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NCOSS Submission to Retail Policy Working Group Composite Paper

The Council of Social Service of NSW (NCOSS) is an independent non-government organisation (NGO) and is the peak body for the non-government human services sector in NSW. NCOSS works with its members on behalf of disadvantaged people and communities towards achieving social justice in New South Wales.

Thank you for the opportunity to comment on the Retail Policy Working Group (RPWG) “Composite Paper,” that works towards a national regime for the regulation of energy markets (non-economic distribution and retail).

NCOSS has an interest in the regulation of energy markets primarily as a result of our interest in matters affecting low income and disadvantaged households. NCOSS believes that energy is an essential service. Energy supports fundamental human needs including safe food (storage, preparation) and safe shelter (hygiene, lighting, temperature control). Energy supports equipment that is critical to wellbeing and independence (health, communication). Beyond these fundamentals, energy supports family life and community engagement (social interactions, employment, education). Except in rare and exceptional circumstances, a regular connection to supply is not discretionary or optional. Reliable, safe and affordable supplies of energy must be guaranteed as far as reasonably possible.

Many low income and disadvantaged households struggle to keep up with energy bills. They spend a higher proportion of their incomes on energy than other Australians and may not be able to reduce or shift their consumption. Some low income households are relatively high level consumers of energy as a result of characteristics such as family size, a disability or illness. As many as one-third of Australian households are at risk of being unable to pay an energy bill at some time; continuity of supply ought to be maintained in all but extraordinary situations.

NCOSS is further concerned that low income consumers face particular disadvantages within a competitive market in negotiating goods and services. These include:

- a reduced ability to access all available information on a product or service;

- lower levels of income to purchase goods ‘upfront’ at a lower rate or negotiate bulk purchase discounts;
- a limited ability to take risks (low levels of disposable income to offset the costs associated with a ‘bad choice’).

Although market forces may be able to self-regulate for some consumers, the tendency will be for low income consumers to pay a premium for their involvement in the market as a result of the above factors.¹

In NSW approximately 26,000 households are disconnected as a result of incapacity to pay for their electricity charges. Approximately 20% of NSW households in the lowest income quintile struggle to pay their essential services bills on time. Reform of energy markets must ensure strong consumer protections for these households, with an emphasis on maintaining continuity of supply.

NCOSS has worked with others in the COSS network and the National Consumers’ Roundtable on Energy to produce a joint response to the detail of the composite paper (attached), which NCOSS endorses.

In addition, NCOSS would like to highlight the following issues for the consideration of the Working group:

- a) *Credit risk assessment.* Assessment of credit risk by energy retailers often works to the disadvantage of low income users, and create unnecessary barriers to gaining access to an essential service. Any assessment of credit risk that relies on historical information about debt be restricted to information about utility debt
- b) *Hardship programs.* NSW has taken positive steps towards the introduction of hardship programs as a regulated requirements for energy retailers. Hardship programs should be mandatory for all retailers to ensure that consumers who experience difficulty in paying energy bills, on standard or market contracts, remain on supply and are offered appropriate arrangements to pay bills with continuing regard to their capacity to pay.
- c) *Late payment fees.* Late payment fees discriminate against low income people who may face continuing difficulties making payments on time. NCOSS believes that late payment fees, currently banned in several jurisdictions, should be prohibited under the new framework as they are regressive in nature and impact disproportionately on low income households. Late payment should be regarded an indicator of potential financial stress and a precursor to offering hardship options.
- d) *Centrepay.* NCOSS believes that all standing offer contracts for electricity and gas supply must include Centrepay as an option for method of payment
- e) *Strong marketing codes.* Our concern about the regulation of marketing to ensure on one hand that consumers are protected from inappropriate, aggressive and misleading conduct; and on the other hand that the benefits promised by competition – choice and

¹ Research from the United Kingdom has shown that low income families will pay a “poverty premium” to access essential goods and services that are enjoyed at a cheaper rate by higher income households. See Lucy Ward. “Poor families face 1000 a year ‘poverty premium,’ say charities.” *Guardian*. Monday March 5, 2007.

value – are accessible as a result of comprehensible and complete information that facilitates choices based on comparison.

f) *Security bonds*. A security deposit will place pressure on households that are attempting to establish the delivery of other essential services, and erode savings and credit that may have been available to respond to future episodes of financial stress. As a result, NCOSS reiterates that security deposits place an unnecessary barrier on low income households that are attempting to connect to an essential service. NCOSS supports strong regulation to minimise the barriers posed by security bonds to accessing essential services, and provisions to ensure that bonds must be refunded once the customer has paid in electricity charges an amount equal or greater than the amount of the security deposit, or after a period of 6 months, whichever is sooner.

I trust that you will take into consideration the recommendations included in this submission. If you require further information, please contact Linda Frow, A/Director, on 9211 2599 or email lindaf@ncoss.org.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'L. Frow', is positioned to the left of a vertical red line.

Linda Frow
A/Director

National Framework for Distribution and Retail Regulation Consultation Paper – Recommendations and comments

Part 1 – Principal recommendations

No.	Subject	Recommendation	Comments
Retailer obligation to supply small customers			
1.	Definition of the obligation	<p>The Law should provide that designated retailers must, in accordance with the Rules, offer to sell energy to small customers for use in premises falling within the retailer's designated supply remit on standing offer terms and conditions.</p> <p>As matters of detail, the Rules should set out:</p>	<p>We strongly support the obligation to supply being placed in the Law. The obligation to supply supports the overriding principles that consumers should have uninterrupted access to essential services and that they should not be disconnected due to an incapacity to pay alone. Considering this, we believe that all regulations supporting the obligation to supply (<i>ie</i>, those relating to access and disconnection) should be placed in the Law, rather than the Rules.</p>
	Application procedures	<ul style="list-style-type: none"> • Application procedures – including requirements for customers to provide: <ul style="list-style-type: none"> ➢ acceptable identification; and ➢ contact details, and requirements for retailers to provide: <ul style="list-style-type: none"> ➢ a description of the standing offer contract formed as a result of the application, and how copies of the contract may be obtained; ➢ a description of the retailer's and customer's respective rights and obligations concerning the supply under the 	<p>We note that “acceptable identification” should not be based on what the retailer believes is acceptable. We would need to view the details of the Rules before we could support this requirement.</p> <p>We support these requirements.</p>

No.	Subject	Recommendation	Comments
	<p>Connection services</p> <p>Conditions to the obligation</p>	<ul style="list-style-type: none"> ➤ Law and Rules, including relevant dispute resolution procedures; ➤ particulars of any rebate or relief available under any government funded energy charge rebate or relief scheme; and ➤ information in community languages about the availability of interpreter services for the languages concerned and telephone numbers for the services; <ul style="list-style-type: none"> • Connection services – the retailer's responsibility to arrange connection services in respect of the supply; and • Conditions to the obligation – the circumstances in which the retailer may refuse to supply, including: <ul style="list-style-type: none"> ➤ failure by the customer to satisfy the application requirements identified above; ➤ failure to provide any security the retailer is entitled to require under the standing offer terms; ➤ failure to pay an amount due to the retailer in respect of the new supply (such as connection charges); ➤ <u>unreasonable</u> failure to provide access to the <u>meter</u>; and ➤ other circumstances beyond the retailer's control. <p>The Law should provide that the standing offer terms take effect as a contract between the retailer and customer.</p>	<p>We support this requirement.</p> <p>Any conditions on the obligation to supply should operate as conditions subsequent, as is currently the case. That is, the retailer should procure connection and has a right to disconnect should the condition not be satisfied within a reasonable time frame.</p> <p>Conditions relating to failure to provide payment (ie, security or connection charges) must be subject to a requirement that the retailer offer an instalment plan if the consumer is unable to pay the required charge within the required time frame. We would expect such a requirement to be expressed on the basis of clause 11.2 of the Victorian Energy Retail Code (VERC) so that the retailer is required to assess a consumer's capacity to pay in offering an instalment plan.</p> <p>The condition relating to failure to provide access to the premises should be "unreasonable failure to provide access to the meter". There should not be a requirement</p>

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		<p><u>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.</u></p>	<p>for a consumer to provide access to their premises. Further, it should be recognised that tenants may not be able to access the meter – the term “unreasonable” recognises that it may be reasonable for a tenant not to provide access to the meter.</p> <p>Note our addition in mark-up. This recommendation was initially considered in Working Paper 1, but subsequently removed for inclusion in both standing offer and market contracts (Part 2, below) on the grounds that it is a regulatory rather than contractual issue. As such, it should be included under Principal Recommendations as a condition to the retailer obligation to supply small customers.</p>
2.	Designating retailers and supply remits	<p>The Law should provide that, for the purpose of the obligation to supply, a designated retailer is a retailer designated as such by a jurisdictional instrument of the jurisdiction or jurisdictions in which it supplies energy, and its designated supply remit is as specified in the instrument.</p> <p>A designated retailer’s supply remit may be specified by reference to:</p> <ul style="list-style-type: none"> • a geographical area; • particular premises or classes of premises; or • particular customers or classes of customers. <p>Under this approach, whether the obligation applies or not will be a jurisdictional decision, depending on whether or not individual jurisdictions elect to make a designation. Similarly, the method of specifying the scope of the obligation (whether on the basis of</p>	<p>We support this recommendation.</p> <p>We appreciate the list of advantages and disadvantages of the Queensland model listed in the Composite Paper. Considering the disadvantages, in particular that the model is untested and would require material changes to current retail price regulation arrangements, we support jurisdictional ministers being able to designate based on geographical areas, as occurs currently in Victoria, NSW and SA.</p>

No.	Subject	Recommendation	Comments
		geographical areas, financial responsibility for the supply point or some other means) will be a jurisdictional decision.	
3.	MCE principles for obligation to supply	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.	We support this recommendation, but consider that consultation should be undertaken in the development of any such principles.
4.	Definition of small customers	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. 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.	We support this recommendation. We would need to view the relevant Rules before supporting this recommendation. It is not entirely clear what other mechanics are contemplated, besides the aggregation issue.
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.	We support this recommendation. The AEMC review should be undertaken with relevant stakeholder consultation.
6.	Tariffs	The Law should provide that standing offer tariffs are those published by designated retailers from time to time.	We support this recommendation.
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	We support this recommendation, noting the additional compliance costs in seeking prior regulatory approval for

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		<p>adopt the minimum terms and conditions set out in the Rules or provide for alternative terms and conditions which are not inconsistent with those set out in the Rules. Terms and conditions published by retailers should not be subject to prior regulatory approval, but would be subject to compliance monitoring and enforcement by the AER.</p>	<p>alternate terms and conditions which are not inconsistent with those set out in the Rules.</p> <p>Our support is conditional, however, upon a) the terms and conditions prescribed in the Rules being adequately and appropriately specified, and b) the AER's compliance monitoring and enforcement being sufficiently resourced and robust. Should the final terms and conditions specified in the Rules materially reduce the consumer protections currently offered by the VERC, we would expect that prior regulatory approval be required. One way to ensure that the AER takes seriously its regulatory obligation to monitor terms and conditions would be to require retailers to lodge terms and conditions with AER.</p>
8.	Standing offer terms	<p>The Rules should contain (preferably in a separate schedule) the minimum requirements applicable to standing offer contracts, expressed in a manner which can take effect as contractual terms. Part 2 of this document sets out summary terms and conditions for development of the initial Rules.</p>	<p>See our comments in Part 2 of this table.</p>
9.	Deemed supply arrangements	<p>With respect to deemed supply arrangements (including move-in supply) the Law should establish the existence of a deemed contract, but the circumstances in which this arises are matters of detail best dealt with in the Rules. On that basis it is proposed that the Law should provide that:</p> <ul style="list-style-type: none"> • the Rules may specify the tariffs, terms and conditions that apply in any circumstance where a customer is taking a supply of energy from a retailer without the customer and retailer having entered into a standing offer contract or market contract; and 	<p>We support this recommendation.</p>

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> 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. 	
10.	When a deemed supply arrangement arises	<p>The Rules should provide for a deemed contract to arise in the following circumstances:</p> <ul style="list-style-type: none"> where a customer occupies premises that are already connected to the distribution system and commences to take a supply of energy; and where a current contractual arrangement terminates without new supply arrangements having been established, <u>subject to any provision in the contract itself concerning the terms and conditions to apply on termination.</u> 	<p>We support this recommendation, but note the change made to the recommendation in track changes. The Rules should make clear that the final clause should only apply where contractual arrangements have terminated, and not when a customer moves into premises that are already connected. Otherwise, it may require a consumer to be placed onto a market contract of a previous occupant, without the relevant consent being obtained.</p> <p>We note that the Composite Paper states that it will be relatively rare that the contract would not deal with the terms applying to any 'holding over' of the supply term. We are not convinced that this is true, in that contractual expiration may also give a retailer a right to terminate a contract or disconnection should they be an unprofitable or difficult. We strongly believe that the deemed supply arrangements should arise in these circumstances to ensure a customer maintains supply.</p>
11.	Tariffs, terms and conditions of deemed supply arrangements	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	We support this recommendation.

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

No.	Subject	Recommendation	Comments
	Retailer – small customer market contracts		

No.	Subject	Recommendation	Comments
14.	Generic versus energy specific regulation	<p>National and jurisdictional consumer protection laws should be relied on where these provide a consistent national approach in dealing with the relevant subject matter. Energy specific regulation is justified where general consumer protection laws are inconsistent or silent and the characteristics of the energy market justify additional regulation.</p> <p>General consumer protection laws are at present largely silent on the regulation of contract terms. The characteristics of the energy market that justify additional regulation are the essential service nature of energy supply and the new and developing state of competition in the energy market. This suggests that market contract regulation should be assessed primarily against the objectives of:</p> <ul style="list-style-type: none"> • ensuring that contractual processes do not result in customers ceasing to have a supply of energy without having an adequate opportunity to address the causes of the potential for disconnection, either independently or by recourse to assistance measures provided by governments or other agencies (recognising that ensuring a supply is ultimately a matter for governments); and • encouraging the development of the competitive market by facilitating consumer choice based on readily comparable market contract offers, recognising that further deregulation of market contract terms can be addressed through the AEMC Rule change process, having regard to the extent and nature of competition and the capacity of consumers to participate in the competitive market. 	<p>We broadly support this recommendation.</p> <p>The objective of 'ensuring 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 disconnection' should acknowledge the existing frameworks for dealing with energy hardship. The Victorian Government requires energy retailers to acknowledge and participate in a collaborative hardship mitigation framework with Government, consumers and the community welfare sector.¹ We are concerned that the current phrasing "ensuring supply is ultimately a matter for governments", while true, undervalues the significant advances made in this area through promoting collaborative responses. This includes relevant obligations being placed on retailers, through both direct regulatory obligations and mandated market contract terms and conditions.</p> <p>Regarding the second objective, we support the principle that further deregulation of market contract terms and conditions be addressed through the AEMC Rule change process, having regard to the extent and nature of competition etc. It follows that for present purposes, the initial regulation of market contract terms and conditions should be as far as possible consistent with what exists in current jurisdictional regulation. Without undertaking the relevant analysis about the capacity of consumers to participate in the competitive market, the RPWG should not significantly deregulate market terms and conditions at this stage.</p>

No.	Subject	Recommendation	Comments
15.	Terms and conditions	<p>The Law should provide that market contracts with small customers, or categories of small customers, must comply with any requirements in relation to such contracts contained in the Rules.</p> <p>The Law should provide authority for the Rules to contain provisions which specify:</p> <ul style="list-style-type: none"> • terms and conditions which must be included in market contracts; • requirements with which the terms and conditions of market contracts must not be inconsistent; and • terms and conditions which must not be included in market contracts. <p>The Rules should contain (preferably in a separate schedule) the minimum requirements applicable to market contracts. This could be done by annotations to the schedule of standing offer terms. Part 2 of this document sets out summary market contract annotations to standing offer terms for development of the initial Rules.</p>	<p>See our comments in Part 2 of this table.</p> <p>As commented in relation to Recommendation 1, we believe that the regulation of market contracts and conditions that relate to access should be placed in the Law, rather than the Rules. That is, all restrictions on disconnection should be placed in the Law. It is our view that ensuring access to supply is an important principle that warrants legislative protection.</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>	<p>We broadly support this recommendation, but would like further information about which obligations would have sub-thresholds, and which obligations would enable distinguishing between domestic and business customers.</p>

No.	Subject	Recommendation	Comments
Retailer – small customer marketing			
17.	Generic versus energy specific regulation	<p>General consumer protection laws with respect to marketing conduct should be relied on where these provide a consistent national approach in dealing with the relevant subject matter. Energy specific regulation is justified where general consumer protection laws are inconsistent and adopting consistent energy specific requirements will have material benefits in terms of:</p> <ul style="list-style-type: none"> • reducing retailer compliance burden or cost (this implies such requirements apply in place of general consumer protection laws); or • consumer protection, having regard to the distinguishing characteristics of the energy market. <p>Energy specific regulation of marketing conduct is justified where the marketing conduct has the potential to influence energy contract formation and terms (or compliance with requirements relating to such marketing conduct) but not in relation to general consumer issues (such as contact times).</p>	<p>We broadly support this recommendation.</p> <p>We do not support the final sentence. The Composite Paper attempts to consider the extent to which marketing requirements are truly responsive to concerns about the characteristics of energy and the energy market, and contrasts that with issues that are more properly viewed as generic consumer protection issues that happen to arise in the context of energy marketing. While this is a worthy goal, in practice this will be difficult. We note that the energy market primarily relies upon direct marketing (door-to-door or telephone sales) for competitive activity, and this will not change in the foreseeable future. As such, regulation of direct sales is required as it is a distinguishing characteristic of the energy market.</p> <p>We also note that in other markets (financial services and consumer credit), there is an outright ban on door-to-door sales. This recognises that, faced with a salesperson at their doorstep, people rarely make rational, welfare maximising decisions, especially those most vulnerable with limited contractual experience. We note, additionally, that energy contracts share some important features with consumer credit, namely they both involve a deferred debt to be repaid, and if not repaid, can mean a default is listed on the consumer's credit information file. Such industry specific regulation of direct marketing responded to particular concerns to those markets.</p> <p>It is our view that current energy-specific regulation of</p>

No.	Subject	Recommendation	Comments
			marketing in jurisdictions responds to concerns outlined above. Considering these concerns continue with respect to the energy market, we believe that comprehensive energy-specific marketing regulation is warranted.
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) 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>	See our comments in Part 3 of this schedule table.
19.	Entities subject to regulation	<p>The Law will need to include a definition of persons engaged in marketing activities. This should include:</p> <ul style="list-style-type: none"> • retailers; • persons acting as agents of retailers for the purpose of gaining new or retaining existing customers; • persons acting as agents of one or more customers in respect of retail energy supply; and • persons otherwise acting as an intermediary between retailers and customers in respect of retail energy supply. 	<p>We support this recommendation.</p> <p>However, the Law or the Rules should make it clear that retailers will ultimately be responsible for activities of their marketers and other agents. If this was not the case, consumers may be limited in their ability to complain about marketers through ombudsman schemes (marketers are not members of such schemes). A retailer would deflect responsibility to their marketer. This would be entirely inappropriate.</p>
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.	We support this recommendation. See our comments in relation to recommendation 4.

No.	Subject	Recommendation	Comments
Contractual model for distribution services			
21.	Need for a default model	A contractual model is required as a default model to apply in both the electricity and gas sectors to provide a framework for the development of the distributor - customer interface and the distributor - retailer interface arrangements.	We support this recommendation. We believe that for domestic customers, there should be very limited (or no) scope to negotiate alternative arrangements. This is because of the large discrepancy between the market power of distributors/retailers and consumers.
22.	Preferred model	<p>A hybrid model is proposed as the default model to apply in both the electricity and gas sectors to provide a framework for the development of the distributor - customer interface and the distributor - retailer interface arrangements.</p> <p>This model involves:</p> <ul style="list-style-type: none"> • a direct contract between a distributor and each customer connected to the distributor's infrastructure governing the physical and operational aspects of the provision of distribution services to the customer, including liability issues; • a contract between the retailer and each of its customers which includes provisions governing the financial aspects of the provision of distribution services to the customer; and • a contract between a distributor and each retailer which sells energy to customers connected to the distributor's infrastructure governing the financial and coordination arrangements between the distributor and the retailer. 	We support this recommendation.
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.	We support this recommendation in principle, although the intersection with the draft Code of Practice for Embedded Generation needs clarification. Section 2.3.4 of the draft Code of Practice is a discussion of connection agreements

No.	Subject	Recommendation	Comments
			<p>between distributors and embedded generators.</p> <p>Contractual arrangements dealing with small embedded generators should be included in the framework for the hybrid contractual model.</p>

No.	Subject	Recommendation	Comments
Distributor obligation to provide connection services			
24.	Scope of obligation	<p>The Law should provide that distributors must, in accordance with the Rules, provide distribution services in respect of a retail customer's premises.</p> <p>The reference to a distributor means a distributor whose network services are subject to access regulation under the Rules.</p> <p>The reference to a retail customer's premises is intended to limit the obligation to customers acquiring (or intending to acquire) energy through a retailer, as distinct from a customer acquiring energy directly from the wholesale market.</p>	We support this recommendation.
25.	Definition of distribution services	<p>Distribution services should be defined in the Law as:</p> <ul style="list-style-type: none"> • the connection of the premises to the distribution network to allow the flow of energy between the network and the premises; • where a physical connection already exists, activating or opening the connection in order to allow the flow of energy between the network and the premises (this is referred to throughout as '<i>energisation</i>' of the connection); and • maintaining the capability of the network to allow the flow of energy between the network and the premises through the connection. <p>The definition of distribution services in the Law should be capable of being supplemented by the AEMC in the Rules.</p>	We support this recommendation.

No.	Subject	Recommendation	Comments
26.	<p>Application procedures and conditions</p> <p>Timeframes</p> <p>Connection requirements</p>	<p>As matters of detail, the Rules should set out:</p> <ul style="list-style-type: none"> • Connection application procedures, permitting an application for connection to be made by either the customer or its retailer and requiring customer contact details and prescribed information relevant to the connection of equipment at the customer's premises (eg. life support, special plant and equipment). For applications by the customer, evidence of a retail contract would also be prescribed information prior to energisation of the connection. • Timeframes for 'standard' new connections and energisations. • Connection requirements and conditions, including: <ul style="list-style-type: none"> ➢ payment for any augmentation, extension or other capital works to the distribution system if required to effect the connection; ➢ completion of any works required for connection which are not part of the distribution system; ➢ compliance with technical and safety requirements in relation to the customer's installation or equipment; and ➢ provision of safe and unhindered access to meters and other equipment of the distributor on the customer's premises. 	<p>We support this recommendation.</p> <p>We strongly support mandated timeframes for standard new connections and energisations. These should be detailed in the Rules, together with consumer rights to guaranteed service level payments should they not be complied with.</p> <p>We broadly support these conditions, but augmentation, connection or other capital works payments must be limited to shallow connection costs. In relation to rental properties, the RPWG must be cognisant of the appropriate party that has responsibility over these conditions. In many cases, the tenant cannot (and may in fact be in breach of residential tenancies legislation if they try to) comply with technical and safety requirements. Tenants may also not be able to provide access to the meter. These obligations should be on the landlord, not the tenant.</p>

No.	Subject	Recommendation	Comments
	Distributor information requirements	<ul style="list-style-type: none"> Distributor information requirements, requiring the distributor to provide to a customer the approved standard terms and conditions (deemed distribution contract) applicable to that customer and notice of the customer's rights in respect of the negotiation of different terms. This information must be provided in circumstances specified in the Rules, including on application for connection of the customer's premises, on request, following any changes to the approved terms and conditions and on a request by the distributor or the customer to negotiate different terms. 	<p>Information requirements should include the provision of a customer charter which outlines rights and obligations, including a distributor's guaranteed service levels and service standards, and consumer rights to access to consumption and network data.</p> <p>Information requirements for embedded generators need to be aligned with any Code of Practice for Embedded Generation; and requirements in the Rules regarding information given to embedded generators by distributors.</p>

No.	Subject	Recommendation	Comments
Distributor interface with customers			
27.	Establishment of deemed distribution contract	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.	We are broadly supportive of this recommendation.
	Duration	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.	We support this recommendation.
	Negotiated distribution contracts	A distributor and a customer may agree different terms to those contained in the deemed distribution contract, subject to: <ul style="list-style-type: none"> in the case of small customers, the provision of prescribed information in relation to their right to the application of the approved standard terms and an explanation of the implications of the proposed different terms; coordination with the customer's retailer; and any other requirements contained in the Rules. 	We see no reason for allowing small customers to agree to different terms to those contained in the deemed distribution contract. Considering that distributors are monopoly service providers in relation to small customers, we are concerned about the ability of distributors to impose terms that are worse than the deemed contractual terms on consumers.
	Access regime still applies	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.	We support this recommendation.
28.	Deemed contract terms and conditions	The Law should include authority for the Rules to make provision for the determination and approval of the terms and conditions of a deemed distribution contract, which <u>must</u> include (but will not be	We believe that determination and approval of the terms and conditions of a deemed distribution contract should <u>only be required where they vary from the model terms</u>

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No.	Subject	Recommendation	Comments
		<p>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>	<p>included in the Rules. We believe that the model terms should operate as the default deemed distribution contract. We would envisage that, in relation to small consumers, there would rarely be reason to vary from the default arrangements.</p> <p>Note our proposed change to the recommendation in mark-up.</p> <p>Additionally, we are concerned that deemed distribution contracts impose obligations on consumers that they are unaware of, or that it is not reasonable for them to be aware of (i.e. technical obligations). We believe that there should be a provision with the effect that customers are deemed to be in compliance with deemed distribution contracts unless they are otherwise notified. Further, any notice should be provided to the person with the responsibility to carry out the required actions – i.e. the landlord or the tenant.</p>
29.	<p>Rules provisions</p> <p>Model terms for deemed distribution contracts</p> <p>Small customer definition</p>	<p>The Rules should include the following provisions in relation to the distributor - customer relationship:</p> <ul style="list-style-type: none"> Model terms to be included in a deemed distribution contract applicable to small customers, preferably in a separate schedule capable of adoption by distributors as contractual terms. Part 4 of this document sets out summary model terms for the development of the initial Rules. Small customers should be defined in the same way as for the retailer obligation to supply. 	<p>See our comments in Part 4 of this table.</p> <p>We support this small customer definition.</p>

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No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> ➤ any specific characteristics of the distributor's network; and ➤ the object of the Law. 	
	<p>Variations during regulatory period</p> <p>Deemed distribution contracts for large customers</p>	<ul style="list-style-type: none"> • Distributors should be permitted to apply to vary the terms of an approved deemed distribution contract during a regulatory period subject to the AER's approval. Provisions relating to any resulting cost increases or decreases should be dealt with in the revenue determination/access arrangement approval. • Distributors may also prepare, and submit for the AER's 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. 	<p>As above – the default deemed distribution contract should only be changed through the AEMC Rule change process, not by the AER.</p> <p>No comment.</p>
30.	Regulatory obligations - Law	The Law should authorise or oblige distributors to disconnect, reconnect and interrupt supply in the circumstances prescribed in the Rules.	We support this recommendation.
31.	<p>Regulatory obligations - Rules</p> <p>Service standards</p> <p>Grounds for disconnection</p>	<p>The Rules should include the following provisions in relation to the distributor – customer relationship:</p> <ul style="list-style-type: none"> • A requirement that distributors must comply with any applicable service standards. • The circumstances in which a distributor is entitled or required to disconnect customer premises, including: <ul style="list-style-type: none"> ➤ in an emergency, including at the direction of a relevant authority; ➤ for health and safety reasons; ➤ at the request of the customer or its retailer 	<p>Supported.</p> <p>Note our comments above. We are concerned that deemed distribution contracts impose obligations on consumers that they are unaware of, or that it is not reasonable for them to be aware of (ie, technical obligations). We believe that there should be a provision with the effect that customers are deemed to be in compliance with deemed distribution contracts unless they</p>

No.	Subject	Recommendation	Comments
		<p>(subject to certification by the retailer that the disconnection is permitted under the Rules);</p> <ul style="list-style-type: none"> ➤ for non-compliance by the customer with 	<p>are otherwise notified. Further, any notice should be provided to the person with the responsibility to carry out the required actions – ie, the landlord or the tenant.</p>
	<p>Restrictions on disconnection</p> <p>Interruptions and curtailments</p> <p>Reconnection</p>	<p>obligations under the deemed distribution contract that are expressed to give rise to an express right of disconnection (eg, failure to provide safe access or meet equipment specifications, or taking unauthorised supply).</p> <ul style="list-style-type: none"> • The circumstances in which a distributor must not disconnect customer premises (in some cases these may only be applicable to small or residential customers). • The circumstances in which a distributor is entitled or required to interrupt or curtail the supply of energy to customer premises, including: <ul style="list-style-type: none"> ➤ planned interruptions subject to prescribed advance notice periods; ➤ unplanned interruptions (faults etc) and circumstances beyond the distributor's control, subject to information requirements and obligations to minimise the duration and extent of interruptions; and ➤ for health and safety reasons or in an emergency, including at the direction of a relevant authority. • A requirement that distributors reconnect a disconnected customer if the reason for the disconnection has been removed. 	<p>Supported. But further detail is required about what the restrictions on disconnection are.</p> <p>Supported.</p> <p>Supported. We believe that there should be a required time frame around such reconnection. This would be more appropriately a contractual requirement, rather than just a regulatory requirement.</p>

No.	Subject	Recommendation	Comments
	Dispute resolution Information provision	<ul style="list-style-type: none"> <li data-bbox="548 443 1171 508">• A requirement that distributors comply with any applicable jurisdictional dispute resolution requirements. <li data-bbox="548 516 1171 597">• Requirements for distributors to provide information to a customer or its retailer on request about the customer's consumption, network tariff or connection. 	Supported. Supported.
	Fault reporting and correction Small customer contracts	<ul style="list-style-type: none"> <li data-bbox="548 613 1171 678">• Requirements concerning the maintenance by distributors of a 24-hour fault information and reporting line. <li data-bbox="548 686 1171 768">• Protections for small customers in relation to negotiated distribution contracts, including protected terms and cooling-off periods. 	Supported. As outlined above, we do not see any basis for negotiated distribution contracts for small customers.

No.	Subject	Recommendation	Comments
Distributor interface with retailers			
32.	Nature of UoS agreement/ interface contract	<p>The Law should include:</p> <ul style="list-style-type: none"> • in electricity, provision for a UoS agreement between each distributor and each retailer which sells electricity to customers connected to the distributor's infrastructure; and • in gas, provision for an interface contract between each distributor and each retailer which sells gas to customers connected to the distributor's infrastructure. <p>The distinction between an electricity UoS agreement and a gas interface contract is that:</p> <ul style="list-style-type: none"> • the electricity UoS agreement covers the provision of and payment for distribution services, and prudential requirements; • the gas interface contract would not cover these matters as they would already be addressed in the access terms and conditions of the distributor's access arrangement. <p>The electricity UoS agreement and gas interface contract would otherwise cover the same subject matter, regulating the arrangements between distributors and retailers in relation to the provision of services to their joint customers.</p>	We support this recommendation.

No.	Subject	Recommendation	Comments
33.	<p>Establishment of deemed UoS agreement/interface contract</p> <p>Negotiated agreements</p> <p>Customer variations</p>	<p>The Law should provide that except where a negotiated UoS agreement/interface contract exists, a deemed UoS agreement/interface contract is deemed to arise between each distributor and each retailer where the retailer sells energy to customers connected to the distributor's infrastructure.</p> <p>The Law would not preclude a distributor and retailer negotiating different terms and conditions of their UoS agreement/interface contract. However, the deemed UoS agreement/interface contract would apply in the absence of any such agreement between the parties.</p> <p>The UoS agreement/interface contract should provide that it does not apply in respect of particular customers to the extent that they have negotiated inconsistent arrangements in relation to the provision of distribution services with the distributor.</p>	<p>We support this recommendation.</p>
34.	<p>Deemed contract terms and conditions</p>	<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 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).</p>	<p>No comment.</p>
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"> 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. 	<p>No comment.</p>

No.	Subject	Recommendation	Comments
	<p>Standard UoS agreements/interface contracts</p> <p>AER approval</p> <p>Variations during regulatory period</p>	<ul style="list-style-type: none"> • Distributors must adopt and publish a deemed UoS agreement/interface contract which has been approved by the AER as part of the revenue determination/access arrangement approval process. • The AER would be required to approve proposed deemed UoS agreements/interface contracts which adopt the model terms set out in the Rules, with guidance provided to the AER in relation to the approval of variations to those terms and conditions. The AER would be permitted to allow variations that the AER considers reasonable having regard to: <ul style="list-style-type: none"> ➢ customer service and network performance standards applicable to the distributor; ➢ any specific characteristics of the distributor's network; and ➢ the object of the Law. • Distributors would be permitted to apply to vary the approved terms and conditions during a regulatory period subject to the AER's approval. Provisions relating to any resulting cost increases or decreases should be dealt with in the revenue determination/access arrangement approval. 	<p>See above comments in relation to service standards.</p>
36.	Regulatory requirements	<p>The Rules should include an obligation on distributors and retailers to comply with the terms of deemed UoS agreements/interface contracts. Compliance would therefore be both a contractual obligation enforceable between the parties and a regulatory obligation enforceable by the AER.</p> <p>The terms of deemed UoS agreements/interface contracts should</p>	<p>We support this recommendation.</p>

No.	Subject	Recommendation	Comments
		not be subject to variation as an outcome of an access dispute.	

No.	Subject	Recommendation	Comments
Distributor interface with embedded generators			
37.	Process for new Rules for embedded generation	<p>To the extent the policy position adopted by the MCE as an outcome of its further work on renewable and distributed generation is to supplement the existing Rules to more fully prescribe the position of embedded generation, there is no existing mechanism in the NEL for this to be done otherwise than by a Rule change submitted to the AEMC, and following the normal Rule change process.</p> <p>Having regard to the policy process adopted in relation to this issue, policy outcomes should be capable of being implemented by a Ministerial order or, where appropriate, by the normal Rule change process. Accordingly, the 2007 legislative package should authorise Rules relating to the connection and operation of embedded generation to be made by Ministerial order.</p>	<p>We support this recommendation, subject to this further work being undertaken pursuant to, and cognisant of, consultations on the Code of Practice of Embedded Generation, some items of which should be upgraded to be included in the Rules. This was an important piece of work that we are concerned is being ignored in the ongoing creation of the initial Rules.</p> <p>Development of new Rules should be subject to the usual AEMC rule change process, rather than being promulgated by Ministerial order. There has been insufficient consultation on the details of embedded generation within the NEM for it to be the subject of a Ministerial order.</p>

No.	Subject	Recommendation	Comments
Business authorisation			
38.	Substantive obligations as licence conditions	Substantive regulatory obligations should be contained in the Law and Rules rather than in licence conditions.	We support this approach, but note that licensing schemes can be much more responsive to changing market conditions resulting from economic, social or technological changes. We maintain that the Rule change process must be sufficiently flexible to respond to changing conditions – we are not currently convinced that it is.
39.	Regulation of entry requirements	The Law should contain a general prohibition on a person: <ul style="list-style-type: none"> • engaging in the retail sale of energy; and • (in the case of electricity) owning, controlling or operating an electricity distribution system; and • (in the case of gas) owning, controlling or operating a distribution pipeline, unless the person has obtained an energy business authorisation from the AER in relation to the carrying out of that activity.	We support this recommendation.
40.	Entry tests Financial viability Organisational and compliance capacity	The Law should set out the entry requirements to be satisfied by persons wishing to obtain energy business authorisations as retailers or distributors, and enable the AER to issue guidelines in relation to the authorisation procedures and its approach to assessing the criteria for authorisation. The criteria for business authorisation should include: <ul style="list-style-type: none"> • financial viability – that the applicant has the financial resources required to undertake the relevant activity; • organisational and compliance capacity – that the applicant has the organisational capacity to carry on the activity for 	We support this recommendation and the proposed entry tests. The entry tests should not only be complied with upon entry into the market – it should be a requirement for the party to continue to satisfy the criteria. This will enable the regulator to revoke registration where those criteria are no longer met. We believe that where a retailer has withdrawn from the market (by invoking a RoLR event), they should no longer

No.	Subject	Recommendation	Comments
	Suitable person	<p>which it is seeking authorisation and to comply with its regulatory obligations;</p> <ul style="list-style-type: none"> suitable person – that the applicant is a suitable person to hold the authorisation; 	<p>be said to have organisational and compliance capacity, or that they should no longer be a suitable person.</p>
	<p>Jurisdictional licensing</p> <p>Market operator registration</p>	<ul style="list-style-type: none"> jurisdictional licensing – in the case of distribution businesses, that the applicant holds any jurisdictional licence or authorisation required with respect to technical and safety matters; and market operator registration – that the applicant has been registered by NEMMCO or the relevant gas market operator in accordance with any registration requirements under the NER or NGR. 	
41.	Removal of overlap with NEMMCO registration	<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"> NEMMCO requirements with respect to financial viability should be limited to satisfaction of the market prudential requirements under chapter 3 of the NER; NEMMCO requirements with respect to organisational and compliance capacity should be limited to the relevant entity's safe and reliable interaction with the market and with technical requirements applicable under national framework instruments (including metrology). 	<p>We support this recommendation, but note that removal of any NEMMCO registration requirements should not result in overall lessening of regulatory requirements.</p>
42.	Corresponding changes to gas market registration requirements	<p>Corresponding modifications should be made to existing gas market rules to be 'grandfathered' under the national framework.</p>	<p>We support this recommendation.</p>

No.	Subject	Recommendation	Comments
43.	Treatment of existing licensees	Distribution and retail businesses that hold current jurisdictional licences should transition to the national business authorisation without further processes.	We support this recommendation.
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.	We support this recommendation. The exemption framework should take into consideration the recommendations from the Victorian Essential Services Commission's recent consultation on this issue.
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.	We support this recommendation. We note that in order to implement this recommendation in relation to exemptions for inset networks, much work would need to be done identifying all inset networks currently operating.
46.	Revocation	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. 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.	We support this recommendation. We believe that a retailer's business authorisation should be revoked should they withdraw from the market due to causing a RoLR event.
47.	Register of authorised persons	The Law should require the AER to maintain a public register of authorised persons and exempt persons and include details of the	We support this recommendation.

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

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

No.	Subject	Recommendation	Comments
		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.	No comment.
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 comment.

No.	Subject	Recommendation	Comments
Retailer failure arrangements			
54.	Statutory framework for RoLR scheme	<p>The NEL and NGL should authorise the AEMC to make Rules in relation to the establishment and operation of a scheme to address the risks and consequences of retailer failure (RoLR scheme) and set out the objectives of the scheme. The objectives could be expressed as being, as far as practicable:</p> <ul style="list-style-type: none"> to ensure that customers of the failed retailer continue to be supplied with energy <u>and that they are not disadvantaged due to retailer's failure</u>; to manage the risks and costs of retailer failure for the benefit of customers and of the designated RoLR; and to ensure the integrity of the wholesale market settlements and network balancing arrangements in the relevant market. 	<p>We broadly support this recommendation, but note our comments in mark-up in relation to the objectives of the scheme. It is our view that consumers should not be disadvantaged by being subject to transferral under a RoLR scheme.</p> <p>Considering the recent RoLR event (withdrawal from market of Energy One), we believe that this work should be done as a matter of priority.</p> <p>Our support of recommendations 55-59 are subject to further consultation.</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"> provisions authorising the AER to appoint one or more entities to act as RoLR, with such appointments to be made on a basis which the AER considers will contribute to the achievement of the objectives of the scheme; provisions specifying the process for and method of appointment; provisions defining the events that trigger the RoLR's supply obligations; 	<p>We broadly support this recommendation.</p>

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> 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 	
		<ul style="list-style-type: none"> conditions to the AER; provisions establishing the basis for determining the prices and terms and conditions of supply, and defining the duration of the RoLR's supply obligation. 	
56.	Consequences of a RoLR event	<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"> a contract may be deemed to exist between the RoLR and the customers of a failed retailer; and contracts between the failed retailer and its customers may be deemed to be terminated or varied. 	<p>We broadly support this recommendation.</p> <p>We believe, however, that where a retailer withdraws from the market creating a RoLR event, that their business authorisation should be revoked.</p>
57.	Obligations on other market participants	The Law should also authorise the Rules to impose obligations on other market participants in connection with the operation of the scheme, including the failed retailer, distributors and market operators.	We broadly support this recommendation.
58.	Insolvency issues	Further consideration should be given to provisions imposing obligations on insolvency administrators or dealing with the use and application of funds of the failed retailer. Such provisions would need to be included in the Law rather than the Rules and may require complementary Commonwealth legislation.	We broadly support this recommendation.
59.	Process for making initial	No Rules should be made by Ministerial order as part of the 2007	We broadly support this recommendation, but note that

No.	Subject	Recommendation	Comments
	Rules	<p>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 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>	<p>work should be done on this by the AEMC as a matter of urgency, considering the recent RoLR event.</p>

No.	Subject	Recommendation	Comments
Customer registration and transfer			
60.	Electricity registration and transfer framework	<p>The NEL should authorise the Rules to provide for:</p> <ul style="list-style-type: none"> the establishment and maintenance of a registry of information relating to each NMI that is eligible for contestability, and for access to and disclosure of that information; and procedures for the efficient transfer of consumers between retailers subject to all applicable laws, <p>for the purposes of facilitating the efficient and effective billing of retail and network tariffs and charges and wholesale market settlement.</p>	We support this recommendation.
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>	We broadly support this recommendation, but see our comments relation to recommendation 63.
62.	Electricity connection point registration NMI standing data	<p>The NER should include provisions:</p> <ul style="list-style-type: none"> defining NMI standing data, and requiring distributors to maintain and provide NMI standing data to NEMMCO and notify changes to that data; 	We broadly support this recommendation.

No.	Subject	Recommendation	Comments
	Transfer requests and process	<ul style="list-style-type: none"> • requiring a transfer request to be accepted as valid if: <ul style="list-style-type: none"> ➢ it contains all the prescribed information; ➢ the connection point details in the request are consistent with the NMI standing data; ➢ there is no outstanding transfer request in relation to the same connection point; ➢ the metering installation complies with applicable requirements for contestability; and ➢ the incoming retailer is registered with NEMMCO as a market participant; 	
		<ul style="list-style-type: none"> • prohibiting a retailer from submitting a transfer request unless: <ul style="list-style-type: none"> ➢ it has obtained any applicable consents from the customer to enter into the retail contract; and ➢ it has all necessary agreements in place to enable the sale of energy to the customer at that connection point; • requiring the transfer process to take into account applicable cooling-off periods by not enabling transfers to be completed before expiry of the cooling-off period; • permitting a retailer to withdraw a transfer request submitted by it at any time before the transfer has been 	<p>We strongly support this recommendation, but query what is meant by “not enabling transfers to be completed”. It is our view that transfers should not begin until expiration of the cooling-off period. If a transfer has begun, consumers who wish to exercise their cooling-off rights may be told that it has begun and cannot be stopped, thereby diminishing the consumer’s ability to take advantage of the cooling-off period.</p>

No.	Subject	Recommendation	Comments
	Objections	<p>registered by NEMMCO;</p> <ul style="list-style-type: none"> requiring the provision of notice of a valid transfer request within one business day to prescribed persons (likely to be the distributor, existing retailer and any other person registered as a metering provider or metering data provider for the connection point); permitting a transfer objection to be lodged within a prescribed time (eg 5 business days from the date of the transfer request) in accordance with the MSATS procedures; requiring the incoming retailer and the objecting party to use best endeavours to resolve the objection, within a prescribed time, or the transfer request is deemed to have been withdrawn; 	<p>We support the position that objections on the grounds of customer debt should not be permitted. If a debt exists with a retailer that a consumer has been transferred from, the regulatory framework relating to energy debts (ie, requirements to offer instalment plans) should continue to apply.</p>
	<p>Transfer period</p> <p>Meter reading</p> <p>Notice to customer</p>	<ul style="list-style-type: none"> specifying the period within which a transfer must be completed (being within 65 business days after a transfer request), the circumstances in which transfers may be made retrospectively effective and the applicable retrospective periods; requiring a transfer to be based on an actual meter reading (with the Rules to specify whether this should be based on a scheduled, special or customer's own reading), obtained within a timeframe prescribed in the MSATS procedures; requiring notice to the customer on completion of the transfer. 	<p>We strongly support this recommendation.</p>
64.	Gas registration and transfer framework	The NGL should authorise the Rules to provide for:	We broadly support this recommendation.

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

No.	Subject	Recommendation	Comments
	changes	amended in a manner which permits the AEMC to consider changes to Rules (including the instruments deemed to be made under the NGR) in accordance with a fast-track process which takes into account prior consultation. The amendments should be in accordance with the SCO proposed amendments to the AEMC Rule change process (subject to the suggestion that SCO consider whether the requirement for prior consultation must be with all relevant stakeholders or must be a public consultation).	

No.	Subject	Recommendation	Comments
Metering – electricity			
68.	Principal regulation of electricity metering	<p>The NEL already contemplates in Schedule 1 that the NEL may contain rules in relation to:</p> <ul style="list-style-type: none"> • the metering of electricity to record the production or consumption of electricity; • the registration of metering installations used to meter electricity; and • the regulation of persons providing metering services relating to the metering of electricity. <p>The NEL does not distinguish between metering for wholesale or retail purposes and it is therefore not necessary to make any amendment for the purpose of bringing retail metering within the NEL.</p> <p>The principal regulation of metering should be contained in the NER / NEM Metrology Procedure regime.</p>	We broadly support this recommendation.
69.	Provisions to be included in the NER	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).	We broadly support this recommendation.
70.	Process	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	We would prefer the outcomes of the work done so far on metering to be implemented through the Rule change process. This is because there has been limited consultation among consumer groups to date.

No.	Subject	Recommendation	Comments
		assessment of the relative timing of each process, but a mechanism which avoids the need for complex transitional arrangements is preferred.	
71.	Supplementary regulation of electricity metering Contractual/regulatory interface provisions Transfer code provisions Incidental jurisdictional legislative provisions	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. 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. Current jurisdictional legislative provisions incidental to metering (in relation to access to premises and theft/diversion of electricity) should not be included in the NEL. Rather, these matters should continue to be regulated as part of the ongoing jurisdictional legislative regimes.	We broadly support this recommendation, but note that care should be taken not to eliminate provisions where regulatory in addition to contractual oversight would be required.
72.	Regulation of metering in non NEM jurisdictions	The non-NEM jurisdictions should continue to regulate metering under their current instruments.	We support this recommendation.
Metering - Gas			
73.	Principal regulation of gas metering	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	We broadly support this recommendation.

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

No.	Subject	Recommendation	Comments
	grandfathered instruments	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.	We broadly support this recommendation, but note our comments in relation to recommendation 71.
Prepayment meters			
77.	Prepayment meter systems	The Law should authorise the Rules to regulate the use of prepayment meter systems for small customers. The Rules should cover the following matters in relation to the use of prepayment meter systems for small customers: <ul style="list-style-type: none"> • Prepayment meter contracts: <ul style="list-style-type: none"> ➢ specific disclosure requirements to obtain a small customer's explicit informed consent to enter into a 	We believe that should prepayment meter systems be allowed in relation to standing offer contracts, they must be such that all terms of the standing offer contract (including in relation to billing, collection, disconnection) should be complied with, and for these matters not to be regulated through alternate provisions. We believe that in relation to market contracts, the use of

No.	Subject	Recommendation	Comments
		<p>prepayment meter contract (this is a specific form of market contract);</p> <ul style="list-style-type: none"> ➤ prohibition on knowingly entering into a prepayment meter contract with a customer with a life support system; ➤ additional requirements to provide information to a small customer who enters into a prepayment meter contract (for example, the operating instructions for the meter, information relating to the payment facilities available, credit retrieval and emergency credit); ➤ minimum terms and conditions of a prepayment meter contract (for example, a mandatory trial period, provisions relating to the fees and charges that may be recovered through the prepayment meter system); ➤ variation of prepayment meter tariffs, undercharging, overcharging and recovery for illegal energy use; and ➤ termination of the prepayment meter contract by the customer, including a request to revert to normal metering or as a result of a transfer to another retailer. <ul style="list-style-type: none"> • Prepayment meter systems requirements: <ul style="list-style-type: none"> ➤ specific requirements for the prepayment meter itself, including in relation to the information displayed, when the meter will disconnect and reconnect, emergency credit, provision of energy concessions, access to meter data; and ➤ requirements in relation to payment facilities. • Other matters: 	<p>prepayment systems should be regulated. We broadly support the recommendation, but believe that regulation should be based on the Essential Services Commission of South Australia's Prepayment Meter Code.</p> <p>We are also concerned that where consumers are on a contract that has a prepayment meter, then they should have the right to revert to the standing offer without a prepayment meter.</p>

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> <li data-bbox="625 446 1123 527">➤ a requirement for the retailer to establish a specific telephone service for enquiries, complaints and emergencies relating to prepayment meter systems; <li data-bbox="625 544 1144 690">➤ 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 data-bbox="625 706 1050 730">➤ retention of records in relation to the above. 	

No.	Subject	Recommendation	Comments
Enforcement mechanisms			
78.	Compliance monitoring and enforcement functions of the AER	<p>The NEL and NGL should include provisions to support the AER's compliance monitoring and enforcement functions as follows:</p> <ul style="list-style-type: none"> • a requirement for regulated entities² to establish systems and procedures to monitor regulatory compliance, in accordance with guidelines issued by the AER; • a requirement for regulated entities to notify the AER of breaches of regulatory obligations, in accordance with guidelines issued by the AER; • a requirement for regulated entities to undertake compliance audits, and to co-operate with such audits being undertaken by the AER or an independent auditor, in accordance with guidelines issued by the AER; and • a requirement for the AER to report on its compliance monitoring and enforcement functions. 	<p>We support this recommendation, but note that the results of AER compliance activities should be made public, so that consumers and other stakeholders are aware of regulatory non-compliance, and can take steps to promote enforcement and seek redress. Public reporting of compliance monitoring also provides important information to markets and promotes 'competition by comparison'.</p> <p>The AER should also have specific powers to undertake comprehensive performance reporting about the level of services provided by regulated entities.</p>
79.	Court based enforcement mechanisms	<p>The court-based enforcement mechanisms provided for in sections 61, 63 and 68 of the NEL (and the equivalent provisions to be included in the NGL) should apply to the non-economic distribution and retail regulatory obligations to be included in the national framework. Compliance with these requirements should be designated as civil penalty provisions.</p>	<p>We support this recommendation.</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"> • an order directing the participant to pay to the Commonwealth an amount up to the amount of any financial benefit attributable to the breach; 	<p>We strongly support this recommendation, and believe that the Law should clarify that these additional orders are available.</p>

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> an order directing the participant to compensate any other person who has suffered loss or damage as a result of the breach; and any other order that the Court considers appropriate. 	
81.	Infringement notices	The provisions currently contained in the NEL (and to be included in the NGL) giving the AER the power to issue infringement notices where the AER believes that there has been a breach of a civil penalty provision should apply to the non-economic distribution and retail regulatory obligations to be included in the national framework.	We strongly support this recommendation.
82.	Administrative remedies	The NEL and NGL should include provisions that enable the AER to accept enforceable undertakings modelled on section 87B of the <i>Trade Practices Act 1974</i> (C'th).	We strongly support this recommendation.
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.	We support this recommendation. However, we believe that should a retailer cause a RoLR event, then its business authorisation should be revoked.
84.	Additional enforcement issues	<p>Consideration should be given to the following additional enforcement issues when the substantive regulatory obligations are settled and the drafting of the Law and Rules is further progressed:</p> <ul style="list-style-type: none"> whether obligations arising from the distribution and retail regulatory functions should be enforceable as between the affected parties or only by the AER; whether the dispute resolution provisions in Chapter 8 of the NER should apply in respect of the distribution and retail rules; and where court based remedies are to be used, whether there 	<p>We believe that extending regulatory enforcement rights to parties other than the regulator should improve the effectiveness of the regulatory system. Private rights will assist enforcement by accessing private resources when the regulator may be disinclined or unwilling to act. We believe that standing should be granted to consumer or public interest organisations in this respect (note that standing has been granted to such organisations in relation to reviews of regulatory price determinations in the Law).</p> <p>We support lower courts being used as appropriate.</p>

No.	Subject	Recommendation	Comments
		<p>is a case for allowing enforcement in the lower courts rather than (as at present) only in the Federal Court and Supreme Courts.</p>	<p>We believe that there should be a specific obligation on the regulator to identify and address systemic issues as part of its enforcement and compliance issue. This obligation should require the regulator to examine the impact of regulatory breaches on different classes of customers.</p>

No.	Subject	Recommendation	Comments
Statutory objectives			
85.	Objectives of the NEL and NGL	There is no need to amend the statutory objectives to be included in the NEL and NGL to accommodate the transfer of the non-economic distribution and retail regulatory functions to the national framework.	We do not agree with this recommendation – see below.
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.	We strongly believe that further consideration should be given to the inclusion of supplementary objectives, such as an environmental and social policy objective or objectives similar to those included in the <i>Essential Services Commission Act 2001 (Vic)</i> . The objective that ensures users and consumers, particularly low-income and vulnerable consumers, benefit from the gains from competition and efficiency, is particularly important – as it allows the regulator to consider the impact of its regulatory activities on different classes of consumers as appropriate, and to collect information and provide information to those consumers.

Part 2 – Regulation of standing offer and market contract terms

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

No.	Subject	Recommendation	Comments
Calculation of Charges			
	Tariffs and charges	<p>Charges are to be made on the basis of tariffs and charges specified in the contract or published in accordance with prescribed, uniform publication requirements (such as in the Gazette and/or a general circulation newspaper and/or on the retailer's internet site). [Note: the level of tariffs and charges remains subject to jurisdictional regulation.]</p> <p>Any variation to standing offer tariffs and charges must be published in advance of the variation taking effect.</p> <p>Upon request, a retailer must provide a customer with information reasonably available to the retailer on network charges, retail charges and any other charges relating to the sale or supply of energy.</p> <p>Market Contract Annotation</p> <p>Publication requirements do not apply to market contracts. Market contract tariffs must be included in the contract and variations must be notified to the customer in accordance with requirements set out in the contract.</p>	<p>We believe that consideration should be given to network pass throughs in the context of the standing contract tariff. Network pass throughs should be transparent.</p> <p>In the context of market contracts, we believe that variations on price (and any other terms and conditions for that matter) should be notified upfront, allowing consumers to cancel the contract without penalty should they not accept the variation. We note that this would be required to comply with the unfair contract term provisions of the <i>Fair Trading Act 1999</i> (Vic). With a view to harmonise regulatory arrangements at "best practice", we believe that this should be provided for all market contracts.</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</p>	<p>We do not support the inclusion of the third dot point which appears to be duplication with the second. We note that</p>

No.	Subject	Recommendation	Comments
		<p>distributor or other responsible person in accordance with the Rules.</p> <p>A retailer may base the calculation of charges under a bill on an estimation of a small customer's consumption of energy in the following circumstances:</p> <ul style="list-style-type: none"> • where the customer consents to the use of estimates by the retailer; • where the retailer is not able to reasonably or reliably base the bill on a meter reading; or • where metering data is not provided to the retailer by the distributor or other responsible person. <p>Market Contract Annotation</p> <p>May be varied by agreement in market contracts.</p>	<p>such a provision does not currently apply in jurisdictional frameworks.</p> <p>We believe that metering data must be included on all bills, including market contracts, irrespective of whether the calculation of charges reflects a consumer's consumption. We are concerned that not providing such information on market contract bills would be at odds with other government policy relating to sustainable consumption.</p> <p>We do not support the variation of this for market contracts - allowing calculation of charges that do not reflect consumption reduces the ability of price signals to operate in the market, and is at odds with government policy promoting demand management.</p>
	Meter reads	<p>A retailer must use its best endeavours to ensure that a meter reading takes place at least once in each 12 month period.</p>	<p>We believe that meter reads should be obtained once every 6 months, which is the current best practice (NSW). As it is customary for meters to be read quarterly, this would not result in any additional compliance cost on industry.</p> <p>The benefit to customers is that estimated reads will occur less frequently. Estimated reads result in price shocks and an inability to understand and control consumption.</p>
	Estimations	<p>Where estimations are permitted to be used as the basis for the calculation of energy charges under a bill for a small customer, the estimations may be based on:</p> <ul style="list-style-type: none"> • the customer's reading of the relevant meter; 	<p>Note our deletion in track changes. We do not believe these words add anything meaningful – either the retailer has historical information or it doesn't.</p>

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> historical meter data for the relevant customer; or where there is no historical meter data for the relevant customer, the average usage of energy by a comparable customer over the corresponding period. 	
	Bill smoothing	<p>Where a retailer is entitled to use estimations as the basis for the calculation of charges under an energy bill, estimated bills may be provided under a smoothing arrangement if:</p> <ul style="list-style-type: none"> the amount payable each month is initially the same; the retailer's estimate is based on the customer's historical billing data or, if no such data exists, the average consumption of a similar customer; the retailer re-estimates consumption after six months; and the difference between the initial estimate and the re-estimate is greater than 10%, the retailer resets the amount payable under each of the remaining bills to reflect the difference. <p>Market Contract Annotation</p> <p>May be varied by agreement in market contracts.</p>	<p>We believe that, for standing contracts, bill smoothing can only occur with the customer's explicit informed consent.</p> <p>We also believe that the re-estimation at the six month period must be based on an actual meter read.</p> <p>We believe that the protections outlined for bill smoothing arrangements should apply to market contracts as well. There is no justification for them being removed, and in fact, it is generally in relation to market contracts that bill smoothing occurs, not standing 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>	<p>We support this recommendation. We believe that the regulator should have oversight for any charges by the retailer for additional meter read requests.</p>

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No.	Subject	Recommendation	Comments
Termination			
	Retailer termination	<p>A retailer may terminate a small customer supply contract where:</p> <ul style="list-style-type: none"> the retailer has a contractual right to disconnect, disconnection has occurred and there is no contractual right to reconnection; the small customer and the retailer have entered into a new customer contract; or the small customer has transferred to another retailer. <p>Market Contract Annotation</p> <p>Market contracts may provide for additional termination events, but must not vary the provisions relating to disconnection.</p>	<p>We do not see any value in the retailer being able to terminate a standing contract. It is our view that retailer termination will create additional barriers to supply should a consumer remedy the reasons for disconnection (ie, additional application process). It is our view that the contract should still be on foot, and if the consumer is in breach, this should lead to disconnection, not termination.</p>
	Customer termination	<p>A small customer may terminate a standing offer contract upon five business days notice to the retailer.</p> <p>Market Contract Annotation</p> <p>A small customer is required to give no more than 28 days notice to terminate a market contract.</p>	<p>We believe that the notice period for market contracts should be 20 business days.</p>
Security			
	Provision of security	<p>A retailer may require a small customer to provide a security deposit where:</p> <ul style="list-style-type: none"> the small customer still owes <u>an amount over a threshold amount</u> to that retailer in relation to the supply of electricity to another address; the customer has unlawfully acquired energy within the past two years; the customer has refused to provide acceptable identification to 	<p>Note our comments in track changes – jurisdictional frameworks currently only require a security deposit should a debt be over a certain threshold amount.</p> <p>Additionally, where a payment is required, retailers should be required to accept an instalment plan in lieu of a security deposit. Regular instalments offset any risk to the retailer in relation to debt deferral under regular payment arrangements. Further, use of Centrepay should qualify as an instalment plan.</p>

No.	Subject	Recommendation	Comments
		<p>the retailer; or</p> <ul style="list-style-type: none"> the retailer reasonably considers that the customer does not have a satisfactory credit history and the customer has refused an instalment plan offered by the retailer. <p>Market Contract Annotation</p> <p>May be varied by agreement in market contracts.</p>	<p>We believe that credit history should only relate to utility debts, not all debts. We consider that in many cases general information held by credit referencing agencies is not fair, accurate or relevant, such that there is currently a review of credit referencing being undertaken by the Australian Law Reform Commission. In particular, there is currently no prohibition against small debts being listed, which could mean that consumers are unfairly being required to pay security deposits, limiting their access to an essential service.</p> <p>Considering our continued concerns with the lack of explicit informed consent in relation to market contracts, we believe that regulation of the provision of security deposits should also apply to market contracts. We are not convinced that the competitive market will ensure that consumers will not be misled into providing security deposits.</p>
	Information about credit history	<p>If a retailer requires a security deposit on the basis that a small customer has an unsatisfactory credit history, the retailer must inform the customer:</p> <ul style="list-style-type: none"> that the retailer has decided the customer has an unsatisfactory credit history; the reasons for the retailer's decision; of the customer's rights to raise a complaint; and that the customer has the right to obtain details in relation to the information on which the retailer's decision was based. 	<p>The customer's right to complain should be clarified so that they are advised of their right to complain to internal dispute resolution as well as external dispute resolution schemes (Ombudsman schemes).</p>
	Amount of security	The amount of security may not exceed 1.5 times the average	We support this recommendation.

No.	Subject	Recommendation	Comments
		<p>quarterly bill (for customers on a quarterly billing cycle) or 2.5 times the average monthly bill (for customers on a monthly billing cycle).</p> <p>Average quarterly and monthly bills should be determined by the AER.</p> <p>Market Contract Annotation</p> <p>May be varied by agreement in market contracts.</p>	<p>As above, this requirement should also apply to market contracts.</p>
	Interest	<p>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.</p>	<p>We support this recommendation.</p>
	Application of security	<p>The retailer may only apply a security deposit to off-set amounts owed to it where the customer:</p> <ul style="list-style-type: none"> • has failed to pay a bill which results in disconnection by the retailer and there is no contractual right to reconnection; • vacates the property <u>and fails to provide the final bill</u>; • requests disconnection; or • transfers to another retailer. <p>The retailer must account to the customer within 14 days after application of the security deposit.</p>	<p>Note our comments in mark-up.</p>
	Repayment of security	<p>The retailer must repay a security deposit to the customer after the customer has completed 12 months of <u>continuous connection to energy</u> or where the customer ceases to take supply from the retailer at the relevant address.</p>	<p>Note our comments in mark-up. We do not believe it is fair for a consumer to be denied repayment of security merely because they were late with a bill, but it did not lead to disconnection.</p> <p>We also believe that there should be an obligation on the retailer to account to the customer within 14 days after the time when the repayment becomes payable.</p>

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No.	Subject	Recommendation	Comments
Billing, apportionment of payment, disputes			
	Frequency of bills	<p>Energy bills must be issued by the retailer at least every three months.</p> <p>Market Contract Annotation</p> <p>May be varied by agreement in market contracts.</p>	We support this recommendation.
	Content of bills	<p>A bill <u>must</u> include the following content:</p> <ul style="list-style-type: none"> customer's name, account number and address; meter identifier; bill period; due date; amount of arrears or credits; relevant tariff; whether the bill was issued as a result of a meter read or an estimation and, if issued as a result of a meter read, the date of the meter reading; values of meter readings (or, if applicable, estimations) at the start and end of the billing period; <ul style="list-style-type: none"> details of consumption or estimated consumption; pro rata billing information (if applicable); 	<p>Note our track changes – the bill should be required to include this information on bills, not merely "should".</p> <p>We strongly believe that bills should include consumption graphs. We note that AAR state that this is being dealt with in the energy efficiency working group. Consumption graphs are not only relevant in promoting energy efficiency, but more importantly provide customer information and ensure consumers are able to compare their usage over time. This is an important consumer protection that should be maintained.</p> <p>We believe that details of dispute resolution schemes should be placed on bills, at least annually.</p> <p>We believe that details of greenhouse gas emissions should be included on the bill. We note that there needs to be robust oversight by the regulator of the accuracy of this information. This information is currently required in ACT and Victoria, which is best practice.</p>

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No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> • any amount deducted, credited or received under a Government rebate or concession scheme or under an instalment plan; • the amount of any security deposit; • the network charge and details of any other miscellaneous charges; • details of the available payment methods; • details of any available government funded concessions or rebates; • telephone number for account and fault enquiries; • contact details for complaints; and • availability of interpreter services in community languages. <p>Amounts billed for goods and services (other than the supply of energy) must be included in a separate bill or as a separate line item on an energy bill.</p>	
	Payment terms	<p>The due date for payment of a bill may not be less than a prescribed period after the date on which the bill is sent out.</p> <p>Market Contract Annotation</p> <p>May be varied by agreement in market contracts.</p>	<p>We are concerned that this recommendation does not adequately capture the timing of the collection cycle and the points in the cycle at which certain information is provided. See further comments under “disconnection”.</p> <p>For a standing contract, the due date of the bill should not be less than 12 days from the date after which the bill is sent out.</p> <p>For a market contract, we believe that a due date of the bill should not be less than a reasonable date after which the bill is sent out. We are concerned about other industries (ie, telcos) which provide that bills are due within an unreasonable short timeframe.</p>

No.	Subject	Recommendation	Comments
	Apportionment	<p>If a bill includes amounts payable for other goods and services provided by the retailer (apart from the supply of energy), any payment made in relation to such a bill must be applied firstly to the payment of the energy charge, unless otherwise directed by the customer or agreed by the customer.</p> <p>Market Contract Annotation</p> <p>May be varied by agreement in market contracts.</p>	<p>We support this recommendation, but do not believe it should be varied for market contracts. Energy is an essential service and should be paid for first in all circumstances.</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>	<p>We believe that historical billing information should be provided on a bill (in terms of a consumption/cost graph) for the previous 15 months, so as to enable comparison with the same period last year. We note that all jurisdictions currently allow more than 12 months (except ACT).</p> <p>We do not support charging for information provided more than once in any 12 month period – customers should have the right to dispute more than one bill in that period.</p> <p>We believe that any such charge should be approved by the regulator.</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.</p> <p>The customer may require the retailer to undertake a meter test, with the cost of the test to be borne according to the outcome of the test.</p> <p>Retailers may require a customer to pay;</p> <ul style="list-style-type: none"> the portion of the bill under review which is not in dispute; or <p>and any future bills that are properly due.</p>	<p>Note our deletions in mark-up. It is not clear what is the meaning of time limits – what time limits, and where do the obligations lie?</p> <p>We think it is reasonable to require the customer to pay amounts which are not in dispute, but not to use some potentially unfair formula to require a greater payment.</p> <p>We believe that customers should not have to pay the costs of a meter test upfront – only if the meter test shows that the read is correct (see last line about refunding).</p>


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Deleted: <#>an amount equal to the average amount of the customer's bills over the previous year (excluding the bill in dispute),¶

No.	Subject	Recommendation	Comments
		<p>Where, after conducting a review of the bill, a retailer is satisfied that the bill is:</p> <ul style="list-style-type: none"> • correct, the customer must pay the amount outstanding; or • incorrect, the retailer must adjust the bill accordingly and refund any fee paid in carrying out any metering test. 	<p>amount paid).</p>
Undercharging and overcharging			
	Undercharging	<p>A retailer may recover from a customer any amount undercharged during the previous 12 months (unless the undercharging arises as a result of the fault or unlawful action of the customer, in which case the 12 month limitation does not apply). Interest is not payable on the amount undercharged and the customer must be given a period of time to pay any undercharged amount commensurate with the 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>	<p>We believe that a retailer should only recover amounts undercharged during the previous 6 months. We note that best practice is 6 months (Tasmania) and it is the timeframe recommended by the Utility Regulators' Forum.</p> <p>We point the RPWG to a submission by Jindarra Community Programs to the Victorian Essential Services Commission (VESC) about the impacts of high bills, which led the VESC to amend the VERC so as to limit the amount undercharged. Problems arose due to retailers not billing consumers, leading to high bills. Such a requirement should encourage retailers to improve their billing systems.</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 as directed by the customer or, where there is no such direction, credit the customer's next bill.</p>	<p>We believe that a consumer should be informed about overcharging within 10 days, which is the norm in jurisdictional frameworks.</p> <p>We believe that the relevant threshold should be defined, and note that the NSW threshold is \$25 which is fair and reasonable.</p> <p>We believe that interest should be payable on any amount overcharged.</p>

No.	Subject	Recommendation	Comments
Payment methods and difficulties			
	Payment methods	<p>A retailer must accept payment by a small customer by any of the following payment methods:</p> <ul style="list-style-type: none"> • in person; • by telephone; • by mail; or • by direct debit. <p>Where a direct debit arrangement is entered into, the retailer and the small customer must agree the amount, date and frequency of the direct debits , <u>notification that direct debits may attract significant dishonour fees</u> and the customer's cancellation options.</p> <p>Market Contract Annotation</p> <p>May be varied by agreement in market contracts. If direct debit is provided for in the market contract, the last paragraph must be complied with.</p>	<p>Note our comments in mark-up. We believe that direct debit arrangements can impose significant detriment on some consumers, and should be regulated. In particular, consumers should be notified that direct debits attract significant dishonour fees. We agree that this regulation should apply to market contracts. Consumer Action recently reviewed a number of direct debit agreements and provided this information to the VESC – this showed that many direct debit agreements are effectively not a voluntary payment method for the benefit of both consumers and retailers (as they are meant to be), but are instead mandatory credit collection methods for the benefit of retailers alone. In particular, variation clauses of direct debit agreements mean that consumers' accounts could be debited at any time, without notice. Such clauses are in breach of the VERC, and manifestly unfair to consumers. Additionally, we believe that many such clauses could be in breach of Part 2B of the Fair Trading Act 1999 (Vic) which deals with unfair contract terms.</p> <p>We believe that in relation to consumers in receipt of Centrelink payments, Centrepay should be a required payment method. This should be at no cost to consumers.</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</p>	<p>We believe that the formulation in the AAR is too weak, especially in relation to requiring the retailer to assess a consumer's <u>capacity to pay</u>. The concept of capacity to pay is crucial, ensuring retailers set instalment plans at levels which consumers can reasonable afford.</p>

No.	Subject	Recommendation	Comments
		<p>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>	<p>We believe that the relevant clauses must reflect clauses 11.1, 11.3, 11.4, 12.1 and 12.2 of the VERC, which is best practice.</p> <p>The RPWG should also be cognisant of the appropriate role of financial counsellors or equivalent community agencies. They should not be treated as a de facto credit management service. Further, retailers and the Rules need to be aware of the high demand for those services and that waiting lists can be up to 6-8 weeks.</p>
	Shortened collection period	Conditions under which a customer may be placed on a shortened collection period and under which the customer must be returned to the normal collection period.	<p>We cannot support this until detail is provided of what is recommended.</p> <p>We would support a shortened collection cycle being allowed based on the conditions set out in the VERC, which is best practice.</p>
Disconnection			
	Grounds for disconnection	<p>A retailer may disconnect or discontinue supply where:</p> <ul style="list-style-type: none"> • a small customer has not paid a bill; • access to a meter has been denied by a small customer for three consecutive scheduled readings without reasonable excuse; • the customer has refused to provide acceptable identification or security; • a customer has acquired energy illegally; <u>or</u> • a customer has obstructed an authorised person in relation to acts to be done under the contract; •  	<p>Note our comments in mark-up. We do not support the termination of a market contract in accordance with the terms of the contract leading to disconnection. A customer should be offered a standing contract so as to maintain supply.</p> <p>Note our comments above in relation to "acceptable" identification.</p>

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a market contract has been terminated in accordance with the terms of the contract.

No.	Subject	Recommendation	Comments
	Limitations on disconnection	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>We cannot support this recommendation without further detail. In particular, we note that further detail needs to clarify the collection cycle, including when reminder notice and disconnection warnings are provided, and the information provided on such notices.</p> <p>We also believe that there should be a minimum threshold of debt beyond which disconnection can occur – this exists currently in jurisdictional frameworks.</p> <p>We also believe that a retailer should not be able to disconnect should a consumer contest the grounds of disconnection (ie, with internal or external dispute resolution) and the complaint is not yet resolved..</p> <p>In relation to restrictions on times/dates disconnection takes place, we support the Queensland Electricity Industry Code (cl 4.18.14) as best practice.</p>
	Notice	<p>Disconnection may not be effected until the retailer has provided the customer with:</p> <ul style="list-style-type: none"> • a reminder notice; and • a disconnection notice, <p>containing prescribed information and at prescribed minimum intervals.</p> <p>In addition, where the customer is experiencing payment difficulties the retailer must make <u>best endeavours</u> to contact the customer by telephone or other specified means.</p>	<p>As above, we cannot support this recommendation without detail about the prescribed information and the prescribed minimum intervals. The prescribed information must include information about dispute resolution, eligible concessions, access to hardship policies, availability of financial counselling, etc.</p> <p>Note our comments in mark-up relating to best endeavours to contact customer – the minimum requirements should be specified.</p>
	Reconnection	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	We cannot support this recommendation without further detail.

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No.	Subject	Recommendation	Comments
		<p>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>	<p>Regulations around payment arrangements for reconnection should refer to the requirement to offer instalment plans (taking into account capacity to pay, etc) outlined above. "Fair and reasonable" is not sufficient.</p> <p>Consumers should additionally have a right to reconnection without payment should they contest the grounds of disconnection through internal or external dispute resolution, until such time the complaint is resolved.</p> <p>Recommendation is unclear in relation to reconnecting premises within 10 business days. If the contract is still on foot, a retailer must reconnect premises if breaches are remedied, and there should be no limitation around 10 days.</p>
Liability and warranties			
	<p>Liability and warranties</p>	<p>A retailer must not include any term or condition in an energy contract that limits the liability of the retailer for breach of the contract or negligence by the retailer, provided that:</p> <ul style="list-style-type: none"> the retailer's liability may be limited as contemplated by section 68A of the <i>Trade Practices Act</i> or by equivalent State or Territory legislative provisions; and there is no variation or exclusion of relevant legislative provisions which provide that the retailer is not liable for damages for failure to supply due to circumstances beyond its control (ie section 120 of the NEL). <p>A retailer may not include in an energy contract with a small customer a term pursuant to which the customer indemnifies the</p>	<p>This rule should be formulated in a way that prevents retailers from including confusing exclusion clauses, which are common in consumer contracts (ie, "we are not liable for our actions or for breach of contract or negligence, except to the extent provided by law")</p>

No.	Subject	Recommendation	Comments
		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.	
Miscellaneous			
	Prepayment meters	A customer may agree but cannot be required to use a prepayment meter.	<p>Any standing offer contract which uses a prepayment meter must be capable of delivering all the terms and conditions of the standing offer, including those relating to billing, payment, collection cycle etc.</p> <p>A customer should provide explicit informed consent before being required to use a prepayment meter. Use of prepayment meters in market contracts should be regulated as per ESCOSA's Prepayment Meter Code.</p>
	Dispute resolution and complaints	A retailer must handle a complaint made by a small customer in accordance with the relevant jurisdictional dispute resolution process.	<p>Contractual regulation of dispute resolution and complaints should ensure consumers are informed of their right to complain to an internal dispute resolution scheme that is in accordance with the Australian Standard. Information about IDR processes should be provided to the regulator, as occurs in SA.</p> <p>Data should be kept about complaints and resolutions for 12 months, as occurs in the ACT.</p> <p>Contractual regulation of dispute resolution and complaints should also ensure consumers of their right to complain to external dispute resolution (ie, Ombudsman schemes).</p>
Additional provisions required in market contracts			
	Cooling-off period	Market Contract Annotation	Note our comments in mark-up. Original drafting was unclear. The cooling-off period should not run until the

No.	Subject	Recommendation	Comments
		<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 <u>if later, from the time the customer receives the full terms and conditions of the contract including information relating to exercising the cooling-off period.</u></p>	<p>time the customer receives a copy of the full terms and conditions of the contract as well as information about how to exercise their cooling-off rights.</p>
	Dual fuel contracts	<p>Market Contract Annotation</p> <p>In the case of dual fuel bills, payment is to be made as agreed with or directed by the customer. If there is no such agreement or direction, payment is to be applied in proportion to the relative value of the electricity and gas charges.</p> <p>If disconnection is permitted, a retailer must ensure that a small customer on a dual fuel contract is initially disconnected from gas supply and that disconnection from electricity supply occurs within a certain period after the disconnection notice, unless otherwise directed by the customer or agreed by the customer.</p>	<p>We support this recommendation.</p> <p>We think it should be made clear that, although gas may be disconnected, the retailer cannot terminate the contract while the consumer still has a right to receive electricity. Alternatively, as Victorian framework provides, disconnection from gas should mean that the consumer reverts to a standing contract for both fuels, with reconnection for gas allowed where reason for disconnection is remedied.</p>
	Early termination charges	<p>Market Contract Annotation</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"> the market contract includes details of the amount or manner of calculation of the early termination charge; and the early termination charge is a reasonable estimate of the cost to the retailer resulting from the early termination. 	<p>We strongly believe that the re-formulated provision in the VERC (clause 32) should be inserted in the new Rules. This re-formulation was deemed necessary after the VESC reviewed early termination clauses which showed that retailers were recovering more than a reasonable estimate of the cost resulting from early termination.</p> <p>The VERC states: Any amount of an early termination fee payable by a customer upon the customer breaching their energy contract must be determined by reference to, and must not exceed, the total of the following direct costs incurred by the retailer in relation to that particular customer which remain unamortised at the time of</p>

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No.	Subject	Recommendation	Comments
			<p>termination:</p> <p>i) pro-rata costs of procuring the customer to enter into the contract</p> <p>ii) additional costs of giving effect to the early termination of the contract, final billing and ceasing to be responsible for the supply address; and</p> <p>iii) the value of any imbalance in the retailer's electricity or gas hedging program to the extent that it is directly attributable to that breach of contract.</p>
<p>Provisions included for consideration in Working Paper 1 but not proposed to be included in standing offer or market contract terms</p>			
	<p>Assessing credit risk (limiting assessment to utility related debt)</p>	<p>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.</p>	<p>See our comments above under security deposit.</p>
	<p>Customer consultative groups</p>	<p>A retailer must establish a customer consultative group.</p>	<p>We do not support this exclusion. Energy is an essential service which means that retailers in this market do have an additional obligation to understand their customer base, and where more assistance may be required, to ensure consumers retain access to supply. Those retailers who have CCCs have all found them to be of great value.</p> <p>We would support this requirement being a general regulatory obligation rather than a contractual term, however.</p>
	<p>Discrimination based on customer supply or use of alternative energy sources</p>	<p>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.</p>	<p>We do not support this exclusion. This provides security of access for customers, often residential, using micro-generation. It is widely acknowledged that those consumers face significant barriers, and the inclusion of such a provision in the Rules would provide some</p>

No.	Subject	Recommendation	Comments
			<p>protection. Whilst we accept that this recommendation may be of regulatory rather than contractual concern, there is no provision for it in the Principal Recommendations of this paper. As such, we would call for the inclusion of this provision under Recommendation 1, as indicated above.</p>
	Fees for late payment	Prohibition on fees for late payment.	<p>We strongly believe that there should be no fees for late payment in relation to standing offer contracts. We note that the standing offer tariff includes allowances for all costs of collection, including late payment. As such, recovery of late payment will allow retailers to over-recover.</p> <p>Fees for late payment also impact disproportionately on consumers suffering financial hardship, which causes them to pay their bills late. As stated by the Treasurer in the second reading speech introducing legislation in Victoria which banned late payment fees: "The government does not believe that people who are unable to pay their bills on time should be penalised further by late payment fees. Accordingly, the bill will prohibit the imposition of late payment fees in respect of small retail customers."</p>
	Compensation for wrongful disconnection	Retailers must pay compensation to customers who are wrongfully disconnected.	<p>We support the inclusion of a regime that allows for compensation for wrongful disconnection, whether this be a contractual term or direct regulatory requirement. Compensation for wrongful disconnection has proved to be useful in Victoria in ensuring retailers have robust programs and procedures to prevent disconnection, and we strongly support its inclusion.</p>

No.	Subject	Recommendation	Comments
Provisions to be included in the Rules (and not as standing offer or market contract terms)			
	Communications with customers	A retailer must provide access to multi-lingual services (for languages common to the relevant customer base) in order to meet the reasonable needs of its small customers.	We support this recommendation.
	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.	We support this recommendation.
	Competitive pricing information	The Rules should require pricing information to be presented in a format which enables comparison between competing offers.	Note our comments in mark-up. We believe that the Rules should require pricing information to be presented in a format which enables comparison between competing offers. Easy to understand and standard form pricing information contributes to effective competition, by promoting effective demand side participation, and is not available except in those jurisdictions where government has required it.. Victorian Guideline No. 19 mandating product information disclosure is best practice.
Provisions subject to separate policy review			
	Consumption graphs	Bills to include comparative consumption data.	We do not believe this should be left to a separate policy review. See our comments earlier.
	Provision of energy efficiency advice	On request, a retailer must provide energy efficiency advice to a small customer.	While it might be appropriate to review this requirement separately, this should happen prior to the implementation of the Rules. This is an obligation in some jurisdictions currently, and should not be lost in the move to the national framework.
	Greenhouse gas emissions information on bills	Bills must include information concerning greenhouse gas emissions in accordance with guidelines.	We believe that information concerning greenhouse gas emissions should be included in the initial Rules prepared

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No.	Subject	Recommendation	Comments
			by the RPWG. See our comments earlier.
	CSOs	Retailers may be required to deliver government funded CSOs.	The national framework should require retailers to deliver government funded CSOs and should require retailers to provide appropriate information about CSOs to consumers, both as part of the contractual information and at appropriate points in the collection cycle (i.e. on disconnection warnings).
	Service standards	Retailers must comply with specified service standards.	We require further information about what is contemplated by this recommendation. We believe that the regulator should be required to report on compliance 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> <p>(a) prior to formation of a market contract: where the prescribed matters may be disclosed in writing, electronically or verbally; and</p> <p>(b) as soon as practicable after formation of a market contract: pursuant to a single written disclosure statement (unless such disclosure statement has already been provided).</p>	<p>We broadly support this recommendation – retailers should be required to provide prescribed information prior to formation of a market contract.</p> <p>However, after formation of market contract, consumers should be provided with full terms and conditions of contract, together with a customer charter (summary of rights and obligations, including information about dispute resolution) as well as information about exercising cooling-off rights.</p> <p>If the contract is formed in a face-to-face situation, as soon as practicable should be at that time, not days after.</p>
	Pre-contractual disclosures - required disclosures	<p>The information which a retailer must provide in the manner described above is information in relation to:</p> <p>(a) prices, charges, penalties, billing and payment arrangements: all applicable prices, charges, early termination payments and penalties, security deposits, service levels, concessions or rebates, billing and payment arrangements and how any of these matters may be changed;</p> <p>(b) contract duration: the commencement date and duration of the contract, the availability of extensions and whether the contract can be transferred to other premises if the customer moves out during the term of the contract;</p>	<p>We strongly support these pre-contractual disclosures, but the following should be made clear:</p> <ul style="list-style-type: none"> • billing information should include frequency of bills; • payment arrangements include all available payment methods; • that all energy market contracts have a cooling-off period; • in the provision of information about the standard supply contract, details of any difference between the market contract's terms and conditions and

No.	Subject	Recommendation	Comments
		<p>(c) cooling-off period: details of rights to rescind the contract, including how to exercise these rights;</p> <p>(d) electronic transactions: if any marketing requirement is to be complied with by an electronic transaction, how the transaction is to operate and, as appropriate, that the customer will be bound by the electronic transaction or will be recognised as having received the information contained in the electronic transaction; and</p> <p>(e) standard supply contracts: the availability of standing offer supply contracts and the relevant regulator's contact details.</p>	<p>the basic terms and conditions under a standing offer.</p> <p>Further, where a product sells renewable power of any description, details should be given about the accredited GreenPower scheme and whether the energy sold complies with that scheme.</p>
	Cooling-off period	Unless such information has previously been supplied to the small customer, a retailer must send documentation to the small customer providing details of the customer's right to rescind the market contract, including information about how to exercise this right, at least 10 business days prior to the expiry of the cooling-off period.	We strongly support this requirement.
	Dispute resolution and complaints	A retailer must advise a small customer of their 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.	We support this requirement, but note that this information should be provided both before and after the consumer has entered into the contract.
	General conduct standards	<p>Marketers must, and retailers must ensure that marketers, comply with all applicable Commonwealth and State and Territory laws in relation to:</p> <p>(a) misleading, deceptive or unconscionable conduct;</p> <p>(b) undue pressure, harassment or coercion; and</p> <p>(c) the quality, form and content of marketing information.</p> <p>Marketers should have, and retailers should ensure that marketers</p>	<p>We strongly support this requirement.</p> <p>In relation to product knowledge, it should be clear that this includes knowledge about accredited GreenPower</p>

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No.	Subject	Recommendation	Comments
		have, adequate product knowledge. Adequate product knowledge covers knowledge of matters such as tariffs, billing procedures and the availability of rebates and concessions.	
	Duties of marketers	<p>At all times in connection with any marketing activity, a marketer must identify his or herself to a small customer. Identification involves the marketer using best endeavours to provide the small customer with:</p> <ul style="list-style-type: none"> (a) the marketer's first name; (b) any relevant identification number; (c) the name of the retailer on whose behalf the marketing contact is being made and contact details for the retailer; (d) sufficient contact details to enable the customer to contact the marketer; and (e) advice as to the purpose of the marketing contact. <p>Where marketing is conducted in person, a marketer must wear an identification badge showing the marketer's photograph, first name and the name of the retailer on whose behalf the marketing contact is being made.</p>	<p>It should be clear that this information should be provided prior to the presentation of the pre-contractual disclosure requirements, and not after the consumer has entered the contract.</p> <p>Additionally, a marketer must disclose:</p> <ul style="list-style-type: none"> • whether they will receive a commission or fee for obtaining a sale; • that the consumer may be contacted as part of an audit procedure, to confirm their understanding of and consent to the contract.
	Training	Retailers must ensure that marketers are appropriately trained in relation to compliance with marketing obligations.	We support this recommendation, but submit that retailers must be obliged to provide regular refresher courses to marketers about the laws and regulations pertaining to marketing.
	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	We strongly support this recommendation.

No.	Subject	Recommendation	Comments
		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.	We support this recommendation, but consider that the AER should be obliged to conduct regular compliance audits.
	Contact times	Not included.	We support this recommendation.
	Contact records	Not included.	<p>We do not support this recommendation.</p> <p>We note that AAR suggests regulation of contact lists should not be required as such regulation doesn't have regard to the distinguishing features of the energy market. We disagree, and note that the competitive energy market relies upon direct sales, and as such, would suggest that direct sales is a distinguishing feature of the energy market. AAR's framework for assessing marketing regulation, therefore, would allow for the regulation of contact records.</p> <p>Considering the significant consumer detriment caused by consumers being hassled when at home, we believe consideration should be given to a Do Not Contact register for energy retailers, that would operate in a similar fashion to the recently established Do Not Call register.</p>

Part 4 – Regulation of distributor-customer contract terms

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

No.	Subject	Recommendation	Comments
	Commencement of contract (as between the distributor and the customer at particular premises)	<p>When the deemed contract commences in relation to a particular customer and premises, being:</p> <ul style="list-style-type: none"> the date specified in the contract (not earlier than the date of publication of the contract by the distributor); or if later, the date the premises were connected to the network or the customer moved in to the premises. 	We support this recommendation
	Collection of charges	An explanatory term may be included noting that charges for distribution services are paid to the retailer and that the distributor may not charge the customer directly for services unless it has a separate agreement with the customer.	We support this recommendation
	Termination of services	<p>When the deemed contract ends in relation to a particular customer and premises, being the earlier of:</p> <ul style="list-style-type: none"> the date the customer is disconnected in accordance with the disconnection procedures and any right of reconnection has expired; the customer ceasing to be responsible for energy consumption at those premises following a specified period of notice to its retailer; the effective date of a negotiated distribution contract for the premises; or 	We support this recommendation, emphasising the need for alignment between the retailer's obligations to a customer prior to disconnection, to ensure that access to energy is not denied because of financial hardship.

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> the date otherwise agreed between the customer and the distributor. 	
	Interruptions to supply	The contract should adopt the provisions of the Rules in relation to interruptions and curtailments to supply.	We support this recommendation.
	Service standards/Guaranteed service levels	<p>The setting of service standards and any associated GSL payment levels may be a matter to be determined individually as part of the AER's approval of the default contract. This is not addressed in this paper. However, following is an indicative list of potential requirements:</p> <ul style="list-style-type: none"> frequency and duration of supply interruptions; timely notice of planned interruptions; quality of supply (excluding frequency) for electricity (this could include voltage variations); wrongful disconnection; timeframes for reconnection; being on time for appointments; response times for fault calls; and provision of fault information. 	<p>We support the inclusion of service standards/GSLs in the deemed contract as long as</p> <p>a) it is recognised that this is a <u>further</u> obligation - network businesses must be required through the Rules to meet service standards and network performance standards and the contract with the customer is not the right vehicle to secure compliance: and</p> <p>b) that the onus should remain on the network business to inform customers of their rights of redress and to pay compensation payments when those standards are not met. It is not reasonable to expect consumers to be aware of the terms and conditions of a deemed distribution contract.</p>
	Liability and warranties	<p>The following limitations of liability may be included:</p> <ul style="list-style-type: none"> implied terms and warranties may be excluded to the extent permitted by law; no liability for supply interruption or disconnection to the extent the distributor is entitled to do so under Law, Rules or contract; 	No comment

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> no liability for reliability or quality of supply, except to the extent caused or contributed to by the distributor's default or negligence; and contractual force majeure. <p>The contract should state that none of these limitations will limit any obligation to make a GSL/compensation payment.</p>	
	Provision of information	The Rules should 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.	<u>Note our mark-up.</u> Distributors should provide information to consumers about their consumption. This is particularly important for rural and regional areas, where decisions about what is the best energy source (within a more limited range of option) necessitate that information being available to consumers.
	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 should include (subject to emergencies):</p> <ul style="list-style-type: none"> time of day and weekend/holiday restrictions for small customers; for electricity, if the address has a registered life support system; where required notices have not been given; where a complaint remains unresolved; or if a distributor reasonably considers that distribution would immediately endanger health or safety. <p>Reconnection should be effected:</p>	<p>We support this recommendation, but note the mark-up. We see no reason why some contracts may not contain those limitations on disconnection.</p> <p>We are concerned that reconnection is subject to payment</p>

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		<ul style="list-style-type: none"> • as soon as practical and within one business day after the reason for disconnection has been removed and the customer requests; and • if a retailer requested disconnection, as soon as practical and within one business day after the retailer requests reconnection, <p>subject to payment of the reconnection fee.</p> <p>A time limit for reconnection should be included, after which a request for connection would be treated as a new connection.</p>	<p>of a reconnection fee, as this provides a substantial barrier to reconnection for customers in financial hardship. The fee should be waived in those circumstances.</p>
	Fault reporting and correction	Provision of 24-hour fault information and reporting line.	We support this recommendation.
	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.	We support this recommendation.
	Customer obligations	<p>To be clearly expressed in the contract, together with the consequences of non-compliance (eg disconnection) and provision for appropriate notice of non-compliance and an opportunity to remedy if applicable. Customer obligations may include matters relating to:</p> <ul style="list-style-type: none"> • theft/unauthorised supply; • provision of safe and unhindered access to meters and other equipment of the distributor; • protection of/tampering with distributor equipment on premises; • safety of customer installation; 	<p>As outlined earlier, given that the customer may be unaware that they are in breach of those obligations the Rules should consider that consumers are deemed to be compliant unless they are informed otherwise.</p>

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"><li data-bbox="548 444 1171 500">• compliance with any restrictions on consumption or use of energy; and<li data-bbox="548 516 1171 571">• requirements to notify certain events (eg faults, leaks, change of use, safety requirements).	

Part 5 – Regulation of distributor-retailer contract terms

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

No.	Subject	Recommendation	Comments
	Connections at request of retailer or end customer	The UoS agreement/interface contract would be limited to requiring the retailer to pass on connection requests in a timely manner.	
	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	The UoS agreement/interface contract would define mutual customers of the distributor and retailer by reference to: <ul style="list-style-type: none"> customers that are connected or seeking to be connected to the distributor's infrastructure; and customers in respect of which the retailer has financial responsibility in the wholesale market (ie. the FRMP in electricity and equivalent in gas). 	
	Collection and on payment of network charges by retailer*	The UoS agreement would provide for the retailer to pay the distributor for distribution services as principal, ie. the retailer is required to pay the distributor regardless of whether it receives payment from its customers (and therefore bears the customer credit risk). This would not include payment for non-standard connections negotiated between the customer and the distributor, which would be paid directly by the customer.	

No.	Subject	Recommendation	Comments
		<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"> • 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 • notification by the distributor to the retailer of general changes in its network tariffs or other relevant charges. 	
	Information sharing to facilitate single billing, billing disputes	<p>The UoS agreement/interface contract would require:</p> <ul style="list-style-type: none"> • the distributor to provide certain information to the retailer to facilitate customer billing by the retailer; and • the parties to cooperate in relation to customer billing disputes. 	

No.	Subject	Recommendation	Comments
	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"> • 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; • mutual indemnities, for example, in relation to customer claims for unlawful disconnection caused by the respective parties; • third party claims procedures; and • liability caps, exclusion of warranties and implied terms, preservation of statutory instruments. 	

No.	Subject	Recommendation	Comments
	Disconnections at request of retailer, distributor or end customer	<p>The UoS agreement/interface contract would provide for:</p> <ul style="list-style-type: none"> • disconnections at the request of the retailer (subject to certification by the retailer that the disconnection is permitted under the Rules), which may include a requirement for the distributor to compensate the retailer where it fails to action such a request (subject to carve outs, eg. where the failure is due to health and safety reasons); • disconnections at the request of a customer (parties obliged to inform each other if they receive such a request); • acknowledgement by the retailer of other circumstances where the distributor is entitled to disconnect; • requirements for reconnection. 	
	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"> • the retailer to transfer or refer to the distributor customer calls in relation to faults or emergencies; • the information to be provided by the distributor to the retailer in this regard, and what information the retailer may provide to the customer. 	
	Handling of complaints	The UoS agreement/interface contract would provide for each party	

No.	Subject	Recommendation	Comments
	(including re billing)	to otherwise transfer or refer to the other any customer complaints received that relate to the other party, and may also include provisions requiring the parties to cooperate in addressing such complaints.	
	Other customer inquiries and claims	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. See also above in relation to allocation of liability.	
	Metering	See comments above in relation to billing. Other relevant provisions in relation to metering would be: <ul style="list-style-type: none"> • obligations imposed on the party responsible for metering to use best endeavours to read meters at a particular frequency and to provide metering data to the other party; • obligations on both parties to notify the other if they become aware of any change to access conditions to a customer premises. 	
	Information sharing in relation to customer information and planned and unplanned outages	The UoS agreement/interface contract would include additional obligations for the parties to share information: <ul style="list-style-type: none"> • the provision of customer details by the retailer to the distributor and of any customer details held by the distributor (eg. in relation to life support systems) to the retailer; • the provision of information in relation to planned and unplanned outages by the distributor to the retailer (and associated referral provisions, similar to faults, as 	

No.	Subject	Recommendation	Comments
		<p>discussed above); and</p> <ul style="list-style-type: none"> • a general obligation to provide information required by the 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.	