

## **Energy and Water Ombudsman (Victoria) Limited**

---

ABN 57 070 516 175

2 August 2007

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

By email: [MCETMarketReform@industry.gov.au](mailto:MCETMarketReform@industry.gov.au)

Dear Madam/Sir

### **Re: Retail Policy Working Group – National Framework for Distribution and Retail Regulation – Composite Paper (June 2007)**

Thank you for the opportunity to comment on the paper prepared by Allens Arthur Robinson entitled *Retail Policy Working Group – National Framework for Non-Economic Distribution and Retail Regulation – Composite Paper (June 2007)* ('Composite Paper').

The Energy and Water Ombudsman (Victoria) (EWOV) brings its experience in resolving customers' complaints against retailers and distributors to this submission, as to our previous submissions. The arrangements made for dispute resolution under a national system of regulation are of great importance to us and are the starting point for this submission.

#### ***Dispute Resolution and Ombudsmen***

EWOV notes that at a number of points, the Composite Paper and its attachments comment that dispute resolution is a matter for jurisdictional regulation and therefore only limited reference needs to be made. We note that at some points the dispute resolution provisions have been cut back from what they were in the earlier Working Papers, for example, at p.223.

It is not entirely evident that the distinction between internal dispute resolution and external dispute resolution has been taken into account in the drawing up of these recommendations. There need to be clear requirements about both internal and external dispute resolution. Internal dispute resolution provisions need to specify standards and processes for retailers and distributors to respond to complaints made directly to them. Such provisions should include:

# National Framework for Distribution and Retail Regulation

## Consultation Paper - Recommendations

This table reproduces the recommendations from the Consultation Paper prepared by Allens Arthur Robinson for the Retail Policy Working Group dated June 2007.

Persons wishing to make submissions in response to the Consultation Paper are requested to do so by completing the 'Comments' column in the table.

### 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.	EWOV supports this definition of the obligation
	Application procedures	<p>As matters of detail, the Rules should set out:</p> <ul style="list-style-type: none"> <li>• Application procedures – including requirements for customers to provide: <ul style="list-style-type: none"> <li>➢ acceptable identification; and</li> <li>➢ contact details,</li> </ul> </li> <li>and requirements for retailers to provide: <ul style="list-style-type: none"> <li>➢ a description of the standing offer contract formed as a result of the application, and how copies of the contract may be obtained;</li> <li>➢ a description of the retailer's and customer's respective rights and obligations concerning the supply under the</li> </ul> </li> </ul>	<p>EWOV supports these application procedures</p> <p>EWOV welcomes the addition of 'including dispute resolution procedures' here, as well as the other additions covering rebates and relief and information in community languages.</p>

No.	Subject	Recommendation	Comments
	<p>Connection services</p> <p>Conditions to the obligation</p>	<ul style="list-style-type: none"> <li>➤ Law and Rules, including relevant dispute resolution procedures;</li> <li>➤ particulars of any rebate or relief available under any government funded energy charge rebate or relief scheme; and</li> <li>➤ information in community languages about the availability of interpreter services for the languages concerned and telephone numbers for the services;</li> </ul> <ul style="list-style-type: none"> <li>• Connection services – the retailer's responsibility to arrange connection services in respect of the supply; and</li> <li>• Conditions to the obligation – the circumstances in which the retailer may refuse to supply, including: <ul style="list-style-type: none"> <li>➤ failure by the customer to satisfy the application requirements identified above;</li> <li>➤ failure to provide any security the retailer is entitled to require under the standing offer terms;</li> <li>➤ failure to pay an amount due to the retailer in respect of the new supply (such as connection charges);</li> <li>➤ failure to provide access to the premises; and</li> <li>➤ other circumstances beyond the retailer's control.</li> </ul> </li> </ul> <p>The Law should provide that the standing offer terms take effect as a contract between the retailer and customer.</p>	<p>Supported</p> <p>Largely supported, although EWOV notes that connection charges are not usually paid at the time of connection, but rather are added to the first bill.</p>
2.	Designating retailers and supply remits	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	This approach to designating retailers and supply remits is reasonable.

No.	Subject	Recommendation	Comments
		<p>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>	
3.	MCE principles for obligation to supply	<p>The MCE should consider agreeing principles to be applied by jurisdictional ministers in determining whether or not to activate or de-activate the obligation by making (or revoking) the relevant jurisdictional instruments. However, there is no need for principles to be agreed at this stage concerning the retailers to be designated and the approach to specifying supply remits where the obligation is to be imposed.</p>	<p>It is appropriate to give some consideration to the prospect that designated supply remits may not be necessary at some stage in the future, but equally it does not have to be done now.</p>
4.	Definition of small customers	<p>The Law should provide that, for the purpose of the obligation to supply, a 'small customer' is a customer whose actual or estimated energy consumption is less than a threshold level specified in the Rules. The initial Rules should specify the existing jurisdictional thresholds.</p> <p>The Rules should set out the mechanics of assessing customer consumption for the purpose of applying the threshold, including</p>	<p>This is a pragmatic approach to the definition of a small customer. It is supported.</p>

No.	Subject	Recommendation	Comments
		whether the threshold applies to individual premises or is aggregated.	
5.	MCE directed review of small customer definition	The MCE should direct the AEMC to undertake a review of small customer consumption thresholds with a view to establishing a nationally consistent threshold, having regard to any policy principles specified by the MCE and the need for any transitional arrangements.	A nationally consistent threshold would be useful in the future.
6.	Tariffs	The Law should provide that standing offer tariffs are those published by designated retailers from time to time.	Given that jurisdictional tariff regulation will apply, this is a sensible approach. EWOV appreciates the rationale for the removal of 'local'.
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.	Given that it is proposed that standing offer contract terms and conditions are not subject to prior regulatory approval it is appropriate to strengthen the reference to the AER's compliance monitoring and enforcement.  EWOV has concerns with the provision for 'alternative terms and conditions which are not inconsistent with those set out in the Rules'. We believe that there should not be provision for minimum standard terms and conditions to be varied.
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.	EWOV has made comment on the specific terms and conditions later in this document.
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	It is appropriate that the Law establish the existence of a deemed contract, but that details are left to the Rules.

No.	Subject	Recommendation	Comments
		<p>dealt with in the Rules. On that basis it is proposed that the Law should provide that:</p> <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>	
10.	When a deemed supply arrangement arises	<p>The Rules should provide for a deemed contract to arise in the following circumstances:</p> <ul style="list-style-type: none"> <li>• where a customer occupies premises that are already connected to the distribution system and commences to take a supply of energy; and</li> <li>• where a current contractual arrangement terminates without new supply arrangements having been established,</li> </ul> <p>subject to any provision in the contract itself concerning the terms and conditions to apply on termination.</p>	These are sensible provisions about when a deemed contract arises.
11.	Tariffs, terms and conditions of deemed supply arrangements	<p>For designated retailers, the Rules should provide that the tariffs, terms and conditions applicable to deemed supply arrangements are the relevant retailer's standing offer tariffs, terms and conditions. This will automatically apply for those jurisdictions that assign the obligation to supply to the FRMP. For other retailers, the retailer may publish tariffs, terms and conditions to apply to deemed supply arrangements, which must be consistent with the standing offer</p>	<p>EWOV is pleased to see that the previous recommendation that the deemed contract terms would be those applying to the immediately preceding customer has been removed. The current recommendation is fairer.</p>

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

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>As in its previous submission, EWOV continues to support a comprehensive energy-specific approach. Only an energy-specific regime will ensure that necessary attention is paid to issues of compliance and enforcement.</p> <p>The objectives against which market contract regulation is to be assessed are also sound. EWOV supports the emphasis of ensuring continuity of supply as a high priority, and also on facilitating consumer choice based on readily comparable market contract offers.</p>



No.	Subject	Recommendation	Comments
<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> <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>	As stated above, EWOV supports an energy-specific regime.
18.	Marketing requirements	<p>The Law should require retailers and other persons engaged in energy marketing to comply with energy marketing requirements set out in the Rules.</p> <p>The Rules should contain (preferably in a separate schedule) requirements applicable to the marketing of energy. Part 3 of this document sets out a summary set of marketing requirements for development of the initial Rules.</p>	In its earlier submission, EWOV supported the position that retailers should be held responsible for the actions of their marketing agents. This was a position of both principle and pragmatism. Principals are generally held responsible for the actions of their agents; why should marketing conduct be different? Secondly, Ombudsmen schemes currently take complaints about marketing against the retailer concerned. There is concern that we may experience difficulty in doing this if persons engaged in marketing are to be held responsible as if they were principals. Such persons are not members of

No.	Subject	Recommendation	Comments
			Ombudsmen schemes. It would be an unfortunate outcome for consumers if the effect of this recommendation was to deny affected consumers redress through Ombudsmen schemes.
19.	Entities subject to regulation	<p>The Law will need to include a definition of persons engaged in marketing activities. This should include:</p> <ul style="list-style-type: none"> <li>• retailers;</li> <li>• persons acting as agents of retailers for the purpose of gaining new or retaining existing customers;</li> <li>• persons acting as agents of one or more customers in respect of retail energy supply; and</li> <li>• persons otherwise acting as an intermediary between retailers and customers in respect of retail energy supply.</li> </ul>	As stated just above, EWOV is of the view that responsibility should rest with retailers, not with persons engaged in marketing activities.
20.	Definition of small customers	The Law should provide that a small customer for the purpose of marketing conduct regulation has the same meaning as for the purpose of the obligation to supply.	Supported

No.	Subject	Recommendation	Comments
<b>Contractual model for distribution services</b>			
21.	Need for a default model	A contractual model is required as a default model to apply in both the electricity and gas sectors to provide a framework for the development of the distributor - customer interface and the distributor - retailer interface arrangements.	Agreed
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>	This hybrid model appears to overcome the simplification implied in both the linear and the triangular models.
23.	Small embedded generators	Consideration should be given to including contractual arrangements dealing with small embedded generators in the framework for the hybrid contractual model.	Agreed

No.	Subject	Recommendation	Comments
<b>Distributor obligation to provide connection services</b>			
24.	Scope of obligation	<p>The Law should provide that distributors must, in accordance with the Rules, provide distribution services in respect of a retail customer's premises.</p> <p>The reference to a distributor means a distributor whose network services are subject to access regulation under the Rules.</p> <p>The reference to a retail customer's premises is intended to limit the obligation to customers acquiring (or intending to acquire) energy through a retailer, as distinct from a customer acquiring energy directly from the wholesale market.</p>	This scope is reasonable
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 '<i>energisation</i>' 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>	Agreed

No.	Subject	Recommendation	Comments
.26.	<p>Application procedures and conditions</p> <p>Timeframes</p> <p>Connection requirements</p> <p>Distributor information</p>	<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> <li>• Timeframes for 'standard' new connections and energisations.</li> <li>• Connection requirements and conditions, including: <ul style="list-style-type: none"> <li>➤ payment for any augmentation, extension or other capital works to the distribution system if required to effect the connection;</li> <li>➤ completion of any works required for connection which are not part of the distribution system;</li> <li>➤ compliance with technical and safety requirements in relation to the customer's installation or equipment; and</li> <li>➤ provision of safe and unhindered access to meters and other equipment of the distributor on the customer's premises.</li> </ul> </li> <li>• Distributor information requirements, requiring the</li> </ul>	<p>The change made to this recommendation is reasonable.</p> <p>It is a little surprising that no process has been suggested by which a national approach to timeframes for standard new connections and energisations could be developed, and yet these are to be specified in the Rules.</p> <p>A general point made in our earlier submission was that there was insufficient attention to how customers would be made aware of the obligations placed on them. This observation also applies to this list of requirements.</p> <p>As mentioned above, EWOV believes it will be difficult for</p>

No.	Subject	Recommendation	Comments
	requirements	<p>distributor to provide to a customer the approved standard terms and conditions (deemed distribution contract) applicable to that customer and notice of the customer's rights in respect of the negotiation of different terms. This information must be provided in circumstances specified in the Rules, including on application for connection of the customer's premises, on request, following any changes to the approved terms and conditions and on a request by the distributor or the customer to negotiate different terms.</p>	<p>customers to understand their rights and obligations under the deemed distribution contract, and considers that the information requirements set out here are a bare minimum.</p>

No.	Subject	Recommendation	Comments
<b>Distributor interface with customers</b>			
27.	<p>Establishment of deemed distribution contract</p> <p>Duration</p> <p>Negotiated distribution contracts</p> <p>Access regime still applies</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 conditions of the deemed distribution contract applicable to that customer, except where a negotiated distribution contract exists.</p> <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>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>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>EWOV supports this.</p> <p>EWOV supports this.</p> <p>It is important that small customers are adequately informed about the implications of entering into a negotiated distribution contract.</p> <p>EWOV supports this.</p>
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	It is appropriate that the Law should include this authority for the Rules.

No.	Subject	Recommendation	Comments
		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).	
29.	<p>Rules provisions</p> <p>Model terms for deemed distribution contracts</p> <p>Small customer definition</p> <p>Standard deemed distribution contracts</p> <p>AER approval</p>	<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> <li>• Small customers should be defined in the same way as for the retailer obligation to supply.</li> <li>• Distributors must adopt and publish a standard deemed distribution contract which has been approved by the AER as part of the revenue determination/access arrangement approval process.</li> <li>• The AER would be required to approve proposed standard deemed distribution contracts that adopt the model terms set out in the Rules, with guidance for the AER in relation to the approval of variations to those terms. The AER would be permitted to allow variations that the AER considers reasonable having regard to: <ul style="list-style-type: none"> <li>➤ customer service and network performance standards applicable to the distributor;</li> </ul> </li> </ul>	<p>EWOV has made more detailed comments later in this document.</p> <p>EWOV supports this provision.</p> <p>AER approval of a standard deemed distribution contract is appropriate, given that it is not recommended that distributors' deemed contracts are to be individually approved.</p> <p>EWOV strongly supports accessible publication of these contracts.</p> <p>This is a fairly loose provision. There appears to be no requirement on the AER to take consumer perspectives into consideration before it approves variations.</p>

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> <li>➤ any specific characteristics of the distributor's network; and</li> <li>➤ the object of the Law.</li> </ul>	
	<p>Variations during regulatory period</p> <p>Deemed distribution contracts for large customers</p>	<ul style="list-style-type: none"> <li>• Distributors should be permitted to apply to vary the terms of an approved deemed distribution contract during a regulatory period subject to the AER's approval. Provisions relating to any resulting cost increases or decreases should be dealt with in the revenue determination/access arrangement approval.</li> <li>• Distributors may also prepare, and submit for the AER's approval, a standard deemed distribution contract applicable to one or more classes of customers, other than small customers, on terms which are fair and reasonable.</li> </ul>	<p>This provision is also quite loose. Unilateral variation of contract terms during a contract can be problematic. AER approval should only be obtainable after consideration of the consumer impacts, if any, of the proposed variation.</p> <p>EWOV supports this provision.</p>
30.	Regulatory obligations - Law	The Law should authorise or oblige distributors to disconnect, reconnect and interrupt supply in the circumstances prescribed in the Rules.	It is highly appropriate that the Law should specify this.
31.	<p>Regulatory obligations - Rules</p> <p>Service standards</p> <p>Grounds for disconnection</p>	<p>The Rules should include the following provisions in relation to the distributor – customer relationship:</p> <ul style="list-style-type: none"> <li>• A requirement that distributors must comply with any applicable service standards.</li> <li>• The circumstances in which a distributor is entitled or required to disconnect customer premises, including: <ul style="list-style-type: none"> <li>➤ in an emergency, including at the direction of a relevant authority;</li> <li>➤ for health and safety reasons;</li> <li>➤ at the request of the customer or its retailer</li> </ul> </li> </ul>	<p>EWOV supports this.</p> <p>EWOV does not support a distributor being able to disconnect a customer for failure to meet the obligations of the deemed distribution contract, unless there is a clear procedure by which the customer is made aware of the relevant obligation, it is established that the breach has continued after the customer has been made aware, and that a warning notice (containing the name and number of</p>

No.	Subject	Recommendation	Comments
		<p>(subject to certification by the retailer that the disconnection is permitted under the Rules);</p> <ul style="list-style-type: none"> <li>➤ for non-compliance by the customer with</li> </ul>	<p>the jurisdictional ombudsman) has been disregarded.</p> <p>The other grounds for disconnection by a distributor are reasonable.</p>
	<p>Restrictions on disconnection</p> <p>Interruptions and curtailments</p> <p>Reconnection</p> <p>Dispute resolution</p>	<p>obligations under the deemed distribution contract that are expressed to give rise to an express right of disconnection (eg, failure to provide safe access or meet equipment specifications, or taking unauthorised supply).</p> <ul style="list-style-type: none"> <li>• The circumstances in which a distributor must not disconnect customer premises (in some cases these may only be applicable to small or residential customers).</li> <li>• The circumstances in which a distributor is entitled or required to interrupt or curtail the supply of energy to customer premises, including: <ul style="list-style-type: none"> <li>➤ planned interruptions subject to prescribed advance notice periods;</li> <li>➤ unplanned interruptions (faults etc) and circumstances beyond the distributor's control, subject to information requirements and obligations to minimise the duration and extent of interruptions; and</li> <li>➤ for health and safety reasons or in an emergency, including at the direction of a relevant authority.</li> </ul> </li> <li>• A requirement that distributors reconnect a disconnected customer if the reason for the disconnection has been removed.</li> <li>• A requirement that distributors comply with any applicable</li> </ul>	<p>These circumstances should be specified.</p> <p>These provisions are reasonable.</p> <p>EWOV supports this.</p> <p>EWOV supports this, and further believes that the deemed</p>

No.	Subject	Recommendation	Comments
	Information provision	<p style="text-align: center;">jurisdictional dispute resolution requirements.</p> <ul style="list-style-type: none"> <li>• Requirements for distributors to provide information to a customer or its retailer on request about the customer's consumption, network tariff or connection.</li> </ul>	<p>distribution contract should contain clauses setting out customers' access to dispute resolution. It is inadequate for it to be mentioned only in the Rules.</p> <p>The dispute resolution clause in deemed distribution contracts must also contain the following requirements for distributors (these are comparable to the requirements proposed for energy retailers in Working Paper 1):</p> <ul style="list-style-type: none"> <li>• A distributor must handle a complaint in accordance with the relevant Australian Standard and the relevant jurisdictional dispute resolution process.</li> <li>• When a customer contacts a distributor in relation to the complaint, the distributor must inform the customer: <ul style="list-style-type: none"> <li>○ that the customer has a right to raise the complaint to a higher level within the distributor's management structure</li> <li>○ that, if after raising the complaint to a higher level, the customer is still not satisfied with the distributor's response, the customer may refer the complaint to the relevant external ombudsman</li> <li>○ of the name and phone number of the relevant external ombudsman.</li> </ul> </li> </ul> <p>EWOV supports this.</p>
	Fault reporting and correction	<ul style="list-style-type: none"> <li>• Requirements concerning the maintenance by distributors of a 24-hour fault information and reporting line.</li> </ul>	<p>EWOV supports this being a regulatory as well as contractual requirement. We are particularly pleased to see the recognition of the fact that the line needs to be available for customer reports as well as the giving of</p>

No.	Subject	Recommendation	Comments
	Small customer contracts	<ul style="list-style-type: none"> <li>• Protections for small customers in relation to negotiated distribution contracts, including protected terms and cooling-off periods.</li> </ul>	<p>information about faults.</p> <p>EWOV supports this requirement.</p>

No.	Subject	Recommendation	Comments
<b>Distributor interface with retailers</b>			
32.	Nature of UoS agreement/ interface contract	<p>The Law should include:</p> <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>	EWOV has no comment on the recommendations in this section.

No.	Subject	Recommendation	Comments
33.	<p>Establishment of deemed UoS agreement/interface contract</p> <p>Negotiated agreements</p> <p>Customer variations</p>	<p>The Law should provide that except where a negotiated UoS agreement/interface contract exists, a deemed UoS agreement/interface contract is deemed to arise between each distributor and each retailer where the retailer sells energy to customers connected to the distributor's infrastructure.</p> <p>The Law would not preclude a distributor and retailer negotiating different terms and conditions of their UoS agreement/interface contract. However, the deemed UoS agreement/interface contract would apply in the absence of any such agreement between the parties.</p> <p>The UoS agreement/interface contract should provide that it does not apply in respect of particular customers to the extent that they have negotiated inconsistent arrangements in relation to the provision of distribution services with the distributor.</p>	
34.	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 UoS agreement/interface contract, which may include (but would not be limited to) matters specified in the Schedule to the Law (these would be based on the subject headings in the table in Part 5 of this document).	
35.	<p>Rules provisions</p> <p>Model terms for UoS agreements/interface contracts</p>	<p>The Rules should include the following provisions in relation to the distributor – retailer interface:</p> <ul style="list-style-type: none"> <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> </ul>	

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

---

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

No.	Subject	Recommendation	Comments
<b>Distributor interface with embedded generators</b>			
37.	Process for new Rules for embedded generation	<p>To the extent the policy position adopted by the MCE as an outcome of its further work on renewable and distributed generation is to supplement the existing Rules to more fully prescribe the position of embedded generation, there is no existing mechanism in the NEL for this to be done otherwise than by a Rule change submitted to the AEMC, and following the normal Rule change process.</p> <p>Having regard to the policy process adopted in relation to this issue, policy outcomes should be capable of being implemented by a Ministerial order or, where appropriate, by the normal Rule change process. Accordingly, the 2007 legislative package should authorise Rules relating to the connection and operation of embedded generation to be made by Ministerial order.</p>	EWOV has no comments on the recommendations in this section

No.	Subject	Recommendation	Comments
<b>Business authorisation</b>			
38.	Substantive obligations as licence conditions	Substantive regulatory obligations should be contained in the Law and Rules rather than in licence conditions.	EWOV accepts this position, provided that all licence conditions are captured in the Law and Rules.
39.	Regulation of entry requirements	<p>The Law should contain a general prohibition on a person:</p> <ul style="list-style-type: none"> <li>engaging in the retail sale of energy; and</li> <li>(in the case of electricity) owning, controlling or operating an electricity distribution system; and</li> <li>(in the case of gas) owning, controlling or operating a distribution pipeline,</li> </ul> <p>unless the person has obtained an energy business authorisation from the AER in relation to the carrying out of that activity.</p>	EWOV supports this recommendation.
40.	<p>Entry tests</p> <p>Financial viability</p> <p>Organisational and compliance capacity</p> <p>Suitable person</p>	<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> <p>The criteria for business authorisation should include:</p> <ul style="list-style-type: none"> <li>financial viability – that the applicant has the financial resources required to undertake the relevant activity;</li> <li>organisational and compliance capacity – that the applicant has the organisational capacity to carry on the activity for which it is seeking authorisation and to comply with its regulatory obligations;</li> <li>suitable person – that the applicant is a suitable person to hold the authorisation;</li> </ul>	The entry requirements are reasonable in EWOV's view. In particular, EWOV supports the inclusion of requirements related to jurisdictional licensing and market operator registration.

No.	Subject	Recommendation	Comments
	<p>Jurisdictional licensing</p> <p>Market operator registration</p>	<ul style="list-style-type: none"> <li>jurisdictional licensing – in the case of distribution businesses, that the applicant holds any jurisdictional licence or authorisation required with respect to technical and safety matters; and</li> <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>	
41.	Removal of overlap with NEMMCO registration	<p>The existing registration requirements administered by NEMMCO under the NER should be modified to remove overlap with the new business authorisation requirements to be administered by the AER. In particular:</p> <ul style="list-style-type: none"> <li>NEMMCO requirements with respect to financial viability should be limited to satisfaction of the market prudential requirements under chapter 3 of the NER;</li> <li>NEMMCO requirements with respect to organisational and compliance capacity should be limited to the relevant entity's safe and reliable interaction with the market and with technical requirements applicable under national framework instruments (including metrology).</li> </ul>	<p>EWOV supports the removal of the overlap with NEMMCO registration requirements. It is not appropriate for NEMMCO to be making judgements about financial viability (beyond market prudential requirements) or about organisational and compliance capacity.</p>
42.	Corresponding changes to gas market registration requirements	<p>Corresponding modifications should be made to existing gas market rules to be 'grandfathered' under the national framework.</p>	<p>EWOV has no comment to make about this recommendation.</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 a sensible inclusion.</p>

No.	Subject	Recommendation	Comments
44.	Exemptions	The Law should authorise the AER to exempt a person from the prohibition in accordance with the Law, the Rules and any guidelines issued by the AER. The Rules and AER guidelines should set out the matters to be considered by the AER in considering applications for exemptions, as well as general exemptions, in each case based initially on current arrangements.	This is an important area. Where small customers are customers of inset networks, there is a danger that they are denied protections that would be available to them if they were customers of authorised retailers. The guidelines for these exemptions are of particular importance.
45.	Exemption conditions and enforcement	The Law should provide that an exemption may be subject to conditions, which are to be subject to monitoring and enforcement by the AER in the same way as if they were obligations under the Rules. In the case of a general exemption, it would be necessary for the AER to establish a framework to ensure it is aware of the persons conducting activities covered by the exemption so that it is able to monitor and enforce compliance by those persons with the conditions of their exemption.	<p>EWOV is pleased to see that the AER is to be obliged to keep track of exempt entities for monitoring and enforcement purposes.</p> <p>However, the status of networks that have been exempted under existing jurisdictional rules is unclear. Are they to be transitioned to the new arrangements in the same way as licensed retailers and distributors? If so, it will be extremely difficult for the AER to keep track of them. If not, it will be quite disruptive. Perhaps transition to the new arrangements could be automatic provided that networks provide details to the AER, but even that approach faces practical difficulties, given that in Victoria and perhaps in other jurisdictions there is no register of exempt networks.</p>

No.	Subject	Recommendation	Comments
46.	Revocation	<p>The Law should authorise the AER to revoke a business authorisation or exemption if the AER determines that the holder ceases to satisfy the entry requirements or, in the case of an exemption, ceases to satisfy the conditions of the exemption.</p> <p>The Law should set out the process for revocation, including requirements for the AER to disclose the basis on which it considers the entry requirements have ceased to be satisfied and to have regard to any submissions made by the holder of the business authorisation in determining whether to revoke the authorisation.</p>	<p>The first paragraph of this recommendation provides for revocation of both authorised and exempt retailers/networks. However, the second paragraph refers only to entities holding a business authorisation. Inset networks operators should also be entitled to know the basis on which their exemption has been cancelled.</p>
47.	Register of authorised persons	<p>The Law should require the AER to maintain a public register of authorised persons and exempt persons and include details of the information to be included in the register.</p>	<p>EWOV strongly supports this requirement.</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>EWOV supports this provision.</p>

No.	Subject	Recommendation	Comments
<b>Ring-fencing</b>			
49.	Provisions to be included in the NEL	<p>Electricity ring-fencing requirements should be included primarily in the NEL, modelled on the equivalent requirements included in the exposure draft of the NGL (but incorporating changes proposed to be made by the SCO in response to submissions on the NGL). This would include requirements relating to:</p> <ul style="list-style-type: none"> <li>• legal separation of the entity conducting distribution network services from other related businesses;</li> <li>• keeping separate and consolidated accounts for distribution services and other services;</li> <li>• cost allocation principles and methodologies in relation to the allocation of costs between distribution services and other services;</li> <li>• limitations on sharing of staff between the network service provider and related businesses; and</li> <li>• measures to ensure the network service provider's dealings with related parties are not on preferential terms.</li> </ul> <p>Requirements relating to the use and disclosure of confidential information obtained by the network service provider should be dealt with in the NER.</p>	EWOV has no comments to make on this section
50.	Additional ring-fencing requirements	The NEL should authorise the AER to impose additional ring-fencing requirements on individual network service providers or their associates in equivalent terms to the AER's power under section 120 of the exposure draft of the NGL.	
51.	Waiver of ring-fencing requirements	The NEL should authorise the AER to grant waivers from the ring-fencing requirements in equivalent terms to section 121 of the	

No.	Subject	Recommendation	Comments
		exposure draft of the NGL (but incorporating criteria to be applied by the AER in granting waivers).	
52.	Regulatory information instruments	The NEL should authorise the AER to issue Regulatory Information Instruments in equivalent terms to the AER's powers under Division 4 of Part 2.1 of the exposure draft of NGL.	
53.	Alternative approach to legal separation	The requirement for legal separation would require transitional arrangements in those jurisdictions where operational separation is currently permitted and exists in practice. As an alternative to including a requirement for legal separation in the NEL, the NEL could authorise the making of Rules in respect of the operational separation of the business of providing network services from related businesses conducted by the same entity.	

No.	Subject	Recommendation	Comments
<b>Retailer failure arrangements</b>			
54.	Statutory framework for RoLR scheme	<p>The NEL and NGL should authorise the AEMC to make Rules in relation to the establishment and operation of a scheme to address the risks and consequences of retailer failure (<b>RoLR scheme</b>) and set out the objectives of the scheme. The objectives could be expressed as being, as far as practicable:</p> <ul style="list-style-type: none"> <li>• to ensure that customers of the failed retailer continue to be supplied with energy;</li> <li>• to manage the risks and costs of retailer failure for the benefit of customers and of the designated RoLR; and</li> <li>• to ensure the integrity of the wholesale market settlements and network balancing arrangements in the relevant market.</li> </ul>	EWOV agrees with this. We also agree with the suggested objectives for the Rules. The Rules should also provide for the situation where the RoLR event has been caused by withdrawal from the market rather than failure.
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> <li>• provisions specifying the process for and method of appointment;</li> <li>• provisions defining the events that trigger the RoLR's supply obligations;</li> <li>• provisions setting out the RoLR's obligations in terms of preparing for the occurrence of a trigger event, including the submission of plans and proposed supply prices, terms and</li> </ul>	EWOV agrees that these points need to be addressed in the Rules.

No.	Subject	Recommendation	Comments
		<p>conditions to the AER;</p> <ul style="list-style-type: none"> <li>• provisions establishing the basis for determining the prices and terms and conditions of supply, and defining the duration of the RoLR's supply obligation.</li> </ul>	
56.	Consequences of a RoLR event	<p>The Law should describe the legal consequences that can arise as a result of the occurrence of a trigger event and permit the Rules to define the manner in which those legal consequences occur. This would include provisions to the effect that, in circumstances described in the Rules:</p> <ul style="list-style-type: none"> <li>• a contract may be deemed to exist between the RoLR and the customers of a failed retailer; and</li> <li>• contracts between the failed retailer and its customers may be deemed to be terminated or varied.</li> </ul>	EWOV agrees that these provisions would be necessary in a trigger event, but is concerned if customers are subject to fixed term contracts with termination fees when they have not agreed to those contracts.
57.	Obligations on other market participants	<p>The Law should also authorise the Rules to impose obligations on other market participants in connection with the operation of the scheme, including the failed retailer, distributors and market operators.</p>	EWOV supports this provision.
58.	Insolvency issues	<p>Further consideration should be given to provisions imposing obligations on insolvency administrators or dealing with the use and application of funds of the failed retailer. Such provisions would need to be included in the Law rather than the Rules and may require complementary Commonwealth legislation.</p>	EWOV has no comment on this recommendation.
59.	Process for making initial Rules	<p>No Rules should be made by Ministerial order as part of the 2007 legislative package. The Law should direct the AEMC to make Rules for a RoLR scheme by a date specified in the Law. The direction to the AEMC should enable the AEMC to make different Rules as between the electricity and gas sectors, and to assess the</p>	EWOV agrees that the AEMC rule making process is probably the most appropriate for this purpose.

No.	Subject	Recommendation	Comments
		<p>need for such Rules as between sectors and jurisdictions. This is intended to enable, as one possible outcome, that a RoLR scheme might not be considered necessary in the gas sector in particular jurisdictions.</p> <p>An expert review could be used to develop and consult on a RoLR scheme, with the outcome to be implemented by Rule changes made by Ministerial order, if the MCE considers that timing and resource issues are such that the task should not be undertaken by the AEMC.</p>	

No.	Subject	Recommendation	Comments
<b>Customer registration and transfer</b>			
60.	Electricity registration and transfer framework	<p>The NEL should authorise the Rules to provide for:</p> <ul style="list-style-type: none"> <li>• the establishment and maintenance of a registry of information relating to each NMI that is eligible for contestability, and for access to and disclosure of that information; and</li> <li>• procedures for the efficient transfer of consumers between retailers subject to all applicable laws,</li> </ul> <p>for the purposes of facilitating the efficient and effective billing of retail and network tariffs and charges and wholesale market settlement.</p>	EWOV supports this recommendation.
61.	MSATS Procedures	<p>The NER should require the MSATS procedures to include processes for implementing the functions and requirements set out in the Rules, including the form and manner in which those functions and requirements must be carried out.</p> <p>The MSATS procedures will require amendment to remove jurisdictional variations and reflect a consistent national approach to customer registration and transfer, subject to appropriate transitional arrangements. The subject matter addressed in the MSATS procedures would be consistent with the proposed amendments to the NER (as described below), and would not change significantly.</p>	EWOV regards the process set out here as sensible, but believes that the harmonised requirements should specify that an actual meter reading is necessary for a transfer.
62.	Electricity connection point registration  NMI standing data	<p>The NER should include provisions:</p> <ul style="list-style-type: none"> <li>• defining NMI standing data, and requiring distributors to maintain and provide NMI standing data to NEMMCO and notify changes to that data;</li> </ul>	<p>Jurisdictional ombudsmen currently have limited access to NMI data under the National Electricity Rules: see 7.7 access to metering data:</p> <p>(a) Despite anything to the contrary in this clause 7.7 and</p>

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> <li>limiting disclosure of NMI standing data by NEMMCO to retailers (Market Customers) who specify the NMI or supply address;</li> <li>specifying the purposes for which a retailer may use NMI standing data; and</li> <li>requiring distributors to provide NMI standing data to Market Customers on request within a prescribed time (eg 1 business day), if they specify the NMI, supply address, or other unique meter number, provided the data is not available through MSATS systems.</li> </ul>	<p>subject to clause 8.6, <i>NEMMCO</i> may provide <i>metering data</i> relating to a <i>Registered Participant</i> from a <i>metering installation</i>, the <i>metering database</i> or the <i>metering register</i> to an Ombudsman acting under a duly constituted industry dispute resolution ombudsman scheme of which the <i>Registered Participant</i> is a participant, if the Ombudsman has requested the data for the purpose of carrying out a function of that scheme in respect of a complaint made by a customer of the <i>Registered Participant</i> against that <i>Registered Participant</i> under that scheme.</p> <p>It would be a retrograde step if this access was taken away from Ombudsmen. EWOV strongly opposes the limitation on access to metering data envisaged by this recommendation and supports the retention of the existing rules with regard to this access.</p>
63.	<p>Electricity consumer transfers</p> <p>Initiation of transfers</p>	<p>The NER should include provisions:</p> <ul style="list-style-type: none"> <li>requiring transfer requests to be initiated only by an incoming retailer submitting a request in accordance with the MSATS procedures;</li> </ul>	<p>As set out in preceding submissions, EWOV believes that the initiation of a transfer prior to the expiry of the cooling-off period leads to transfer errors and supports a system of flagging a pending transfer rather than the initiation of the actual transfer.</p>

No.	Subject	Recommendation	Comments
	Transfer requests and process	<ul style="list-style-type: none"> <li>• requiring a transfer request to be accepted as valid if:               <ul style="list-style-type: none"> <li>➢ it contains all the prescribed information;</li> <li>➢ the connection point details in the request are consistent with the NMI standing data;</li> <li>➢ there is no outstanding transfer request in relation to the same connection point;</li> <li>➢ the metering installation complies with applicable requirements for contestability; and</li> <li>➢ the incoming retailer is registered with NEMMCO as a market participant;</li> </ul> </li> </ul>	
		<ul style="list-style-type: none"> <li>• prohibiting a retailer from submitting a transfer request unless:               <ul style="list-style-type: none"> <li>➢ it has obtained any applicable consents from the customer to enter into the retail contract; and</li> <li>➢ it has all necessary agreements in place to enable the sale of energy to the customer at that connection point;</li> </ul> </li> <li>• requiring the transfer process to take into account applicable cooling-off periods by not enabling transfers to be completed before expiry of the cooling-off period;</li> <li>• permitting a retailer to withdraw a transfer request submitted by it at any time before the transfer has been registered by NEMMCO;</li> </ul>	<p>EWOV is pleased to see the emphasis in this provision on consents ‘from the customer’, which we interpret to mean the account holder. EWOV strongly believes, in the interests of minimising complaints, transfer requests should only be signed by the account holder of the former contract. If this is not what is meant by this provision, we would like to see it re-phrased so as to remove any ambiguity.</p> <p>EWOV believes that the transfer should not even be initiated prior to the end of the cooling-off period in the interests of avoiding transfer complaints which could be difficult to resolve. The MSATS data should merely be flagged ‘pending transfer’.</p>

No.	Subject	Recommendation	Comments
	Objections	<ul style="list-style-type: none"> <li>requiring the provision of notice of a valid transfer request within one business day to prescribed persons (likely to be the distributor, existing retailer and any other person registered as a metering provider or metering data provider for the connection point);</li> <li>permitting a transfer objection to be lodged within a prescribed time (eg 5 business days from the date of the transfer request) in accordance with the MSATS procedures;</li> <li>requiring the incoming retailer and the objecting party to use best endeavours to resolve the objection, within a prescribed time, or the transfer request is deemed to have been withdrawn;</li> </ul>	This recommendation is unclear about the basis for objections, although it is understood that these are to be developed from existing bases for objection in the various jurisdictions, excluding objection on the basis of debt.
	Transfer period  Meter reading  Notice to customer	<ul style="list-style-type: none"> <li>specifying the period within which a transfer must be completed (being within 65 business days after a transfer request), the circumstances in which transfers may be made retrospectively effective and the applicable retrospective periods;</li> <li>requiring a transfer to be based on an actual meter reading (with the Rules to specify whether this should be based on a scheduled, special or customer's own reading), obtained within a timeframe prescribed in the MSATS procedures;</li> <li>requiring notice to the customer on completion of the transfer.</li> </ul>	EWOV supports a period for retrospective transfers of 130 days. As noted, the ability to have retrospective transfer to correct erroneous transfers is important.  EWOV believes that it is important that there be notice to the customer on completion of the transfer.
64.	Gas registration and transfer framework	<p>The NGL should authorise the Rules to provide for:</p> <ul style="list-style-type: none"> <li>the establishment and maintenance of a registry of</li> </ul>	EWOV supports this recommendation.

No.	Subject	Recommendation	Comments
		<p>information relating to each gas supply point that is eligible for contestability, and for access to and disclosure of that information; and</p> <ul style="list-style-type: none"> <li>procedures for the efficient transfer of consumers between retailers subject to all applicable laws,</li> </ul> <p>for the purposes of facilitating the efficient and effective billing of retail and network tariffs and charges, wholesale market settlement and/or gas pipeline balancing.</p>	
65.	Grandfathering of retail market rules	<p>The NGL should authorise the NGR to provide for those matters by requiring compliance with a retail market instrument (to be defined as an instrument identified in the NGR, or any other instrument approved by the AEMC for that purpose), and deeming the provisions of any such instrument to take effect as Rules, subject to the Rule-change procedures in the NGL.</p> <p>The existing gas retail market rules should be brought within the national framework in their current form by being deemed to take effect as Rules under the NGL authorising provision described above.</p>	EWOV has no comment on the remainder of this section.
66.	Process for review of grandfathered instruments	<p>In progressing the work program of the GMLG or other process for development of national gas market arrangements, the SCO should consider a process for the development at a later stage of nationally consistent customer registration and transfer arrangements. This could be included as part of the process for development of the rules associated with the STTM or could be a direction to the AEMC to undertake a review after the initial Rules have been made.</p>	
67.	Gas retail market rule changes	<p>The Rule change procedures in the NEL and NGL should be amended in a manner which permits the AEMC to consider changes to Rules (including the instruments deemed to be made under the</p>	

No.	Subject	Recommendation	Comments
		<p>NGR) in accordance with a fast-track process which takes into account prior consultation. The amendments should be in accordance with the SCO proposed amendments to the AEMC Rule change process (subject to the suggestion that SCO consider whether the requirement for prior consultation must be with all relevant stakeholders or must be a public consultation).</p>	

No.	Subject	Recommendation	Comments
<b>Metering – electricity</b>			
68.	Principal regulation of electricity metering	<p>The NEL already contemplates in Schedule 1 that the NEL may contain rules in relation to:</p> <ul style="list-style-type: none"> <li>• the metering of electricity to record the production or consumption of electricity;</li> <li>• the registration of metering installations used to meter electricity; and</li> <li>• the regulation of persons providing metering services relating to the metering of electricity.</li> </ul> <p>The NEL does not distinguish between metering for wholesale or retail purposes and it is therefore not necessary to make any amendment for the purpose of bringing retail metering within the NEL.</p> <p>The principal regulation of metering should be contained in the NER / NEM Metrology Procedure regime.</p>	EWOV has no comments to make on this section.
69.	Provisions to be included in the NER	<p>The amendments to the NER and NEM Metrology Procedure currently being developed by NEMMCO as part of its NEM Metrology Programme should be implemented. In addition, these amendments should include certain provisions which are currently omitted from the NEMMCO process but which could be adequately addressed within the NER / NEM Metrology Procedure framework (as set out in Part B of Attachment 9 to Working Paper 4).</p>	
70.	Process	<p>These amendments could be implemented through the normal change procedures for the NER and NEM Metrology Procedure or, alternatively, by Ministerial order as part of the 2007 legislative package. The appropriate option should be determined based on an</p>	

No.	Subject	Recommendation	Comments
		assessment of the relative timing of each process, but a mechanism which avoids the need for complex transitional arrangements is preferred.	
71.	<p>Supplementary regulation of electricity metering</p> <p>Contractual/regulatory interface provisions</p> <p>Transfer code provisions</p> <p>Incidental jurisdictional legislative provisions</p>	<p>Provisions relevant to metering are included in retail contracts (see Part 2 of this document), connection contracts, deemed distribution contracts, electricity UoS agreements and gas interface contracts (see Parts 4 and 5 of this document). These provisions are in some cases repeated in existing metering regulatory instruments. The amendments proposed to be made to the NER / NEM Metrology Procedure should be reviewed as part of this exercise to avoid unnecessary overlap.</p> <p>Transfer code provisions relevant to metering should be harmonised within the national framework, as described in the customer registration and transfer recommendations set out above. The amendments proposed to be made to the NER / NEM Metrology Procedure should also be reviewed as part of this exercise to avoid unnecessary overlap.</p> <p>Current jurisdictional legislative provisions incidental to metering (in relation to access to premises and theft/diversion of electricity) should not be included in the NEL. Rather, these matters should continue to be regulated as part of the ongoing jurisdictional legislative regimes.</p>	
72.	Regulation of metering in non NEM jurisdictions	The non-NEM jurisdictions should continue to regulate metering under their current instruments.	
<b>Metering - Gas</b>			
73.	Principal regulation of gas metering	The NGL should authorise the inclusion of Rules in relation to metering in the NGR in similar terms to Schedule 1 of the NEL, for	

No.	Subject	Recommendation	Comments
		<p>example, that the NGR may contain rules in relation to:</p> <ul style="list-style-type: none"> <li>• the metering of gas to record the production or consumption of gas;</li> <li>• the registration of metering installations used to meter gas; and</li> <li>• the regulation of persons providing metering services relating to the metering of gas.</li> </ul>	
74.	<p>Grandfathering</p> <p>Gas retail market rules</p> <p>Other jurisdictional metering instruments</p>	<p>The NGL should authorise the NGR to provide for those matters by requiring compliance with another instrument (to be defined as an instrument identified in the Rules, or any other instrument approved by the AEMC for that purpose), and deeming the provisions of any such instrument to take effect as Rules, subject to the Rule-change procedures in the Law.</p> <p>The metering provisions contained in the gas retail market rules would be grandfathered as part of those rules, as discussed in the customer registration and transfer recommendations above.</p> <p>The regulatory requirements currently contained in additional jurisdictional instruments would also be grandfathered. However, in relation to these requirements, it may be appropriate in some cases to create new stand-alone instruments that either extract relevant metering regulation from a broader jurisdictional instrument (Victoria), or bring together the requirements of a number of jurisdictional instruments (New South Wales and Western Australia). This process would be undertaken by Ministerial order as part of the 2007 legislative package.</p>	
75.	Process for review of	In progressing the work program of the GMLG or other process for	

No.	Subject	Recommendation	Comments
	grandfathered instruments	development of national gas market arrangements, the SCO should consider a process for the review at a later stage of the grandfathered instruments to establish (as far as practicable) nationally consistent gas metering arrangements. This could involve the GMO/NEMO undertaking a process similar to that undertaken by NEMMCO for electricity metering, with Rule changes to be submitted to the AEMC under the normal Rule change process.	
76.	Supplementary regulation of gas metering  Contractual/regulatory interface provisions          Incidental jurisdictional legislative provisions	As for electricity, relevant metering provisions considered in relation to retail contracts (Part 2 of this document) and in relation to the distributor - retailer and distributor - customer interfaces (Parts 4 and 5 of this document) should apply.  Potential overlap with the grandfathered metering regulation will need to be considered in respect of the specific provisions adopted for the retail contracts and interface arrangements, with unnecessary duplication being removed.  Current jurisdictional legislative provisions incidental to metering (in relation to access to premises and theft / diversion of gas) would not be included in the NGL. Rather, these matters would continue to be regulated as part of the ongoing jurisdictional legislative regimes.	
<b>Prepayment meters</b>			
77.	Prepayment meter systems	The Law should authorise the Rules to regulate the use of prepayment meter systems for small customers.  The Rules should cover the following matters in relation to the use of prepayment meter systems for small customers: <ul style="list-style-type: none"><li>• Prepayment meter contracts:<ul style="list-style-type: none"><li>➤ specific disclosure requirements to obtain a small customer's explicit informed consent to enter into a</li></ul></li></ul>	The suggested inclusions for prepayment meter contracts do not go far enough to protect the interests of consumers. EWOV believes that the provisions should be based on the South Australian Prepayment Meter System Code which represents best practice in this area..  EWOV has some concern about the situation where, in rented properties, the tenants move into a property with a

No.	Subject	Recommendation	Comments
		<p>prepayment meter contract (this is a specific form of market contract);</p> <ul style="list-style-type: none"> <li>➤ prohibition on knowingly entering into a prepayment meter contract with a customer with a life support system;</li> <li>➤ additional requirements to provide information to a small customer who enters into a prepayment meter contract (for example, the operating instructions for the meter, information relating to the payment facilities available, credit retrieval and emergency credit);</li> <li>➤ minimum terms and conditions of a prepayment meter contract (for example, a mandatory trial period, provisions relating to the fees and charges that may be recovered through the prepayment meter system);</li> <li>➤ variation of prepayment meter tariffs, undercharging, overcharging and recovery for illegal energy use; and</li> <li>➤ termination of the prepayment meter contract by the customer, including a request to revert to normal metering or as a result of a transfer to another retailer.</li> </ul> <ul style="list-style-type: none"> <li>• Prepayment meter systems requirements: <ul style="list-style-type: none"> <li>➤ specific requirements for the prepayment meter itself, including in relation to the information displayed, when the meter will disconnect and reconnect, emergency credit, provision of energy concessions, access to meter data; and</li> <li>➤ requirements in relation to payment facilities.</li> </ul> </li> <li>• Other matters:</li> </ul>	<p>prepayment meter, and believes that the trial period should apply in that circumstance.</p>

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> <li data-bbox="734 360 1330 459">➤ a requirement for the retailer to establish a specific telephone service for enquiries, complaints and emergencies relating to prepayment meter systems;</li> <li data-bbox="734 480 1346 651">➤ hardship and payment difficulties – the prepayment meter system must identify to the retailer instances of self disconnection and the retailer must take action to revert a customer to standard metering in certain circumstances; and</li> <li data-bbox="734 671 1240 699">➤ retention of records in relation to the above.</li> </ul>	

No.	Subject	Recommendation	Comments
<b>Enforcement mechanisms</b>			
78.	Compliance monitoring and enforcement functions of the AER	<p>The NEL and NGL should include provisions to support the AER's compliance monitoring and enforcement functions as follows:</p> <ul style="list-style-type: none"> <li>• a requirement for regulated entities<sup>1</sup> to establish systems and procedures to monitor regulatory compliance, in accordance with guidelines issued by the AER;</li> <li>• a requirement for regulated entities to notify the AER of breaches of regulatory obligations, in accordance with guidelines issued by the AER;</li> <li>• a requirement for regulated entities to undertake compliance audits, and to co-operate with such audits being undertaken by the AER or an independent auditor, in accordance with guidelines issued by the AER; and</li> <li>• a requirement for the AER to report on its compliance monitoring and enforcement functions.</li> </ul>	EWOV supports this recommendation and is pleased to see that greater flexibility has been written into it.
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.	EWOV agrees with these mechanisms being available.
80.	Additional orders	<p>Consideration should be given to expanding the description of orders available to the Court to include:</p> <ul style="list-style-type: none"> <li>• an order directing the participant to pay to the</li> </ul>	EWOV has no comment to make on this recommendation.

<sup>1</sup> References to 'regulated entities' in the paper are to distributors and retailers required to hold a national businesses authorisation as proposed in Working Paper 3.

No.	Subject	Recommendation	Comments
		<p>Commonwealth an amount up to the amount of any financial benefit attributable to the breach;</p> <ul style="list-style-type: none"> <li>• an order directing the participant to compensate any other person who has suffered loss or damage as a result of the breach; and</li> <li>• any other order that the Court considers appropriate.</li> </ul>	
81.	Infringement notices	The provisions currently contained in the NEL (and to be included in the NGL) giving the AER the power to issue infringement notices where the AER believes that there has been a breach of a civil penalty provision should apply to the non-economic distribution and retail regulatory obligations to be included in the national framework.	EWOV agrees that infringement notices should be a mechanism available to the AER.
82.	Administrative remedies	The NEL and NGL should include provisions that enable the AER to accept enforceable undertakings modelled on section 87B of the <i>Trade Practices Act 1974</i> (C'th).	EWOV supports the recommendation that the AER should be able to accept enforceable undertakings.
83.	Revocation of business authorisation	The AER's power to revoke a business authorisation should be limited to circumstances where a distributor or retailer ceases to satisfy the entry tests and not be available as an enforcement mechanism to address one-off breaches.	EWOV does not disagree with this, except that currently non-membership of a dispute resolution scheme by a licensed entity puts that entity in breach of its licence. It is of concern that non-membership of an approved dispute resolution scheme may not be regarded seriously under these arrangements.
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</li> </ul>	EWOV agrees that it is sensible for remedies to be pursued in lower courts, but otherwise has no comment to make on this recommendation.

No.	Subject	Recommendation	Comments
		<p>the NER should apply in respect of the distribution and retail rules; and</p> <ul style="list-style-type: none"> <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>	

No.	Subject	Recommendation	Comments
<b>Statutory objectives</b>			
85.	Objectives of the NEL and NGL	There is no need to amend the statutory objectives to be included in the NEL and NGL to accommodate the transfer of the non-economic distribution and retail regulatory functions to the national framework.	EWOV maintains its view that the objectives as currently expressed in the NEL and NGR are too narrowly focussed on economic and technical outcomes.
86.	Supplementary objectives	To the extent that the contrary view is taken and it is considered that the general objectives are not adequate to provide guidance for the non-economic distribution and retail regulatory functions, this will be better addressed by more specific direction targeted at the particular regulatory functions concerned rather than at the level of the general objective. This could be achieved by the inclusion of supplementary objectives to which the AEMC and AER must have regard in giving effect to the primary statutory objective.	EWOV believes that the specification of a set of supplementary objectives would better allow regulation of the electricity and gas sectors to respond to the increasingly complex and demanding environment within which they operate.

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

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

No.	Subject	Recommendation	Comments
<b>Calculation of Charges</b>			
	Tariffs and charges	<p>Charges are to be made on the basis of tariffs and charges specified in the contract or published in accordance with prescribed, uniform publication requirements (such as in the Gazette and/or a general circulation newspaper and/or on the retailer's internet site). [Note: the level of tariffs and charges remains subject to jurisdictional regulation.]</p> <p>Any variation to standing offer tariffs and charges must be published in advance of the variation taking effect.</p> <p>Upon request, a retailer must provide a customer with information reasonably available to the retailer on network charges, retail charges and any other charges relating to the sale or supply of energy.</p> <p><b>Market Contract Annotation</b></p> <p>Publication requirements do not apply to market contracts. Market contract tariffs must be included in the contract and variations must be notified to the customer in accordance with requirements set out in the contract.</p>	<p>EWOV is concerned by the removal of the requirement for individual notification to customers on market contracts of changes to tariffs. It notes the recommendation that variations must be notified to the customer in accordance with requirements set out in the contract, but notes that the ability to vary contracts unilaterally is a vexed issue, and effective notification is a minimum requirement.</p> <p>It is suggested that this requirement could be made more specific in two ways: firstly the requirement should be for effective publication, that is, publication in a way that has a reasonable chance of being seen by customers, and secondly, that the notification should be at least two months in advance.</p>
	Use of meter data	Unless otherwise permitted, a retailer must base the calculation of charges for a small customer's bill on metering data provided by the	EWOV supports these recommendations and believes they would be enhanced by a further requirement that the

No.	Subject	Recommendation	Comments
		<p>distributor or other responsible person in accordance with the Rules.</p> <p>A retailer may base the calculation of charges under a bill on an estimation of a small customer's consumption of energy in the following circumstances:</p> <ul style="list-style-type: none"> <li>• where the customer consents to the use of estimates by the retailer;</li> <li>• where the retailer is not able to reasonably or reliably base the bill on a meter reading; or</li> <li>• where metering data is not provided to the retailer by the distributor or other responsible person.</li> </ul> <p><b>Market Contract Annotation</b></p> <p>May be varied by agreement in market contracts.</p>	<p>bill indicates clearly that it is an estimated bill where this is the case.</p>
	Meter reads	<p>A retailer must use its best endeavours to ensure that a meter reading takes place at least once in each 12 month period.</p>	<p>EWOV supports these requirements applying to standing offer and market contracts.</p> <p>Given the size of back-bills that can result from underestimations, a 6 month provision is preferable to a 12 month provision. However, EWOV recognises the practical difficulties of this where the customer does not provide access to the meter.</p>
	Estimations	<p>Where estimations are permitted to be used as the basis for the calculation of energy charges under a bill for a small customer, the estimations may be based on:</p> <ul style="list-style-type: none"> <li>• the customer's reading of the relevant meter;</li> <li>• historical meter data for the relevant customer reasonably available to the retailer; or</li> <li>• where there is no historical meter data for the relevant</li> </ul>	<p>EWOV supports these requirements applying to standing offer and market contracts.</p>

No.	Subject	Recommendation	Comments
		customer, the average usage of energy by a comparable customer over the corresponding period.	
	Bill smoothing	<p>Where a retailer is entitled to use estimations as the basis for the calculation of charges under an energy bill, estimated bills may be provided under a smoothing arrangement if:</p> <ul style="list-style-type: none"> <li>• the amount payable each month is initially the same;</li> <li>• the retailer's estimate is based on the customer's historical billing data or, if no such data exists, the average consumption of a similar customer;</li> <li>• the retailer re-estimates consumption after six months; and</li> <li>• the difference between the initial estimate and the re-estimate is greater than 10%, the retailer resets the amount payable under each of the remaining bills to reflect the difference.</li> </ul> <p><b>Market Contract Annotation</b></p> <p>May be varied by agreement in market contracts.</p>	EWOV supports these requirements applying to standing offer and market contracts.
	Meter access	<p>A customer must allow the retailer or its representative (ordinarily the distributor) safe and unhindered access to the supply address for the purposes of reading the meter.</p> <p>If a failure to provide access results in a charge being based on an estimation and the customer subsequently requests an actual read, the retailer may charge the customer its reasonable costs of complying with the request.</p>	EWOV believes that these are reasonable recommendations.
<b>Termination</b>			
	Retailer termination	<p>A retailer may terminate a small customer supply contract where:</p> <ul style="list-style-type: none"> <li>• the retailer has a contractual right to disconnect, disconnection has occurred and there is no contractual right to reconnection;</li> </ul>	EWOV supports this recommendation applying to standing offer and market contracts.

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> <li>the small customer and the retailer have entered into a new customer contract; or</li> <li>the small customer has transferred to another retailer.</li> </ul> <p><b>Market Contract Annotation</b></p> <p>Market contracts may provide for additional termination events, but must not vary the provisions relating to disconnection.</p>	
	Customer termination	<p>A small customer may terminate a standing offer contract upon five business days notice to the retailer.</p> <p><b>Market Contract Annotation</b></p> <p>A small customer is required to give no more than 28 days notice to terminate a market contract.</p>	<p>EWOV notes the increase in the notice period for standing offer contracts from three to five days, but also the reason for this increase.</p> <p>EWOV supports these requirements, subject to an acknowledgment that in exceptional circumstances a customer may not be able to give this notice (e.g. escaping from domestic violence).</p>
<b>Security</b>			
	Provision of security	<p>A retailer may require a small customer to provide a security deposit where:</p> <ul style="list-style-type: none"> <li>the small customer still owes that retailer in relation to the supply of electricity to another address;</li> <li>the customer has unlawfully acquired energy within the past two years;</li> <li>the customer has refused to provide acceptable identification to the retailer; or</li> <li>the retailer reasonably considers that the customer does not have a satisfactory credit history and the customer has refused an instalment plan offered by the retailer.</li> </ul>	<p>EWOV largely supports these requirements applying to standing offer and market contracts, subject to the following amendments:</p> <ul style="list-style-type: none"> <li>The first dot point should state that the amount owed must be no more than an amount nominated by the regulator. Otherwise, a security deposit could be required over a very small debt, which would be disproportionate.</li> <li>The fourth dot point needs to provide guidance about the basis upon which the retailer can form the view that the customer does not have a satisfactory credit history. The basis should be restricted to there being</li> </ul>

No.	Subject	Recommendation	Comments
		<p><b>Market Contract Annotation</b></p> <p>May be varied by agreement in market contracts.</p>	<p>a 'relevant default'. This should be carefully defined, bearing in mind that electricity and natural gas are essential services, as has been done at clause 2.1 of the VESC's <i>Credit Assessment Guidelines</i>.</p>
	<p>Information about credit history</p>	<p>If a retailer requires a security deposit on the basis that a small customer has an unsatisfactory credit history, the retailer must inform the customer:</p> <ul style="list-style-type: none"> <li>• that the retailer has decided the customer has an unsatisfactory credit history;</li> <li>• the reasons for the retailer's decision;</li> <li>• of the customer's rights to raise a complaint; and</li> <li>• that the customer has the right to obtain details in relation to the information on which the retailer's decision was based.</li> </ul>	<p>EWOV supports these requirements applying to standing offer and market contracts, and believes the retailer should also inform the customer about the right to internal and external dispute resolution.</p>
	<p>Amount of security</p>	<p>The amount of security may not exceed 1.5 times the average quarterly bill (for customers on a quarterly billing cycle) or 2.5 times the average monthly bill (for customers on a monthly billing cycle).</p> <p>Average quarterly and monthly bills should be determined by the AER.</p> <p><b>Market Contract Annotation</b></p> <p>May be varied by agreement in market contracts.</p>	<p>In supporting these requirements previously, EWOV had assumed that the amount of security deposit was calculated on the basis of that customer's consumption. If it is to be calculated on the basis of an average household's consumption, the amount of the security deposit could be quite high for a single person. EWOV would prefer the amount of the security deposit to be related to that customer's actual or likely consumption.</p>
	<p>Interest</p>	<p>The retailer must pay interest on a security deposit to the customer in accordance with an interest rate specified initially in the Rules and subject to periodic review by the AER.</p>	<p>This approach will achieve a standard rate across jurisdictions, which is good.</p>
	<p>Application of security</p>	<p>The retailer may only apply a security deposit to off-set amounts</p>	<p>EWOV supports this requirement applying to standing</p>

No.	Subject	Recommendation	Comments
		<p>owed to it where the customer:</p> <ul style="list-style-type: none"> <li>• has failed to pay a bill which results in disconnection by the retailer and there is no contractual right to reconnection;</li> <li>• vacates the property;</li> <li>• requests disconnection; or</li> <li>• transfers to another retailer.</li> </ul> <p>The retailer must account to the customer within 14 days after application of the security deposit.</p>	offer and market contracts.
	Repayment of security	The retailer must repay a security deposit to the customer after the customer has completed 12 months of on-time payment of energy charges or where the customer ceases to take supply from the retailer at the relevant address.	EWOV welcomes the addition of the words ' <i>from the retailer</i> ' in this recommendation.
<b>Billing, apportionment of payment, disputes</b>			
	Frequency of bills	<p>Energy bills must be issued by the retailer at least every three months.</p> <p><b>Market Contract Annotation</b></p> <p>May be varied by agreement in market contracts.</p>	EWOV supports this requirement applying to standing offer and market contracts
	Content of bills	<p>A bill should include the following content:</p> <ul style="list-style-type: none"> <li>• customer's name, account number and address;</li> <li>• meter identifier;</li> <li>• bill period;</li> <li>• due date;</li> <li>• amount of arrears or credits;</li> <li>• relevant tariff;</li> </ul>	<p>EWOV supports these requirements applying to standing offer and market contracts.</p> <p>EWOV welcomes the addition of items it suggested in its submission on Working Paper 1, as well as some other items.</p> <p>However, the absence of a requirement for a consumption graph is regretted.</p>

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> <li>• whether the bill was issued as a result of a meter read or an estimation and, if issued as a result of a meter read, the date of the meter reading;</li> <li>• values of meter readings (or, if applicable, estimations) at the start and end of the billing period;</li> <li>• details of consumption or estimated consumption;</li> <li>• pro rata billing information (if applicable);</li> </ul>	
		<ul style="list-style-type: none"> <li>• any amount deducted, credited or received under a Government rebate or concession scheme or under an instalment plan;</li> <li>• the amount of any security deposit;</li> <li>• the network charge and details of any other miscellaneous charges;</li> <li>• details of the available payment methods;</li> <li>• details of any available government funded concessions or rebates;</li> <li>• telephone number for account and fault enquiries;</li> <li>• contact details for complaints; and</li> <li>• availability of interpreter services in community languages.</li> </ul> <p>Amounts billed for goods and services (other than the supply of energy) must be included in a separate bill or as a separate line item on an energy bill.</p>	<p>There should also be a requirement for details of the jurisdictional ombudsman to appear on bills annually.</p>
	<p>Payment terms</p>	<p>The due date for payment of a bill may not be less than a prescribed period after the date on which the bill is sent out.</p> <p><b>Market Contract Annotation</b></p> <p>May be varied by agreement in market contracts.</p>	<p>EWOV supports this requirement applying to standing offer and market contracts. Given the current consensus around 'not less than 12 business days', it would be sensible to adopt this in national regulation for both standing offer and market contracts.</p>

No.	Subject	Recommendation	Comments
	Apportionment	<p>If a bill includes amounts payable for other goods and services provided by the retailer (apart from the supply of energy), any payment made in relation to such a bill must be applied firstly to the payment of the energy charge, unless otherwise directed by the customer or agreed by the customer.</p> <p><b>Market Contract Annotation</b></p> <p>May be varied by agreement in market contracts.</p>	EWOV supports this requirement applying to standing offer and market contracts.
	Historical billing information	A retailer must provide historical billing data for the previous 12 months on request and without charge to a small customer. Any information provided prior to that period or more than once in any 12 month period may be subject to a reasonable charge.	EWOV supports this requirement applying to standing offer and market contracts.
	Billing disputes	<p>A retailer must review a bill upon the request of a small customer in accordance with the retailer's standard complaints and dispute resolution procedures and in accordance with any time limits applicable under those procedures.</p> <p>The customer may require the retailer to undertake a meter test, with the cost of the test to be borne according to the outcome of the test.</p> <p>Retailers may require a customer to pay the greater of:</p> <ul style="list-style-type: none"> <li>• the portion of the bill under review which is not in dispute; or</li> <li>• an amount equal to the average amount of the customer's bills over the previous year (excluding the bill in dispute),</li> </ul> <p>and any future bills that are properly due.</p> <p>Where, after conducting a review of the bill, a retailer is satisfied that the bill is:</p> <ul style="list-style-type: none"> <li>• correct, the customer must pay the amount outstanding; or</li> <li>• incorrect, the retailer must adjust the bill accordingly and refund</li> </ul>	EWOV partially supports these requirements, but notes that the customer, if not satisfied by the retailer's review of the issue, has the right to take the matter to the relevant jurisdictional ombudsman. The current wording of the recommendation does not require the retailer to investigate the bill, but merely to review it. The recommendation would be better if it noted that the customer has the right to take the matter to an Ombudsman.

No.	Subject	Recommendation	Comments
		any fee paid in carrying out any metering test.	
<b>Undercharging and overcharging</b>			
	Undercharging	A retailer may recover from a customer any amount undercharged during the previous 12 months (unless the undercharging arises as a result of the fault or unlawful action of the customer, in which case the 12 month limitation does not apply). Interest is not payable on the amount undercharged and the customer must be given a period of time to pay any undercharged amount commensurate with the period of the undercharging. Any amount undercharged must be listed and explained as a separate item on the customer's next bill or on a separate bill.	As noted in EWOV's submission to Working Paper 1, an ability to bill for 12 months where the retailer has undercharged as a result of its own systems or staff error is harsh and could cause hardship. In Victoria, the period of recovery of undercharging where the retailer has been at fault is nine months and even this can cause financial strain. EWOV is opposed to setting this period at 12 months, and recommends six months.
	Overcharging	A retailer must promptly inform the customer upon becoming aware of an overcharge and must repay any amount overcharged. If the amount overcharged is less than a threshold amount, the retailer must credit that amount to the next bill. If the amount overcharged exceeds the relevant threshold, the retailer must repay the amount as directed by the customer or, where there is no such direction, credit the customer's next bill.	EWOV supports these requirements applying to standing offer and market contracts and supports the New South Wales threshold amount of \$25.
<b>Payment methods and difficulties</b>			
	Payment methods	<p>A retailer must accept payment by a small customer by any of the following payment methods:</p> <ul style="list-style-type: none"> <li>• in person;</li> <li>• by telephone;</li> <li>• by mail; or</li> <li>• by direct debit.</li> </ul> <p>Where a direct debit arrangement is entered into, the retailer and the</p>	EWOV supports these requirements applying to standing offer and market contracts.

No.	Subject	Recommendation	Comments
		<p>small customer must agree the amount, date and frequency of the direct debits and the customer's cancellation options.</p> <p><b>Market Contract Annotation</b></p> <p>May be varied by agreement in market contracts. If direct debit is provided for in the market contract, the last paragraph must be complied with.</p>	
	<p>Payment difficulties</p>	<p>A retailer must offer a small customer an instalment plan where the customer informs the retailer that it is experiencing payment difficulties [or it becomes apparent to the retailer that the customer is experiencing payment difficulties]. Where customers are experiencing payment difficulties, retailers must provide information to those customers in relation to available concessions or Government assistance, independent financial counselling services and their ability to have the bill redirected to a consenting third party.</p> <p>A retailer is not required to offer an instalment plan if the customer has had two instalment plans cancelled due to non-payment in the previous 12 months.</p>	<p>Mindful of the prevalence of affordability complaints reaching our office, EWOV supports these requirements applying to standing offer and market contracts. In addition, EWOV suggests a requirement on energy retailers to provide information about energy efficiency.</p> <p>EWOV considers it would be a seriously retrograde step if the current requirement for energy retailers in Victoria to have an approved hardship policy was dismantled.</p> <p>EWOV regrets that the words 'or it becomes apparent to the retailer that the customer is experiencing payment difficulties' have been placed in limbo. It is not an unreasonable requirement on retailers to reach that conclusion where there is a relevant history. While it is desirable that the customer self-identifies, that may be difficult in some circumstances.</p> <p>EWOV suggests that the words 'is not' be replaced by 'may not be' in the sentence starting 'a retailer is not required to offer an instalment plan'.</p>
	<p>Shortened collection period</p>	<p>Conditions under which a customer may be placed on a shortened collection period and under which the customer must be returned to the normal collection period.</p>	<p>If shortened billing cycles are to be permitted, then there should be closely defined limits on when they are allowed, as is set out in the Victorian <i>Energy Retail Code</i> (e.g.</p>

No.	Subject	Recommendation	Comments
			where the customer has received reminder notices on three consecutive bills, prior warning, etc).
<b>Disconnection</b>			
	Grounds for disconnection	<p>A retailer may disconnect or discontinue supply where:</p> <ul style="list-style-type: none"> <li>• a small customer has not paid a bill;</li> <li>• access to a meter has been denied by a small customer for three consecutive scheduled readings without reasonable excuse;</li> <li>• the customer has refused to provide acceptable identification or security;</li> <li>• a customer has acquired energy illegally;</li> <li>• a customer has obstructed an authorised person in relation to acts to be done under the contract; or</li> <li>• a market contract has been terminated in accordance with the terms of the contract.</li> </ul>	EWOV regards these recommendations as reasonable, subject to the comments made below.
	Limitations on disconnection	<p>Other limitations will apply to the right to discontinue supply in circumstances where a small customer has not paid a bill on account of having insufficient income. In these circumstances, the retailer is required to comply with its obligations in respect of customer payment difficulties (eg to offer instalment plans or special payment arrangements and to make referrals to counselling services, etc) before proceeding to disconnect a customer. Retailers are not entitled to disconnect while an application for Government assistance or a payment plan is pending. In addition, premises registered as containing life support or other medical equipment may not be disconnected and retailers may only carry out disconnections before specified times of the day and on specified days.</p>	<p>EWOV regrets that this recommendation has not incorporated its suggestion that there also be a limitation on disconnection while a customer has an unresolved complaint relating to the relevant bill, either with the retailer or with the jurisdictional Ombudsman.</p> <p>Otherwise these limitations on disconnection are reasonable.</p>

No.	Subject	Recommendation	Comments
	Notice	<p>Disconnection may not be effected until the retailer has provided the customer with:</p> <ul style="list-style-type: none"> <li>• a reminder notice; and</li> <li>• a disconnection notice,</li> </ul> <p>containing prescribed information and at prescribed minimum intervals.</p> <p>In addition, where the customer is experiencing payment difficulties the retailer must make a reasonable attempt to contact the customer by telephone or other specified means.</p>	<p>EWOV is pleased to see that reference to prescribed information and prescribed minimum periods has been included. However, EWOV sees no reason why a reasonable attempt to contact the customer should be limited to customers experiencing payment difficulty. Retailers should be making a reasonable effort to contact <b>any</b> customer who is likely to be disconnected. In fact, as stated in our previous submission, EWOV believes that the words 'make a reasonable attempt' should be replaced with 'use its best endeavours' as in the VESC's <i>Energy Retail Code</i>.</p> <p>The prescribed information to be included in the disconnection notice should include information about the jurisdictional Ombudsman, including its name and phone number.</p>
	Reconnection	<p>A retailer must notify a small customer of the arrangements which the customer will need to make in respect of reconnection, including any costs payable by the customer. Any payment arrangements for reconnection must allow for fair and reasonable payments at fair and reasonable intervals.</p> <p>A retailer must reconnect premises if the breaches described above are remedied within 10 business days. Retailers must make appropriate arrangements with the relevant distributor to ensure that reconnection occurs as soon as possible for the customer.</p>	<p>EWOV supports these requirements applying to standing offer and market contracts. Reconnection should take place as soon as breaches are remedied.</p>
<b>Liability and warranties</b>			
	Liability and warranties	<p>A retailer must not include any term or condition in an energy contract that limits the liability of the retailer for breach of the</p>	<p>EWOV supports these requirements applying to standing offer and market contracts.</p>

No.	Subject	Recommendation	Comments
		<p>contract or negligence by the retailer, provided that:</p> <ul style="list-style-type: none"> <li>• the retailer's liability may be limited as contemplated by section 68A of the <i>Trade Practices Act</i> or by equivalent State or Territory legislative provisions; and</li> <li>• there is no variation or exclusion of relevant legislative provisions which provide that the retailer is not liable for damages for failure to supply due to circumstances beyond its control (ie section 120 of the NEL).</li> </ul> <p>A retailer may not include in an energy contract with a small customer a term pursuant to which the customer indemnifies the retailer, so that the retailer may recover from the customer an amount greater than the retailer would otherwise have been able to recover at general law for breach of contract or negligence by the customer in respect of the contract.</p>	
<b>Miscellaneous</b>			
	Prepayment meters	A customer may agree but cannot be required to use a prepayment meter.	EWOV supports this requirement applying to standing offer and market contracts.
	Dispute resolution and complaints	A retailer must handle a complaint made by a small customer in accordance with the relevant jurisdictional dispute resolution process.	<p>EWOV believes this is a point at which there needs to be clarity about the standard applying to internal dispute resolution (IDR) as well as those applying to external dispute resolution (EDR). IDR requirements should include standards about maintaining records about customer complaints, reporting on complaints, internal escalation and referring complaints to EDR bodies.</p> <p>As set out in the letter of submission, EWOV believes it is inadequate merely to refer to 'the relevant jurisdictional dispute resolution process' because there is essential material related to dispute resolution schemes in licences</p>

No.	Subject	Recommendation	Comments
			and this material needs to be captured in the Rules.
<b>Additional provisions required in market contracts</b>			
	Cooling-off period	<p><b>Market Contract Annotation</b></p> <p>A retailer must ensure that each market contract entered into with a small customer enables the customer to rescind the contract within 10 business days after the contract is entered into or, if later, after the customer receives prescribed information relating to the cooling off period.</p>	EWOV welcomes the addition that recognises the start of the cooling-off period should date from the customer's receipt of prescribed information.
	Dual fuel contracts	<p><b>Market Contract Annotation</b></p> <p>In the case of dual fuel bills, payment is to be made as agreed with or directed by the customer. If there is no such agreement or direction, payment is to be applied in proportion to the relative value of the electricity and gas charges.</p> <p>If disconnection is permitted, a retailer must ensure that a small customer on a dual fuel contract is initially disconnected from gas supply and that disconnection from electricity supply occurs within a certain period after the disconnection notice, unless otherwise directed by the customer or agreed by the customer.</p>	EWOV supports these requirements applying to standing offer and market contracts.
	Early termination charges	<p><b>Market Contract Annotation</b></p> <p>The retailer may only impose an early termination charge under a small customer market contract if:</p> <ul style="list-style-type: none"> <li>• the market contract includes details of the amount or manner of calculation of the early termination charge; and</li> <li>• the early termination charge is a reasonable estimate of the cost to the retailer resulting from the early termination.</li> </ul>	EWOV accepts this provision but notes that it should also be a requirement to notify customers about early termination charges as part of pre-contract disclosure.

No.	Subject	Recommendation	Comments
<b>Provisions included for consideration in Working Paper 1 but not proposed to be included in standing offer or market contract terms</b>			
	Assessing credit risk (limiting assessment to utility related debt)	In deciding whether a small customer has an unsatisfactory credit history, a retailer may only have regard to any relevant utility related default by that small customer.	As stated in our previous submission, EWOV supports a requirement to have regard only to relevant defaults and is therefore concerned by the removal of this item.
	Customer consultative groups	A retailer must establish a customer consultative group.	EWOV agrees that, while customer consultative groups can be valuable, it is not a contractual term.
	Discrimination based on customer supply or use of alternative energy sources	A retailer must not refuse to supply or supply on inferior terms on the basis that the customer supplies or uses alternative forms or sources of energy or services that reduce the demand for energy.	EWOV agrees that this is not a contractual term.
	Fees for late payment	Prohibition on fees for late payment.	EWOV's preference is that fees for late payment for small customers be prohibited. They merely add to the debt for people already experiencing difficulty in meeting their utility bills.
	Compensation for wrongful disconnection	Retailers must pay compensation to customers who are wrongfully disconnected.	EWOV has seen the benefits of this provision in Victoria. We support the idea that it could potentially form part of the service standard regime.
<b>Provisions to be included in the Rules (and not as standing offer or market contract terms)</b>			
	Communications with customers	A retailer must provide access to multi-lingual services (for languages common to the relevant customer base) in order to meet the reasonable needs of its small customers.	EWOV agrees that this is appropriate for regulation, not as a term in standing offer or market contracts.
	Customer information	A retailer must make available on request and without charge standardised information to a small customer concerning his or her rights, entitlements and obligations.	EWOV can see some benefit in this being a contractual term. It does not seem to be as obviously a matter for regulation as the above item.
	Competitive pricing information	The Rules should permit (but not require) the AER to require pricing information to be presented in a format which enables comparison between competing offers.	The removal of this to the regulatory area is going to mean significant delays in the availability of comparative material in those jurisdictions where a similar requirement is not

No.	Subject	Recommendation	Comments
			already in force.
<b>Provisions subject to separate policy review</b>			
	Consumption graphs	Bills to include comparative consumption data.	<p>The first three items in this list of matters subject to separate policy review are all to do with energy efficiency. Categorising them as subject to policy review means that retailers do not need to do anything to help their customers to become more aware of energy efficiency or to equip them to improve their energy efficiency. Given the immediacy of energy efficiency as an issue, this seems to be a perverse outcome.</p> <p>EWOV believes that at least consumption graphs should be mandatory.</p>
	Provision of energy efficiency advice	On request, a retailer must provide energy efficiency advice to a small customer.	See comment immediately above.
	Greenhouse gas emissions information on bills	Bills must include information concerning greenhouse gas emissions in accordance with guidelines.	See comment above.
	CSOs	Retailers may be required to deliver government funded CSOs.	EWOV accepts that this is a matter for jurisdictional regulation.
	Service standards	Retailers must comply with specified service standards.	EWOV regrets the delay to the implementation of service standards since these are of benefit to consumers.

### Part 3 – Regulation of marketing conduct

The recommended requirements would apply to marketing conduct involving small customers.

No.	Subject	Recommendation	Comments
	Pre-contractual disclosures - timing/form	<p>A retailer must provide a small customer with certain prescribed information as follows:</p> <p>(a) <b>prior to formation of a market contract:</b> where the prescribed matters may be disclosed in writing, electronically or verbally; and</p> <p>(b) <b>as soon as practicable after formation of a market contract:</b> pursuant to a single written disclosure statement (unless such disclosure statement has already been provided).</p>	<p>EWOV believes the change to this recommendation is acceptable, given the change to the starting date of the cooling-off period, to the date at which this information is received. It would not be acceptable if this change was made without the other as well.</p>
	Pre-contractual disclosures - required disclosures	<p>The information which a retailer must provide in the manner described above is information in relation to:</p> <p>(a) <b>prices, charges, penalties, billing and payment arrangements:</b> all applicable prices, charges, early termination payments and penalties, security deposits, service levels, concessions or rebates, billing and payment arrangements and how any of these matters may be changed;</p> <p>(b) <b>contract duration:</b> the commencement date and duration of the contract, the availability of extensions and whether the contract can be transferred to other premises if the customer moves out during the term of the contract;</p> <p>(c) <b>cooling-off period:</b> any rights to rescind the contract, including how to exercise these rights;</p>	<p>This list appears reasonable, but please see our comments on the dispute resolution clause below.</p> <p>Customers also need to be informed about the binding nature of contracts entered into over the phone.</p>

No.	Subject	Recommendation	Comments
		<p>(d) <b>electronic transactions:</b> if any marketing requirement is to be complied with by an electronic transaction, how the transaction is to operate and, as appropriate, that the customer will be bound by the electronic transaction or will be recognised as having received the information contained in the electronic transaction; and</p> <p>(e) <b>standard supply contracts:</b> the availability of standing offer supply contracts and the relevant regulator's contact details.</p>	
	Cooling-off period	Unless such information has previously been supplied to the small customer, a retailer must send documentation to the small customer providing details of the customer's right to rescind the market contract, including information about how to exercise this right, at least 10 business days prior to the expiry of the cooling-off period.	EWOV sees this preservation of the 10 day cooling-off period as a customer benefit.
	Dispute resolution and complaints	A retailer must advise a small customer of its right to complain to the retailer in respect of any marketing activity conducted on behalf of the retailer and, if such complaint is not satisfactorily resolved by the retailer, of the customer's right to complain to the relevant industry ombudsman.	<p>Given that this has been removed from the list of pre-contractual disclosures, it is hard to see what mechanism a retailer will use to inform customers of this. Presumably it would still need to be an item included in the 'Welcome Pack' or be in a Customer Charter distributed to a customer soon after an account is set up.</p> <p>EWOV also has some concern about the fact that there is no indication of the time within which a retailer must fulfil this obligation. Is it 'as soon as possible' or some other period?</p> <p>The obligation should not be just to tell the customer of the right to complain to the relevant industry Ombudsman; the obligation should extend to giving the name and telephone number of that Ombudsman.</p>

No.	Subject	Recommendation	Comments
	General conduct standards	<p>Marketers must, and retailers must ensure that marketers, comply with all applicable Commonwealth and State and Territory laws in relation to:</p> <ul style="list-style-type: none"> <li>(a) misleading, deceptive or unconscionable conduct;</li> <li>(b) undue pressure, harassment or coercion; and</li> <li>(c) the quality, form and content of marketing information.</li> </ul> <p>Marketers should have, and retailers should ensure that marketers have, adequate product knowledge. Adequate product knowledge covers knowledge of matters such as tariffs, billing procedures and the availability of rebates and concessions.</p>	<p>EWOV is concerned that these matters may not be adequately enforced if there is not an energy-specific regime.</p> <p>In relation to the last paragraph of this recommendation, EWOV believes that these should be expressed as obligatory, ie with 'must' rather than 'should'.</p>
	Duties of marketers	<p>At all times in connection with any marketing activity, a marketer must identify his or herself to a small customer. Identification involves the marketer using best endeavours to provide the small customer with:</p> <ul style="list-style-type: none"> <li>(a) the marketer's first name;</li> <li>(b) any relevant identification number;</li> <li>(c) the name of the retailer on whose behalf the marketing contact is being made and contact details for the retailer;</li> <li>(d) sufficient contact details to enable the customer to contact the marketer; and</li> <li>(e) advice as to the purpose of the marketing contact.</li> </ul> <p>Where marketing is conducted in person, a marketer must wear an identification badge showing the marketer's photograph, first name and the name of the retailer on whose behalf the marketing contact is being made.</p>	<p>EWOV supports this item of regulation. We receive many cases in which the customer is either confused or mistaken as to the identity of the retailer being represented, too many for all of them to be due to customer inattention or assumption. It is helpful to have a clear statement regarding a marketer's obligation to identify themselves and the name of the retailer they represent.</p>
	Training	Retailers must ensure that marketers are appropriately trained in	EWOV supports this requirement which is inherent in

No.	Subject	Recommendation	Comments
		relation to compliance with marketing obligations.	having requirements at all.
	Record keeping	Retailers must keep records of all marketing related activities, including details of marketing visits which have been conducted, and telephone marketing calls which have been placed. Retailers must also retain records of any explicit informed consent obtained by a marketer for two years after such consent is obtained.	EWOV strongly supports this requirement. Without these records, it would be impossible to resolve marketing complaints that come to this office.
	Compliance audits	A retailer may be required by the AER to conduct a compliance audit in respect of the compliance by marketers with their marketing obligations.	EWOV sees this as an unwarranted dilution of the earlier recommendation, for which no rationale appears to have been given.
	Contact times	Not included.	EWOV accepts the rationale given for the exclusion of these requirements.
	Contact records	Not included.	See above.

## Part 4 – Regulation of distributor-customer contract terms

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

No.	Subject	Recommendation	Comments
	Commencement of contract (as between the distributor and the customer at particular premises)	<p>When the deemed contract commences in relation to a particular customer and premises, being:</p> <ul style="list-style-type: none"> <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>	EWOV supports the recommendation.
	Collection of charges	An explanatory term may be included noting that charges for distribution services are paid to the retailer and that the distributor may not charge the customer directly for services unless it has a separate agreement with the customer.	EWOV supports the recommendation.
	Termination of services	<p>When the deemed contract ends in relation to a particular customer and premises, being the earlier of:</p> <ul style="list-style-type: none"> <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> <li>the effective date of a negotiated distribution contract for the premises; or</li> </ul>	EWOV supports the recommendation.

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> <li>the date otherwise agreed between the customer and the distributor.</li> </ul>	
	Interruptions to supply	The contract should adopt the provisions of the Rules in relation to interruptions and curtailments to supply.	EWOV supports the proposal to set out the circumstances in which a distributor is permitted to interrupt or curtail supply, and the distributor's obligations in relation to the provision of notice and information to customers, in the Rules, as well as in the deemed distribution contract.
	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>EWOV suggests the requirement for a distributor to comply with any jurisdictionally imposed service level obligations should be noted in the Rules, as well as in the deemed distribution contract.</p> <p>The deemed distribution contract should also clarify for the customer how any payment for failure to meet the service standards will be received.</p> <p>In addition to the service standards listed here, there is also a Guaranteed Service Level payment in Victoria relating to the repair of street-lighting.</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</li> </ul>	EWOV remains concerned at the breadth of the limitation of liability for reliability and quality of supply. It suggests that there would be no liability for damage and disruption caused by, for example, an underperforming feeder which

No.	Subject	Recommendation	Comments
		<p>extent the distributor is entitled to do so under Law, Rules or contract;</p> <ul style="list-style-type: none"> <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>The contract should state that none of these limitations will limit any obligation to make a GSL/compensation payment.</p>	<p>is scheduled for upgrade at some time in the future. In this instance there can be major disruptions for residential customers and losses for business customers.</p> <p>It also suggests that liability is excluded for voltage variation incidents, which is a most unfair outcome for consumers. EWOV believes, as it submitted previously, that the Victorian <i>Voltage Variation Guideline</i> should be adopted nationally, and that there would be benefits in doing this for distributors as well as for customers. It is regrettable that no serious consideration appears to have been given to this, as there is no doubt that this area will remain problematic and generate customer complaints, without the Guideline.</p>
	Provision of information	May include an obligation on the distributor to provide information to a customer or its retailer on request about that customer's consumption, applicable network tariff or connection.	EWOV supports this recommendation.
	Disconnections and reconnections (excluding temporary supply interruptions)	<p>The contract should adopt the provisions of the Rules in relation to the circumstances in which a distributor may, or must, disconnect. The contract should also specify when a distributor must not disconnect. These circumstances may include (subject to emergencies):</p> <ul style="list-style-type: none"> <li>• time of day and weekend/holiday restrictions for small customers;</li> <li>• for electricity, if the address has a registered life support system;</li> <li>• where required notices have not been given;</li> <li>• where a complaint remains unresolved; or</li> </ul>	EWOV strongly supports the disconnection provisions being in the Rules and then adopted in the deemed distribution contract.

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> <li>• if a distributor reasonably considers that distribution would immediately endanger health or safety.</li> </ul> <p>Reconnection should be effected:</p> <ul style="list-style-type: none"> <li>• as soon as practical and within one business day after the reason for disconnection has been removed and the customer requests; and</li> <li>• if a retailer requested disconnection, as soon as practical and within one business day after the retailer requests reconnection,</li> </ul> <p>subject to payment of the reconnection fee.</p> <p>A time limit for reconnection should be included, after which a request for connection would be treated as a new connection.</p>	
	Fault reporting and correction	Provision of 24-hour fault information and reporting line.	EWOV supports this recommendation, but considers that there should also be requirements about ensuring the facility is adequate and ready to be operational if an emergency situation arises. It is inappropriate for these requirements to be part of the contract, but the Rules should specify that distributors must take steps to ensure that their faults information and reporting line arrangements are up-to-date and operational. This provision would mean the distributors would have to, for example, test Interactive Voice Response systems, or ensure that they had sufficient trained staff on call to cope with emergencies. Recent events in both South Australia and Victoria attest to the need for these provisions.
	Dispute resolution	The contract should include details of the applicable complaints/dispute resolution process and require the distributor to	EWOV supports the proposal to include a dispute resolution clause in deemed distribution contracts that

No.	Subject	Recommendation	Comments
		<p>comply with the relevant rules or procedures.</p>	<p>requires the distributor to comply with the rules of the relevant dispute resolution scheme. In the absence of a licensing regime, this requirement should also be stated in the Law and Rules.</p> <p>The dispute resolution clause in deemed distribution contracts must also contain the following requirements for distributors:</p> <ul style="list-style-type: none"> <li>• A distributor must handle a complaint in accordance with the relevant jurisdictional dispute resolution process.</li> <li>• When a customer contacts a distributor in relation to the complaint, the distributor must inform the customer: <ul style="list-style-type: none"> <li>○ that the customer has a right to raise the complaint to a higher level within the distributor's management structure</li> <li>○ that, if after raising the complaint to a higher level, the customer is still not satisfied with the distributor's response, the customer may refer the complaint to the relevant external ombudsman</li> <li>○ of the name and phone number of the relevant external Ombudsman.</li> </ul> </li> </ul> <p>As noted above, there are disputes on a range of matters that require coordination by retailers and distributors to resolve, and Use of System Agreements should commit retailers and distributors to cooperate to this end.</p>
	<p>Customer obligations</p>	<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> </ul>	<p>As EWOV has previously submitted, it is unreasonable to impose obligations on customers without effective communication of those obligations. Distributors should be obliged in the Rules to undertake communication to customers in order to notify them of their rights and obligations. There have been recent excellent examples</p>

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> <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>of effective communication of these matters by some Victorian distributors.</p>

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

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

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

No.	Subject	Recommendation	Comments
		<p>Payment provisions would cover matters such as invoicing, use of meter data/estimates, adjustment of accounts for changes to meter data or correction of errors, over/under charging, interest on late payments and disputes. Provisions concerning over/under charging should be consistent with the requirements applying between the retailer and customer (see Part 2 of this document).</p> <p>These provisions may also cover the pass through of GSL payments owed by distributors to customers or provide for the direct payment of GSL payments by distributors to customers.</p>	
	<p>Changes in network tariffs or distribution services</p>	<p>The UoS agreement/interface contract would cover:</p> <ul style="list-style-type: none"> <li>• interaction between the retailer and distributor in relation to the network tariff applicable to a particular customer, in particular, for the distributor to respond to retailer requests to change a customer's applicable network tariff and for the retailer to inform the distributor of changes to the use of customer premises which may alter the applicable network tariff; and</li> <li>• notification by the distributor to the retailer of general changes in its network tariffs or other relevant charges.</li> </ul>	<p>EWOV notes the comment that the obligation to ensure customers are allocated to the correct network tariff is arguably better addressed in the distribution pricing rules and price determinations. However, the obligation to ensure correct allocation to a network tariff is something that clearly belongs in a document that is setting out the rights and responsibilities as between the distributor and the customer, that is the deemed distribution contract.</p>
	<p>Information sharing to facilitate single billing, billing disputes</p>	<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>	<p>EWOV strongly supports this recommendation since our experience has been that where distributors and retailers do not co-operate in the matter of information sharing in relation to disputes, the dispute is very much prolonged.</p>

No.	Subject	Recommendation	Comments
	Credit support*	The UoS agreement would require the retailer to provide credit support in certain circumstances and set out the approach to determining the amount and nature of the credit support, when it may be drawn and other matters.	EWOV has no comment on this.
	Termination	<p>The UoS agreement/interface contract would provide for termination rights for the distributor and retailer respectively.</p> <p>However, to protect customers in these circumstances, the relevant provisions should require a distributor to continue to provide services until the UoS agreement/interface contract has ceased to apply to all of the retailer's customers (for example, because they have transferred to a retailer of last resort).</p>	EWOV supports the recommendation that is intended to prevent a customer having their supply disconnected as a result of the cancellation of the Use of System Agreement between their retailer and the distributor. Such an event is beyond a customer's control.
	Interruptions to supply*	The UoS agreement would contain an acknowledgement of the distributor's right to interrupt supply in accordance with the Law and the Rules.	<p>EWOV supports this recommendation, subject to clarification of the detail of notice requirements.</p> <p>EWOV supports the proposal for interface provisions covering the provision of information by the distributor to retailers and a referral procedure for customer enquiries relating to interruptions.</p>
	Allocation of liability between retailer, distributor and customer	<p>The UoS agreement/interface contract would provide for the liability of the distributor and the retailer and, in particular, for:</p> <ul style="list-style-type: none"> <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> </ul>	EWOV supports this proposal, subject to its comments above on the breadth of distributors' limitations on liability.

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> <li>• third party claims procedures; and</li> <li>• liability caps, exclusion of warranties and implied terms, preservation of statutory instruments.</li> </ul>	
	Disconnections at request of retailer, distributor or end customer	<p>The UoS agreement/interface contract would provide for:</p> <ul style="list-style-type: none"> <li>• disconnections at the request of the retailer (subject to certification by the retailer that the disconnection is permitted under the Rules), which may include a requirement for the distributor to compensate the retailer where it fails to action such a request (subject to carve outs, eg. where the failure is due to health and safety reasons);</li> <li>• disconnections at the request of a customer (parties obliged to inform each other if they receive such a request);</li> <li>• acknowledgement by the retailer of other circumstances where the distributor is entitled to disconnect;</li> <li>• requirements for reconnection.</li> </ul>	EWOV supports this proposal.
	Enforcement of distributor's rights	The UoS agreement/interface contract may provide for the distributor to notify or consult with the retailer before enforcing its rights against a customer (including disconnection), and to indemnify the retailer for any assistance provided by the retailer.	It would be appropriate for such consultation to take place.
	Information sharing to facilitate connection, disconnection	See comments in relation to connection and disconnection above.	EWOV has no comment here.

No.	Subject	Recommendation	Comments
	Handling of fault complaints	<p>The UoS agreement/interface contract would provide for:</p> <ul style="list-style-type: none"> <li>• the retailer to transfer or refer to the distributor customer calls in relation to faults or emergencies;</li> <li>• the information to be provided by the distributor to the retailer in this regard, and what information the retailer may provide to the customer.</li> </ul>	<p>These are sensible provisions which could reduce the extent of customer frustration. If a customer rings the retailer and it is easy for the retailer to provide the information sought, it is sensible to do so.</p>
	Handling of complaints (including re billing)	<p>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.</p>	<p>EWOV supports this provision, but would like to see 'must' rather than 'may' so that there is an obligation to co-operate.</p>
	Other customer inquiries and claims	<p>The UoS agreement/interface contract would similarly provide for the transfer or referral of customer inquiries and may also include provisions requiring the parties to cooperate in relation to addressing such inquiries/claims. Such provisions may specifically relate to cooperation in relation to disputes referred to the Ombudsman.</p> <p>See also above in relation to allocation of liability.</p>	<p>EWOV supports this recommendation.</p>
	Metering	<p>See comments above in relation to billing. Other relevant provisions in relation to metering would be:</p> <ul style="list-style-type: none"> <li>• obligations imposed on the party responsible for metering to use best endeavours to read meters at a particular frequency and to provide metering data to the other party;</li> <li>• obligations on both parties to notify the other if they become aware of any change to access conditions to a customer premises.</li> </ul>	<p>EWOV supports this recommendation.</p>
	Information sharing in	<p>The UoS agreement/interface contract would include additional</p>	<p>EWOV supports this recommendation.</p>

No.	Subject	Recommendation	Comments
	relation to customer information and planned and unplanned outages	<p>obligations for the parties to share information:</p> <ul style="list-style-type: none"> <li>• the provision of customer details by the retailer to the distributor and of any customer details held by the distributor (eg. in relation to life support systems) to the retailer;</li> <li>• the provision of information in relation to planned and unplanned outages by the distributor to the retailer (and associated referral provisions, similar to faults, as discussed above); and</li> <li>• a general obligation to provide information required by the other party to carry out its obligations under the agreement.</li> </ul>	
	Information to be provided to the customer	The UoS agreement/interface contract would require each party to refer to the other customer requests for information relating to the other party, but may also provide for the retailer to provide information to customers on behalf of the distributor in some circumstances.	This is a sensible recommendation. EWOV supports it.
	Information sharing to facilitate churn	See comments above in relation to sharing customer information.	EWOV supports this recommendation.
	Communications generally	The UoS agreement/interface contract may provide for the parties to develop communications protocols.	EWOV supports this recommendation, and considers that although B2B arrangements are well developed, such a provision would be helpful.
	Cooperation generally	The UoS agreement/interface contract would require the parties to provide information to, and generally cooperate with, the other to enable the other party to carry out its obligations under the agreement and under its agreements with customers.	EWOV supports this recommendation.
	Dispute resolution	Dispute resolution procedure to be included.	EWOV assumes this provision refers to disputes between distributors and retailers.



- A requirement to handle complaints in accordance with the relevant Australian standard<sup>1</sup>
- A requirement to inform a customer of their right to have their matter escalated to a higher level if they are not satisfied with the resolution or information offered at the initial point of contact
- A requirement to inform a customer of their right to refer the complaint to the jurisdictional Ombudsman if they are dissatisfied by the higher level contact
- A requirement to provide in writing the name and phone number of the jurisdictional Ombudsman.

External dispute resolution in this context is the jurisdictional Ombudsman. We take the point that this is viewed as a matter for jurisdictional regulation, but we remain deeply concerned that there are currently provisions relating to dispute resolution in Victorian retail and distribution gas and electricity licences and this important material is in danger of being overlooked.

In our submission to Working Paper 3, we noted the crucial importance of ensuring that the substantive obligations that are currently licence conditions are retained in the new model – as Laws, Rules and entry requirements. Specifically, EWOV is most concerned that the Rules should contain all of the provisions about dispute resolution that are currently set out in Victorian electricity and gas retail and distribution licences.

It will be inadequate to merely regulate, at a national level, a general requirement for membership of a dispute resolution scheme in the relevant jurisdiction. Detailed provisions are required at a national level to provide clear guidance:

- to jurisdictionally-based regulators as to what the essential features of dispute resolution schemes are
- to registered entities as to their obligations in the area of dispute resolution
- to jurisdictionally-based dispute resolution schemes as to the standards which they must maintain to retain approved status.

The provisions relating to dispute resolution in the current Victorian electricity and gas licences are again provided as an attachment to this submission. In particular, clause 25.3 sets out, in practical detail, the features that are required of a dispute resolution scheme in Victoria in order for it to be able to be approved by the jurisdictional regulator. These features reflect the principles in the *National Benchmarks for Industry-Based Customer Dispute Resolution Schemes*<sup>2</sup> – namely, accessibility, independence, fairness, accountability, efficiency and effectiveness. It is important that equivalent requirements are built into the proposed national model. Further consultation with current energy Ombudsman schemes and jurisdictional regulators is required on the detail of such national requirements.<sup>3</sup>

---

<sup>1</sup> The relevant standard is AS ISO 10002—2006

<sup>2</sup> The *National Benchmarks for Industry-Based Customer Dispute Resolution Schemes* were published in 1997 by the Commonwealth Department of Industry, Science and Tourism.

<sup>3</sup> For example, clauses 25.3(e)-(h) would need to be amended to accommodate schemes that do not have a Board or that have a Board and a Council.

We regret that in the section on limitations on disconnection (p. 221), there is no mention of an unresolved dispute with the relevant Ombudsman being a reason not to disconnect. This limitation already exists in the Victorian *Energy Retail Code* and is an important safeguard to prevent wrongful disconnection.

We also have concerns that the Composite Paper has overlooked the possible involvement of the jurisdictional Ombudsman at some points, for example, in the recommendation relating to billing disputes in Part 2 of Attachment 6 (p. 218). It is common for customers to bring a billing dispute to an Ombudsman after a retailer has 'reviewed' the bill and found it to be correct. It is also common for further investigation to reveal that there was in fact a billing error. In those circumstances, the bill remains in dispute, and the customer should not be obliged to pay the disputed portion of the bill prior to the resolution of the matter.

Another point relevant to Ombudsmen is the recommendation about who should have access to NMI standing data (p. 194). The present proposal is that only retailers would have that access. Currently Ombudsmen have access under National Electricity Rules, and the proposed recommendation would create an inconsistency between the Law and the Rules. The access for Ombudsmen is according to a tightly written procedure and EWOV is unaware of any issues or problems that have arisen since this procedure was put in place. It is important that this recommendation be rewritten so as to allow Ombudsmen to have access to NMI data according to the procedure set out in the Rules.

The provision about dispute resolution and complaints in Part 3 of Attachment 6 (p. 229) is inadequate as presently expressed. An obligation to tell a customer of their right to complain to the relevant industry ombudsman is given effect by an additional requirement to advise the customer of the name and number of that Ombudsman.

### ***Comments on the text of the Composite Paper***

#### *Definition of the Obligation*

EWOV believes that the conditions to the obligation to connect should operate as conditions subsequent. As a matter of practice, the connection charge is added to the first bill which is likely to arrive after three months.

#### *Small customer definition*

EWOV supports Recommendation 4 (p. 13) and maintains its view that small customers should include business customers whose usage is below the threshold. Small businesses have no advantages over residential customers in dealing with energy retailers and distributors and should be offered the same protections. That threshold should be set at 160MWh per year

### *Standing offer terms*

Please see our detailed comments in the relevant section of the table.

### *Deemed supply arrangements*

EWOV believes that the recommendations in the Composite Paper are an improvement on those in Working Paper 1 and supports the revised recommendations.

### *Generic versus energy specific regulation*

EWOV notes that the Composite Paper recommends a combination of generic and energy-specific regulation. We note the view expressed that the general consumer protection laws are adequate for matters relating to the marketing of energy, but that energy-specific measures are required to regulate contract terms and conditions. EWOV disagrees strongly that marketing can be left to generic laws and generalist regulators, and believes that the recommendation is based solely on looking at the similarity of content of regulation, without consideration of compliance and enforcement. Marketing abuses are regularly evident in the jurisdictions which have full retail competition<sup>4</sup> and it is a serious concern that a generalist regulator like a Consumer Affairs, Trade Practices or Fair Trading agency may not be able to give priority to energy marketing issues in the way a specialist regulator could if there was energy-specific regulation on this point. If the recommendation was accepted as written, companies whose agents use unacceptable marketing practices may not be held accountable. There needs to be an energy-specific regime for marketing as well as for terms and conditions.

### *Marketing: Entities subject to regulation*

We note that the option chosen here is the one we least preferred in our earlier submission. It is of concern to us that the question raised as to the ability of jurisdictional Ombudsmen to handle and resolve marketing complaints was not answered. Ombudsmen have to be able to take the case against the retailer, even when the dispute is about something the marketing representative has done. We are concerned that retailers may dispute jurisdiction on the grounds that marketers are principals. We note the comment at page 31 that ‘the recommended approach does not alter the legal responsibility of retailers for the marketing activities of their agents’, but seek reassurance on this specific point.

---

<sup>4</sup> See the ACT Essential Services Consumer Council (ESCC) Stakeholders’ Alert about the rise of marketing complaints in the ACT; The Energy & Water Ombudsman NSW’s (EWON’s) recent information statement about *Marketing of Energy Contracts to the Elderly/Frail Aged* at [www.ewon.com.au](http://www.ewon.com.au); EWOV’s own marketing reports, supplied to relevant retailers and regulators, support the points made in these documents. In particular, EWOV’s experience supports every item in the list of marketing behaviours on p. 4 of the ACT ESCC submission.

*Business authorisation: substantive obligations as licence conditions*

EWOV endorses the comment, at p. 59, that ‘if substantive obligations are to be removed from jurisdictional licences, care will need to be taken to ensure that gaps do not occur in the national framework’. As set out previously, on pages. 1-2 of this submission, it is our belief that a gap has been permitted to occur with respect to the description of the characteristics of an approved dispute resolution scheme.

*Customer registration and transfer: electricity connection point registration*

As EWOV has noted in the table and on pages 2-3 of this submission, we believe there has been an oversight here. Ombudsmen currently have access to National Metering Identifier (NMI) standing data under the Rules, and this access, which has been effective and non-controversial, needs to be retained.

*Enforcement mechanisms*

EWOV was generally supportive of the approach in Working Paper 5, and welcomes the modifications in the Composite Paper that give the Australian Energy Regulator (AER) greater flexibility.

*Statutory objectives*

EWOV maintains its view that the objective of the National Electricity Law is too technical and prescriptive, and will hamper the efforts of the Australian Energy Market Commission and the AER to respond to environmental challenges and to the effects on consumers of price rises. We note the comments of Consumer Action in its submission that this objective was not intended to be used for the purposes of retail and distribution regulation, and support the inclusion of objectives relating to the interests of low-income and vulnerable consumers and also to energy efficiency. We believe this is best achieved by the development of facilitating objectives.

***Comments on matters in Attachment 6***

*Terms and conditions of standing offer and market contracts*

EWOV notes both changes to the recommendations since Working Paper 1 and the matters that have remained the same. Speaking broadly, a reasonable framework has been proposed for standing offer and market contract terms and conditions, but we wish to make the following points:

Notification of tariff changes: we note that the requirement to notify customers individually has been removed and that tariff changes now only have to be published. We take the point that individual notification may have been onerous but believe that the publication requirement should be specified in more detail, otherwise a single

advertisement in the public notices section of a newspaper will meet the requirement. If publication is to be the requirement, it should be specified that it is publication in a manner that is likely to be seen or heard by customers. We also note that there is no specification of an amount of notice that must be given: EWOV believes that the current Victorian requirement of two months is reasonable.

Use of meter data: where a bill has been based on an estimated reading, there should be a clear indication of that on the bill.

Provision of security: EWOV believes there needs to be greater clarity as to the basis on which a retailer can form the judgement that a customer has an unsatisfactory credit history. Security deposits can be substantial amounts and it is necessary that retailers distinguish between customers whose credit history is unsatisfactory and customers who are financially stressed but endeavour to pay their bills.

Undercharging: EWOV disagrees with the comment at p.219 that ‘the limitation period for undercharging by retailers needs to be matched with the retailer’s liability to distributors for undercharging in respect of network charges’. If the retailer has made an error, it seems unreasonable that the costs of that error are automatically passed to the customer. The retailer should bear the financial responsibility for errors it has made or for failures of its systems. EWOV maintains its position that six months is a reasonable period for backbilling, or, failing that, that it should be set at the Victorian limit of nine months where the retailer has been in some way at fault. Our basis for suggesting six months is that it controls the arrears the customer is being asked to pay to a manageable level.

Payment difficulties: EWOV supports these recommendations, but regrets that the bracketed words — ‘or it becomes apparent to the retailer that the customer is experiencing payment difficulties’ — have been set aside for further discussion. Retailer recognition of payment difficulties has been operating as one of the methods for identifying hardship in Victoria. While it is desirable that customers self-identify, there are obviously psychological barriers to this in some circumstances, and retailer staff should have the training and skills to pick up on this and make it easier for the customer. The search for objective criteria in this area is likely to be fruitless; it is inherently an area where judgement is called for, although training can give substantial guidance.

Notice: The recommendation about notice of disconnection (p. 222) refers to ‘prescribed information’. Presumably the information would be prescribed in the Rules. If this is the case, EWOV believes that the prescribed information should include the name and phone number of the relevant Ombudsman.

Provisions subject to separate policy review: EWOV is concerned that all matters relating to energy efficiency and providing information to customers about their energy efficiency have been placed in this indeterminate category. Given the immediacy of the issue, decisions should be reached on these matters sooner rather than later.

### *Regulation of distributor-customer contract terms*

Liability and warranties: EWOV remains concerned by the breadth of the limitation on liability for reliability and quality of supply (p. 235). Liability for voltage variation incidents is in some jurisdictions a vexed and very difficult issue, with some distributors trying to avoid all responsibility for such incidents. It becomes expensive, time-consuming and frustrating for the consumer, the distributor and the Ombudsman. The way to avoid this is to adopt the Victorian *Voltage Variation Guideline*. This guideline has turned the issue into a virtually routine matter which is easily settled, a good outcome for both customers and distributors.

As a more general point, an excessive limitation on distributors' liabilities in the deemed distribution contract could be seen as unfair, given that distributors are monopolies and customers do not have a say in deemed terms and conditions. These current limitations are, it could be argued, verging on that unfairness.

Fault reporting and correction: EWOV believes this recommendation is too general as currently phrased (p 236). What distributors need to have is the capacity to deal with the calls generated by major storms and outages, such as those experienced in Victoria on 16 January 2007. This recommendation needs to be amplified by reference to a tested readiness to deal with major events.

Customer obligations: EWOV believes it is unreasonable to place obligations on customers in a deemed contract if they have not been given adequate notification of those requirements. This recommendation only envisages notification of non-compliance after it has occurred, not proactive information to customers about those obligations in the first place.

### *Regulation of distributor-retailer contract terms*

Changes in network tariffs or distribution services: EWOV regrets that the opportunity to bring further clarity in relation to the obligation to ensure customers are allocated to the correct network tariff has not been taken. We do not agree that it should be addressed in the distribution pricing rules and price determinations. Rather, as a matter directly affecting customers, it should be a distributor obligation in the deemed contract between distributors and customers.

***Conclusion***

As requested, EWOV has made more detailed comment in the table provided. We hope that the submission above and the table are helpful. If you have any queries, or wish more detail on any point, please contact Frances Wood, Acting Manager Public Affairs and Policy, on (03) 9649 7599.

Yours sincerely

A handwritten signature in cursive script that reads "Fiona McLeod".

**Fiona McLeod**  
**Energy and Water Ombudsman (Victoria)**

Attachment: Dispute resolution provisions in current Victorian electricity and gas retail and distribution licences

**Attachment:**

**Dispute resolution provisions in current Victorian electricity and gas retail and distribution licences**

**25. DISPUTE RESOLUTION**

25.1 The *Licensee* must submit to the *Commission* for its approval, and if approved implement, a scheme for the fair, reasonable and effective investigation and resolution of disputes between it and:

(a) a *customer* about the *Licensee's* services, billing and charging; and

(b) aggrieved persons about the manner in which the *Licensee* conducts its business under this licence generally.

25.2 Unless it has been notified by the *Commission* that it need not comply with this clause 25.2, the *Licensee* must comply with clause 25.1 by submitting to the *Commission* for its approval an ombudsman scheme and implementing any such scheme that the *Commission* has approved.

25.3 An ombudsman scheme that is implemented by the *Licensee* to comply with clause 25.2 must contain and comply with terms and conditions that:

(a) bind the *Licensee* to participate in the scheme and comply with its rules (as amended from time to time) from the date on which it is approved by the *Commission*;

(b) provide the *Licensee's customers* and aggrieved persons with ready and equal access to the scheme;

(c) subject to clause 25.3(d), present no cost barriers to *customers*;

(d) do not permit fees to be charged to, or costs to be awarded against, residential and small business *customers*;

(e) provide that the scheme be governed by a board consisting of an independent chairperson and equal numbers of *customer* representatives appointed by the *Commission* and representatives appointed by the members of the scheme;

(f) in accordance with a process approved by the *Commission*, provide for those members of the scheme and *customer* representatives that are members of the board to appoint the chairperson after consultation with the *Commission*;

(g) provide for the board to appoint the ombudsman;

- (h) require the board to inform the *Commission* of any proposed amendments of the scheme;
- (i) confer on the ombudsman the power to make rulings with which the *Licensee* is required to comply;
- (j) provide that, if the scheme prevents a ruling of the ombudsman from exceeding in value a maximum amount, that amount must be no less than \$20,000 in respect of a complaint from an individual *customer*;
- (k) confer on the ombudsman the power to impose sanctions on the *Licensee* for a breach of a ruling;
- (l) require the ombudsman to follow fair and efficient procedures, and make decisions that are fair and reasonable having regard to the law, the licences, industry codes, deemed contracts, and good industry practice;
- (m) enable the *Commission* to refer complaints in relation to the conduct of the participating *Licensee's* business conducted under this licence to the ombudsman;
- (n) require the *Licensee* to bear a fair proportion of the cost of the development, establishment and operation of the ombudsman scheme;
- (o) enable a question as to the fairness of the proportion of the costs which must be borne by a *Licensee* to be decided by the *Commission* on the basis of the *Commission's* opinion of the fairness of the proportion;
- (p) require the ombudsman to report to the *Commission* as and when required by the *Commission* on the operation of the scheme in relation to the industry of which the *Licensee* is part;
- (q) require the ombudsman to publish its decisions and annual reports on the operation of the scheme and the performance of each member of the scheme in relation to the industry of which the *Licensee* is part;
- (r) require the board to conduct periodic and comprehensive reviews of the performance of the scheme in consultation with members, *customer* representatives, the *Commission* and other interested parties; and
- (s) provide for the *Licensee* to withdraw from the scheme subject to:
  - (1) the *Commission* notifying the *Licensee* that it need not comply with clause 25.2;

- (2) the *Licensee* providing to the *Commission* 12 months notice in *writing* of the *Licensee's* intention to withdraw; and
  
- (3) the *Licensee* satisfying the *Commission* that the *Licensee* complies with clause 25.1.