

19 May 2022

Renewable Gas Policy Team

Department of Industry, Science, Energy and Resources

Via email: [renewablegas@industry.gov.au](mailto:renewablegas@industry.gov.au)

## Energy Networks Australia's response to the "Review into extending the natural gas regulatory framework – Officials paper."

Energy Networks Australia welcomes the opportunity to respond to the *Extending the national gas regulatory framework to hydrogen and renewable gases and blends - Proposed changes to NGL, NERL and National Regulations Consultation Paper* released on 31 March 2022.

Energy Networks Australia is the national industry body representing Australia's electricity transmission and distribution and gas distribution networks. Our members provide more than 16 million electricity and gas connections to almost every home and business across Australia.

Table E.1 of the Paper outlines the refined approach to extending the national framework to covered gases. The approach addresses four questions:

1. How would a product become a covered gas?
2. What would jurisdictions be responsible for?
3. Application of the NGL.
4. Application of the NERL?

ENA supports the approach to extend the national gas law framework and is providing comments on some of the specific details and drafting as part of the proposed framework.

- » ENA supports the definition of the covered gases and how the definition will be applied in the NGL. The proposed definition addresses some of the inadequacies of the earlier approach that used Natural Gas Equivalents, Constituent Gases and Other Gas Products. These appear not to have been defined in the draft NGL modifications.
- » The reforms appear to have been drafted for a fully mature hydrogen or renewable gas market, while in reality, this market is still emerging. The reforms may have unintentional consequences by impeding investment in hydrogen or renewable gas production or infrastructure projects during trial and demonstration stages. This may lead to higher costs of hydrogen and renewable gas production and/or delivery. These unintentional consequences should be further explored and minimised in the legislative drafting.
- » Additional reforms – possibly through supportive national and jurisdictional policies – may be needed to develop more effective competition in this market. The proposed reforms on their own will not develop a market but enable this market by expanding the definition of covered gas. Early investment in market development may achieve better outcomes for consumers through competition.

- » The proposed approach is for automatic ring-fencing of blending facilities. Further consideration should be given on whether this approach, with the option of exemptions, is the best approach to develop the market (given our response above).
  - The definition of a Blend Processing Facility (Sec 2 of the proposed Amendments) may need additional clarification. It is unclear whether the current definition assumes the facility includes hydrogen or renewable production and/or blending that renewable gas into the pipeline or network. In the former case, automatic ring-fencing may be appropriate as it encourages competition of renewable gas production (although an argument could be made for pilot and demonstration projects whose purpose is to develop a renewable gas market). In the latter case, this blending is similar to current blending facilities that are parts of networks and pipelines and it may not be appropriate to ring-fence those facilities.
  - The proposed reform does include provisions for exemptions and class exemptions but it is unclear whether this will support the development of this emerging market or become an impediment.
  - The AER already appears to have the powers to impose additional ring-fencing obligations or conditions on exemptions for the minimum ring-fencing requirements. Imposing additional obligations may reduce the AER's ability to be flexible and use discretion where this is warranted in a rapidly evolving emerging market. It is unclear what the benefit to the AER and gas distribution networks would be if these new powers were provided to the regulator.
- » The current reforms appear focussed on a fully mature hydrogen and renewable gas market. The transition from natural gas to blended gas to 100 per cent hydrogen will have different technical, economic and social costs. The potential of transitional arrangements in the NGL should be investigated and introduced as required.
- » It is unclear how the new gas definitions will be applied to the NERL. The proposed approach only allows for Natural Gas Equivalents to be subject to the NERL/NERR. While this may be appropriate to ensure customer protections, it is unclear how these definitions will provide a pathway for other covered gases (e.g. 100 % hydrogen) in the NERL. This links to the previous point about the potential requirements for transitional arrangements.
- » Further, the definition of Natural Gas Equivalents does not appear to have been included in the proposed national framework. It appears that approving the types of gases that can be supplied will remain the responsibility for each jurisdiction.

We have provided response to the consultation questions in the attachment. Should you have any queries please contact ENA's Head of Renewable Gas, Dr Dennis Van Puyvelde, [dvanpuyvelde@energynetworks.com.au](mailto:dvanpuyvelde@energynetworks.com.au).

Yours sincerely,



**Dominic Adams**  
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# Attachment 1: Officials' Consultation Paper – Energy Network Australia

## Feedback on the refined approach (see Chapter 3)

No.	Questions	Feedback
Related to:	Proposed approach to specifying the gases and blends within scope of national gas regulatory framework	n/a
1	What are your views on the refined approach to identifying the gases and blends that could fall within the scope of the national framework (see section 3.1)?	<p>ENA is supportive of the definition of the covered gases and how the definition will be applied in the NGL. The proposed definition addresses some of the inadequacies of the earlier approach with the definitions of Natural Gas Equivalents, Constituent Gases and Other Gas Products, which appear not to have been defined in the draft NGL modifications.</p> <p>It is unclear how these definitions will be applied to the NERL. The proposed approach only allows for Natural Gas Equivalents to be subject to the NERL/NERR. While this may be appropriate to ensure customer protections, it is unclear how these definitions will provide a pathway for other covered gases (e.g. 100 % hydrogen) in the NERL.</p> <p>Further, the definition of Natural Gas Equivalents does not appear to have been included in the proposed national framework. It appears that approving the types of gases that can be supplied will remain the responsibility for each jurisdiction.</p>
Related to:	Proposed extension of the NGL and National Gas Regulations	n/a
2	What are your views on the refined approach to extending the NGL to covered gases (see section 3.3)? Where appropriate, please comment in relation to the subheadings below.	
2.1	<p>What are your views on the proposed extension of the pipeline access regime to all pipelines transporting covered gases (i.e. natural gas, biomethane, synthetic methane, hydrogen and blends of these gases) and the impacts it may have on smaller players or new entrants? In responding to this question please consider:</p> <ul style="list-style-type: none"> <li>▪ the proposal to extend to the regime in this way from the commencement of the reforms;</li> <li>▪ the potential impact on industry development, including where it may support the development a competitive and cost-efficient hydrogen and renewable gas industry, or may create barriers;</li> <li>▪ the proposed changes to the pipeline ring-fencing arrangements; and</li> <li>▪ the proposed power to exempt remote pipelines.</li> </ul>	<p>ENA is generally supportive of these extensions.</p> <p>The purpose of these extensions are to:</p> <p style="text-align: center;"><i>Foster the development of competition in contestable parts of the hydrogen and renewable gas industry and promote economic efficiency in the long-term interest of consumer, by...</i> (Sec 3.3 of Official's consultation paper)</p> <p>The reforms appear to have been drafted for a fully mature hydrogen or renewable gas market, while in reality, this market is still emerging. The reforms may have unintentional consequences by impeding investment in hydrogen or renewable gas production or infrastructure projects during trial and demonstration stages. This may lead to higher costs of hydrogen and renewable gas production and/or delivery. These unintentional consequences should be further explored and minimised in the legislative drafting.</p> <p>Additional reforms – possibly through supportive national and jurisdictional policies – may be needed to develop the competition of this market. The reforms on their own will not develop a market but enable this market by expanding the definition of covered gas.</p>

No.	Questions	Feedback
2.2	What are your views on the proposed new light-handed access regime for blend processing facilities?	<p>The proposed approach is for automatic ring-fencing of blending facilities. Further consideration should be given on whether this approach, with the option of exemptions, is the best approach to develop the market, given the significant development required (see our response in the earlier question).</p> <p>The definition of a Blend Processing Facility (Sec 2 of the proposed Amendments) may need additional clarification. It is unclear whether the current definition assumes the facility includes hydrogen or renewable production and blending that gas into the pipeline or network. In the former case, automatic ring-fencing may be appropriate as it encourages competition of renewable gas production (although an argument could be made for pilot and demonstration projects whose purpose is to develop a renewable gas market). In the latter case, this blending is similar to current blending facilities that are parts of networks and pipelines and it may not be appropriate to ring-fence those facilities.</p> <p>The proposed reform does include provisions for exemptions and class exemptions, but it is unclear whether this will become an impediment.</p>
2.3	When developing the refined approach, a number of steps have been taken to minimise regulatory costs and risks for industry participants and new entrants. Do you think any additional steps are required? If so, please explain what they are and why they are required.	ENA has not identified any additional steps.
2.4	<p>Do you agree with the AEMC's recommendations (see section 3.2) that the NGL be amended to:</p> <ul style="list-style-type: none"> <li>▪ enable rules to be made so that AEMO can collect information for the purposes of the VGPR and capacity modelling from facilities that do not otherwise participate directly in the DWGM?</li> <li>▪ limit the potential for the unintended application of the GSOO provisions in the NGL?</li> </ul> <p>If you disagree with either of these recommendations, please explain why.</p>	ENA support these recommendations.
2.5	<p>Do you agree with the AER's recommendations (see section 3.2) that the NGL be amended to:</p> <ul style="list-style-type: none"> <li>▪ accord the regulator the power to impose additional ring fencing requirements on a class of service providers or associates through a ring-fencing order?</li> <li>▪ allow conditions to be imposed on minimum ring-fencing exemptions issued under the NGR?</li> </ul> <p>If you disagree with either of these recommendations, please explain why.</p>	The AER already appears to have the powers to impose additional ring-fencing obligations or conditions on exemptions for the minimum ring-fencing requirements. It is unclear what the benefit to the AER and gas distribution networks would be if these new powers were provided to the regulator.
2.6	Are any transitional arrangements required in the NGL to accommodate the extension to covered gases? If so, explain what they are and why they are required.	The current reforms appear focussed on a fully mature hydrogen and renewable gas market. The transition from natural gas to blended gas to 100 per cent hydrogen will have different technical, economic and social costs. The potential of transitional arrangements in the NGL should be investigated and introduced as required.

No.	Questions	Feedback
Related to:	Proposed extension of the NERL and National Energy Retail Regulations	n/a
3.0	What are your views on the refined approach to extending the NERL to covered gases (see section 3.3)? Where appropriate, please comment in relation to the questions below.	Please see detailed comments on page 9 below.
3.1	What are your views on the approach to identifying NGEs and defining prescribed covered gases?	<p>It is unclear how these definitions will be applied to the NERL. The proposed approach only allows for Natural Gas Equivalents to be subject to the NERL/NERR. While this may be appropriate to ensure customer protections, it is unclear how these definitions will provide a pathway for other covered gases (e.g. 100 % hydrogen) in the NERL.</p> <p>Further, the definition of Natural Gas Equivalents does not appear to have been included in the proposed national framework. It appears that approving the types of gases that can be supplied will remain the responsibility for each jurisdiction.</p>
3.2	What are your views on the separate authorisation and exemption of natural gas and NGEs (as one group) and prescribed covered gases (as separate products)?	Please see below.
3.3	Are any transitional arrangements required in the NERL to accommodate the extension to covered gases? If so, explain what they are and why they are required.	It appears that the NERL will only cover NGE's, which are not clearly defined. Additional arrangements will be needed to allow the other covered gases to be accommodated in the NERL.

## Feedback on proposed changes to the National Gas Law (see Attachment A and Chapter 4)

Section of Draft Bill	Feedback
17	The proposed change amends the definition of "pipeline" to ensure that "pipeline" does not include other equipment used to remove or add components to covered gas, such as blend processing facilities. These items were already excluded from the definition of "pipeline". The amendment simply clarifies that blend processing facilities are not intended to be included within the definition of "pipeline", although those facilities could be considered as part of the gas infrastructure. (Also see comment 21)
21	<p>The proposed change amends the definition of "pipeline service" to exclude the production of "primary gas and processable gas" and to exclude the sale or purchase of any covered gas or processable gas.</p> <p>The Bill amends the National Gas Law so it applies to "covered gas" rather than "natural gas". This amendment facilitates this change. There are some issues about whether or not "blending services" are included within the definition of "pipeline services". It seems clear that "pipeline service" could include a blending service where the blending service is provided by means of a pipeline, as an "in pipeline" blending service. This type of service could then be a reference service.</p> <p>It is unclear whether "pipeline service" includes a blending service when it is provided by means of a separate blending facility. "Pipeline service" can include services that are ancillary to services provided by means of a pipeline (which would suggest that a blending service can be included). However, the definition of "pipeline" excludes blend processing facilities (see comment #17) and this suggests that blending services cannot be provided as pipeline services or reference services. This should be clarified.</p>
23	This section amends the definition of "producer" to replace "natural gas" with "1 or more primary gases"

Section of Draft Bill	Feedback
	<p>The Bill amends the National Gas Law so it applies to “covered gas” rather than “natural gas”. This amendment is consistent with this change, although it is notable that this amendment refers to “primary gases” rather than “covered gases”. This difference means that “producer” as defined will not include:</p> <ul style="list-style-type: none"> <li>▪ a person who produces a blend of primary gases (although such a person might be a “blend processing service provider”); or</li> <li>▪ a person who produces a gas which is included as a covered gas by a local regulation.</li> </ul> <p>It seems incorrect to exclude these persons from the definition of “producer”, especially as the declared wholesale gas market and the retail market will be extended by the Bill to all covered gases.</p>
32	<p>Section 6(1)(b)(v) is amended to delete the reference to an applicable access arrangement from the definition of “regulatory obligation or requirement”.</p> <p>Section 24 of the National Gas Law allows a service provider to recover the efficient costs of complying with regulatory obligations or requirements. The amendment to section 6 appears to extend these costs to include costs that are associated with “pipeline services”, even where those services are not reference services.</p> <p>The purpose of this change is unclear. It might be related to the point that a pipeline service could include an in pipeline blending service (which may or may not be a reference service) - see comment #21.</p>
33	<p>Section 7 is amended to limit regulatory payments for pipeline service standards to service standard that relate to reference services.</p> <p>Section 24 of the National Gas Law allows a service provider to recover the efficient costs of making “regulatory payments”. A regulatory payment is defined to include a sum that is paid for breach of a pipeline service standard where it was efficient to pay that sum. This amendment limits the scope of these sums to those that relate to pipeline services to which an access arrangement applies (or, in other words, reference services).</p> <p>The purpose of this change is unclear. It might be related to the point that a pipeline service could include an “in pipeline blending service” (which may or may not be a reference service) - see comment #21.</p>
41	<p>Section 24(2)(b) is amended by adding “relating to a scheme pipeline” after “regulatory payment”.</p> <p>Section 24 of the National Gas Law allows a service provider to recover the efficient costs of making “regulatory payments”. A regulatory payment is defined to include a sum that is paid for breach of a pipeline service standard where it was efficient to pay that sum. This amendment limits the scope of these sums to those that relate to scheme pipelines.</p> <p>The purpose of this change is unclear.</p>
85	<p>Section 91L(1) is amended by replacing “the retail market for natural gas” with “a retail market for a covered gas”</p> <p>Section 91L defines the retail gas market. At one level, the proposed change is merely consequential, extending the retail market to include covered gas. At another level, there is a potential drafting issue. As amended, the section reads as though there are several separate markets for different types of covered gas.</p> <p>From a technical drafting perspective, it would be clearer to draft the change to read “a retail market for a covered gas or covered gases” to cover those situations where different types of covered gases are substitutable (and, therefore, form part of the same product market).</p>
87	<p>The definition of “related business” in section 137 is amended to include a reference to blend processing services, the business of producing primary gases and the business of producing or selling covered gases. The definition of “related business” is significant because it is used in the minimum ring-fencing provisions under the National Gas Law.</p>

Section of Draft Bill	Feedback
	<p>Under the National Gas Law (as currently drafted), the owner, controller or operator of a pipeline (that is, a service provider) cannot carry on a business of producing, purchasing or selling natural gas or processable gas. With the proposed amendment, the existing prohibition is extended such that, in addition to the existing prohibitions, a service provider could also not:</p> <ul style="list-style-type: none"> <li>▪ provide a blending service for primary gases for injection into a pipeline using a “blend processing facility”;</li> <li>▪ use a blend processing facility to provide a service of separating a gas blend into constituent gases before re-injection into a pipeline as a primary gas or a gas blend;</li> <li>▪ carry on a business of producing hydrogen, bio-methane, synthetic methane or any other gas added as a primary gas by the National Gas Regulations; or</li> <li>▪ carry on a business of purchasing or selling hydrogen, bio-methane, synthetic methane or any other gas added as a primary gas by the National Gas Regulations, a gas blend or any other gas specified as a covered gas by local regulation in a particular jurisdiction).</li> </ul> <p>The definition of “related business” is also significant because it is used in section 140. Section 140 applies where an associate of a service provider takes part in a related business. If an associate of a service provider takes part in a related business then:</p> <ul style="list-style-type: none"> <li>▪ none of the service provider’s staff can serve as marketing staff of the associate; and</li> <li>▪ none of service provider’s marketing staff can serve as staff of the associate.</li> </ul> <p>(Note that, for this purpose, “staff” refers broadly to officers, employees, consultants, independent contractors, or agents).</p> <p>The change in the definition of “related business” will potentially extend the range of associates that are relevant to these staff restrictions. At present, under the National Gas Law as currently drafted, the restrictions on marketing staff apply only to associates who engage in a business of producing, purchasing or selling natural gas or processable gas. With the proposed amendment, the existing prohibition is extended such that, in addition to the existing group of associates, it will also apply to an associate which:</p> <ul style="list-style-type: none"> <li>▪ provides a blending service for primary gases for injection into a pipeline using a “blend processing facility”;</li> <li>▪ uses a blend processing facility to provide a service of separating a gas blend into constituent gases before re-injection into a pipeline as a primary gas or a gas blend;</li> <li>▪ carries on a business of producing hydrogen, bio-methane, synthetic methane or any other gas added as a primary gas by the National Gas Regulations; or</li> <li>▪ carries on a business of purchasing or selling hydrogen, bio-methane, synthetic methane or any other gas added as a primary gas by the National Gas Regulations, a gas blend or any other gas specified as a covered gas by local regulation in a particular jurisdiction).</li> </ul> <p>Thus, for example, under the National Gas Law as currently drafted, if an associate carried on a business of producing hydrogen (and no other business), there would be no restriction on the service provider’s staff serving as marketing staff of the associate or marketing staff of the associate serving as staff of the service provider. This will change with the proposed amendments.</p>
92	<p>A new Chapter 5A is inserted with third party access obligations for non-pipeline facilities and new ring-fencing obligations for blend processing service providers and their associates and other persons</p> <p>New Chapter 5A has three parts.</p> <p><b>Part 1 is headed “Information Transparency”.</b> Part 1 applies to blend processing facilities, compression service facilities, storage facilities and other facilities which are prescribed by the National Gas Regulations (apart from pipelines). Part 1 enables the Rules to require the collection, disclosure, verification, management and publication of information about services provided by a blend processing facility, a compression service facility, a storage</p>

Section of Draft Bill	Feedback
	<p>facility or any other facility prescribed by the National Gas Regulations (apart from a pipeline). The terms of this Part are very similar to former sections 83A and 83AA (discussed in comment #49).</p> <p><b>Part 2 is headed “Access to certain facilities”.</b> Part 2 regulates access to blend processing facilities and other facilities prescribed by the National Gas Regulations. These are called ‘relevant facilities’. Part 2 states that the owner, operator or controller of a relevant facility (or an associate of such a person) must not prevent or hinder access to a service provided by the relevant facility. Part 2 also requires the owner, operator or controller of a relevant facility to negotiate in good faith about the terms of access to a service provided by the facility. Part 2 allows the Rules to make provisions about a negotiation framework and dispute resolution for access disputes.</p> <p><b>Part 3 is headed “Ring fencing”.</b> Part 3 imposes ring-fencing obligations on a blend processing service provider or a person prescribed by the Regulations and any associate of a blend processing service provider or a person prescribed by the Regulations. These parties cannot carry on:</p> <ul style="list-style-type: none"> <li>▪ the business of providing pipeline services;</li> <li>▪ the business of producing primary gas or processable gas;</li> <li>▪ the business of purchasing or selling covered gas or processable gas.</li> </ul> <p>This is a very significant new prohibition. It applies in addition to the existing ring-fencing obligations imposed on service providers and their associates under Chapter 4. Most significantly, the new-ring fencing provisions will prevent a service provider from providing – or continuing to provide - pipeline services, without an exemption, where it is an associate of a blend processing service provider. This is contrary to statements made in the Consultation Paper.</p> <p>This will mean that existing gas transmission and distribution businesses will need an exemption from Part 3, in order to remain in business, if they have an associate that is a blend processing service provider (or is a person in a class prescribed by the National Regulations).</p> <p>Part 3 – Restrictions on Anti-Competitive Conduct</p> <p>Part 3 also imposes competition constraints on a blend processing service provider or a person prescribed by the Regulations and any associate of a blend processing service provider or a person prescribed by the Regulations.</p> <p>Under Part 3, these parties need approval make, vary or give effect to a contract, arrangement or understanding with an associate, in relation to a “relevant facility”, where the arrangement has an anti-competitive effect in the market for service provided by a facility owned, operated or controlled by the party. A “relevant facility” is a blend processing facility (if the party is a blend processing service provider) or a facility prescribed by the National Gas Regulations (in the case of another person).</p> <p>This prohibition on anti-competitive conduct is in addition to the existing prohibition in section 147 of the National Gas Law, which already prohibits a service provider from making, varying or giving effect to a contract which would have an anti-competitive effect in a market for covered gas services (pipeline services or the supply of covered gas or an ancillary service).</p> <p>Part 3 – Competitive Parity Rule</p> <p>Part 3 also imposes a competitive parity rule on a blend processing service provider or a person prescribed by the Regulations and any associate of a blend processing service provider or a person prescribed by the Regulations.</p> <p>These parties need approval to make, vary or give effect to a contract that is inconsistent with the competitive parity rule. The competitive parity rule is the rule that a party must ensure that a party must provide services to associates as if they were separate unrelated entities.</p> <p>This prohibition is in addition to the existing prohibition in section 148 of the National Gas Law, which already prohibits a service provider from making, varying or giving effect an “associate contract” that is inconsistent with the competitive parity rule.</p>

Section of Draft Bill	Feedback
	<p>Part 3 - Exemptions</p> <p>Part 3 contemplates that the Rules may provide for exemptions from Part 3.</p> <p>Part 3 - Interaction with Chapter 4</p> <p>It is unclear why the new ring-fencing provisions in Part 3 of Chapter 5A have been separated from the existing ring -fencing provisions in Chapter 4 or how these ring fencing provisions are intended to interact (especially as regards exemptions).</p> <p>The new ring-fencing provisions look poorly drafted and require special attention.</p>

*[insert extra rows if necessary]*

## Feedback on proposed changes to the National Gas Regulations

Section of Draft Variation Regulations	Feedback

*[insert extra rows if necessary]*

Feedback on proposed changes to National Energy Retail Law (see Attachment A and Chapter 5)

Section of Draft Bill	Feedback
1	<p>In the context of the National Energy Retail Law, it is proposed within the Bill that “gas” is defined to mean:</p> <ul style="list-style-type: none"> <li>▪ natural gas (as defined in the National Gas Law);</li> <li>▪ natural gas equivalents; and</li> <li>▪ prescribed covered gases.</li> </ul> <p>Paragraph (b) - “natural gas equivalents” - is defined to mean a “covered gas” (as defined in the National Gas Law) that is:</p> <ul style="list-style-type: none"> <li>▪ supplied through a “deemed natural gas equivalent distribution system”; or</li> <li>▪ prescribed by a local instrument for use as a natural gas equivalent in a jurisdiction.</li> </ul> <p>Paragraph (c) - “prescribed covered gas” - is defined to mean a “covered gas” (as defined in the National Gas Law) that is prescribed by the National Energy Retail Regulations (that is, the prescription occurs at a national level, rather than a jurisdictional level, as for a “natural gas equivalent”). Note that a local regulation can override the national regulation and exclude one or more prescribed covered gases from the definition of “gas” (see proposed section 2(7), discuss in comment #4 below). There appears to be a drafting problem with this definition.</p> <p>For the purpose of the definition of “natural gas equivalents” (discussed above), a “deemed natural gas equivalent distribution system” means an existing distribution system that is authorised to haul a covered gas (other than natural gas or a prescribed covered gas).</p> <p><b>Implications for Distribution Networks</b></p> <p>For distribution networks, the change to the definition of “gas” has implications for how the NERL applies to distribution networks. Under the present law, NERL only applies to natural gas networks that are covered pipelines under the NGL or nominated for regulation under NERL. Following the proposed changes to the definition of “gas” under NERL, the situation appears to be as follows:</p> <p>(a) The NERL will only apply to distribution pipelines that are covered or nominated for regulation. For gas, these are “distribution systems” as defined in NERL (“NERL distribution systems”)</p> <p>(b) However, proposed changes to the National Gas Law will extend the concept of “pipeline” so that a pipeline is not just a pipeline that hauls natural gas but also includes a pipeline that hauls any other covered gas.</p> <p>(c) Proposed changes to NERL (see section 16 below) state that the NERL applies to a gas distributor to the extent that the distributor supplies:</p> <ul style="list-style-type: none"> <li>• natural gas;</li> <li>• natural gas equivalents; or</li> <li>• a prescribed covered gas.</li> </ul> <p>(d) This means:</p> <ul style="list-style-type: none"> <li>• If a distributor owns or operates a NERL distribution system, supplying natural gas, NERL applies to that distributor in relation to the supply of natural gas. This is the current situation.</li> <li>• If a distributor owns or operates a NERL distribution system, which supplies a gas that has been prescribed as a natural gas equivalent by local regulation, NERL will apply to that distributor in relation to the supply of the natural gas equivalent.</li> <li>• If a distributor owns or operates a NERL distribution system, which supplies another covered gas (that has been prescribed by national regulations for the purposes of NERL), NERL will apply to that distributor in relation to the supply of that prescribed covered gas.</li> </ul>

Section of Draft Bill	Feedback
	<ul style="list-style-type: none"> <li>• If a distributor owns or operates a network:               <ul style="list-style-type: none"> <li>A. that is a NERL distribution system as at the time of the amendments; and</li> <li>B. that network subsequently is authorised to transport a covered gas that is not prescribed by local regulation or national regulations, then NERL will apply to that distributor in relation to the supply of that covered gas (this gas is also treated as a natural gas equivalent, even though it is not prescribed by local regulation).</li> </ul> </li> </ul> <p>(e) One significant point to note about this formula is that, if a distribution network was a NERL distribution system when the amendments come into effect (the “NGL extension date”), then that network will remain subject to NERL no matter what covered gas it subsequently transports (as long as it is authorised to transport that covered gas). Thus, for example, NERL would continue to apply to that network even if that becomes a pure hydrogen network.</p> <p>(f) By comparison, if a NERL distribution system transports a covered gas (other than natural gas) but that network was not covered or nominated as at the NGL extension date, the network would only be subject to NERL if the relevant covered gas was prescribed by local or national regulation. Thus, for example, if a network of this type was a pure hydrogen network – and hydrogen was not prescribed – the customers of the network would not have the benefit of NERL.</p> <p>(g) It is unclear why the customers of one hydrogen network should automatically get the protection provided by NERL whereas the customers of another hydrogen network do not get automatic protection automatically.</p>
4	<p>A new section 2(7) is inserted to allow local instrument to exclude a prescribed covered gas from the definition of “gas”. This section was mentioned above (in comment #1). It allows a local instrument to override the prescription of a gas by a national regulation. There appears to be a drafting problem with the section. We believe that:</p> <p>(a) Section 2(7) should be re-worded so that a local regulation is allowed to exclude a covered gas from the definition of “prescribed covered gas”; and</p> <p>(b) the definition of “prescribed covered gas” (in section 2(1)) should be amended so that it means a covered gas that is prescribed by the National Energy Retail Regulations and which has not been excluded from the definition of prescribed covered gas by a local regulation.</p>
5	<p>A new section 3A is inserted which allows the National Regulations to modify the application of the NERL, the NER Regulations and the NER Rules to prescribed covered gas. We understand this section has been included to allow flexibility. It is unclear why this flexibility is required for prescribed covered gases but not natural gas equivalents. There is no obvious reason why the type of gas should affect consumer protection provisions.</p>

*[insert extra rows if necessary]*

## Feedback on proposed changes to the National Energy Retail Regulations

Section of Draft Variation Regulations	Feedback

*[insert extra rows if necessary]*