

Ministerial Council on Energy
Standing Committee of Officials

Explanatory Material

First Exposure Draft

National Energy Retail Law

National Energy Retail Regulations

National Energy Retail Rules

April 2009

Contents

CONTENTS.....	II
RELEVANT PUBLICATIONS.....	IV
1 OVERVIEW.....	1
1.1 INTRODUCTION	1
1.2 DECISION FRAMEWORK AND AUSTRALIAN ENERGY MARKET AGREEMENT	1
1.3 TRANSITIONING TO THE NATIONAL FRAMEWORK.....	2
2 NECF POLICY ISSUES	4
2.1 AMENDMENTS TO POLICY FROM THE SCO POLICY PAPER	4
2.1.1 <i>Obligation to offer supply to non-residential gas customers</i>	4
2.1.2 <i>Publishing requirements for standing offer price</i>	4
2.1.3 <i>Tariffs and charges for deemed customer retail arrangements</i>	4
2.1.4 <i>Credit support between retailers and distributors</i>	5
2.1.5 <i>Performance monitoring and reporting</i>	6
2.1.6 <i>Other minor policy changes</i>	7
2.2 OTHER MATTERS RAISED BY STAKEHOLDERS.....	7
2.2.1 <i>Enforcement regime</i>	7
2.2.2 <i>Distributor – customer relationship in gas</i>	8
3 NATIONAL ENERGY RETAIL LAW, REGULATIONS AND RULES	9
3.1 INTRODUCTION	9
3.1.1 <i>Legal architecture</i>	9
3.1.2 <i>Definitional issues</i>	9
3.1.3 <i>Definitions related to the services provided by retailers and distributors</i>	10
3.2 RETAILER – SMALL CUSTOMER RELATIONSHIP.....	11
3.2.1 <i>Small customer definition thresholds prescribed in the Regulations</i>	11
3.2.2 <i>Financially responsible retailer and obligation to offer supply</i>	12
3.2.3 <i>Small market offer customers</i>	12
3.2.4 <i>Standing offer and standard retail contracts</i>	13
3.2.5 <i>Market retail contracts</i>	13
3.2.6 <i>National Energy Marketing Rules</i>	13
3.2.7 <i>Deemed customer retail arrangements</i>	13
3.2.8 <i>Prepayment meter systems</i>	14
3.2.9 <i>Customer hardship regime</i>	14
3.2.10 <i>Large customers</i>	15
3.3 DISTRIBUTOR – RETAIL CUSTOMER RELATIONSHIP	15
3.3.1 <i>Deemed standard distribution contract</i>	16
3.3.2 <i>AER approved standard distribution contracts</i>	17
3.3.3 <i>National connection frameworks for electricity and gas</i>	17
3.4 DISTRIBUTOR – RETAILER RELATIONSHIP	18
3.4.1 <i>Retail support terms and conditions</i>	18
3.4.2 <i>Credit support</i>	19
3.4.3 <i>Liability and indemnity</i>	20
3.4.4 <i>GST</i>	20
3.5 ROLE OF THE AER IN THE NECF	20
3.5.1 <i>Enforceable undertakings</i>	20
3.5.2 <i>AER Compliance regime</i>	21
3.5.3 <i>AER performance regime</i>	21
3.6 ROLE OF THE AEMC AND THE MCE	21
3.7 RETAILER AUTHORISATION AND EXEMPTION	22
3.7.1 <i>Exemption regime</i>	23
3.8 DISPUTE RESOLUTION	23
3.8.1 <i>Customer disputes</i>	23

3.8.2	<i>Conduct disputes</i>	23
3.8.3	<i>Other retailer – distributor disputes</i>	24
3.9	RETAIL CONSULTATION PROCEDURE.....	24
4	COORDINATION WITH OTHER POLICY AREAS	25
4.1	SMART METERS.....	25
4.2	BILL BENCHMARKING	25
4.3	CONNECTION ARRANGEMENTS AND OTHER NETWORK MATTERS	26
4.3.1	<i>Electricity planning and connections</i>	26
4.3.2	<i>Other network policy matters</i>	26
4.4	RETAILER OF LAST RESORT	27
4.5	METERING, TRANSFERS AND OTHER BUSINESS RULES	27
4.6	COAG CONSUMER POLICY FRAMEWORK.....	27

Relevant Publications

SCO Consultation Regulatory Impact Statement, October 2008

http://www.ret.gov.au/Documents/mce/_documents/RIS%5FNational%5FFramework%5Ffor%5FRegulating%5FEle%5Fand%5FGas20081021085248.pdf

SCO 'A National Framework for Regulating Electricity and Gas (Energy) Distribution and Retail Services to Customers' June 2008

http://www.ret.gov.au/Documents/mce/_documents/MCE%5FSCO%5FNational%5FFramework20080613111731.pdf – SCO Policy Paper

http://www.ret.gov.au/Documents/mce/_documents/MCE%5FSCO%5FTable%5Fof%5FRecommendations20080613102115.pdf – Table of Recommendations

Allens Arthur Robinson 'National Framework for Distribution and Retail Regulation – Composite Paper and Table of Recommendations' June 2007

http://www.ret.gov.au/Documents/mce/_documents/National%5FFramework%5Ffor%5FNon%5FEconomic%5FDistribution%5Fand%5FRetail%5FRegulation20070619165729.pdf – Composite Paper

http://www.ret.gov.au/Documents/mce/_documents/National%5FFramework%5Ffor%5FDistribution20070619175259.doc – Table of Recommendations

Allens Arthur Robinson 'National Framework for Distribution and Retail Regulation – Supplementary Working Paper' April 2007

<http://www.ret.gov.au/Documents/mce/emr/rpwg/supp/default.html>

Allens Arthur Robinson 'National Framework for Distribution and Retail Regulation – Working Paper 4' March 2007

<http://www.ret.gov.au/Documents/mce/emr/rpwg/distr-retail-reg/reg4.html>

Allens Arthur Robinson 'National Framework for Distribution and Retail Regulation – Working Paper 3' January 2007

<http://www.ret.gov.au/Documents/mce/emr/rpwg/distr-retail-reg/reg3.html>

Allens Arthur Robinson 'National Framework for Distribution and Retail Regulation – Working Paper 2' December 2006

<http://www.ret.gov.au/Documents/mce/emr/rpwg/distr-retail-reg/reg2.html>

Allens Arthur Robinson 'National Framework for Distribution and Retail Regulation – Working Paper 1' November 2006

<http://www.ret.gov.au/Documents/mce/emr/rpwg/distr-retail-reg/reg1.html>

1 Overview

1.1 Introduction

The Ministerial Council on Energy (MCE) is tasked with creating a national framework for regulating the sale and supply of energy (both electricity and gas) to retail customers – a National Energy Customer Framework (NECF). The NECF forms part of ongoing national energy market reforms set out in the Australian Energy Market Agreement (AEMA), as amended in 2006.

This document accompanies the First Exposure Draft National Energy Retail Law (the NERL or the Law), National Energy Retail Regulations (the Regulations) and National Energy Retail Rules (the NERR or the Rules) for the NECF. This package is referred to as the 'First Exposure Draft'. The purpose of this document is to describe the process to date for developing, and the key features of, the First Exposure Draft.

Much of the core policy underpinning this Exposure Draft package was set out in the MCE Standing Committee of Officials (SCO) document *A National Framework for Regulating Electricity and Gas (Energy) Distribution and Retail Services to Customers: Policy Response Paper* (the SCO Policy Paper) in June 2008. The SCO Policy Paper responded to the recommendations made by consultants Allens Arthur Robinson (AAR) in the Composite Paper released in June 2007. The outcomes of consultation on the SCO Policy Paper were further considered by the SCO and, where endorsed, are set out in this paper and the First Exposure Draft Law, Regulations and Rules.

The structure of this paper is as follows:

- Section 2 explains the policy changes from the SCO Policy Paper;
- Section 3 explains the content of the First Exposure Draft Law, Regulations and Rules and the legislative structure adopted for the purpose of the First Exposure Draft; and
- Section 4 notes the relationship between the First Exposure Draft for the NECF and other related MCE work streams.

The MCE will consider submissions on the First Exposure Draft prior to releasing a Second Exposure Draft of the Law, Regulations and Rules in late 2009. The MCE anticipates introducing the final legislative proposals into the South Australian Parliament in 2010. Both this paper and the First Exposure Draft have been developed for the purposes of consultation and feedback and as such contain policies which have not yet been agreed to or endorsed by Energy Ministers.

1.2 Decision framework and Australian Energy Market Agreement

The decision framework used by the SCO in developing the First Exposure Draft for the NECF is that set out in the AEMA (clause 14 and Annexure 2). Clause 14 of the AEMA contains the commitments of the jurisdictions on the following matters:

- a single customer framework for electricity and gas (to the extent that this reflects operational realities);
- the process for the development and making of the initial Rules;

- principles relating to consistency, transparency and minimising duplication and regulatory burden for the initial Rules;
- removal of redundant levies, fees and charges associated with transferred functions;
- jurisdictional derogations to be clearly specified, with phase-out as appropriate according to identified timelines; and
- defined and time-limited transitional arrangements where necessary.

Under the AEMA, the States and Territories maintain responsibility for certain regulatory functions including: off-grid networks; community service obligations; measures to maintain distribution tariff equalisation schemes; land use, planning and environmental approvals or policies; and other items as listed in Annexure 2 of the AEMA.

1.3 Transitioning to the National Framework

The introduction of the NECF in each of the States and Territories¹ is a major regulatory transition which will require careful management. The current jurisdictional arrangements, while containing many similarities, have developed in different contexts and therefore reflect a range of different starting positions for the transition to the NECF.

Whilst Governments recognise that many stakeholders would be keen to see the NECF adopted as soon as possible after the national legislation is passed, it should be recognised that the NECF will replace a substantial body of State and Territory consumer legislation and that the transfer needs to be effected in as seamless and orderly manner as possible.

Unlike previous energy market reform packages implemented to date (e.g. the economic distribution reforms enacted in 2008), significant parts of State and Territory energy legislation will need to be removed or modified before the NECF can become operational at an individual jurisdictional level. In addition to reflecting the relevant transitional arrangements, some jurisdictional legislation will need to be retained over the longer term to cover certain functions, such as technical and safety matters and off-grid operations that will not form part of the national framework. Consequently, it is not possible to simply repeal all existing energy related jurisdictional legislation.

It may be necessary for some jurisdictions to transition on an incremental basis, taking up some parts of the NECF before others. Others may elect to make a comprehensive transition in one step. For example, while the NECF has been developed with a view to accommodating either the continuation of price regulation or the removal (phasing out) of price regulation at an individual jurisdictional level, those jurisdictions that currently have price regulation may find it difficult to adopt certain parts of the new national framework immediately depending on the form of regulation applying. Similarly, jurisdictions where Full Retail Contestability has not commenced may also face difficulties in applying all elements of the NECF immediately.

¹ Noting that there is currently no commitment from Western Australia to apply the national framework, nor from the Northern Territory to apply the national framework in respect of electricity. See the AEMA, as amended 2 June 2006.

At this stage, it is difficult to gauge the exact timing for the full implementation of the NECF. The legislative package for the NECF is expected to be introduced to the South Australian Parliament (the lead legislature for AEMA reforms) in 2010.

Jurisdictions remain committed to move to the new NECF as soon as practicable, as committed to in the AEMA. However, the timing for jurisdictions to apply the national framework is not known at this time, and is at the discretion of the jurisdictions.

States and Territories will be better placed to consider the expected timing involved in moving to the NECF once the national legislation is more settled. This is expected to be after feedback has been received and considered on this First Exposure Draft. This will enable jurisdictions to commence the process of closely examining the impact on current State legislation and to consult with stakeholders in their State or Territory on specific implementation and transitional arrangements relating to the adoption of the NECF.

2 NECF Policy Issues

2.1 Amendments to policy from the SCO Policy Paper

As noted in the previous section, the policy underpinning the NECF contained in this First Exposure Draft largely reflects that set out in the SCO Policy Paper and Table of Recommendations released in June 2008. However, a number of matters were raised in consultation on the SCO Policy Paper which has led to some policy changes for the NECF. These changes are outlined below.

2.1.1 Obligation to offer supply to non-residential gas customers

The SCO Policy Paper proposed a '2-tier' model for the obligation to offer supply to small electricity customers. Under this model, for non-residential customers (now called 'business customers') consuming between 40 megawatt hours (MWh) and 100 MWh of electricity per annum, (called small market offer customers) a retailer may fulfill its obligation to offer supply by offering either a standard or market retail contract to these customers.

Industry stakeholders, particularly retailers, welcomed this approach and strongly advocated that a similar model be instituted for gas customers (if the proposed threshold for the definition of a small gas customer could not be lowered).

Recognising that gas business customers are likely to have diverse consumption patterns and needs, the SCO endorsed a 2-tier small customer model in gas, with retailers able to fulfill their obligation to supply business customers consuming between 400 gigajoules (GJ) and 1 terajoule (TJ) of gas per annum by offering either a standard or market retail contract.

2.1.2 Publishing requirements for standing offer price

The SCO Policy Paper included requirements in relation to standing offer prices which would require retailers to publish their standing offer prices (and any variations) no less than 20 business days before they take effect. Retailer submissions opposed this requirement, noting it may leave retailers financially exposed if notice of distribution prices was not aligned. As a result, the SCO determined that standing offer prices must be published 10 business days before the prices take effect.

2.1.3 Tariffs and charges for deemed customer retail arrangements

Deemed supply arrangements (now called deemed customer retail arrangements) are the arrangements that clarify the respective rights and obligations of customers and retailers where a small customer consumes energy but does so without a contractual relationship for customer retail services in place. This circumstance is most likely to occur where a new customer moves into a premises and commences using energy without contacting a retailer because the connection point at the premises was not de-energised when the previous customer vacated the premises.

The SCO Policy Paper proposed that retailers:

- could publish a deemed supply tariff which differed from the applicable standing offer tariff; and
- would be entitled to arrange for de-energisation of the premises if the customer had not entered into a contract after six months.

A number of stakeholders expressed concerns with these recommendations. Ombudsmen and customer representative groups were concerned that this could result in deemed supply tariffs being set at punitive rates. A number of stakeholders also indicated that a six month time limit on deemed customer retail arrangements was not appropriate.

As a result, the provisions for deemed customer retail arrangements in the NECF, contained in the First Exposure Draft, include the following:

- the tariff applicable to deemed customer retail arrangements will be the relevant retailer's standing offer price²;
- there will not be a set period of time after which an automatic termination of deemed customer retail arrangements occurs. However, retailers will rely on the general regime for de-energising premises where a party has not met the pre-conditions for supply (to provide their name and contact details); and
- where a retailer already has the billing details of a customer on deemed customer retail arrangements (such as where a market contract lapses) the retailer may transition the customer onto the retailer's standard retail contract rather than de-energising the customer's premises.

2.1.4 Credit support between retailers and distributors

The SCO Policy Paper proposed that a distributor would be able to require a retailer to provide credit support in certain circumstances and that the Retail Support Contract (RSC) will set out the approach to determine the amount and form of the credit support, when it may be drawn upon and other matters.

Stakeholder feedback generally agreed with the suggestion of using alternative forms of credit support to meet credit support requirements. Distributors and retailers tended to agree that credit support arrangements should provide an appropriate balance between minimising the risk exposure of distributors to the non-payment of distribution charges and the costs that the arrangements impose upon retailers.

The SCO has accepted that distributors should be entitled to require credit support from certain retailers to enable distributors to manage their risk of exposure to non-payment for services by a retailer in a regulatory environment where a distributor cannot refuse to provide such services. It is also accepted that such credit support arrangements should not be so onerous as to impose unreasonable costs on retailers or effectively create a barrier to entry in the retail market.

The SCO further considers it likely that the 'best' approach to determining:

- a) which retailers should be required to provide credit support; and
- b) how much, and in what form, that credit support should be provided,

² Noting this may be a regulated tariff, subject to any price regulation that may apply in the relevant jurisdiction.

will change over time as new approaches are developed and implemented by regulators in and beyond Australia. The NERL and NERR have therefore been drafted so as to be relatively flexible, with these requirements to be the subject of Credit Support Guidelines published by the Australian Energy Regulator (AER). The SCO's aim in creating the flexible regime reflected in the NERL and NERR is to encourage parties to reach a mutually acceptable negotiated outcome, but also provide suitable guidance (and, where necessary, dispute resolution mechanisms) in the event agreement cannot be reached.

The detail of the proposed credit support provisions in the NERL and NERR is discussed further in Section 3 of this paper.

2.1.5 Performance monitoring and reporting

The SCO Policy Paper specifically foresaw a performance monitoring and reporting regime including hardship and marketing. A number of stakeholders expressed concerns that there was insufficient detail provided on the proposed performance reporting regime particularly as current jurisdictional regimes were more detailed. As a result, the SCO has endorsed more explicit performance monitoring and reporting functions for inclusion in the NECF.

The SCO has determined that the NECF will include a requirement that the AER prepare and publish an annual Retail Market Performance Report on range of matters including:

- performance of retailers against national hardship indicators to be developed by the AER;
- performance of regulated entities against any applicable service standards;
- a retail market overview (e.g. the number of retailers and those actively selling to customers); and
- a Retail Market Performance Report on the performance of regulated entities in relation to matters including
 - customer service and complaints (e.g. in relation to marketing);
 - payment plans
 - de-energisations and re-energisations
 - concessions
 - direct debt defaults; and
 - prepayment schemes.

The purpose of the Retail Market Performance Report is to enable the AER and other interested persons to observe levels and trends in performance, which may be broken down according to:

- participating jurisdictions;
- customer classes (i.e. residential and small business); and
- specific activities (i.e. complaints in relation to billing, marketing or other specific matters).

The NECF will also include a requirement that the AER develop performance reporting guidelines to provide guidance to regulated entities on matters including measuring their performance against the national hardship indicators, details about the information and data that must be provided to the AER.

The SCO Policy Paper also considered whether Regulatory Information Instruments (RIIs) should be included in the NECF. Several stakeholders commented that these instruments, which were designed with access regulation in mind, were not appropriate for the NECF. Noting these concerns, and giving further consideration to the sufficiency of the AER's other information gathering powers, the SCO has determined that RIIs will not be included in the monitoring and enforcement regime for the NECF.

However the Rules will require regulated entities to provide information and data to the AER to facilitate the preparation of annual compliance and performance reports.

2.1.6 Other minor policy changes

In addition to the matters discussed above, stakeholders made extensive comments on many other aspects of the NECF. The SCO has considered these comments and, in a number of cases, has amended aspects of the NECF in recognition of the issues raised. A summary of minor policy changes following consultation on the SCO Policy Paper is set out in Attachment A. The First Exposure Draft itself also necessarily includes a level of detail that was not evident from the SCO Policy Paper. Many matters of additional detail or clarification raised in stakeholder submissions are reflected in the First Exposure Draft and have not been specifically addressed in this Information Paper or Attachment A.

2.2 Other matters raised by stakeholders

In addition to the matters outlined above, stakeholders raised concerns about two key elements of the NECF on which the SCO does not propose to change its policy position.

2.2.1 Enforcement regime

A key feature of the enhanced enforcement regime provided for in the NECF, which applies to matters under the national energy regulatory regimes more broadly, is the ability of lower courts to hear matters within each participating jurisdiction. Although stakeholders raised a concern that this expansion of the role of lower courts would result in a greater number of court-based actions, the SCO remains committed to lower courts having a role for a number of reasons, including:

- providing the AER with more flexible and less costly enforcement options, which promotes efficiency by ensuring that only the more serious and complex matters are brought before the superior courts;
- giving industry access to the lower courts which creates consistency with other industry sectors; and
- increasing the opportunity and reducing the costs for third parties (i.e. parties other than the AER) to access the court system.

Parties other than the AER presently have access to State and Territory lower courts under the existing national energy Laws and Rules (the National Electricity Law and the National Gas Law and Rules made under those Laws). For simplicity, for the NECF, the AER will have access only to the Federal Magistrates Court for matters suited to the lower courts.

Stakeholders also raised concerns over the enforcement regime (and enforceable undertakings in particular) applying more generally to other energy market

participants, such as transmission businesses. SCO considers that the strong policy rationale for enhancing the enforcement regime for distribution and retail businesses applies equally to all energy market participants. The availability of an administrative remedy will provide the AER with more flexible enforcement options for the energy sector.

2.2.2 Distributor – customer relationship in gas

During consultation on the SCO Policy Paper, gas distribution businesses put forward the view that the current predominantly 'linear' contractual model in gas is adequate and should not be changed to incorporate a direct customer – distributor contractual relationship (or any further distributor – retailer contractual requirements), whether for consistency with electricity or for any other reason.

After careful consideration, the SCO determined that the policy for a direct distributor – customer relationship is the correct way to proceed in the gas sector. The key reasons are that a distributor – customer contract:

- presents a framework for the future. Issues that arise in the customer-distributor relationship from this point onward can be directly addressed by the Australian Energy Market Commission (AEMC) through customer distribution contracts and/or retail support contractual arrangements rather than through retailer – distributor practices and access arrangements;
- provides greater clarity. Customers will be provided with the terms and conditions of their dealings with distributors, and this will assist in clarifying what it is a distributor (as opposed to their retailer) does for them. Understanding the retailer-distributor distinction and its practical effects is a key issue in competitive retail markets;
- facilitates retail competition by assisting in the separation of the financial and physical aspects of providing energy services to customers. Retailers are better able to concentrate on their key advantages in procuring and trading energy on behalf of their customers;
- promotes accountability and flexibility. The rules of customer – distributor interaction are specified as a mutual responsibility. The alternative is to deal with these interactions via formal Rules which miss the important aspect of reciprocity in the relationship and are less transparent in communicating these responsibilities to customers. It also does not preclude parties negotiating alternate arrangements by mutual consent; and
- reflects the actual relationship, which in turn has key advantages in directly assigning liabilities and risks between the parties, according to where each party has control. Allowing customers a direct relationship with their distributor establishes responsibility to the party which is ultimately affected.

3 National Energy Retail Law, Regulations and Rules

3.1 Introduction

3.1.1 Legal architecture

The SCO Policy Paper indicated that the NECF would be implemented via a single set of Rules that will align the various regimes for retail supply of electricity and gas to customers. The transfer of the current jurisdictional regimes to a national framework provides a unique opportunity to put in place an integrated regulatory framework for the retail supply of both electricity and gas – ‘energy’.

The First Exposure Draft comprises the following draft legal instruments:

- a new, stand-alone NERL that sets up the framework for the NECF to be applied as the law of each jurisdiction in the same way as the NEL and the NGL are currently applied laws, but the NERL will deal exclusively with the subject matters of the NECF;
- a new set of Rules, the NERR, which focus on consumer protection matters, including three model contracts governing the relationship between customers, retailers and distributors respectively, and which would be made under the NERL in the same way as the NER and the NGR are each made under the NEL and the NGL; and
- a new set of Regulations, which would be made under the NERL in the same way as other existing ‘national’ regulations are made under the NEL and NGL.

For the purposes of the development of the First Exposure Draft, the SCO considers that stand-alone NERL, NERR and Regulations would best allow stakeholders to come to grips with the whole of the new regulatory regime. However, the SCO recognises that an alternative architectural model is available, whereby the NERL provisions implementing the NECF are incorporated into the existing NEL and NGL by way of amending legislation. A single set of National Retail Rules for electricity and gas is considered essential irrespective of whether the NECF is implemented via a new NERL or amendments to the NEL and NGL.

The SCO seeks views and comments from interested stakeholders on the proposed legal architecture, and whether there are any policy reasons why a new stand-alone NERL regime should not be adopted to support the single Rules for the NECF.

Irrespective of the architectural model chosen, the implemented NECF package dealing with customer retail supply matters must work consistently with any areas of interface with the NEL and NGL (and the Rules made under them). Where it is necessary to clarify or link the new NECF package with existing national electricity and gas regimes, these changes will be implemented via consequential amendments to the NEL/NGL and included as part of the Second Exposure Draft package due for release later in 2009. It should be noted that there is no proposal to consolidate the NEL/NER and NGL/NGR regimes – these will continue to govern the national access regimes and wholesale markets as applicable.

3.1.2 Definitional issues

The SCO recognises the key role played by definitions in setting the scope of legal rights and obligations under the NERL and NERR. Where appropriate, terminology

from existing national and jurisdictional legislation has been employed, although in many cases the fact that the NECF requires terminology which:

- a) has a particular “customer” focus or relevance; and
- b) is capable of applying equally in the electricity and gas contexts,

has meant that terms and definitions from the existing NEL and NGL regimes have not necessarily been incorporated into the NERL and NERR.

3.1.3 Definitions related to the services provided by retailers and distributors

A number of key service definitions in particular have specific meaning and importance in the NERL and NERR, and stakeholder views on the sufficiency and clarity of these definitions is invited.

- **customer retail service** means the sale of energy by a retailer to a customer at a supply point. The way in which customer retail services are to be provided to small customers is subject to the requirements of Part 2 of the NERL and Part 2 of the NERR. Note that Part 5 of the NERL prohibits the sale of energy by any person unless the person holds a current retailer authorisation or is subject to an exemption.
- **customer distribution service** means any one or more of the following –
 - a) a customer connection service;
 - b) a customer supply service;
 - c) a service prescribed by the Rules as a customer distribution service for the purposes of this definition.
 - **customer connection services** include both new connections and energisation; and
 - **customer supply service** is the transfer of energy from a distributor's distribution system at a supply point.

The way in which customer distribution services are to be provided to small and large customers is subject to the requirements in Part 3 of the NERL and Part 4 of the NERR, although in many cases the NERL and NERR provisions are at this First Exposure draft stage incomplete. This is because it is anticipated that ongoing work in relation to national connections frameworks will inform the scope of the rights and obligations between distributors and customers that are to be implemented in the NECF (discussed further in Section 4 below).

- **supply point** means the point at which a distribution system connects to an energy installation or equipment that serves the premises of one or more customers.
- **distribution system** has been defined differentially for the electricity and gas contexts, but also seeks to capture at a functional level the system "used" to supply energy to customers at a supply point, without becoming entangled in (physical) connection issues.

Both the terms **energisation** and **connection** have been intentionally used in order to capture different concepts and processes (with corresponding meanings to apply to the terms de-energisation and disconnection):

- **connection** is used in the context of establishing physical infrastructure for the purpose of supplying energy to a premises; and
- **energisation** is used in the context of opening/enabling an existing connection such that energy may be supplied to a premises (de-energisation correspondingly refers to the 'shutting off' of the supply of energy, while disconnection refers to the physical removal of assets relating to the supply point) .

The definitions and descriptions of the service relationships set out in each of the model contracts at Schedules 1, 2 and 3 of the NERR are also key concepts in the appropriate allocation of rights and responsibilities between distributors, retailers and customers respectively. The model contracts have been drafted on the basis of the provision of services by retailers and distributors to customers as follows:

- **retailers** sell energy that is delivered at the connection to the customer's premises. The energy is sold and transferred to the customer at the supply point. The retailer therefore arranges the conveyance of energy to that point by the distributor, the costs of which are incorporated in the price charged by the retailer to the customer; and
- **distributors** convey energy for retailers to support their obligation to sell to the customer at the supply point. They are also responsible to customers for ensuring that energy is supplied at applicable standards between the distribution system and the customer's premises. That is, the distributor – customer relationship is focused on what happens at the point of connection, in terms of quality and reliability of energy supply and the interface between the respective property and equipment of the distributor and the customer. The customer pays an amount representing the charges for customer distribution services to the retailer (noting that a distributor has no right to require payment directly from a small customer under a standard distribution contract).

The model contracts have also been drafted on the assumption of the following relationship between distributors and retailers in relation to their 'shared customers':

- distributors provide an energy conveyance/delivery service to support the retailer's obligation to sell to the customer at the supply point; and
- retailers pay distributors for both the conveyance/delivery service and the customer distribution service for each shared customer's supply points as a principal obligation to the distributor.

Again, stakeholder comment on the practical implications of the drafting in relation to the service and financial relationships as described in the model contracts is invited.

3.2 Retailer – small customer relationship

The NECF provisions regulating the relationship between retailers and small customers in relation to the sale of energy are contained in Part 2 of the NERL, which is supplemented by Part 2 of the NERR and the model terms and conditions of the Standard Retail Contract (set out in Schedule 1 to the NERR). Some key aspects of these provisions are discussed below.

3.2.1 Small customer definition thresholds prescribed in the Regulations

Section 106 of the NERL defines 'small customers' as:

- a) residential customers; and

- b) business customers who consume energy at or below an upper threshold as prescribed by the Regulations.

Clause 9 of the Regulations prescribes the following upper consumption thresholds for business customers:

- for electricity - 100 MWh per annum; and
- for gas – 1 TJ per annum.

Clause 10 of the Regulations provides for these thresholds to be reviewed at least every 5 years.

3.2.2 Financially responsible retailer and obligation to offer supply

The retailer with the obligation to offer to provide customer retail services to small customers (i.e. to make an offer to supply under a 'standing offer' or market retail contract), will be the 'designated retailer'. For existing connections, the designated retailer will be the 'financially responsible retailer' for the supply point (see section 106 of the NERL).

In gas this is the retailer who has financial responsibility for the supply point and in electricity this means the financially responsible market participant for the supply point under the NER.

For new connections, the designated retailer will be a local area retailer who will be identified by jurisdictional instrument (see section 107 of the NERL).

Rules 205 to 206 include requirements for both distributors and retailers to facilitate a customer identifying who is the financially responsible retailer.

3.2.3 Small market offer customers

Section 212 of the NERL provides that a designated retailer may, in respect of a small market offer customer, elect to satisfy its obligation to offer supply by making:

- a market offer, i.e. under a market retail contract which contains the minimum terms and conditions; or
- a standing offer to that customer.

Under clause 9 of the Regulations, the customers that will be prescribed as small market offer customers are:

- business electricity customers consuming above 40 MWh (but no more than 100 MWh) per annum of electricity; and
- business gas customers consuming above 400 GJ (but no more than 1 TJ) per annum of gas.

For the small market offer customers, once the designated retailer has made a market offer it is not obliged to make a standing offer to that customer.

Clause 10 of the Regulations also includes a mechanism for future reviews of the consumption threshold for defining small market offer customers.

3.2.4 Standing offer and standard retail contracts

Section 204 of the NERL requires a designated retailer's standing offer to be in the form of the retailer's standard retail contract and at the standing offer price. The standing offer price must be published by the retailer in advance (see section 205 of the NERL) and may be a regulated price in jurisdictions where retail price controls remain in place.

A retailer's standard retail contract must conform to the model terms and conditions set out in Schedule 1 to the NERL, with only 'permitted alterations' and 'required additions' allowed. A retailer's standard retail contract must also be published in advance.

3.2.5 Market retail contracts

Retailers and small customers may agree to enter into a market retail contract for the provision of customer retail services. A small customer's 'informed consent' (see section 218 of the NERL) is required. Relevant rules in Part 2 of the NERR are specifically noted as applying as minimum requirements for market retail contracts. These minimum requirements operate as minimum terms and conditions which will apply to the extent of any inconsistency with the provisions of any market retail contract in place between a retailer and a small customer (see section 217 of the NERL).

3.2.6 National Energy Marketing Rules

Section 223 of the Law enables the making of National Energy Marketing Rules (Marketing Rules). In accordance with SCO Policy Paper, the Marketing Rules will not cover matters that are already the subject of general law requirements (i.e. in the Commonwealth *Trade Practices Act 1974* (TPA) and state Fair Trading legislation) which are already consistent across jurisdictions and appropriate for marketing energy retail services to retail customers. As such, the Marketing Rules in Schedule 4 of the Rules do not include matters dealt with under general law such as:

- contact times for door knocking and telephone marketing; and
- general conduct standards including prohibitions on misleading, deceptive and unconscionable conduct, undue influence, coercion and harassment.

The provisions of the Marketing Rules may require modification as elements of the Council of Australian Governments (COAG) new consumer policy framework are further developed. The new consumer policy framework is discussed further in Section 4 of this paper.

3.2.7 Deemed customer retail arrangements

Sections 225-226 of the NERL provide for a deemed contractual arrangement to apply between the financially responsible retailer and a 'move-in customer' or 'carry-over customer' where such a customer starts consuming energy at premises without first entering into a formal contract with a retailer. The deemed contractual arrangement will have the same terms and conditions as the retailer's standard retail contract.

Under rules 237-239, both a retailer and a customer in a deemed customer retail arrangement are obliged to take certain steps to facilitate the conclusion of a formal

customer retail contract as soon as possible. Rule 609 allows a retailer to arrange for de-energisation of a move-in or carry-over customer where the customer has not complied with the requirements of rule 238.

3.2.8 Prepayment meter systems

Not all participating jurisdictions intend to allow for the retailing of energy using prepayment meters, and this is recognised in section 227 of the NERL, which requires a Minister of a participating jurisdiction to publish a notice in the South Australian Government Gazette before prepayment meters may be used by retailers in the Minister's jurisdiction.

Where prepayment meters are allowed in particular jurisdictions, retailers intending to sell energy using such systems must comply with all of the applicable NERL and NERR requirements, including the particular provisions in respect of prepayment meters set out in Part 8 of the NERR.

3.2.9 Customer hardship regime

Part 2 Division 8 of the NERL sets out the statutory provisions for a national Customer Hardship regime. Section 103 defines a 'hardship customer' as a residential customer who has been identified under the retailer's Customer Hardship Policy as a customer who is experiencing payment difficulties due to hardship.

Customer Hardship Policy

Section 232 of the NERL requires all retailers to have a Customer Hardship Policy, the purpose of which is to assist hardship customers to better manage their energy bills on an ongoing basis. A retailer must implement and comply with a hardship policy that complies with the requirements in the Law, including the content requirements in section 233 for:

- the early identification by retailers and self-identification by customers of those experiencing payment difficulties due to hardship for the early response by retailers;
- flexible payment options for payment of energy bills by hardship customers in accordance with the Rules;
- processes for identifying government concession programs and financial counselling services to assist in hardship mitigation, and notifying hardship customers; and
- other programs designed to assist hardship customers.

De-energisation of hardship customers

Section 236 of the NERL contains a general statement of principle that de-energisation of a hardship customer due to inability to pay should be a last resort option. Rule 605 also provides that supply to the premises of hardship customers should be de-energised only where a customer has not paid a bill and has not:

- agreed to a Payment Plan (the requirements for which are set out in the Rules) or other payment option to pay a bill offered by the retailer; or
- adhered to that customer's obligations to make payments in accordance with an agreed Payment Plan or other payment option relating to the payment of bills.

It should be noted that retailers will also often be requested to provide instalment payment options to a wider group of customers than just hardship customers. The retailer may choose to provide such payment options via the same payment plan that applies to hardship customers, but also may choose to provide an alternative payment plan option. The NERL and NERR do not contain specific provisions in relation to the requirements of payment plans other than for hardship customers.

AER does not approve Customer Hardship Policy

The AER will not have an approval function in relation to a retailer's Customer Hardship Policy. The requirement is for the retailer to publish their Customer Hardship Policy. The AER will monitor and must carry out compliance audits (and thereby ensure compliance) as to whether a Customer Hardship Policy published by a retailer complies with the requirements of the NERL and NERR (see section 1004(2) of the NERL) and whether the retailer is implementing their Customer Hardship Policy.

AER to develop national hardship indicators

Section 1016 of the NERL, supplemented by Part 3 of the Rules, gives the AER new functions in relation to the customer hardship regime to develop 'national hardship indicators' and to monitor and report on retailer performance against those national hardship indicators.

3.2.10 Large customers

Consistent with the SCO Policy Paper, the NECF does not include energy-specific regulation in relation to the provision of customer retail services to large customers. Large customers are defined in section 106 of the NERL and clause 8 of the Regulations as business customers consuming over the upper consumption threshold of 100MWh of electricity or 1TJ of gas per annum.

Part 2 of the NERL (see section 201(2)) and accordingly Parts 2 and 3 of the NERR do not apply to the large customer – retailer relationship. The effect of this is that parties should look to the general law, including the TPA and Fair Trading legislation, to understand the requirements that must be met. The implementation of the COAG consumer policy framework, and in particular the new Australian Consumer Law (ACL) discussed below in Section 4 of this paper, will likely modify these general law requirements applying to large customers in the future.

3.3 Distributor – retail customer relationship

Part 3 of the NERL and Part 4 of the NERR provide a framework for the regulation of the direct relationship between distributors and small and large customers with respect to the physical interface and supply of both electricity and gas. The key features covering this relationship include:

- a statutory obligation on distributors to offer customer connection services and customer supply services to retail customers (see sections 302 and 303 of the NERL);
- provision for three alternative kinds of customer distribution contracts which will create contractual obligations between distributors and customers; and
- rules that provide for a 'model' standard distribution contract that will be deemed to apply to small and large customers in certain circumstances.

The distributor – customer contract under the NECF is based on the following distributor – customer relationship:

- a distributor provides customer distribution services to the customer at its supply point under the customer distribution contract;
- a distributor is responsible to a customer for ensuring that energy sold and delivered under the customer retail contract is transferred to the customer's premises in accordance with applicable standards;
- the distributor-customer relationship is focused on the quality and reliability of energy supply to the customer's premises at the supply point; and
- the customer distribution contract recognises that the customer usually pays an amount representing the charges for customer distribution services to the retailer (but the distributor has no right to require payment directly from a small customer under a standard distribution contract).

The three customer distribution contracts provided for in section 304 of the NERL are:

- the deemed standard distribution contract – which will be deemed to apply to small customers who take supply (but may be applied to large customers where there is no AER approved standard distribution contract that applies);
- AER approved standard distribution contract for classes of large customers – which distributors may submit to the AER for approval; and
- negotiated distribution contracts – small and large customers and distributors will not be prevented from negotiating alternative arrangements to those provided for in a standard distribution contract.

Relationship with NEL and NGL access regimes

Under the existing NEL and NGL access regimes, customers may seek access to the conveyance services provided by means of gas and electricity distribution systems. Section 316 of the NERL recognises this right and makes it clear that nothing in Part 3 of the NERL affects the rights of customers to negotiate a contract for an electricity network service or a pipeline service (as defined in the NEL and NGL, respectively).

However, in practice few customers of retailers will seek access to conveyance services, because a customer can only purchase energy at the supply point for the customer's premises and their retailer will be provided with conveyance services by the distributor for that energy.

3.3.1 Deemed standard distribution contract

As for the obligations on retailers in relation to standard retail contracts, a distributor must adopt and publish its own form of standard distribution contract, in accordance with the requirements in Division 4 of Part 3 of the Law. The model terms for standard distribution contracts are set out in Schedule 2 to the Rules. Section 307 of the NERL will deem a standard distribution contract to apply between distributors and small customers, and to large customers where no applicable AER approved standard distribution contract or negotiated distribution contract is in place. The deemed application of a standard distribution contract directly establishes mutual rights and obligations between distributors and customers.

There are two key features of the standard distribution contract worth noting. Firstly, this contract has been designed to require compliance with the ongoing obligations

on distributors arising from jurisdictional energy instruments, such as service standards and Guaranteed Service Level (GSL) schemes. In respect of some provisions, this will require distributors to insert the relevant jurisdictionally-based requirements into the contract that they adopt as their standard distribution contract.

Secondly, section 1301 of the NERL includes a statutory immunity from liability for failure to supply energy for both distributors and retailers, which will operate in relation to the supply of both electricity and gas. The immunity is based on the wording in section 120 of the NEL and precludes liability from arising except where there has been negligence or bad faith. The liability regime for distributors therefore includes:

- the statutory immunity for a failure to supply (in whole or in part) in section 1301 of the NERL;
- a head of power in section 803 of the NERL for the making of Rules for or with respect to the liability of distributors, retailers and customers and for the provision of indemnities; and
- provisions in the model standard distribution contract reflecting the statutory immunity for a failure to supply (clause 6.2); implied warranties (clause 6.1); general statement as to quality of energy supplied to a customer's premises (clause 5.5); and circumstances of interruption to supply (clause 9). The underlying policy rationale is to ensure that both distributors and retailers are not liable for matters beyond their control in relation to the quality and reliability of supply of energy.

3.3.2 AER approved standard distribution contracts

Section 312 of the NERL allows, but does not require, a distributor to submit one or more forms of customer distribution contract which apply only to large customers, or classes of large customers, to the AER for approval. The NERL provides the AER with the discretion to grant approval where satisfied that the proposed terms and conditions are fair and reasonable (see section 312(3)). Once approved, an AER approved standard distribution contract will be deemed to apply between the distributor and all large customers to which the contract relates (other than those customers, if any, that have a negotiated distribution contract in place) in place of the standard distribution contract.

In addition, rule 402 contemplates that AER approved standard distribution contracts may vary or exclude the requirements of Part 4 of the NERR as they apply to those large customers.

3.3.3 National connection frameworks for electricity and gas

The SCO recognises that requirements and pre-conditions for new connections (which include modifications to existing connections) are closely related to the rules and contracts governing ongoing supply of energy to retail customers.

In addition, the distribution services provided by distributors are the subject of economic regulation under the national electricity and gas access regimes, as is funding of connection-related works and equipment.

Recognising that the connections framework relates to both the economic regulation of distribution business and ongoing supply to retail customers, the First Exposure Draft for the NECF has therefore fully addressed energisation where no separate

(new) connection application is required (only in relation to the ongoing supply of energy). Some examples of distribution network connection-related matters not covered in this First Exposure Draft include:

- The processes associated with obtaining a new or modified connection to a distribution network;
- the technical requirements associated with various types of standard and non-standard connections;
- minimum content for new connection contracts;
- connection costs;
- service standard content;
- connection for embedded generation; and
- a negotiating framework for negotiated connections.

The development of a national framework for electricity distribution network connections allows for the possibility of harmonisation of the various jurisdictional frameworks currently applying to distribution network connections.

The Network Policy Working Group (NPWG) has been tasked with developing national arrangements for the following regulatory matters identified in the AEMA:

- Connection and capital contributions – arrangements for new connections, new connection charges and capital works contributions;
- Distribution network expansion – determining when network extensions are part of the regulated service and how charges are levied; and
- Distributor interface with customers and embedded generators – determining the nature of the distributor – embedded generator relationship including use of the distribution system.

The complete framework for new connections being developed by the NPWG and the legal implementation of the national distribution network connection framework will form part of the Second Exposure Draft NERL and NERR package (where it impacts directly on the design of the NECF). In addition, the Second Exposure Draft will include a package of amendments to the NEL and the NER, and to the NGL and the NGR for the implementation of the national electricity and gas connection frameworks.

3.4 Distributor – retailer relationship

As foreshadowed in the SCO Policy Paper, successful implementation of the NECF is dependent upon certain mutual rights and obligations being imposed between distributors and retailers, where they have shared customers. Part 4 of the NERL, as supplemented by Part 5 of the NERR and the 'retail support terms and conditions' set out in Schedule 3 to the NERR, provide for such arrangements.

3.4.1 Retail support terms and conditions

Part 4 of the NERL operates so as to deem the application of certain contractual rights and obligations (in the form of mandatory retail support terms and conditions) between distributors and retailers where they have customers in common. These terms and conditions are identified by an asterisk in Schedule 3 to the NERR. The way in which the retail support terms and conditions are implemented depends upon whether:

- an existing contractual relationship governing the sale and supply of energy to shared customers has been negotiated and is in place between the distributor and the retailer (which may be an existing 'gas service agreement'); or
- no such existing contract is in place.

In the former case, the mandatory retail support terms and conditions are deemed to be incorporated into the relevant existing contract. In the latter case, all of the terms and conditions set out in Schedule 3 (including the mandatory retail support terms and conditions and other terms and conditions) are deemed to apply between the distributor and the retailer, so as to create a complete contractual arrangement (the default RSC) between the parties to support the sale and supply of energy to shared customers.

The retail support terms and conditions which will always apply (i.e. those that are asterisked in Schedule 3) are those terms which SCO considered to be essential. This is based on two considerations:

- the need to support the regulatory obligations of distributors and retailers under the NECF in the supply of energy to customers (for example, the clauses dealing with information sharing, fault and emergency information for customers, and customer enquiries and complaints); and/or
- the monopolist position of distributors means that a mandated set of minimum terms and conditions is required to ensure that retailers have access to a fair set of terms and conditions (for example, the clauses dealing with credit support and liability).

While distributors and retailers are not prevented from negotiating additional terms and conditions as part of their arrangements for energy supply to their shared customers, they are prevented, by virtue of section 408 of the NERL, from concluding an agreement which does not include the applicable retail support terms and conditions, or which includes other terms which are inconsistent with those terms and conditions.

3.4.2 Credit support

Provisions in relation to when a retailer may be required to provide credit support in favour of a distributor are set out in sections 411-413 of the NERL, as supplemented by rule 504, and clause 7 of the RSC at Schedule 3 to the NERR. Clause 7 is a mandatory term, and therefore will always be deemed to apply between a distributor and a retailer, in accordance with the provisions relating to the retail support terms and conditions discussed above.

Rule 504 requires the AER to develop and publish the Credit Support Guidelines which will specify the matters by reference to which a distributor and a retailer may agree as to:

- circumstances where the retailer should be required to provide credit support in favour of the distributor;
- the means for determining an appropriate level of credit support to be provided by the retailer;
- the form that any credit support may take; and
- when and how any existing credit support arrangements may be reviewed and revised.

In preparing the Credit Support Guidelines, the AER is to ensure that the Guidelines reflect the need for levels of credit support provided by a retailer to a distributor to be proportionate, taking into account:

- the retailer's assets and liabilities;
- the retailer's credit rating; and
- the risk posed by a retailer in default of payment to a distributor (for example, by reference to the retailer's share of the distributor's overall revenue).

The Rules also require the AER, in preparing the Credit Support Guidelines, to specify a variety of 'acceptable' forms of credit support which may include:

- a shareholder guarantee;
- a bank guarantee;
- a third party guarantee;
- credit insurance; or
- any other form agreed between the distributor and the retailer.

3.4.3 Liability and indemnity

Clause 13 of the RSC contains mandatory terms and therefore will be deemed to apply between distributors and retailers as discussed above. These clauses are designed to operate consistently with the liability and indemnity clauses in each of the regulated customer contracts and are not intended to detract from any statutory immunity provision benefiting either the retailer or distributor (including section 1301 of the NERL). Distributors and retailers are able to agree additional terms as between themselves with respect to liability and indemnity (for example, mutual caps on liability under the contract), but they must be consistent with the specified minimum terms.

3.4.4 GST

Clause 6 of the RSC is not presented as a mandatory term, as it is anticipated that existing agreements already provide (potentially in different ways) for any necessary clarification of the distributor – retailer relationship for GST purposes. Clause 6 has therefore been drafted as the minimum requirement for GST purposes in the event that the full RSC is deemed to apply on a default basis. Further, clause 6 has been drafted with the intent that existing arrangements with respect to GST in both the gas and electricity sectors not be amended or undermined. The SCO welcomes views from interested stakeholders as to the appropriateness of each of these clauses.

3.5 Role of the AER in the NECF

3.5.1 Enforceable undertakings

Generally speaking, the AER is to have an equivalent enforcement role under the NERL and the NERR as it has for the NEL and the NGL (see Part 11 of the NERL). For example, the NERL has an equivalent infringement notice regime which will be applied to breaches of obligations under the NERL and the NERR.

However, the NERL establishes a new enforceable undertaking regime, allowing the AER to accept enforceable undertakings modelled on section 87B of the TPA (see section 1101 NERL). This regime will ultimately apply more broadly than just to

distributors and retailers, by applying to all market participants. It is important to note, however, that the First Exposure Draft only provides for enforceable undertakings in respect of distributors and retailers. The consequential amendments to the NEL and NGL required to apply the enforceable undertaking regime more broadly to other entities will form part of the Second Exposure Draft. Implementation of this policy decision will be the subject of further stakeholder engagement at the time of the Second Exposure Draft.

3.5.2 AER Compliance regime

Part 10 of the NERL establishes a compliance monitoring and reporting regime focussed on the NECF. The compliance regime comprises the following key features:

- the AER will be required to monitor the compliance of regulated entities and other persons with the requirements of the NECF (section 1001 of the NERL);
- regulated entities will be required to establish policies, systems and procedures so that they can comply with their obligations under the NECF (section 1002);
- the AER will have powers to carry out compliance audits or to have them carried out (sections 1004-1007);
- regulated entities will be required to furnish information and data for the purpose of the AER's compliance monitoring role and for the preparation of the annual compliance report (section 1003); and
- the AER will be required to publish an annual compliance report for the NECF, and will make guidelines and procedures to support this role (sections 1008-1010).

3.5.3 AER performance regime

Part 10 of the NERL and Part 10 of NERR set out a rigorous performance regime, which provides for the following elements:

- regulated entities will be required to furnish information and data for the purpose of the AER's Retail market performance report (section 1011 of the NERL);
- the AER will have powers to carry out performance audits in respect of retailers by reference to the national hardship indicators developed by the AER (sections 1012 and 1016 of the NERL); and
- the AER will be required to publish an annual Retail market performance report on key aspects of the NECF, and will make guidelines and procedures to support this role (sections 1013-1015 of the NERL).

The content of retail market performance reports is specified in Part 10 of the NERR.

3.6 Role of the AEMC and the MCE

Part 7 of the NERL sets out the functions of the AEMC in relation to the new NERR, and in particular:

- the role of the AEMC in relation to carrying out reviews, (along the lines of the existing regimes in Part 4 of the NEL and Part 2.2 of the NGL); and
- the powers and functions of the AEMC in relation to the Rule making role (closely reflecting Part 7 of the NEL and Chapter 9 of the NGL).

Section 701 of the NERL includes the general statements of functions for the AEMC. In addition, section 803 sets out the subject matters of the new NERR, and makes provisions for both general and specific subject matters.

The NERL (sections 708-711) contains an equivalent role for the MCE (the issuing of Statements of Policy Principles) in relation to the NECF as it has for the NEL and NGL regimes.

The statutory objective in section 113 of the NERL (which also forms the basis of the rule making test for the making of amendments to the NERR) is an equivalent objective to that of the NEL and NGL regimes.

Once made initially by the South Australian Minister, the NERR are to be administered by the AEMC as the statutory Rule making body in the equivalent way to the NER and the NGR.

Part 7 of the NEL and Chapter 9 of the NGL set out the procedure for initiating, assessing and making amendments to the National Electricity Rules and the National Gas Rules respectively. Part 8 of the NERL contains the Rule making procedure for the NERR, which is the same as for the NEL and the NGL, but with necessary minor modifications to accommodate differences arising in relation to the NECF.

3.7 Retailer authorisation and exemption

Retailer authorisations and exemptions are dealt with in Part 5 of the NERL and Part 9 of the NERR. Section 501 of the NERL is the principal provision which creates a prohibition on the sale of energy to customers by a person unless that person either:

- a) holds either a retailer authorisation granted by the under the NERL, and has satisfied any applicable market registration requirements; or
- b) is subject to an exemption granted by the AER under the NERR.

The AER is required to maintain a Public Register of Authorised Retailers and Exempt Sellers in accordance with section 529 of the NERL and rule 920.

1.1.1 Retailer authorisation

Divisions 2 to 5 of Part 5 of the NERL set out:

- the process by means of which a person may apply to the AER for a retailer authorisation;
- the entry criteria which need to be satisfied by an applicant for a retailer authorisation. In this context it should be noted that while market registration is required prior to a person being entitled to sell energy without offending the section 501 prohibition, market registration is necessarily a separate process and is not a pre-condition for retailer authorisation;
- the ability of the AER to attach conditions to an authorisation relating to the satisfaction of the entry criteria; and
- the processes by which a retailer authorisation may be transferred, surrendered and revoked.

The AER must, under section 527 of the NERL, make Retailer Authorisation Guidelines to provide further guidance to applicants in relation to the authorisation process.

3.7.1 Exemption regime

Division 6 of Part 5 of the NERL empowers the AER to exempt persons or classes of persons from the requirement to hold a retailer authorisation in accordance with the NERR, and allows the AER to impose and enforce conditions on exempt sellers. The detail of the exempt selling regime is contained in Part 9 of the NERR.

Under the NERR (rule 902), the AER is empowered to grant 3 kinds of exemptions:

- individual exemptions, which are granted on application on a case-by-case basis;
- deemed exemptions, which are granted by order of the AER applying to a class of exempt seller, and which are effective from the date of the order; and
- registered exemptions, which are granted by order of the AER applying to a class of exempt seller, but are only effective from the date on which a person registers with the AER as belonging to that class.

Rules 908 and 909 set out the Exempt Selling Policy Principles and Exempt Selling Policy Factors. The AER must have regard to the former, and may have regard to the latter, in its decision making in relation to exemptions.

Section 528 of the NERL requires the AER to develop Exempt Selling Guidelines in accordance with the Rules, which are intended to provide additional guidance to persons subject to, or seeking, an exemption.

It is noted that transitional arrangements with respect to existing jurisdictional authorisations/licences and exemptions will be dealt with further as part of the Second Exposure Draft package and jurisdictional transitional arrangements.

3.8 Dispute resolution

3.8.1 Customer disputes

The access dispute regime in the NEL and NGL will not apply to small customer disputes. Rather, the NECF implements the AEMA decision to continue the use of jurisdictional energy industry ombudsman or other relevant dispute resolution bodies for small energy customer disputes. This is achieved by the obligation on retailers and distributors to handle complaints made by small customers in accordance with the requirements of the relevant jurisdictional dispute resolution body (see rules 242 and 409).

The applicable body (or bodies) for these purposes in each jurisdiction (generally, the relevant energy ombudsman) is specifically referred to in clause 5 of the Regulations. This creates a robust dispute resolution regime, which provides for any jurisdictional changes to be easily reflected at the national level. It should be noted there may be consequential amendments needed at the jurisdictional level to facilitate this regime, such as ensuring the recognised jurisdictional ombudsmen have sufficient powers to deal with complaints under the NERL and the NERR.

3.8.2 Conduct disputes

The NERL includes a 'conduct provision' regime which has been drafted using the NGL regime as a precedent (see section 105). Under this regime, parties can bring court proceedings for a declaration that another person is in breach of a conduct provision and seek the recovery of damages for any loss suffered. These

proceedings will be heard in the relevant State or Territory court of competent jurisdiction. The particular provisions in the NERL and NERR that will constitute conduct provisions have not yet been identified and the SCO invites industry input as to which obligations are considered appropriate to designate as such.

3.8.3 Other retailer – distributor disputes

In relation to disputes between retailers and distributors, the NERL applies the existing court-based enforcement regime located in Part 6 of the NEL for electricity and in Chapter 8 of the NGL for gas, with such modifications as are necessary to apply to the NECF.

3.9 Retail consultation procedure

Given the number of decisions that the AER is tasked to make under the NERL and NERR, SCO considers that it is helpful to have ‘generic’ consultation procedures set out in the Rules to apply to such decision-making so as to:

- clarify, both for the AER and interested stakeholders, the process to be followed in regulatory decision-making, thereby giving comfort to the AER that the resulting decision is procedurally robust, and allowing stakeholders to understand in advance the scope of their opportunity to comment on regulatory decisions that affect them; and
- avoid duplicative drafting throughout the Rules.

The proposed generic retail consultation procedure is set out in Part 11 of the Rules. Other provisions of the NERR refer to this procedure where applicable. The SCO invites views from interested stakeholders as to the adequacy of the proposed generic consultation procedure in light of the decisions that it applies to, in particular with respect to the proposed consultation timeframes.

4 Coordination with other Policy Areas

This First Exposure Draft sets out the draft Law, Regulations and Rules for implementing the NECF, which is being developed by the SCO. As previously noted, a number of MCE work streams are currently developing proposed legislative changes to areas related to the NECF. The Second Exposure Draft of the NECF will reflect policy currently being finalised through several of these other MCE work streams that impact directly on the operation of the NECF. While this work is not ready to be incorporated into the First Exposure Draft, separate consultation processes have been, or will be, conducted by officials.

4.1 Smart meters

In December 2007, the MCE committed to work with stakeholders to review consumer protection arrangements and ensure appropriate protections exist for customers with smart meters. As part of this commitment the Smart Meter Working Group (SMWG) is examining the proposed NECF to identify common policy considerations, assess its ability to accommodate the pricing and operational implications of smart metering, and propose additional or alternative arrangements where appropriate to ensure the national framework will be flexible enough to apply in jurisdictions with smart meters and those without.

The SMWG, in cooperation with the Retail Policy Working Group (RPWG), is developing a working paper which discusses areas of common policy between smart meters and the NECF. This paper is expected to be released for public consultation shortly after the First Exposure Draft. Any amendments will be included in the Second Exposure Draft of the NECF and will be subject to approval by the MCE.

Areas of focus for the SMWG include:

- bill content;
- prepayment metering;
- identification of, and obligations to, customers in hardship;
- de-energisation arrangements;
- retail tariff offer requirements;
- customer – retailer – distributor contractual relationships; and
- general marketing conduct standards.

In parallel with this work, the National Stakeholder Steering Committee is developing the business-to-business arrangements to facilitate the market operations between distributors, retailers and the market operator in the National Electricity Market with the introduction of smart meters. These arrangements will be developed in consultation with the SCO.

4.2 Bill benchmarking

The Customer Information Implementation Committee, within the National Framework for Energy Efficiency, is undertaking an investigation into the establishment of a Bill Benchmarking Regime (BBR), which is subject to a Regulatory Impact Statement (RIS) and MCE approval.

The NERL will enable the making of Rules for the various agreed components of the BBR. Those components specified in the Rules may include the requirement for energy retailers to provide a benchmark that compares a household's energy use with an average for a comparative area (e.g. local or State average). It is envisaged that the benchmark would contain adequate information to allow for a useful comparison and motivate energy consumers, especially those with above average consumption, to implement energy efficiency improvements. It is anticipated that there will be flexibility for the retailer to determine the metric used for the benchmark, placement on the bill and the provision of any additional information to assist the household reduce their energy use.

A range of benchmark options will be put forward in the consultation RIS for stakeholder comment, which is expected to be released in the middle of 2009. It is unlikely the benchmark requirements will be included in the Second Exposure Draft for the NECF, however final design specifications will be published in the Decision RIS. As the BBR provisions are essentially stand-alone in nature, it is expected to be relatively straightforward to include these provisions in the initial NERR prior to the Rules being made.

4.3 Connection arrangements and other network matters

4.3.1 Electricity planning and connections

The NPWG is developing and implementing a national framework for distribution network planning and connection arrangements as agreed in the AEMA. In this regard, in December 2008 the SCO released the policy paper outlining a proposed national framework for electricity distribution connection arrangements – *National Frameworks for Electricity Distribution Network Planning, Connection and Connection Charge Arrangements*. A number of written submissions were received in response to this paper.

The MCE has further requested the AEMC to conduct a review of electricity distribution planning, expansion and reporting arrangements as part of the same work stream. In March 2009 the AEMC released a scoping and issues paper for public comment.

Subject to SCO approval and any further consultation required, it is envisaged that the national connections and capital contributions framework will be implemented through consequential amendments to the NER as part of the Second Exposure Draft of the NECF. There is a degree of overlap or interaction of the connections procedures with the NECF, specifically in the instances where a new customer will be seeking both a new physical connection as well as energisation. The NPWG and RPWG are working together to ensure a consistent and seamless approach to the connections and energisation arrangements for these customers.

4.3.2 Other network policy matters

The NPWG work stream also includes the development of a national framework for gas connection arrangements and a review of electricity ring-fencing arrangements, as set out in the AEMA.

Work on these frameworks will follow the development of the national framework for electricity planning and connections policy response and will include stakeholder consultation on proposed national policy.

4.4 Retailer of last resort

NERA Economic Consulting (NERA) and AAR were asked to review existing Retailer of Last Resort (RoLR) frameworks and to advise on the development of an appropriate policy framework for a national RoLR scheme. The draft report has identified the incentives that differing arrangements have on both the failing retailer and the RoLR, and how the incentives are affected by differing circumstances of retailer exit. The draft report also sets out a proposed framework for developing a national RoLR scheme, the parameters of a national RoLR scheme and the principles in deciding the appropriate alternatives in relation to those parameters.

The SCO released a draft consultancy report on a proposed national RoLR framework, developed by NERA and AAR, for consultation in September 2008. NERA and AAR have prepared a final report for SCO considering written submissions on the draft report.

The RPWG is using the NERA and AAR final report to develop a policy framework for RoLR which, following a further round of consultation, is expected to form the basis of provisions to be included in the Second Exposure Draft of the NECF.

4.5 Metering, transfers and other business rules

The SCO recognises that a number of procedures, business rules and other documents (collectively referred to here as Procedures), specify many of the operational elements of the sale and supply of electricity and natural gas to retail customers. This includes metrology procedures, rules relating to customer transfers and business-to-business procedures to support the provision of bundled energy services to customers.

While many of these Procedures are already largely harmonised across the jurisdictions, they will need to be reviewed to:

- identify and make arrangements for implementing any consequential amendments to the Procedures that are required to support the NECF; and
- avoid duplication between the various elements of the national framework, and in particular ensure that operational details of transactions between businesses are appropriately located as between the Rules and Procedures.

This review will be undertaken by the RPWG in consultation with stakeholders, following consultation on this First Exposure Draft.

4.6 COAG Consumer Policy Framework

In October 2008, COAG agreed a new consumer policy framework proposed by the Ministerial Council on Consumer Affairs in response to the recommendations of the Productivity Commission's *Review of Australia's Consumer Policy Framework* released in May 2008. Reforms to implement the new consumer policy framework have three key elements:

- an ACL, which is based on the existing consumer protection provisions of the TPA, includes provisions regulating unfair contract terms, new enforcement powers and, where it is agreed that the TPA is not adequate, changes based on best practice in state and territory laws;
- a new national product safety regulatory and enforcement framework, as part of the national consumer law; and

- enhanced enforcement cooperation and information sharing mechanisms between national and state and territory regulatory agencies.

In February 2009 a consultation and information paper entitled *An Australian Consumer Law: Fair markets – Confident consumers* was released. That paper notes that the ACL will be passed through the Commonwealth Parliament by 31 December 2010 and that Parliaments of the States and Territories will have passed application legislation by that date also.

The new national arrangements in the ACL, and other elements of the new consumer policy framework, may apply to some elements of the sale and supply of energy to retail customers. For example, some market retail and distribution contracts may be subject to the ACL's proposed restrictions on unfair contract terms, where the contracts are 'standard form' in nature (i.e. the terms and conditions are set in advance and offered to customers on a 'take it or leave it' basis). Additionally, the RPWG will consider whether the new consumer policy framework includes nationally consistent regulation which may, if appropriate, remove the need for some energy-specific regulation.

While aspects of the ACL, such as provisions in relation to unfair contract terms and enhancements to the Australian Competition and Consumer Commission's enforcement powers, are expected to be legislated for by the end of 2009 most of the reforms will not be in place until 2011. RPWG proposes to examine the ACL when it is settled and recommend any changes to the NECF as a result of it to MCE at that time.

Minor Policy Changes from the SCO Policy Paper

Attachment A

	Issue raised by stakeholders	SCO Response
B2B procedures	Several comments refer to existing business-to-business (B2B) procedures and provisions of the NECF which may conflict with them, or be facilitated through B2B arrangements.	Where possible, NECF (and RSC) provisions will be drafted to allow retailer/distributor actions to be enacted through B2B procedures. Direct reference to B2B procedures will not be made as these differ between markets and are subject to change. The NECF does not seek to unnecessarily duplicate existing processes.
Bill content	The extent of the obligation to offer interpretation services via bills was queried by stakeholders.	Clarification – the obligation is to provide details of an interpreter service. This does not entail a requirement that retailers pay for these services.
Business authorisation	There is a continuing question of whether the AER authorisation or Australian Energy Market Operator (AEMO) registration would be the 'primary' or first authorisation.	Parallel assessment is preferred, with both bodies carrying out their respective investigations without overlap. The AER and AEMO are expected to cooperate on coordinating their respective processes. It should be noted that whilst the AER may grant a general retailer authorisation, a retailer is not able to begin retail activities in any particular market (electricity or gas) until it has, if required, successfully registered with AEMO for that market.
Commencement of contract	The circumstances which give rise to the standard and deemed contracts were raised.	Clarification – for contracts which are deemed, the contract commences on taking supply of energy. Where a contract is applied for – on a valid application. Where a contract is offered – on acceptance of the offer. This clarifies the 'triggers' for commencement of contracts in the various circumstances in which they arise.

Conditions to the obligation	When a customer is disconnected for non-payment, the status of the FRRs responsibility to offer supply to that customer is unclear.	<p>Clarification – rectification of the reason for disconnection is necessary for reconnection. This includes non-payment of a security deposit.</p> <p>Whilst the SCO Policy Paper did specify that applications for reconnection after 10 days would be treated as applications for new connection, this refers to the administrative procedure that would need to be gone through by the customer, and does not modify the requirement that a customer who was disconnected must rectify the reason for their disconnection.</p>
Conduct provisions	The scope of conduct provisions needs clarification as to their application in the NECF.	The Chapter 8 dispute resolution panel will not be able to hear disputes arising from conduct provisions, these will be heard by a court of competent jurisdiction. Refer also to the discussion in Section 3.8.2 of this paper.
Customer aggregation	Retailers in submissions raised that a non-residential customer with multiple supply points might be better classified as 'large' if its cumulative consumption across all supply points exceeds 100 MWh or 1 TJ per annum. The possibility of different customers aggregating voluntarily to 'opt out' of the small customer protections and access bulk offers was also raised.	<p>Small business customers will be permitted to aggregate to opt out of the small customer – retailer regime, if they provide explicit informed consent. However, retailers will not be permitted (of their own initiative) to aggregate customers with multiple supply points.</p> <p>Allowing a retailer to aggregate supply points on the basis that the customers at those points constitute a single entity goes beyond the reasonable discretion of a retailer and raises questions about the status of franchisees and other businesses which may be only loosely linked. There is, however, no apparent downside to allowing non-residential customers to opt out of small customer protections if their total consumption is above 100 MWh or 1 TJ per annum and they wish to do so.</p> <p>No aggregation of supply points in distributors' systems is contemplated.</p>

Customer classification

The issue of who is responsible for classifying customers as 'small' or 'large' was raised, with several parties stating that distributors and retailers are both, at times, unaware of the nature of the premises they are supplying. The decision not to have a consumption threshold applicable to residential customers may also have some practical impacts on classification systems.

A detailed classification process will not be included in the NECF. However, both retailers and distributors will be able to inform the other of the classification of customers with distributors responsible for holding classification information.

Distributors hold the systems information for connection points and are best placed to utilise and store this information. In practice it would be expected that the distributor would be best placed to assess the consumption of a customer whilst a retailer would be best placed to know whether a customer was a residential or business customer, so an exchange of information between the parties is needed to ensure that the classification is kept up to date.

Customer termination

Stakeholders asked for clarity regarding minimum timeframes for customer termination.

Customers will be required to give at least five business days notice to terminate a standard retail contract. Retailers may set a minimum period of notice in market retail contracts of no more than 20 business days.

Standard retail contracts are a 'default' and customers should not be discouraged from transferring to a market retail contract when they are able. Market retail contracts, similarly, should not unduly inhibit termination (subject to other termination requirements) through unreasonably long notice periods.

Customer transfer

Current jurisdictional customer transfer codes impose some restrictions around the initiation and completion of transfer requests. These codes should be removed upon introduction of the NECF. The two issues which need to be addressed are the interaction between initiation of a request and customer cooling off periods, and grounds for objection.

Transfer requests may not be initiated until such a time as the date to complete the request is later than the expiry of the customer's cooling-off period. The approach taken allows for the most expeditious transfer whilst still respecting the customer's right to 'cool off'.

Grounds for objection remain an area for further development.

De-energisation	The exact working of the late payment notice and de-energisation procedure was raised by stakeholders.	<p>The following procedure will be used: A bill issued will have a due date 12 business days after issue. After expiry of this, a retailer may issue a reminder notice with a due date 5 days after issue. After expiry of this, a retailer may issue a de-energisation notice with a date of de-energisation not less than 5 business days from issue. The proposed procedure reflects typical timeframes across jurisdictions.</p> <p>The date of issue must be stated on the bill, the reminder notice and the de-energisation notice, and retailers must ensure that the date of issue allows the customer the requisite number of business days to pay the bill.</p>
Discovering the FRR	Customers will need to be able to easily discover who the FRR is for their supply point, implying that a body must be designated with responsibility for collecting and dissemination of this information. In Queensland, where an FRR model is already operating, distributors have this responsibility, but it could also be carried out by AEMO with suitable systems adjustments.	<p>Distributors should be responsible for informing customers of their responsible retailer. The SCO considers it to be relatively less costly for distributors to perform this role as they already keep information on the FRR for supply points on their networks, and will need to have customer interaction under the NECF for other matters.</p> <p>However, by including this requirement in the Rules, it is able to be amended in the future to allow further development of the FRR model. For example, it may be beneficial for this role to be taken over by a single body (i.e. AEMO or a related body) to simplify customer access and centralise records keeping in future.</p> <p>Customers will be alerted to the new model on introduction of the NECF.</p>
Dispute resolution	Standard contract terms generally require adherence to an internal dispute resolution process by retailers and distributors. This may be generic or based on an Australian Standard.	The model standard retail and customer distribution contract terms will require adherence to the current Australian Standard (as amended from time to time) for internal dispute resolution.
Early termination fees	Stakeholders asked for clarification on whether standard retail contracts could incorporate early termination fees.	Standard retail contracts are not to have early termination fees. Standard retail contracts do not have a fixed term and hence early termination is not an applicable concept.

Embedded networks	Distributors were concerned to ensure there was no requirement to take over embedded networks in the event of their owner failing.	Clarification – there will be no requirement for distributors to take over embedded networks. Customers in a distributor's service area which are on an embedded network may be entitled to connection to the distributor's network, but this will be as a new connection, subject to payment of the distributor's costs of connection.
Estimated Meter Readings	Submissions called for estimation regulations to be consistent with metrology procedures.	This remains a matter for further development. The NECF will not duplicate estimation requirements and procedures set out in metrology procedures and will not prevent further development of metrology requirements. Any consequential amendments to metrology procedures for the NECF do not form part of this First Exposure Draft.
Exemptions	Several parties submitted that there should be more policy guidance within the business authorisation exemptions framework, particularly pertaining to customer protections.	A set of exemption policy principles and factors have been developed to guide the AER's approach. Refer to the discussion in Section 3.7 of this paper for more information.
Information provision for dispute resolution	The AER raised the issue of whether the AER and jurisdictional ombudsmen would be permitted under statute to share information in a way which facilitates them playing their assigned roles.	It is necessary that the regulator and ombudsmen are able to share information regarding customer disputes and systemic issues. Provision for information sharing will be made in the laws, subject to further development (noting small customer dispute resolution remains an area of State and Territory responsibility under the AEMA).
Instalment plans	Stakeholders asked whether there was a minimum/maximum number of instalment plans that a customer could fail to meet before disconnection action is taken against them.	Retailers need only offer an instalment plan twice in a twelve month period where the obligation to offer an instalment plan is specified or the retailer chooses to offer an instalment plan. This largely reflects existing jurisdictional practice.
Interruptions and curtailments	The provision for interruptions in accordance with interruptible tariffs in current arrangements was noted.	There is no reason to preclude this facility. Provision for interruptions in accordance with interruptible tariffs and contractual arrangements will be made, however they are not included in this First Exposure Draft as arrangements for smart meters to be included in the Second Exposure Draft are expected to require further provisions in this regard.

Liability management regime

Non access-regulated networks may be 'opted-in' to the NECF, and exempt networks under the NER may be required to act according to some customer rules as conditions of their exemptions. Whether or not the liability management regime applies to these entities is an issue.

Non access-regulated networks which participate in the NECF as relevant distribution networks will have the benefit of statutory immunities, but exempt networks will not. For the purposes of the customer framework, an 'opted-in' network should be treated on an equal basis to any other network. However, exempt networks should not be able to gain powerful statutory immunities through operating a network which is only incidental to their core business, and should accept any potential liabilities to their customers which apply through general law.

Life support systems

Most jurisdictions have some system whereby customers who are dependent on life support systems can register for various purposes including receipt of rebates and Community Service Obligation (CSO) payments, and also to prevent de-energisation, priority re-energisation, emergency assistance and notice of planned outages. Registration is always carried out by distribution businesses.

Distributors will be obliged to maintain a register of premises with life support machines, solely for the purposes of the prohibition on de-energisation, priority re-energisation and notice of outages (CSOs are a jurisdictional matter and may have a broader or narrower range of eligible parties).

A list of common life support systems which qualify, plus the ability for other systems to be registered on the recommendation of a qualified medical practitioner, will be specified.

A list of authorised life support systems would be kept and maintained by the AER.

The key issue is on what ground a customer qualifies as a 'life support' customer.

Marketer identification

Consumer groups recommended that self-identification by the marketer be the first required disclosure in any customer contact.

Self identification should be the first disclosure. Customers should always be made aware of who they are talking to and on whose behalf they are working. This reduces the scope for misleading conduct.

Marketers to be trained in relation to marketing obligations.

Retailers noted that this requirement appeared to be regulating 'inputs' and not 'outputs' of marketing.

The requirement for marketers to be trained in relation to marketing obligations will be removed.

Marketers will need to be trained in order to meet their conduct obligations, and retailers will be responsible for all marketing undertaken on their behalf, subject to performance reporting and compliance oversight by the AER. The way in which retailers meet these obligations should be the retailer's decision.

Model terms for standard retail contracts

Retailers queried whether there would be flexibility to write standard retail contracts which are 'not inconsistent' with the model terms.

Clarification – 'look and feel' changes, and inclusion of relevant company names and details will be permitted alterations within the model terms. In addition, some alterations (such as including details of any relevant GSL scheme applying in a jurisdiction) are required.

However, consistency with the model terms requires adoption (with the exception of the above) of the model terms without alteration or addition. The reasons for adoption of a model approach were discussed in the SCO policy paper.

Negotiated distribution contracts

Can a customer be supplied under the Standard Retail Contract (SRC) if they have a negotiated distribution contract? The SRC provides only for payment through the retailer, whereas negotiated distribution contracts may involve direct payment to the distributor.

Further work is required in this regard and will be impacted by the outcomes of the NPWG work stream and in particular any negotiating framework for distributors and small customers which may be developed for new connections.

Network tariffs

Stakeholders asked for clarification on what was and was not included by the term 'network charges/network tariffs'.

This matter is further clarified in drafting.

Overcharging	Different stakeholders expressed differing opinions on the appropriate level of an overcharging threshold (the level beyond which a retailer must offer immediate repayment rather than a bill credit to the customer). The issue of payment of interest on overcharging was also raised.	The \$50 threshold will be included as an initial level, and may be reviewed and amended by the AER over time. No interest is required to be paid by the retailer. Payment of interest on overcharged amounts was never envisaged and does not reflect current practice.
Pre-contractual disclosures	One stakeholder queried the appropriateness of requiring disclosure of the availability of standard retail contracts by marketers, and the contact details of the AER.	Deletion – no requirement to disclose standard retail contract availability, or AER contact details, will be included. There is no apparent rationale to force disclosure of standing offers, which may be the product of a competing retailer under the FRR model. Small customers (other than small market offer customers) who terminate market retail contracts will automatically be entitled to their retailer's standing offer. However, the FRR will be required to advise customers who are entitled to be supplied under that retailer's standard retail contract of the availability and content of their standard retail contract. Contact details for the AER are not likely to be helpful to the customer at the marketing stage.
Record keeping - marketing related activities and explicit informed consent.	Stakeholders asked for more clarification on timeframes for marketing record keeping.	For actions where customers must give explicit informed consent, records must be kept for the period the customer has a contract with the retailer, or two years, whichever is longer. For general marketing contacts, records should be kept for twelve months. The purpose of record keeping for explicit informed consent is to ensure compliance with substantive obligations and records should be retained for as long as they are relevant. For general marketing contact, the purpose of records is to facilitate performance reporting and general conduct oversight, and need not be kept longer than each (annual) performance reporting round.

Re-energisation	The maximum timeframe for re-energisation needs to be specified to ensure that customers are not left de-energised for an unreasonably long time.	The SCO agrees that re-energisation should occur promptly, however different circumstances (i.e. geography) and relationships with GSLs and economic regulatory arrangements all need to be taken into account.
Rental properties	Provision of owner/agent details by tenants seeking supply for rental properties is 'standard practice' according to some submitters.	Provision of owner/agent details will not be a condition to the obligation to offer supply as these are not critical to establishing a billing relationship with the customer. Retailers may ask for these details, but should not refuse supply if they are not provided.
Restrictions on de-energisation	Some stakeholders felt that de-energisation should be further restricted to times when there is certain to be a following business day in which a customer could resolve de-energisation issues.	The times at which de-energisation may not be carried out will be expanded to include Fridays, the days before public holidays and over the period 20 to 31 December. This will not include planned interruptions or where the customer has agreed otherwise. Customers should be able to resolve any issues arising from de-energisation on the next day.
Termination of customer distribution services	The circumstances surrounding termination of customer distribution contracts requires clarification, especially where customers have been disconnected, and may not have provided access to the meter.	The South Australian provision for termination when the retailer has issued a final account (which requires a meter read) will be adopted. This approach is considered to provide for all relevant processes to finalise the customer's account (including granting of meter access for a final meter read), before the contract terminates, without undue complexity.