

18 July 2007

Manager, MCE Secretariat,
Department of Industry, Tourism and Resources,
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Dear Sir/Madam

**RESPONSE TO RETAIL POLICY WORKING GROUP
COMPOSITE CONSULTATION PAPER**

Thank you for providing an opportunity to comment on the Retail Policy Working Group's composite consultation paper on a National Framework for Non-Economic Distribution and Retail Regulation.

Aurora Energy, as a distributor/retailer, has contributed to the submissions prepared by the Energy Networks Association and the Energy Retailers Association of Australia, and we support and endorse the work done by those industry bodies. The views expressed in this letter are those that relate to our particular circumstances, or those that we consider to be sufficiently important to warrant a separate submission.

1. At the recent meeting with the RPWG, we discussed the value of making submissions on a paper which of itself has no standing in terms of agreed policy positions by either the MCE or SCO, or indeed by the RPWG itself. The RPWG indicated that the intention is that the next step will be the development of a SCO policy position, informed by the Allens Arthur Robinson paper and the views of the stakeholders gathered during the consultation process. Aurora strongly supports that intention. It is our view that real progress from here in the absence of any policy direction is impossible.

In the same vein, we also support the proposed extension of time for implementation to 1 January 2009. Meaningful consultation on such a broad range of critical regulatory functions requires a reasonable timeframe for implementation, and avoiding the Christmas period for urgent consultation would be a rare treat!

2. Table 1 (page 11 of the paper) shows the thresholds that define small customers in the various jurisdictions. The levels appear to be those that were used to define the last tranche of retail contestability, and thus might not be the most appropriate for another purpose. As an aside, the relevant number for the last tranche in Tasmania is 150MWh per annum.

We believe that the RPWG is in a position to make a decision on the consumption level or class of customers that should be afforded protection as 'small customers' for the purposes of this consultation. Aurora would suggest that this threshold should be set at no more than 100MWh per annum, or should perhaps be defined as limited to residential customers only.

3. Table 2 (page 15 of the paper) indicates an intention to include in the rules the requirement to produce pricing information in a comparable form to other retailers. Aurora does not support this intention, and further does not support pricing comparison tools similar to those that are already used in some jurisdictions. These tools are overly simplistic, and do not readily allow for information on innovative pricing and fee structures to be adequately represented. Aurora currently faces an example of this, as we currently offer time of use pricing to residential customers in the NEM and the current price comparators do not allow meaningful price comparison. Our view is that the current comparators were designed around the existing market offers that are generally based on accumulation metering. These comparators risk providing a barrier to second tier retailers offering innovative products.
4. On the contractual model, Aurora generally supports Recommendations 21 and 22 on a hybrid default model for electricity, in which there is a direct (deemed) contract between the distributor and the customer, a contract between the retailer and the customer, and a contract between each retailer and the distributor. The option for variations from the default position by agreement between the parties is also supported, but we note that detailed drafting will need to consider how this option works with section 5.3 of the Rules.

However it is unclear from the wording used in Recommendation 22 (and in Recommendation 32 and Attachment 4) whether the distributor is only required to provide distribution services to the customer. It appears from the definition of distribution services that (unless this definition is split into component parts) the distributor can only be obliged under one contract to provide these services in relation to a customer. If the definition continues to cover all three components of the distribution service, it would follow that under the hybrid model:

- the distributor will be contractually obliged to provide the distribution services under one contract, being the distribution contract between the distributor and customer; and

- the financial and coordination arrangements between the distributor and the retailer in relation to the provision of the distribution services to a customer will be dealt with in the use of system/interface agreement between the distributor and the retailer.

However, this does not appear to follow from Recommendation 32 (refer to the third dot point) and Attachment 4 (Obligation to Supply). We believe the intent of the hybrid model is that the distributor provides distribution services to the customer, and the other references should be corrected to support this intent.

We note in addition that revenue determinations are made on the basis of circumstances as they stand at the time, and a change as significant as the contracting model may well require some transitional arrangements to be established in order that the risk/reward balance between the participants is not disturbed unduly.

5. Recommendation 31 lists some of the circumstances in which a distributor may (or must) disconnect customer premises. Although we recognise that this is an early stage in the process and the detail has yet to be developed, we notice that the ability to disconnect if a customer's use interferes with either the network or other customers is missing.
6. Recommendation 44 authorises the AER to exempt a person from the Law, the Rules and any guidelines issued by the AER. Aurora agrees that this is appropriate, however it is our view that the exemption process should be transparent and the views of stakeholders should be sought and considered in public consultation. The standard AER consultation process should apply.
7. Recommendations 49 – 53 deal with ring-fencing. Although it is not clear from the paper, we understand from our meetings with the RPWG that the intent of these recommendations is to regulate behaviour between a distributor and a related retailer. It is our understanding that all distributors and retailers in the gas industry are separate legal entities, and that this is now also the position in the South Australian, Victorian and Queensland electricity industries. This means that the provisions of ring-fencing and potential legal separation only relate to NSW, ACT and Tasmanian entities.

Legal separation is likely to result in increased operating and governance costs. As a small organisation in the context of the National Electricity Market, Aurora already faces particular challenges in relation to economies of scale, which would be exacerbated by these costs. Where these increased costs relate to the regulated distribution business, they would most likely flow through to customers. However it is unclear that there are any benefits from such measures that would outweigh these costs. Aurora already

operates under ring-fencing arrangements developed and monitored by the jurisdictional regulator and there is no evidence that legal separation would benefit Tasmanian customers. If legal separation were to be imposed, in order that these major changes in our business conditions may be addressed with due diligence, we would submit that we would need a reasonable period of at least two years to manage the transition and therefore any requirement to implement legal separation should be delayed until after 2011.

Attached is a marked-up table from the consultation paper to support our views. Additional thoughts on the drafting details to be considered are also included for reference.

We would be happy to discuss our views further with you if needed. Should you require clarification on any of the matters raised in this submission, please contact me on 03 6237 3390.

Yours sincerely

Wim de Puit
Manager Regulation and Compliance

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> ➤ a description of the retailer's and customer's respective rights and obligations concerning the supply under the 	<p>However, the NER defines 'supply' to mean delivery of electricity. In addition the Consultation Paper later refers to 'sale and supply'.</p> <p>These terms need to be consistently used during the detail drafting phase. Most jurisdictions define retailing to mean the sale of electricity.</p>
	<p>Connection services</p> <p>Conditions to the obligation</p>	<ul style="list-style-type: none"> ➤ Law and Rules, including relevant dispute resolution procedures; ➤ particulars of any rebate or relief available under any government funded energy charge rebate or relief scheme; and ➤ information in community languages about the availability of interpreter services for the languages concerned and telephone numbers for the services; • Connection services – the retailer's responsibility to arrange connection services in respect of the supply; and • Conditions to the obligation – the circumstances in which the retailer may refuse to supply, including: <ul style="list-style-type: none"> ➤ failure by the customer to satisfy the application requirements identified above; ➤ failure to provide any security the retailer is entitled to require under the standing offer terms; ➤ failure to pay an amount due to the retailer in respect of the new supply (such as connection charges); ➤ failure to provide access to the premises; and 	<p>Agreed.</p> <p>Agreed.</p>

No.	Subject	Recommendation	Comments
		<p>➤ other circumstances beyond the retailer's control.</p> <p>The Law should provide that the standing offer terms take effect as a contract between the retailer and customer.</p>	
2.	Designating retailers and supply remits	<p>The Law should provide that, for the purpose of the obligation to supply, a designated retailer is a retailer designated as such by a jurisdictional instrument of the jurisdiction or jurisdictions in which it supplies energy, and its designated supply remit is as specified in the instrument.</p> <p>A designated retailer's supply remit may be specified by reference to:</p> <ul style="list-style-type: none"> • a geographical area; • particular premises or classes of premises; or • particular customers or classes of customers. <p>Under this approach, whether the obligation applies or not will be a jurisdictional decision, depending on whether or not individual jurisdictions elect to make a designation. Similarly, the method of specifying the scope of the obligation (whether on the basis of geographical areas, financial responsibility for the supply point or some other means) will be a jurisdictional decision.</p>	Agreed.
3.	MCE principles for obligation to supply	<p>The MCE should consider agreeing principles to be applied by jurisdictional ministers in determining whether or not to activate or de-activate the obligation by making (or revoking) the relevant jurisdictional instruments. However, there is no need for principles to be agreed at this stage concerning the retailers to be designated and the approach to specifying supply remits where the obligation is to be imposed.</p>	Agreed although this is a jurisdictional issue.
4.	Definition of small customers	<p>The Law should provide that, for the purpose of the obligation to supply, a 'small customer' is a customer whose actual or estimated</p>	Agreed. However, note that our current thresholds under the Contestable Customer Regulations are

No.	Subject	Recommendation	Comments
		<p>energy consumption is less than a threshold level specified in the Rules. The initial Rules should specify the existing jurisdictional thresholds.</p> <p>The Rules should set out the mechanics of assessing customer consumption for the purpose of applying the threshold, including whether the threshold applies to individual premises or is aggregated.</p>	<p>established for a different purpose and use a different process.</p>
5.	MCE directed review of small customer definition	<p>The MCE should direct the AEMC to undertake a review of small customer consumption thresholds with a view to establishing a nationally consistent threshold, having regard to any policy principles specified by the MCE and the need for any transitional arrangements.</p>	<p>Why go to another process?</p>
6.	Tariffs	<p>The Law should provide that standing offer tariffs are those published by designated retailers from time to time.</p>	<p>Agreed.</p>
7.	Specification of terms and conditions	<p>The Law should provide that standing offer contract terms and conditions must be published by designated retailers and may either adopt the minimum terms and conditions set out in the Rules or provide for alternative terms and conditions which are not inconsistent with those set out in the Rules. Terms and conditions published by retailers should not be subject to prior regulatory approval, but would be subject to compliance monitoring and enforcement by the AER.</p>	<p>Agreed.</p>
8.	Standing offer terms	<p>The Rules should contain (preferably in a separate schedule) the minimum requirements applicable to standing offer contracts, expressed in a manner which can take effect as contractual terms. Part 2 of this document sets out summary terms and conditions for development of the initial Rules.</p>	<p>Agreed.</p>

No.	Subject	Recommendation	Comments
9.	Deemed supply arrangements	<p>With respect to deemed supply arrangements (including move-in supply) the Law should establish the existence of a deemed contract, but the circumstances in which this arises are matters of detail best dealt with in the Rules. On that basis it is proposed that the Law should provide that:</p> <ul style="list-style-type: none"> • the Rules may specify the tariffs, terms and conditions that apply in any circumstance where a customer is taking a supply of energy from a retailer without the customer and retailer having entered into a standing offer contract or market contract; and • the tariffs, terms and conditions specified in the Rules take effect as a contract between the customer and the retailer in accordance with the Rules. 	Agreed.
10.	When a deemed supply arrangement arises	<p>The Rules should provide for a deemed contract to arise in the following circumstances:</p> <ul style="list-style-type: none"> • where a customer occupies premises that are already connected to the distribution system and commences to take a supply of energy; and • where a current contractual arrangement terminates without new supply arrangements having been established, <p>subject to any provision in the contract itself concerning the terms and conditions to apply on termination.</p>	Agreed.
11.	Tariffs, terms and conditions of deemed supply arrangements	<p>For designated retailers, the Rules should provide that the tariffs, terms and conditions applicable to deemed supply arrangements are the relevant retailer's standing offer tariffs, terms and conditions. This will automatically apply for those jurisdictions that assign the obligation to supply to the FRMP. For other retailers, the retailer may</p>	Agreed.

No.	Subject	Recommendation	Comments
		publish tariffs, terms and conditions to apply to deemed supply arrangements, which must be consistent with the standing offer terms set out in the Rules. If the retailer does not do so, the standing offer terms contained in the Rules will apply. In either case, while jurisdictional tariff regulation continues the tariff must not exceed the tariff that would apply if the premises were being supplied by the designated retailer.	
12.	Duration of deemed supply arrangements	The duration of deemed supply arrangements should be 6 months unless terminated earlier. For jurisdictions that assign the obligation to supply to the FRMP, the supply obligation may continue indefinitely in that, if the customer takes no action, the supply will continue on the retailer's standing offer tariffs, terms and conditions.	Agreed.
13.	Notice requirements for deemed supply arrangements	<p>The Rules should require:</p> <ul style="list-style-type: none"> • the customer to give notice to the retailer equivalent to the application requirements for supply under a standing offer; and • the retailer to give the customer details of the tariffs, terms and conditions applicable to the supply, the customer's options for establishing a new supply arrangement (including, where applicable, the availability of supply under a standing offer) and what will happen at the end of the deemed supply arrangement if the customer does not do so (including the retailer's entitlement to disconnect the supply and the tariffs, terms and conditions that will apply to the customer if the supply continues). 	Agreed.

No.	Subject	Recommendation	Comments
Retailer – small customer market contracts			
14.	Generic versus energy specific regulation	<p>National and jurisdictional consumer protection laws should be relied on where these provide a consistent national approach in dealing with the relevant subject matter. Energy specific regulation is justified where general consumer protection laws are inconsistent or silent and the characteristics of the energy market justify additional regulation.</p> <p>General consumer protection laws are at present largely silent on the regulation of contract terms. The characteristics of the energy market that justify additional regulation are the essential service nature of energy supply and the new and developing state of competition in the energy market. This suggests that market contract regulation should be assessed primarily against the objectives of:</p> <ul style="list-style-type: none"> • ensuring that contractual processes do not result in customers ceasing to have a supply of energy without having an adequate opportunity to address the causes of the potential for disconnection, either independently or by recourse to assistance measures provided by governments or other agencies (recognising that ensuring a supply is ultimately a matter for governments); and • encouraging the development of the competitive market by facilitating consumer choice based on readily comparable market contract offers, recognising that further deregulation of market contract terms can be addressed through the AEMC Rule change process, having regard to the extent and nature of competition and the capacity of consumers to participate in the competitive market. 	Agreed.

No.	Subject	Recommendation	Comments
15.	Terms and conditions	<p>The Law should provide that market contracts with small customers, or categories of small customers, must comply with any requirements in relation to such contracts contained in the Rules.</p> <p>The Law should provide authority for the Rules to contain provisions which specify:</p> <ul style="list-style-type: none"> • terms and conditions which must be included in market contracts; • requirements with which the terms and conditions of market contracts must not be inconsistent; and • terms and conditions which must not be included in market contracts. <p>The Rules should contain (preferably in a separate schedule) the minimum requirements applicable to market contracts. This could be done by annotations to the schedule of standing offer terms. Part 2 of this document sets out summary market contract annotations to standing offer terms for development of the initial Rules.</p>	Agreed.
16.	Definition of small customers	<p>The Law should provide that a small customer for the purpose of market contract regulation has the same meaning as for the purpose of the obligation to supply, except that the Rules may distinguish between domestic and business small customers, may apply sub-thresholds and may allow for aggregation of consumption at separate premises for the purpose of specific regulatory requirements.</p>	Agreed.

No.	Subject	Recommendation	Comments
Retailer – small customer marketing			
17.	Generic versus energy specific regulation	<p>General consumer protection laws with respect to marketing conduct should be relied on where these provide a consistent national approach in dealing with the relevant subject matter. Energy specific regulation is justified where general consumer protection laws are inconsistent and adopting consistent energy specific requirements will have material benefits in terms of:</p> <ul style="list-style-type: none"> • reducing retailer compliance burden or cost (this implies such requirements apply in place of general consumer protection laws); or • consumer protection, having regard to the distinguishing characteristics of the energy market. <p>Energy specific regulation of marketing conduct is justified where the marketing conduct has the potential to influence energy contract formation and terms (or compliance with requirements relating to such marketing conduct) but not in relation to general consumer issues (such as contact times).</p>	Agreed.
18.	Marketing requirements	<p>The Law should require retailers and other persons engaged in energy marketing to comply with energy marketing requirements set out in the Rules.</p> <p>The Rules should contain (preferably in a separate schedule) requirements applicable to the marketing of energy. Part 3 of this document sets out a summary set of marketing requirements for development of the initial Rules.</p>	Agreed.
19.	Entities subject to regulation	<p>The Law will need to include a definition of persons engaged in marketing activities. This should include:</p> <ul style="list-style-type: none"> • retailers; 	Agreed.

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> • persons acting as agents of retailers for the purpose of gaining new or retaining existing customers; • persons acting as agents of one or more customers in respect of retail energy supply; and • persons otherwise acting as an intermediary between retailers and customers in respect of retail energy supply. 	
20.	Definition of small customers	The Law should provide that a small customer for the purpose of marketing conduct regulation has the same meaning as for the purpose of the obligation to supply.	Agreed.

No.	Subject	Recommendation	Comments
Contractual model for distribution services			
21.	Need for a default model	A contractual model is required as a default model to apply in both the electricity and gas sectors to provide a framework for the development of the distributor - customer interface and the distributor - retailer interface arrangements.	Agreed.
22.	Preferred model	<p>A hybrid model is proposed as the default model to apply in both the electricity and gas sectors to provide a framework for the development of the distributor - customer interface and the distributor - retailer interface arrangements.</p> <p>This model involves:</p> <ul style="list-style-type: none"> • a direct contract between a distributor and each customer connected to the distributor's infrastructure governing the physical and operational aspects of the provision of distribution services to the customer, including liability issues; • a contract between the retailer and each of its customers which includes provisions governing the financial aspects of the provision of distribution services to the customer; and • a contract between a distributor and each retailer which sells energy to customers connected to the distributor's infrastructure governing the financial and coordination arrangements between the distributor and the retailer. 	<p>Aurora agrees with the proposed model subject to the following clarification.</p> <p>It is unclear from the wording used in this Recommendation (and in Recommendation 32 and Attachment 4) whether the distributor is only required to provide distribution services to the customer.</p> <p>It appears from the definition of distribution services that (unless this definition is split into component parts) the distributor can only be obliged under one contract to provide these services in relation to a customer.</p> <p>If the definition continues to cover all 3 components of the distribution service, it would follow that under the hybrid model:</p> <ul style="list-style-type: none"> • the distributor will be contractually obliged to provide the distribution services under one contract, being the distribution contract between the distributor and customer; and • the financial and coordination arrangements between the distributor and the retailer in relation to the provision of the distribution services to a

No.	Subject	Recommendation	Comments
			<p>customer will be dealt with in the use of system/interface agreement between the distributor and the retailer.</p> <p>However, this does not appear to follow from Recommendation 32 and Attachment 4.</p>
23.	Small embedded generators	Consideration should be given to including contractual arrangements dealing with small embedded generators in the framework for the hybrid contractual model.	Agreed.

No.	Subject	Recommendation	Comments
Distributor obligation to provide connection services			
24.	Scope of obligation	<p>The Law should provide that distributors must, in accordance with the Rules, provide distribution services in respect of a retail customer's premises.</p> <p>The reference to a distributor means a distributor whose network services are subject to access regulation under the Rules.</p> <p>The reference to a retail customer's premises is intended to limit the obligation to customers acquiring (or intending to acquire) energy through a retailer, as distinct from a customer acquiring energy directly from the wholesale market.</p>	<p>Agreed.</p> <p>However, note our comments in relation to Recommendation 27 concerning the interaction with Rule 5.3 of the NER.</p>
25.	Definition of distribution services	<p>Distribution services should be defined in the Law as:</p> <ul style="list-style-type: none"> • the connection of the premises to the distribution network to allow the flow of energy between the network and the premises; • where a physical connection already exists, activating or opening the connection in order to allow the flow of energy between the network and the premises (this is referred to throughout as '<i>energisation</i>' of the connection); and • maintaining the capability of the network to allow the flow of energy between the network and the premises through the connection. <p>The definition of distribution services in the Law should be capable of being supplemented by the AEMC in the Rules.</p>	<p>Agreed.</p> <p>In particular, we note that this definition covers 3 separate categories of services. This supports our understanding of the hybrid model (i.e. that the distributor is obliged under the distribution contract to provide all 3 components of the distribution services to the customer).</p> <p>As a drafting issue, this definition will need to be synchronised with the related definitions used in the NER. For example, see the current definitions of <i>connection service</i>, <i>distribution service</i>, <i>distribution use of system service</i>.</p> <p>Agreed.</p>

No.	Subject	Recommendation	Comments
26.	<p>Application procedures and conditions</p> <p>Timeframes</p> <p>Connection requirements</p> <p>Distributor information</p>	<p>As matters of detail, the Rules should set out:</p> <ul style="list-style-type: none"> • Connection application procedures, permitting an application for connection to be made by either the customer or its retailer and requiring customer contact details and prescribed information relevant to the connection of equipment at the customer's premises (eg. life support, special plant and equipment). For applications by the customer, evidence of a retail contract would also be prescribed information prior to energisation of the connection. • Timeframes for 'standard' new connections and energisations. • Connection requirements and conditions, including: <ul style="list-style-type: none"> ➤ payment for any augmentation, extension or other capital works to the distribution system if required to effect the connection; ➤ completion of any works required for connection which are not part of the distribution system; ➤ compliance with technical and safety requirements in relation to the customer's installation or equipment; and ➤ provision of safe and unhindered access to meters and other equipment of the distributor on the customer's premises. • Distributor information requirements, requiring the 	<p>Agreed.</p> <p>Note our comments in relation Recommendation 27 in relation to the interaction between this proposal and Rule 5.3 of the NER.</p> <p>For example, the process for connecting a large customer supply address to the distribution network would usually be different to the process for connecting a small customer supply address.</p> <p>Agreed.</p> <p>Agreed.</p> <p>Agreed.</p>

No.	Subject	Recommendation	Comments
	requirements	<p>distributor to provide to a customer the approved standard terms and conditions (deemed distribution contract) applicable to that customer and notice of the customer's rights in respect of the negotiation of different terms. This information must be provided in circumstances specified in the Rules, including on application for connection of the customer's premises, on request, following any changes to the approved terms and conditions and on a request by the distributor or the customer to negotiate different terms.</p>	

No.	Subject	Recommendation	Comments
Distributor interface with customers			
27.	<p>Establishment of deemed distribution contract</p> <p>Duration</p> <p>Negotiated distribution contracts</p>	<p>The Law should provide that upon connection of a retail customer's premises to a distribution system, or on the date a customer moves in to premises that are already connected, a contract is deemed to arise between the customer and the distributor on the terms and conditions of the deemed distribution contract applicable to that customer, except where a negotiated distribution contract exists.</p> <p>The deemed distribution contract will remain in effect while the customer is responsible to its retailer for the consumption of energy at the relevant premises or until the customer enters into a negotiated distribution contract with the distributor.</p> <p>A distributor and a customer may agree different terms to those contained in the deemed distribution contract, subject to:</p> <ul style="list-style-type: none"> • in the case of small customers, the provision of prescribed information in relation to their right to the application of the approved standard terms and an explanation of the implications of the proposed different terms; • coordination with the customer's retailer; and 	<p>Agreed.</p> <p>Agreed.</p> <p>If a deemed distribution contract comes to an end in relation to a customer for premises but those premises are not disconnected and the retailer continues to be financially responsible for those premises, it appears that the distributor would be unable to recover any network charges from the retailer in relation to those premises because there would be no distribution services being provided under a deemed distribution contract in respect of those premises.</p> <p>This issue can be addressed during the drafting phase.</p> <p>Agreed, subject to the following clarification.</p> <p>The requirement to co-ordinate with the customer's retailer concerning any different terms agreed between the distributor and customer suggest that a three-way agreement is required.</p> <p>Is it intended that a distributor and customer can not agree to different terms without the agreement of</p>

No.	Subject	Recommendation	Comments
	Access regime still applies	<ul style="list-style-type: none"> any other requirements contained in the Rules. <p>The deemed distribution contract provisions do not affect the rights of a customer to negotiate for the direct provision of distribution services in accordance with Chapter 5 of the NER or under an access arrangement in accordance with the NGR.</p>	<p>the retailer?</p> <p>Clause 5.3.1(c) of the NER provides that any person wishing to establish a <i>connection</i> to the <i>network</i> may elect to follow the procedures in Rule 5.3.</p> <p>Under this process, the offer to <i>connect</i> could differ from the model terms and any failure to agree the terms of a <i>connection agreement</i> would be resolved in accordance with the Rule 8.2 process rather than by automatically adopting the model terms.</p> <p>It appears from this Recommendation that a large customer could choose to either:</p> <ul style="list-style-type: none"> seek to negotiate a distribution contract under the new process and revert to the deemed distribution contract if it can not reach agreement with the distributor; or initiate a Rule 5.3 process and resolve any dispute under the Rule 8.2 process.
28.	Deemed contract terms and conditions	The Law should include authority for the Rules to make provision for the determination and approval of the terms and conditions of a deemed distribution contract, which may include (but will not be limited to) matters specified in the Schedule to the Law (these would include the subject headings in the table in Part 4 of this document).	Agreed. See our comments in Part 4 of this document.
29.	Rules provisions Model terms for deemed distribution contracts	<p>The Rules should include the following provisions in relation to the distributor - customer relationship:</p> <ul style="list-style-type: none"> Model terms to be included in a deemed distribution contract applicable to small customers, preferably in a separate schedule capable of adoption by distributors as 	<p>Agreed.</p> <p>Is it intended that this requirement should be</p>

No.	Subject	Recommendation	Comments
	<p>Small customer definition</p> <p>Standard deemed distribution contracts</p> <p>AER approval</p>	<p>contractual terms. Part 4 of this document sets out summary model terms for the development of the initial Rules.</p> <ul style="list-style-type: none"> • Small customers should be defined in the same way as for the retailer obligation to supply. • Distributors must adopt and publish a standard deemed distribution contract which has been approved by the AER as part of the revenue determination/access arrangement approval process. • The AER would be required to approve proposed standard deemed distribution contracts that adopt the model terms set out in the Rules, with guidance for the AER in relation to the approval of variations to those terms. The AER would be permitted to allow variations that the AER considers reasonable having regard to: <ul style="list-style-type: none"> ➤ customer service and network performance standards applicable to the distributor; ➤ any specific characteristics of the distributor's network; and ➤ the object of the Law. 	<p>limited to the model terms for small customers? The Consultation Paper appears to suggest that model terms will also be required for large customers.</p> <p>Agreed.</p> <p>Agreed.</p> <p>Agreed.</p> <p>However, one of the other reasons for seeking a variation to the model terms would be to accommodate the particular characteristics of a proposed large customer connection.</p> <p>Under the Rules 5.3 process these characteristics would be addressed in the <i>application to connect</i> and the offer to <i>connect</i> and any failure to agree would be dealt with on a case by case basis under Rule 8.2.</p>
	<p>Variations during regulatory period</p> <p>Deemed distribution</p>	<ul style="list-style-type: none"> • Distributors should be permitted to apply to vary the terms of an approved deemed distribution contract during a regulatory period subject to the AER's approval. Provisions relating to any resulting cost increases or decreases should be dealt with in the revenue determination/access arrangement approval. • Distributors may also prepare, and submit for the AER's 	<p>Agreed.</p> <p>Agreed. This process could be used to deal with the</p>

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	contracts for large customers	approval, a standard deemed distribution contract applicable to one or more classes of customers, other than small customers, on terms which are fair and reasonable.	characteristics of individual large customer connections.
30.	Regulatory obligations - Law	The Law should authorise or oblige distributors to disconnect, reconnect and interrupt supply in the circumstances prescribed in the Rules.	Agreed.
31.	Regulatory obligations - Rules Service standards Grounds for disconnection	<p>The Rules should include the following provisions in relation to the distributor – customer relationship:</p> <ul style="list-style-type: none"> • A requirement that distributors must comply with any applicable service standards. • The circumstances in which a distributor is entitled or required to disconnect customer premises, including: <ul style="list-style-type: none"> ➤ in an emergency, including at the direction of a relevant authority; ➤ for health and safety reasons; ➤ at the request of the customer or its retailer (subject to certification by the retailer that the disconnection is permitted under the Rules); ➤ for non-compliance by the customer with 	<p>Agreed.</p> <p>Agreed.</p>
	Restrictions on disconnection	<p>obligations under the deemed distribution contract that are expressed to give rise to an express right of disconnection (eg, failure to provide safe access or meet equipment specifications, or taking unauthorised supply).</p> <ul style="list-style-type: none"> • The circumstances in which a distributor must not disconnect customer premises (in some cases these may 	Agreed.

No.	Subject	Recommendation	Comments
	<p>Interruptions and curtailments</p> <p>Reconnection</p> <p>Dispute resolution</p> <p>Information provision</p>	<p>only be applicable to small or residential customers).</p> <ul style="list-style-type: none"> • The circumstances in which a distributor is entitled or required to interrupt or curtail the supply of energy to customer premises, including: <ul style="list-style-type: none"> ➤ planned interruptions subject to prescribed advance notice periods; ➤ unplanned interruptions (faults etc) and circumstances beyond the distributor's control, subject to information requirements and obligations to minimise the duration and extent of interruptions; and ➤ for health and safety reasons or in an emergency, including at the direction of a relevant authority. • A requirement that distributors reconnect a disconnected customer if the reason for the disconnection has been removed. • A requirement that distributors comply with any applicable jurisdictional dispute resolution requirements. • Requirements for distributors to provide information to a customer or its retailer on request about the customer's consumption, network tariff or connection. 	<p>Agreed.</p> <p>Agreed.</p> <p>Agreed.</p> <p>Agreed.</p>
	<p>Fault reporting and correction</p> <p>Small customer contracts</p>	<ul style="list-style-type: none"> • Requirements concerning the maintenance by distributors of a 24-hour fault information and reporting line. • Protections for small customers in relation to negotiated distribution contracts, including protected terms and cooling-off periods. 	<p>Agreed.</p> <p>Agreed.</p>

No.	Subject	Recommendation	Comments
Distributor interface with retailers			
32.	Nature of UoS agreement/ interface contract	<p>The Law should include:</p> <ul style="list-style-type: none"> in electricity, provision for a UoS agreement between each distributor and each retailer which sells electricity to customers connected to the distributor's infrastructure; in gas, provision for an interface contract between each distributor and each retailer which sells gas to customers connected to the distributor's infrastructure. <p>The distinction between an electricity UoS agreement and a gas interface contract is that:</p> <ul style="list-style-type: none"> the electricity UoS agreement covers the provision of and payment for distribution services, and prudential requirements; the gas interface contract would not cover these matters as they would already be addressed in the access terms and conditions of the distributor's access arrangement. <p>The electricity UoS agreement and gas interface contract would otherwise cover the same subject matter, regulating the arrangements between distributors and retailers in relation to the provision of services to their joint customers.</p>	<p>This Recommendation suggests that the distributor will be providing distribution services to the retailer under the UoS agreement. This is inconsistent with our understanding concerning the proposed operation of the hybrid contractual model.</p> <p>In particular, we understand that:</p> <ul style="list-style-type: none"> the distributor would be providing distribution services to the retailer's customer under the distribution contract; and the financial and coordination arrangements between the distributor and the retailer in relation to the provision of the distribution services to a customer will be dealt with in the use of system/interface agreement between the distributor and the retailer; and the financial and coordination arrangements between the distributor and retailer would include payment for distribution services and retailer prudential requirements (and not the provision of distribution services). <p>In our view this structure achieves the policy consideration set out in Recommendation 22 and creates clear contractual lines of responsibility between all parties.</p> <p>If this position is adopted, then it would appear that the coordination agreement would be the better</p>

No.	Subject	Recommendation	Comments
			<p>contractual template to use.</p> <p>However, we agree with the statements at the top of page 36 that once a tripartite arrangement is accepted the terminology used to describe it becomes less important. The real issue is what rights and obligations are included in the three separate contractual relationships established.</p> <p>It follows that the distributor to retailer contract could be called a UoS agreement provided that the previous use of this term and the definition of 'use of system' in the NER do not operate to cause confusion as to each party's respective rights and obligations.</p>
33.	<p>Establishment of deemed UoS agreement/interface contract</p> <p>Negotiated agreements</p> <p>Customer variations</p>	<p>The Law should provide that except where a negotiated UoS agreement/interface contract exists, a deemed UoS agreement/interface contract is deemed to arise between each distributor and each retailer where the retailer sells energy to customers connected to the distributor's infrastructure.</p> <p>The Law would not preclude a distributor and retailer negotiating different terms and conditions of their UoS agreement/interface contract. However, the deemed UoS agreement/interface contract would apply in the absence of any such agreement between the parties.</p> <p>The UoS agreement/interface contract should provide that it does not apply in respect of particular customers to the extent that they have negotiated inconsistent arrangements in relation to the provision of distribution services with the distributor.</p>	<p>Agreed.</p> <p>Agreed.</p> <p>Agreed.</p>

No.	Subject	Recommendation	Comments
34.	Deemed contract terms and conditions	The Law should include authority for the Rules to make provision for the determination and approval of the terms and conditions of a deemed UoS agreement/interface contract, which may include (but would not be limited to) matters specified in the Schedule to the Law (these would be based on the subject headings in the table in Part 5 of this document).	Agreed.
35.	Rules provisions Model terms for UoS agreements/interface contracts	The Rules should include the following provisions in relation to the distributor – retailer interface: <ul style="list-style-type: none"> • Model terms to be included in a deemed UoS agreement/interface contract, preferably in a separate schedule capable of adoption by distributors as contractual terms. Part 5 of this document sets out summary model terms for development of the initial Rules. 	Agreed.
	Standard UoS agreements/interface contracts AER approval	<ul style="list-style-type: none"> • Distributors must adopt and publish a deemed UoS agreement/interface contract which has been approved by the AER as part of the revenue determination/access arrangement approval process. • The AER would be required to approve proposed deemed UoS agreements/interface contracts which adopt the model terms set out in the Rules, with guidance provided to the AER in relation to the approval of variations to those terms and conditions. The AER would be permitted to allow variations that the AER considers reasonable having regard to: <ul style="list-style-type: none"> ➤ customer service and network performance standards applicable to the distributor; ➤ any specific characteristics of the distributor's network; and 	Agreed. Agreed.

No.	Subject	Recommendation	Comments
	<p>Variations during regulatory period</p>	<ul style="list-style-type: none"> ➤ the object of the Law. • Distributors would be permitted to apply to vary the approved terms and conditions during a regulatory period subject to the AER's approval. Provisions relating to any resulting cost increases or decreases should be dealt with in the revenue determination/access arrangement approval. 	<p>Agreed.</p>
<p>36.</p>	<p>Regulatory requirements</p>	<p>The Rules should include an obligation on distributors and retailers to comply with the terms of deemed UoS agreements/interface contracts. Compliance would therefore be both a contractual obligation enforceable between the parties and a regulatory obligation enforceable by the AER.</p> <p>The terms of deemed UoS agreements/interface contracts should not be subject to variation as an outcome of an access dispute.</p>	<p>Agreed.</p> <p>The second point makes it clear that the Rules 5.3 process can not be used to circumvent the requirements of the deemed UoS agreement/interface contract (i.e. unless the distributor and the customer otherwise agree, the deemed UoS agreement/interface contract will apply rather than the Rule 8.2 process).</p> <p>We note that this approach differs from the proposed approach to the interaction between the deemed distribution contract process and the Rule 5.3 process in relation to the establishment of new connections (which specifically preserves the dual operation of the deemed distribution contract and the Rule 5.3 process).</p>

No.	Subject	Recommendation	Comments
Distributor interface with embedded generators			
37.	Process for new Rules for embedded generation	<p>To the extent the policy position adopted by the MCE as an outcome of its further work on renewable and distributed generation is to supplement the existing Rules to more fully prescribe the position of embedded generation, there is no existing mechanism in the NEL for this to be done otherwise than by a Rule change submitted to the AEMC, and following the normal Rule change process.</p> <p>Having regard to the policy process adopted in relation to this issue, policy outcomes should be capable of being implemented by a Ministerial order or, where appropriate, by the normal Rule change process. Accordingly, the 2007 legislative package should authorise Rules relating to the connection and operation of embedded generation to be made by Ministerial order.</p>	

No.	Subject	Recommendation	Comments
Business authorisation			
38.	Substantive obligations as licence conditions	Substantive regulatory obligations should be contained in the Law and Rules rather than in licence conditions.	Agreed.
39.	Regulation of entry requirements	<p>The Law should contain a general prohibition on a person:</p> <ul style="list-style-type: none"> • engaging in the retail sale of energy; and • (in the case of electricity) owning, controlling or operating an electricity distribution system; and • (in the case of gas) owning, controlling or operating a distribution pipeline, <p>unless the person has obtained an energy business authorisation from the AER in relation to the carrying out of that activity.</p>	Agreed.
40.	<p>Entry tests</p> <p>Financial viability</p> <p>Organisational and compliance capacity</p>	<p>The Law should set out the entry requirements to be satisfied by persons wishing to obtain energy business authorisations as retailers or distributors, and enable the AER to issue guidelines in relation to the authorisation procedures and its approach to assessing the criteria for authorisation.</p> <p>The criteria for business authorisation should include:</p> <ul style="list-style-type: none"> • financial viability – that the applicant has the financial resources required to undertake the relevant activity; • organisational and compliance capacity – that the applicant has the organisational capacity to carry on the activity for which it is seeking authorisation and to comply with its regulatory obligations; 	Agreed.

No.	Subject	Recommendation	Comments
	Suitable person	<ul style="list-style-type: none"> suitable person – that the applicant is a suitable person to hold the authorisation; 	
	Jurisdictional licensing Market registration operator	<ul style="list-style-type: none"> jurisdictional licensing – in the case of distribution businesses, that the applicant holds any jurisdictional licence or authorisation required with respect to technical and safety matters; and market operator registration – that the applicant has been registered by NEMMCO or the relevant gas market operator in accordance with any registration requirements under the NER or NGR. 	
41.	Removal of overlap with NEMMCO registration	The existing registration requirements administered by NEMMCO under the NER should be modified to remove overlap with the new business authorisation requirements to be administered by the AER. In particular: <ul style="list-style-type: none"> NEMMCO requirements with respect to financial viability should be limited to satisfaction of the market prudential requirements under chapter 3 of the NER; NEMMCO requirements with respect to organisational and compliance capacity should be limited to the relevant entity's safe and reliable interaction with the market and with technical requirements applicable under national framework instruments (including metrology). 	Agreed.
42.	Corresponding changes to gas market registration requirements	Corresponding modifications should be made to existing gas market rules to be 'grandfathered' under the national framework.	

No.	Subject	Recommendation	Comments
43.	Treatment of existing licensees	Distribution and retail businesses that hold current jurisdictional licences should transition to the national business authorisation without further processes.	Agreed.
44.	Exemptions	The Law should authorise the AER to exempt a person from the prohibition in accordance with the Law, the Rules and any guidelines issued by the AER. The Rules and AER guidelines should set out the matters to be considered by the AER in considering applications for exemptions, as well as general exemptions, in each case based initially on current arrangements.	Agreed, but with appropriate consultation.
45.	Exemption conditions and enforcement	The Law should provide that an exemption may be subject to conditions, which are to be subject to monitoring and enforcement by the AER in the same way as if they were obligations under the Rules. In the case of a general exemption, it would be necessary for the AER to establish a framework to ensure it is aware of the persons conducting activities covered by the exemption so that it is able to monitor and enforce compliance by those persons with the conditions of their exemption.	Agreed.
46.	Revocation	<p>The Law should authorise the AER to revoke a business authorisation or exemption if the AER determines that the holder ceases to satisfy the entry requirements or, in the case of an exemption, ceases to satisfy the conditions of the exemption.</p> <p>The Law should set out the process for revocation, including requirements for the AER to disclose the basis on which it considers the entry requirements have ceased to be satisfied and to have regard to any submissions made by the holder of the business authorisation in determining whether to revoke the authorisation.</p>	Agreed.
47.	Register of authorised	The Law should require the AER to maintain a public register of	Agreed.

No.	Subject	Recommendation	Comments
	persons	authorised persons and exempt persons and include details of the information to be included in the register.	
48.	Ancillary rights and powers	Ancillary rights and powers (such as those relating to compulsory acquisition and works on public and private land) should continue to be dealt with in jurisdictional legislation. The national framework business authorisation can be used as a basis for defining the entities that have the benefit of such rights and powers.	Agreed.

No.	Subject	Recommendation	Comments
Ring-fencing			
49.	Provisions to be included in the NEL	<p>Electricity ring-fencing requirements should be included primarily in the NEL, modelled on the equivalent requirements included in the exposure draft of the NGL (but incorporating changes proposed to be made by the SCO in response to submissions on the NGL). This would include requirements relating to:</p> <ul style="list-style-type: none"> • legal separation of the entity conducting distribution network services from other related businesses; • keeping separate and consolidated accounts for distribution services and other services; • cost allocation principles and methodologies in relation to the allocation of costs between distribution services and other services; • limitations on sharing of staff between the network service provider and related businesses; and • measures to ensure the network service provider's dealings with related parties are not on preferential terms. <p>Requirements relating to the use and disclosure of confidential information obtained by the network service provider should be dealt with in the NER.</p>	Agreed with provisos.
50.	Additional ring-fencing requirements	The NEL should authorise the AER to impose additional ring-fencing requirements on individual network service providers or their associates in equivalent terms to the AER's power under section 120 of the exposure draft of the NGL.	
51.	Waiver of ring-fencing	The NEL should authorise the AER to grant waivers from the	Agreed.

No.	Subject	Recommendation	Comments
	requirements	ring-fencing requirements in equivalent terms to section 121 of the exposure draft of the NGL (but incorporating criteria to be applied by the AER in granting waivers).	
52.	Regulatory information instruments	The NEL should authorise the AER to issue Regulatory Information Instruments in equivalent terms to the AER's powers under Division 4 of Part 2.1 of the exposure draft of NGL.	
53.	Alternative approach to legal separation	The requirement for legal separation would require transitional arrangements in those jurisdictions where operational separation is currently permitted and exists in practice. As an alternative to including a requirement for legal separation in the NEL, the NEL could authorise the making of Rules in respect of the operational separation of the business of providing network services from related businesses conducted by the same entity.	Agreed.

No.	Subject	Recommendation	Comments
Retailer failure arrangements			
54.	Statutory framework for RoLR scheme	<p>The NEL and NGL should authorise the AEMC to make Rules in relation to the establishment and operation of a scheme to address the risks and consequences of retailer failure (RoLR scheme) and set out the objectives of the scheme. The objectives could be expressed as being, as far as practicable:</p> <ul style="list-style-type: none"> • to ensure that customers of the failed retailer continue to be supplied with energy; • to manage the risks and costs of retailer failure for the benefit of customers and of the designated RoLR; and • to ensure the integrity of the wholesale market settlements and network balancing arrangements in the relevant market. 	Agreed.
55.	Description of matters to be included in the Rules	<p>The Law should set out the matters to be addressed in the Rules by way of general description along the following lines:</p> <ul style="list-style-type: none"> • provisions authorising the AER to appoint one or more entities to act as RoLR, with such appointments to be made on a basis which the AER considers will contribute to the achievement of the objectives of the scheme; • provisions specifying the process for and method of appointment; • provisions defining the events that trigger the RoLR's supply obligations; • provisions setting out the RoLR's obligations in terms of preparing for the occurrence of a trigger event, 	Agreed.

No.	Subject	Recommendation	Comments
		including the submission of plans and proposed supply prices, terms and	
		conditions to the AER; <ul style="list-style-type: none"> • provisions establishing the basis for determining the prices and terms and conditions of supply, and defining the duration of the RoLR's supply obligation. 	
56.	Consequences of a RoLR event	The Law should describe the legal consequences that can arise as a result of the occurrence of a trigger event and permit the Rules to define the manner in which those legal consequences occur. This would include provisions to the effect that, in circumstances described in the Rules: <ul style="list-style-type: none"> • a contract may be deemed to exist between the RoLR and the customers of a failed retailer; and • contracts between the failed retailer and its customers may be deemed to be terminated or varied. 	Agreed.
57.	Obligations on other market participants	The Law should also authorise the Rules to impose obligations on other market participants in connection with the operation of the scheme, including the failed retailer, distributors and market operators.	Agreed.
58.	Insolvency issues	Further consideration should be given to provisions imposing obligations on insolvency administrators or dealing with the use and application of funds of the failed retailer. Such provisions would need to be included in the Law rather than the Rules and may require complementary Commonwealth legislation.	Agreed.
59.	Process for making initial Rules	No Rules should be made by Ministerial order as part of the 2007 legislative package. The Law should direct the AEMC to make	Agreed.

No.	Subject	Recommendation	Comments
		<p>Rules for a RoLR scheme by a date specified in the Law. The direction to the AEMC should enable the AEMC to make different Rules as between the electricity and gas sectors, and to assess the need for such Rules as between sectors and jurisdictions. This is intended to enable, as one possible outcome, that a RoLR scheme might not be considered necessary in the gas sector in particular jurisdictions.</p> <p>An expert review could be used to develop and consult on a RoLR scheme, with the outcome to be implemented by Rule changes made by Ministerial order, if the MCE considers that timing and resource issues are such that the task should not be undertaken by the AEMC.</p>	

No.	Subject	Recommendation	Comments
Customer registration and transfer			
60.	Electricity registration and transfer framework	<p>The NEL should authorise the Rules to provide for:</p> <ul style="list-style-type: none"> • the establishment and maintenance of a registry of information relating to each NMI that is eligible for contestability, and for access to and disclosure of that information; and • procedures for the efficient transfer of consumers between retailers subject to all applicable laws, <p>for the purposes of facilitating the efficient and effective billing of retail and network tariffs and charges and wholesale market settlement.</p>	Agreed.
61.	MSATS Procedures	<p>The NER should require the MSATS procedures to include processes for implementing the functions and requirements set out in the Rules, including the form and manner in which those functions and requirements must be carried out.</p> <p>The MSATS procedures will require amendment to remove jurisdictional variations and reflect a consistent national approach to customer registration and transfer, subject to appropriate transitional arrangements. The subject matter addressed in the MSATS procedures would be consistent with the proposed amendments to the NER (as described below), and would not change significantly.</p>	Agreed.
62.	Electricity connection point registration NMI standing data	<p>The NER should include provisions:</p> <ul style="list-style-type: none"> • defining NMI standing data, and requiring distributors to maintain and provide NMI standing data to NEMMCO and 	Agreed.

No.	Subject	Recommendation	Comments
		<p>notify changes to that data;</p> <ul style="list-style-type: none"> • limiting disclosure of NMI standing data by NEMMCO to retailers (Market Customers) who specify the NMI or supply address; • specifying the purposes for which a retailer may use NMI standing data; and • requiring distributors to provide NMI standing data to Market Customers on request within a prescribed time (eg 1 business day), if they specify the NMI, supply address, or other unique meter number, provided the data is not available through MSATS systems. 	
63.	<p>Electricity consumer transfers</p> <p>Initiation of transfers</p>	<p>The NER should include provisions:</p> <ul style="list-style-type: none"> • requiring transfer requests to be initiated only by an incoming retailer submitting a request in accordance with the MSATS procedures; 	Agreed.

No.	Subject	Recommendation	Comments
	Transfer requests and process	<ul style="list-style-type: none"> • requiring a transfer request to be accepted as valid if: <ul style="list-style-type: none"> ➤ it contains all the prescribed information; ➤ the connection point details in the request are consistent with the NMI standing data; ➤ there is no outstanding transfer request in relation to the same connection point; ➤ the metering installation complies with applicable requirements for contestability; and ➤ the incoming retailer is registered with NEMMCO as a market participant; 	
		<ul style="list-style-type: none"> • prohibiting a retailer from submitting a transfer request unless: <ul style="list-style-type: none"> ➤ it has obtained any applicable consents from the customer to enter into the retail contract; and ➤ it has all necessary agreements in place to enable the sale of energy to the customer at that connection point; • requiring the transfer process to take into account applicable cooling-off periods by not enabling transfers to 	

No.	Subject	Recommendation	Comments
	Objections	<p>be completed before expiry of the cooling-off period;</p> <ul style="list-style-type: none"> • permitting a retailer to withdraw a transfer request submitted by it at any time before the transfer has been registered by NEMMCO; • requiring the provision of notice of a valid transfer request within one business day to prescribed persons (likely to be the distributor, existing retailer and any other person registered as a metering provider or metering data provider for the connection point); • permitting a transfer objection to be lodged within a prescribed time (eg 5 business days from the date of the transfer request) in accordance with the MSATS procedures; • requiring the incoming retailer and the objecting party to use best endeavours to resolve the objection, within a prescribed time, or the transfer request is deemed to have been withdrawn; 	
	<p>Transfer period</p> <p>Meter reading</p>	<ul style="list-style-type: none"> • specifying the period within which a transfer must be completed (being within 65 business days after a transfer request), the circumstances in which transfers may be made retrospectively effective and the applicable retrospective periods; • requiring a transfer to be based on an actual meter reading (with the Rules to specify whether this should be based on a scheduled, special or customer's own reading), obtained within a timeframe prescribed in the MSATS procedures; 	

No.	Subject	Recommendation	Comments
	Notice to customer	<ul style="list-style-type: none"> requiring notice to the customer on completion of the transfer. 	
64.	Gas registration and transfer framework	<p>The NGL should authorise the Rules to provide for:</p> <ul style="list-style-type: none"> the establishment and maintenance of a registry of information relating to each gas supply point that is eligible for contestability, and for access to and disclosure of that information; and procedures for the efficient transfer of consumers between retailers subject to all applicable laws, <p>for the purposes of facilitating the efficient and effective billing of retail and network tariffs and charges, wholesale market settlement and/or gas pipeline balancing.</p>	
65.	Grandfathering of retail market rules	<p>The NGL should authorise the NGR to provide for those matters by requiring compliance with a retail market instrument (to be defined as an instrument identified in the NGR, or any other instrument approved by the AEMC for that purpose), and deeming the provisions of any such instrument to take effect as Rules, subject to the Rule-change procedures in the NGL.</p> <p>The existing gas retail market rules should be brought within the national framework in their current form by being deemed to take effect as Rules under the NGL authorising provision described above.</p>	

No.	Subject	Recommendation	Comments
66.	Process for review of grandfathered instruments	In progressing the work program of the GMLG or other process for development of national gas market arrangements, the SCO should consider a process for the development at a later stage of nationally consistent customer registration and transfer arrangements. This could be included as part of the process for development of the rules associated with the STTM or could be a direction to the AEMC to undertake a review after the initial Rules have been made.	
67.	Gas retail market rule changes	The Rule change procedures in the NEL and NGL should be amended in a manner which permits the AEMC to consider changes to Rules (including the instruments deemed to be made under the NGR) in accordance with a fast-track process which takes into account prior consultation. The amendments should be in accordance with the SCO proposed amendments to the AEMC Rule change process (subject to the suggestion that SCO consider whether the requirement for prior consultation must be with all relevant stakeholders or must be a public consultation).	

No.	Subject	Recommendation	Comments
Metering – electricity			
68.	Principal regulation of electricity metering	<p>The NEL already contemplates in Schedule 1 that the NEL may contain rules in relation to:</p> <ul style="list-style-type: none"> • the metering of electricity to record the production or consumption of electricity; • the registration of metering installations used to meter electricity; and • the regulation of persons providing metering services relating to the metering of electricity. <p>The NEL does not distinguish between metering for wholesale or retail purposes and it is therefore not necessary to make any amendment for the purpose of bringing retail metering within the NEL.</p> <p>The principal regulation of metering should be contained in the NER / NEM Metrology Procedure regime.</p>	Agreed.
69.	Provisions to be included in the NER	<p>The amendments to the NER and NEM Metrology Procedure currently being developed by NEMMCO as part of its NEM Metrology Programme should be implemented. In addition, these amendments should include certain provisions which are currently omitted from the NEMMCO process but which could be adequately addressed within the NER / NEM Metrology Procedure framework (as set out in Part B of Attachment 9 to Working Paper 4).</p>	Agreed.
70.	Process	<p>These amendments could be implemented through the normal change procedures for the NER and NEM Metrology Procedure or, alternatively, by Ministerial order as part of the 2007 legislative</p>	Agreed.

No.	Subject	Recommendation	Comments
		<p>package. The appropriate option should be determined based on an assessment of the relative timing of each process, but a mechanism which avoids the need for complex transitional arrangements is preferred.</p>	
71.	<p>Supplementary regulation of electricity metering</p> <p>Contractual/regulatory interface provisions</p> <p>Transfer code provisions</p> <p>Incidental jurisdictional legislative provisions</p>	<p>Provisions relevant to metering are included in retail contracts (see Part 2 of this document), connection contracts, deemed distribution contracts, electricity UoS agreements and gas interface contracts (see Parts 4 and 5 of this document). These provisions are in some cases repeated in existing metering regulatory instruments. The amendments proposed to be made to the NER / NEM Metrology Procedure should be reviewed as part of this exercise to avoid unnecessary overlap.</p> <p>Transfer code provisions relevant to metering should be harmonised within the national framework, as described in the customer registration and transfer recommendations set out above. The amendments proposed to be made to the NER / NEM Metrology Procedure should also be reviewed as part of this exercise to avoid unnecessary overlap.</p> <p>Current jurisdictional legislative provisions incidental to metering (in relation to access to premises and theft/diversion of electricity) should not be included in the NEL. Rather, these matters should continue to be regulated as part of the ongoing jurisdictional legislative regimes.</p>	Agreed.
72.	Regulation of metering in non NEM jurisdictions	The non-NEM jurisdictions should continue to regulate metering under their current instruments.	Agreed.

No.	Subject	Recommendation	Comments
Metering – Gas			
73.	Principal regulation of gas metering	<p>The NGL should authorise the inclusion of Rules in relation to metering in the NGR in similar terms to Schedule 1 of the NEL, for example, that the NGR may contain rules in relation to:</p> <ul style="list-style-type: none"> • the metering of gas to record the production or consumption of gas; • the registration of metering installations used to meter gas; and • the regulation of persons providing metering services relating to the metering of gas. 	
74.	<p>Grandfathering</p> <p>Gas retail market rules</p> <p>Other jurisdictional metering instruments</p>	<p>The NGL should authorise the NGR to provide for those matters by requiring compliance with another instrument (to be defined as an instrument identified in the Rules, or any other instrument approved by the AEMC for that purpose), and deeming the provisions of any such instrument to take effect as Rules, subject to the Rule-change procedures in the Law.</p> <p>The metering provisions contained in the gas retail market rules would be grandfathered as part of those rules, as discussed in the customer registration and transfer recommendations above.</p> <p>The regulatory requirements currently contained in additional jurisdictional instruments would also be grandfathered. However, in relation to these requirements, it may be appropriate in some cases to create new stand-alone instruments that either extract relevant metering regulation from a broader jurisdictional instrument</p>	Agreed.

No.	Subject	Recommendation	Comments
		(Victoria), or bring together the requirements of a number of jurisdictional instruments (New South Wales and Western Australia). This process would be undertaken by Ministerial order as part of the 2007 legislative package.	
75.	Process for review of grandfathered instruments	In progressing the work program of the GMLG or other process for development of national gas market arrangements, the SCO should consider a process for the review at a later stage of the grandfathered instruments to establish (as far as practicable) nationally consistent gas metering arrangements. This could involve the GMO/NEMO undertaking a process similar to that undertaken by NEMMCO for electricity metering, with Rule changes to be submitted to the AEMC under the normal Rule change process.	
76.	Supplementary regulation of gas metering Contractual/regulatory interface provisions Incidental jurisdictional legislative provisions	As for electricity, relevant metering provisions considered in relation to retail contracts (Part 2 of this document) and in relation to the distributor - retailer and distributor - customer interfaces (Parts 4 and 5 of this document) should apply. Potential overlap with the grandfathered metering regulation will need to be considered in respect of the specific provisions adopted for the retail contracts and interface arrangements, with unnecessary duplication being removed. Current jurisdictional legislative provisions incidental to metering (in relation to access to premises and theft / diversion of gas) would not be included in the NGL. Rather, these matters would continue to be regulated as part of the ongoing jurisdictional legislative regimes.	
Prepayment meters			
77.	Prepayment meter systems	The Law should authorise the Rules to regulate the use of	Agreed.

No.	Subject	Recommendation	Comments
		<p>prepayment meter systems for small customers.</p> <p>The Rules should cover the following matters in relation to the use of prepayment meter systems for small customers:</p> <ul style="list-style-type: none"> • Prepayment meter contracts: <ul style="list-style-type: none"> ➤ specific disclosure requirements to obtain a small customer's explicit informed consent to enter into a prepayment meter contract (this is a specific form of market contract); ➤ prohibition on knowingly entering into a prepayment meter contract with a customer with a life support system; ➤ additional requirements to provide information to a small customer who enters into a prepayment meter contract (for example, the operating instructions for the meter, information relating to the payment facilities available, credit retrieval and emergency credit); ➤ minimum terms and conditions of a prepayment meter contract (for example, a mandatory trial period, provisions relating to the fees and charges that may be recovered through the prepayment meter system); 	

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> ➤ variation of prepayment meter tariffs, undercharging, overcharging and recovery for illegal energy use; and ➤ termination of the prepayment meter contract by the customer, including a request to revert to normal metering or as a result of a transfer to another retailer. • Prepayment meter systems requirements: <ul style="list-style-type: none"> ➤ specific requirements for the prepayment meter itself, including in relation to the information displayed, when the meter will disconnect and reconnect, emergency credit, provision of energy concessions, access to meter data; and ➤ requirements in relation to payment facilities. • Other matters: <ul style="list-style-type: none"> ➤ a requirement for the retailer to establish a specific telephone service for enquiries, complaints and emergencies relating to prepayment meter systems; ➤ hardship and payment difficulties – the prepayment meter system must identify to the retailer instances of 	

No.	Subject	Recommendation	Comments
		<p>self disconnection and the retailer must take action to revert a customer to standard metering in certain circumstances; and</p> <p>➤ retention of records in relation to the above.</p>	

No.	Subject	Recommendation	Comments
Enforcement mechanisms			
78.	Compliance monitoring and enforcement functions of the AER	<p>The NEL and NGL should include provisions to support the AER's compliance monitoring and enforcement functions as follows:</p> <ul style="list-style-type: none"> • a requirement for regulated entities¹ to establish systems and procedures to monitor regulatory compliance, in accordance with guidelines issued by the AER; • a requirement for regulated entities to notify the AER of breaches of regulatory obligations, in accordance with guidelines issued by the AER; • a requirement for regulated entities to undertake compliance audits, and to co-operate with such audits being undertaken by the AER or an independent auditor, in accordance with guidelines issued by the AER; and • a requirement for the AER to report on its compliance monitoring and enforcement functions. 	Agreed.
79.	Court based enforcement mechanisms	<p>The court-based enforcement mechanisms provided for in sections 61, 63 and 68 of the NEL (and the equivalent provisions to be included in the NGL) should apply to the non-economic distribution and retail regulatory obligations to be included in the national framework. Compliance with these requirements should be designated as civil penalty provisions.</p>	Agreed.
80.	Additional orders	<p>Consideration should be given to expanding the description of orders available to the Court to include:</p>	Agreed.

¹ References to 'regulated entities' in the paper are to distributors and retailers required to hold a national businesses authorisation as proposed in Working Paper 3.

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> • an order directing the participant to pay to the Commonwealth an amount up to the amount of any financial benefit attributable to the breach; • an order directing the participant to compensate any other person who has suffered loss or damage as a result of the breach; and • any other order that the Court considers appropriate. 	
81.	Infringement notices	The provisions currently contained in the NEL (and to be included in the NGL) giving the AER the power to issue infringement notices where the AER believes that there has been a breach of a civil penalty provision should apply to the non-economic distribution and retail regulatory obligations to be included in the national framework.	Agreed.
82.	Administrative remedies	The NEL and NGL should include provisions that enable the AER to accept enforceable undertakings modelled on section 87B of the <i>Trade Practices Act 1974</i> (C'th).	Agreed.
83.	Revocation of business authorisation	The AER's power to revoke a business authorisation should be limited to circumstances where a distributor or retailer ceases to satisfy the entry tests and not be available as an enforcement mechanism to address one-off breaches.	Agreed.
84.	Additional enforcement issues	<p>Consideration should be given to the following additional enforcement issues when the substantive regulatory obligations are settled and the drafting of the Law and Rules is further progressed:</p> <ul style="list-style-type: none"> • whether obligations arising from the distribution and retail regulatory functions should be enforceable as between the affected parties or only by the AER; • whether the dispute resolution provisions in 	Agreed.

No.	Subject	Recommendation	Comments
		<p>Chapter 8 of the NER should apply in respect of the distribution and retail rules; and</p> <ul style="list-style-type: none"> • where court based remedies are to be used, whether there is a case for allowing enforcement in the lower courts rather than (as at present) only in the Federal Court and Supreme Courts. 	

No.	Subject	Recommendation	Comments
Statutory objectives			
85.	Objectives of the NEL and NGL	There is no need to amend the statutory objectives to be included in the NEL and NGL to accommodate the transfer of the non-economic distribution and retail regulatory functions to the national framework.	Agreed.
86.	Supplementary objectives	To the extent that the contrary view is taken and it is considered that the general objectives are not adequate to provide guidance for the non-economic distribution and retail regulatory functions, this will be better addressed by more specific direction targeted at the particular regulatory functions concerned rather than at the level of the general objective. This could be achieved by the inclusion of supplementary objectives to which the AEMC and AER must have regard in giving effect to the primary statutory objective.	

Part 2 – Regulation of standing offer and market contract terms

The recommended requirements would apply to both standing offer and market contracts. Market contracts would be capable of variation with the customer's informed consent where indicated by a 'Market Contract Annotation' in the table. The concept of 'informed consent' would be defined in the Rules.

No.	Subject	Recommendation	Comments
Calculation of Charges			
	Tariffs and charges	<p>Charges are to be made on the basis of tariffs and charges specified in the contract or published in accordance with prescribed, uniform publication requirements (such as in the Gazette and/or a general circulation newspaper and/or on the retailer's internet site). [Note: the level of tariffs and charges remains subject to jurisdictional regulation.]</p> <p>Any variation to standing offer tariffs and charges must be published in advance of the variation taking effect.</p> <p>Upon request, a retailer must provide a customer with information reasonably available to the retailer on network charges, retail charges and any other charges relating to the sale or supply of energy.</p> <p>Market Contract Annotation</p> <p>Publication requirements do not apply to market contracts. Market contract tariffs must be included in the contract and variations must be notified to the customer in accordance with requirements set out in the contract.</p>	

No.	Subject	Recommendation	Comments
	Use of meter data	<p>Unless otherwise permitted, a retailer must base the calculation of charges for a small customer's bill on metering data provided by the distributor or other responsible person in accordance with the Rules.</p> <p>A retailer may base the calculation of charges under a bill on an estimation of a small customer's consumption of energy in the following circumstances:</p> <ul style="list-style-type: none"> • where the customer consents to the use of estimates by the retailer; • where the retailer is not able to reasonably or reliably base the bill on a meter reading; or • where metering data is not provided to the retailer by the distributor or other responsible person. <p>Market Contract Annotation</p> <p>May be varied by agreement in market contracts.</p>	
	Meter reads	<p>A retailer must use its best endeavours to ensure that a meter reading takes place at least once in each 12 month period.</p>	
	Estimations	<p>Where estimations are permitted to be used as the basis for the calculation of energy charges under a bill for a small customer, the estimations may be based on:</p> <ul style="list-style-type: none"> • the customer's reading of the relevant meter; • historical meter data for the relevant customer reasonably available to the retailer; or • where there is no historical meter data for the relevant customer, the average usage of energy by a comparable customer over the corresponding period. 	

No.	Subject	Recommendation	Comments
	Bill smoothing	<p>Where a retailer is entitled to use estimations as the basis for the calculation of charges under an energy bill, estimated bills may be provided under a smoothing arrangement if:</p> <ul style="list-style-type: none"> • the amount payable each month is initially the same; • the retailer's estimate is based on the customer's historical billing data or, if no such data exists, the average consumption of a similar customer; • the retailer re-estimates consumption after six months; and • the difference between the initial estimate and the re-estimate is greater than 10%, the retailer resets the amount payable under each of the remaining bills to reflect the difference. <p>Market Contract Annotation</p> <p>May be varied by agreement in market contracts.</p>	
	Meter access	<p>A customer must allow the retailer or its representative (ordinarily the distributor) safe and unhindered access to the supply address for the purposes of reading the meter.</p> <p>If a failure to provide access results in a charge being based on an estimation and the customer subsequently requests an actual read, the retailer may charge the customer its reasonable costs of complying with the request.</p>	
Termination			

No.	Subject	Recommendation	Comments
	Retailer termination	<p>A retailer may terminate a small customer supply contract where:</p> <ul style="list-style-type: none"> • the retailer has a contractual right to disconnect, disconnection has occurred and there is no contractual right to reconnection; • the small customer and the retailer have entered into a new customer contract; or • the small customer has transferred to another retailer. <p>Market Contract Annotation</p> <p>Market contracts may provide for additional termination events, but must not vary the provisions relating to disconnection.</p>	
	Customer termination	<p>A small customer may terminate a standing offer contract upon five business days notice to the retailer.</p> <p>Market Contract Annotation</p> <p>A small customer is required to give no more than 28 days notice to terminate a market contract.</p>	
Security			
	Provision of security	<p>A retailer may require a small customer to provide a security deposit where:</p> <ul style="list-style-type: none"> • the small customer still owes that retailer in relation to the supply of electricity to another address; • the customer has unlawfully acquired energy within the past two years; 	

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> • the customer has refused to provide acceptable identification to the retailer; or • the retailer reasonably considers that the customer does not have a satisfactory credit history and the customer has refused an instalment plan offered by the retailer. <p>Market Contract Annotation May be varied by agreement in market contracts.</p>	
	Information about credit history	<p>If a retailer requires a security deposit on the basis that a small customer has an unsatisfactory credit history, the retailer must inform the customer:</p> <ul style="list-style-type: none"> • that the retailer has decided the customer has an unsatisfactory credit history; • the reasons for the retailer's decision; • of the customer's rights to raise a complaint; and • that the customer has the right to obtain details in relation to the information on which the retailer's decision was based. 	
	Amount of security	<p>The amount of security may not exceed 1.5 times the average quarterly bill (for customers on a quarterly billing cycle) or 2.5 times the average monthly bill (for customers on a monthly billing cycle).</p> <p>Average quarterly and monthly bills should be determined by the AER.</p> <p>Market Contract Annotation May be varied by agreement in market contracts.</p>	

No.	Subject	Recommendation	Comments
	Interest	The retailer must pay interest on a security deposit to the customer in accordance with an interest rate specified initially in the Rules and subject to periodic review by the AER.	
	Application of security	<p>The retailer may only apply a security deposit to off-set amounts owed to it where the customer:</p> <ul style="list-style-type: none"> • has failed to pay a bill which results in disconnection by the retailer and there is no contractual right to reconnection; • vacates the property; • requests disconnection; or • transfers to another retailer. <p>The retailer must account to the customer within 14 days after application of the security deposit.</p>	
	Repayment of security	The retailer must repay a security deposit to the customer after the customer has completed 12 months of on-time payment of energy charges or where the customer ceases to take supply from the retailer at the relevant address.	
Billing, apportionment of payment, disputes			
	Frequency of bills	<p>Energy bills must be issued by the retailer at least every three months.</p> <p>Market Contract Annotation</p> <p>May be varied by agreement in market contracts.</p>	
	Content of bills	A bill should include the following content:	

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> • customer's name, account number and address; • meter identifier; • bill period; • due date; • amount of arrears or credits; • relevant tariff; • whether the bill was issued as a result of a meter read or an estimation and, if issued as a result of a meter read, the date of the meter reading; • values of meter readings (or, if applicable, estimations) at the start and end of the billing period; • details of consumption or estimated consumption; • pro rata billing information (if applicable); 	
		<ul style="list-style-type: none"> • any amount deducted, credited or received under a Government rebate or concession scheme or under an instalment plan; • the amount of any security deposit; • the network charge and details of any other miscellaneous charges; • details of the available payment methods; • details of any available government funded concessions or rebates; • telephone number for account and fault 	

No.	Subject	Recommendation	Comments
		<p>enquiries;</p> <ul style="list-style-type: none"> • contact details for complaints; and • availability of interpreter services in community languages. <p>Amounts billed for goods and services (other than the supply of energy) must be included in a separate bill or as a separate line item on an energy bill.</p>	
	Payment terms	<p>The due date for payment of a bill may not be less than a prescribed period after the date on which the bill is sent out.</p> <p>Market Contract Annotation</p> <p>May be varied by agreement in market contracts.</p>	
	Apportionment	<p>If a bill includes amounts payable for other goods and services provided by the retailer (apart from the supply of energy), any payment made in relation to such a bill must be applied firstly to the payment of the energy charge, unless otherwise directed by the customer or agreed by the customer.</p> <p>Market Contract Annotation</p> <p>May be varied by agreement in market contracts.</p>	
	Historical information billing	<p>A retailer must provide historical billing data for the previous 12 months on request and without charge to a small customer. Any information provided prior to that period or more than once in any 12 month period may be subject to a reasonable charge.</p>	
	Billing disputes	<p>A retailer must review a bill upon the request of a small customer in accordance with the retailer's standard complaints and dispute resolution procedures and in accordance with any time limits</p>	

No.	Subject	Recommendation	Comments
		<p>applicable under those procedures.</p> <p>The customer may require the retailer to undertake a meter test, with the cost of the test to be borne according to the outcome of the test.</p> <p>Retailers may require a customer to pay the greater of:</p> <ul style="list-style-type: none"> • the portion of the bill under review which is not in dispute; or • an amount equal to the average amount of the customer's bills over the previous year (excluding the bill in dispute), <p>and any future bills that are properly due.</p> <p>Where, after conducting a review of the bill, a retailer is satisfied that the bill is:</p> <ul style="list-style-type: none"> • correct, the customer must pay the amount outstanding; or • incorrect, the retailer must adjust the bill accordingly and refund any fee paid in carrying out any metering test. 	
Undercharging and overcharging			
	Undercharging	<p>A retailer may recover from a customer any amount undercharged during the previous 12 months (unless the undercharging arises as a result of the fault or unlawful action of the customer, in which case the 12 month limitation does not apply). Interest is not payable on the amount undercharged and the customer must be given a period of time to pay any undercharged amount commensurate with the</p>	

No.	Subject	Recommendation	Comments
		period of the undercharging. Any amount undercharged must be listed and explained as a separate item on the customer's next bill or on a separate bill.	
	Overcharging	A retailer must promptly inform the customer upon becoming aware of an overcharge and must repay any amount overcharged. If the amount overcharged is less than a threshold amount, the retailer must credit that amount to the next bill. If the amount overcharged exceeds the relevant threshold, the retailer must repay the amount as directed by the customer or, where there is no such direction, credit the customer's next bill.	
Payment methods and difficulties			
	Payment methods	<p>A retailer must accept payment by a small customer by any of the following payment methods:</p> <ul style="list-style-type: none"> • in person; • by telephone; • by mail; or • by direct debit. <p>Where a direct debit arrangement is entered into, the retailer and the small customer must agree the amount, date and frequency of the direct debits and the customer's cancellation options.</p> <p>Market Contract Annotation</p> <p>May be varied by agreement in market contracts. If direct debit is provided for in the market contract, the last paragraph must be complied with.</p>	

No.	Subject	Recommendation	Comments
	Payment difficulties	<p>A retailer must offer a small customer an instalment plan where the customer informs the retailer that it is experiencing payment difficulties [or it becomes apparent to the retailer that the customer is experiencing payment difficulties]. Where customers are experiencing payment difficulties, retailers must provide information to those customers in relation to available concessions or Government assistance, independent financial counselling services and their ability to have the bill redirected to a consenting third party.</p> <p>A retailer is not required to offer an instalment plan if the customer has had two instalment plans cancelled due to non-payment in the previous 12 months.</p>	
	Shortened collection period	Conditions under which a customer may be placed on a shortened collection period and under which the customer must be returned to the normal collection period.	
Disconnection			
	Grounds for disconnection	<p>A retailer may disconnect or discontinue supply where:</p> <ul style="list-style-type: none"> • a small customer has not paid a bill; • access to a meter has been denied by a small customer for three consecutive scheduled readings without reasonable excuse; • the customer has refused to provide acceptable identification or security; • a customer has acquired energy illegally; • a customer has obstructed an authorised 	

No.	Subject	Recommendation	Comments
		<p>person in relation to acts to be done under the contract; or</p> <ul style="list-style-type: none"> • a market contract has been terminated in accordance with the terms of the contract. 	
	<p>Limitations on disconnection</p>	<p>Other limitations will apply to the right to discontinue supply in circumstances where a small customer has not paid a bill on account of having insufficient income. In these circumstances, the retailer is required to comply with its obligations in respect of customer payment difficulties (eg to offer instalment plans or special payment arrangements and to make referrals to counselling services, etc) before proceeding to disconnect a customer. Retailers are not entitled to disconnect while an application for Government assistance or a payment plan is pending. In addition, premises registered as containing life support or other medical equipment may not be disconnected and retailers may only carry out disconnections before specified times of the day and on specified days.</p>	
	<p>Notice</p>	<p>Disconnection may not be effected until the retailer has provided the customer with:</p> <ul style="list-style-type: none"> • a reminder notice; and • a disconnection notice, <p>containing prescribed information and at prescribed minimum intervals.</p> <p>In addition, where the customer is experiencing payment difficulties the retailer must make a reasonable attempt to contact the customer by telephone or other specified means.</p>	
	<p>Reconnection</p>	<p>A retailer must notify a small customer of the arrangements which</p>	

No.	Subject	Recommendation	Comments
		<p>the customer will need to make in respect of reconnection, including any costs payable by the customer. Any payment arrangements for reconnection must allow for fair and reasonable payments at fair and reasonable intervals.</p> <p>A retailer must reconnect premises if the breaches described above are remedied within 10 business days. Retailers must make appropriate arrangements with the relevant distributor to ensure that reconnection occurs as soon as possible for the customer.</p>	
Liability and warranties			
	Liability and warranties	<p>A retailer must not include any term or condition in an energy contract that limits the liability of the retailer for breach of the contract or negligence by the retailer, provided that:</p> <ul style="list-style-type: none"> • the retailer's liability may be limited as contemplated by section 68A of the <i>Trade Practices Act</i> or by equivalent State or Territory legislative provisions; and • there is no variation or exclusion of relevant legislative provisions which provide that the retailer is not liable for damages for failure to supply due to circumstances beyond its control (ie section 120 of the NEL). <p>A retailer may not include in an energy contract with a small customer a term pursuant to which the customer indemnifies the retailer, so that the retailer may recover from the customer an amount greater than the retailer would otherwise have been able to recover at general law for breach of contract or negligence by the customer in respect of the contract.</p>	

No.	Subject	Recommendation	Comments
Miscellaneous			
	Prepayment meters	A customer may agree but cannot be required to use a prepayment meter.	
	Dispute resolution and complaints	A retailer must handle a complaint made by a small customer in accordance with the relevant jurisdictional dispute resolution process.	
Additional provisions required in market contracts			
	Cooling-off period	<p>Market Contract Annotation</p> <p>A retailer must ensure that each market contract entered into with a small customer enables the customer to rescind the contract within 10 business days after the contract is entered into or, if later, after the customer receives prescribed information relating to the cooling off period.</p>	
	Dual fuel contracts	<p>Market Contract Annotation</p> <p>In the case of dual fuel bills, payment is to be made as agreed with or directed by the customer. If there is no such agreement or direction, payment is to be applied in proportion to the relative value of the electricity and gas charges.</p> <p>If disconnection is permitted, a retailer must ensure that a small customer on a dual fuel contract is initially disconnected from gas supply and that disconnection from electricity supply occurs within a certain period after the disconnection notice, unless otherwise directed by the customer or agreed by the customer.</p>	
	Early termination charges	<p>Market Contract Annotation</p> <p>The retailer may only impose an early termination charge under a</p>	

No.	Subject	Recommendation	Comments
		small customer market contract if: <ul style="list-style-type: none"> • the market contract includes details of the amount or manner of calculation of the early termination charge; and • the early termination charge is a reasonable estimate of the cost to the retailer resulting from the early termination. 	
Provisions included for consideration in Working Paper 1 but not proposed to be included in standing offer or market contract terms			
	Assessing credit risk (limiting assessment to utility related debt)	In deciding whether a small customer has an unsatisfactory credit history, a retailer may only have regard to any relevant utility related default by that small customer.	
	Customer consultative groups	A retailer must establish a customer consultative group.	
	Discrimination based on customer supply or use of alternative energy sources	A retailer must not refuse to supply or supply on inferior terms on the basis that the customer supplies or uses alternative forms or sources of energy or services that reduce the demand for energy.	
	Fees for late payment	Prohibition on fees for late payment.	
	Compensation for wrongful disconnection	Retailers must pay compensation to customers who are wrongfully disconnected.	
Provisions to be included in the Rules (and not as standing offer or market contract terms)			
	Communications with customers	A retailer must provide access to multi-lingual services (for languages common to the relevant customer base) in order to meet the reasonable needs of its small customers.	
	Customer information	A retailer must make available on request and without charge standardised information to a small customer concerning his or her	

No.	Subject	Recommendation	Comments
		rights, entitlements and obligations.	
	Competitive pricing information	The Rules should permit (but not require) the AER to require pricing information to be presented in a format which enables comparison between competing offers.	
Provisions subject to separate policy review			
	Consumption graphs	Bills to include comparative consumption data.	
	Provision of energy efficiency advice	On request, a retailer must provide energy efficiency advice to a small customer.	
	Greenhouse gas emissions information on bills	Bills must include information concerning greenhouse gas emissions in accordance with guidelines.	
	CSOs	Retailers may be required to deliver government funded CSOs.	
	Service standards	Retailers must comply with specified service standards.	

Part 3 – Regulation of marketing conduct

The recommended requirements would apply to marketing conduct involving small customers.

No.	Subject	Recommendation	Comments
	Pre-contractual disclosures - timing/form	<p>A retailer must provide a small customer with certain prescribed information as follows:</p> <ul style="list-style-type: none"> (a) prior to formation of a market contract: where the prescribed matters may be disclosed in writing, electronically or verbally; and (b) as soon as practicable after formation of a market contract: pursuant to a single written disclosure statement (unless such disclosure statement has already been provided). 	
	Pre-contractual disclosures - required disclosures	<p>The information which a retailer must provide in the manner described above is information in relation to:</p> <ul style="list-style-type: none"> (a) prices, charges, penalties, billing and payment arrangements: all applicable prices, charges, early termination payments and penalties, security deposits, service levels, concessions or rebates, billing and payment arrangements and how any of these matters may be changed; (b) contract duration: the commencement date and duration of the contract, the availability of extensions and whether the contract can be transferred to other premises if the customer moves out during the term of the contract; (c) cooling-off period: any rights to rescind the contract, including how to exercise these rights; 	

No.	Subject	Recommendation	Comments
		<p>(d) electronic transactions: if any marketing requirement is to be complied with by an electronic transaction, how the transaction is to operate and, as appropriate, that the customer will be bound by the electronic transaction or will be recognised as having received the information contained in the electronic transaction; and</p> <p>(e) standard supply contracts: the availability of standing offer supply contracts and the relevant regulator's contact details.</p>	
	Cooling-off period	Unless such information has previously been supplied to the small customer, a retailer must send documentation to the small customer providing details of the customer's right to rescind the market contract, including information about how to exercise this right, at least 10 business days prior to the expiry of the cooling-off period.	
	Dispute resolution and complaints	A retailer must advise a small customer of its right to complain to the retailer in respect of any marketing activity conducted on behalf of the retailer and, if such complaint is not satisfactorily resolved by the retailer, of the customer's right to complain to the relevant industry ombudsman.	
	General conduct standards	<p>Marketers must, and retailers must ensure that marketers, comply with all applicable Commonwealth and State and Territory laws in relation to:</p> <p>(a) misleading, deceptive or unconscionable conduct;</p> <p>(b) undue pressure, harassment or coercion; and</p> <p>(c) the quality, form and content of marketing information.</p> <p>Marketers should have, and retailers should ensure that marketers have, adequate product knowledge. Adequate product knowledge</p>	

No.	Subject	Recommendation	Comments
		covers knowledge of matters such as tariffs, billing procedures and the availability of rebates and concessions.	
	Duties of marketers	<p>At all times in connection with any marketing activity, a marketer must identify his or herself to a small customer. Identification involves the marketer using best endeavours to provide the small customer with:</p> <ul style="list-style-type: none"> (a) the marketer's first name; (b) any relevant identification number; (c) the name of the retailer on whose behalf the marketing contact is being made and contact details for the retailer; (d) sufficient contact details to enable the customer to contact the marketer; and (e) advice as to the purpose of the marketing contact. <p>Where marketing is conducted in person, a marketer must wear an identification badge showing the marketer's photograph, first name and the name of the retailer on whose behalf the marketing contact is being made.</p>	
	Training	Retailers must ensure that marketers are appropriately trained in relation to compliance with marketing obligations.	
	Record keeping	Retailers must keep records of all marketing related activities, including details of marketing visits which have been conducted, and telephone marketing calls which have been placed. Retailers must also retain records of any explicit informed consent obtained by a marketer for two years after such consent is obtained.	

No.	Subject	Recommendation	Comments
	Compliance audits	A retailer may be required by the AER to conduct a compliance audit in respect of the compliance by marketers with their marketing obligations.	
	Contact times	Not included.	
	Contact records	Not included.	

Part 4 – Regulation of distributor-customer contract terms

The following terms would be included in the model terms for deemed distribution contracts to be included in the Rules. Note that negotiated distribution contracts may be entered into where both parties agree, subject to requirements specified in the Law and Rules for small customers.

No.	Subject	Recommendation	Comments
	Commencement of contract (as between the distributor and the customer at particular premises)	<p>When the deemed contract commences in relation to a particular customer and premises, being:</p> <ul style="list-style-type: none"> • the date specified in the contract (not earlier than the date of publication of the contract by the distributor); or • if later, the date the premises were connected to the network or the customer moved in to the premises. 	Agreed.
	Collection of charges	An explanatory term may be included noting that charges for distribution services are paid to the retailer and that the distributor may not charge the customer directly for services unless it has a separate agreement with the customer.	<p>Agreed.</p> <p>However, this is the closest the model terms come to stating that the distributor is required to provide distribution services to the customer in relation to its premises.</p> <p>The model terms should include a specific provision to this effect and explain how the deemed distribution contract interacts with the terms of the customers contract with the retailer.</p>
	Termination of services	<p>When the deemed contract ends in relation to a particular customer and premises, being the earlier of:</p> <ul style="list-style-type: none"> • the date the customer is disconnected in accordance with the disconnection procedures and any right of reconnection 	Agreed.

No.	Subject	Recommendation	Comments
		<p>has expired;</p> <ul style="list-style-type: none"> • the customer ceasing to be responsible for energy consumption at those premises following a specified period of notice to its retailer; • the effective date of a negotiated distribution contract for the premises; or • the date otherwise agreed between the customer and the distributor. 	
	Interruptions to supply	The contract should adopt the provisions of the Rules in relation to interruptions and curtailments to supply.	Agreed.
	Service standards/Guaranteed service levels	<p>The setting of service standards and any associated GSL payment levels may be a matter to be determined individually as part of the AER's approval of the default contract. This is not addressed in this paper. However, following is an indicative list of potential requirements:</p> <ul style="list-style-type: none"> • frequency and duration of supply interruptions; • timely notice of planned interruptions; • quality of supply (excluding frequency) for electricity (this could include voltage variations); • wrongful disconnection; • timeframes for reconnection; • being on time for appointments; • response times for fault calls; and • provision of fault information. 	<p>Agreed.</p> <p>However we note that some of these service standards may only be relevant to small customers. The model terms should allow different services standards to apply to different classes of customers.</p>

No.	Subject	Recommendation	Comments
	Liability and warranties	<p>The following limitations of liability may be included:</p> <ul style="list-style-type: none"> • implied terms and warranties may be excluded to the extent permitted by law; • no liability for supply interruption or disconnection to the extent the distributor is entitled to do so under Law, Rules or contract; • no liability for reliability or quality of supply, except to the extent caused or contributed to by the distributor's default or negligence; and • contractual force majeure. <p>The contract should state that none of these limitations will limit any obligation to make a GSL/compensation payment.</p>	<p>Working Paper 2 refers to the fact that the South Australian deemed distribution contract contains a limit on the liability of the distributor in certain circumstances where the distributor has been negligent.</p> <p>This type of limit on liability is a common feature of <i>connection agreements</i> negotiated under Rule 5.3 for large customers and other non-energy related commercial arrangements.</p> <p>We understand that this is intended as an indicative non-exclusive list of the limitation on liability which may be included in the model terms. However, we want to ensure that this issue is further debated before the model terms are finalised.</p>
	Provision of information	May include an obligation on the distributor to provide information to a customer or its retailer on request about that customer's consumption, applicable network tariff or connection.	Agreed.
	Disconnections and reconnections (excluding temporary supply interruptions)	<p>The contract should adopt the provisions of the Rules in relation to the circumstances in which a distributor may, or must, disconnect. The contract should also specify when a distributor must not disconnect. These circumstances may include (subject to emergencies):</p> <ul style="list-style-type: none"> • time of day and weekend/holiday restrictions for small customers; • for electricity, if the address has a registered life support system; • where required notices have not been given; 	Agreed.

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> • where a complaint remains unresolved; or • if a distributor reasonably considers that distribution would immediately endanger health or safety. <p>Reconnection should be effected:</p> <ul style="list-style-type: none"> • as soon as practical and within one business day after the reason for disconnection has been removed and the customer requests; and • if a retailer requested disconnection, as soon as practical and within one business day after the retailer requests reconnection, <p>subject to payment of the reconnection fee.</p> <p>A time limit for reconnection should be included, after which a request for connection would be treated as a new connection.</p>	
	Fault reporting and correction	Provision of 24-hour fault information and reporting line.	Agreed.
	Dispute resolution	The contract should include details of the applicable complaints/dispute resolution process and require the distributor to comply with the relevant rules or procedures.	Agreed. The customer should also be required to comply with the specified dispute resolution process.
	Customer obligations	<p>To be clearly expressed in the contract, together with the consequences of non-compliance (eg disconnection) and provision for appropriate notice of non-compliance and an opportunity to remedy if applicable. Customer obligations may include matters relating to:</p> <ul style="list-style-type: none"> • theft/unauthorised supply; • provision of safe and unhindered access to meters and 	<p>Agreed.</p> <p>This could pick up by reference any customer specific obligations which are permitted/required in relation to particular types of customer connections or installations.</p>

No.	Subject	Recommendation	Comments
		<p>other equipment of the distributor;</p> <ul style="list-style-type: none"> • protection of/tampering with distributor equipment on premises; • safety of customer installation; • compliance with any restrictions on consumption or use of energy; and • requirements to notify certain events (eg faults, leaks, change of use, safety requirements). 	

Part 5 – Regulation of distributor-retailer contract terms

The following terms would be included in the model terms for UoS agreements/interface contracts to be included in the Rules. In general, the same terms and conditions apply to electricity UoS agreements and gas interface contracts. Clauses marked with an asterisk would not apply in gas interface contracts as these provisions would already be dealt with in the access terms and conditions. Note that negotiated contracts may be entered into where the parties agree.

No.	Subject	Recommendation	Comments
	Connections at request of retailer or end customer	The UoS agreement/interface contract would be limited to requiring the retailer to pass on connection requests in a timely manner.	Agreed.
	Obligation to supply*	The UoS agreement would provide for the distributor to provide distributor services to the retailer (who then provides a bundled service to its customers).	<p>This is inconsistent with our understanding concerning the operation of the hybrid contractual model and the model terms for the deemed distribution contract.</p> <p>The distributor is not providing distribution services to the retailer under the UoS agreement. These services are being provided under the deemed distribution contract.</p> <p>There is no suggestion in the definition of distribution services that it is intended that the components services which make up the distribution services should be provided under separate contracts.</p>
	Customers covered by the agreement	The UoS agreement/interface contract would define mutual customers of the distributor and retailer by reference to:	Agreed

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> customers that are connected or seeking to be connected to the distributor's infrastructure; and customers in respect of which the retailer has financial responsibility in the wholesale market (ie. the FRMP in electricity and equivalent in gas). 	
	Collection and on payment of network charges by retailer*	The UoS agreement would provide for the retailer to pay the distributor for distribution services as principal, ie. the retailer is required to pay the distributor regardless of whether it receives payment from its customers (and therefore bears the customer credit risk). This would not include payment for non-standard connections negotiated between the customer and the distributor, which would be paid directly by the customer.	Agreed.
		<p>Payment provisions would cover matters such as invoicing, use of meter data/estimates, adjustment of accounts for changes to meter data or correction of errors, over/under charging, interest on late payments and disputes. Provisions concerning over/under charging should be consistent with the requirements applying between the retailer and customer (see Part 2 of this document).</p> <p>These provisions may also cover the pass through of GSL payments owed by distributors to customers or provide for the direct payment of GSL payments by distributors to customers.</p>	<p>Agreed.</p> <p>Agreed.</p>
	Changes in network tariffs or distribution services	<p>The UoS agreement/interface contract would cover:</p> <ul style="list-style-type: none"> interaction between the retailer and distributor in relation to the network tariff applicable to a particular customer, in particular, for the distributor to respond to retailer requests to change a customer's applicable network tariff and for the retailer to inform the distributor of changes to the use of 	Agreed.

No.	Subject	Recommendation	Comments
		<p>customer premises which may alter the applicable network tariff; and</p> <ul style="list-style-type: none"> notification by the distributor to the retailer of general changes in its network tariffs or other relevant charges. 	
	Information sharing to facilitate single billing, billing disputes	<p>The UoS agreement/interface contract would require:</p> <ul style="list-style-type: none"> the distributor to provide certain information to the retailer to facilitate customer billing by the retailer; and the parties to cooperate in relation to customer billing disputes. 	Agreed.
	Credit support*	<p>The UoS agreement would require the retailer to provide credit support in certain circumstances and set out the approach to determining the amount and nature of the credit support, when it may be drawn and other matters.</p>	Agreed.
	Termination	<p>The UoS agreement/interface contract would provide for termination rights for the distributor and retailer respectively.</p> <p>However, to protect customers in these circumstances, the relevant provisions should require a distributor to continue to provide services until the UoS agreement/interface contract has ceased to apply to all of the retailer's customers (for example, because they have transferred to a retailer of last resort).</p>	Agreed.
	Interruptions to supply*	<p>The UoS agreement would contain an acknowledgement of the distributor's right to interrupt supply in accordance with the Law and the Rules.</p>	Agreed.
	Allocation of liability between retailer, distributor and customer	<p>The UoS agreement/interface contract would provide for the liability of the distributor and the retailer and, in particular, for:</p> <ul style="list-style-type: none"> the distributor to indemnify the retailer for customer claims 	Agreed.

No.	Subject	Recommendation	Comments
		<p>for which the distributor would have been liable if the customer had made the claim under its contract with the distributor;</p> <ul style="list-style-type: none"> • mutual indemnities, for example, in relation to customer claims for unlawful disconnection caused by the respective parties; • third party claims procedures; and • liability caps, exclusion of warranties and implied terms, preservation of statutory instruments. 	
	<p>Disconnections at request of retailer, distributor or end customer</p>	<p>The UoS agreement/interface contract would provide for:</p> <ul style="list-style-type: none"> • disconnections at the request of the retailer (subject to certification by the retailer that the disconnection is permitted under the Rules), which may include a requirement for the distributor to compensate the retailer where it fails to action such a request (subject to carve outs, eg. where the failure is due to health and safety reasons); • disconnections at the request of a customer (parties obliged to inform each other if they receive such a request); • acknowledgement by the retailer of other circumstances where the distributor is entitled to disconnect; • requirements for reconnection. 	<p>Agreed.</p>
	<p>Enforcement of distributor's rights</p>	<p>The UoS agreement/interface contract may provide for the distributor to notify or consult with the retailer before enforcing its rights against a customer (including disconnection), and to indemnify the retailer for any assistance provided by the retailer.</p>	<p>Agreed.</p>

No.	Subject	Recommendation	Comments
	Information sharing to facilitate connection, disconnection	See comments in relation to connection and disconnection above.	Agreed.
	Handling of fault complaints	<p>The UoS agreement/interface contract would provide for:</p> <ul style="list-style-type: none"> • the retailer to transfer or refer to the distributor customer calls in relation to faults or emergencies; • the information to be provided by the distributor to the retailer in this regard, and what information the retailer may provide to the customer. 	Agreed.
	Handling of complaints (including re billing)	The UoS agreement/interface contract would provide for each party to otherwise transfer or refer to the other any customer complaints received that relate to the other party, and may also include provisions requiring the parties to cooperate in addressing such complaints.	Agreed.
	Other customer inquiries and claims	<p>The UoS agreement/interface contract would similarly provide for the transfer or referral of customer inquiries and may also include provisions requiring the parties to cooperate in relation to addressing such inquiries/claims. Such provisions may specifically relate to cooperation in relation to disputes referred to the Ombudsman.</p> <p>See also above in relation to allocation of liability.</p>	Agreed.
	Metering	<p>See comments above in relation to billing. Other relevant provisions in relation to metering would be:</p> <ul style="list-style-type: none"> • obligations imposed on the party responsible for metering to use best endeavours to read meters at a particular frequency and to provide metering data to the other party; • obligations on both parties to notify the other if they 	Agreed.

No.	Subject	Recommendation	Comments
		become aware of any change to access conditions to a customer premises.	
	Information sharing in relation to customer information and planned and unplanned outages	<p>The UoS agreement/interface contract would include additional obligations for the parties to share information:</p> <ul style="list-style-type: none"> • the provision of customer details by the retailer to the distributor and of any customer details held by the distributor (eg. in relation to life support systems) to the retailer; • the provision of information in relation to planned and unplanned outages by the distributor to the retailer (and associated referral provisions, similar to faults, as discussed above); and • a general obligation to provide information required by the other party to carry out its obligations under the agreement. 	Agreed.
	Information to be provided to the customer	The UoS agreement/interface contract would require each party to refer to the other customer requests for information relating to the other party, but may also provide for the retailer to provide information to customers on behalf of the distributor in some circumstances.	Agreed.
	Information sharing to facilitate churn	See comments above in relation to sharing customer information.	Agreed.
	Communications generally	The UoS agreement/interface contract may provide for the parties to develop communications protocols.	Agreed.
	Cooperation generally	The UoS agreement/interface contract would require the parties to provide information to, and generally cooperate with, the other to enable the other party to carry out its obligations under the	Agreed.

No.	Subject	Recommendation	Comments
		agreement and under its agreements with customers.	
	Dispute resolution	Dispute resolution procedure to be included.	Agreed.