



queensland council of social service inc
WORKING FOR A FAIR QUEENSLAND

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Manager, MCE Secretariat
Department of Resources, Energy and Tourism
GPO Box 1564
Canberra ACT 2601

Re: Second Exposure Draft of the National Energy Customer Framework

The Queensland Council of Social Service (QCOSS) is pleased to submit a response to the Ministerial Council on Energy (MCE) Standing Committee of Officials (SCO) Second Exposure Draft of the National Energy Customer Framework (NECF).

QCOSS is the peak body for over 600 welfare and community sector organisations in Queensland. For 50 years QCOSS has worked to promote social justice and provides a voice for and with Queenslanders affected by poverty and inequality. We act as a State-wide Council that leads on issues of significance to the social, community and health sectors. We work for a Fair Queensland and develop and advocate socially, economically and environmentally responsible public policy and action by community, government and business.

QCOSS participates in the National Energy Consumer Roundtable, and has contributed to and supports the submission developed by the roundtable in relation to the NECF. We attach a copy of this submission for your consideration. As this is a comprehensive and detailed submission, we also wish to highlight some specific matters that are of particular concern to QCOSS.

Social Obligation/Objective

A central and important area where the current NECF remains weak is in expressing the social obligations and responsibilities that attach to the provision of energy as an essential service for all consumers. Unfortunately, the national energy retail objective as it is currently worded places economic efficiency as the central goal of the Law, and assumes that efficient investment and operation will protect the long term interests of consumers. This is backwards. The objective should be to protect the long term interests of consumers, including by efficient investment and operation. That is:

“The objective of this Law is to protect the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply by promoting efficient investment in, and efficient operation and use of, energy services and by ensuring that any benefits arising from competition between retailers engaged in the provision of energy services are shared equitably with the consumers of the energy services.”

The current objective does not recognise the nature of energy as an essential service, or the importance of identifying the rights and responsibilities of consumers, retailers, regulators and government, in order to ensure equality of access to energy. Nor does the objective recognise the necessity of ensuring the social and economic sustainability of energy supply. Without these principles articulated as part of the national energy retail objective, the NERL will be susceptible to interpretation in a way that promotes the economic interests of energy businesses over the protection of consumers. While we note the additional clause that has been added to the NERL between the first and second exposure draft, we believe that the addition of the second clause does not adequately address consumers' concerns since by focussing on hardship customers, it only aims to provide support where the operation of the energy market has failed to provide security and affordability of supply, and not to put in place measures that could prevent this situation.

A strengthened objective would also flow through to a stronger role for the Australian Energy Regulator (AER) that encapsulates social responsibilities. This would be consistent with the approach of various jurisdictional regulators, including the Essential Services Commissions of South Australia and Victoria, that currently recognise protecting the interests of consumers as their primary objective. Ideally, the AER would publish an annual social strategy or action plan that outlines how it will meet this objective and address its statutory or implied social responsibilities. For example, the UK regulator (OFGEM) has published a Social Action Strategy since 2005 (and note that the UK Government has strengthened provisions that make it clear the regulator must protect the interests of customers). A published strategy that is updated annually would encourage accountability and give an incentive for the development of effective social actions.

Hardship Requirements/Payment Plans:

QCOSS acknowledges that the requirement in the second exposure draft for retailers to have hardship policies and to have those policies approved by the AER, is an improvement on the current legislation in place in Queensland. We strongly support these inclusions in the NECF. However we also believe that the NECF should aim to provide universal protection to customers who may face payment difficulties. This would be in addition to requiring specific support for customers who are identified as experiencing hardship. Without broad protections, there is a risk that "hardship" will be construed too narrowly, resulting in consumers being excluded from the benefits of retailer assistance.

The amendment requiring retailers to offer payment plans to customers experiencing financial payment difficulties, other than those who have been identified as hardship customers, is welcomed. However, the current provisions still only require retailers to offer payment plans to customers who are currently experiencing payment difficulties, and not to those who wish to enter into a payment plan in order to avoid likely payment difficulties. Our view is that payment plans should be available to any customer who needs them and not just to customers experiencing hardship. Some customers (who are not currently experiencing payment difficulties) may still need a payment plan so as to better manage their financial affairs or because they anticipate changes in their financial situation in the foreseeable future. A universally targeted regime of assistance can be seen as a form of prevention and early intervention for such customers.

While we are pleased that in the second exposure draft of the NECF, the section on payment plans has been put in a division separate from hardship, this improvement does not go quite far enough. There is an opportunity to clearly express the intention to provide universal protections and assistance to customers who are having difficulty paying their energy bills by some minor structural changes to the legislation.

For example, Division 7 could appear before the division on hardship and be expanded to contain some broad principles around supporting customers to manage payment of their energy bills. A broader heading such as “Assistance to manage energy bills for small customers” would be more appropriate to support this intention than simply “payment plans”. The division could include the requirement for retailers to offer payment plans to residential customers who require assistance to manage bills, and should also include the general principle that customers should not be disconnected due to an inability to pay energy bills.

This would provide greater recognition of an intent to offer basic universal protections and assistance for all customers to prevent them from falling into payment difficulties or to manage payment difficulties, while also making provision for the greater level of assistance that is required by some customers who are experiencing hardship.

We also draw MCE’s attention to the concern expressed by the about the use of the term ‘hardship customer’ throughout the NECF. There are a wide range of circumstances which might lead to a customer requiring assistance, and different responses are more appropriate in different situations. Use of the term ‘hardship customer’ implies that customers requiring assistance due to financial difficulties belong to a particular group, which discourages the flexibility needed to address customers’ individual circumstances. We also share the concern that the term ‘hardship customer’ stigmatises those who require assistance and recommend that it be changed to ‘customer experiencing hardship’.

Reporting and Compliance:

To reinforce the social obligation that should be central to the role of the national regulator, the AER performance regime must have a strong customer focus. The reporting framework should encourage best practice in protecting the interests of consumers, including by retailers, the AER, government, and other bodies including consumer organisations. The framework should include:

- Public reporting by the AER of all available information, including information provided by retailers on indicators, a review by the AER of retailer hardship policies, a statement about the social actions undertaken by each retailer, and the results of any research conducted
- Follow up socio-economic research instigated by the AER to inform the public reporting, and including surveys and reviews of customers, to
 - assess the overall effectiveness for consumers of tariffs, programs, policies and measures
 - assess whether customers are actually aware of the available programs and measures and are able to access them
 - assess the effectiveness of assistance intended to protect vulnerable consumers, including whether vulnerable customers are on hardship programs when they should be, or are being disconnected at a disproportionately high rate
 - encourage best practice by all parties by publicly reporting where additional attention is required

- identify best practice by retailers and other parties by reference to the consumer experience
- encourage best practice by the regulator by critically examining the effectiveness of the performance reporting framework
- feed into the energy affordability report
- A mandatory audit program to
 - ensure compliance by retailers with their hardship policies and other obligations
 - assess the accuracy and reliability of any data provided by retailers
 - assess the effectiveness of a retailer's internal plans and processes

Both the research program and the audit regime are crucial to the public reporting framework. Public reporting of indicators alone is not sufficient, especially since the indicators will only capture a fraction of the picture and may lead to a focus on improving the indicator rather than improving the underlying situation. A research program and audit regime, combined with public reporting, will allow the effectiveness of retailer and government programs to be more fully assessed by all parties, and the accuracy and reliability of reported information tested and verified. For example, a regular research program could:

- determine if customers are on the most cost effective tariff for them, and whether they are able to access the information required to identify the most cost effective tariff
- identify any customer issues that are not captured in the performance reporting data, such as vulnerable customers not being aware of hardship programs or being embarrassed to approach retailers about going onto a hardship program (so are not captured in the retailer data on hardship, and are more likely to be disconnected), or using credit cards to pay utility bills when a retailer hardship program would be a cheaper alternative
- assess the impact on low income and vulnerable consumers of energy affordability and ensure they are able to access the lowest possible tariffs. In the UK, such research revealed that the the lowest tariffs offered by retailers (typically on-line tariffs) were not accessible to low income households because of lower access to the internet, and the standard tariff often represented a more expensive energy service. In response, retailers agreed to introduce 'social tariffs' for some vulnerable consumers which are no greater than the lowest tariff product.

This is the type of ongoing socio-economic research that should be instigated by the economic regulator since it goes to the heart of whether the interests of consumers are being protected. Consumer organisations could then use this evidence as the basis for advocacy or the AER, government or retailers could introduce or change programs, or alter tariff regimes.

Prepayment Meter Provisions:

The current NERL permits the provision of energy to customers using a prepayment meter system only under a market retail contract. Part 8 of the NERR is thus worded in such a way that the consumer protections set out in the Rules apply only to prepayment meter customers who have a market retail contract. In Queensland, a number of customers in remote Indigenous communities are supplied with electricity by Ergon Energy, using card-operated meters. Ergon Energy is not permitted to offer market retail contracts under the arrangements for full retail competition in Queensland.

Most, although not all, customers using prepayment meters in Queensland are not connected to the National Electricity Market. QCOSS understands that the Queensland Government holds the view that these customers will not be covered by the NECF.

It is unacceptable for customers using card-operated meters, whether on market contracts or standard contracts and whether grid-connected or not, to be denied the consumer protections set out in the NECF. As many of the customers using pre-payment meters experience multiple disadvantage, they are a highly vulnerable group of customers. Further, since pre-payment meters are in practice used only in Indigenous communities, to exclude pre-payment meter customers in Queensland from coverage of the NECF may constitute indirect discrimination.

We believe that the NECF should be amended to extend the coverage of Part 8 of the Rules to existing prepayment meter customers who are supplied with energy under standard retail contracts. We would further hope that the Queensland Government will adopt a policy of applying the protections set out under Part 8 of the Rules to all prepayment meter customers, whether or not they are connected to the NEM.

Second Exposure Draft of the National Energy Customer Framework: Law, Rules, Regulations and Contracts

Our response below has been prepared jointly with other organisations representing residential and small business consumers in all jurisdictions that participate in the National Energy Market. We have drafted our response on the basis that universal best practice consumer protections should be available to all Australian energy consumers.

This submission represents our views based on the information detailed within the Second Exposure Draft of the National Energy Customer Framework: Law, Rules, Regulations and Contracts. However, given the significant new material we reserve the right to revisit and revise our comments accordingly.

Policy consideration of smart meter consumer protections

The second exposure draft of the NECF has been developed by Ministerial Council on Energy Standing Committee of Officials (**MCE SCO**) (and the Retail Policy Working Group (**RPWG**)) without sufficient regard to the implementation of 'smart meters' or 'smart metering infrastructure' or the functionality, capability or services that may subsequently be enabled. We have prepared our response to the second exposure draft of the NECF on that basis and on the understanding that the NECF contemplates a non smart metering paradigm for the supply and sale of energy to small customers. We will work with MCE SCO to develop consumer protection arrangements for smart meter enabled energy markets as the opportunity and need arise and in light of jurisdictional developments (ie Victoria).

Acronyms used:

ACCC – Australian Competition and Consumer Commission
AER – Australian Energy Regulator
ASIC – Australian Securities and Investments Commission
ASIC Act - *Australian Securities and Investments Commission Act 2001* (Cth).
EWON - Energy and Water Ombudsman New South Wales
EWOV - Energy and Water Ombudsman Victoria
TPA – *Trade Practices Act 1974* (Cth)
MCE SCO – Ministerial Council on Energy Standing Committee of Officials
NECA - National Electricity Code Administrator
NECF - National Energy Customer Framework
NERL or Law - National Energy Retail Law
NERR or Rules - National Energy Retail Rules
National Regulations - National Energy Retail Regulations
NGL – National Gas Law

National Energy Retail Law

Draft National Energy Retail Law		
Part 1 – Preliminary		
Division 1 - Interpretation		
102	Explicit informed consent	<p>We note, with concern, that there is no definition in section 102 for explicit informed consent, and therefore it has no consistent meaning across the NERL or the NERR. We believe that explicit informed consent is required for a number of transactions within the framework and as such should be defined here. The inclusion of 'authorised and competent' is an essential part of explicit informed consent - failure to include these will further undermine the purpose of having explicit informed consent in the NERL. We have provided our recommended drafting for a definition of explicit informed consent below:</p> <p>'Explicit informed consent' means the consent given by the consumer to an energy business¹ or their agent in relation to energy products and services, on the basis that:</p> <ul style="list-style-type: none"> • adequate information disclosure is provided, where the energy business or their agent has clearly, fully and adequately disclosed in plain English all matters relevant to the consent of the consumer, including each specific purpose and use of the consent; • the transaction is with a person authorised and competent to do so; • there is a genuine understanding by the consumer; and • the transaction is undertaken with complete voluntariness.

¹ 'Explicit informed consent' must apply to all energy businesses not just retailers. There are increasingly instances where distribution businesses enter into arrangements with consumers directly outside of the standard distribution contract, for example 'ripple control' in Queensland. It is essential that a consumer provides its explicit informed consent to validate any contract variation from a standard contract.

102	Hardship customer	<p>We reject the definition and use of the term "hardship customer" throughout the NECF. The term "hardship customer" undermines the functioning hardship assistance and programs by narrowly defining what is in fact a customer experience. Customers may experience hardship on an a temporary, ongoing or sporadic basis and hardship assistance must be flexible enough to accommodate these circumstances. Rights that accrue to consumers experiencing hardship should be universally available. The core provisions of the NECF should be designed to enable retailers to develop systems and processes that assist them to prevent consumers from requiring hardship assistance and for additional assistance to be provided under hardship programs to facilitate households to remain on supply. Further, a consumer's entry into a retailer's hardship program, nor their identification as a customer experiencing hardship, should be defined by a retailer's hardship program as proposed in the drafting of the definition in the NECF. Consumers must be able to self identify, be identified by third parties or by a retailer. As such, we have removed this reference in our recommended drafting changes.</p> <p>We strongly recommend that <u>all</u> references to 'hardship customer' throughout the NECF be amended to 'customer experiencing hardship' and that section 102 be amended to read:</p> <p>'Customer experiencing hardship' means a residential customer of who is identified as a customer experiencing payment difficulties due to hardship.</p> <p>Consumer groups including welfare agencies have extensive experience and expertise working with vulnerable and disadvantaged Australians. In our submission on the first exposure draft of the NECF we highlighted these concerns and are disappointed that the second exposure draft of the NECF has failed to address this. As a result, we again refer you to the expert advice we submitted in our submission to the first exposure draft of the NECF, including the learnings from the Committee for Melbourne Utility Debt Spiral Project (Utility Debt Spiral Project)², and strongly encourage you to proactively consult with us to fully understand the significance of these issues prior to the release of the final legislation.</p>
102	Payment plan	<p>As mentioned above, customers move in and out of financial difficulties. The definition of 'payment plan' in the NERL suggests that only customers who are <i>currently</i> experiencing payment difficulties are</p>

² Committee for Melbourne, Utility Debt Spiral Project (November 2004). A copy is available on <http://www.cuac.org.au/database-files/view-file/2264/>

		<p>able to access a payment plan. Customers who believe they may have payment difficulties in the foreseeable future (for example, due to changes in their personal circumstances – job loss etc) and those who are not currently experiencing payment difficulties but merely need some help in managing their bill payments, could be excluded. The current definition of ‘payment plan’ effectively limits a customer’s ability to be proactive in managing his/her financial affairs; in particular, from ensuring timely and prompt payment of utility accounts through payment arrangements.</p> <p>We submit that the definition of ‘payment plan’ must be amended to read:</p> <p>‘Payment plan means a plan for:</p> <ul style="list-style-type: none"> (a) a customer experiencing hardship; or (b) a residential customer who is not a customer experiencing hardship but who requires assistance in managing payments; to pay a retailer, by periodic instalments in accordance with the Rules, any amounts payable by the customer’;
102	Cooling off period	<p>Cooling off period is current not defined in the NERL and believe this may be a drafting error. We propose the following definition:</p> <p>"Cooling off period is the period in which a consumer can cancel a contract and refers to the period of business days following physical receipt of a contract by the consumer".</p>
102	Written notice	<p>The second exposure draft of the NECF makes reference to written notices but does not define this term. We are concerned that a lack of clarity and certainty may lead retailers and distribution businesses to deliver notices by means other than hard copy by post, such as e-mail or text by mobile phone, without the express agreement of the customer.</p> <p>Acknowledging that some customers do not have regular or reliable access to e-mail or mobile phone services, that many will prefer to receive their notices by post, and that others will have changed their e-mail address or mobile number without informing their retailer, we submit that the NERL should define a written notice as:</p>

		<p>“a notice delivered in hard copy, by post to customers at their registered billing address unless explicit informed consent has been obtained to deliver the notice in another identified manner”.</p> <p>Given the potentially serious consequences if customers do not receive notices in relation to disconnection or supply interruption, we further submit that the definition of a written notice must identify that a written notice relating to disconnection and supply interruption must always be delivered in hard copy by post, in addition to by any other means agreed to by the customer.</p>
Division 2 – Matters relating to participating jurisdictions		
Division 3 – National Energy Retail Objective and Policy Principles		
	Consumer Policy Rationale	<p>We strongly support the amendment to section 113 of the NERL. We are pleased that the MCE SCO recognises the role of the consumer in the National Energy Customer Framework, and the importance and relevance of addressing this in the objective.</p> <p>We note however, that the current amendment has been drafted to mainly deal with hardship. We are concerned by the limitations this places on access to universal protections that should be the right of all consumers under the NECF.</p> <p>As such, to ensure the NECF actively provides for all consumers we have recommended a minor drafting amendment as follows:</p> <p><i>The national energy retail objective should not be taken to prevent or restrict the development and application of consumer protections for any small use customers, including, but not limited to the development, approval and application of customer hardship policies</i></p> <p>Further, however the concerns raised by consumer groups in our response to the first exposure draft of the NECF have not been addressed. As such, we reiterate our response to the first exposure draft of the NECF, that is, that the <i>National Energy Retail Objective</i> as part of national energy policy, must apply the following two principles:</p>

		<p>1. Fairness: Fairness is about setting responsible and reasonable rights and responsibilities that apply to all customers and a shared responsibility with the energy industry, specifically retailers, distributors, regulators and government. Fairness encapsulates equality of access, recognition of the essential nature of energy,. Hardship on the other hand, refers to ‘make good provisions’, that need to apply when the principle of fairness has not been met. The ‘fairness principal must be enshrined in the <i>National Energy Retail Law Objective</i>, hardship is but one aspect of this principle.</p> <p>2. Sustainability: Governments, consumer groups and increasingly businesses across Australia (and indeed internationally) are implementing steps to curtail greenhouse emissions and encourage innovations which will particularly impact upon the Australian energy industry and its consumers. Any legislation or regulation associated with energy markets, must therefore give careful attention to the social implications of these policies and the ongoing environmental sustainability of energy provision.</p> <p>These principles inform our comments below.</p>
113	National Energy Retail Objective	<p>As discussed above, we strongly support the amendment to section 113 of the NERL. We are pleased that the MCE SCO recognises the role of the consumer in the National Energy Customer Framework, and the importance and relevance of addressing this in the objective.</p> <p>As the objective is the basis for which future rules will be made by the AEMC and will guide the decision making of the AER, additional guidance as to the intent of the NECF, in providing a consumer protection framework is critical.</p> <p>Further, however, to ensure it addresses the full intent of the NECF (and subsequent NERL and NERR), to provide for best practice consumer protections the drafting must be amended.</p> <p>The drafting we propose is focused on ensuring that the Objective applies to consumer protections for <u>all</u> small customers and does not create a distinction between small customers and customers experiencing hardship. Further, to encapsulate the principles we outlined above, we propose the</p>

		<p>following as the National Energy Retail Objective:</p> <p><i>The objective of this Law is to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply.</i></p> <p><i>For the purposes of the national energy retail objective, the provision of energy services for the long term interests of consumers shall be understood to occur in a manner that is:</i></p> <ul style="list-style-type: none"> <i>a. Fair, meaning that the incidence of energy costs are applied equitably between and within different customer classes; and</i> <i>b. Sustainable, meaning that energy supply does not lead to deleterious environmental or social outcomes</i> <p><i>The national energy retail objective should not be taken to prevent or restrict the development and application of consumer protections for any small use customers, including, but not limited to the development, approval and application of customer hardship policies</i></p>
Division 4 – Operation and effect of National Retail Rules		
Division 5 – Application of this law, the rules and procedures to forms of energy		
116	Application of this Law, the Rules and Procedures to forms of energy	<p>Section 116 (1) (a) should refer to “the sale and supply of electricity or gas, or both, and services related to the sale and supply of electricity or gas, or both”.</p> <p>We are concerned that the current drafting excludes the application of the NECF to energy businesses and others selling ancillary services, such as demand management products and services.</p>

Draft National Energy Retail Law		
Part 2 – Relationship between retailers and small customers		
Division 1 – Preliminary		
Division 2 – Customer retail contracts generally		
Division 3 – Standing offers and standard retail contracts for small customers		
Section	Subject Matter	Comment
	Consumer policy rationale	This provision must ensure that all consumers can access electricity and gas services under fair and reasonable conditions, having regard to the nature of energy as an essential service and the power and information disparity between retailers, distributors and small customers. Our comments below are predicated on this fundamental principle.
203	Model terms and conditions	<p>The model terms and conditions as set out in <i>Schedule 1</i> do not clearly provide customers a summary of their rights and responsibilities under the NERL. Many sections refer back to the NERL or NERR from which they derive and do not provide any information within the contract.</p> <p>If this is to be the only means by which retailers are obliged to communicate with consumers about their rights, it should be easily understood by the consumer, without reference to the NERL or NERR.</p> <p>However, we believe that the model contract should be supplemented by a customer charter, derived from the contract that sets out a consumers rights and obligations in plain English.</p>
205 (1)	Publication of standing offer prices	We strongly support the publication of standing offer prices by the AER. In order to assist consumers with accessing and comparing other offers, this provision should be extended to require the publication of market offers. This will also assist informed consumers to effectively participate in a competitive market.
205(2)	Variation of standing offer prices	We support the inclusion of a reference to the requirements of jurisdictional energy legislation in variation of standing offer prices.
205(3) (b)	Publication and	We support the inclusion of the requirement for retailers to publish a notification of variation of a

	notification of variation	retailers standing offer price in a newspaper circulating in the participating jurisdictions. However, this requirement should be strengthened to ensure that it is a newspaper that circulates throughout the entire jurisdiction and include a requirement that the range of the variation be published. For example, if across the jurisdiction standing offer prices are to be increased by a minimum of 5% in one area and 15% in another, notification in the newspaper should require that the range of 5% to 15% be published and this should be published 20 days prior to the variation taking effect.
205 (3) (c)	Publication and notification of variation	<p>Customers should be informed of any variation to their tariffs prior to the variation taking place. Recent experience in Queensland has shown that retrospective price increases cause serious consumer detriment and confusion, with the economic regulator proposing that prior notification be required.³ Prior notification of price variation may also encourage consumers to shop around for more competitive rates and support a competitive market in jurisdictions where there is Full Retail Competition and in line with the Competition Principles Agreement 2007.</p> <p>In order for this information to be easily understood by consumers we submit that the notification should include the tariff shape, proposed price increase as a percentage and including the calculated the dollar value impact on a bill.</p>
205(6)	Notification to the AER	In order for the Australian Energy Regulator (AER) to publish standing offer prices in a timely manner, notification of variation should be provided to the AER 20 days prior to the variation taking effect, consistent with the public notification requirements recommended above.
205(7)	Publication by the AER	As the independent regulator and a source of impartial information to the public, information provided by the AER should be timely and accurate. As such the AER must be required to publish the standing offer prices or variation to standing offer prices on the day that they take effect.
211	Standard retail contract to be consistent with	This provision should be clarified to ensure that standard contracts do not contain additional terms and conditions. This is not clear in the current drafting. However, as stated in response to section 203

³ Queensland Competition Authority, *Draft Decision: proposed amendments to the Electricity Industry Code requiring prior notice for price changes*, December 2009, <http://www.qca.org.au/files/ER-Industry-code-QCA-DraftDecCodeChge-1209.pdf>, p.13.

	model terms as conditions	above, we do not believe that the model contract adequately provides consumers with an understanding of their rights and obligations set out in the NERL. Significantly the model contract does not provide for information on the applicable charges, fees and tariffs to be included in the contract information.
Division 4 – Market retail contracts for small customers		
215 (b)	Formation of market retail contracts	This is a new and extremely broad provision in the NERL. While not wishing to limit product innovation in market contracts, the NERL must be clear that the provision of “any other services” does not jeopardise a consumers access to the supply of essential services. For example, where the provision of telecommunications and electricity or gas services are bundled, non payment of a telephone bill may lead to disconnection for other essential services. The drafting of this provision must ensure that this does not occur.
Division 5 – Explicit informed consent		
	Consumer Policy Rationale	<p>We acknowledge and commend MCE SCO's decision to expand the title of this section from 'Informed consent' to 'Explicit informed consent'. We are concerned however, that it remains undefined in Part 1 Section 102 and therefore any reference to explicit informed consent throughout the NERL and the NERR is without consistent reference, undermining its effectiveness. The inclusion of a definition of 'Explicit informed consent' is fundamental to the strength of the NERL and to consumer protections in relation to engaging with any retail / distribution standard or market contract and specifically in relation to the provision of energy as an essential service.</p> <p>We strongly recommend that a definition of 'Explicit informed consent' be included in Section 102 as per our proposed drafting.</p> <p>'Explicit informed consent' means the consent given by the consumer to an energy business⁴ or their agent in relation to energy products and services, on the basis that:</p>

⁴ 'Explicit informed consent' must apply to all energy businesses not just retailers. There are increasingly instances where distribution businesses enter into arrangements with consumers directly outside of the standard distribution contract, for example 'ripple control' in Queensland. It is essential that a consumer provides its explicit informed consent to validate any contract variation from a standard contract.

		<ul style="list-style-type: none"> adequate information disclosure is provided, where the energy business or their agent has clearly, fully and adequately disclosed in plain English all matters relevant to the consent of the consumer, including each specific purpose and use of the consent the transaction is with a person authorised and competent to do so there is a genuine understanding by the consumer; and the transaction is undertaken with complete voluntariness. <p>Retailers must be obliged to engage with consumers who are authorised account holders who have the competency and capacity to do so in an informed and equitable manner. Failure to include these obligations on energy businesses undermines the validity of this section of the NERL for consumers and demonstrates a lack of commitment to the purpose of 'explicit informed consent'.⁵</p>
222	Record of explicit informed consent	We note that in the first draft of the NECF there was an obligation on retailers to develop written procedures for receiving and recording 'informed consent' given verbally by customers (see Section 220 (4)) and for making these available to customers on request. We question why this has been removed as this further removes the obligation for energy businesses to develop processes and procedures to ensure they gain 'Explicit informed consent', particularly in line with our recommendations for the definition of 'Explicit informed consent'. We note that there is only an incremental cost to businesses in maintaining these records and we strongly urge MCE SCO to re-instate this requirement.
223 (2) (c)	No or defective explicit informed consent	We support the inclusion of this section, however to give it full effect, we refer to our comments in relation to the definition of explicit informed consent.
223 (4)	No or defective explicit informed consent	We seek clarification on this subsection. Our understanding of it is that where a consumer hasn't provided their explicit informed consent, and where a transfer hasn't actually taken place, the consumer is only liable to pay their original retailer for any energy used.
224	Rules	This section of the NERL suggests the Rules may make provision in relation to 'explicit informed consent'. We are unclear what the intention of this section is and suggest the meaning is clarified. In

⁵ *Coercion and harassment at the door; Consumer experiences with energy direct marketers*. A report by Consumer Action Law Centre and the Financial and Consumer Rights Council November 2007.

		addition this rule should also include the application of, for explicit informed consent should apply to any marketing activity and any variation from standard contract terms.
Division 6 – Customer hardship		
	Consumer policy rationale	<p>We are pleased to see the requirement for retailers' hardship policies to be approved by the AER. However, we are concerned that the other recommendations which we raised our submission to the first exposure draft of the NECF have not been addressed.</p> <p>We note that the AER is obliged to approve a hardship policy if it meets the purpose of a hardship policy in section 225(2) and the minimum requirements for a hardship policy in section 226. We submit that AER approval of retailers' hardship policies will not, of itself, provide an adequate safeguard that retailers have robust and adequate hardship policies. Amendments are also needed to sections which outline the purpose of, and the minimum requirements for, a hardship policy. Further, we are concerned that the general principle regarding disconnection allows a customer experiencing hardship and participating in a hardship program to be disconnected. This is unacceptable. Our concerns are elaborated below.</p>
225	Customer hardship policies	We support the amendments to the NERL that require a retailer's customer hardship policy to be approved by the AER. The approval of the retailer's customer hardship policy should be done as part of the retailer's approval and authorisation process however (section 503 Entry criteria), this is an essential aspect of a retailer's customer management program and should be fully developed before commencing operation in the market.
225(1)(b)	Customer hardship policies	To acknowledge that a number of customers participating in hardship programs are from culturally and linguistically diverse (CALD) backgrounds, it is necessary that the hardship policies are made available in other languages than English, to ensure the hardship policies are made as widely available as possible for those who need it.
225(2)	Customer hardship policies	The purpose of a retailer's customer hardship policy is not merely to assist customers experiencing hardship to better manage their energy bills on an ongoing basis, but to ensure that customers who are participating in a retailer's hardship program are not disconnected solely due to an inability to pay their energy bills.

		<p>A retailer with an appropriate hardship program should not disconnect a customer who is actively participating in the program. Further, retailers' hardship policies should actively ensure that procedures are in place to ensure consumers rights around payment plans, consumer protections and disconnections in the NECF are guaranteed.</p> <p>In our submission on the first exposure draft of the NECF we raised these concerns. We are disappointed that our concerns were not addressed in the second exposure draft of the NECF.</p> <p>We regard an amendment to section 225(2) as imperative, especially in the context of section 227(1). Section 227(1)(b) provides that in deciding whether to approve a retailer's customer hardship policy, the AER will have regard to the likelihood of the policy achieving the purpose as set out in section 225(2). To ensure that hardship programs are effective and customers experiencing hardship are adequately protected, we submit again that the sub-section must be re-drafted to read:</p> <p>'The purpose of a retailer's customer hardship policy is to assist customers experiencing hardship to better manage their energy bills on an ongoing basis and to ensure that such customers are not disconnected solely due to an inability to pay their energy bills.'</p>
226	Minimum requirements for customer hardship policy	<p>In our submission to the first exposure draft of the NECF, we submitted that the minimum requirements for a customer hardship policy should draw from the learnings from the Utility Debt Spiral Project.⁶ The project harnessed the expertise of business, government, regulators and civil society project partners to establish a best practice hardship response program.</p> <p>While we strongly support clauses 226 (a) and (b), we reiterate that the minimum requirements for a hardship program must also include:</p> <ul style="list-style-type: none"> • Flexible payment methods, including Centrepay; • Review of customer tariff and terms and conditions; • Review customer's current consumption and where appropriate provide personalised assistance

⁶ Committee for Melbourne, Utility Debt Spiral Project (November 2004). A copy is available on <http://www.cuac.org.au/database-files/view-file/2264/>

		<p>to better manage consumption;</p> <ul style="list-style-type: none"> • Development of options to assist future payments, including incentives, discounts etc.; • Development of referrals to local support services; • Suspension of disconnection, debt collection, legal action while consumers are participating in the hardship program; • Clearly articulated and communicated hardship policy; and • Details of internal and external dispute resolution schemes. <p>We submit that section 226 must be amended to reflect, as a minimum, the above requirements.</p> <p>We regard the amendment as crucial, especially in the context of section 227(1). Section 227(1)(a) obliges the AER to approve a retailer’s customer hardship policy if the AER is satisfied that the hardship policy meets the minimum standards in section 226. Our proposed amendment to the minimum standards would ensure that customers experiencing hardship have access to robust and effective hardship programs.</p>
226(a)	Minimum requirements for customer hardship policy	<p>We support the current drafting of this section. However, in our submission to the first exposure draft of the NECF we explained the need to expand the wording to allow relevant third parties to identify customers who are experiencing payment difficulties due to hardship. Third parties (for example: financial counsellors, welfare agencies, emergency support services, authorised representatives of the customer, etc) play an important role in assisting and identifying customers who are experiencing payment difficulties due to hardship. We submit that section 226(a) be amended to include identification by relevant third parties with the consumer's consent.</p>
226(c)	Minimum requirements for customer hardship policy	<p>Centrepay is mentioned in Rule 304 of the NERR as a payment option for customers experiencing hardship. We therefore submit that section 226(c) be amended to include a reference to Centrepay. For example:</p> <p>‘flexible payment options (including a payment plan and Centrepay) for the payment of energy bills by customers experiencing hardship; and’</p>

226(d)	Minimum requirements for customer hardship policy	<p>In addition to financial counselling services, retailers should also have processes to identify and notify customers about other support services. The current wording fails to address this although this was raised in our submission to the first exposure draft of the NECF. We submit that section 226(d) be amended as follows:</p> <p>'processes to identify appropriate governmental concession programs, appropriate financial counselling services or other support agencies, and to notify customers experiencing hardship of those programs and services;'</p>
New sub-section to 226	Minimum requirements for customer hardship policy	<p>Rule 305(1) of the NERR obliges a retailer's customer hardship policy to 'contain processes to review the appropriateness of a hardship customer's customer retail contract.' This is an important requirement which should be reflected in the NERL as a minimum requirement for a hardship policy.</p> <p>We submit that the following new sub-section be added to section 226:</p> <p>'The minimum requirements for a customer hardship policy of a retailer are that it must contain - processes to review the appropriateness of the customer retail contract of a customer experiencing hardship.'</p>
228	Obligation of retailer to communicate customer hardship policy	<p>We strongly support the drafting of this section, however note that it appears contradictory to Rule 301(1) to which it refers.</p> <p>Section 228 provides that: 'A retailer must, in accordance with the Rules, inform a residential customer of the retailer's customer hardship policy where it appears to the retailer that non-payment of an energy bill is due to the customer experiencing payment difficulties due to hardship.'</p> <p>Whereas, Rule 301(1) provides that: 'A retailer must inform a customer experiencing hardship of the retailer of the existence of the retailer's customer hardship policy as soon as practicable after the customer is identified as a hardship customer.'</p> <p>Rule 301(1) should be amended to concur with this section.</p>

229	General principle regarding de-energisation (or disconnection) of premises of hardship customers	<p>It should be a fundamental principle of a customer protection framework that no consumer should be disconnected solely due to an incapacity to pay. The current wording does not guarantee that the most vulnerable people in our community are protected from disconnection. We are disappointed that our concerns which were raised in our submission to the first exposure draft of the NECF were not addressed in the current draft. We submit again that section 229 must be amended to read:</p> <p>‘A retailer must give effect to the general principle that a consumers premises shall not be de-energised (or disconnected) due to inability to pay energy bills’.</p>
Division 7 – Payment plans		
	Consumer policy rationale	<p>Our view is that payment plans should be available to any customer who needs them and not just to customers experiencing hardship. Some customers (who are not currently experiencing payment difficulties) may still need a payment plan so as to better manage their financial affairs or because they anticipate changes in their financial situation in the foreseeable future.</p> <p>While we are pleased that in the second exposure draft of the NECF, the section on payment plans has been put in a division separate from hardship, this improvement does not go quite far enough. There is an opportunity to make some structural changes to the legislation that better expresses an intention to provide universal protections and assistance to customers who are having difficulty paying their energy bills.</p> <p>As a suggestion, Division 7 could appear before the division on hardship and be expanded to contain some broad principles around supporting customers to manage payment of their energy bills. A broader heading such as “Assistance to manage energy bills for small customers” would be more appropriate to support this intention than simply “payment plans”. The division would include the requirement for retailers to offer payment plans to residential customers who require assistance to manage payment plans (see section 231(1) below), and should also include the general principle that customers should not be de-energised (or disconnected) due to an inability to pay energy bills (see our comments for section 229 earlier)</p> <p>Restructuring the legislation in this way would provide greater recognition of an intent to offer basic</p>

		universal protections and assistance for all customers to prevent them from falling into payment difficulties or to manage payment difficulties (when and if they need it), while also making provision for the greater level of assistance that is required by a some customers who are experiencing hardship either on a temporary or ongoing basis.
231(1)	Payment plans	<p>See our comments on the definition of payment plan in section 102. In line with our proposed amendment to the definition of payment plan in section 102, we submit that section 231 be amended to read:</p> <p>'A retailer must offer and apply payment plans for:</p> <ul style="list-style-type: none"> (a) customers experiencing hardship; and (b) other residential customers who require assistance in managing payments; <p>in accordance with the Rules.'</p>
Division 8 – Energy marketing		
	Consumer policy rationale	<p>We are pleased with the overall expansion of obligations on retailers in relation to energy marketing, as outlined in the NERL and NERR, and also the inclusion of the marketing rules into the NERR, as opposed to having them as a schedule to the Rules. Further, we encourage MCE SCO to identify and address any gaps in marketing protections as the Australian Consumer Law is developed, recognising the role of energy as an essential service.</p> <p>We strongly suggest that the application of these provisions should be expanded to distribution businesses and any other energy product or service providers, in relation to any form of energy marketing to small customers. The increasing range of products and services, including the current products such as 'ripple control' in Queensland for example, currently require distribution businesses to engage with consumers directly in relation to varying contract terms.</p> <p>Further to this, we are disappointed and unclear however, as to why some of our other recommendations in our response to the first exposure draft of the NECF have not been adopted. The recommendations we made represent a way to minimise the negative impacts of marketing practices across the energy market, specifically based upon our extensive experience as consumer</p>

		<p>representatives and on behalf of our affected constituents. We continue to highlight the issues that arise in jurisdictions where marketing of energy products and services cause significant consumer detriment. While we acknowledge that in part, a failure of enforcement is to blame, we also believe there are a number of commonsense methods that can be used to further mitigate the detriment experienced by consumers for this practice (and at times, mal-practice).</p> <p>Our recommendations are based upon the assumption that regulations should ultimately be seeking to prohibit poor marketing practices, and specifically prohibit:</p> <ul style="list-style-type: none"> • misleading consumers about the nature of a document they are signing; • forging consumers' signatures; • attempting to sell to minors; • bringing undue pressure to bear, particularly upon vulnerable consumers; • sales activity outside certain times of the day; and • continuing an approach after a consumer has requested that it be terminated. <p>We point MCE SCO to the inclusion of marketing obligations as a licence condition in the United Kingdom, and to the continued experience in the United Kingdom of poor switching decisions by consumers on the door step and 'mis-selling' by retailers. These observations have been made by Ofgem and refer to the fact that competition is not sufficiently developed in the energy market⁷ to remove these protections as yet. We are in a position in Australia, where competition is also not sufficiently developed, to mitigate the impact of marketing practices on consumers as competition does develop (rather than having to react when the issues are exacerbated nationally). We refer MCE SCO to extensive reports of detriment to consumers in Victoria as footnoted.⁸</p>
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⁷ Ofgem, Decision document: Regulation of marketing to domestic customers, 30 March 2009 access: <http://www.ofgem.gov.uk/Markets/RetMkts/Compl/DirectMktng/Documents1/SLC25Decision%202009.pdf>

⁸ 'Coercion and harassment at the door - Consumer experiences with energy direct marketers'⁸

- <http://www.consumeraction.org.au/downloads/EnergyMarketinginVictoria-Finalv.3.pdf> and The African Consumer Experience of the Contestable Energy Market in the West of Melbourne www.communitylaw.org.au/footscray/cb_pages/images/ENERGY%20REPORT09.doc

		We strongly urge the NERL make provision for the AER to develop marketing guidelines, in line with the Victorian Marketing Code of Conduct to further mitigate the impacts of energy marketing on consumers.
232	Definitions	<p>Based upon the comments we have made above, regarding the need for all energy services to be included under these marketing protections, we strongly recommend that the definition of Marketing be expanded to include 'any activity involving contact with a small customer (whether solicited or unsolicited) that may result in a small customer entering into a customer retail contract or a distribution contract for energy and 'other services'.</p> <p>Further, an additional definition, 'distribution marketer' should be included to capture all marketing by a distribution business or its associates.</p>
233	National Energy Marketing Rules	<p>We understand that this may be an oversight by the drafters, however this section is no longer valid following the inclusion of marketing obligations into the NERR, rather than an additional section 'National Energy Marketing Rules'. This section needs to be amended to refer to the Rules.</p> <p>In addition to the information provided under section 233 (2), the ability for a small customer to rescind a market retail contract during the cooling off period requires a clear explanation and definition of cooling off period. We strongly recommend that this is included in the definitions in section 102 and that the cooling offer period is clearly stated as 10 business days following receipt of the contract.</p> <p>We propose the following drafting:</p> <p>"Cooling off period is the period in which a customer can cancel a contract and refers to the period of business days following physical receipt of a contract by the consumer".</p>
Division 9 – Deemed customer retail arrangements		
235(6)	Deemed customer arrangement for new or continuing customer without a customer retail contract	This provision should not be applicable to carry over customers. Where a customer retail contract ceases, retailers have access to the customers name and identification details required to form a standing offer contract, and indeed will be supplying this customer on the same terms and conditions as a standing offer contract. Either a standing offer contract should be formed or as is the case with mobile phone plans, consumers should continue to be supplied on the terms and conditions of their current

		market contracts with no applicable termination fees.
Division 10 – Prepayment meters		
	Consumer policy rationale	<p>In those jurisdictions which allow the use of prepayment meter systems, including Tasmania, South Australia, Queensland and Western Australia, a significant amount of work has been done to determine adequate and appropriate customer protections for prepayment meter customers. We believe it is important to adopt the best examples of Australian regulatory practice for customer protections in regards to prepayment meters in the NECF. While the second exposure draft of the NECF has gone some way to addressing our concerns, there are many matters for which stronger customer protections are necessary for prepayment meter customers. Please find following our suggestions and comments under relevant sections in relation to prepayment meters.</p> <p>We would also like to draw the attention of the MCE SCO to remote Indigenous communities in some jurisdictions who are offered electricity services through prepayment meters. Many of these communities are outside the National Electricity Market and are provided with prepayment meter services under standard retail contracts due to the unavailability of market retail contracts. We are concerned that a number of jurisdictions are likely to exempt prepayment meter services in remote Indigenous communities from the provisions of the NECF, even where communities do come under the National Electricity Market. We believe that this is a situation which is inherently unfair and untenable. A NERL that does not address the needs of some of the nation's most vulnerable customers is incomplete. We are of the opinion that the NECF should incorporate sections that address the needs of remote Aboriginal and Torres Strait Islander communities.</p> <p>At the least, we argue that existing prepayment meters provided under standard retail contracts should be covered by the NECF. We consider that it would be good practice for jurisdictions to apply the minimum protections for prepayment meter customers afforded under the NECF to all customers supplied with energy via prepayment meters, whether or not they are part of the National Electricity Market.</p>
237	Use of prepayment meter systems only in jurisdictions where	We recommend that a subsection be added to require a jurisdiction to conduct a multi-stakeholder consultation process before legislating to allow the use of prepayment meter systems in that jurisdiction for the first time.

	permitted	
Division 11 – AER Retail Pricing Information Guidelines		
242	AER retail pricing information guidelines for presentation of standing and market offer prices	This provision should be amended to require the AER to produce such guidelines i.e. change ‘may’ to ‘must’. The absence of clear information guidelines will hamper competitive pressure in the market as consumers will be unable to readily compare prices, terms, conditions or fees and charges.

Draft National Energy Retail Law		
Part 3 – Relationship between customers and distributors		
Section	Subject Matter	Comment
	Consumer Policy Rationale	<p>We are concerned that this section of the NECF, relies on protections enshrined in the Trade Practices Act (TPA) to regulate the relationship between a consumer and a monopoly business. The TPA is designed for a competitive marketplace where it is expected there is a more equitable balance of power between customers and business. As a natural monopoly, electricity distribution needs much stronger and more specific consumer protections to ensure that customers are not disadvantaged as they interact with their service provider.</p> <p>While we acknowledge the intention to maintain jurisdictionally regulated Guaranteed Service Level (GSL) Schemes and service standards, we are concerned that these state based protections may be eroded over time with the Commonwealth seen as responsible for the regulation of the distribution network and the absence of any national baseline service standards. The NECF should facilitate the addition of national protections with regard to service standards if this is required over time.</p> <p>We think elements of the regulatory frameworks used in other jurisdictions could be incorporated into the NECF. For example, the Victorian Essential Services Commission (ESC) compiles data on distributor’s performance according to a set of criteria and then publishes a report that provides the market with comparative performance data of the five different distribution businesses. We are of the view that similar regime could be included in the NECF in order for both customers and distributors to</p>

		<p>be aware of distributors' comparative performance and where improvement is required. This could be included in the Part 8 of the NERL on the Functions and Powers of the AER.</p> <p>Generally, we are supportive of the fact that the NECF adopts an approach that includes more direct relationship between the customer and distributor than exists in some Australian jurisdictions . However, we emphasise the need for distributors, which may currently have limited interaction with customers, to be well equipped to manage the new contractual relationship and direct interaction with customers. Similarly, we emphasise the need for customers to be aware of any changes to the relationship between themselves and the distributor as the NECF becomes law.</p> <p>We note that to achieve this, distributors may require more information about their customers than just the National Meter Identifier (NMI). We support a change to this but emphasise that it should be accompanied by appropriate privacy protections and personal information should not be used for marketing activities of any kind. Currently, the distribution contract places an obligation on the customer to provide the distributor with any information that is reasonable for the purposes of this contract. We believe that the information sharing should be better defined and accompanied with appropriate privacy protections.</p> <p>A further issue of significant concern is the fact that the marketing rules in the draft of the NECF do not currently apply to distributors. It is likely that many new energy products and services will become available as energy networks become "smarter". For example, customers could enter into contracts to allow direct load control by a distributor in return for a reduction in network charges. Distributors will be able to offer these products and services to their customers and marketing rules should apply. This should include a requirement that any contract between a customer and a distributor requires the customer to provide explicit informed consent. Please refer to our comments in Division 5 - Explicit informed consent and Division 8 - Energy marketing. Broadly speaking, we would like to see the drafting of the purpose and intent of the sections of the NECF that relate to the relationship between distributors and customers be revised. The regulated market is characterised by monopoly providers and there is a need for specific obligations on distributors to customers. Our specific comments and criticisms of NECF provisions that relate to the relationship between customers and distributors are outlined below.</p>
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		The Consumer Advocacy Panel funded a research project into the customer-distributor relationship under the first exposure draft of the NECF ⁹ . This research report has been sent to MCE SCO. We note that the relevant sections of the NECF have been amended slightly in the second exposure draft of the NECF. However, the majority of recommendations contained in the research report remain relevant and we would strongly urge the consideration of this report as further refinement of the NECF occurs, to ensure adequate balance in the distributor / customer relationship and that best practice consumer protections apply nationally.
Division 1 – Preliminary		
Part 3	Obligations on distribution businesses.	The current drafting of Part 3 places few obligations on distribution businesses to provide high quality and reliable energy supply as well as good customer service. Such obligations are essential in regulation if a market is characterised by a monopoly provider of a good or service. The current drafting of the NECF relies heavily upon the TPA which is designed for a competitive market and fails to adequately provide for the specific nature of the energy market and the role of energy as an essential service.
Division 2 – Obligation to provide customer connection services		
Division 3 - Customer connection contracts generally		
Division 4 – Deemed standard connection contracts		
306	Formation of a deemed standard distribution contract	It is recommended that a retail contract between an individual customer and a retailer be required to be in place as a prerequisite for the distribution contract to be considered formed. However, we note that this may be an issue in the event that body corporate or developers organising connection or for exempt supply arrangements. This section may be improved by more explicit drafting.
308(4) (a)	Required alterations	It is unclear from this section what specific jurisdictional amendments can be made. We believe that these should relate solely to Guaranteed Service Levels and service standards and that this should be clarified in the law.
Division 5 – AER approved standard connection contracts		
Division 6 - Negotiated connection contracts		
Division 6	Negotiated connection	We note and support the strengthening of the consumer protections around negotiated contracts for

⁹ Prins, David (2009) *Advice on National Energy Customer Framework (NECF)*, Etrog Consulting Pty. Ltd., Melbourne

	contracts	small customers, in particular the laws of explicit informed consent must apply to any negotiated contract between a distributor and a customer (based upon our definition of explicit informed consent in section 102).
Notable omissions from the law		<p>To ensure maximum consumer protection, in line with the intent of the NECF, it would be appropriate to insert several other sections in the NERL. These would include:</p> <ul style="list-style-type: none"> • A provision that allows the addition of regulations for particular products and services. It is important that the law provides sufficient scope for new products and services in energy markets to be appropriately regulated. This would apply for instance in the event of the widespread introduction of smart/advanced metering. It is important that customers receive the benefits of the services that they have to pay for as a result of distributors'/government decisions. Furthermore, advanced distribution network products may necessitate additional and well designed customer protections in light of new retail and network products. • A requirement for distributors to adhere to the marketing rules that bind retailers including a requirement for a customer to provide explicit informed consent for any contract that they enter into with a distributor.

Draft National Energy Retail Law		
Part 4 – Small customer complaints and dispute resolution		
Section	Subject Matter	Comment
401(a)(vi)	Definitions	We support the inclusion of this subsection.
New 401(a)(vii)	Definitions: Relevant matter	This definition should be expanded to include an additional sub-section – 'conduct of a retailer's and distributor's employees, servants, officers, contractors or agents.'
403(2)	Standard complaints	As 'regularly reviewed' is vague, we suggest that it be amended to read 'annually reviewed.'

	and dispute resolution procedures	
403(3)	Standard complaints and dispute resolution procedures	As 'must be substantially consistent' could be interpreted widely, we suggest that it be amended to ensure that complaints and dispute resolution procedures 'must be consistent' with the Australian Standard. Or alternatively this section could empower the AER to produce guidelines as to which sections must be consistent with the standards and which sections may be substantially consistent with the standard.
404(2)	Complaints made to retailer or distributor for internal resolution	It is not appropriate to impose time limits for making complaints under this provision. Given the long billing cycles and the complex nature of energy supply, problems may not become apparent until sometime after the original incident. The standard complaints and dispute resolution procedures should also be free and easily accessible to customers (and their authorised representatives). For example, complaints should be accepted by various methods such as by telephone, email, fax, mail etc. Interpretation services should be available as not all customers are have English as their first language.
404(3)	Complaints made to retailer or distributor for internal resolution	It is not appropriate to impose time limits for making complaints under this provision. However, the 'time limits applicable under those procedures for handling a complaint,' must ensure that complaints are handled expeditiously. We note that while there is a reference to 'expeditiously' in rules 510(2)-(3) and 511(2)-(3) ¹⁰ which addresses 'Shared customer enquiries and complaints', there is no similar reference in section 404(3). To ensure that customer complaints are progressed expeditiously, we suggest an amendment to section 404(3): 'The complaint must be handled expeditiously and in accordance with the retailer's or distributor's standard complaints and dispute resolution procedures'.

¹⁰ Rule 510(2): The retailer must respond to an enquiry expeditiously.

Rule 510(3): The retailer must resolve a complaint expeditiously and in accordance with its standard complaints and dispute resolution procedures.

Rule 511(2): The distributor must respond to an enquiry expeditiously.

Rule 511(3): The distributor must resolve a complaint expeditiously and in accordance with its standard complaints and dispute resolution procedures.

405	Complaints made or disputes referred to energy ombudsman	It is not clear what the distinction between sub-sections (a) and (b) is (or why a distinction is required). That is, the difference between a small customer 'mak[ing] a complaint to the energy ombudsman' and 'refer[ing] a dispute to the energy ombudsman'.
406(1)(e)	Functions and powers of energy ombudsman	We suggest amending sub-section (e) to read: 'to identify and advise on systemic issues and potential compliance issues and in appropriate cases, report these to relevant retailers, distributors and regulatory authorities, as a means of preventing complaints and disputes from escalating or arising.'
New sub-sections to 406	Functions and powers of energy ombudsman	Some customers, particularly disadvantaged customers and those from non-English speaking backgrounds may have difficulty in contacting the energy ombudsman and articulating the details of their complaint. We believe that this section should be expanded to facilitate appropriate access to energy ombudsman services for these consumers. We suggest including the following new sub-sections: (5) 'An authorised representative of the small customer may make a complaint or dispute on behalf of a small customer. (6) Complaints and disputes may be made orally or in writing.
407(1)	Information and assistance requirements	In order to ensure the timely resolution of complaints referred to the energy ombudsman, we suggest amending sub-section (1) to read as follows: 'A retailer or distributor must, in accordance with the procedures of the energy ombudsman, including any time limits applicable under those procedures, provide information and assistance relating to a small customer complaint or dispute to the ombudsman on request by the ombudsman.'
408(2)	Retailers and	As distributors are increasingly likely to be involved in marketing to small customers, we believe that

	distributors to be members of a scheme	<p>this sub-section should be amended to incorporate this:</p> <p>‘A distributor must –</p> <p>(a) be a member of, or subject to, an energy ombudsman scheme for each jurisdiction where it has small customers connected to its distribution system or engages in marketing to small customers; and</p> <p>(b) comply with the requirements of the scheme.’</p>
New sub-section to Part 4	No fees or costs	<p>As energy ombudsman schemes are free to consumers, we suggest including the following provision:</p> <p>‘No fees for use of the energy ombudsman scheme will be charged to, or costs awarded against, a small customer.’</p>

Draft National Energy Retail Law		
Part 5 – Authorisation of retailers and exempt seller regime		
Section	Subject Matter	Comment
	Consumer policy rationale	<p>Authorisation of retailers</p> <p>Given the increasing level of competition in the National Energy Market and the number of new entrants in each jurisdiction the AER has an increased responsibility for ensuring that the market operates and functions successfully. This begins with the authorisation of market participants.</p> <p>In order to avoid disruption to the energy market and consumers it is of utmost importance that the AER performs its role of authorising retailers through a systematic review of a retailer's probity, their systems and processes and their knowledge of their regulatory obligations and compliance framework, prior to granting authorisation. Further, a risk management strategy to prevent a RoLR event must be introduced, whereby risks are flagged as early indicators to initiate a transfer process, and prior to a licence revocation.</p>

Exempt seller regime

We acknowledge the need for exempt supply arrangements in circumstances where the costs of full NECF compliance outweigh the benefits to the consumer. However, on the basis that current jurisdictional arrangements do not offer adequate protection or transparency for consumers in exempt seller regimes the 'exempt selling guidelines' established by the AER must be robust and at minimum enable payment arrangements, ie payment plans and hardship provisions to be available to exempt customers.

Currently, it is difficult to know the total number of exempt customers, supply standards or contractual arrangements these customers are on, as they vary across and within jurisdictions. There is a lack of transparency about energy charges amongst exempt suppliers for exempt customers and exempt customers in retirement villages, high rise apartments and caravan parks, for example, have little control over their energy purchasing decisions in comparison to retail customers and as such are often unaware of the amount of energy they consume and the relevant charges applicable to them. It is essential therefore that exempt customers have access to a transparent process which enable them to see the exact quantity of energy purchased and all applicable rates and charges, this would eradicate the issue of exempt sellers unfairly profiting at the expense of exempt customers.

In addition, exempt customers must benefit from protections that retail customers experience, in relation to billing arrangements, access to government concessions and a complaint handling scheme. Failure to provide these basic protections to exempt customers excludes them from their access to consumer rights.

We recognise that the second exposure draft of the NECF outlines a scheme that is an improvement on current arrangements, however, further modifications are necessary to ensure that exempt customers receive adequate protection and information and the compliance and auditing requirements in Part 12 of the law and Rule 903 of the NERR are adequate.

We note the role of the AER in developing guidelines to cover some of these conditions and look forward to contributing to this process.

		Further, an extensive reporting framework must be established to facilitate the monitoring role of the AER. We have provided an outline of necessary information to achieve this.
Division 1 – Prohibition on unauthorised selling of energy		
Division 2 – Application for and issue of retailer authorisation		
503	Entry criteria	The entry criteria, listed as organisational and technical capacity, financial resources and suitability criteria, need to be thoroughly developed through the AER Retailer Authorisation Guidelines to ensure they include as a minimum the following: a risk management strategy, fully developed customer management systems including a customer hardship policy, and demonstrated working knowledge of, and compliance with, regulation including all guidelines and the credentials of the organisation directors.
504	Public notice and submissions	<p>In addition to publishing an application on the AER's website, all stakeholders should be notified directly, via for example the subscription list, and in engagement forums, workgroups etc as a more proactive method of notifying interested parties.</p> <p>Further, we refer to our submission to the first exposure draft of the NECF where we recommended the consultation period regarding the application be six weeks, to be consistent with other areas of the NERL related to public consultation. We are unsure why this recommendation was overlooked and re-instate our comments, for the purpose of consistency through NERL and NERR.</p>
505	Deciding application	<p>The 'Note' at the bottom of this section refers to granting an application to a failed retailer where they will be responsible for the payment of the costs of a prior RoLR event.</p> <p>While we have considerable concerns about the authorisation of a previously failed retailer or an associate of a failed retailer, we support the principle that the failed retailer should bear the costs of their failure. Further to this we would like to see its expansion (as noted in our response to Section 653) whereby all the costs paid by the applicant must be re-apportioned to all affected consumers who, depending on the final design of the RoLR scheme, may have borne the costs of the failed retailer at the time of the RoLR event.</p>

506	Conditions	<p>We support this provision, including the ability of the AER to amend or revoke imposed conditions at a later date. However, this section does not allow the AER to impose conditions once an application for authorisation is granted. New conditions, based on current drafting, can only be imposed as part of a transfer or revocation process.</p> <p>The AER should be able to impose conditions on an existing authorisation. Otherwise, in the face of concerns about a retailer’s continuing ability to meet authorisation entry criteria, it has only two options – to do nothing or to pursue the last resort revocation process.</p>
Division 3 – Transfer of retailer authorisation		
515-6	Application of application process to transfers	In the case of a transfer of a retailer’s authorisation, we expect that the same detailed requirements as applicable to a new license, apply to transferee.
Division 4 – Surrender of retailer authorisation		
Division 5 – Revocation of retailer authorisation		
520	Power to revoke	While revocation is severe and should only be considered after all other enforcement procedures have been exhausted we refer to section 520 (2) (b) and the AER’s reference to a 'material failure', upon which it will base its decision to revoke an authorisation. At this stage 'material failure' is undefined and therefore potentially subjective. 'Material failure' needs to be defined and must consider to whom the failure is material.
522	Revocation process	<p>We note that there are no timeframes under subsection (6) to indicate how long a retailer has before an authorisation is revoked. We nominate three months to facilitate a fair transition and to minimise consumer detriment from ongoing poor performance of the retailer.</p> <p>In addition, at all times consumers' rights to access, and retailers’ obligations to cooperate with, the relevant energy ombudsman must be retained as a condition of the licence, including in the instance where a retailer may be placed in administration.</p>
523	Transfer of customers following revocation	It is not clear if the ‘requirements of conditions’ regarding the transfer of customers specified here are conditions that the AER is able to impose as part of the revocation process, or more generally “conditions”, for example under the RoLR provisions. We recommend that this be clarified. We also

		recommend that if the former is intended, the AER be required to develop any such conditions having regard to the RoLR transfer processes but without any associated cost to consumers.
Division 4 – Surrender of retailer authorisation		
Division 5 – Revocation of retailer authorisation		
Division 6 – Exemptions		
524 – 530	Exemptions	We support the conditions set under section 528 (1) and the elevation of these conditions to the NERL from the Rules. However, in addition to the mention of consumer protections generally at section 528 (1) (c) there needs to be an explicit reference to the desirability of maintaining access to relevant payment arrangements, and specifically hardship arrangements for exempt customers.
Division 7 – Miscellaneous		
531 – 533	Miscellaneous	<p>We strongly suggest that the NERL establish a reporting framework for the exempt seller regime. Lack of transparency around current exempt selling arrangements makes it difficult to gauge the level of disadvantage or inequity faced by energy consumers under exempt selling regimes. Items that should be included for reporting include:</p> <ul style="list-style-type: none"> • Total number of exempt customers; • Residential status of exempt customers; • Disconnection rates of exempt customers; • Access to consumer protections and government concessions by exempt customers; • Compliance; and • Other relevant measures. <p>The NERL should also allow the AER to take monitoring and compliance action, and impose its framework on exempt sellers</p>

Draft National Energy Retail Law

Part 6 – Retailer of last resort scheme

Section	Subject Matter	Comment
	Consumer policy rationale	<p>Without guidance as to the policy rationale behind the RoLR provisions it is difficult to provide critical analysis of this section. We have provided a summary of our understanding of the process to date, however strongly urge the MCE SCO to further explain the policy rationale relating to this section and consult with more broadly to prior to finalising the RoLR regime. .</p> <p>The first exposure draft of the NECF did not include any detail of the Retailer of Last Resort (RoLR) scheme. The explanatory material published by MCE SCO in concert with the release of the second exposure draft of the NECF includes two sections regarding RoLR, one at 3.9 and the other at Attachment C. At clause 76 of the Explanatory Material MCE SCO refers to the [draft] report prepared by NERA/AAR (and published by MCE SCO in October 2008) and subsequent comments made by stakeholders.</p> <p>The explanatory material does not explain why the final report prepared by NERA/AAR (dated January 2009) was not published until November 2009 coincident with publication of the second exposure draft of NECF. Nor does the Explanatory Material indicate what changes were made to the report as a result of stakeholder comments or otherwise or how the report was considered by MCE SCO in the production of the RoLR sections of the NERL and NERR.</p> <p>Neither of the relevant Consultation Regulation Impact Statement (published in October 2008) nor the Decision Regulation Impact Statement published on the MCE website in July 2009, i.e. after publication of the first exposure draft of the NECF, make anything but tangential reference to RoLR. Despite clause 6 of Attachment C, there, to date, has been no published analysis of the costs and benefits of a RoLR and no indication of the MCE SCO policy-making process that informed the drafting of legislation and related instruments. As stated above, without t guidance as to the policy rationale behind the RoLR provisions it is difficult to provide critical analysis of this section.</p> <p>In the Final Report prepared by NERA/AAR there is a list of principles “for assessing alternative</p>

		<p>arrangements for a national RoLR scheme”. It is unclear how these principles have been enacted in this provided drafting, in indeed if MCE SCO has considered alternative policy principles in developing this section. We would be pleased to discuss further the policy rationale for many of the decisions on the RoLR provisions.</p> <p>Clause 79 of the explanatory material indicates that “the NECF will allow for jurisdictional variations to the national RoLR scheme where deemed necessary”. Neither the NERL nor the NERR provide any further detail in this regard.</p> <p>At clause 22 of Attachment C, MCE SCO notes that “cost recovery for a RoLR event will come from: RoLR customers, through prices set at the designated RoLR’s standing offer prices and possibly an up-front fee; and all customers through charges to recover any under-recovery of RoLR costs from RoLR customers during a RoLR event”. The proposal that customers other than customers of the failed retailer would contribute to the cost of a RoLR transition is a significant policy decision and a departure from current jurisdictional arrangements. Given that there is little precedent for this charging regime we would appreciate greater clarity in the NERL as to how and where the various cost recovery mechanisms will apply.</p> <p>As per our comments to Part 13 of the NERL, we believe the civil penalty provisions to be inadequate, particularly in relation to the actions of a person or business, that may contribute to a RoLR event.</p>
Division 1 – Preliminary		
Division 3 – Appointment of designated of RoLRs		
608	Designation of registered RoLR	The NERL is currently unclear as to whether or how the AER would resolve the question of cost recovery in the event that a RoLR was appointed as designated RoLR in an <i>apprehended</i> RoLR event that did not subsequently result in an <i>actual</i> RoLR event. These are complex issues and require further consultation and debate.
611 (1) (a)	Guidelines	The NERL is currently unclear as to whether “to be applicable in the case of a RoLR event involving a default RoLR” means in the event of the default RoLR failing or in the event of a default RoLR becoming the/a designated RoLR.

Division 4 – Declaration of RoLR event		
612 (1)	Issue of RoLR notice	It is unclear as to why the AER would not be required to issue a notice if it believes that a RoLR event has occurred. We strongly recommend a drafting change of may to <i>must</i> .
Division 5 – Arrangements for sale of energy to transferred customers		
621 (4)	Contractual arrangements for sale of energy to transferred small customers	<p>Our understanding of Division 8 is that RoLR cost recovery might be effected <i>ex-ante</i> or <i>ex-post</i>, and from directly affected customers (ie customers of the failed retailer) and/or other/all customers, and through an upfront fee and/or through the tariff/s applied by the RoLR to deemed small customer contracts.</p> <p>Further, we understand that the deemed arrangement allows for tariff ('price') other than a usual standing offer tariff for a maximum period of three months. Recovering costs through a multiple mechanisms, particularly through separate tariffs means that cost may be borne disproportionately by customers who remain with the RoLR for that three month period. We propose that costs are not recovered by a separate tariff for RoLR customers, rather that they are charged the standing offer rate.</p>
622	Contractual arrangements for sale of energy to transferred large customers	While we understand it is necessary for large customers to be provided with continuity of supply in a RoLR event, it is unclear why the contractual arrangements for this are included in the NECF.
Division 6 – Information requirements		
625 (2)	Information to be provided to AER by AEMO and retailers	We believe this subsection should be a civil penalty provision. Civil penalties should apply if a retailer delays or withholds notification. Further, the provisions under Division 6 Information Requirements, Subdivisions 1, 2, 3, 4 should also be marked as civil penalty provisions to address this.
634 (2)	Further provision about the information that may be described in a RoLR regulatory information instrument	It is unclear as to why this sub-clause is required in particular to apprehended events given that section 629 (4) reads, "To avoid doubt (a) a RoLR regulatory information notice can be served on a retailer whether or not an actual or apprehended RoLR event has occurred in relation to the retailer; and (b) a RoLR general regulatory information order can be made whether or not an actual or apprehended RoLR event has occurred in relation to a retailer."
634 (2)	Further provision about	We are uncertain how this provision might be affected by the changing nature of metering, meter

(a)	the information that may be described in a RoLR regulatory information instrument	services provision and meter data provision. In particular we are concerned that non-metering, but meter-reliant, services sold by a retailer would be affected by retailer failure.
634 (2) (e)	Further provision about the information that may be described in a RoLR regulatory information instrument	We are concerned that “the latest financial statements” could be interpreted to mean the most recent (public or published) annual accounts for the entity. if so, we query whether these would be adequate. We recommend the drafting of this section be amended to clearly state the exact types of information required by the AER in order to determine financial viability.
634 (4) (e)	Further provision about the information that may be described in a RoLR regulatory information instrument	This section reads “details of each customer’s average consumption of energy in a specified period of 12 months”. However we do not believe that this requirement would give an accurate picture of the load profile of the customer base. What may be more useful is each customer’s total consumption in a given period (of twelve months or otherwise) or average consumption over one or more periods (eg monthly or quarterly).
Division 7 – RoLR plans		
643 (1)	RoLR plans	This provision must further define the scope of the AER’s RoLR plans. It is currently unclear as to whether these plans are to be developed nationally (market-wide), jurisdictionally, by local / distribution area, or by retailer.
Division 8 – RoLR cost recovery schemes		
	General	Without this guidance as to the policy rationale behind the RoLR provisions it is difficult to provide critical analysis of this section. We have provided into previous RoLR consultations to date and strongly urge MCE SCO to engage in further consultation with stakeholders.
645	Operation of this Division, schemes and determinations	Basic consumer protection should apply to all customers after a RoLR event. As such RoLR cost recovery schemes should operate in accordance with all other sections or the NERL and NERR and this should be outlined in this section.
649	RoLR cost recovery scheme distributor payment determination	We are concerned that this is a policy-making discussion that was never had, properly or publicly. The prospect of distributors being required to make payments towards the cost of the scheme is new and as per our earlier comments, we cannot fully address this provision as the policy rationale and discussion

		has not been clearly articulated in this process. Further, there is no clear indication as to how the AER may allocate these costs, particularly mid distribution pricing periods.
651 (1) and (2)	Rules regarding schemes and determinations	<p>This section should establish the general principles to be adhered to in the making of Rules regarding the RoLR scheme.</p> <p>We suggest that: these Rules should give effect to the principle that the cost recovery should take into account both the costs and benefits of a RoLR and ensure that only efficient costs are recovered. We note also the customer acquisition costs that would be eradicated should a RoLR have a number of customers transitioned to them.</p>
Division 9 – Miscellaneous		
652	Information to be included in customer retail contracts	<p>The information provided in contracts must cover how a consumer will be notified of a RoLR event. We suggest that Consumers must be notified directly, in writing, of the RoLR event within three business days of the event occurring and what will happen to the customer’s arrangements for the purchase of energy if a RoLR event occurs. We direct the MCE SCO to the Victorian ESC processes developed for this purpose.</p> <p>Please also see below at Rule 1124 of the NERR.</p>
Division 6 – Information requirements		
649	RoLR cost recovery scheme distributor payment determination	<p>Primarily we have concerns that this section has been drafted following policy decisions made behind closed doors, despite the consultation processes previously addressing RoLR. While we potentially support the premise of this policy decision, we are unclear how it may be applied. This is particularly relevant based upon the AER’s completion or current projects in relation to the distribution price reviews for NSW, QLD, SA and now Victoria.</p> <p>Should we support the drafting we believe it should read “... that the AER must, as part of its determination with respect to a RoLR cost recovery scheme under this Division, make a determination that one or more distributors are to make payments towards costs of the scheme”, with 'may' being replaced by 'must'..</p>

		We are concerned that the pass through mechanisms that may allow distributors to pass the charge through to retailers in addition to any network tariffs. As there is no transparency in retailer tariffs, in de-regulated jurisdictions, we have little confidence that this would be passed through directly, or consistently to consumers.
651 (1) and (2)	Rules regarding schemes and determinations	<p>We are concerned that the NERL only requires that the Rules may make provision regarding cost recovery schemes (for retailers and/or distributors) including making of applications, making and publication of submissions, principles or factors to be taken into consideration when making or amending a scheme, making and publication of scheme or amendments, retailers or distributors who are liable. We urge that this be redrafted as 'must'.</p> <p>In addition, we believe the NERL should provide some principles in relation to cost recovery for a RoLR and make provision for the AER to develop guidelines for RoLR cost recovery, subject to section 1202, the retail consultation procedure.</p>
Division 9 – Miscellaneous		

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Part 7 – Small compensation claims regime		
Section	Subject Matter	Comment
	Consumer policy rationale	Part 3 of the NERL envisages a more direct relationship between the customer and distributor. We are therefore pleased to see the inclusion of a small claims regime in Part 7 to enable customers to make claims against their distributor for voltage variations. Currently only Victoria has a claims regime for voltage variations, <i>Electricity Industry Guideline No. 11 Voltage Variation Compensation (April 2001, Version 1)</i> (Victorian Guideline). In the absence of national regulations, consumers in all other jurisdictions however, do not have access to a small claims regime. We see the NECF as an opportunity for a national small claims framework be extended to those jurisdictions so that all consumers have access to small claims and the relevant protections.

		<p>Section 720 undermines the entire intent of Part 7 and the integrity of the small claims regime. Section 720 is at complete odds with the intent of having a voltage variation scheme which is to allow small customers to be compensated by the distributor without having to prove fault or liability. The inclusion of section 720 prevents us from fully supporting the current drafting of Part 7.</p> <p>Part 7 of the NERL applies only to compensation claims between a small customer and a distributor. It envisages claims for property damage, loss or destruction arising from voltage variations. Small customer–retailer claims are therefore excluded. This section should also explicitly provide that claims between a customer and a retailer for wrongful disconnection would be left to the individual jurisdictions.</p>
Division 1 - Preliminary		
Division 1	Preliminary	<p>The title of Part 7 ‘Small compensation claims regime’ implies that consumers only receive small amounts of compensation for claims under Part 7. . We suggest that the title of Part 7 be amended slightly to ‘Small claims compensation regime’ not ‘Small compensation claims regime’ and consequent amendments be made throughout the NECF</p>
703(1)(b)	Claimable incidents – meaning	<p>Access to Part 7 depends on the customer’s consumption threshold. ‘Small customers’ are covered under Part 7; that is, a ‘residential customer’ or a ‘business customer who consumes energy at business premises below the upper consumption threshold.’¹¹ The upper consumption threshold is ‘100 MWh per annum.’¹² As the upper consumption threshold is set too low in the National Regulations, some small businesses (which, for example, are covered by the Victorian Guideline)¹³ would be excluded from Part 7. We have, in our comments on consumption thresholds,¹⁴ advocated for raising the upper consumption threshold for small businesses so that they would be covered by Part 7.</p>

¹¹ section 105(2) of the NERL

¹² regulation 8(2) of the National Regulations.

¹³ clause 1.1.1, Victorian Guideline; ‘applies to any person whose property is damaged due to an unauthorised voltage variation affecting an electrical installation where the aggregate consumption of electricity which is taken from the relevant customer’s point of supply is, or is reasonably expected to be, less than 160 megawatt hours in any year

¹⁴ See comments on Sections 105 and 106 of the NERL; Regulations 8 and 9 of the National Regulations.

705	Maximum amount – meaning	Section 705(2)(b) may be unconstitutional – a Federal regulator should not be able to determine the content of a legislative requirement. As with sections 703 and 704, it would be better that the alternative to prescription in a local instrument is, prescription in the National Regulations.
706	Minimum amount – meaning	We note that in certain cases, the distributor’s administrative cost of processing a claim could outweigh the cost of the claim itself especially when the claim is for a very low amount. Therefore, we support a ‘minimum amount’, in principle. However, the ‘minimum amount’ must be fair and reasonable. Section 706(2)(b) may be unconstitutional – see comments at section 705 above.
707(2)(b)	Median amount – meaning	Section 707(2)(b) may be unconstitutional – see comments at section 705 above.
708(2)	Repeat claimant – meaning	We are concerned that section 708(2) is unconstitutional – see comments at section 705 above. We note that there is a reference to ‘local instrument of this jurisdiction’ in the definitions of ‘maximum amount’, ‘minimum amount’ and ‘median amount’. However, in the definition of ‘repeat claimant’, there is no similar reference. The confidential version of the Victorian Guideline sets out ‘the number of claims a person must make for the person to have made repeated claims for the purpose of [the] guideline.’ ¹⁵ We submit that section 708(2) must be amended to permit applicable local instruments to apply and to require notification of the repeated claims maximum number to the relevant energy ombudsman.
708(3)-(5)	Repeat claimant – meaning	There are some localities which have lower supply reliability and may therefore be more susceptible to voltage variations. Therefore, there is the likelihood that consumers living within such localities would submit more voltage variation claims within the relevant period/periods than someone residing elsewhere. We recommend that any parameters regarding what constitutes a ‘repeat claimant’ take this into consideration.

709(a)	AER determinations of minimum amount, maximum amount, median amount and repeated claims maximum number	<p>We object to the use of the term ‘responsible officers.’ The common understanding for ‘responsible officers’ suggests government representatives. However, genuine consultation must be with a wider cross section of the community including consumer representatives, industry as well as representatives from the government and regulatory bodies. We suggest that section 709(a) be amended to read :</p> <p>‘after consultation with interested parties for the jurisdiction’</p> <p>However, as stated above, we are concerned that provision for the AER to determine these amounts is unconstitutional.</p>
709(b)(i)-(iii)	AER determinations of minimum amount, maximum amount, median amount and repeated claims maximum number	<p>Sections 705(2)(a), 706(2)(b) and 707(2)(b) imply that the AER would determine the maximum/minimum/median amount if that amount is not determined by the local instrument of the jurisdiction. Sections 709(b)(i)-(b)(iii), however, suggest that when the AER determines what the maximum/minimum/median amount should be (which presumably would arise where such amounts are not prescribed by the local instrument of the jurisdiction), the AER would have regard to that jurisdiction’s maximum/minimum/ median amount.</p> <p>The drafting is therefore inconsistent.</p>
Division 2 – Compensation Generally		
710(1)	Liability to pay compensation	<p>Section 701(2) provides that ‘fault, negligence, or bad faith on the part of a distributor’ need not be established in order to receive compensation from the distributor. The reference in section 710(1)(a) to ‘[I]t is established’ contradicts the notion of not having to prove fault because it could be interpreted to require the customer to establish the matters listed in sub-sections (i) to (iv), that is, the distributor is liable for the claimable incident.</p> <p>Section 710 must be deleted. We do not see the need for a separate section on ‘Liability to pay compensation’ as subsequent divisions to section 710 already oblige the distributor to compensate the customer for a claimable incident, upon completion of the claims form and the provision of relevant</p>

		information. Further, under the Victorian Guideline, a claimant is not required to establish anything; the claim is payable upon proper completion of the claims form and the provision of relevant information. ¹⁶
711(2)(c)	Duty of distributor to provide information and advice	As there are some customers who do not have internet access, we suggest that distributors send to customers on request, a copy of their small compensation claims summary. We therefore suggest amending section 711(2)(c) as follows: 'send to the person a hard copy of a summary of the small compensation claims regime and claims form on request and at no charge.'
Division 3 – Claims process		
712(2)(f)	Making of claims	We suggest amending this sub-section as follows: 'for claims for property damage, justification for the amount claimed, on the basis that the person should be no worse off, being either - ¹⁷
712(3)	Making of claims	Based upon the current drafting, a customer is only allowed to make one claim. On this basis, if they make any mistakes in that claim, or if further property damage comes to light after they have made the claim they cannot revise their claim without the concurrence of the distributor, which is at the distributor's complete discretion. Complete discretion to the distributor without any guidance about the exercise of that discretion is unreasonable, and it is a conflict given that the distributor has an interest in minimising the claim. The section should be amended to delete the reference to a distributor's concurrence. Alternatively, some guidance should be placed around the distributor's ability to withhold concurrence. A short-hand way to do so is to include the words 'which should not be unreasonably withheld' after 'with

¹⁶ Clause 2.4 of the Victorian Guideline.

¹⁷ The amendment would accord with clause 2.2(c)(1)(D) of the Victorian Guideline.

		the concurrence of the distributor’.
712(4)	Making of claims	<p>If the customer makes more than one claim on the same day, the distributor has complete discretion as to which of those claims they accept – while (a) states that they may reject all claims after the first claim, (b) states that they can choose which claim out of two or more made on the same day (and not necessarily the first in time received) to treat as the first claim.</p> <p>As with section 712(3), complete discretion to the distributor without any guidance is unreasonable and a conflict. The customer should be asked which of their claims they would like to be treated as their sole/revised claim.</p>
712(7)	Making of claims	<p>There is no guarantee that claims would be processed in an expeditious manner since only ‘best endeavours’ are required. If there are standard procedures for the distributor to process claims, this should be reflected in the NERL. We recommend amending section 712(7) to read:</p> <p>‘A distributor must deal with claims in a timely manner and in accordance with its small claims compensation regime including any time limits applicable under those procedures for handling a claim.’</p>
713	Claims for less than the minimum amount	See our comments at section 706.
714	Claims for more than the maximum amount	<p>A distributor can, under section 714, reject a claim which exceeds the ‘maximum amount’ unless the customer requests revision of the claim amount to an amount which is below the ‘maximum amount’ within 5 business days.</p> <p>We submit that if the claim exceeds the ‘maximum amount’, the distributor should not be able to simply reject the whole of the claim. Instead, the claim should be automatically revised down (without the claimant having to request it of the distributor) to the ‘maximum amount.’ The claimant has the option to raise a complaint with the jurisdictional energy ombudsman if unsatisfied with the compensation amount received. The Victorian Guideline, for example, does not require the customer to request that the claim be revised downwards.</p>

715	Confirmation of claims involving property damage	<p>‘Suitably qualified person’ must be defined. We suggest that the wording in the Victorian Guideline could be used:</p> <p>‘Suitably qualified person means:</p> <p>(a) in respect of an electrical installation, an electrician; and</p> <p>(b) in respect to any other item of property, the manufacturer, appliance repairer or other person suitably qualified to assess the damage to the item;’</p>
715(3) and (4)	Confirmation of claims involving property damage	<p>Under section 712(f) a claimant is already obliged to provide ‘quotes, receipts and other evidence’ when making a claim for property damage. The claims process should not be onerous for claimants and a statement from a suitably qualified person should be sufficient for <u>any</u> claim submitted under Part 7, regardless of whether the amount claimed is within the ‘mandatory range’ or discretionary range.’ For example, a statement from a qualified person is sufficient evidence for any claim submitted under the Victorian Guideline.¹⁸ We therefore submit that section 715(4) should be deleted and section 715(3) amended to read:</p> <p>‘The distributor must (subject to subsection 2) accept the statement as a satisfactory statement that the property damage was likely to be caused by or is consistent with the occurrence of a claimable incident.’</p>
716	Claims for amounts within the mandatory range	<p>We agree that claims within the ‘mandatory range’ should be paid without any assessment by the distributor upon occurrence of a claimable incident and submission of the necessary claims form and satisfactory statement from a suitably qualified person by the claimant.</p>
716(1)(c)	Claims for amounts within the mandatory range	<p>See our comments at sections 710(1)(a), 720(b) and 720(c). We therefore submit that the reference to ‘it is established’ be deleted. Submission of a properly filled claims form and a satisfactory statement from a suitably qualified person should be adequate. Imposing a requirement to establish that a claimable incident occurred runs the risk that a dispute between the distributor and customer (which is what Part 7 should be attempting to avoid) would result. We also note that there is no similar requirement in section 717 in the context of claims for amounts in the discretionary range.</p>

¹⁸ Clause 2.3 of the Victorian Guideline.

716(1)(d)	Claims for amounts within the mandatory range	This provision should clarify that the reference is to a claim rejected in accordance with another provision of this Division, not merely that the distributor may reject the claim.
717	Claims for amounts in the discretionary range	In principle, we support the assessment of claims which are within the 'discretionary range.'
717(1)(a)(ii)	Claims for amounts in the discretionary range	As mentioned in our amended sections 715(3) and 715(4), there should be no distinction as to the type of information required to support a claim. The same information to support a claim should apply to all claims made under Part 7. We submit that section 717(1)(a)(ii) be amended to read as per section 716(1)(a)(ii): 'a satisfactory statement, if relevant and if requested under section 715.'
717(1)(c)	Claims for amounts in the discretionary range	See our comments at section 716(1)(d).
717(5)	Claims for amounts in the discretionary range	In relation to a business customer, see our comments on consumption threshold at section 703(1)(b).
718	Claims by repeat claimants	See our comments at section 708.
718(2)	Claims by repeat claimants	We submit that similar wording to sections 717(3) – 717(4) be adopted for sections 718(2)(a) and 718(2)(b) as it is reasonable that the same principles apply to 'repeat claimants'. The additional option under section 718(2)(c) of being able to reject the claim provides protection to the distributor. The amendment would also align section 718(2) with the Victorian Guideline. ¹⁹

¹⁹ Clause 2.4.1(e) of the Victorian Guideline: "If clause 2.4.1(c) allows the distributor to dispute, and the distributor disputes the person's claim, once the distributor has completed its own assessment of the damage to the person's property:

(1) pay the person the amount claimed;

720	Rejection of claims	<p>We strongly object to section 720. The current wording of section 720 undermines the entire objective of Part 7 which is to provide consumers with a compensation regime for loss and damage arising from voltage variations. Section 720 is worded to empower distributors to arbitrarily reject claims. In particular, sub-section (c) which permits distributors to reject claims for any reason whatsoever.</p> <p>Sub-sections 720(a) and 720(b) also strongly undermine the entire purpose of Part 7, because the purpose is to establish a simple no-fault regime to deal with small claims without requiring the customer to prove absolutely that an incident such as a voltage variation occurred, which they are not in a position to do. This is the problem that leads to disputes and is the reason why the Victorian Guideline was created in the first place. Instead, even after a customer had followed the entire claim process to its end, the distributor could still require full proof that an incident occurred, not just provision of a satisfactory statement from a qualified person. Customers are not in a position to provide such proof, which is why disputes occur and why a small claims regime is necessary in the first place.</p> <p>We strongly submit that section 720 be deleted.</p>
721	Distributor to advise customer of reasons for reducing or rejecting claim and of review rights	<p>The reference to 'review rights' in the heading is inappropriate because that is not the role of the energy ombudsman. A court or tribunal reviews a person's rights; an energy ombudsman resolves complaints on the basis of what is fair and reasonable and not merely on the basis of legal rights. We submit that the heading should be amended as follows:</p> <p>'Distributor to advise customer of reasons for reducing or rejecting claims and of right of referral to the energy ombudsman'.</p>
Division 4 – Payment of compensation		

- (2) pay the person the amount necessary to compensate the person for the damage to the person's property, on the basis that the person should be no worse off, being either:
 - (A) the cost of replacing the person's property with property of substantially the same age, functionality and appearance; or
 - (B) the cost of repairing the person's property to substantially the same functionality and appearance; or
- (3) reject the person's claim."

723	Method of payment	<p>The current wording of section 723 allows the distributor to decide how payment for compensation should be made, rather than the claimant (customer) deciding. Our view is that the customer should decide how payment should be made. Some customers may need the payment immediately and would not want to wait till the next retailer's bill to receive payment. Further, the compensation amount is explicitly determined by reference to the amount needed to replace or repair an item of property, thus it is understood that the customer may need the compensation to replace or repair property – receiving this amount as a credit on their electricity bill does not allow them to do this. We concede that it may be administratively difficult to provide direct payment for small amounts, we propose a threshold of \$25 whereby any amount of \$25 or over can be paid by the in a manner as identified by the customer. Any amount under \$25 will be paid as a credit on the next bill.</p> <p>We submit that section 723 should be amended as follows:</p> <p>'A distributor must, as soon as practicable, make a payment of compensation due to a small customer under this Division in relation to the customer's claim by any method agreed to with the customer, where the amount is \$25 or over, including:</p> <ul style="list-style-type: none"> (a) a credit on the customer's next bill from their retailer by arrangement with the relevant retailer; or (b) direct payment by the distributor to the customer by cheque or electronic funds transfer.' (c) For amounts under \$25 the distributor will pay a credit on the customer's next bill from their retailer by arrangement with the relevant retailer;
724	Finality of payment of compensation	<p>Section 724 must be amended to take the following points into account:</p> <p>Firstly, section 724 does relate well to section 721. Section 721(b) provides that '[i]f the amount paid is less than the amount claimed' the distributor has to inform the person that he/she has a right of recourse to the energy ombudsman if dissatisfied with the decision.' This suggests that customers, if dissatisfied with the compensation amount received, can approach the energy ombudsman.</p>

		<p>Section 724 however, provides that '[i]f a small customer is compensated....' 'the customer cannot make any further claim' or 'commence or maintain proceedings for damages' and that the 'distributor has no further liability.'</p> <p>This suggests that once the customer receives a payment from the distributor, the customer is barred from making any other claim even though he/she may be dissatisfied with the amount received.</p> <p>Secondly, it is unclear what the reference to 'a decision of the relevant energy ombudsman' means in section 724. Most cases at the energy ombudsman are resolved by conciliation. Conciliated outcomes are generally not binding on the disputing parties, unless there is a formal agreement signed between them (in this case, customer and distributor) that it is a full and final settlement of the claim, which would release the responsible party (distributor) from further liability. Otherwise, the claimant (customer) is free to pursue the matter in other forums which may include 'commencing' or maintain[ing] proceedings for damages' in court.</p> <p>However, if the energy ombudsman makes a 'binding decision', while the decision would be binding on the scheme participant, the customer has the option to accept or reject the decision. If the customer accepts the decision, the scheme participant is released from all claims, actions etc with regard to the complaint. If the customer rejects the decision, he/she can pursue alternative remedies such as court, and the scheme participant no longer remains bound by the energy ombudsman's decision. As an example, see clause 6.1 of EWOV's Charter.²⁰</p> <p>Thirdly, we strongly object to sub-sections (a) to (c) because it denies a claimant the right to seek redress for a claimable incident once compensation had been made even though the claimant may be dissatisfied with the amount received. This is unfair and unreasonable. Further, it also prevents a</p>
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²⁰ Clause 6.1 of EWOV's Charter provides that: 'All decisions by the Ombudsman under paragraph 6.1 shall be automatically binding upon Participants. However, the complainant may elect whether or not to accept the decision of the Ombudsman within twenty-one (21) days of the Ombudsman's decision. If the complainant accepts the decision of the Ombudsman, the complainant shall fully release the Participant from all claims, actions etc in relation to the complaint. In the event that the complainant does not accept the decision of the Ombudsman, the complainant may pursue his or her remedies in any other forum the complainant may choose and the Participant is then fully released from the Ombudsman's decision.'

		claimant from making claims for matters which fall outside Part 7 (such as, claims for personal injury, economic loss or damage to intangible property) even though such claims could have arisen from the same voltage variation incident. We agree that claimants who have accepted compensation as full and final settlement of their claim for a claimable incident should not be allowed to make further claims against the distributor. However, claimants who have not or who are claiming for matters which fall outside Part 7 must not be denied redress.
Division 5 – Miscellaneous		
725(1)	Other remedies	We reject section 725(1). As mentioned above, section 724 prevents a claimant from seeking alternative remedies once compensation has been made for a claimable incident regardless of whether the claimant has accepted or rejected the amount. The reference to section 724 in section 725(1) renders this section superfluous. This is because no one would be able to institute court proceedings for damages for a claimable incident under section 725(1) once compensation has been paid under section 724.
725(2)	Other remedies	We reject section 725(2). It is unfair and unreasonable to deny small customers access to Part 7 if they are enforcing or attempting to enforce other rights they may have outside Part 7 (such as, claims for personal injury, economic loss or damage to intangible property).
726	Payment of compensation not to be admission of fault, negligence or bad faith	<p>If a distributor receives a large proportion of compensation claims, this can be an indicator of poor supply reliability, non-adherence to guaranteed service levels or systems problems. It could also indicate that there is a systemic issue. We note that it is usually the court or tribunal (formal legal mechanisms) which determines fault, negligence or bad faith. Therefore, we can support section 726 in principle, but subject to the following condition, that the AER carry out compliance audits on distributors which have a large proportion of compensation claims made against them (under section 1204) to assess the distributor's compliance with the NERL, NERR and National Regulations. We note that sections 1211(1)(b) and 1214(e) oblige the distributor to include in its retail market performance report, 'a report on the performance of distributors in relation to the small compensation claims regime under Part 7.' If the performance report reveals that a large proportion of compensation claims has been received by a specific distributor, the AER should audit that distributor for compliance.</p> <p>Further, section 726 should be amended to read as follows:</p>

		<p>'In making a payment of compensation under Division 4, a distributor does not admit fault, negligence or bad faith in respect of the claimable incident concerned.'</p> <p>This is as Division 4 deals with 'Payment of compensation.' Also, it is only upon payment of a claim, rather than '[i]n deciding to make a payment' that the distributor does not admit fault, negligence or bad faith.</p>
727(1)(a)	Requirement to keep records on regime activities	<p>The reference to 'this Division' is incorrect. It is Division 4 which deals with 'Payment of compensation.' Section 727(1)(a) should be amended to read as follows:</p> <p>'create a record of each claim for compensation paid by the distributor under Division 4, including a record of how the claim was processed and determined; and...'</p>
727(2)(a)	Requirement to keep records on regime activities	<p>The reference to 'this Division' in sub-section 2(a) is incorrect. We submit that section 727(2)(a) should be amended to read:</p> <p>'the AER should 'verify the distributor's compliance with the relevant requirements of this Part and the Rules relating to claims for compensation; and...'</p>
727(3)	Requirement to keep records on regime activities	<p>The reference to 'this Division' in sub-section (3) is incorrect as claims for compensation are made under Division 3. We submit that the reference to 'under this Division' in section 727(3) should be amended to read 'under Division 3.'</p>
728	Rules	<p>We reserve our comments as currently there are no Rules relating to Part 7 small compensation claims regime.</p>

Part 8 – Functions and powers of the Australian Energy Regulator		
Section	Subject Matter	Comment
Division 1 – General		
	Power to make Guidelines	The AER should be provided with broad, clearly defined, powers to make legally binding guidelines under the NERL. Experience demonstrates that guidelines can perform a critical function in reducing compliance costs as well as administrative burdens for industry. Guidelines also facilitate compliance by industry; improve targeted enforcement of the legislation and improve regulatory outcomes which in turn improve the consumer experience of the intended benefits of the reforms anticipated to be delivered to Australian energy consumers. Giving the AER expansive powers to make guidelines based upon its own discretion, will empower the AER to clearly communicate with industry and modify consumer protections.
801	Functions and Powers	<p>We support the functions and powers of the AER as defined in clause 801 of the NERL.</p> <p>However, to bring the objectives of the NERL to life in delivering tangible benefits for consumers, these functions and powers must be carried out effectively. Success in the operational translation of these functions and powers will largely depend on Australian Governments ensuring that the AER is:</p> <ul style="list-style-type: none"> • adequately resourced; • informed through active and open dialogue and consultation with consumers; and • responsive to the importance of ensuring consumers have access to affordable energy when performing its functions and exercising its powers. <p>Clause 801(1)(f) appears to be an error.</p>
802	Manner in which AER performs AER regulatory	We support the criteria that describe the manner in which the AER is to perform its functions and exercise its powers.

	functions or powers	In providing this support, we repeat our earlier comments expressing our concerns about the objectives of the NERL.
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Draft National Energy Retail Law		
Part 9 – Functions and powers of the Australian Energy Market Commission		
Section	Subject Matter	Comment
Division 1 - General		
901	Functions and powers of the AEMC	We support the functions and powers of the AEMC as defined in clause 901 of the NERL.
904	AEMC must have regard to national energy retail objective	We support the inclusion of a clear statement imposing a positive obligation on the AEMC to have regard to the objective of the NERL in performing or exercising any function or power. In providing this support, we repeat our earlier comments expressing our concerns about the objectives of the NERL.
Division 2 – Rule making functions and powers of the AEMC		
Division 3 – Committees, panels and working groups of the AEMC		
907	Establishment of committees and panels and working groups	Committees, panels and working groups are an important mechanism through which the AEMC can inform itself in exercising its powers and performing its functions under the NERL. This has been recognised by the AEMC and has motivated the AEMC to commence discussions with participants of the National Consumers Roundtable on Energy to develop an appropriate model and supporting processes for consultation and communication between the AEMC and consumer representatives. In formalising the mechanism for consultation (whether it be by committee, panel or working group), it would be appropriate for the NERL to include clauses that:

		<ul style="list-style-type: none"> • set out the functions of the relevant committee (panel or working group). These functions should include a specific requirement that the relevant committee (panel or working group) establish adequate processes for consulting with small customers and undertake consultation with small customers; and • provide guidance on the appointment of members.
Division 4 – MCE directed reviews		
911	Conduct of MCE directed review	A positive and clear obligation should be imposed on the AEMC to undertake consultation with its committee and additional interested stakeholders in conducting all MCE directed reviews.
Division 5 – Other reviews		
912	Other reviews	<p>A positive and clear obligation should be imposed on the AEMC to undertake consultation with its committee and additional interested stakeholders in the conduct of reviews.</p> <p>A clear requirement should also be imposed on the AEMC to ensure that the committee includes consumer representation from all jurisdictions and has representatives from multiple stakeholders.</p>
Division 6 Miscellaneous		

Draft National Energy Retail Law		
Part 10 – National Energy Retail Rules		
Section	Subject Matter	Comment
Division 1 – Interpretation		
1001	Definitions <i>Publish</i>	Currently the definition of <i>publish</i> only anticipates that material will be available on the AEMC website or at the offices of the AEMC. Proactive communication should also include a monthly summary of activities to stakeholders, by the AEMC.
Subdivision 2 – Rule making test		
1002	Application of National	We strongly advocate that the NERL objective is expanded to recognise the importance of access to

	Energy Retail Law Objective	affordable energy for consumers as per our recommendation in section 113 of the NERL. As such, the AEMC must have regard to the NERL (with expanded objectives) and ensure it addresses consumer interests. The current objective limits the potential role of the AEMC in its rule making responsibilities.
Division 2 – National Energy Retail Rules generally		
1003	Subject Matter of Rules	<p>We strongly oppose the AEMC having authority to make or change Rules that impact on the fundamental supply of energy as an essential service. As such we strongly advocate for the removal of section 1003 (2)(g) of NERL regarding the energisation, de-energisation or re-energisation of premises of consumers. These functions specifically should remain in the NERL.</p> <p>Similarly, we oppose the AEMC making rules about standard retail contracts, section. 1003 (4) and believe the provisions for standard contracts should be contained in the NERL, not the NERR.</p>
Division 3 – Initial National Energy Retail Rules		
Division 4 – Subsequent rules and rule amendment procedure		
1012	Content of requests for Rules	We oppose the charging of a fee for requesting a rule change for non-industry participants, (ie consumer representatives) as it may act as a deterrent to good policy making and particularly represents a power imbalance between consumers and industry.
1013	Waiver of fee for Rule requests	We support the waiver of fees for Rule changes for non-industry participants. The charging of a fee for requesting a rule change as it may act as a deterrent to good policy making and particularly represents a power imbalance between consumers and industry.
1017	Notice of proposed Rule	We suggest a six week minimum be the standard timeframe in which to require a response to a proposed rule.
1018	Publication of non-controversial or urgent final Rule determination	This section provides for expedited progress of an “urgent” or “non controversial rule”. We again propose that the NERL objective recognises the importance of access to affordable energy for consumers, as per our recommendation in section 113 NERL. This will help ensure that this provision is not misused to subvert normal consultation processes where the issue under consideration may impact on the achievement of this objective.

1019	“Fast Track” Rules where previous public consultation by energy regulatory body or an AEMC review	As above, it is important that this provision is not used to avoid consultation processes where the matter is of fundamental importance. An expanded objective for the NERL is important to ensure this does not occur in relation to matters that have an impact on consumers’ access to affordable energy.
1022	Draft Rule determinations	We support this provision with the caveats noted above in section 1018 and section 1019 of the NERL.
1025	Final Rule determination	We support this provision, but note that it may be useful for the legislation to limit the overall time that a rule change process should run, for example to no more than 12 months.
Division 5 – Miscellaneous provisions relating to Rule making by the AEMC		
1033	AEMC may extend period of time for making of final Rule determination for further consultation	We support a six week minimum for all public consultation processes.

Draft National Energy Retail Law		
Part 12 – Compliance and performance		
Division 1 – AER Compliance regime		
Section	Subject Matter	Comment
1201	Obligation of AER to monitor compliance	In our response to the first exposure draft of the NECF we argued that this section should be expanded to state that the AER has responsibility for public reporting of its compliance monitoring regime and enforcement where regulated entities do not comply with the NERL or NERR. We reiterate that position. Public reporting of compliance monitoring and enforcement of the provisions of the NECF are important

		in ensuring that energy markets develop in a manner that protects the long term interests of consumers.
1202	Obligation of regulated entities to establish arrangements to monitor compliance	We reiterate the position expressed in our response to the first exposure draft of the NECF, that policies, systems and procedures established by retail entities in accordance with this section should be approved by the AER.
1203	Obligation of retail entities to provide information and data about compliance	We reiterate the position expressed in our response to the first exposure draft of the NECF, that this section should also require regulated entities to provide information and data to the AER regarding their compliance with hardship policies.
1204	Compliance audits by AER	Our response to the first exposure draft of the NECF recommended that the word 'may' be replaced with the word 'must' in both subsections, such that the AER is obligated to conduct, or engage contractors to conduct, compliance audits. We are extremely concerned that this recommendation has not been taken on board. Due to the critical nature of hardship, we are unable to support a framework which 'may' not measure retailers' compliance with their hardship policies as that does not guarantee consumers experiencing hardship security of energy supply.
1208	Compliance reports	Our response to the first exposure draft of the NECF expressed the view that in addition to publishing an annual compliance report, the AER should be required to publish quarterly compliance update reports released within 3 months of the last day of March, June, September and December each year. Doing so would allow for earlier identification of and response to emerging issues and those arising from seasonal or unexpected events. Accordingly, we reiterate our previous recommendation.
1209	Contents of compliance reports	We reiterate our previous recommendation that this section specifically require the AER to report compliance with hardship obligations, penalties imposed on regulated entities for non-compliance, and strategies for rectifying non-compliance in its annual compliance reports.
1210	AER Compliance Procedures and Guidelines	The retail consultation procedure in Rule 1202, to be followed in making the AER Compliance Procedures and Guidelines, does not require the AER to consult with consumers, or any other groups, in preparing the draft guidelines. We are concerned that permitting the AER to exclude consumer input

		until a later stage of the process may result in the development of procedures and guidelines that do not ensure the long term interests of consumers are protected in the energy market.
Division 2 – AER performance regime		
1212	Performance audits - hardship	<p>We support this section in general, however we reiterate the position expressed in relation to section 1204 and section 1209 above, that retailers should be audited with respect to their compliance with hardship policies, and that the AER should be required to include such audits in its compliance reporting.</p> <p>In our response to the first exposure draft of the NECF, we mentioned that due to the critical nature of hardship, a retailer’s customer hardship policy must undergo AER compliance audits, and not merely performance audits. Performance audits by reference to national hardship indicators are not sufficient to ensure that consumers experiencing hardship receive the full protection intended under Division 2 of Part 6 of the NERL and Part 3 of the NERR. Retailers, even first tier retailers, have failed in relation to how they respond to customers experiencing hardship. The ESC’s regulatory audit of AGL (which was released in late August 2009) revealed that AGL failed in 12 of the 13 performance indicators in the financial hardship indicators category. For four of these indicators the data was not reliable or accurate, with the result that there was no accurate record on customers entering or exiting a hardship program. As a result, there is no information available as to how AGL’s customers experiencing hardship fared.²¹</p> <p>We are disappointed that there is no specific requirement for a retailer’s customer hardship policy to undergo AER compliance audits in the second exposure draft of the NECF. This remains an important matter and we strongly recommend that this requirement be included in the NERL.</p>
1213	Retail market performance reports	Refer to comments in relation to section 1208. We also consider that the AER should publish quarterly update reports on retail market performance.

²¹ Essential Services Commission, Summary Audit Report, Regulatory Audit of AGL Energy Limited (August 2009), at 10.
<http://www.esc.vic.gov.au/NR/rdonlyres/33015970-4F89-425D-AC87-211191056A07/0/RPTSummaryAuditReportAGL200907092.pdf>

1214	Contents of retail market performance reports	<p>We note that the language relating to service standards has been clarified and welcome this change.</p> <p>We reiterate our previous recommendation that entities providing energy services under exempt supply arrangements be required to provide information and data about compliance, the number of connections under exempt supply arrangements, and disconnections for non-payment of a bill. We refer to our comments in Part 5 Division 6 of the NERL in relation to the types of information necessary to determine the wellbeing of exempt customers.</p> <p>We also reiterate our previous recommendation that market performance reports be required to include information on market innovations such as demand management schemes.</p>
1215	AER Performance Reporting Procedures and Guidelines	See comments in relation to section 1210 above.
1216	National Hardship Indicators	<p>As the AER will be tasked with the responsibility of monitoring performance and compliance, we support the development of national hardship indicators so as to measure how successful retailers' customer hardship policies are. For instance, a retailer's hardship policy should fulfil its purpose – see comments at section 225(2). The development of these national hardship indicators must however be subject to wide stakeholder consultation.</p> <p>Section 1216(1) is inconsistent with Rule 306 of the NERR, which states that the AER 'must, in accordance with the retail consultation procedure, determine national hardship indicators.' The same obligation must apply in section 1216(1) and the word 'may' should be changed to 'must':</p> <p>'The AER must determine and publish national hardship indicators in accordance with the Rules.'</p> <p>This section also does not specify how and where the national hardship indicators are to be published. We recommend that the wording be amended to require the national hardship indicators to be made available on the AER's website.</p>

1216(1)	National hardship indicators	<p>We note that under rule 306(1) of the NERR, the AER ‘must, in accordance with the retail consultation procedure, determine national hardship indicators.’ The same obligation must apply in section 1216(1) and it must be amended to read:</p> <p>‘The AER must determine and publish national hardship indicators in accordance with the Rules.’</p>
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Draft National Energy Retail Law		
Part 13 – Enforcement		
Section	Subject Matter	Comment
	Consumer policy rationale	<p>We note that Part 13 of the NECF has been copied, with only a few exceptions, straight from the National Gas Law (NGL).</p> <p>While it is sensible and efficient to avoid “re-inventing the wheel”, we see no evidence of any consideration as to whether there are models for enforcement provisions other than the NGL and, if so, whether the NGL’s enforcement provisions represent the most appropriate enforcement and remedies framework for an energy consumer or retail law.</p> <p>In fact, several models for enforcement provisions do exist other than the NGL. Most obviously, the enforcement provisions in the TPA and the ASIC Act have been designed for a consumer law context. Further, these have been subject to extensive recent review by the Productivity Commission, which has in turn led to reforms currently being progressed by the Federal Government with the support of the State and Territories, in the form of the Trade Practices Amendment (Australian Consumer Law) Bill 2009, to bring them up to best practice. This has not been the case with the NGL enforcement provisions.</p> <p>We consider that the largely wholesale copying of the NGL provisions into the NECF, and the failure to address any of our concerns in response to the first exposure draft of the NECF legislation, is lazy policy development and lazy drafting.</p>

		<p>The NECF enforcement provisions as currently drafted will leave a legislative regime that will be very difficult for the AER to enforce and, literally, impossible for consumers to seek remedies from. The links between the likelihood of enforcement of a law, and compliance with that law, are well-known.</p> <p>Indeed, we are unaware of a single reported legal action brought under the NGL (or National Electricity Law) for a breach of a provision of those laws. Even the use of non-court-based enforcement measures has been limited, with the AER reporting that it has used undertakings and/or infringement notices on only six occasions in total since it assumed regulatory responsibilities from the NECA in mid-2005, and not at all in relation to gas since the NGL was enacted.²²</p> <p>Part 13 is in urgent need of amendment.</p> <p>Finally, as discussed in our comments on section 102 above, the actual civil penalty amounts themselves are too small to provide any effective deterrent and must be raised substantially, in line with comparable civil penalties in other national consumer laws.</p>
Division 1 – Enforceable undertakings		
1301	Enforceable undertakings	We support this section. Enforceable undertakings are an important tool in a flexible and modern enforcement regime, and this section reflects the drafting in section 87B of the TPA.
Division 2 – Proceedings generally		
1302	Instituting civil proceedings under this Law	<p>We strongly recommend that subsection (3) be amended to replace the limitation on bringing civil proceedings to 'breach of a conduct provision' with an ability to bring civil proceedings in respect of a breach of any provision of the Law, National Regulations or Rules.</p> <p>The NECF is a consumer protection law, however, this section is currently drafted based on section 229 of the NGL rather than the relevant provisions of the TPA (or ASIC Act), which would be more appropriate.</p> <p>This is surprising given the drafters seem to be aware of the appropriateness of using the TPA as a</p>

²² AER, 'Investigations', *AER website*, www.aer.gov.au/content/index.phtml/itemId/656186. This page also indicates that even before the AER assumed regulatory responsibility from the NECA, the NECA pursued enforcement action against businesses for code breaches on only four occasions.

		<p>model (see s.1301 above).</p> <p>As a result, section 1302(3) unreasonably restricts the ability of consumers, other energy businesses or other third parties to take legal action for a breach of a NECF provision. It provides that third parties may only bring civil legal proceedings in respect of a breach of a <i>conduct provision</i>.</p> <p>However, there is no good policy reason to limit the ability to bring a civil proceeding for a breach of a NECF provision to only a limited set of provisions. For example, in respect of the consumer protection provisions of the TPA, the regulator (ACCC) or <i>any other person</i> may apply for an injunction under the legislation (s.80) and <i>any person</i> who suffers loss or damage by conduct of another person done in breach of a provision may bring an action for damages (s.82) or for other orders to compensate, prevent or reduce loss or damage (s.87). Similarly, under the ASIC Act, the regulator (ASIC) or <i>any other person</i> may apply for an injunction related to a breach of any provision of the consumer protection division (s.12GD) and <i>any person</i> who suffers loss or damage by conduct of another person done in breach of a consumer protection or unconscionable conduct provision may bring an action for damages (s.12GF) or for other orders to compensate, prevent or reduce loss or damage (s.12GM).</p> <p>We are unaware that the MCE SCO has stated any policy rationale for its decision to limit the ability of third parties to bring civil proceedings under the NECF. It seems manifestly unreasonable to prevent consumers from seeking any form of civil redress for a breach of the laws that are supposed to protect them, if they suffer harm as a consequence of an illegal breach of those laws.</p> <p>Further, there is much policy work available to support enabling third parties to bring civil proceedings in relation to consumer laws. For example, experts such as Professor Iain Ramsay and Professor Michael Trebilcock have noted that a mix of private and public enforcement and remedies provisions provides for an enforcement system that does not rely too heavily on either consumers, businesses or government - too much reliance on private actions taken by individuals can be ineffective and/or socially regressive but relying solely on governments or regulators to enforce the law is also a risk, because it</p>
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		<p>cannot be assumed that public agencies will always take action (and if they do, they may concentrate on issues affecting parties who wield social and political influence).²³</p> <p>Justice Murphy summarised the issue well in discussing TPA s.80 in the High Court of Australia case of <i>R v Federal Court of Australia; Ex parte Pilkington ACI (Operations) Pty Ltd</i>²⁴: ‘...experience shows that enforcement agencies in environmental and consumer protection (as well as those in occupational safety and health) often become unable or unwilling to enforce the law (because of inadequate resources or because they tend to become too close to those against whom they should be enforcing the law). Section 80 expresses the policy that such tendency to non-enforcement or limited enforcement should be overcome by providing that the Court may grant an injunction restraining a contravention of Pts IV or V on the application of the Minister, the Trade Practices Commission or...any other person.’</p> <p>The OECD has noted that the more effective the enforcement mechanisms for a consumer law, the less government intrusion is required in business activity, because effective enforcement is a greater deterrent to non-compliance and reduces the need for more widespread inspection and government monitoring.²⁵ The OECD has also noted the role that third party rights can have in providing a ‘constraint on corruption’, by which it means corruption in the sense of problems of industry-capture or lack of appetite by the regulator to act (not overt inducements by improper means such as bribery).²⁶</p> <p>We agree and point out that if the current section 1302 is retained, the AER will necessarily be under greater pressure to engage in more, and more detailed, monitoring and reporting of retailer and distributor conduct as well as to undertake more enforcement actions, because there will be no other alternatives for ensuring compliance with the NECF legislation or redress for consumers affected by a breach.</p>
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²³ Iain Ramsay, ‘Consumer redress and access to justice’, in Charles E.F. Rickett & Thomas G.W. Telfer (eds), *International Perspectives on Consumers’ Access to Justice*, Cambridge 2003, pp36-40; see also Thomas Wilhelmsson, ‘Consumer Law and Social Justice’, in Iain Ramsay (ed), *Consumer Law in the Global Economy: National and International Dimensions*, 1997; Michael J. Trebilcock, ‘Rethinking consumer protection policy’, in Charles E.F. Rickett & Thomas G.W. Telfer (eds), *International Perspectives on Consumers’ Access to Justice*, Cambridge 2003.

²⁴ (1978) 142 CLR 113 at 131.

²⁵ OECD Committee on Consumer Policy, *Best Practices for Consumer Policy: Report on the Effectiveness of Enforcement Regimes*, 20 December 2006, p9.

²⁶ As above, pp57-58.

		<p>The final problem with this section – and which strongly exacerbates its unreasonableness – is that not only are civil actions for breaches of the NECF laws by a third party limited to breaches of a conduct provision, no conduct provisions are proposed to be prescribed under the NECF legislation!</p> <p>At least under the NGL, some provisions are specified as conduct provisions, meaning the provision is not completely redundant. At present, the NECF prohibits <i>any</i> legal action by a third party for a breach of a NECF provision whatsoever. Surely the MCE SCO cannot think that this position is tenable.</p> <p>At the very least, a large number of NECF provisions should be specified as conduct provisions, however, the better approach would be to remove this unnecessary and unreasonable limitation altogether.</p>
1303	Time limit within which proceedings may be instituted	<p>We support a six year time limit for the bringing of civil proceedings. This is consistent with the typical time limit for bringing most general civil proceedings in Australia.</p> <p>However, this has been drafted to state that the time limit commences on the date on which the breach occurred. This is generally appropriate but in the general civil law context, we note that the six year time limit is generally expressed to run from the date on which the cause of action accrued, not the date the defendant engaged in the offending conduct. This is relevant to section 1306, for example.</p> <p>Further, most limitation of actions statutes allow for the court to grant an extension of time to bring an action under special circumstances. We suggest that this power also be granted to the Court under the NERL, for example in cases in which a regulated business has acted fraudulently to hide a breach.</p>
Division 3 – Proceedings for breaches of this Law, the National Regulations or the Rules		
1304	AER proceedings for breaches of this Law, the National Regulations or the Rules that are not offences	<p>We strongly recommend that section 1304 be amended to reflect the drafting of regulator enforcement powers relevant to consumer laws in the TPA (and ASIC Act), including in the current Trade Practices Amendment (Australian Consumer Law) Bill 2009.</p> <p>In particular, subsections (1) and (2) should be amended to provide that the relevant orders are available if person is in breach of (presently) <i>or has breached</i> (in the past) a relevant provision.</p>

	<p>In addition, subsection (4) should be re-drafted, and a subsection (5) added, to reflect the more appropriate model of the TPA's ss.80(4)-(5) rather than the NGL.</p> <p>At present, section 1304 is drafted based on the NGL provisions, which we do not consider to be appropriate or well drafted for the NECF context.</p> <p>Subsections (1) and (2) provide for the AER to apply for various orders (including civil penalties and compliance programs), whereas subsections (3) and (4) provide for the AER to apply for an injunction. However, the drafting of the circumstances under which the AER can seek orders as opposed to injunctions is different.</p> <p>We make the point that courts tend to find that if provisions are drafted differently, there must be a reason for the difference.</p> <p>A plain reading of subsections (1) and (2) is that the AER may only apply for orders including payment of a civil penalty if 'a person is in breach of' a NECF provision.</p> <p>The reference to 'a person is in breach of' suggests that the person must be currently breaching the provision at the time the action is brought by the AER. These words can be contrasted with the words used in subsection (3), which allow the AER to bring an application for an injunction if a person 'has engaged, is engaging or is proposing to engage in any conduct in breach of' a NECF provision. These words distinguish between 'has engaged' in the past, and 'is engaging' in the present.</p> <p>This interpretation of the meaning of 'in breach of' is further supported by the definition of 'civil penalty' in section 102. This definition provides for two maximum penalty amounts – an overall maximum and a maximum amount '<i>for every day during which the breach continues</i>'.</p> <p>By contrast, the TPA provides that the Court can order, for example, the payment of a civil penalty or a probation order (for example to set up a compliance program) if a person 'has contravened' a relevant provision or 'has engaged in' contravening conduct. These provisions clearly provide for the regulator to apply for such orders if a person "has breached" a provision, not only if a person "is in breach of" a provision. The same applies to civil penalties under the <i>Corporations Act 2001 (Cth)</i>.</p>
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		<p>There is no reason to limit the ability of the AER to apply for civil penalties and other orders to cases in which a breach is ongoing. Such orders must be available for all relevant breaches, whether once-off or ongoing, and whether subsequently rectified or not. Matters such as subsequent rectification would be relevant to the Court in making a decision as to whether a civil penalty or other order was appropriate or as to what penalty amount should be ordered, but should not constitute a blanket bar on the availability of this order.</p> <p>With regard to the injunctions provisions, we are still concerned that subsection (4) may place an unnecessary restriction on the Court's general power to grant an injunction. It is unclear whether the "if" clauses in (4)(a) and (4)(b) are intended to provide a limitation on the Court's general power under subsection (3) or if they are merely descriptive of the circumstances in which (4)(a) and (4)(b) apply. This is ambiguous drafting, which we note is not a problem under the relevant TPA provisions (s.80(4)).</p> <p>Further, subsection (4) corresponds to TPA s.80(4), in that it attempts to ensure that the Court's power to grant an injunction restraining a person from doing something is not unnecessarily limited. However, a provision ensuring that the Court's corresponding power to grant an injunction <i>requiring</i> a person to do something is also not unnecessarily limited has not been included. By contrast, TPA s.80(5) performs this function. A provision based on TPA s.80(5) should be inserted as s.1304(5).</p>
1305	Proceedings for declaration that a person is in breach of a conduct provision	<p>The same comments and recommendations made above in relation to section 1304 apply here.</p> <p>We note that these comments are further highlighted by the incorrect title for section 1305 – 'Proceedings for declaration that a person is in breach of a conduct provision' – when in fact the section covers not only proceedings for a declaration but also consequent orders, and separate proceedings for injunctions.</p>
1306	Actions for damages by persons for breach of conduct provision	<p>We strongly recommend substantial amendments to this section and/or that additional sections be added. It simply does not reflect provisions for consumer (and business) redress for loss or damage suffered that are found in other consumer laws nor government policy in this regard as reflected in the current Trade Practices Amendment (Australian Consumer Law) Bill 2009.</p>

	<p>We do not understand why no attempt has been made to amend this section following our comments in relation to the first exposure draft of the NECF legislative package.</p> <p>As stated previously, we support the NERL providing for persons other than the AER to be able to seek compensation for loss or damage suffered as a result of conduct done in breach of a relevant provision.</p> <p>However, this section will require a person who suffered loss or damage to undertake two separate legal proceedings in relation to the same conduct – one to recover compensation (under this section) and another if they want to obtain other orders or an injunction to prevent ongoing harmful conduct (under section 1305). Even the court in which they would bring the two proceedings would be different!</p> <p>This is inefficient and impractical, and in practice it will mean that most parties, particularly small customers, will almost always be unable to pursue compensation for conduct in breach of the NECF laws.</p> <p>In any case, section 1306 is limited to breaches of conduct provisions, of which there are none! Our comments in relation to section 1302 apply equally here. This provision is completely redundant unless this limitation is removed (or various provisions are actually specified as conduct provisions).</p> <p>Further, this section does not allow for the AER, as the regulator, to seek an order for compensation for persons who have suffered loss or damage as a result of a breach when it has brought proceedings for other orders in respect of the same breach.</p> <p>The current reforms that the Government is making to the general consumer law, contained in the Trade Practices Amendment (Australian Consumer Law) Bill 2009, will allow the consumer regulators (ACCC and ASIC) to seek redress for consumers who have suffered loss or damage as a result of contravening conduct, when the regulator is pursuing general enforcement action.</p> <p>We strongly recommend that the NERL be amended to provide for the AER to be able to seek orders for non-party redress in the same manner in which the ACCC and ASIC will be able to do so. We are unaware of any underlying policy rationale for not following this policy from the general consumer law area in the energy consumer law area.</p>
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Division 4 – Matters relating to breaches of this Law, the National Regulations or the Rules		
1307	Matters for which there must be regard in determining amount of civil penalty	The comments made above in relation to subsection 1304(1)-(2) apply here – this section should be amended to refer to declarations that a person is in breach of or has breached a civil penalty provision.
1309	Breaches of civil penalty provisions involving continuing failure	<p>We are also concerned with the drafting of this section.</p> <p>The section states that its contents are for the purpose of determining the civil penalty for a breach of a civil penalty provision. It goes to provide that, for this purpose, a breach consisting of a failure to do something is to be regarded as continuing until that something is done.</p> <p>Our reading is therefore that this section seems intended to be relevant to the Court only in determining the seriousness of a breach and thus the amount of the civil penalty that the Court should order for the relevant breach.</p> <p>However, there is nothing elsewhere in the NERL to indicate why the duration of a breach is relevant to determining the amount of a civil penalty. Duration is not a listed factor under section 1307, for example. Thus the section may be of no use to the Court in making its decision.</p> <p>In addition, if our reading is correct, the section does not apply for other purposes, such as determining that a person is currently ‘in breach’ of a provision as is required by the current drafting of section 1304, or determining what orders or type of injunction are available (for example an injunction requiring a person to act). The drafting of this section should be changed if it is intended to apply more generally – which we believe it should.</p>
1311	Persons involved in breach of civil penalty provision or conduct provision	<p>We strongly recommend that this section be amended to apply to any breach of a NECF provision, not merely to breaches of civil penalty provisions and conduct provisions (of which there are none).</p> <p>We query whether there any underlying policy reason why the MCE SCO has decided that a person should be allowed to aid, abet, counsel or procure, or be directly or indirectly knowingly concerned in, or</p>

		<p>party to, some breaches of the NERL, NERR or National Regulations? As currently drafted, this appears to have been directly transposed from the NGL without active consideration. The TPA and ASIC Act, for example, do not limit the aiding and abetting provisions in this way.</p> <p>Subsection (2) provides sufficient protection against inappropriate enforcement by making it clear that only the enforcement measures available in respect of a breach of that sort of provision are available against an aider or abetter of the breach – for example, a civil penalty is not available for procuring a breach of a non-civil penalty provision.</p>
1312	Attempt to breach a civil penalty provision	The comments made above in relation to section 1312 apply here. As with aiding and abetting, the TPA and ASIC do not limit enforcement measures such as injunctions to attempted breaches of civil penalty provisions, rather, they are available for an attempted contravention generally.
1313	Civil penalties payable to the Commonwealth	We recommend that the Government consider directing some or all civil penalty payments to matters related to energy regulation, for example to the Consumer Advocacy Panel for distribution to consumer education and capacity building programs.
Division 6 – Further provision for corporate liability for breaches of this Law		
		We support the addition of this Division, but again note that it merely copies the NGL in limiting its application breaches of an offence provision, civil penalty provision or conduct provision (of which there are none). We recommend that it have general application to any breach of a NECF provision.
Division 7 – Application of provisions of NGL		
1322	Search warrants	<p>We continue to recommend that this section be amended to ensure it enables the AER to conduct workable investigations in practice.</p> <p>Simple problems such as that a Magistrate cannot authorise an authorised person to be assisted by other persons in undertaking a search, for example to undertake manual labour, have not been addressed.</p>

Draft National Energy Retail Law		
Part 14 – Evidentiary matters		
Section	Subject Matter	Comment
		We have no comments on Part 14 of the Law.

Draft National Energy Retail Law		
Part 15 – General		
Section	Subject Matter	Comment
1501	Immunity in relation to failure to supply energy	We are concerned that this section provides an exclusion of liability that is too broad. We recommend that subsection 3 be revised so that the section does not apply in the event that they have significantly abrogated their responsibilities as set out in the retail laws, rules and regulations. This will ensure that severe breaches of the law incur a personal liability while not incurring a liability for oversights or honest mistakes.

Draft National Energy Retail Regulations		
Regulation	Subject Matter	Comment
7 and Schedule 2	Conduct provisions	As with the NERL, there are no Rules specified as conduct provisions in the National Regulations. Under the current drafting of the NERL (subsections.1302, 1305 and 1306), this means that third parties, including consumers, have no ability to seek any remedies for a breach of any part of the NECF laws. Again, this is unreasonable, unfair and poor policy.
8 and 9	Business customers – upper consumption thresholds for	We are disappointed that concerns raised by our submission to the first exposure draft of the NECF have not been incorporated into the second exposure draft of the NECF. We argued for increasing the upper consumption threshold for electricity so that there is adequate protection for small

<p>determining status as small or large customers (section 106(2)(a) of the Law)</p> <p>Business customers – lower consumption thresholds for determining status as small market offer customers (section 106(2)(a) of the Law)</p>	<p>businesses. The explanatory memorandum does not provide a satisfactory answer to the concerns raised. We reiterate our concerns here again:</p> <ol style="list-style-type: none"> 1. The NECF sets the upper consumption threshold of electricity at 100 MWh per annum. This effectively excludes business customers consuming between 100 to 160 MWh per annum of electricity from the retailers' obligation to supply and other consumer protections (in particular, small customer complaints and dispute resolution (Part 4 of the NERL) and small claims regime (Part 7 of the NERL)) since access to these services depends on the threshold This would have a significant impact on these businesses. 2. There are some small businesses that are essentially small in nature (for example, employing 1 to 20 people) but consume a lot of energy (for example, bakery, dry cleaners, small restaurants such as fish and chip shops, cafes and corner convenience shops). It is incorrect to assume that all small business customers are sophisticated and able to negotiate successfully and on an equal footing with large energy retailers. Proprietors of such small businesses may lack the business acumen or information necessary to ensure that their energy contracts contain fair and reasonable terms and conditions. They would benefit from the protections under the NECF framework. We strongly recommend that the upper threshold should be raised to 160 MWh per annum for electricity. 3. The NECF sets the lower consumption threshold of electricity at 40 MWh per annum. The limitation of access to a standing offer for small businesses using between 40 MWh per annum, to 100 MWh per annum of electricity has serious repercussions for small businesses and is a diminishment in consumer protection. The effect is that small businesses (consuming between 40 to 100 MWh per annum of electricity) are unable to obtain a standing offer and would have no option but to accept a market retail contract from a designated retailer (section 213 of the NERL). We strongly recommend the following: <ol style="list-style-type: none"> (a) A designated retailer should offer any small business consuming less than 100 MWh per annum of electricity a standing offer. A retailer and small customer may, however, negotiate to enter into a market retail contract. (b) There is no obligation on a designated retailer to make a standing offer to a small business
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		customer consuming between 100 to 160 MWh per annum of electricity, if the customer declines to enter into a market retail contract,
10	Review of consumption thresholds (section 106(2)(b) of the Law)	Any review of consumption thresholds must be subject to wide stakeholder consultation. See comments at section 911 of the NERL.

National Energy Retail Rules

Draft National Energy Retail Rules		
Part 1 Preliminary		
Rule	Subject Matter	Comment
Division 1 – Introduction and definitions		
Division 2 – Consumption threshold matters		
105	Business premises – aggregated application of upper consumption thresholds by agreement	We are pleased to see the inclusion of “explicit informed consent” as a requirement before business customers are able to aggregate consumption thresholds under rule 105 (3 & 4).
Division 3 – Classification of customers		
108	Retailer reclassification of customers	This section allows a retailer to reclassify a customer on its own initiative, or on application by, the customer or the distributor after the formation of the customer retail contract. This should be amended to require the retailer to contact the customer and inform them of the reasons for the proposed reclassification, and to allow the customer an opportunity to challenge the reclassification. Further, rule 108(5) should be amended to provide that the reclassification should only occur following resolution of any customer objections to the reclassification.
110	Distributor reclassification of business customers	The comments relating to rule 108(3) should apply to rule 110(3) in the context of reclassifications which are distributor initiated or on application by the financially responsible retailer. Further, this rule should be amended to provide that the reclassification should only occur following resolution of any customer objections to the reclassification.

Draft National Energy Retail Rules		
Part 2 – Customer Retail Contracts		
Rule	Subject Matter	Comment
Division 1 – Standard retail contracts - terms and conditions generally		
Division 2 – Market retail contracts - terms and conditions generally		
Division 3 Customer retail contracts – pre-contractual procedures		
207(5)	Pre-contractual request to designated retailer for sale of energy	This provision should ensure that a retailer cannot require payment of any outstanding amount prior to the commencement of the contract and that consumers are offered an instalment plan by which to pay any outstanding amounts, consistent with the requirements for security deposits.
208(1)(c)	Responsibilities of designated retailer in response to request for sale of energy	Although the model contract contains information on a customers obligation to notify the retailer of any life support equipment required, we believe this provision should also contain a reference to life support requirements as it is at the point most relevant and readily accessible to consumers.
209(2)	Basis for bills (SRC and MRC)	We submit that only obliging retailers to read customer meters every twelve months will mean that many customers will receive three out of four estimated bills in a year. We are concerned that some customers are adversely affected by this minimal obligation. Customers who have inadvertently purchased an energy intensive appliance, customers who have an appliance with a fault that leads to excessive energy consumption, and customers who have an undetected gas leak, will consume considerably more energy than they would otherwise have consumed over a twelve month period, and be receive considerably higher energy bills than would otherwise have been the case, had they received a bill during this period that was based on an actual meter read. To minimise the likelihood of such adverse outcomes for customers, we recommend that retailers be obliged to physically read customer meters at least every six months.
Division 4 – Customer retail contracts – billing		
NEW RULE	Definition of a bill	The NECF does not set out how a bill must be provided to consumers. We are concerned that without definition retailers may deliver bills by means other than post, such as e-mail or mobile phone, without the express agreement of the customer.

		Acknowledging that some customers do not have ready access to e-mail or mobile phones, that many will prefer to receive their bills by post, and that others will have changed their e-mail address or mobile number without having informing their retailer, we submit that bills should be defined as a “written notice” in line with the definition proposed in Part 1, Division 1 of the law.
209(1)(d)	Basis for bills	If bills are to be based on a method other than those outlined in Rule 209 (1) (a, b and c) this should require the explicit informed consent of the small customer. A method that calculates charges by means other than units of energy consumed is highly unorthodox and customers must be aware and fully informed of the basis for their charges. The information asymmetry between retailers and customers means that the customer may be at a distinct disadvantage in these circumstances.
210(4)(b)	Estimation as basis for bills	The provision for repaying undercharged amounts should not be limited to 12 months. If the retailer and customer agree to a longer repayment period the rules should not limit this. This provision also undermines the operation of hardship programs as it dictates timeframes for the repayment of monies without regard to a consumers financial circumstance.
210(6)	Estimation as basis for bills	The requirements for meter reading protect both retailer and consumer interests in ensuring that the correct amount is paid for energy used. We see no reason why market contracts should be exempt from these provisions and believe that this rule should not effect the operation of rule 209(2).
211(1)	Bill smoothing (SRC)	This rule should clarify that bill smoothing can be made available at a customer's request and with their explicit informed consent. The current drafting is not clear as to when a retailer ‘may’ offer this.
212(1)	Frequency of bills	This provision brings the issuance of bills for both gas and electricity into alignment in all jurisdictions. This has the potential to increase payment difficulties as large bills arrive simultaneously. In Victoria the current requirement is to issue bills for gas at least once every two months and electricity once every three months. This allows energy bills to be staggered throughout the year and assists households meet their payment obligations. Any changes to billing frequency can only be made with a customer’s explicit informed consent.
213	Contents of bill	We support the changes made to the content requirements for bills. The requirement should also include an obligation to provide the contact details of the relevant jurisdictional ombudsman and

		information on greenhouse gas emissions.
214 (1)	Pay by date	The pay by date should be extended to 15 days from the date of issuance to accommodate postage delays, particularly for households in rural and regional areas. This is currently an issue for those consumers in, for example, in northern Queensland.
214(3)	Pay by date	This rule must apply to both standing and market retail contracts. Consumers should have adequate opportunity to pay their bills within a reasonable period.
215(3)	Apportionment	This rule must apply to market contracts to ensure that where other arrangements for the provision of other services is entered into, these do not jeopardise a household's supply of essential services. Excluding market contracts from this rule is a significant change from the first exposure draft of the NECF and it is particularly problematic when market contracts are now able to include a range of unspecified "other services" as permitted under section 215(b) of the NERL (refer also to comments on section 211 NERL).
216	Historical billing information	The NERR must specify a timeframe within which historical billing information is to be provided to a customer. 10 business days is the standard timeframe within most NEM jurisdictions, providing a recognition that a consumer has the right to access their information within a reasonable (and legally defined) timeframe.
216(2)	Historical billing information	Consumers should not be charged for requesting billing information for a period longer than 12 months or more than once in any 12 month period. If billing issues are systemic and recurring (as they have been recently with one retailer operating in a number of NEM jurisdictions) customers should have the right to investigate these free of charge.
217(2)	Billing disputes	The reference to "time limits" in this clause is unclear. The reference to standard complaints and dispute resolution procedures and time limits in this rule does not guarantee that disputes will be reviewed in an expeditious manner.
217(5)(b)	Billing disputes	Requiring a consumer to pay for meter tests in advance provides a barrier to resolving billing disputes and identifying faulty metering equipment. This should be prohibited.

218(2)(a)	Undercharging	<p>The reference to a customer 'fault' in this rule should be removed. The reference to unlawful act or omission is sufficient to cover cases where a customer has caused undercharging and we are concerned that the inclusion of customer fault is too broad and subjective a measure.</p> <p>We also restate the case that as per current best practice in Tasmania, that a retailer should only be able to recover amounts undercharged during the previous six months. Consumers should not be penalised for retailer or distributor error.</p>
218(2)(d)	Undercharging	<p>The provision for repaying undercharged amounts should not be limited. If the retailer and customer agree to a longer repayment period the rules should not prohibit this. This provision also undermines the operation of hardship programs as it dictates timeframes for the repayment of monies without regard to a consumers financial circumstance.</p>
219(6)	Overcharging	<p>The overcharging threshold limits a consumers ability to make choices about how and where their funds are used. While we do not believe that any threshold is appropriate we acknowledge that a threshold is currently applied in all jurisdictions. Therefore we recommend that the overcharging threshold should be set at \$25 as is currently the case in New South Wales to offset costs incurred by a retailer in arranging a refund.</p>
220(2)	Payment methods	<p>Centrepay is a critical tool to assist low income households meet their payment obligations. It empowers households to manage their finances without requiring rigorous assessment by the retailer, or a financial counsellor and potentially further stigmatising low income households.</p> <p>Allowing the use of Centrepay may assist in avoiding the need for households to access assistance through hardship programs and avoid additional costs to the retailer. This provision should require the use of Centrepay when requested by a customer.</p>
221(1)(b)	Payment difficulties	<p>Consistent with earlier comments we believe that payment plans should be made available to all customers. Payment plans can be a preventative measure to ensure that a consumer does not fall in to payment difficulties or a way to manage bills for a short period. They should not be limited to people who have expressed payment difficulties or those on hardship plans.</p>

		<p>We submit that:</p> <ol style="list-style-type: none"> 1. Under the current wording of Rule 221(1), the obligation of the retailer to offer a payment plan to a residential customer who is not a customer experiencing hardship, arises only if that customer 'informs the retailer.....that the customer is experiencing payment difficulties.' This unrealistically assumes that all customers are aware of payment plans and the process required to access them. Further, some customers (whether because of financial embarrassment or otherwise) including those who may be in most need of a payment plan, will not be prepared to acknowledge their financial circumstances to their retailer. Retailers, should through a customer's payment history, be able to tell whether a customer requires some assistance in managing their payments. Thus, retailers are in a position to initiate an offer of a payment plan to a customer. 2. The current drafting of Rule 221(1) also excludes customers who are not currently experiencing payment difficulties from access to a payment plan. Some customers may not be experiencing payment difficulties but may need assistance in managing their payments because of anticipated changes in their personal circumstances in the foreseeable future. <p>We suggest that Rule 221(1) be amended to read:</p> <p>'A retailer must offer a payment plan to:</p> <ol style="list-style-type: none"> (c) a customer experiencing hardship; or (d) a residential customer who is not a customer experiencing hardship but who is experiencing payment difficulties (e) a residential customer who requires assistance in managing payments; <p>Additionally, this rule should remove the provision which specifies <i>how</i> a consumer must inform a retailer of payment difficulties (i.e. either by telephone or in writing). It is desirable for a consumer to</p>
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		contact a retailer to make this request and prescribing the form in which they must do this is unnecessary.
222(1)	Shortened collection cycle	A shortened collection cycle fails to provide consumers with fair and reasonable contract terms. Under no circumstances is a shortened collection cycle in a consumer's interest. We do not believe it is appropriate for such a provision to be negotiated between a consumer and retailer as it can only be used as a punitive measure.
222 (2)(b)	Shortened collection cycle	A shortened collection cycle allows for retailers to avoid some of the notification requirements set out in the standard retail contract. In Victoria and South Australia, a shortened collection cycle applies only after a customer has paid their account on or after the issuing of reminder notices for <u>three consecutive bills</u> or where payment is made on two consecutive disconnection-warning notices. Rule 222 proposes to reduce the number of reminder notices. Reminder notices require payment 17 business days after the issuance of the original bill and disconnection warnings 22 days, meaning that reminder notices can be issued more frequently and thus sets a lower threshold for the shortened collection cycle to be introduced. This is a substantial reduction in current protections and we cannot support this change.
222(4)	Shortened collection cycle	Notwithstanding comments made above, if the requirements for being placed on a shortened collection cycle have been reduced, the requirements for being removed from a shortened collection cycle should be reduced accordingly.
Division 5 – Customer retail contracts – Security Deposits		
224	Consideration of credit history	<p>This rule should only relate to utility debts and be renamed to “consideration of utility credit history”. While we have considerable concern about the accuracy and relevance of information held by credit rating agencies, the nature of utility costs and bill paying is also unique within a household budget.</p> <p>The 2007 Victorian Utility Consumption Survey found that utility bills are prioritised for payment households higher than any other household cost, other than rents and mortgages. Other debts do not provide an accurate indication of a households utility credit risk in these circumstances.</p>
225(3)	Requirement for security	We strongly support these changes.

	deposit	
225(4)	Requirement for a security deposit	“Specified period” should be defined in this clause as no less than the pay-by-date of a normal billing cycle (i.e. 15 days) in order to ensure that the consumer has two fortnightly payment periods in which to obtain money for the security deposit.
225(8)	Requirement for a security deposit	We support this clause.
227	Amount of security deposit	This rule must also apply to market retail contracts. Security deposits are required to guard against potential retailer losses for non payment and the calculation methods used in this rule provides a fair and reasonable means to calculate this. Not providing coverage to market contracts allows retailers to charge above fair and reasonable costs for some customers.
228	Interest on security deposit	We support this clause.
229	Use of security deposit	Consistent with our comments on Rule 227, this rule should also apply to market retail contracts.
230	Obligation to return security deposit	We support the application of this rule to both standard and market contracts.
Division 6 – Market retail contracts – complaints and disputes		
231(1)(b)	Small customer complaints and dispute resolution information	<p>We suggest that this rule be amended to insert the word ‘expeditiously’ in line with our comments in section 404(3) of the NERL. Further, customers must be provided with a hard copy of the retailer’s standard complaints and dispute resolution procedures at no charge. We suggest the following amendments: :</p> <p>‘the retailer is obliged to handle a complaint made by a small customer expeditiously and in accordance with the retailer’s standard complaints and dispute resolution procedures, which can be found on the retailer’s website or provided to the customer on request at no cost.’</p>
231(1)(c)	Small customer complaints and dispute resolution information	<p>For consistency with section 404(4) of the NERL, we suggest an amendment to Rule 231(1)(c):</p> <p>‘the retailer must inform the small customer of the outcome of the customer’s complaint as soon as reasonably possible and within any time limits applicable under the retailer’s standard complaints and</p>

		dispute resolution procedures.’
Division 7 – Market Retail Contracts – liability provisions		
Division 8 – Customer retail contracts – Termination		
237(3)(d)	Retailer notice of expiry of market retail contract	<p>While we support the inclusion of the retailer’s obligation to notify a customer of the expiry of their contract, de-energisation of a carry over customer is a disproportionate response to a situation where the retailer holds all the information required for the formation of a standard retail contract.</p> <p>Allowing de-energisation in these circumstances simply places additional onus on a consumer who has already taken the necessary steps to obtain energy supply when entering into their initial market contract. In practice many consumers are not aware of the range of different market products available, and would expect continuity of service on the expiry of their contract, until otherwise advised.</p>
Division 9 – Deemed customer retail arrangements		
Division 10 – Other retailer obligations		
240	Referral to interpreter services	<p>This provision should require a retailer “to <i>provide</i> access to interpreter services if necessary or appropriate to meet the reasonable needs of the customer”. Customers from culturally and linguistically diverse communities and refugee communities may not know how to initiate contact with an interpreter service and the free interpreting services that are available when accessing government departments are not available to the same people when accessing private businesses. Particularly for refugee households who may have had little to no previous contact with an energy retailer, or indeed any experience of an energy market, access to free interpreting services is vital to ensuring that they are able to address any questions and concerns that may help to avoid disconnection. This will also assist retailers to ensure they have gained explicit informed consent for transactions with consumers from non-English speaking backgrounds.</p>
Division 11 – Retail marketing		
Subdivision 1 - Preliminary		
242	Application of Division	<p>As per our comments above, in relation to the expanding responsibilities of all participants in the energy market the 'Application of Division' needs also to apply to distribution businesses, and potentially, in future other market participants such as demand aggregators.</p>

Subdivision 2 - Providing information to small customers		
244 (b)	Requirement for and timing of disclosure to small customers	It is essential that an energy marketer provides the required information, including a copy of a contract, to a small customer <u>prior</u> to forming the contract. The rules as currently written preclude a consumer from accessing a copy of a contract in any verbal negotiation or prior to signing a contract. The failure to allow a consumer access to a contract's terms and conditions prior to signing a contract is unconscionable.
245	Form of disclosure to small customers	<p>The provision of required information verbally does not adequately provide assurances that a customer has understood the information or the terms of the agreement, therefore not enabling the customer to fully provide their explicit informed consent. This rule should be amended to require 'required information' to be provided in writing at all times to enable explicit informed consent.. All door to door contact must include full written disclosure, including the contract.</p> <p>Further, as per our submission to the first exposure draft of the NECF, accompanying the written disclosure statement must be a prescribed form which highlights to a consumer that they are changing contracts and that there is a cooling off period which they can exercise. This accords with current best practice in regulating door-to-door sales contracts generally, not just in the energy area.</p>
246	Required information	The AER should include a review of 'Required information' in the development of the Pricing and information guideline.
Proposed additional rule	Time to consider required information	It is essential that retailers are required to ensure consumers are provided with a reasonable opportunity to consider the required information, away from the presence of the retail marketer, before entering into a contract.
Subdivision 3 - Marketing activities		
253	Record keeping	<p>We are deeply concerned that the period for which marketing activity records must be kept has been reduced from two years to a period of 12 months.</p> <p>We query the purpose of the reduction on the basis that issues of explicit informed consent and the</p>

		<p>validity of a contract directly correlate with marketing activity in most cases and this undermines the ability for a consumer to argue against marketing practices that may not have gained explicit informed consent or which have placed them in detriment over that time. We strongly recommend a re-instatement of the two year period.</p> <p>The records of this event must be maintained and made available. Further, we made recommendations in our submission to the first exposure draft of the NECF in relation to the type of information that should be collected, including; the premises visited, the dates and times of each visit, and the name of the marketing representative - for all sites where marketing activity was entered into, whether or not a contract was made. Many of the marketing issues experienced by consumers occur without a contract being entered into and are therefore not often reported as marketing issues by retailers or regulators, but are nonetheless non-compliances.</p>
247	No contact times	We strongly recommend 'contact' be defined in relation to 'Subdivision 3 Marketing activities'. This definition should ensure that contact refers to any direct, face to face or phone contact.
248	No contact lists	<p>We commend MCE SCO for including 'No contact lists' in the NERR. We strongly recommend making explicit that no contact be entered into in relation to any energy marketing of any type and for any product.</p> <p>Further, we recommend that the 'No contact list' be maintained by the Australian Energy Regulator. This provides a centralised point for the 'no contact register'. The alternative, for Victorian customers in particular, would be to have to contact up to 14 energy businesses to register for no contact. This is a convoluted and time consuming task. A centralised process run by the AER would simplify this process and empower consumers.</p>
Proposed additional rule	Duty of retailer to provide training to marketers	<p>We are very disappointed and unsure why our recommendation to place an obligation on retailers to train marketing staff is not included in the NERL or the NERR. This is a fundamental aspect of ensuring retailer compliance to the NERL and NERR and minimising the negative impacts of marketing practices on consumers.</p> <p>We strongly recommend that all training in relation to retailer obligations under the NERL and NERR be</p>

		<p>provided by the AER for all energy marketers, and provision made for the AER to be able to charge a fee for service. The facilitation of this training by the AER would provide a consistent training platform to all energy marketers and will highlight and emphasise the importance of complying with the NERL and NERR, reducing the incidence of non-compliance. The completion of training by the AER would effectively certify an energy marketer to conduct energy marketing activity on behalf of a retailer. All additional training should be provided by the retailers.</p> <p>Training of retailer marketers is critical to the effectiveness of compliance to a retailer's obligations. As such retailer obligations should also extend to creating and maintaining training manuals for retail marketers and to running regular courses, including update / refresher courses. Training manuals and training records for marketing representatives should be maintained for a period of at least one year from the last date of training on which the training with the relevant manuals took place. These should be maintained for independent audits.</p>
Proposed additional rule	Marketing Guideline	We strongly urge the NERL to empower the AER to develop a legally binding Marketing guideline.
Subdivision 4 - General conduct standards		
254	General conduct standards	<p>We strongly recommend that the provisions included in this Rule be incorporated into the training obligations of retailers for energy marketers.</p> <p>We believe this Rule should be a civil penalty provision. Civil penalties should apply if a retailer is in breach of its energy marketing obligations.</p>
Subdivision 12 Retail Pricing information Guidelines		

Part 3 – Customer hardship and payment difficulties

Rule	Subject Matter	Comment
301(1)	Obligation of retailer to communicate customer hardship policy	<p>Rule 301(1) is inconsistent with section 228 of the NERL. This rule should be amended in line with section 228 of the NERL to ensure that all consumers experiencing payment difficulties are informed of the availability of hardship programs.. To ensure consistency between the NERL and the NERR, and provide consumers with adequate information on hardship policies we submit that rule 301(1) be amended to read:</p> <p>'A retailer must inform a residential customer of the retailer's customer hardship policy as soon as practicable where it appears to the retailer that non-payment of an energy bill is due to the customer experiencing payment difficulties.'</p> <p>Further, these obligations must apply in the case of both standard retail contracts and market retail contracts.</p>
301 (2)	Obligation of retailer to communicate customer hardship policy	<p>All customers should be able to access their retailer's hardship policy. We suggest that this rule be amended to "the retailer must provide any customer with a copy of the customer hardship policy on request and at no expense"</p> <p>The retailer must provide <i>any</i> customer with copy of policy on request.</p>
302	Payment plans	<p>Rule 605 informs that retailers must offer customers two payment plans prior to arranging for disconnection of supply. Customers in some jurisdictions, such as NSW, currently do not benefit from an offer of two payment plans. As such, we strongly support the intent of this proposal. However, in its current form, we question whether many customers will receive any material benefit from this obligation. Namely, we are concerned that retailer obligations could be met by briefly mentioning the availability of a payment plan on a reminder notice and then on a disconnection notice. To be effective, we contend that the Rule 302 must identify a payment plan offer as:</p> <p>'an invitation to a customer to enter into a payment plan that, at a minimum, explains that a payment</p>

		plan will provide the opportunity for the customer to make smaller payments on a regular basis, informs the customer that payments will be based in part on the customer's capacity to pay, and states that the customer cannot be disconnected whilst abiding by the terms of the payment plan'.
302(2)	Payment plans	Recognising that finances, health, employment and other circumstances can change and impact on the capacity to adhere to a payment plan, we propose that this Rule also require retailers to inform customers that they have the right to renegotiate the terms of their payment plan if they experience a demonstrable change in circumstances. We also advocate that retailers be obliged to give customers details about when payment plans shall be deemed to have been breached and cancelled.
303	Waiver of late payment fee for hardship customer	<p>This rule must be amended to clearly state that as long as the customer is participating in a retailer's hardship program, no late payments fees should be chargeable (this includes late payment fees on accrued bills as well as subsequent bills received when the customer is participating in the hardship program). Our suggested wording is:</p> <p>'A retailer must waive any fee payable under a customer retail contract with a customer experiencing hardship for late payment of a bill for customer retail services. This means the waiver of any late payment fee for accrued bills and subsequent bills due to a retailer, with a customer participating in a hardship program as defined in rule 306(4).'</p>
306(2)	National hardship indicators	<p>See our comments at section 1216 of the NERL. Rule 306(2) provides no clarity as to the purpose of national hardship indicators, which we believe is to measure the extent of consumer hardship. The national hardship indicators should be used as a basis to measure the success of a retailer's customer hardship policy. For example, it should include information on the number of customers who successfully completed the hardship program and returned to mainstream billing, the number of previous hardship program participants who were disconnected within 12 months etc. We submit that as a minimum, the national hardship indicators cover the following:</p> <ul style="list-style-type: none"> • Number of hardship program participants; • Hardship program participants for whom access was sought by a third party; • Hardship program participants who are concession card holders; • Customers denied access to a retailer's hardship program;

		<ul style="list-style-type: none"> • Average debt of new entrants into a hardship program; • Average debt upon exit from a hardship program; • Average length of participation for participants in a hardship program; • Participants exiting a hardship program by agreement with the retailer; • Hardship program participants excluded for not complying with requirements; • Disconnections of previous hardship program participants within 12 months; • Reconnections of previous hardship program participants within 12 months; • Energy field audits provided at no cost to customer; • Average cost contributed by customers where a partial contribution was required; • Appliances provided under a hardship program; • Customers referred to programs for appliance replacement; and • Customers referred to programs for appliance replacement who managed to receive an appliance replacement. <p>Additional sources that may inform the type of hardship indicators that may be appropriate are a report currently being undertaken by Queensland Council of Social Service and any previous work done by the Victorian ESC.</p>
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Draft National Energy Retail Rules		
Part 4 – Relationship between distributors and customers		
Rule	Subject Matter	Comment
Division 1 - Preliminary		
402	Variation or exclusion of provisions of this Part by AER approved standard connection contracts	This section is unclear and appears to allow the AER to completely exclude the application of this Part. Does this mean that this Part can be deemed to not apply if a customer enters into an AER approved standard connection contract? Is this type of contract the same as a deemed standard contract? At worst this section removes the need for the presence of this Part. At best, it is confusing and opaque. It needs to be clarified.
Division 2 - Customer connection services		

404	Provision of information to customers	Contracts and other legal requirements of customers and distributors alike should be available to customers in plain English. We note the complexity of the contract and associated laws and regulations and the difficulties that customers may have in understanding the arrangements.
406	Small customer complaints and dispute resolution information	This rule should require the distributor to adhere to the national standard for dispute resolution as is the case for retailers under the NECF.
406(1)(b)	Small customer complaints and dispute resolution information	To ensure complaints are handled in a timely manner we suggest an amendment to this rule 406(1)(b) to insert the word 'expeditiously' in line with our amended section 404(3) of the NERL. Further, we also suggest an amendment to this sub-section to ensure that a customer requesting a hard copy of the distributor's standard complaints and dispute resolution procedures, is not charged for. Suggested drafting:: 'the distributor is obliged to handle a complaint made by a small customer expeditiously and in accordance with the distributor's standard complaints and dispute resolution procedures, which can be found on the distributor's website or provided to the customer on request at no cost.'
406(1)(c)	Small customer complaints and dispute resolution information	For consistency with section 404(4) of the NERL, we suggest an amendment to rule 406(1)(c): 'the distributor must inform the small customer of the outcome of the customer's complaint as soon as reasonably possible and within any time limits applicable under the distributor's standard complaints and dispute resolution procedures.'
Division 3 - Deemed standard connection contracts		
Division 4 - Negotiated connection contracts		
Division 5 - Distributor obligations to customers		
410	Provision of Information	Distributors often do not have access to their customers' personal (i.e. names, telephone contact etc) information. Often the distributor is only aware of a customer's NMI. This makes it difficult for them to distinguish between the current customer's consumption and that of any previous customers. As a result they may not be able to pass on accurate information to a current customer. This is one of the reasons that we advocate for distributors to be able to hold the relevant particulars of their customers with appropriate privacy protections in place. It is important that the customer retains ownership of their

		data and it is only provided to distributors to improve the quality of service and relationship between customers and distributors. Such personal information provided to the distributor must not be used for any other purpose than to improve customer service standards. This relates to section 14.2 of the deemed standard distribution contract in that we strongly support consumer ownership of consumption data.
Division 6 - Distributor interruption to supply		
Division 6	Distributor interruption to supply	<p>Division 6 of the rules include provisions that allow distributors to interrupt supply at any time for a planned or unplanned outage. We strongly advocate the amendment of this division so that it includes: stronger provisions around informing customers of outages.</p> <p>Rule 412 allows distributors to interrupt energy supply for a planned and unplanned outage at any time in accordance with the energy laws. This is then followed up with rule 413 that requires a distributor to provide 4 days notice in the event of a planned interruption and rule 414 that requires a distributor to make a telephone information service available and use their “best endeavours” to restore customer supply.</p>
413	Planned interruptions	<p>This rule requires distributors to notify customers by “any appropriate means” four days prior to a planned supply outage. This is too broad and could result in many customers not being informed of the supply interruption. We would like to see “by any appropriate means” replaced with “written notice” or something similar. This will better ensure that customers are well informed about any supply outage. Rule 413 should also provide compensation for customers in the event that the distributor fails to notify them of a planned interruption.</p>
414	Unplanned interruptions	<p>To improve service standards and address any health and safety issues posed by extended unplanned outages this provision should include a requirement for distributors to personally contact customers by telephone in the event that a supply outage lasts for more than 8 hours and notify the relevant community services department</p>

Part 5 – Relationship between distributors and retailers - retail support obligations

Division 4 - Shared customer enquiries and complaints

	Consumer policy rationale	In handling a customer enquiry or complaint, retailers and distributors must be able to determine whether the customer’s matter falls within their area of responsibility and if not, they should appropriately refer the customer to his/her retailer/distributor as the case may be. The current draft does not facilitate this because it is unclear what complaints and enquiries should be referred to the retailer or distributor. This is explained further below.
510(1)	Enquiries or complaints relating to the retailer	<p>We are concerned that the reference to ‘an issue relating to the sale of energy’ in this rule may not cover all retailer responsibilities.</p> <p>Arguably, ‘an issue relating to the sale of energy’ could exclude other matters for which a retailer is responsible. We note that the applicable sub-sections relating to retailers under the definition ‘relevant matter’ in section 401(1)(a) of the NERL appears wider than the ‘sale of energy.’ For example, it includes a retailer’s obligation to a customer before a retail contract is formed (which presumably could mean before any sale of energy).</p> <p>We suggest that this rule be clarified.</p>
511(1)	Enquiries or complaints relating to the distributor	<p>This rule refers to ‘customer connection services.’ which is defined in section 102(1) of the NERL to include (c) ‘a service relating to the ongoing energisation of the premises, including the initial energisation, supply, de-energisation or re-energisation of the premises’ (‘de-energisation or disconnection’ has the same definition under section 102(1)).</p> <p>We are concerned that the reference to customer connection services in this rule could lead to the perverse situation where a consumer who has been disconnected contacts their retailer about the disconnection; the retailer refers the person to the distributor rather than assisting the person to reconnect. We suggest that this rule be clarified.</p>

Draft National Energy Retail Rules		
Part 6 – De-energisation (or disconnection) of premises		
Division 1 – Preliminary		
Rule	Subject Matter	Comment
Part 6	De-energisation (or disconnection) of premises	<p>Given Part 6 of the NERR refers to the withdrawal of energy supply due to consumer actions and not the removal of properties from distribution or transmission networks by distributors, we continue to advocate that Part 6 be named ‘Disconnection of premises’ and that subsequent references to ‘de-energisation’ be changed to ‘disconnection’.</p> <p>Acknowledging this position, we recognise that the new name ‘De-energisation (or disconnection) of premises’ is an improvement upon ‘De-energisation of premises’ and welcome the amendment.</p>
Division 1 - Preliminary		
601	Definition	To comply with industry best-practice, as per the Victorian Energy Retail Code, and to give customers adequate time to contact their retailer, we reiterate our earlier recommendation that (a) be changed so that the protected period in which retailers and distributors cannot disconnect customers ends at 2pm rather than 3pm.
603 (1)	Reminder notices - retailers	This section defines a reminder notice as a written notice but does not identify how retailers must deliver written notices. Consistent with our recommendation to section 102 of the NERL, we submit that the NECF must oblige retailers to deliver hard copy written notices by post, unless they have received explicit informed consent to deliver them in some other identified way.
603 (2)	Reminder notices – retailers	We note that many customers are sent reminder notices because they have been unable to afford to pay their bills by their due dates. We also know that many of these customers do not know that support is available to assist them to pay their energy bills. To assist these customers to learn about and access support and avoid the indignity of disconnection, we contend that reminder notices must include information about the availability of retailer payment plans and hardship programs, as well as government concessions and rebates.

		<p>We also recommend that disconnection warning notices include a statement from the retailer asking the customer to contact their retailer, on a number provided, in the event they are experiencing difficulty paying their bill.</p> <p>We support the inclusion of a rule that requires reminder notices to include the details of the existence and operation of the energy ombudsman and in a manner that encourages consumers to pursue these avenues where they think it might be necessary..</p>
604	Disconnection warning notices	We welcome the change from ‘de-energisation warning notices’ to ‘disconnection warning notices’.
604 (1)	Disconnection warning notices	This section defines a disconnection warning notice as a written notice but does not identify how retailers and distribution businesses must deliver written notices. Consistent with our recommendation to section 102 of the NERL, we submit that the NECF must oblige retailers to deliver hard copy written notices by post where they relate to disconnection.
604 (2)	Disconnection warning notices	<p>Acknowledging that a significant proportion of customers receive disconnection warning notices because they have been unable to afford to pay their energy bills, we again contend that disconnection warning notices must include information about the availability of retailer payment plans and hardship programs, as well as government concessions and rebates. We again note that many customers will not be aware of the availability of support and submit that the obligation to include such information on disconnection warning notices will, in some cases, be the difference between connection and disconnection.</p> <p>We also recommend that disconnection warning notices include a statement from the retailer asking the customer to contact their retailer, on a number provided, in the event they are experiencing difficulty paying their bill.</p>
604 (2) (c)	Disconnection warning notices	Consistent with jurisdictional best-practice, we contend that the date of disconnection should be not fewer than 7 business days after the date of issue of the warning notice. Permitting disconnection after just 5 days from the date of issue of the warning notice means customers may not have had adequate time to access support from their retailer and/or other parties. The outcome may be an increase in the number of households to experience the indignity of disconnection.

Division 2 – Retailer-initiated de-energisation of premises		
605 (1)	De-energisation for not paying bill	We welcome the reference to ‘disconnection warning notice’ in place of ‘de-energisation warning notice’.
605 (1) (d)	De-energisation for not paying bill	<p>We again submit that this Rule must refer to retailer best endeavours to contact a customer either in person or by telephone. Contact by mail, facsimile or email fails to guarantee that the customer has received or understood earlier notices and does not give the customer a direct opportunity to indicate they are experiencing difficulties paying their bill.</p> <p>Acknowledging that not all customers are at home during business hours due to work and other commitments, we also advocate that retailers be obliged to attempt one out-of-hours contact before undertaking disconnection. We note that Victorian and NSW retailers must currently attempt to contact customers outside business hours if previous attempts at contact have been unsuccessful.</p>
605 (2)	De-energisation for not paying bill	<p>We contend that this Rule must be re-drafted to prevent the disconnection of households participating in retailer hardship programs. The current iteration suggests customers experiencing hardship are protected from disconnection only if they are adhering to a payment plan. We note that hardship programs should contain additional and alternative assistance – as per our comments on minimum requirements for customer hardship policy at section 226 of the NERL – and some customers may be accessing this assistance but not to participating in a payment plan. We recommend this Rule requires that customers must not be disconnected when participating in hardship programs.</p> <p>Further, Rule 605 informs that retailers must offer customers two payment plans prior to arranging for disconnection of supply. Customers in some jurisdictions, such as NSW, currently do not benefit from an offer of two payment plans. As such, we strongly support the intent of this proposal. However, in its current form, we question whether many customers will receive any material benefit from this obligation. Namely, we are concerned that retailer obligations could be met by simply mentioning the availability of a payment plan on a reminder notice and then on a disconnection notice. To be effective, as noted earlier, we contend that the Rule 302 must identify a payment plan offer as:</p> <p>'an invitation to a customer to enter into a payment plan that, at a minimum, explains that a payment</p>

		plan will provide the opportunity for the customer to make smaller payments on a regular basis, informs the customer that payments will be based in part on the customer's capacity to pay, and states that the customer cannot be disconnected whilst abiding by the terms of the payment plan'.
605 (3)	De-energisation for not paying bill	Please see our comments at Rule 222 in relation to shortened collection cycles.
605 (3) (c)	De-energisation for not paying bill	<p>We submit that (c) must refer to retailer best endeavors to contact a customer either in person or by telephone. As noted above, contact by mail, facsimile or email fails to guarantee that the customer has received or understood earlier notices and does not give the customer a direct opportunity to indicate they are experiencing difficulties paying their bill.</p> <p>Acknowledging that not all customers are at home during business hours due to work and other commitments, we also advocate that retailers be obliged to attempt one out-of-hours contact before undertaking disconnection.</p>
606 (1)	De-energisation for not paying a security deposit	We contend that the phrase '...if the customer has refused to pay a security deposit...' incorrectly and inappropriately implies that the customer has wilfully decided not to make this payment and ignores the likelihood that the customer was unable to do so due to financial hardship. We recommend that this Rule be redrafted to adopt a less value laden phrase such as '... if the customer has not paid a security deposit...', consistent with retailer obligations in Rule 225.
606 (1) (a)	De-energisation for not paying a security deposit	This section refers to a written notice of intent to disconnect but does not identify how retailers must deliver written notices. Consistent with our recommendation to section 102 of the NERL, we submit that the NECF must oblige retailers to deliver hard copy written notices by post where they relate to disconnection.
606 (1) (b)	De-energisation for not paying a security deposit	We welcome the reference to 'disconnection warning notice' in place of 'de-energisation warning notice'.
606 (3)	De-energisation for not paying a security deposit	We support the application of this Rule in relation to market retail contracts.

607	De-energisation for denying access to meter	<p>We contend that the phrase ‘... if the customer has failed to allow...’ inaccurately and inappropriately infers that the customer has actively denied the retailer access to the meter. We recommend that this Rule be redrafted to employ less value laden language such as ‘...if the retailer has been unable, for 3 consecutive scheduled meter readings, to access the customer’s premises..’.</p> <p>Acknowledging that tenants may be unable to arrange physical access to meters, we again submit that this Rule must set out alternative arrangements and retailer responsibilities in response to this issue. The model terms and conditions make provisions for when the consumer is not the owner of the property. This should be reflected here.</p>
607 (1) (b)	De-energisation for denying access to meter	<p>We are concerned that the phrase ‘...on each of the occasions access was denied...’ inappropriately suggests that the customer actively prevented access to the meter. We recommend that this Rule be redrafted to employ less value laden language such as ‘...on each of the occasions access was not achieved...’.</p> <p>We also suggest that the phrase ‘... advising of the retailer’s ability to arrange for de-energisation’ may not adequately convey the intent of the assertion and would better read ‘... advising of the retailer’s authority to arrange for de-energisation’.</p> <p>Consistent with amendments to other sections of Part 6 of the NERR, we contend this section must oblige retailers to give customers a written notice advising of the retailer’s authority to arrange for ‘disconnection’ rather than ‘de-energisation’.</p> <p>We also note that this section does not identify how retailers must deliver a written notice. Consistent with our recommendation to section 102 of the NERL, we submit that the NECF must oblige retailers to deliver hard copy written notices by post where they relate to disconnection.</p>
607 (1) (c)	De-energisation for denying access to meter	<p>As is currently the case in NSW and Victoria, we again submit that this Rule must refer to retailer best endeavours to contact a customer either in person or by telephone. Contact by mail, facsimile or email fails to guarantee that the customer has received or understood earlier notices and does not give the customer a direct opportunity to indicate they are experiencing difficulties paying their bill.</p>

		Acknowledging that not all customers are at home during business hours due to work and other commitments, we also advocate that retailers be obliged to attempt one out-of-hours contact before undertaking disconnection.
607 (1) (d)	De-energisation for denying access to meter	<p>Consistent with amendments to other sections of Part 6 of the NERR, we contend this section must oblige retailers to give customers a written notice of their intention to arrange for 'disconnection' rather than 'de-energisation'.</p> <p>Consistent with our recommendation to section 102 of the NERL, we also submit that the NECF must oblige retailers to deliver hard copy written notices of their intention to disconnect by post.</p>
607 (1) (e)	De-energisation for denying access to meter	We welcome the reference to 'disconnection warning notice' in place of 'de-energisation warning notice'.
608	De-energisation for illegally using energy	<p>We are concerned that the new iteration of this Rule would unfairly allow a retailer to make arrangements to de-energise a customer even if someone else, such as a neighbour, was responsible for illegally acquiring energy from the customer's property.</p> <p>We support the text from the first exposure draft of the NECF that states that 'a retailer may make immediate arrangements for de-energisation of a customers' premises if the customer has fraudulently acquired energy'.</p>
609	De-energisation for non-notification by move-in or carry-over customers	We reiterate our belief that disconnection is an inappropriate measure for carry-over customers. Retailers already have the necessary details to continue to supply and bill carry-over customers for energy and are readily able to offer carry-over customers new market retail contracts. Where carry-over customers do not wish to take up new market retail contracts, they are protected by retailers' obligations to supply under the standard retail contract.
609 (2)	De-energisation for non-notification by move-in or carry-over customers	This section refers to a written notice of intent to disconnect but does not identify how retailers must deliver written notices. Consistent with our recommendation to section 102 of the NERL, we submit that the NECF must oblige retailers to deliver hard copy written notices by post where they relate to disconnection.

610 (1) (b)	When retailer must not arrange de-energisation	Acknowledging that customer complaints are often directed to retailers before being referred to the energy ombudsman, we submit that this Rule must be amended so that a retailer must not be able to arrange for the disconnection of a customer where the customer has made a complaint, directly related to the reason for the proposed disconnection, to the retailer and the complaint remains unresolved.
610 (1) (c)	When retailer must not arrange de-energisation	<p>We welcome the amendment prohibiting retailers from disconnecting residential customers adhering to payment plans.</p> <p>However, we again suggest that reference to customers experiencing hardship being on a payment plan is not entirely accurate. See our comments at Rule 605(2) above. The proposed rule means that customers experiencing hardship who are not accessing a payment plan but who are accessing and complying with other forms of support within the retailer hardship program can still be disconnected. We recommend this rule be redrafted to indicate that a customer experiencing hardship cannot be disconnected.</p>
610 (1) (g)	When retailer must not arrange de-energisation – suggested additional Rule	<p>We note that industry best-practice dictates the existence of a threshold under which disconnection cannot occur and again advocate that this Rule be amended to protect customers from disconnection for arrears below a threshold to be determined by the AER or set out in the NERR as 1.5 times the consumers' average bill. Acknowledging research conducted in NSW that reveals 14 per cent of households were disconnected for arrears of \$200 or less, we submit that the addition of such a threshold would ensure many households would avoid going without this essential service on account of insignificant debts.</p> <p><i>We suggest a Rule along the lines of (g) where the customer has an overdue debt under the threshold for disconnection.</i></p>
610 (5)	When retailer must not arrange de-energisation	We welcome the application of this Rule to market retail contracts.
611 (7)	Timing of de-energisation where duel	We welcome the removal of this sub Rule that previously indicated Rule 611 did not apply in relation to market retail contracts.

	fuel contract	
612 (3)	Request for de-energisation	We welcome the application of this Rule to market retail contracts.
Division 3 – Distributor de-energisation of premises		
613 (1)	Grounds for de-energisation	<p>We again submit that the ability for a distributor to disconnect a consumer must be limited to the grounds listed in Rule 613. This could be achieved by inserting the word ‘only’ after the word ‘may’ in the first line.</p> <p>We remain concerned at the lack of detail governing the grounds for distributor disconnection of premises. Whilst a distributor can disconnect at the direction of a relevant authority, for example, it is not clear which authorities would be considered relevant. We recommend that the Rules clarify these grounds for disconnection.</p>
613 (3)	Grounds for de-energisation	<p>We welcome the reference to ‘disconnection warning notice’ in place of ‘de-energisation warning notice’.</p> <p>We reiterate our belief that the process for disconnection, including issuing warnings, must provide adequate opportunity for consumers to either resolve the issue, or raise the issue for dispute resolution.</p> <p>This is particularly important for tenants who may have limited control over the timeliness and effectiveness of landlord responses to issues that represent grounds for disconnection, such as not providing and maintaining space, equipment or facilities required for connection services and safe access for the distributor. We note the Victorian Distribution Code (clause 12.6) protects tenants from disconnection by a distributor and submit that, where safety issues are significant enough and a landlord is not responding to requests, an alternative mechanism is required to resolve the issue, without disconnecting the tenant, and monies recovered for work undertaken at a later date.</p>
614 (1) (b)	When distributor must not de-energise premises	Acknowledging that customer complaints may be directed to distributors before being referred to the energy ombudsman, we submit that this Rule must be amended so that a distributor must not be able to arrange for the disconnection of a customer where the customer has made a complaint, directly related to the reason for the proposed disconnection, to the distributor and the complaint remains

		unresolved.
Division 4 – Re-energisation of premises		
615	Obligations on retailers to arrange re-energisation of premises	We again contend that this Rule must outline the timeframes for reconnection. Specifically, if a request for reconnection is made prior to 2pm on a business day, reconnection should occur that same business day. Where the request is made after 2pm (in line with the restrictions for disconnection as outlined in Rule 601 and our amendments to that Rule), reconnection should occur as soon as possible, and no later than, the following business day. Outlining reconnection timeframes is important as it limits the period over which consumers go without supply. Where a household is disconnected prior to 2pm, mandated timeframes give customers the opportunity to rectify the problem and get back on supply within the same business day.
615	Obligations on retailer to arrange re-energisation of premises	We understand that many customers who have been disconnected due to an inability to pay are still likely to be experiencing hardship at the point of reconnection. To minimise the possibility of customers experiencing multiple disconnections, we also recommend that the NECF be amended to expressly require retailers to offer payment plans to customers seeking reconnection following disconnection due to inability to pay.
615	Obligations on retailer to arrange re-energisation of premises	<p>Again, we advocate that the Rules clarify the service standards for property reconnection including the establishment of timeframes and any payments consumers may be eligible for if timeframes are not met.</p> <p>We also submit that up front payment of the reconnection charge should not be a precondition of reconnection, particularly if disconnection has occurred as a result of payment difficulties. We contend that Rule 615 (1) (c) must add that as an alternative the retailer must offer the consumer alternative payment arrangements, such as a payment plan, to pay any reconnection charge.</p> <p>We also posit that the Rules must stipulate that consumers who experience wrongful disconnection must not be charged reconnection fees and that the retailer or distributor must pay compensation to the consumer.</p>

615 (1)	Obligation on retailer to arrange re-energisation of premises	<p>We do not believe that 10 days is an adequate period for customers who have been disconnected to arrange for assistance to facilitate reconnection. We understand that community sector resource constraints mean that some customers experiencing financial hardship must wait weeks to secure appointments to access community support services such as energy vouchers and financial counseling.</p> <p>We are concerned that some customers who experience disconnection and can not arrange reconnection within 10 days but do establish a new account thereafter, may experience unanticipated difficulty and delay in transferring payment arrangements including access to rebates, direct debits and Centrepay because they have a new account.</p> <p>To ensure customers have the requisite time to arrange reconnection and avoid payment arrangement problems associated with the establishment of new accounts, we advocate that customers who have experienced disconnection be given 30 days rather than 10 days to arrange reconnection.</p> <p>Moreover, we note that this Rule neglects to identify what happens if a customer rectifies the matter that led to disconnection and makes a request for reconnection after the identified period. We are concerned that this will generate confusion such that, in some instances, customers will be informed they must pay the full amount owing on their old account before a new account can be established. We recommend that this Rule be amended to clarify customer rights and retailer obligations relating to reconnection after 30 days from the date of disconnection.</p>
616 (2)	Obligation on distributor to re-energise premises	Our response to Rule 615 above applies equally to Rule 616 (2).

Draft National Energy Retail Rules		
Part 7 – Life Support		
Rule	Subject Matter	Comment
	Consumer Policy	Reliability of supply is crucial to life support customers. We emphasise the need for retailers and

	Rationale	<p>distributors to extend a higher standard of customer service and care to this vulnerable group of consumers. Retailers should, for example, be pro-actively identifying life support customers who have difficulties paying their bills and offering them flexible payment options and hardship assistance.</p> <p>Given the impacts of climate change and extreme weather events, we would like to see an extension of the life support provisions to cover the aged, those with disabilities and those with other medical conditions (for example: the visually impaired and people with Multiple Sclerosis who are dependent on cooling in Summer).</p>
702	Retailer obligations	We reiterate our recommendations made in our submission to the first exposure draft of the NECF . An obligation should be placed on retailers to inform life support customers about relevant concessions and applicable grants, including grants to upgrade equipment or the energy efficiency of their premises.
703	Distributor obligations	<p>We support Rule 703 as life support customers require higher supply reliability.</p> <p>However, as mentioned above, there are people with other medical conditions who, while not on life support, are still highly dependent on supply reliability. These people are currently not protected by the current NECF framework. We recommend that the NERR require the establishment of a priority services register (similar to the one that operates in the United Kingdom) which allows customers with special health needs (not just life support customers) to receive higher supply reliability and other services from distributors For example, personal visits where life support customers are off supply as a result of power failure during a heatwave. We recommend organisations such as the Victorian Department of Human Services perform this function.</p>
703(2)(c)	Distributor obligations	As per our recommendation to section 102 (1) of the NERL, we submit that the written notice referred to in this Rule must be delivered in hard copy by post to customers with life support equipment.

Rule	Subject Matter	Comment
802 (1)	Disclosure requirements at marketing stage	<p>We support the requirement to provide additional information to prospective prepayment meter customers. The subrule, however, should also specify that the retailer must receive '<i>explicit informed consent</i>' from the customer prior to forming a prepayment meter market retail contract. This is a requirement under South Australia's (SA) and the Australian Capital Territory's (ACT) prepayment meter system codes and is a minimum customer protection that is appropriate to apply to all jurisdictions.</p>
802 (2)	Disclosure requirements at marketing stage	<p>We are of the opinion that the Rules should specify the amount of emergency credit that is to be provided in the prepayment meter system, being the approximate cost of three to five days supply. This will prevent vulnerable consumers from developing a significant debt that may be difficult to pay off before being able to reactivate their prepayment meter system following self disconnection. It will also ensure customers are offered a minimum emergency credit amount. Such a range is presently specified in the Tasmanian Electricity Code, and is a consumer protection that we believe should be applied in all jurisdictions that allow prepayment meter systems. We believe it is appropriate to specify a range rather than a specific dollar amount in the Rules, as the cost of electricity is constantly rising. If a dollar amount is used, the amount of emergency credit will be eroded over time or the Rules would need amending frequently. We are of the opinion that the rules could direct the AER (or state jurisdictional regulators) to specify the dollar amount of emergency credit annually, with reference to the range and the approximate price of electricity for the coming year.</p> <p>Potential customers should also be advised of their right to request system testing of the prepayment meter system if they suspect a fault, and the terms and conditions of requesting any such test.</p>
802	Additional sub rule	<p>Due to the vulnerability of many small customers, it is appropriate to insert an additional subrule that explicitly specifies that a customer must not be coerced into accepting a prepayment meter. Although '<i>explicit informed consent</i>' would ensure customers are fully informed prior to entering a market retail contract, a further subrule prohibiting coercion is advisable.</p> <p>The Western Australian (WA) Economic Regulatory Authority (ERA), for example, has recently</p>

		<p>recommended the following amendment to their 'Code of Conduct for the Supply of Electricity for Small Use Customers' (Code of Conduct):</p> <p>"A retailer must not, in relation to the offer of, or provision of, a pre-payment meter service:</p> <ul style="list-style-type: none"> a) Engage in conduct that is misleading, deceptive or likely to mislead or deceive or that is unconscionable; or b) Exert undue pressure on a customer, nor harass or coerce a customer." <p>We recommend the adoption of this provision, but would also suggest a specific clarification that states a requirement to the effect that a retailer 'must not make the supply of electricity to a small retail customer dependent on their acceptance of a prepayment meter system'.</p>
803 (2)	System requirements	<p>System display</p> <p>We support the display requirements under this subsection, but are of the opinion that further system display requirements should be added, including:</p> <ul style="list-style-type: none"> - the total number of electricity units consumed at each rate; - the price in dollars and cents for each <i>electricity rate</i>; - the <i>standing fixed charge</i> amount; - the total number of electricity units consumed on the <i>prepayment meter</i>; and - the time and date. <p>These system display requirements above are required under the Tasmanian Electricity Code.</p> <p>Paragraph (a) of subrule 2 should also specify that the financial balance of the prepayment meter system should be displayed with the remaining normal and <i>emergency credit</i> amounts available on the prepayment meter system (accurate to within \$1 of the actual balance). This is also a requirement of the Tasmanian Electricity Code.</p>
803 (3)	System requirements	Self Disconnection Times

		We recommend, in line with the ERA's proposed amendments to the WA Code of Conduct, that the word "self" be deleted from "self disconnection" in this subrule.
804	Trial Period	<p>We support the capacity for customers to withdraw from a market retail contract in relation to prepayment meters within the trial period at no cost to the customer.</p> <p>We strongly suggest, however, that it would be appropriate to also allow customers to withdraw from a market retail contract in relation to prepayment meters at no cost, in the period immediately following a price rise. This is a requirement of the Tasmanian Electricity Code, which allows customers 28 days to request the removal of the prepayment meter system following a price rise, at no cost. This is an important customer protection, particularly when, as recently occurred in Tasmania, there were significantly higher increases in prepayment meter tariffs compared to other tariffs.</p>
805	Operating instructions to be provided	We support the provisions of Rule 805. The ACT's Prepayment Meter System Code, however, further requires that a utility must, at a minimum, place prominently on the PPM system contact details, to which a small customer can make complaints or enquiries and/or to report faults and emergencies relating to the PPM. We believe this is a minimum customer protection that is appropriate to apply to all jurisdictions.
806	Consumption information to be provided	<p>We support the information required to be provided to customers on request. We are of the opinion, however, that it is critical to also supply customers with aggregate time of use information. As with smart meters, one of the benefits of a prepayment meter system is purportedly to allow customers to alter behaviour in response to greater information on relative costs, thus reducing peak demand.</p> <p>As in the ACT's Prepayment Meter System Code, which specifies 5 business days, it is also appropriate to provide a time frame within which a retailer must comply with the information provision requirements of Rule 806.</p>
807	Limitation on recovery of debt	We support the provisions of Rule 807 limiting the recovery of debt. It would be appropriate, however, to also specify that customers must be given the option to pay debts owed to the retailer, other than those referred to in rule 811 or 812, in agreed instalments. Such a provision could be for debts over a

		certain amount, for example, \$100. This would enable those customers living on a low income a better opportunity to avoid bad debt and allow the retailer a greater likelihood of complete debt recovery.
809 (2)	System Testing	We oppose this subrule on the grounds that it is unfair to customers on a low income. The requirement to pay the costs of a meter or system check upfront will effectively prevent many from accessing their right to ensure the system is operating correctly. We call for the removal of this provision, and for the specification that the reasonable charges for system testing are only to be recovered in accordance with Rule 807.
816 (2)(e)	Payment Difficulties and Hardship	<p>We support the requirement for retailers to provide information to identified customers experiencing hardship on concession, rebate or relief schemes. We are of the opinion that it is also appropriate to require retailers to provide information on financial counselling or other relevant services available in the customer's area, as is required under the ACT's Prepayment Meter System Code.</p> <p>For example, the ERA have proposed amendments to Part 9.12 of the WA Code of Conduct to state that if a customer is experiencing payment difficulty or financial hardship, the retailer must provide:</p> <ul style="list-style-type: none"> • referral to relevant consumer representative organisations; and/or • information on independent financial and other relevant counselling services.
816	Additional subrule	<p>We recommend the adoption of a further sub rule that would require the retailer, once a customer experiencing hardship is identified, to automatically enter that customer into its hardship program.</p> <p>We also recommend that once a retailer has identified a person as experiencing payment difficulties, the retailer must ensure that person, if receiving Centrelink payments, has the opportunity to pay via 'Centrepay' as a payment option.</p>
817	Payment towards prepayment meter system account	This section should be altered to ensure that retailers <i>must always</i> provide an option for customers using prepayment meter systems to pay in person. Many low income, rural and regional customers may not have access to internet services or banking or credit card facilities that allow payment over the internet or telephone. The Rule presently only requires at least one method of payment of three specified options. We are of the opinion that it should be at least two, with one being payment in

		<p>person. The Tasmanian Electricity Code requires payment in person options to be available, as does the Code of Conduct in WA and this is a minimum customer requirement that should be applied in the Rules for all jurisdictions.</p> <p>The ACT's Prepayment Meter System Code also contains the following provision in relation to payments towards accounts.</p> <p>(7) At least 70% of a customer's payment to a PPM system must be applied to supply of the utility service. Any payment in excess of this amount may be applied by the utility to repayment of the emergency credit and other amounts, which may be collected from a customer in accordance with this Code.</p> <p>This is a customer protection that would be appropriate to be specified in the Rules and applied across all jurisdictions, to the extent that it could be worded so as not to conflict with Rule 818, the content of which we support.</p>
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Draft National Energy Retail Rules		
Part 9 –Exempt selling regime		
Rule	Subject Matter	Comment
Division 1 - Division 5		
	Exempt Selling Regime	We generally support the exempt seller regime, however point to the lack of access to a complaints handling scheme and alternative dispute resolution scheme. We also note the failure to include a monitoring and compliance mechanism for this scheme.
905	Conditions generally	This item should refer to “the sale of energy and energy services”. This would encompass the sale of demand management products by exempt suppliers.

Draft National Energy Retail Rules

Part 10 – Retail market performance reports

Rule	Subject Matter	Comment
1002	Contents of retail market performance report – retail market overview	<p>We welcome the re-drafting of this section to require information to be reported by jurisdiction and by categories of customers, including residential and business customers. However, we reiterate the recommendation made in our response to the first exposure draft of the NECF, that information should be reported in aggregate across the National Energy Market in addition to by jurisdiction, and that data should also be reported for the previous five years. This will make it easier to identify trends in the energy market.</p> <p>The requirement to report on numbers of customers moving between market retail contracts and standard retail contracts has been deleted from the Second Exposure Draft. This information is especially important in monitoring the development of the energy market in jurisdictions which have introduced full retail competition relatively recently. We recommend that this requirement includes an indication of the number of customers moving between market and standard retail contracts and vice versa in a retail market performance report be reintroduced.</p> <p>Information to be included in a report on energy affordability has been deleted from this Rule. Energy affordability is a critical aspect of the market and these elements should be set out as part of reporting obligations under the Rules. Accordingly we recommend that sub items (i) to (iii) from the First Exposure Draft be reinstated, and reiterate our previous recommendation that additional sub items be added, requiring that information on government funded Community Service Obligations delivered by retailers and estimated aggregate carbon emissions for electricity and gas use be included. We recommend further that an additional sub item be added requiring a report on energy affordability to include information and data on late payment fees applied by retailers.</p>
1003	Contents of retail market performance report – retail market activities	<p>We are pleased that the Second Exposure Draft clarifies the information to be included in retail market activities reviews in relation to disconnection, reconnection and prepayment meter systems. We also welcome the addition of a requirement to include data on security deposits held by retailers in a retail</p>

	review	<p>market activities review.</p> <p>However, item (b), the handling of customers experiencing payment difficulties requires clarification. We recommend that retail market performance reports be required to include information and statistics on the following items:</p> <ul style="list-style-type: none"> • Payment methods and options, including the availability of Centrepay • Number of customers paying their account via a payment plan • Disconnections and reconnections of customers who have previously been on a payment plan • Disconnections and reconnections of customers who have been disconnected in the previous 24 months • Disconnections and reconnections of concession card holders • Direct debit defaults or termination of direct debit due to default. <p>See also our comments in relation to Rule 306(2), identifying data that should be included in national hardship indicators. This information should also be included in retail market performance reports.</p> <p>In addition, we recommend that retail market activities reviews be required to include information on the following items:</p> <ul style="list-style-type: none"> • Number of estimated and substituted accounts; • Marketing activity; and • Complaints to relevant ombudsman schemes.
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Draft National Energy Retail Rules

Part 11 – Retailer of last resort scheme

Rule	Subject Matter	Comment
Division 1 - RoLR register Eols and RoLR event Eols		
Division 2 - RoLR procedures		

Division 3 - Arrangements for sale of energy for transferred large customers		
Division 4 - RoLR cost recovery schemes		
1120 (2)	Application for determination	<p>This rule deals with determinations of the AER for cost recovery including for distributor payment determinations.</p> <p>Rule 1120 provides that “[t]he AER may determine the form of, and information to be included in, an application under this rule”. There is no further detail on the nature, extent or timing of costs that might be recoverable.</p> <p>At clause 27 of the explanatory material “ SCO requests stakeholder feedback on whether further guidance needs to be given in the Rules on what cost should be recoverable...”</p> <p>We suggest that further guidance should be given in the Rules regarding what costs should be recoverable. We would be pleased to provide further advice on this matter.</p>
1222 (2)		<p>The only principles for cost recovery set out in the Rules are that the AER when making its decision be guided as follows</p> <ul style="list-style-type: none"> • “RoLR should be provided with a reasonable opportunity to recover at least the efficient costs that it incurs with respect to the... scheme” • “tariffs set for recovery of costs should allow for a return commensurate with the regulatory and commercial risks with respect to the... scheme” • “retailers for whom the registered RoLR is the retailer of last resort should make payment in proportion to their customer base, to the cost of the scheme <p>The last would seem to apply to costs incurred ex-ante ie for establishment and at (3) the AER determination may, as it affects tariffs, differ between customers and classes of customers.</p> <p>As noted above, we suggest that further guidance should be given in the Rules regarding what costs should be recoverable. We would be pleased to provide further advice on this matter and are of the view</p>

		that the benefits of customer acquisition through a RoLR event should be assessed, are measured and factored into a calculation of costs.
Division 5 - Minimum publication requirements for RoLR events		
1123	Minimum publication requirements for RoLR events	<p>The NERL and NERR seem to be silent on the matter of notification of an event to affected customers except at section 644 (b) (ii) of the NERL under Contents of RoLR plans such that a plan "... must... include, in the event of a RoLR event, strategies to quickly and effectively communicate... to affected small customers and large customers-details of the event and available options"</p> <p>It is not clear who, in the event of a retailer failure and subsequent RoLR event has responsibility for direct communications and whether or how these communications might be prescribed.</p>
Division 6 - Miscellaneous		
1124	Information to be included in customer retail contracts	<p>Further to 652 above</p> <p>(1) "AER must publish a standard form for notice required by section 652 to be included</p> <p>(2) "must be expressed in plain language"</p> <p>(3) "must be placed in a prominent position and be readily legible"</p> <p>We are interested to consider and provide advice regarding the form of words required to satisfy this requirement.</p>

Draft National Energy Retail Rules		
Part 12 – Consultation for the National Energy Retail Framework		
Rule	Subject Matter	Comment
1201	Customer Consultative Group	This obligation to establish and maintain an ongoing customer consultative and advisory committee should be imposed on the AER under the NERL (as opposed to the Rules, where it is currently placed). Rule 1201 (Customer Consultative Group) should be moved to Part 8 of the NERL

		<p>A clear obligation should also be imposed on the AER to ensure the group's membership includes consumer representatives from each jurisdictional participant in the national energy market.</p> <p>Rule 1201 fails to give sufficient guidance on the functions of the Group. The functions of the Customer Consultative Group should be explicitly stated.</p> <p>Importantly, these functions should include a specific function requiring the Group to:</p> <ul style="list-style-type: none"> • establish adequate processes for consulting with small customers • undertake consultation with small customers for all significant AER reviews and reports. <p>In addition, clear guidance on the appointment of members should be provided within the clause.</p>
1202	Retail Consultative Procedure	<p>This procedure is critical to ensuring that effective consumer consultation is undertaken on a number of important matters on which the AER is to develop guidelines. However, the proposed procedure is deficient in this regard. As currently drafted, the procedure does not require the AER to consult with the Customer Consultative Group in the preparation of an instrument. Consultation with the Group ensures the AER is appropriately informed of emerging issues for consumers in the marketplace that will be relevant to the particular instrument. The clause should be amended to include a requirement that the AER must consult with the Group in the AER's process for preparing a draft instrument – at the very least, this could easily occur during the earlier stages of the instrument's drafting process. This additional requirement ensures the procedure is consistent with the overall objective and intention of the reforms and produces outcomes that will best serve the long term interests of energy consumers.</p> <p>Written comments on the draft instrument should also be required no sooner than six weeks from the publication of the instrument. This is consistent with the timeframes we have suggested for other consultation procedures.</p>

Draft Model Standard Retail Contract		
Clause	Subject Matter	Comment
	Consumer policy rationale	<p>The Draft Model Standing Contract provides a template for retail contracts and must include a minimum level of information required for customers to understand the implications of entering into a contract. Our comments below are premised on the principle that retailers have an obligation to provide this information in a simple and readable format, ensuring that all relevant requirements under the NERL and NERR are clearly stated.</p> <p>We find that the Model Contract is retailer-centred and does not provide sufficient information to customers to allow them to understand their rights and the obligations of retailers. Provisions that refer back to the NERL and NERR, without providing detail of the rights and obligations as outlined by the NERL and NERR are of little use to a consumer.</p> <p>Specifically, the use of the terms 'connection', 'disconnection', 'energisation', 'de-energisation' and 're-energisation' is confusing. Terms that are easily understood by consumers must be used in the model contract, as such we suggest that only disconnection and re-connection be referred to in this section.</p>
4.1	When does this contract start	<p>Any pre-conditions required by the NERL must be set out in this section</p> <p>We suggest that this should be rephrased to outline the pre-contractual obligations of the customer. For example:</p> <p>"This contract starts after you have contacted us to request a connection and you have provided us with your name, identification details and billing address".</p>
4.2	When does this contract end?	<p>The use of the terms 'disconnected' and 're-energisation' in 4.2(a)(v) may cause confusion for customers and needs to be amended. The mis-match of terms in this sub-clause renders obscure the meanings of 'disconnection' and 're-energisation'. This section should be redrafted as follows:</p>

		<p>(a) Your contract with us ends when any of the following occur:</p> <p>(v) the end of the period of 10 business days commencing on the day the premises are disconnected if you have not, within that period:</p> <p>(A) met the requirements for us to arrange re-connection under this contract and the Rules; and</p> <p>(B) made a request to us for re-connection.</p>
6.3	Pre-conditions	<p>All preconditions required for the formation of a contract should be set out here, as consumers should be able to know what information can be required of them by the retailer.</p> <p>For example:</p> <p>"For this contract to commence you must provide us with your name your, identification details such as a driver's license, passport or birth certificate details and your billing address".</p>
6.4	Life support equipment	<p>These retailer obligations should be amended to include the amended obligations recommended in Rule 702.</p>
6.5	Obligations if you are not the owner	<p>This requirement is not included in the NERL. While we support this provision, to avoid confusion this should be included as a provision under the rules as well as within the contract.</p>
8.2	Variations to tariffs and charges	<p>Clause 8.2(a) refers to the requirement for retailers to publish changes to tariffs and charges 10 days prior to them taking effect on their website and on the next bill. This does not also include the requirement as laid out in Clause 205(3)(b) in the NERL, which states that the designated retailer must:</p> <p>(b) publish a notice about the variation in a newspaper circulating in the participating jurisdictions in which the retailers has customers, notifying customers that:</p> <p>(i) there has been a variation; and</p> <p>(ii) the variation (or the standing offer prices as varied) are published on the retailer's website</p>

		This requirement should be made clear in the Model Contract and should reflect our previous recommendations on prior notification of a tariff change. .
8.3	Information relating to eligibility for type of tariff	The requirement for customers to inform retailers if their circumstances relating to eligibility for a type of tariff have changed is unrealistic and unclear. Most customers will not know how to comply with this obligation unless more guidance is provided. For example, that they should contact their retailer about changes to their consumption or when they acquire new equipment.
8.5	Changes to type of tariff or charge during a billing cycle	This provision must be amended to ensure that retailers must seek your explicit informed consent, clearly outlining the purpose of a tariff change, the way the tariff may change and any impacts a tariff change may have on your energy bill, prior to changing a tariff or a charge.
9	Billing	<p>It does not make it clear in the Model Contract exactly what the obligations are in terms of the length of a billing cycle. The omission of this information renders further information in the Model Contract of limited use. Clause 212 of the NERR clearly states that retailers are required to bill Standard Retail Contract customers at least quarterly, and this needs to be communicated at the outset in the Model Contract, by rewording inserting a new sub-clause 9.1 which reads:</p> <p style="text-align: center;">9.1 The billing cycle <i>We are required under the Rules to bill you at least every 3 months.</i> <i>We must gain your consent before making changes to the frequency with which we bill you.</i></p> <p>Subsequent sub-clauses should be renumbered accordingly.</p>
10.4	Late Payment Fees	<p>Late payment fees disproportionately penalise households experiencing payment difficulties. This is not an appropriate measure when dealing with an essential service, where the penalty for non payment is disconnection. We believe that late payment fees only exacerbate hardship and should be banned.</p> <p>If the MCE SCO decides to include Late Payment fees, this provision should require the publication of the late payment fee amount in the contract as customers should be aware of the full extent of fees and charges they may be liable for prior to entering into that contract.</p>

10.5	Difficulties paying	<p>This section does not adequately reflect the requirements of hardship programs, nor does the tone of the drafting encourage households to contact their retailer to seek further assistance. We suggest that this clause be amended as follows:</p> <p style="text-align: center;">10.5 Difficulties in paying</p> <p><i>(a) If you have difficulties paying your bill you should contact us as soon as possible. We will discuss your options for paying the bill and any additional assistance that may be available under our Customer Hardship Policy.</i></p> <p><i>(b) [no change suggested]</i></p> <p><i>(c) If you are a residential customer we are also required to identify situations where we believe you may be experiencing difficulties in paying your bill. In these cases we may contact you to offer you additional assistance under our Customer Hardship Policy, including things like flexible payment arrangements and information on government concessions.</i></p> <p><i>(d) copies of our Customer Hardship Policy are available on our website and can also be provided to you at no cost on request.</i></p>
11 (b)	Meters	<p>We submit that only obliging retailers to read customer meters every twelve months will mean that many customers will receive three out of four estimated bills in a year. We are concerned that some customers are adversely affected by this minimal obligation. Customers who have inadvertently purchased an energy intensive appliance, customers who have an appliance with a fault that leads to excessive energy consumption, and customers who have an undetected gas leak, will consume considerably more energy than they would otherwise have consumed over a twelve month period, and be receive considerably higher energy bills than would otherwise have been the case, had they received a bill during this period that was based on an actual meter read. To minimise the likelihood of such adverse outcomes for customers, as per our recommendation to Rule 209(2), we contend that retailers must be obliged to physically read customer meters at least every six months.</p>
12.3 (a)	Reviewing your bill	<p>These is no need for this provision to refer to the NERL, it is unnecessarily confusing.</p>

13	Security Deposits	<p>Clause 13.1 states that the retailer may require a security deposit but does not specify the amount that can be required by the retailer, but refers the customer back to the NERR regarding the maximum amount and the prerequisites for requiring a security deposit. This does not provide a customer/potential customer with enough information.</p> <p>The Model Contract should lay out, in simple terms, the main reasons behind requiring security deposits, and the rights and obligations of retailers and customers with respect to security deposits. Providing more information regarding the circumstances under which a retailer can require a security deposit would ensure that a customer can make a reasoned assumption regarding whether or not one will be required (eg. poor credit history).</p> <p>This section should also outline the opportunity to pay a security deposit by instalments as outlined in s225(3) of the Rules.</p>
14.2	Notice and warning of disconnection	<p>The requirements should be set out here rather than referring to the rules to ensure that customer's are aware of disconnection procedures.</p> <p>We suggest that this clause be redrafted to:</p> <p>"Before disconnecting your property we will send you a disconnection warning notice, outlining the reasons for disconnection, and how the problem can be rectified. If the disconnection is for non payment of a bill we will also send you a reminder notice before the disconnection warning. We will also make contact with your prior to disconnection taking place, via phone or face to face."</p>
15 (b)	Re-energisation after disconnection	<p>As per our introductory comments, the reference here to re-energisation may be confusing for a consumer, particularly as re-energisation is not a widely used or generally understood term. We suggest the use of "reconnection".</p> <p>The requirements for reconnection should be set out here rather than referring to the rules to ensure that consumers are aware of the necessary steps required to arrange re-connection.</p>

		<p>We suggest that this clause be redrafted to:</p> <p>We may refuse to arrange reconnection and terminate your contract if you do not rectify the problem that has lead to your disconnection and you have not paid any charge for reconnection.</p>
19.2(a)	Our obligations in handling complaints	<p>In line with our amended section 404(3) of the NERL, we suggest including the word 'expeditiously' in clause 19.2(a). In addition, some customers do not have access to the internet. We therefore also suggest including a provision to oblige the retailer to provide, upon the customer's request, a free copy of its standard complaints and dispute resolution procedures. This would also be in line with our amended rule 231(1)(b) of the NERR. We suggest this clause be amended to:</p> <p>'We must handle a complaint made by you expeditiously and in accordance with our standard complaints and dispute resolution procedures, which are published on our website or provided free to you on request.'</p>
19.1(b)(i)	Our obligations in handling complaints	<p>We suggest amending clause 19.1(b)(i) so it is in line with section 404(4) of the NERL:</p> <p>'of the outcome of your complaint as soon as reasonably possible and within any time limits applicable under our standard complaints and dispute resolution procedures.'</p>
22	Retailer of last resort	<p>The definition of 'RoLR event' in Schedule 1 does not provide an adequate explanation to the customer as to what a RoLR event would mean. Rule 1124 sets out the requirements for standard information on RoLR events to be included in all contracts. This should be sufficient information for customers and this clause would no longer be required.</p>
Schedule 1	Dictionary	<p>The definition of 'small customer' as 'a business customer who consumes energy at or below a level determined under the National Energy Retail Law' is unclear. Customers will have no idea what this means or what their consumption level should be to enable them to fall within the definition of 'small customer'. The definition in Schedule 1 must be amended so that customers understand what the prescribed consumption threshold is.</p>

Draft Model Standard Distribution Contract		
Clause	Subject Matter	Comment
5.3 (b)	Services and your connection point.	This clause states that the distributor's obligations extend up to the connection point. With the advent of smart metering, voluntary load control, ripple control and other emerging features of the energy supply system it is likely that distributors' obligations may have to extend beyond the supply point. We therefore, suggest that this clause is expanded and consideration given to circumstance where a distributor may have obligations beyond the customer supply point.
5.5	Quality of energy supplied to your premises	<p>We note that this clause lists a variety of factors which may cause supply quality and reliability to be affected. As it is currently worded it does not constitute an acknowledgement on behalf of the customer that these are legitimate circumstances that a distributor may provide lower quality or unreliable supply and nor should it. The list of factors is too broad and, in many of the listed circumstances, it would be possible for the distributor to undertake risk mitigation activities to avoid quality or reliability impacts. This section also fails to place any obligation on a distributor to ensure quality and reliability of supply.</p> <p>Clause 5.5 should be completely redrafted. It should provide a clear avenue for customers to be compensated for poor supply quality or reliability. It should also separate supply quality and reliability in the acknowledgement that they are different and that the associated impacts on customers are different. For example, supply quality can severely damage appliances and can therefore be more costly to customers than supply reliability.</p> <p>The section can also acknowledge that there are situations beyond the distributors' control where supply can be affected. However, the clause could stipulate the risk mitigation to be taken by a distributor and a liability to compensate customers if risk mitigation actions are not undertaken. There should also be far fewer listed "excuses" for reducing supply quality or reliability.</p> <p>If supply quality or reliability is affected by factors outside the distributor's control, alternate avenues for customer support/redress should, at the very least, be listed here.</p>
6.1	Full information	We are concerned that provision 6.1 is insufficiently well defined. As is expounded elsewhere in this

		submission, we would like a regime which allows distributors to hold reasonable information about their customers and that this information is subject to appropriate privacy protections and not used for marketing purposes.
6.8(c)	Obligations if you have a small generator such as a solar panel	6.8 (c) The applicable terms and conditions referred to in this clause should be publicly available. This is in the interests of transparency and so the customer is aware of things they need to consider in investing in micro-generation. It may be appropriate to provide the applicable terms and conditions as an appendix or schedule to this contract.
7	Our liability	Clause 7 limits the liability of the distributor to that outlined in the Trade Practices Act and jurisdictional legislation. We note that the Trade Practices Act is designed for a competitive environment and not the natural monopoly of energy distribution. We recommend that Clause 7 should require that energy supply should be of sufficient quality to ensure that damage does not occur to customer's property. We also note that products and services such as direct load control and ripple control may result in distributors' actions leading to damage to a customer's property. This may need to be addressed in this clause as well as in other points in the NECF.
9.1	Distributor may interrupt supply	Clause 9.1 provides a non-exclusive list of reasons as to why a distributor may interrupt supply. As a result of the list not being exclusive, this clause provides no customer protection whatsoever. Clause 9.1 should provide an exclusive list of reasons why supply may be interrupted. Any interruption that occurs for reasons outside this list of reasons should be deemed to be the responsibility of the distributor and, consequently, customers should have access to compensation. As a starting point we recommend that "including" is removed from this clause.
9.2	Supply may be interrupted or limited	Clause 9.2 requires customers to acknowledge that supply may be interrupted or limited. It does not, however, require distributors to accept that there are limitations to when supply may be interrupted or limited. This should be revised accordingly.
9.3(a)	Interruptions	This clause requires a distributor to notify a customer of a planned interruption to supply by "mail, letterbox drop, press advertisement or other appropriate means." This clause is far too broad and does not require the distributor to go to any effort to make sure customers are informed of a supply interruption. A distributor, for example could notify a customer of planned interruption by placing a

		notice on a website if this is deemed appropriate means. However, it would be highly unlikely that a customer would ever check their distributor's website. This clause should be revised to ensure that consumers are provided written notice (as previously defined) 4 days of prior to the planned supply interruption.
9.6 and 11.4	Life support equipment.	We support the extension of clause 11.4 so that a wider range of customers receive this higher level of supply reliability. It is not just people with life-support equipment that have a particularly high need for reliability. Older people and people with a range of medical conditions also need high supply reliability. We recommend that the NECF establish a system similar to the priority services register in the UK which allows customers with special needs to receive higher supply reliability and other services from distributors.
14.2	Access to information	This provision allows distributors to charge a reasonable fee for the provision to consumers of consumption and time of use data. We strongly reject this provision and believe that consumers must be able to access their consumption data free of charge. With increasingly automated supply and data systems, this will become relatively cheap and easy to provide.
6.4, 9.6 and 11.4	Life support equipment.	See comments at rule 703. We support the extension of the life support provisions so that a wider range of customers receive higher level of supply reliability. It is not just life-support customers that have a particularly high need for reliability. Older people and people with a range of medical conditions also need high supply reliability. We recommend that the NECF establish a system similar to the priority services register in the UK which allows customers with special needs to receive higher supply reliability and other services from distributors.
15.2(a)	Handling complaints and disputes	<p>In line with our amended section 404(3) of the NERL, we suggest including the word 'expeditiously' in clause 15.2(a). In addition, some customers do not have access to the internet. We therefore also suggest including a provision to oblige the distributor to provide, upon the customer's request, a free copy of its standard complaints and dispute resolution procedures. This would also be in line with our amended rule 406(1)(b) of the NERR.</p> <p>'We must handle a complaint made by you expeditiously and in accordance with our standard complaints and dispute resolution procedures, which are published on our website or provided free to you on request.'</p>

15.2(b)(i)	Handling complaints and disputes	We suggest amending clause 15.2(b)(i) so it is in line with section 404(4) of the NERL: 'of the outcome of your complaint as soon as reasonably possible and within any time limits applicable under our standard complaints and dispute resolution procedures.'
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