



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

10 November 2005

Dear Sir,

Re: National Framework Schedule for Distribution and Retail Functions

Thank you for the invitation to provide comments on the *Proposed Framework Schedule for the Transfer of Distribution and Retail Functions*. The ERAA has previously provided comments on a draft version of the schedule. These are attached.

In providing feedback, the ERAA is concerned by the lack of detail around some of the listed responsibilities. Specifically:

- Items 21 and 22 – Other retail related markets not covered elsewhere and the balancing regime and settlements;
- Items 25 and 26 Distributor/Retail small end customer dispute resolution scheme;
- Item 30 Local gas market arrangements; and,
- Item 32 Abolishment of General business authorisations (licensing) for retailers and distributors.

The ERAA believes the current co-regulatory approaches in the gas market, with Vencorp in Victoria, the Gas Market Company in NSW and the Retail Energy Market Company in SA, work well and should be maintained. We recognise, however, some changes could be undertaken to improve the consistency and efficiency of their operation.

In relation to dispute resolution schemes, the ERAA recognises the benefits of the current State based schemes. However, some changes are needed to improve the consistency of their principles and approaches. That said, it is important that

arrangements for dispute resolution do not rule out a future national dispute resolution scheme.

Finally the ERAA notes the proposal for the abolition of licences for retailers. The Association believes that appropriate prudential checks need to be in place to ensure retailers in the market are financially viable. The appropriate mechanism to achieve these checks would need to be established following consultations. Any licensing, whether for retailers or distributors, should be under a national regime.

I trust that you will find this information satisfactory and if you require any additional information please feel free to contact me on 0417 276 567.

Yours sincerely,

Patrick Gibbons
Executive Director
Energy Retailers Association of Australia

COMMENTS ON PROPOSED FRAMEWORK SCHEDULE FOR TRANSFER OF DISTRIBUTION AND RETAIL FUNCTIONS

Summary Comments

The opportunity to provide comments on the categories of functions that should be transferred to a national framework, those that should remain with the states and territories and those that should be abolished is welcomed.

Whilst it is important to agree on the broad responsibilities, it is difficult to make categorical decisions on some of the functions in the absence of the full context and detailed information.

The ERAA will be providing a more detailed response to the Gilbert + Tobin paper where we will outline our position on several of the matters raised.

The main points that the ERAA would put forward are;

- The transfer of all energy market regulatory responsibilities currently undertaken by the jurisdictions to the national regulator, except for those where it was agreed that the responsibilities will remain with the States (safety, technical, environmental and retail pricing) is broadly supported.
- It is important to fully utilise the national frameworks already in place (for example gas distribution pricing under the National Gas Code and electricity distribution pricing under the National Electricity Law).
- Retail pricing regulation should in fact be phased out over the transitional period.
- Opportunities for the harmonisation of aspects of safety, technical and environmental regulation should be pursued where it makes sense.
- The retention/extension of the current co-regulatory industry/government approaches, such as that of the Gas Market Company (GMC) in NSW, and Retail Energy Market Company (REMCo) in SA/WA is supported.
- The regulatory objectives and principles that underpin the national regulatory framework must be clearly articulated before the work proceeds. In that regard, it is important that the national regulatory framework for distribution and retail delivers the following outcomes:

- A substantial reduction in the overall costs of regulation and increased efficiency in terms of participation in a competitive energy market;
- Energy specific regulation that is limited to matters where there has been demonstrable market failure, or there is a lack of existing customer protection law, with every energy specific provision developed using a structured and transparent process that ensures that all provisions are justified against clearly defined objectives and criteria, and tested against the principles of best practice regulation;
- A market environment which is conducive to promoting competition through achieving a “level playing field” for all participants, and is supported by appropriate terms and conditions of access;
- Fully utilises national frameworks already in place, for example for gas distribution pricing under the National Gas Code and electricity distribution pricing under the National Electricity Law and Rules; and,
- An effective rule change process allowing for consultation with all stakeholders.

Therefore, further to the following comments on the broad allocation of responsibilities we expect that the process for the development of a national regulatory framework will provide for these arrangements to be tested against the above objectives.

Comments of Functions List

National

Items 1 –14

Distribution access regulation is already covered by national access regimes for gas and electricity. The gas access regime (including the gas code) and the National Electricity Law and Rules provide a sound basis for access and pricing for distribution networks. While jurisdictional regulators currently undertake administration of these frameworks, they are national in character.

What remains is to transfer the regulatory responsibilities from jurisdictions to the AER and to transfer the responsibility for code changes to the AEMC. Another area of work is to consider any impediments to a national approach (such as derogations from the National Electricity Rules or rules for economic regulation for gas that are additional to the rules established under the Gas Code).

It is important that the existing MCE processes for reviewing distribution pricing are not duplicated or confused by consideration in this part of the MCE program.

In relation to item 12, it should be noted that some distribution related market rules are developed and administered under authorised industry schemes and therefore item 12 is not needed as it is dealt with by item 30.

In relation to items 13 and 14, it should be noted that any technical regulation is to remain with the states and territories.

Subject to these comments above, items 1 – 14 being part of the national framework is supported.

Item 15

The ERAA supports the removal of retail price regulation in accordance with an agreed process and timetable. This is also consistent with Recommendation 10.5 of the Productivity Commission's Final Report on the Review of National Competition Policy:

“In retail infrastructure markets, once effective competition has been established, regulatory constraints on prices should be removed. Ensuring that disadvantaged groups continue to have adequate access to services at affordable prices should be pursued through adequate, well targeted and transparent community service obligations (or other appropriate mechanisms), that are monitored regularly for effectiveness.”

The priority for policy makers should be on identifying and removing any barriers to effective competition to an agreed timetable in the jurisdictions that are open to competition.

The process for removal/retention of price controls could be dealt with under the Australian Energy Market Agreement (AEMA) through establishing a high-level principle that retail price regulation be removed at the end of the current price paths in the jurisdictions that are open to competition unless competition is demonstrated to be ineffective through effectiveness of competition reviews as follows:

- Establish robust and transparent criteria that will form the basis of their determination about the effectiveness of competition;
- Identify any remaining market failures or barriers to competition and set a binding timetable to:

- Take action to correct or remove the identified market failures and barriers to competition before the expiry of the paths;
- Address the transitional and distributional impacts through direct and transparent Government funded Community Service Obligations (CSO's);
- Where competition is demonstrated to be ineffective, States to conduct and publish periodic and regular reviews of effectiveness of competition in each jurisdiction.

Items 16 to 19

The transfer of these responsibilities to the national regulator subject to these responsibilities being tested against the objectives outlined above is supported.

The development of a national framework for electricity and gas distribution and retailing is a unique opportunity to deliver further efficiencies in the retail energy market. It is our view that a national regime for licensing and consumer protection is preferable to the continuation of the current jurisdictional approach. Jurisdictions have demonstrated an inability to deliver nationally consistent outcomes, despite obligations to do so in their enabling legislation. The current example of the Victorian ESC and ESCOSA conducting separate but concurrent consultation processes on the establishment of a price disclosure regime is a case in point."

With regard to items 18 & 19, the ERAA is concerned that inclusion of these items (marketing and market contracts) presupposes that continued energy specific regulation in these areas is warranted. It is our view that the Trade Practices Act, Privacy Act, and fair trading legislation provide comprehensive customer protection without the need for additional energy specific regulation.

Item 20

This function is already under a national regime and it is supported that it continues to be administered in the same way it currently is.

Items 21 and 22

Gas Retail Market Rules, which include gas balancing, settlements, and customer transfer rules are developed under co-regulatory approaches by the government/regulator authorised schemes. Material rule changes are approved by the government/regulator.

Gas Retail Market Rules administered by the Gas Market Company in NSW, Retail Energy Market Company (REMCo) in SA/WA, and VenCorp in Victoria should continue to be managed by these schemes, with the charter of these organisations requiring harmonisation of the rules to the extent possible, and to seek efficiencies through joint processes.

To the extent that jurisdictional regulators currently have a role in administering specified areas of market arrangements, these roles should be transferred to a national regime.

Item 23

A national approach is supported, but note that it is important that current appeal arrangements that exist in gas are used as the basis for the national approach and that it is imperative that there is no diminution in appeal rights.

State/Territories

Item 24

Retention of technical and safety arrangements at the jurisdictional level, subject to exploring opportunities for efficiencies under a national regime is supported. It is important to ensure “seamless” handling where local requirements result in financial impact on distribution businesses that need to be reflected in economic decisions by the national regulator.

Items 26

It is recognised that the current dispute resolution schemes also include dispute resolution for the water industry, and it would make sense to continue with current arrangements.

However, there is merit in ensuring that the charter, governance and the operating principles (procedures and reporting in particular) are nationally consistent to ensure effectiveness and efficiency for national retailers.

Further, it is important that any decisions on dispute resolution schemes do not preclude a national dispute resolution scheme for energy if one is seen to be more efficient in future.

Item 27

System operations are undertaken through a number of different arrangements, for example by NEMMCO for electricity, load-shedding schedules under the NSW Gas Access Arrangements, and by market managers such as Vencorp.

Consideration needs to be given to an arrangement that will achieve this objective most efficiently.

Item 28

It is understood that State governments would want to implement CSOs to meet their policy objectives and that the Local Departments may manage these.

The important issue here is that the CSOs are appropriately funded, and that the retailer and the jurisdictional agency should negotiate these agreements on a commercial basis.

Item 29

There should be a national approach to management of environmental issues such as greenhouse, however it is accepted that the arrangements are currently jurisdictional and would require a transition period.

Local environmental matters such as EIS etc would need to remain with the jurisdictions.

Item 30

Local gas market arrangements. Eg. GMC, REMCo and Vencorp– refer to comment under item 21 and 22.

Item 31

The continuation of the current arrangements for FTA activities is supported.

However, any moves to bring the current jurisdictional energy specific marketing codes of conduct under the Fair Trading legislation would be strongly objected. If there is a demonstrated need to retain certain aspects of the energy specific marketing codes of conduct, these should be under a consistent national regulatory framework.

Abolished

Item 32

It is important that prudential/credit support requirements are adequate to ensure that retailers/distributors who enter the energy market are able to demonstrate financial viability. This is important for the integrity and stability of the energy market.

Items 33 and 34

The abolishment of items 33 and 34 are supported.