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18 July, 2007

Manager MCE Secretariat,  
Department of Industry, tourism and Resources,  
GPO Box 9839  
Canberra ACT 2601

**By email MCEMarketreform@industry.gov.au**

Dear Sir/Madam,.

**National Framework for non-Economic Distribution and Retail Regulation**

Thank you for the opportunity to respond to the recommendations proposed in the Consultation Paper prepared for the Retail Policy Working Group by Allens Arthur Robinson. Powercor Australia Limited and CitiPower Pty (together 'the businesses') are Victorian electricity distributors.

This submission provides CitiPower and Powercor comments for your consideration in the table format provided by the RPWG.

Should you have any questions in relation to this submission, please do not hesitate to contact Rolf Herrmann on (03) 9683 4282 or by email at rherrmann@powercor.com.au.

Yours sincerely

**Richard Gross**  
**General Manager Regulation**



No.	Subject	Recommendation	Comments – CitiPower & Powercor
	<p>Connection services</p> <p>Conditions to the obligation</p>	<ul style="list-style-type: none"> <li>➤ Law and Rules, including relevant dispute resolution procedures;</li> <li>➤ particulars of any rebate or relief available under any government funded energy charge rebate or relief scheme; and</li> <li>➤ information in community languages about the availability of interpreter services for the languages concerned and telephone numbers for the services;</li> </ul> <ul style="list-style-type: none"> <li>• Connection services – the retailer's responsibility to arrange connection services in respect of the supply; and</li> <li>• Conditions to the obligation – the circumstances in which the retailer may refuse to supply, including: <ul style="list-style-type: none"> <li>➤ failure by the customer to satisfy the application requirements identified above;</li> <li>➤ failure to provide any security the retailer is entitled to require under the standing offer terms;</li> <li>➤ failure to pay an amount due to the retailer in respect of the new supply (such as connection charges);</li> <li>➤ failure to provide access to the premises; and</li> <li>➤ other circumstances beyond the retailer's control.</li> </ul> </li> </ul> <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</p>	

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		<p>instrument.</p> <p>A designated retailer's supply remit may be specified by reference to:</p> <ul style="list-style-type: none"> <li>• a geographical area;</li> <li>• particular premises or classes of premises; or</li> <li>• particular customers or classes of customers.</li> </ul> <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>	
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>	
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 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>	

No.	Subject	Recommendation	Comments – CitiPower & Powercor
5.	MCE directed review of small customer definition	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.	
6.	Tariffs	The Law should provide that standing offer tariffs are those published by designated retailers from time to time.	
7.	Specification of terms and conditions	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.	
8.	Standing offer terms	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.	
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"> <li>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</li> </ul>	

No.	Subject	Recommendation	Comments – CitiPower & Powercor
		<p>market contract; and</p> <ul style="list-style-type: none"> <li>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.</li> </ul>	
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"> <li>where a customer occupies premises that are already connected to the distribution system and commences to take a supply of energy; and</li> <li>where a current contractual arrangement terminates without new supply arrangements having been established,</li> </ul> <p>subject to any provision in the contract itself concerning the terms and conditions to apply on termination.</p>	
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 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.</p>	
12.	Duration of deemed supply arrangements	<p>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</p>	

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		indefinitely in that, if the customer takes no action, the supply will continue on the retailer's standing offer tariffs, terms and conditions.	
13.	Notice requirements for deemed supply arrangements	<p>The Rules should require:</p> <ul style="list-style-type: none"> <li>• the customer to give notice to the retailer equivalent to the application requirements for supply under a standing offer; and</li> <li>• 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).</li> </ul>	

No.	Subject	Recommendation	Comments– CitiPower & Powercor
<b>Retailer – small customer market contracts</b>			
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"> <li>• 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</li> <li>• 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.</li> </ul>	

No.	Subject	Recommendation	Comments– CitiPower & Powercor
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"> <li>• terms and conditions which must be included in market contracts;</li> <li>• requirements with which the terms and conditions of market contracts must not be inconsistent; and</li> <li>• terms and conditions which must not be included in market contracts.</li> </ul> <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>	
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>	

No.	Subject	Recommendation	Comments – CitiPower & Powercor
<b>Retailer – small customer marketing</b>			
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"> <li>• reducing retailer compliance burden or cost (this implies such requirements apply in place of general consumer protection laws); or</li> <li>• consumer protection, having regard to the distinguishing characteristics of the energy market.</li> </ul> <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>	
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>	
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"> <li>• retailers;</li> <li>• persons acting as agents of retailers for the purpose of</li> </ul>	

No.	Subject	Recommendation	Comments – CitiPower & Powercor
		<p>gaining new or retaining existing customers;</p> <ul style="list-style-type: none"> <li>• persons acting as agents of one or more customers in respect of retail energy supply; and</li> <li>• persons otherwise acting as an intermediary between retailers and customers in respect of retail energy supply.</li> </ul>	
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.	

No.	Subject	Recommendation	Comments – CitiPower & Powercor
<b>Contractual model for distribution services</b>			
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.	
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"> <li>• 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;</li> <li>• 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</li> <li>• 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.</li> </ul>	
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.	

No.	Subject	Recommendation	Comments – CitiPower & Powercor
<b>Distributor obligation to provide connection services</b>			
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>	
25.	Definition of distribution services	<p>Distribution services should be defined in the Law as:</p> <ul style="list-style-type: none"> <li>• the connection of the premises to the distribution network to allow the flow of energy between the network and the premises;</li> <li>• 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</li> <li>• maintaining the capability of the network to allow the flow of energy between the network and the premises through the connection.</li> </ul> <p>The definition of distribution services in the Law should be capable of being supplemented by the AEMC in the Rules.</p>	





No.	Subject	Recommendation	Comments – CitiPower & Powercor
<b>Distributor interface with customers</b>			
27.	<p>Establishment of deemed distribution contract</p> <p>Duration</p> <p>Negotiated distribution contracts</p> <p>Access regime still applies</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"> <li>• 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;</li> <li>• coordination with the customer's retailer; and</li> <li>• any other requirements contained in the Rules.</li> </ul> <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>As the model proposed is a 'hybrid', but based upon a linear contract model, the requirement to 'coordinate' with the customer's retailer would be better expressed as a requirement to consult with the retailer. Ultimately the distributor and customer should be free to agree different terms, without requiring any approval from the retailer.</p>
28.	Deemed contract terms and conditions	<p>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).</p>	

No.	Subject	Recommendation	Comments – CitiPower & Powercor
29.	<p>Rules provisions</p> <p>Model terms for deemed distribution contracts</p> <p>Small customer definition</p> <p>Standard deemed distribution contracts</p> <p>AER approval</p>	<p>The Rules should include the following provisions in relation to the distributor - customer relationship:</p> <ul style="list-style-type: none"> <li>• 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 contractual terms. Part 4 of this document sets out summary model terms for the development of the initial Rules.</li> <li>• Small customers should be defined in the same way as for the retailer obligation to supply.</li> <li>• 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.</li> <li>• 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"> <li>➤ customer service and network performance standards applicable to the distributor;</li> <li>➤ any specific characteristics of the distributor's network; and</li> <li>➤ the object of the Law.</li> </ul> </li> </ul>	
	<p>Variations during regulatory period</p>	<ul style="list-style-type: none"> <li>• 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</li> </ul>	

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	Deemed distribution contracts for large customers	<p>relating to any resulting cost increases or decreases should be dealt with in the revenue determination/access arrangement approval.</p> <ul style="list-style-type: none"> <li>• Distributors may also prepare, and submit for the AER's 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.</li> </ul>	
30.	Regulatory obligations - Law	The Law should authorise or oblige distributors to disconnect, reconnect and interrupt supply in the circumstances prescribed in the Rules.	
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"> <li>• A requirement that distributors must comply with any applicable service standards.</li> <li>• The circumstances in which a distributor is entitled or required to disconnect customer premises, including:               <ul style="list-style-type: none"> <li>➤ in an emergency, including at the direction of a relevant authority;</li> <li>➤ for health and safety reasons;</li> <li>➤ at the request of the customer or its retailer (subject to certification by the retailer that the disconnection is permitted under the Rules);</li> <li>➤ for non-compliance by the customer with</li> </ul> </li> </ul>	
		<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</p>	

No.	Subject	Recommendation	Comments – CitiPower & Powercor
	<p>Restrictions on disconnection</p> <p>Interruptions and curtailments</p> <p>Reconnection</p> <p>Dispute resolution</p> <p>Information provision</p>	<p>unauthorised supply).</p> <ul style="list-style-type: none"> <li>• The circumstances in which a distributor must not disconnect customer premises (in some cases these may only be applicable to small or residential customers).</li> <li>• 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"> <li>➤ planned interruptions subject to prescribed advance notice periods;</li> <li>➤ 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</li> <li>➤ for health and safety reasons or in an emergency, including at the direction of a relevant authority.</li> </ul> </li> <li>• A requirement that distributors reconnect a disconnected customer if the reason for the disconnection has been removed.</li> <li>• A requirement that distributors comply with any applicable jurisdictional dispute resolution requirements.</li> <li>• Requirements for distributors to provide information to a customer or its retailer on request about the customer's consumption, network tariff or connection.</li> </ul>	
	<p>Fault reporting and correction</p> <p>Small customer contracts</p>	<ul style="list-style-type: none"> <li>• Requirements concerning the maintenance by distributors of a 24-hour fault information and reporting line.</li> <li>• Protections for small customers in relation to negotiated</li> </ul>	<p>CitiPower and Powercor do not consider cooling off provisions are</p>

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		distribution contracts, including protected terms and cooling-off periods.	appropriate or necessary in relation to distribution contracts. We note that any such agreement with a small customer is most likely to be at their request and any such agreement, once reached, should be binding.

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<b>Distributor interface with retailers</b>			
32.	Nature of UoS agreement/ interface contract	<p>The Law should include:</p> <ul style="list-style-type: none"> <li>• in electricity, provision for a UoS agreement between each distributor and each retailer which sells electricity to customers connected to the distributor's infrastructure; and</li> <li>• in gas, provision for an interface contract between each distributor and each retailer which sells gas to customers connected to the distributor's infrastructure.</li> </ul> <p>The distinction between an electricity UoS agreement and a gas interface contract is that:</p> <ul style="list-style-type: none"> <li>• the electricity UoS agreement covers the provision of and payment for distribution services, and prudential requirements;</li> <li>• 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.</li> </ul> <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>However, despite the inclusion of credit or prudential arrangements in the UoS agreement there remains a risk that a retailer failure could result in a bad debt for distribution services. The Law or Rules should provide for the distributor to be sheltered from this risk by an appropriate pass through mechanism. Alternatively the deemed customer contract should allow recovery by the distributor in the event of a failure to pay by the retailer.</p>

No.	Subject	Recommendation	Comments – CitiPower & Powercor
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>	
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).	
35.	<p>Rules provisions</p> <p>Model terms for UoS agreements/interface contracts</p>	<p>The Rules should include the following provisions in relation to the distributor – retailer interface:</p> <ul style="list-style-type: none"> <li>• 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.</li> </ul>	
	Standard UoS	<ul style="list-style-type: none"> <li>• Distributors must adopt and publish a deemed UoS</li> </ul>	



No.	Subject	Recommendation	Comments – CitiPower & Powercor
<b>Distributor interface with embedded generators</b>			
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>	<p>CitiPower and Powercor remain strongly of the view that the appropriate mechanism for adopting all or part of the Code of Practice for Embedded Generation would be to incorporate the relevant provisions into the NER through the AEMC Rule Change procedures using the governance structure established for this purpose. This will ensure that all stakeholders will have an opportunity to have input in the drafting and content of any such potentially significant and technical provisions.</p> <p>It should also be appreciated that the type of detail that is contemplated by the SCO and EMRWG will require careful review and drafting by industry experts. The reasons given in the RPWG June 2007 Consultation Paper for such amendments being made by Ministerial order appear more applicable to why such amendments are necessary at all, rather than justifying their being made by Ministerial order .</p>



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	<p>Organisational and compliance capacity</p> <p>Suitable person</p>	<ul style="list-style-type: none"> <li>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;</li> <li>suitable person – that the applicant is a suitable person to hold the authorisation;</li> </ul>	
	<p>Jurisdictional licensing</p> <p>Market operator registration</p>	<ul style="list-style-type: none"> <li>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</li> <li>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.</li> </ul>	
41.	Removal of overlap with NEMMCO registration	<p>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:</p> <ul style="list-style-type: none"> <li>NEMMCO requirements with respect to financial viability should be limited to satisfaction of the market prudential requirements under chapter 3 of the NER;</li> <li>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).</li> </ul>	
42.	Corresponding changes to gas market registration	Corresponding modifications should be made to existing gas market rules to be 'grandfathered' under the national framework.	

No.	Subject	Recommendation	Comments – CitiPower & Powercor
	requirements		
43.	Treatment of existing licensees	Distribution and retail businesses that hold current jurisdictional licences should transition to the national business authorisation without further processes.	
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.	<p>Some form of registration of parties that may otherwise be exempt from registration under the NEL/Rules should also be retained. The Victorian Essential Services Commission has recently examined this issue and published a draft decision recommending that a simple form of registration apply to persons wishing to have the benefit of the exemption for the intermediary distribution and supply and/or reselling of electricity, to ensure that customers are receiving the protection they require.</p> <p>We also note that current registration requirements only apply to activities associated with the interconnected transmission and distribution system. Consideration should also be given to an appropriate form of registration for parties responsible for electricity distribution or retailing activities not associated with the interconnected transmission and distribution system to ensure that customers are receiving the protection they require.</p>
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.	

No.	Subject	Recommendation	Comments – CitiPower & Powercor
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>	
47.	Register of authorised persons	<p>The Law should require the AER to maintain a public register of authorised persons and exempt persons and include details of the information to be included in the register.</p>	
48.	Ancillary rights and powers	<p>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.</p>	<p>The reference to these powers as ‘ancillary’ does not seem appropriate. For example, the ability to carry out works on public or private land is fundamental to electricity distribution, not ancillary.</p> <p>While we appreciate that the AEMA presently contains no mandate to roll existing jurisdictional rights and powers into a national regime, we consider that the obvious benefits of consistent national regulation in this area make it an appropriate area to address. We therefore submit that this should form part of the transition arrangements from existing jurisdictional based regulation to the national regime.</p>

No.	Subject	Recommendation	Comments – CitiPower & Powercor
<b>Ring-fencing</b>			
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"> <li>• legal separation of the entity conducting distribution network services from other related businesses;</li> <li>• keeping separate and consolidated accounts for distribution services and other services;</li> <li>• cost allocation principles and methodologies in relation to the allocation of costs between distribution services and other services;</li> <li>• limitations on sharing of staff between the network service provider and related businesses; and</li> <li>• measures to ensure the network service provider's dealings with related parties are not on preferential terms.</li> </ul> <p>Requirements relating to the use and disclosure of confidential information obtained by the network service provider should be dealt</p>	<p>We note that the RPWG now proposes that these requirements be legislated and based upon the exposure draft of the NGL. As these requirements will be legislative, the accuracy of their content will be paramount. In particular, it requires greater clarity as to what the objective of these provisions is than is currently the case. We believe that the primary objective is to ensure appropriate separation of distribution and retail functions to ensure non-discriminatory access to the distribution system by competing retailers. If this is correct it should be specified in the Law to guide the form of any Rules or guidelines that may be proposed.</p> <p>We submit that this provision, by referring to all 'related businesses', is too broad. It should be limited to the separation of a distribution business from a related retail business.</p> <p>As drafted this provision could be interpreted to require the separation of the entities providing "direct control services" from "negotiated distribution service".</p> <p>This element appears to duplicate the cost allocation guidelines contemplated under the rules.</p>

No.	Subject	Recommendation	Comments – CitiPower & Powercor
		with in the NER.	
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.	This power should be limited to ensure that it does not become a <i>de facto</i> law making power, rather than a purely regulatory power as is envisioned by NEM governance arrangements.
51.	Waiver of ring-fencing requirements	The NEL should authorise the AER to grant waivers from the 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.	

No.	Subject	Recommendation	Comments – CitiPower & Powercor
<b>Retailer failure arrangements</b>			
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 (<b>RoLR scheme</b>) 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"> <li>• to ensure that customers of the failed retailer continue to be supplied with energy;</li> <li>• to manage the risks and costs of retailer failure for the benefit of customers and of the designated RoLR; and</li> <li>• to ensure the integrity of the wholesale market settlements and network balancing arrangements in the relevant market.</li> </ul>	<p>The risks and costs of the Distributor should also be covered by appropriate prudential arrangements or pass through mechanism.</p>
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"> <li>• 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;</li> <li>• provisions specifying the process for and method of appointment;</li> <li>• provisions defining the events that trigger the RoLR's supply obligations;</li> <li>• provisions setting out the RoLR's obligations in terms of preparing for the occurrence of a trigger event, including the submission of plans and proposed supply prices, terms and</li> </ul> <p>conditions to the AER;</p>	<p>CitiPower and Powercor believe that the AER should not have the option of appointing distributors to the role of RoLR, unless they have a stapled retailer.</p>

No.	Subject	Recommendation	Comments – CitiPower & Powercor
		<ul style="list-style-type: none"> <li>provisions establishing the basis for determining the prices and terms and conditions of supply, and defining the duration of the RoLR's supply obligation.</li> </ul>	
56.	Consequences of a RoLR event	<p>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:</p> <ul style="list-style-type: none"> <li>a contract may be deemed to exist between the RoLR and the customers of a failed retailer; and</li> <li>contracts between the failed retailer and its customers may be deemed to be terminated or varied.</li> </ul>	
57.	Obligations on other market participants	<p>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.</p>	
58.	Insolvency issues	<p>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.</p>	
59.	Process for making initial Rules	<p>No Rules should be made by Ministerial order as part of the 2007 legislative package. The Law should direct the AEMC to make 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</p>	

No.	Subject	Recommendation	Comments – CitiPower & Powercor
		<p>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 – CitiPower & Powercor
<b>Customer registration and transfer</b>			
60.	Electricity registration and transfer framework	<p>The NEL should authorise the Rules to provide for:</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• procedures for the efficient transfer of consumers between retailers subject to all applicable laws,</li> </ul> <p>for the purposes of facilitating the efficient and effective billing of retail and network tariffs and charges and wholesale market settlement.</p>	<p>CitiPower and Powercor agree that substantive obligations should be set out in the Rules and more detailed procedural matters should be provided in subsidiary documents such as the MSATS procedures. CitiPower and Powercor also agree that it should be possible to achieve a relatively high degree of consistency between jurisdictional requirements when transferring them to the National framework. However, we repeat that allowing amendments to achieve jurisdictional consistency to be made by Ministerial Order will be problematic as jurisdictional differences may not be easily reconciled.</p> <p>It is important to ensure adequate consultation is provided to ensure that commercial impact on regulated participants is taken into consideration and inefficient additional costs are not imposed.</p> <p>NEMMCO has discretion under the Rules to amend the MSATS and related procedures through the Rules Consultation Procedures which ensures appropriate consultation with participants. This would be a better mechanism to achieve reconciliation of outstanding jurisdictional differences.</p>
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>	

No.	Subject	Recommendation	Comments – CitiPower & Powercor
62.	Electricity connection point registration  NMI standing data	The NER should include provisions: <ul style="list-style-type: none"> <li>• defining NMI standing data, and requiring distributors to maintain and provide NMI standing data to NEMMCO and notify changes to that data;</li> <li>• limiting disclosure of NMI standing data by NEMMCO to retailers (Market Customers) who specify the NMI or supply address;</li> <li>• specifying the purposes for which a retailer may use NMI standing data; and</li> <li>• 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.</li> </ul>	
63.	Electricity consumer transfers  Initiation of transfers	The NER should include provisions: <ul style="list-style-type: none"> <li>• requiring transfer requests to be initiated only by an incoming retailer submitting a request in accordance with the MSATS procedures;</li> </ul>	

No.	Subject	Recommendation	Comments – CitiPower & Powercor
	Transfer requests and process	<ul style="list-style-type: none"> <li>• requiring a transfer request to be accepted as valid if:               <ul style="list-style-type: none"> <li>➤ it contains all the prescribed information;</li> <li>➤ the connection point details in the request are consistent with the NMI standing data;</li> <li>➤ there is no outstanding transfer request in relation to the same connection point;</li> <li>➤ the metering installation complies with applicable requirements for contestability; and</li> <li>➤ the incoming retailer is registered with NEMMCO as a market participant;</li> </ul> </li> </ul>	
		<ul style="list-style-type: none"> <li>• prohibiting a retailer from submitting a transfer request unless:               <ul style="list-style-type: none"> <li>➤ it has obtained any applicable consents from the customer to enter into the retail contract; and</li> <li>➤ it has all necessary agreements in place to enable the sale of energy to the customer at that connection point;</li> </ul> </li> <li>• requiring the transfer process to take into account applicable cooling-off periods by not enabling transfers to be completed before expiry of the cooling-off period;</li> </ul>	<p>CitiPower and Powercor support this proposal as it is an improvement on the current arrangements that apply in Victoria.</p> <p>In Victoria customer transfers must not be registered in MSATS before the cooling off period expires which creates a mechanism for misalignment and confusion during the cooling off period as there is no market mechanism to advise relevant stakeholders when customers exercise the cooling off option. When this occurs the “old” retailer and the LNSP incur the costs of establishing the responsible entities and to bring their information systems up to date to reflect the changes that have occurred, particularly if the premises have been re-</p>

No.	Subject	Recommendation	Comments – CitiPower & Powercor
	Objections	<ul style="list-style-type: none"> <li>• permitting a retailer to withdraw a transfer request submitted by it at any time before the transfer has been registered by NEMMCO;</li> <li>• 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);</li> <li>• 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;</li> <li>• 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;</li> </ul>	<p>energised in the process.</p> <p>Greater transparency of the transfer process by registering the intention to transfer as early as possible would make a very significant contribution to operational efficiency and customer service by reducing the opportunity for errors and misunderstandings among participants leading to protracted manual processes to resolve the problems.</p>
	Transfer period	<ul style="list-style-type: none"> <li>• specifying the period within which a transfer must be completed (being within 65 business days after a transfer</li> <li>• request), the circumstances in which transfers may be made retrospectively effective and the applicable</li> </ul>	

No.	Subject	Recommendation	Comments – CitiPower & Powercor
	<p>Meter reading</p> <p>Notice to customer</p>	<p>retrospective periods;</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• requiring notice to the customer on completion of the transfer.</li> </ul>	
64.	Gas registration and transfer framework	<p>The NGL should authorise the Rules to provide for:</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• procedures for the efficient transfer of consumers between retailers subject to all applicable laws,</li> </ul> <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 – CitiPower & Powercor
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 – CitiPower & Powercor
<b>Metering – electricity</b>			
68.	Principal regulation of electricity metering	<p>The NEL already contemplates in Schedule 1 that the NER may contain rules in relation to:</p> <ul style="list-style-type: none"> <li>• the metering of electricity to record the production or consumption of electricity;</li> <li>• the registration of metering installations used to meter electricity; and</li> <li>• the regulation of persons providing metering services relating to the metering of electricity.</li> </ul> <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 NER.</p> <p>The principal regulation of metering should be contained in the NER / NEM Metrology Procedure regime.</p>	
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>	
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 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</p>	<p>The Consultation Paper recognises a risk that the current process of reviewing the metering arrangements may not be complete in time for the 2007 legislative package and contemplates the implementation of the revised metering arrangements through Ministerial Order. Whilst this approach would provide a more certain outcome in relation to timing, it would effectively cut off an important phase of broader</p>

No.	Subject	Recommendation	Comments – CitiPower & Powercor
		preferred.	<p>consultation through the Rule Change process administered by the AEMC which could compromise the overall quality and effectiveness of metering regulations.</p> <p>CitiPower and Powercor therefore submit that the metering changes should be progressed through the normal NER change processes, with appropriate transitional arrangements allowing current metering arrangements to continue, if necessary due to timing issues with the 2007 legislative package. We note that the RPWG Consultation Paper view is that this will lead to 'complex transitional arrangements for electricity metering', but consider that such transitional arrangements need not be complex, as they should be based upon the status quo, and that it remains preferable to complete the current consultation process in order to comprehensively address the complex issues involved in developing a national metering model.</p>
71.	<p>Supplementary regulation of electricity metering</p> <p>Contractual/regulatory interface provisions</p> <p>Transfer code provisions</p> <p>Incidental jurisdictional</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</p>	

No.	Subject	Recommendation	Comments – CitiPower & Powercor
	legislative provisions	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.	
72.	Regulation of metering in non NEM jurisdictions	The non-NEM jurisdictions should continue to regulate metering under their current instruments.	
<b>Metering – Gas</b>			
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"> <li>• the metering of gas to record the production or consumption of gas;</li> <li>• the registration of metering installations used to meter gas; and</li> <li>• the regulation of persons providing metering services relating to the metering of gas.</li> </ul>	
74.	<p>Grandfathering</p> <p>Gas retail market rules</p> <p>Other jurisdictional</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</p>	

No.	Subject	Recommendation	
	metering instruments	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 (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.	

No.	Subject	Recommendation	Comments – CitiPower & Powercor
<b>Prepayment meters</b>			
77.	Prepayment meter systems	<p>The Law should authorise the Rules to regulate the use of 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"> <li>• Prepayment meter contracts: <ul style="list-style-type: none"> <li>➤ 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);</li> <li>➤ prohibition on knowingly entering into a prepayment meter contract with a customer with a life support system;</li> <li>➤ 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);</li> <li>➤ 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);</li> <li>➤ variation of prepayment meter tariffs, undercharging, overcharging and recovery for illegal energy use; and</li> <li>➤ 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.</li> </ul> </li> </ul>	

No.	Subject	Recommendation	Comments – CitiPower & Powercor
		<ul style="list-style-type: none"> <li>• Prepayment meter systems requirements:               <ul style="list-style-type: none"> <li>➤ 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</li> <li>➤ requirements in relation to payment facilities.</li> </ul> </li> <li>• Other matters:               <ul style="list-style-type: none"> <li>➤ a requirement for the retailer to establish a specific telephone service for enquiries, complaints and emergencies relating to prepayment meter systems;</li> <li>➤ hardship and payment difficulties – the prepayment meter system must identify to the retailer instances of self disconnection and the retailer must take action to revert a customer to standard metering in certain circumstances; and</li> <li>➤ retention of records in relation to the above.</li> </ul> </li> </ul>	

No.	Subject	Recommendation	Comments – CitiPower & Powercor
<b>Enforcement mechanisms</b>			
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"> <li>• a requirement for regulated entities<sup>1</sup> to establish systems and procedures to monitor regulatory compliance, in accordance with guidelines issued by the AER;</li> <li>• a requirement for regulated entities to notify the AER of breaches of regulatory obligations, in accordance with guidelines issued by the AER;</li> <li>• 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</li> <li>• a requirement for the AER to report on its compliance monitoring and enforcement functions.</li> </ul>	<p>Powercor and CitiPower note the proposal for the Rules to include the obligations listed.</p> <p>However, these additional obligations are proposed in the context of a regulatory regime where, under the Law and Trade Practices Act 1974 (TPA) the AER will be able to take proceedings seeking a range of civil remedies including (for corporations) pecuniary penalties of up to \$100,000 and \$10,000 for each day the breach continues. These are significant penalties, which being similar to fines, are seen by the courts as relating to quasi criminal offences. In addition, we note some provisions of the Law will continue to attract criminal penalties.</p> <p>These significant penalties relate to quasi criminal and criminal offences which should therefore attract the right not to self incriminate. This is inconsistent with a proposal that businesses are required to provide self disclosure of any and all compliance breaches.</p> <p>Further, an enforcement regime that is based upon significant court imposed penalties, would ordinarily leave it to the discretion of the regulated entity how they will most efficiently manage their own compliance processes and risk. This they would do in the clear knowledge that a breach can have significant commercial and reputational repercussions and with awareness of the extensive investigatory and enforcement powers conferred upon the AER by the Law and TPA. In our view this approach will result in a similar level of compliance, but at a lower compliance cost to the businesses.</p> <p>We also note that this more interventionist regulatory model will inevitably escalate the costs of compliance, which ultimately will flow</p>

<sup>1</sup> 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 – CitiPower & Powercor
			<p>through to the consumer in increased charges. If any such heavy handed regulatory regime were to be introduced, we submit it should first be subject to a cost benefit analysis, one which we consider likely to show that the costs of imposing these additional regulatory obligations will far outweigh any public benefit. The businesses are therefore strongly opposed to including new interventionist regulatory obligations in the Rules of the type suggested.</p> <p>We note that the Consultation Paper proposes that whether any obligation to report any instances of regulatory breaches be subject to a materiality threshold, or hierarchy of penalties, should be left to the enabling provisions of the Law or AER guidelines.</p> <p>As previously submitted we note that the existing regulatory regime applying to distribution businesses under their licences includes a range of non discretionary strict requirements that cannot in practical terms be consistently complied with. This level of ongoing non-compliance is generally addressed by the regulator adopting a policy regarding how they will treat instances of such non compliance, which is generally for them to accept a level of compliance consistent with the practical realities of the particular task. We submit that the enabling provisions of the Law should expressly recognise the need for a materiality threshold, or exclude the application of penalties for defined classes of regulatory breach.</p> <p>To require reporting of all instances of non compliance with such regulatory obligations will be pointless and merely absorb resources of both the business and regulator that could be better utilised elsewhere.</p>
79.	Court based enforcement mechanisms	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	The businesses believe that a progressive escalation of enforcement mechanisms is essential to ensure appropriate measures are available to ensure efficient compliance.

No.	Subject	Recommendation	Comments – CitiPower & Powercor
		<p>and retail regulatory obligations to be included in the national framework. Compliance with these requirements should be designated as civil penalty provisions.</p>	<p>The regulator should be required to take informal action in the first instance or at least issue a warning letter that an infringement has been identified. This is an important step in providing the regulated business the opportunity to consider appropriate action to overcome the non-compliance.</p> <p>Where the issue is not resolved through the informal action, a combination of infringement notices with opportunity for the affected entity to respond and the powers for the AER to accept enforceable undertakings would provide an efficient framework to ensure effective compliance.</p>
80.	Additional orders	<p>Consideration should be given to expanding the description of orders available to the Court to include:</p> <ul style="list-style-type: none"> <li>• an order directing the participant to pay to the Commonwealth an amount up to the amount of any financial benefit attributable to the breach;</li> <li>• an order directing the participant to compensate any other person who has suffered loss or damage as a result of the breach; and</li> <li>• any other order that the Court considers appropriate.</li> </ul>	<p>Powercor and CitiPower do not consider it necessary that the orders available to the court for breach of a civil penalty provision be expanded as suggested. Rather such remedies may be sought by the AER when settling the terms of the court enforceable undertaking, assuming such a remedy is made available to the AER under the Law as is proposed.</p>
81.	Infringement notices	<p>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.</p>	
82.	Administrative remedies	<p>The NEL and NGL should include provisions that enable the AER to accept enforceable undertakings modelled on section 87B of the</p>	<p>To the extent that it is considered necessary to introduce any new form of administrative remedy, we would support the approach</p>

No.	Subject	Recommendation	Comments – CitiPower & Powercor
		<i>Trade Practices Act 1974 (C'th).</i>	recommended by the RPWG, being court enforceable undertakings modelled on those available to the Australian Competition & Consumer Commission under section 87B TPA.
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.	Powercor and CitiPower strongly agree with this proposal. Such an outcome would be unduly draconian and ultimately not benefit customers.
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"> <li>• whether obligations arising from the distribution and retail regulatory functions should be enforceable as between the affected parties or only by the AER;</li> <li>• whether the dispute resolution provisions in Chapter 8 of the NER should apply in respect of the distribution and retail rules; and</li> <li>• 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.</li> </ul>	<p>The businesses note that the RPWG leaves open of the possibility of private enforcement action, as currently exists in relation to the 'conduct provisions' under the Gas Pipelines Access Law (GPAL). While we note that the Consultation Paper refers to the need to limit such private rights of action, the businesses remain strongly of the view that the obligations upon distribution and retail functions in the Law and Rules should not confer any rights of private action. Such rights are open to vexatious litigation by access seekers and are not consistent with the range of remedies available in relation to breach of the Law or Rules (i.e. civil penalties and criminal fines). Further, as noted in the Consultation Paper such rights may lead to a proliferation of vexatious or strategic litigation and confuse the application and interpretation of the Law.</p> <p>We submit that there is no justification for introducing private rights into the regulatory regime for electricity distribution or retailing. If any rights of private action were to be introduced, these should be limited to access to the Chapter 8 dispute resolution processes and not include any right to institute court proceedings.</p>

No.	Subject	Recommendation	Comments – CitiPower & Powercor
<b>Statutory objectives</b>			
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.	
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
<b>Calculation of Charges</b>			
	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><b>Market Contract Annotation</b></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>	
	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</p>	

No.	Subject	Recommendation	Comments
		<p>estimation of a small customer's consumption of energy in the following circumstances:</p> <ul style="list-style-type: none"> <li>• where the customer consents to the use of estimates by the retailer;</li> <li>• where the retailer is not able to reasonably or reliably base the bill on a meter reading; or</li> <li>• where metering data is not provided to the retailer by the distributor or other responsible person.</li> </ul> <p><b>Market Contract Annotation</b></p> <p>May be varied by agreement in market contracts.</p>	
	Meter reads	A retailer must use its best endeavours to ensure that a meter reading takes place at least once in each 12 month period.	
	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"> <li>• the customer's reading of the relevant meter;</li> <li>• historical meter data for the relevant customer reasonably available to the retailer; or</li> <li>• where there is no historical meter data for the relevant customer, the average usage of energy by a comparable customer over the corresponding period.</li> </ul>	
	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"> <li>• the amount payable each month is initially the same;</li> <li>• the retailer's estimate is based on the customer's historical billing data or, if no such data exists, the average consumption</li> </ul>	

No.	Subject	Recommendation	Comments
		<p>of a similar customer;</p> <ul style="list-style-type: none"> <li>the retailer re-estimates consumption after six months; and</li> <li>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.</li> </ul> <p><b>Market Contract Annotation</b></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>	
<b>Termination</b>			
	Retailer termination	<p>A retailer may terminate a small customer supply contract where:</p> <ul style="list-style-type: none"> <li>the retailer has a contractual right to disconnect, disconnection has occurred and there is no contractual right to reconnection;</li> <li>the small customer and the retailer have entered into a new customer contract; or</li> <li>the small customer has transferred to another retailer.</li> </ul> <p><b>Market Contract Annotation</b></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>	

No.	Subject	Recommendation	Comments
		<p><b>Market Contract Annotation</b></p> <p>A small customer is required to give no more than 28 days notice to terminate a market contract.</p>	
<b>Security</b>			
	Provision of security	<p>A retailer may require a small customer to provide a security deposit where:</p> <ul style="list-style-type: none"> <li>• the small customer still owes that retailer in relation to the supply of electricity to another address;</li> <li>• the customer has unlawfully acquired energy within the past two years;</li> <li>• the customer has refused to provide acceptable identification to the retailer; or</li> <li>• 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.</li> </ul> <p><b>Market Contract Annotation</b></p> <p>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"> <li>• that the retailer has decided the customer has an unsatisfactory credit history;</li> <li>• the reasons for the retailer's decision;</li> <li>• of the customer's rights to raise a complaint; and</li> <li>• that the customer has the right to obtain details in relation to the</li> </ul>	

No.	Subject	Recommendation	Comments
		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><b>Market Contract Annotation</b></p> <p>May be varied by agreement in market contracts.</p>	
	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"> <li>• has failed to pay a bill which results in disconnection by the retailer and there is no contractual right to reconnection;</li> <li>• vacates the property;</li> <li>• requests disconnection; or</li> <li>• transfers to another retailer.</li> </ul> <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.	

No.	Subject	Recommendation	Comments
<b>Billing, apportionment of payment, disputes</b>			
	Frequency of bills	<p>Energy bills must be issued by the retailer at least every three months.</p> <p><b>Market Contract Annotation</b></p> <p>May be varied by agreement in market contracts.</p>	
	Content of bills	<p>A bill should include the following content:</p> <ul style="list-style-type: none"> <li>• customer's name, account number and address;</li> <li>• meter identifier;</li> <li>• bill period;</li> <li>• due date;</li> <li>• amount of arrears or credits;</li> <li>• relevant tariff;</li> <li>• 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;</li> <li>• values of meter readings (or, if applicable, estimations) at the start and end of the billing period;</li> <li>• details of consumption or estimated consumption;</li> <li>• pro rata billing information (if applicable);</li> </ul>	
		<ul style="list-style-type: none"> <li>• any amount deducted, credited or received under a Government rebate or concession scheme or under an instalment plan;</li> <li>• the amount of any security deposit;</li> <li>• the network charge and details of any other miscellaneous charges;</li> <li>• details of the available payment methods;</li> </ul>	

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> <li>• details of any available government funded concessions or rebates;</li> <li>• telephone number for account and fault enquiries;</li> <li>• contact details for complaints; and</li> <li>• availability of interpreter services in community languages.</li> </ul> <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><b>Market Contract Annotation</b></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><b>Market Contract Annotation</b></p> <p>May be varied by agreement in market contracts.</p>	
	Historical billing information	<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 applicable under those procedures.</p>	

No.	Subject	Recommendation	Comments
		<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"> <li>• the portion of the bill under review which is not in dispute; or</li> <li>• an amount equal to the average amount of the customer's bills over the previous year (excluding the bill in dispute),</li> </ul> <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"> <li>• correct, the customer must pay the amount outstanding; or</li> <li>• incorrect, the retailer must adjust the bill accordingly and refund any fee paid in carrying out any metering test.</li> </ul>	
<b>Undercharging and overcharging</b>			
	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 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.</p>	
	Overcharging	<p>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</p>	

No.	Subject	Recommendation	Comments
		as directed by the customer or, where there is no such direction; credit the customer's next bill.	
<b>Payment methods and difficulties</b>			
	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"> <li>• in person;</li> <li>• by telephone;</li> <li>• by mail; or</li> <li>• by direct debit.</li> </ul> <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><b>Market Contract Annotation</b></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>	
	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>	

No.	Subject	Recommendation	Comments
	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.	
<b>Disconnection</b>			
	Grounds for disconnection	<p>A retailer may disconnect or discontinue supply where:</p> <ul style="list-style-type: none"> <li>• a small customer has not paid a bill;</li> <li>• access to a meter has been denied by a small customer for three consecutive scheduled readings without reasonable excuse;</li> <li>• the customer has refused to provide acceptable identification or security;</li> <li>• a customer has acquired energy illegally;</li> <li>• a customer has obstructed an authorised person in relation to acts to be done under the contract; or</li> <li>• a market contract has been terminated in accordance with the terms of the contract.</li> </ul>	
	Limitations on disconnection	<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>	

No.	Subject	Recommendation	Comments
	Notice	<p>Disconnection may not be effected until the retailer has provided the customer with:</p> <ul style="list-style-type: none"> <li>• a reminder notice; and</li> <li>• a disconnection notice,</li> </ul> <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>	
	Reconnection	<p>A retailer must notify a small customer of the arrangements which 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>	
<b>Liability and warranties</b>			
	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"> <li>• 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</li> <li>• 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</li> </ul>	

No.	Subject	Recommendation	Comments
		<p>of the NEL).</p> <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>	
<b>Miscellaneous</b>			
	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.	
<b>Additional provisions required in market contracts</b>			
	Cooling-off period	<p><b>Market Contract Annotation</b></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><b>Market Contract Annotation</b></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</p>	

No.	Subject	Recommendation	Comments
		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.	
	Early termination charges	<p><b>Market Contract Annotation</b></p> <p>The retailer may only impose an early termination charge under a small customer market contract if:</p> <ul style="list-style-type: none"> <li>• the market contract includes details of the amount or manner of calculation of the early termination charge; and</li> <li>• the early termination charge is a reasonable estimate of the cost to the retailer resulting from the early termination.</li> </ul>	
<b>Provisions included for consideration in Working Paper 1 but not proposed to be included in standing offer or market contract terms</b>			
	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.	
<b>Provisions to be included in the Rules (and not as standing offer or market contract terms)</b>			
	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.	

No.	Subject	Recommendation	Comments
	Customer information	A retailer must make available on request and without charge standardised information to a small customer concerning his or her 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.	
<b>Provisions subject to separate policy review</b>			
	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"> <li>(a) <b>prior to formation of a market contract:</b> where the prescribed matters may be disclosed in writing, electronically or verbally; and</li> <li>(b) <b>as soon as practicable after formation of a market contract:</b> pursuant to a single written disclosure statement (unless such disclosure statement has already been provided).</li> </ul>	
	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"> <li>(a) <b>prices, charges, penalties, billing and payment arrangements:</b> 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;</li> <li>(b) <b>contract duration:</b> 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;</li> <li>(c) <b>cooling-off period:</b> any rights to rescind the contract, including how to exercise these rights;</li> <li>(d) <b>electronic transactions:</b> if any marketing requirement is to be</li> </ul>	

No.			
		<p>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) <b>standard supply contracts:</b> the availability of standing offer supply contracts and the relevant regulator's contact details.</p>	
	Cooling-off period	<p>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.</p>	
	Dispute resolution and complaints	<p>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.</p>	
	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> <ul style="list-style-type: none"> <li>(a) misleading, deceptive or unconscionable conduct;</li> <li>(b) undue pressure, harassment or coercion; and</li> <li>(c) the quality, form and content of marketing information.</li> </ul> <p>Marketers should have, and retailers should ensure that marketers have, adequate product knowledge. Adequate product knowledge covers knowledge of matters such as tariffs, billing procedures and the availability of rebates and concessions.</p>	
	Duties of marketers	<p>At all times in connection with any marketing activity, a marketer</p>	

No.	Subject	Recommendation	Comments
		<p>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"> <li>(a) the marketer's first name;</li> <li>(b) any relevant identification number;</li> <li>(c) the name of the retailer on whose behalf the marketing contact is being made and contact details for the retailer;</li> <li>(d) sufficient contact details to enable the customer to contact the marketer; and</li> <li>(e) advice as to the purpose of the marketing contact.</li> </ul> <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.	
	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 – CitiPower & Powercor
	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"> <li>• the date specified in the contract (not earlier than the date of publication of the contract by the distributor); or</li> <li>• if later, the date the premises were connected to the network or the customer moved in to the premises.</li> </ul>	<p>Rather than referring to when the customer moved into the premises it would be more appropriate to refer to the date the customer took supply.</p>
	Collection of charges	<p>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>	<p>Explanation of the assignment of network tariffs and changes to maximum demand should also be provided.</p> <p>The recommendation seems to overlook the fact that some other services are also charged by the distributor to the retailer who charges the customer.</p> <p>There are also services which are commonly billed directly to the customer</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"> <li>• the date the customer is disconnected in accordance with the disconnection procedures and any right of reconnection has expired;</li> </ul>	<p>The recommendation omits the replacement of the contract with a new one.</p>

No.	Subject	Recommendation	Comments – CitiPower & Powercor
		<ul style="list-style-type: none"> <li>• the customer ceasing to be responsible for energy consumption at those premises following a specified period of notice to its retailer;</li> <li>• the effective date of a negotiated distribution contract for the premises; or</li> <li>• the date otherwise agreed between the customer and the distributor.</li> </ul>	
	Interruptions to supply	The contract should adopt the provisions of the Rules in relation to interruptions and curtailments to supply.	
	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"> <li>• frequency and duration of supply interruptions;</li> <li>• timely notice of planned interruptions;</li> <li>• quality of supply (excluding frequency) for electricity (this could include voltage variations);</li> <li>• wrongful disconnection;</li> <li>• timeframes for reconnection;</li> <li>• being on time for appointments;</li> <li>• response times for fault calls; and</li> <li>• provision of fault information.</li> </ul>	
	Liability and warranties	<p>The following limitations of liability may be included:</p> <ul style="list-style-type: none"> <li>• implied terms and warranties may be excluded to the extent</li> </ul>	A further limitation should be provided where the customer breaches the contract or the electricity law.

No.	Subject	Recommendation	Comments – CitiPower & Powercor
		<p>permitted by law;</p> <ul style="list-style-type: none"> <li>• no liability for supply interruption or disconnection to the extent the distributor is entitled to do so under Law, Rules or contract;</li> <li>• no liability for reliability or quality of supply, except to the extent caused or contributed to by the distributor's default or negligence; and</li> <li>• contractual force majeure.</li> </ul> <p>The contract should state that none of these limitations will limit any obligation to make a GSL/compensation payment.</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.	Information about the customer's consumption is held by the retailer and it would be more appropriate for the retailer to provide this to the customer, rather than the distributor.
	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"> <li>• time of day and weekend/holiday restrictions for small customers;</li> <li>• for electricity, if the address has a registered life support system;</li> <li>• where required notices have not been given;</li> <li>• where a complaint remains unresolved; or</li> <li>• if a distributor reasonably considers that distribution would</li> </ul>	

No.	Subject	Recommendation	Comments – CitiPower & Powercor
		<p>immediately endanger health or safety.</p> <p>Reconnection should be effected:</p> <ul style="list-style-type: none"> <li>• as soon as practical and within one business day after the reason for disconnection has been removed and the customer requests; and</li> <li>• if a retailer requested disconnection, as soon as practical and within one business day after the retailer requests reconnection,</li> </ul> <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.	
	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.	
	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"> <li>• theft/unauthorised supply;</li> <li>• provision of safe and unhindered access to meters and other equipment of the distributor;</li> <li>• protection of/tampering with distributor equipment on premises;</li> </ul>	<p>The customer should also be obliged to:</p> <ul style="list-style-type: none"> <li>• meet the reasonable technical requirements of the distributor</li> <li>• take precautions to minimise the risk of loss or damage which may result from poor quality or reliability of electricity supply.</li> </ul>

No.	Subject	Recommendation	Comments – CitiPower & Powercor
		<ul style="list-style-type: none"> <li>• safety of customer installation;</li> <li>• compliance with any restrictions on consumption or use of energy; and</li> <li>• requirements to notify certain events (eg faults, leaks, change of use, safety requirements).</li> </ul>	

## 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 – CitiPower & Powercor
	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.	
	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).	
	Customers covered by the agreement	<p>The UoS agreement/interface contract would define mutual customers of the distributor and retailer by reference to:</p> <ul style="list-style-type: none"> <li>• customers that are connected or seeking to be connected to the distributor's infrastructure; and</li> <li>• customers in respect of whom the retailer has financial responsibility in the wholesale market (ie. the FRMP in electricity and equivalent in gas).</li> </ul>	
	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.	It is not clear why the proposal should seek separate treatment for negotiated non-standard connections. If, for example, a customer has negotiated a higher standard of reliability and agreed to pay a premium rate for this service, it should still be charged to the retailer unless the customer and distributor agree that it should be a separate transaction directly between them.

No.	Subject	Recommendation	Comments – CitiPower & Powercor
		<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>	
	Changes in network tariffs or distribution services	<p>The UoS agreement/interface contract would cover:</p> <ul style="list-style-type: none"> <li>• 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 customer premises which may alter the applicable network tariff; and</li> <li>• notification by the distributor to the retailer of general changes in its network tariffs or other relevant charges.</li> </ul>	
	Information sharing to facilitate single billing, billing disputes	<p>The UoS agreement/interface contract would require:</p> <ul style="list-style-type: none"> <li>• the distributor to provide certain information to the retailer to facilitate customer billing by the retailer; and</li> <li>• the parties to cooperate in relation to customer billing disputes.</li> </ul>	

No.	Subject	Recommendation	Comments – CitiPower & Powercor
	Credit support*	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.	
	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>	
	Interruptions to supply*	The UoS agreement would contain an acknowledgement of the distributor's right to interrupt supply in accordance with the Law and the Rules.	
	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"> <li>• the distributor to indemnify the retailer for customer claims for which the distributor would have been liable if the customer had made the claim under its contract with the distributor;</li> <li>• mutual indemnities, for example, in relation to customer claims for unlawful disconnection caused by the respective parties;</li> <li>• third party claims procedures; and</li> <li>• liability caps, exclusion of warranties and implied terms, preservation of statutory instruments.</li> </ul>	
	Disconnections at request	The UoS agreement/interface contract would provide for:	

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	of retailer, distributor or end customer	<ul style="list-style-type: none"> <li>• 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);</li> <li>• disconnections at the request of a customer (parties obliged to inform each other if they receive such a request);</li> <li>• acknowledgement by the retailer of other circumstances where the distributor is entitled to disconnect;</li> <li>• requirements for reconnection.</li> </ul>	
	Enforcement of distributor's rights	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.	
	Information sharing to facilitate connection, disconnection	See comments in relation to connection and disconnection above.	
	Handling of fault complaints	<p>The UoS agreement/interface contract would provide for:</p> <ul style="list-style-type: none"> <li>• the retailer to transfer or refer to the distributor customer calls in relation to faults or emergencies;</li> <li>• the information to be provided by the distributor to the retailer in this regard, and what information the retailer may provide to the customer.</li> </ul>	
	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	

No.	Subject	Recommendation	Comments – CitiPower & Powercor
		provisions requiring the parties to cooperate in addressing such complaints.	
	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>	
	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"> <li>• 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;</li> <li>• obligations on both parties to notify the other if they become aware of any change to access conditions to a customer premises.</li> </ul>	
	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"> <li>• 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;</li> <li>• 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</li> <li>• a general obligation to provide information required by the</li> </ul>	

No.	Subject	Recommendation	Comments – CitiPower & Powercor
		other party to carry out its obligations under the agreement.	
	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.	
	Information sharing to facilitate churn	See comments above in relation to sharing customer information.	
	Communications generally	The UoS agreement/interface contract may provide for the parties to develop communications protocols.	
	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 agreement and under its agreements with customers.	
	Dispute resolution	Dispute resolution procedure to be included.	