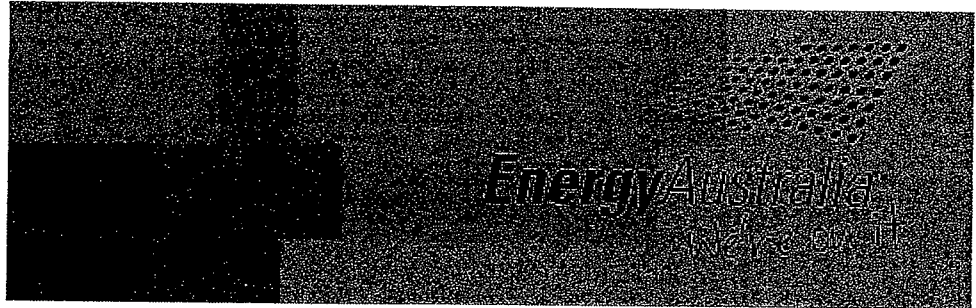


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25 July 2007

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### National Framework for Distribution and Retail Regulation – Composite Paper

EnergyAustralia welcomes the opportunity to comment on the issues raised in Composite paper released by Allens Arthur Robinson (AAR). Our response encapsulates our comments raised in previous working papers and at stakeholder forums on 26 June and 3 July.

I am encouraged to hear that RPWG officers intend engage in several consultative processes going forward. The intention to consult with stakeholders on policy matters prior to drafting is a positive step forward and an important element missing in other reform workstreams.

While the Composite paper does not advance the policy considerations as far as we expected, we are now looking forward to SCO engagement on key issues and a more detailed understanding of the policy intent of governments in the next phase of consultation.

With this in mind, please find attached our response to the AAR Composite Paper (in the format requested by the RPWG). EnergyAustralia's response incorporates statements made in respect of other RPWG papers. More focus has been given to several areas, including

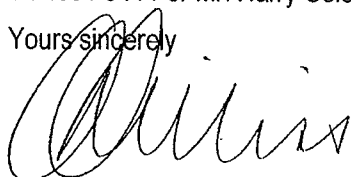
- **Integrity between proposed contractual arrangements and commercial and operational practice:** While EnergyAustralia generally supports the proposed "tripartite" contractual model, the Composite Paper is confused and unclear about the nature of services provided by DNSP to Retailers and end use customers under the proposed use of system agreements and deemed distribution services contract respectively. This uncertainty then extends to the nature of services provided by Retailers to end use customers. As a result there is a disconnect between what the contractual model defines as the relationship between the three parties and the respective obligations and responsibilities of each of the parties. EnergyAustralia has advised that no contractual model will work unless the RPWG first consider:
  1. the nature of service provided to end use customers by both DNSPs and Retailers;
  2. the arrangements made between distributors and retailers to deliver those services to end use customers;
  3. a clear alignment of these contractual arrangements with the services being provided by DNSPs and Retailers



- **The role of the AER:** The paper tends to favour regulatory impost without first justifying a need for the additional regulatory intervention. For example, AER approval must be obtained by DNSPs for deemed contracts and use of system agreements – even if the DNSP adopts the model terms set out in the Rules. The imposition of a requirement for AER approval is not an inconsequential matter, particularly where it has been proposed as part of each five year revenue reset process (and therefore even assuming the DNSP does not change its model terms between resets). The AER's approval would not be a mere formality as has been indicated in consultation fora on the Composite paper. An approval process will involve public consultation and a proper process to justify the AER's decision. However, no justification for this level of regulation has been forthcoming, nor has a regulatory purpose or "gap" has been identified to justify such an approval.
- **The integration of work streams:** To date, separate work streams have consulted on the economic and non-economic aspects of distribution regulation. While the split was a misnomer, the arbitrary split is understandable in the context of the enormous work load currently being progressed through the MCE processes. However, it is clear that the point has been reached where these processes must be properly integrated so that each package can be understood by stakeholders as part of the larger NEM reform process. Whilst it may appear to be a small point, the fact that the Composite paper proposed a definition of "distribution services" for non-economic regulatory purposes without discussion or any references to the existing and quite different definition used in the National Electricity Rules for the general NEM indicates a dangerous disconnect between these processes. From a DNSP perspective these services are exactly the same, they are the services provided by the distribution systems, the regulatory processes must recognise them as such

If any further clarification of the issues raised is needed, please do not hesitate to contact me on 02 4951 9411 or Mr. Harry Colebourn on 02 9269 4171.

Yours sincerely



Geoff Lilliss  
Executive General Manager Network

# National Framework for Distribution and Retail Regulation

## Consultation Paper - Recommendations

### Part 1 – Principal recommendations

No.	Subject	Recommendation	Comments
<b>Retailer obligation to supply small customers</b>			
1.	Definition of the obligation	The Law should provide that designated retailers must, in accordance with the Rules, offer to sell energy to small customers for use in premises falling within the retailer's designated supply remit on standing offer terms and conditions.	EnergyAustralia notes that the obligation to supply is for small retail customers only. Currently in NSW, the obligation is to supply all customers within the supply district, although for large customers the terms and conditions are not regulated in any way.
2.	Designating retailers and supply remits	<p>The Law should provide that, for the purpose of the obligation to supply, a designated retailer is a retailer designated as such by a jurisdictional instrument of the jurisdiction or jurisdictions in which it supplies energy, and its designated supply remit is as specified in the instrument.</p> <p>A designated retailer's supply remit may be specified by reference to:</p> <ul style="list-style-type: none"> <li>• a geographical area;</li> <li>• particular premises or classes of premises; or</li> <li>• particular customers or classes of customers.</li> </ul> <p>Under this approach, whether the obligation applies or not will be a jurisdictional decision, depending on whether or not individual jurisdictions elect to make a designation. Similarly, the method of specifying the scope of the obligation (whether on the basis of geographical areas, financial responsibility for the supply point or some other means) will be a jurisdictional decision.</p>	<p>EnergyAustralia has previously recommended that adopting a "Queensland" approach to the obligation to supply avoids the need for a "local retailer" to be created; and will simplify the process both for retailers and customers in relation to move-in scenarios and ensure that customers have adequate protection and continuity of supply and that retailers have their financial exposures protected in those instances where the customer does not contact them on move-in to provide required details</p> <p>The composite paper seems to provide adequate flexibility to allow for this and other approaches; which is acceptable. EnergyAustralia looks forward to how this will be represented in drafting form.</p>
7.	Specification of terms and conditions	The Law should provide that standing offer contract terms and conditions must be published by designated retailers and may either adopt the minimum terms and conditions set out in the Rules or provide for alternative terms and conditions which are not inconsistent with those set out in the Rules. Terms and conditions published by retailers should not be subject to prior regulatory approval, but would be subject to compliance monitoring and enforcement by the AER.	<p>EnergyAustralia has previously recommended an approach similar to that proposed under the Queensland gas regulations which allows retailers to develop and publish alternative terms and conditions in a manner that is consistent with the code requirements.</p> <p>It should be discretionary for retailers to adopt any determined standing offer terms and conditions or use their own alternative version. This will ensure that the development of innovative and differentiated product offerings in the market is not impaired.</p>

No.	Subject	Recommendation	Comments
8.	Standing offer terms	The Rules should contain (preferably in a separate schedule) the minimum requirements applicable to standing offer contracts, expressed in a manner which can take effect as contractual terms. Part 2 of this document sets out summary terms and conditions for development of the initial Rules.	EnergyAustralia is supportive of the concept that default terms and conditions should be subject to a monitoring/enforcement regime rather than a regulatory approval function.  EnergyAustralia has previously submitted that contractual relationships between the parties should be defined. While energy contracts may require provisions dealing with industry specific matters, the inclusion of general contract provisions should be in line with those included in contracts outside of the energy industry and with regards to the law generally. This approach avoids unnecessary duplication and will minimise customer confusion.
9.	Deemed supply arrangements	With respect to deemed supply arrangements (including move-in supply) the Law should establish the existence of a deemed contract, but the circumstances in which this arises are matters of detail best dealt with in the Rules. On that basis it is proposed that the Law should provide that: <ul style="list-style-type: none"> <li>• the Rules may specify the tariffs, terms and conditions that apply in any circumstance where a customer is taking a supply of energy from a retailer without the customer and retailer having entered into a standing offer contract or market contract; and</li> <li>• the tariffs, terms and conditions specified in the Rules take effect as a contract between the customer and the retailer in accordance with the Rules.</li> </ul>	EnergyAustralia previously submitted that new customers do not always contact the retailer to advise of their occupation of a site. Also, some customers fail to advise retailers that they are moving out. It would be impractical to impose an obligation upon retailers to notify customers of any deemed contract arrangement and supply alternatives available to them soon after occupation unless customers notify the retailer that they have moved into or out of the site.  Retailers should be required to do this on a "best endeavours" basis.

No. Subject		Recommendation	Comments
<b>Retailer – small customer market contracts</b>			
14.	Generic versus energy specific regulation	<p>National and jurisdictional consumer protection laws should be relied on where these provide a consistent national approach in dealing with the relevant subject matter. Energy specific regulation is justified where general consumer protection laws are inconsistent or silent and the characteristics of the energy market justify additional regulation.</p> <p>General consumer protection laws are at present largely silent on the regulation of contract terms. The characteristics of the energy market that justify additional regulation are the essential service nature of energy supply and the new and developing state of competition in the energy market. This suggests that market contract regulation should be assessed primarily against the objectives of:</p> <ul style="list-style-type: none"> <li>ensuring that contractual processes do not result in customers ceasing to have a supply of energy without having an adequate opportunity to address the causes of the potential for disconnection, either independently or by recourse to assistance measures provided by governments or other agencies (recognising that ensuring a supply is ultimately a matter for governments); and</li> <li>encouraging the development of the competitive market by facilitating consumer choice based on readily comparable market contract offers, recognising that further deregulation of market contract terms can be addressed through the AEMC Rule change process, having regard to the extent and nature of competition and the capacity of consumers to participate in the competitive market.</li> </ul>	<p>EnergyAustralia has previously submitted its preferred option to place reliance on national and consumer protection laws, extended to provide for certain terms and conditions that cater for energy as an essential service.</p>
<b>No. Subject</b>			
<b>Retailer – small customer marketing</b>			
17.	Generic versus energy specific regulation	<p>General consumer protection laws with respect to marketing conduct should be relied on where these provide a consistent national approach in dealing with the relevant subject matter. Energy specific regulation is justified where general consumer protection laws are inconsistent and adopting consistent energy specific requirements will have material benefits in terms of:</p>	<p>EnergyAustralia has previously submitted that marketing activities are already sufficiently regulated by general consumer protection laws at both National and jurisdictional levels - experience has shown that the vast majority of complaints have been adequately covered by general consumer protection and other laws.</p>

<b>No.</b>	<b>Subject</b>	<b>Recommendation</b>	<b>Comments</b>
		<ul style="list-style-type: none"> <li>• reducing retailer compliance burden or cost (this implies such requirements apply in place of general consumer protection laws); or</li> <li>• consumer protection, having regard to the distinguishing characteristics of the energy market.</li> </ul> <p>Energy specific regulation of marketing conduct is justified where the marketing conduct has the potential to influence energy contract formation and terms (or compliance with requirements relating to such marketing conduct) but not in relation to general consumer issues (such as contact times).</p>	
<b>No.</b>	<b>Subject</b>	<b>Recommendation</b>	<b>Comments</b>
<b>Contractual model for distribution services</b>			
22.	Preferred model	<p>A hybrid model is proposed as the default model to apply in both the electricity and gas sectors to provide a framework for the development of the distributor - customer interface and the distributor - retailer interface arrangements.</p> <p>This model involves:</p> <ul style="list-style-type: none"> <li>• a direct contract between a distributor and each customer connected to the distributor's infrastructure governing the physical and operational aspects of the provision of distribution services to the customer, including liability issues;</li> <li>• a contract between the retailer and each of its customers which includes provisions governing the financial aspects of the provision of distribution services to the customer; and</li> <li>• a contract between a distributor and each retailer which sells energy to customers connected to the distributor's infrastructure governing the financial and coordination arrangements between the distributor and the retailer.</li> </ul>	<p>EnergyAustralia generally supports a hybrid (tripartite) approach. However, the Composite Paper is confused and unclear about the nature of services provided by DNSP to Retailers and end use customers under the proposed use of system agreements and deemed distribution services contract respectively. This uncertainty then extends to the nature of services provided by Retailers to end use customers (see commentary at 25 below).</p> <p>EnergyAustralia previously submitted that connection should be addressed by the distributor and the customer. However, the retailer may make an application for connection on behalf of the customer if required. Nevertheless, the contract for connection would exist between the distributor and the customer.</p> <p>The terms proposed for each of the three key contracts must reflect current operational arrangements and current commercial practice.</p> <p>EnergyAustralia's preference is for the retailer to generally be responsible for the collection of use of system payments from the customer and make payments to the distributor. However, in this instance the retailer would not be acquiring the use of system services</p> <p>The distributor is responsible for delivery of energy to required standards, may be liable for any claims arising from the standard not being met and therefore should have the direct contractual</p>

<b>No.</b>	<b>Subject</b>	<b>Recommendation</b>	<b>Comments</b>
			<p>relationship with the customer for delivery. The only basis upon which the retailer is involved is when arranging services on behalf of the customer.</p> <p>Further EnergyAustralia believes the contract between distributor and customer would specify customer obligations in relation to use of the distribution system – it is a two way agreement.</p> <p>It is essential that the distributor has the right to defend any claims made against it and make payment to justified claims.</p> <p>Furthermore, removing the financial interface between the distributor and customer does not cater for the circumstance when a connection is being established or if a connection needs to be varied, nor for a variety of miscellaneous charges such as for special meter reading or disconnection.</p> <p>EnergyAustralia also notes that it already has one large customer that has chosen to be directly billed its Use of System charge.</p>
<b>No.</b>	<b>Subject</b>	<b>Recommendation</b>	<b>Comments</b>
24.	Scope of obligation	<p>Distributor obligation to provide connection services</p> <p>The Law should provide that distributors must, in accordance with the Rules, provide distribution services in respect of a retail customer's premises.</p> <p>The reference to a distributor means a distributor whose network services are subject to access regulation under the Rules.</p> <p>The reference to a retail customer's premises is intended to limit the obligation to customers acquiring (or intending to acquire) energy through a retailer, as distinct from a customer acquiring energy directly from the wholesale market.</p>	

No.	Subject	Recommendation	Comments
25.	Definition of distribution services	<p>Distribution services should be defined in the Law as:</p> <ul style="list-style-type: none"> <li>• the connection of the premises to the distribution network to allow the flow of energy between the network and the premises;</li> <li>• where a physical connection already exists, activating or opening the connection in order to allow the flow of energy between the network and the premises (this is referred to throughout as 'energisation' of the connection); and</li> <li>• maintaining the capability of the network to allow the flow of energy between the network and the premises through the connection.</li> </ul> <p>The definition of distribution services in the Law should be capable of being supplemented by the AEMC in the Rules.</p>	<p>The paper proposes a deemed contract exist between DNSPs and end use customers in relation to "distribution services".</p> <p>The proposed definition of "distribution services" is quite different to that which is currently adopted under Chapter 10 of the National Electricity Rules for the purpose of the NEM. The AAR definition is similar to that which is currently used in NSW to describe customer connection services. It does not naturally include what is referred to as "use of system" which end use customers pay for as part of their network charges.</p> <p>If "use of system" is not encapsulated in the definition of distribution services provided under a deemed distribution contract then it is difficult to see how terms and conditions relating to reliability and quality of supply aspects can be included in the deemed distribution contract.</p> <p>Similarly, if a contractual paradigm is adopted to define the relationship between DNSPs and end use customers then it is essential that the obligations under that contract align with the services being provided, to do otherwise makes nonsense of the contractual paradigm.</p> <p>EnergyAustralia is concerned about the integration of the economic and non-economic regulatory reform agendas.</p> <p>To date these packages have been developed as separate work streams. This is understandable in the context of the enormous work load currently being progressed through the MCE processes. However, it is clear that the point has been reached where these processes must be properly integrated so that each package can be understood by stakeholders as part of the larger NEM reform process.</p> <p>Whilst it may appear to be a small point, the fact that the Composite paper proposed a definition of "distribution services" for non-economic regulatory purposes without discussion or any references to the existing and quite different definition used in the National Electricity Rules for the general NEM indicates a dangerous disconnect between these processes.</p> <p>From a DNSP's perspective these services are exactly the same, being the services provided by the distribution systems, and the regulatory processes must recognise them as such.</p>

<b>No.</b>	<b>Subject</b>	<b>Recommendation</b>	<b>Comments</b>
26.	Application procedures and conditions	<p>As matters of detail, the Rules should set out:</p> <ul style="list-style-type: none"> <li>Connection application procedures, permitting an application for connection to be made by either the customer or its retailer and requiring customer contact details and prescribed information relevant to the connection of equipment at the customer's premises (eg. life support, special plant and equipment). For applications by the customer, evidence of a retail contract would also be prescribed information prior to energisation of the connection.</li> </ul>	<p>This change confirms that the customer may negotiate a connection without a retail contract, but cannot obtain energisation unless it has a retailer.</p> <p>The application procedures and conditions will also need to provide for circumstances where customers seek to change their load and additional conditions of connection need to be imposed and where additional requirements are imposed and to ensure that conditions imposed upon the connection of previous occupants continue to apply to new occupants. Also careful consideration needs to be given to the timing of contract formation and its alignment with the practicalities of applying for connection.</p> <p>For example a developer will apply for connection in relation to a development which will eventually become a mixed commercial or residential development. The connection application is processed by the distributor and conditions are imposed in relation to the connection on the basis of the expected load and requirements of the connection. Such requirements can include the location of a substation or transformer on the site to enable supply to be provided.</p> <p>Currently in NSW a deemed contract arises when an application for connection is made so that if dispute arise in relation to the conditions being imposed or any other aspect of the connection those are resolved in the context of the connection contract and energisation does not occur until all conditions have been complied with, which is appropriate. If a contract does not arise until energisation, it the context for the imposition of conditions and their resolution becomes less certain. Once a development is finished, a number of new owners or occupiers will move into the site and it is important that there are mechanisms available under the deemed contract to ensure that conditions imposed in relation to that development continue to apply to the new owners.</p>
<b>No.</b>	<b>Subject</b>	<b>Recommendation</b>	<b>Comments</b>
27.	Establishment of deemed distribution contract	<p><b>Distributor interface with customers</b></p> <p>The Law should provide that upon connection of a retail customer's premises to a distribution system, or on the date a customer moves in to premises that are already connected, a contract is deemed to arise between the customer and the distributor on the terms and</p>	<p>The AAR paper states that it is not necessary for the deemed contract to arise upon an application to connect because the distributor's connection obligation is directly regulated in the Law and subject to the requirements of the Rules (including customer compliance and</p>

No.	Subject	Recommendation	Comments
		<p>conditions of the deemed distribution contract applicable to that customer, except where a negotiated distribution contract exists.</p>	<p>access requirements). This statement does not appear to recognise that there are many aspects of connection arrangements that need to be imposed as part of the connection contract process but prior to energisation, these relate to important pre-conditions which must be met before energisation and which must endure during the contract. The types of matters being considered here relate to the provision of service equipment such as substations which involves issues such as easements and rights of access and load limiting equipment. It is not clear from the paper how these matters could be imposed outside the contractual framework but have continuing effect during the contract. However if all matters imposed prior to energisation of a connection could be imposed in such a way that they form part of the contract on an ongoing basis then it would be workable. Consideration also needs to be given to the framework in which disputes regarding matters imposed prior to connection can be resolved. Currently in NSW these are resolved within a contractual framework.</p>
	Duration	<p>The deemed distribution contract will remain in effect while the customer is responsible to its retailer for the consumption of energy at the relevant premises or until the customer enters into a negotiated distribution contract with the distributor.</p>	<p>For safety and operational reasons the obligations of a connection contract would need to endure whilst a supply point is energised. To align the connection contract to the period when a customer is responsible to a retailer for consumption of energy may leave periods when there is no distribution agreement in place.</p>
	Negotiated distribution contracts	<p>A distributor and a customer may agree different terms to those contained in the deemed distribution contract, subject to:</p> <ul style="list-style-type: none"> <li>• in the case of small customers, the provision of prescribed information in relation to their right to the application of the approved standard terms and an explanation of the implications of the proposed different terms;</li> <li>• coordination with the customer's retailer; and</li> <li>• any other requirements contained in the Rules.</li> </ul>	<p>This does not imply any obligation on a distributor to enter into a contract other than on the approved default terms. It merely provides for the flexibility for the parties to agree (at either the distributor's or the customer's request) different terms which may be mutually beneficial or to address specific circumstances.</p>
	Access regime still applies	<p>The deemed distribution contract provisions do not affect the rights of a customer to negotiate for the direct provision of distribution services in accordance with Chapter 5 of the NER or under an access arrangement in accordance with the NGR.</p>	<p>It is not clear why the arrangements for deemed distribution contracts would not be considered part of the access regime in any case. However customers should be required to choose to seek access under either the retail path or the wholesale path and not both. It should be clear that if a retail customer applies to a distributor for distribution services then the default position is a deemed distribution contract and that the Chapter 5 process and requirements in relation to connection applications and agreements only apply if a customer specifically chooses to take that course in preference to the retail</p>

No. Subject		Recommendation	Comments
28.	Deemed contract terms and conditions	The Law should include authority for the Rules to make provision for the determination and approval of the terms and conditions of a deemed distribution contract, which may include (but will not be limited to) matters specified in the Schedule to the Law (these would include the subject headings in the table in Part 4 of this document).	<p>There is no reason or basis for requiring the AER to approve the terms and conditions of deemed contracts which adopt the model terms. This is just an unnecessary layer of regulation which will result in further process and regulatory imposition for no benefit. This is not best practice regulation. Any approval role of the AER should be confined to approving a proposed deemed contract that varies from that provided in the model terms.</p> <p>No regulatory purpose has been established for requiring AER approval and the fact that the AER would be required to approve those that adopt the model terms underlines how superfluous the requirement is and that little regard has been had to the procedural requirements that would still need to be fulfilled for no established regulatory purpose.</p> <p>Whilst the terms and conditions of a deemed contract are relevant to the AER's distribution revenue determination, it would be sufficient for the AER to be able to take into account the model terms and conditions and any variations to that which have been approved by the AER</p>
29.	Rules provisions Model terms for deemed distribution contracts	<p>The Rules should include the following provisions in relation to the distributor - customer relationship:</p> <ul style="list-style-type: none"> <li>Model terms to be included in a deemed distribution contract applicable to small customers, preferably in a separate schedule capable of adoption by distributors as contractual terms. Part 4 of this document sets out summary model terms for the development of the initial Rules.</li> </ul>	<p>It is not clear to EnergyAustralia whether it is proposed that a deemed contract apply to other than small customers and how the terms and conditions for such customers are to be established. Whilst it should be open for such contracts to be negotiated between the parties, on the whole distributors would also be seeking to apply model terms to most large customers.</p> <p>This is currently the case in NSW with the Standard Form Customer Connection Contract, which applies to customers of all sizes. For this reason EnergyAustralia requests that provisions also be made for the development of model terms for non-small customers, which could be adopted and applied to distributors.</p>
No. Subject		Recommendation	Comments
<b>Distributor interface with retailers</b>			
32.	Nature of UoS agreement/	The Law should include:	As stated in relation to recommendation 22, EnergyAustralia has no

No.	Subject	Recommendation	Comments
	interface contract	<ul style="list-style-type: none"> <li>in electricity, provision for a UoS agreement between each distributor and each retailer which sells electricity to customers connected to the distributor's infrastructure; and</li> <li>in gas, provision for an interface contract between each distributor and each retailer which sells gas to customers connected to the distributor's infrastructure.</li> </ul> <p>The distinction between an electricity UoS agreement and a gas interface contract is that:</p> <ul style="list-style-type: none"> <li>the electricity UoS agreement covers the provision of and payment for distribution services, and prudential requirements;</li> <li>the gas interface contract would not cover these matters as they would already be addressed in the access terms and conditions of the distributor's access arrangement.</li> </ul> <p>The electricity UoS agreement and gas interface contract would otherwise cover the same subject matter, regulating the arrangements between distributors and retailers in relation to the provision of services to their joint customers.</p>	issue with the hybrid model proposed, however further detailed consideration needs to be given to the nature of services provided under the use of system agreement and these services must reflect commercial and operational reality.
35.	Rules provisions	<p>The Rules should include the following provisions in relation to the distributor – retailer interface:</p> <ul style="list-style-type: none"> <li>Model terms to be included in a deemed UoS agreement/interface contract, preferably in a separate schedule capable of adoption by distributors as contractual terms. Part 5 of this document sets out summary model terms for development of the initial Rules.</li> <li>Distributors must adopt and publish a deemed UoS agreement/interface contract which has been approved by the AER as part of the revenue determination/access arrangement approval process.</li> </ul>	EnergyAustralia believes that consideration should be given to whether certain obligations in Use of System arrangements such as those required for credit support should be stand alone rule obligations as well as contractual obligations, with a view to having a quick mechanism for enforcing credit support requirements without resorting to breach of contract action.
	Standard UoS agreements/interface contracts		For the same reasons outlined in relation to recommendation 29, there should be no requirement for the AER to approve use of system agreements which adopt the model terms.
36.	Regulatory requirements	<p>The Rules should include an obligation on distributors and retailers to comply with the terms of deemed UoS agreements/interface contracts. Compliance would therefore be both a contractual</p>	Consideration should be given to what the scope will be for "access disputes" between DNSP and Retailers.

No.	Subject	Recommendation	Comments
		<p>obligation enforceable between the parties and a regulatory obligation enforceable by the AER.</p> <p>The terms of deemed UoS agreements/interface, contracts should not be subject to variation as an outcome of an access dispute.</p>	
<b>No.</b>	<b>Subject</b>	<b>Recommendation</b>	<b>Comments</b>
<b>Distributor interface with embedded generators</b>			
<b>No.</b>	<b>Subject</b>	<b>Recommendation</b>	<b>Comments</b>
<b>Business authorisation</b>			
40.	Entry tests	<p>The Law should set out the entry requirements to be satisfied by persons wishing to obtain energy business authorisations as retailers or distributors, and enable the AER to issue guidelines in relation to the authorisation procedures and its approach to assessing the criteria for authorisation.</p> <ul style="list-style-type: none"> <li>market operator registration – that the applicant has been registered by NEMMCO or the relevant gas market operator in accordance with any registration requirements under the NER or NGR.</li> </ul>	<p>Provided that the authorisation is confined to entry requirements (as proposed under recommendation 40 below) and the AER does not have the power to impose substantive obligations as licence conditions this may be unobjectionable.</p> <p>The arrangements should ensure that applicants can obtain market operator registration before a business authorisation is in place, ie. that there is not a catch 22 in relation to meeting market entry requirements.</p>
43.	Treatment of existing licensees	<p>Distribution and retail businesses that hold current jurisdictional licences should transition to the national business authorisation without further processes.</p>	<p>This is strongly supported.</p>
44.	Exemptions	<p>The Law should authorise the AER to exempt a person from the prohibition in accordance with the Law, the Rules and any guidelines issued by the AER. The Rules and AER guidelines should set out the matters to be considered by the AER in considering applications for exemptions, as well as general exemptions, in each case based initially on current arrangements.</p>	<p>EnergyAustralia looks forward to further development of policy in relation to exemptions. The implications of AER discretion to apply exemptions has implications for a range of stakeholders.</p>
48.	Ancillary rights and powers	<p>Ancillary rights and powers (such as those relating to compulsory acquisition and works on public and private land) should continue to be dealt with in jurisdictional legislation. The national framework business authorisation can be used as a basis for defining the entities that have the benefit of such rights and powers.</p>	<p>This will need careful consideration as there needs to be a very clear distinction between the matters which will be dealt with under the Law and Rules and those under jurisdictional legislation. For example, the important issue of the demarcation between customer's installation and the distributors system must be clear and preferably consistent on a national basis, but national consistency may not be possible in the short term as in some jurisdictions this may also be subject to jurisdictional consumer safety legislation which will not be nationally</p>

No.		Subject	Recommendation	Comments
No.		Subject	Recommendation	Comments
<b>Ring-fencing</b>				
49.	Provisions to be included in the NEL	Electricity ring-fencing requirements should be included primarily in the NEL, modelled on the equivalent requirements included in the exposure draft of the NGL (but incorporating changes proposed to be made by the SCO in response to submissions on the NGL). This would include requirements relating to:		EnergyAustralia supports ring fencing requirements being set out in the NEL, rather than the Rules. Specific definitions are proposed for the NEL, but at the time of submission these are not available. The provisions of the NGL require legal separation of distribution from any related businesses whereas such a requirement is not proposed to be imposed through the NEL at this stage.
53.	Alternative approach to legal separation	The requirement for legal separation would require transitional arrangements in those jurisdictions where operational separation is currently permitted and exists in practice. As an alternative to including a requirement for legal separation in the NEL, the NEL could authorise the making of Rules in respect of the operational separation of the business of providing network services from related businesses conducted by the same entity.		<p>EnergyAustralia supports the development of electricity ring fencing requirements in the NEL. However EnergyAustralia has previously submitted that any framework should ensure that a distribution business is not economically disadvantaged by meeting these additional regulatory costs by either allowing for sufficient pass through arrangements in its revenue determination, or if the changes are substantial, the continuation of the existing determination under the arrangements that existed at the time of making the determination.</p> <p>Similarly, as there are economic consequences, any discretion afforded by the regulator in respect of ring fencing arrangements should be subject to merits review.</p> <p>It is important that any ring fencing arrangements allow for flexibility and consideration of a wide range of factors. Common regulation of ring-fencing ignores the spatial differentiation of network topology, and of the types of offices and social working practices of communities across city and rural areas. It is necessary for sufficient flexibility to be retained in the framework to deal with such situations to avoid having unnecessarily inefficient and uneconomic arrangements imposed on a resource constrained industry.</p> <p>Finally, ring fencing requirements that seek to impose legal separation must be limited to acquisition. To empower divestment in any form, there would need to be an explicit head of power conferred under the NEL, a power that currently only exists under the Trade Practices Act for unauthorised mergers. Such expansion is not recommended by EnergyAustralia as it raises broader competition policy issues, most obviously that of "trust busting". "Trust busting" powers, such as</p>

No.	Subject	Recommendation	Comments
			<p>those in the United States, have had mixed outcomes in recent years, and if adopted in Australia would add a dimension of regulatory risk into all industries with unforeseeable impacts on business growth and development that has been judiciously avoided to date.</p>
<b>Retailer failure arrangements</b>			
55.	Description of matters to be included in the Rules	<p>The Law should set out the matters to be addressed in the Rules by way of general description along the following lines:</p> <ul style="list-style-type: none"> <li>provisions authorising the AER to appoint one or more entities to act as RoLR, with such appointments to be made on a basis which the AER considers will contribute to the achievement of the objectives of the scheme;</li> </ul>	<p>This provision still appears to leave open the possibility that a person other than a retailer could be appointed as a retailer of last resort. It is clearly inappropriate for there to be any scope for person or body to be appointed as retailer of last resort who is not 'set up' to undertake the role.</p> <p>It is not appropriate for any person to be able to be appointed, rather it must be someone currently registered as a Market Customer. Also this might be better determined by the jurisdiction and reflected in the NEM as per the approach to right to supply obligations.</p> <p>The recommendation that the AER appoint the RoLR appears to be inconsistent with recommendation 2 regarding the obligation to supply. It would appear that these obligations are aligned and if one is to be determined on a jurisdictional basis then so should the other. In any case, the provisions in the law relating to the entities which may be appointed as the RoLR should require that the entity be a registered Market Participant and that body appointing be satisfied that the entity being appointed is in a position to carry out the functions of the RoLR.</p>
<b>Customer registration and transfer</b>			

No. Subject		Recommendation	Comments
<b>Enforcement mechanisms</b>			
79.	Court based enforcement mechanisms	The court-based enforcement mechanisms provided for in sections 61, 63 and 68 of the NEL (and the equivalent provisions to be included in the NGL) should apply to the non-economic distribution and retail regulatory obligations to be included in the national framework. Compliance with these requirements should be designated as civil penalty provisions.	The current approach adopted under the National Electricity Rules should be followed, so that consideration is given to each rule obligation and whether it should be a civil penalty provision prior to prescribing it as a civil penalty provision under the National Electricity Regulations.
84.	Additional enforcement issues	<p>Consideration should be given to the following additional enforcement issues when the substantive regulatory obligations are settled and the drafting of the Law and Rules is further progressed:</p> <ul style="list-style-type: none"> <li>• whether obligations arising from the distribution and retail regulatory functions should be enforceable as between the affected parties or only by the AER;</li> <li>• whether the dispute resolution provisions in Chapter 8 of the NER should apply in respect of the distribution and retail rules; and</li> <li>• where court based remedies are to be used, whether there is a case for allowing enforcement in the lower courts rather than (as at present) only in the Federal Court and Supreme Courts.</li> </ul>	EnergyAustralia agrees that there should be scope for some obligations to be enforced directly by parties. The most obvious example is the obligation imposed upon retailers to provide credit support. Whilst this would be a contractual obligation under the proposed use of system agreement, its enforcement as a contractual obligation would not necessarily bring timely or appropriate relief. Distributors are not in a position to withdraw services under a use of system agreement and the financial exposure for distributors where a retailer refuses to provide credit support can be significant. There must be a market consequence where a participant fails to comply with obligation that is fundamental to the smooth operation of the market
No. Subject		Recommendation	Comments
Statutory objectives			

## Part 2 – Regulation of standing offer and market contract terms

No. Subject		Recommendation	Comments
Calculation of Charges			
Security			

No.	Subject	Recommendation	Comments
	Billing, apportionment of payment, disputes		
	Undercharging and overcharging		
	Payment methods and difficulties		
	Disconnection		
	Liability and warranties		
	Miscellaneous		
	Additional provisions required in market contracts		
	Provisions included for consideration in Working Paper 1 but not proposed to be included in standing offer or market contract terms		
	Provisions to be included in the Rules (and not as standing offer or market contract terms)		
	Provisions subject to separate policy review		

### Part 3 – Regulation of marketing conduct

No.	Subject	Recommendation	Comments
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### Part 4 – Regulation of distributor-customer contract terms

No.	Subject	Recommendation	Comments
	Commencement of contract (as between the distributor and the customer at particular premises)	<p>When the deemed contract commences in relation to a particular customer and premises, being:</p> <ul style="list-style-type: none"> <li>the date specified in the contract (not earlier than the date of publication of the contract by the distributor); or</li> <li>if later, the date the premises were connected to the network or the customer moved in to the premises.</li> </ul>	For the reasons set out in relation to recommendation 27 it is likely (particularly for new connections) that services related to the connection will commence under the contract prior to the energisation of the connection or a customer moving into the premises. This should be catered for in the contractual arrangements.
	Collection of charges	An explanatory term may be included noting that charges for distribution services are paid to the retailer and that the distributor may not charge the customer directly for services unless it has a separate agreement with the customer.	It will not always be the case that charges for distribution services are paid to the retailer. Some services related to the connection will be provided prior to the engagement of a retailer, particularly those relating to design and inspection of connection, whilst others may be

No.	Subject	Recommendation	Comments
	Termination of services	<p>When the deemed contract ends in relation to a particular customer and premises, being the earlier of:</p> <ul style="list-style-type: none"> <li>• the date the customer is disconnected in accordance with the disconnection procedures and any right of reconnection has expired;</li> <li>• the customer ceasing to be responsible for energy consumption at those premises following a specified period of notice to its retailer;</li> </ul>	<p>payable directly to the distributors if the customer arranges those services directly.</p> <p>For the reasons set out in relation to recommendation 27, it is not appropriate for the obligations of the customer under the distribution contract to be aligned with the customer's responsibility for energy consumption. It is possible for example for a site to be energised but with no retail contract in place because it has terminated. The customers' obligations in relation to the network connection should endure notwithstanding that the customer is not responsible to a retailer for consumption at the premises.</p>
	Service standards/Guaranteed service levels	<p>The setting of service standards and any associated GSL payment levels may be a matter to be determined individually as part of the AER's approval of the default contract. This is not addressed in this paper. However, following is an indicative list of potential requirements:</p> <ul style="list-style-type: none"> <li>• frequency and duration of supply interruptions;</li> <li>• timely notice of planned interruptions;</li> <li>• quality of supply (excluding frequency) for electricity (this could include voltage variations);</li> <li>• wrongful disconnection;</li> <li>• timeframes for reconnection;</li> <li>• being on time for appointments;</li> <li>• response times for fault calls; and</li> <li>• provision of fault information.</li> </ul>	<p>There needs to be a clear distinction between the matters which are to be determined at a jurisdictional level and those determined under the National Electricity Rules. The list of potential requirements appears to capture "service reliability requirements" which are clearly retained as jurisdictional matters under the AEMA (clause 14.7 and Annexure 2).</p>
	Liability and warranties	<p>The following limitations of liability may be included:</p> <ul style="list-style-type: none"> <li>• implied terms and warranties may be excluded to the extent permitted by law;</li> <li>• no liability for supply interruption or disconnection to the extent the distributor is entitled to do so under Law, Rules or contract;</li> <li>• no liability for reliability or quality of supply, except to the extent caused or contributed to by the distributor's default or negligence; and</li> <li>• contractual force majeure.</li> </ul>	<p>There should also be scope for caps to be included in liability provisions even where the distributor is negligent. Uncapped liability may have implications for the service that the regulator has assessed as the subject of the determination.</p>

<b>No.</b>	<b>Subject</b>	<b>Recommendation</b>	<b>Comments</b>
		The contract should state that none of these limitations will limit any obligation to make a GSL/compensation payment.	
	Customer obligations	<p>To be clearly expressed in the contract, together with the consequences of non-compliance (eg disconnection) and provision for appropriate notice of non-compliance and an opportunity to remedy if applicable. Customer obligations may include matters relating to:</p> <ul style="list-style-type: none"> <li>• theft/unauthorised supply;</li> <li>• provision of safe and unhindered access to meters and other equipment of the distributor;</li> <li>• protection of/tampering with distributor equipment on premises;</li> <li>• safety of customer installation;</li> <li>• compliance with any restrictions on consumption or use of energy; and</li> <li>• requirements to notify certain events (eg faults, leaks, change of use, safety requirements).</li> </ul>	<p>In addition to the matters listed there are a number of additional matters, most of which would be imposed as pre-conditions to energisation which must also apply for the duration of the contract, these include:</p> <ul style="list-style-type: none"> <li>• the installation of service lines and other equipment (including substations) to enable supply to be made to the premises;</li> <li>• the provision of access and in some case formal easements to support the existence of the distributors service lines which are required to cross the property of third parties to enable supply to the customer;</li> <li>• compliance with applicable service and installation rules and customer installation safety plans;</li> <li>• maintenance of the customer's installation to meet the requirements imposed at the time of connection</li> </ul>

### Part 5 – Regulation of distributor-retailer contract terms

<b>No.</b>	<b>Subject</b>	<b>Recommendation</b>	<b>Comments</b>
	Obligation to supply*	The UoS agreement would provide for the distributor to provide distributor services to the retailer (who then provides a bundled service to its customers).	This obligation needs to properly align with the nature of services provided under the contract between distributor and retailer.
	Information sharing to facilitate single billing, billing disputes	<p>The UoS agreement/interface contract would require:</p> <ul style="list-style-type: none"> <li>• the distributor to provide certain information to the retailer to facilitate customer billing by the retailer; and</li> <li>• the parties to cooperate in relation to customer billing disputes.</li> </ul>	The obligations in relation to information should be aligned with the B2B procedures, most which are still at a jurisdictional level but recognised under the MSATs made under the National Electricity Rules.
	Credit support*	The UoS agreement would require the retailer to provide credit support in certain circumstances and set out the approach to determining the amount and nature of the credit support, when it may be drawn and other matters.	As stated in relation to recommendation 84 the obligation to provide credit support should also be an obligation under the Rules and enforceable by parties under than the AER.
	Allocation of liability	The UoS agreement/interface contract would provide for the liability	The agreement should also set out the procedure to be followed

No.	Subject	Recommendation	Comments
	between retailer, distributor and customer	<p>of the distributor and the retailer and, in particular, for:</p> <ul style="list-style-type: none"> <li>• the distributor to indemnify the retailer for customer claims for which the distributor would have been liable if the customer had made the claim under its contract with the distributor;</li> <li>• mutual indemnities, for example, in relation to customer claims for unlawful disconnection caused by the respective parties;</li> <li>• third party claims procedures; and</li> <li>• liability caps, exclusion of warranties and implied terms, preservation of statutory instruments.</li> </ul>	between the parties when claims are received.
	Information sharing to facilitate connection, disconnection	See comments in relation to connection and disconnection above.	Established B2B procedures may also be relevant here.
	Handling of complaints (including re billing)	The UoS agreement/interface contract would provide for each party to otherwise transfer or refer to the other any customer complaints received that relate to the other party, and may also include provisions requiring the parties to cooperate in addressing such complaints.	The agreement should also provide for the circumstances in which complaints will be referred to jurisdictional ombudsman.