

MINISTERIAL COUNCIL ON ENERGY

STANDING COMMITTEE OF OFFICIALS

NATIONAL ENERGY CUSTOMER FRAMEWORK

SECOND EXPOSURE DRAFT

NATIONAL ENERGY RETAIL LAW

NATIONAL ENERGY RETAIL REGULATIONS

NATIONAL ENERGY RETAIL RULES

NATIONAL ELECTRICITY (RETAIL SUPPORT) AMENDMENT RULE

NATIONAL GAS (RETAIL SUPPORT) AMENDMENT RULE

***NATIONAL ELECTRICITY (RETAIL CONNECTION) AMENDMENT
RULE***

NATIONAL GAS (RETAIL CONNECTION) AMENDMENT RULE

EXPLANATORY MATERIAL

November 2009

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Part 1 Introduction

1. The Council of Australian Governments (COAG) Australian Energy Market Agreement (AEMA) provides for the Ministerial Council on Energy (MCE) to develop a national framework for energy distribution and retail regulation.
2. This document deals with the second exposure draft of the National Energy Customer Framework (NECF).
3. This document, the associated attachments, and the proposed Legislation, Regulations and Rules, have been released by the MCE Standing Committee of Officials (SCO) in November 2009 for consultation purposes only, and do not represent the final views of the MCE, or the governments of participating jurisdictions.
4. The participating jurisdictions are the Australian Capital Territory (ACT), New South Wales (NSW), Queensland (Qld), South Australia (SA), Tasmania (TAS) and Victoria (Vic). Note that there is currently no commitment from Western Australia and the Northern Territory to apply the national framework.
5. For ease of reference, the second exposure draft of the proposed Law, Regulations and Rules is referred to collectively as NECF2.

1.1 Background

6. NECF2 comprises a proposed National Energy Retail Law (NERL), National Energy Retail Regulations, and National Energy Retail Rules (NERR) and proposed new parts to Rules under the National Electricity Law (NEL) and National Gas Law (NGL).
7. The NECF will introduce a single national framework for energy distribution networks and retail markets regulated by the Australian Energy Regulator (AER). In accordance with the AEMA, the Australian Energy Market Commission (AEMC) will be the rule-making body for the NERR, with the initial NERR to be made by the SA Minister under powers in the NERL. The AER and AEMC are already the regulator and rule-making body, respectively, in relation to the National Electricity Rules (NER) and National Gas Rules (NGR).
8. The AER assumed responsibility for electricity distribution network price determinations on 1 January 2008, and for gas distribution pipeline price determinations on 1 July 2008, with the exception that price determinations for relevant networks in Western Australia would continue to be undertaken by the Economic Regulation Authority of Western Australia.
9. The NECF will complete the transfer of distribution network regulation to the national framework, and provide the national framework for regulating the sale and supply of energy (electricity and gas) by retailers and distributors.
10. The NECF deals primarily with the following matters:
 - the retailer-customer relationship, and associated rights, obligations and consumer protection measures;
 - distributor interactions with customers and retailers, and associated rights, obligations and consumer protection measures;
 - retailer authorisations; and
 - compliance monitoring and reporting; enforcement; and performance reporting.

11. The preparation of the national framework is guided by the following principles agreed by COAG in the AEMA:
 - provide common national regulatory arrangements for electricity and gas;
 - improve the transparency of regulatory arrangements;
 - provide an appropriate level of regulatory certainty;
 - reduce overlap between energy specific and generic regulation; and
 - minimise the regulatory compliance burden and associated cost.
12. Generally, the NERL will provide the framework for the NECF, with the NERR providing the detailed content of consumer protection measures and model contracts governing relationships between customers, retailers and distributors. New parts of the NER and NGR will also operate in conjunction with the NERL and NERR.
13. The NECF will be made up of the national Laws, Regulations and Rules, and where necessary, jurisdiction-specific provisions.
14. The NECF framework is similar to existing relevant arrangements in the States and Territories:
 - for non-economic regulation of network services, some rationalisation for national consistency has been undertaken where there are considered to be net benefits;
 - for retailers and associated consumer protection measures, where currently there are significant differences between jurisdictional consumer protection measures, and differing market characteristics to justify retention of the differences, the NECF provides for some limited region-specific measures to continue, with these measures also being enforced by the AER in place of the existing jurisdictional regulator in some circumstances.
15. In accordance with the AEMA, States and Territories will continue to be responsible for retail price regulation, service reliability standards (where not part of the distribution network price determination process as in Victoria), metering, load shedding and curtailment, and dispute resolution (Ombudsman) schemes.
16. States and Territories will also continue to be responsible for matters such as community service obligations, distribution tariff equalisation schemes, land use and planning approval and environmental policies, and technical and safety regulation.
17. The NECF2 exposure documents do not contain any jurisdictional transitional materials. These will be prepared individually by jurisdictions.

1.2 Process to date

18. Development of the NECF has been managed by the Retail Policy Working Group (RPWG) and Network Policy Working Group (NPWG), which are interjurisdictional working groups of Departmental officials established by the MCE SCO.
19. The RPWG has conducted three major public consultation exercises to date, commencing with a consultant's proposal paper in June 2007, a SCO policy paper in June 2008, and a first exposure draft NERL and NERR published on 30 April 2009 (NECF1).
20. A Consultation Regulation Impact Statement (RIS) was published in October 2008. Following consideration of submissions, the MCE agreed in July 2009 to the publication of a Decision RIS for the NECF as developed for NECF1.

21. The Decision RIS primarily assessed the costs and benefits of a single national framework compared with individual jurisdictional regulation, and concluded that there is a substantial economic benefit in progressing to a single national framework.
22. The Decision RIS found that the essential service character of energy supply services, and the monopoly nature of distribution services and information asymmetry between small customers and energy distributors and retailers, justifies a number of substantial energy-specific consumer protection measures.
23. The Decision RIS recommended a number of preferred options for the NECF, including an obligation to offer supply, a hardship regime to assist disadvantaged customers, and clear guidance in the application of the statutory objective of the NECF regarding the role of the hardship regime.
24. In addition, the NPWG has undertaken separate public consultation on policy papers for both the electricity and gas connection frameworks (outlined in section A.1).
25. A recommended final NECF legislative package is scheduled to be considered by the MCE at its mid 2010 meeting, prior to introduction of a final legislative package into the SA Parliament in the 2010 Spring Session.
26. Application Acts in each participating jurisdiction are generally expected to be introduced from 2011 onwards (with SA, as lead legislator, expected to introduce its application Act with the NECF legislation). Each jurisdictional Application Act will set out the specific jurisdictional arrangements for transitioning to the NECF. A new section 103 of the NERL recognises the role of both the Application Acts, and other jurisdictional energy legislation in implementing the NECF.
27. Key changes to the NERL and NERR in response to submissions are discussed in Part 3.

1.3 Structure of the explanatory material

28. The explanatory material below provides a general summary of the key changes from NECF1 to NECF2, many in response to issues raised in stakeholder submissions.
29. Five attachments are provided as part of this document. The first four attachments provide additional explanation of new material developed for NECF2, including:
 - the proposed arrangements for network connections (Attachment A); and
 - the proposed customer registration and transfer arrangements (Attachment B); and
 - a national Retailer of Last Resort (RoLR) regime (Attachment C); and
 - an indication of the potential enhancements to accommodate customer protections for customers with smart meters (Attachment D).

Attachment E provides links to relevant publications released by the MCE throughout the development of the NECF.

1.4 Submissions and consultation on NECF2 exposure materials

30. Submissions are invited on the NECF2 package (NERL, NERR, Regulations and NER and NGR amendments), and can be lodged by mail or electronically as follows:

Manager, MCE Secretariat

Department of Resources, Energy and Tourism

GPO Box 1564
CANBERRA ACT 2601

Email: MCEMarketReform@ret.gov.au

31. Submissions are requested by close of business Friday 26 February 2010.
32. Submissions will be published on the MCE website. If lodging a submission where consent to publication is not given, please state this clearly in the lodgement advice.
33. A public forum on NECF2 will be held over two days on Wednesday 3 February – Thursday 4 February 2010 in Melbourne.

Part 2 Statutory objective and legal architecture

2.1 Statutory objective

34. Similar to other national energy market legislation, the draft NERL contains an objective to inform the efficient and effective development and application of the NERL and NERR.
35. The objective follows the objectives of the NEL and NGL to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy.
36. The effect of the provision is that the AEMC and AER will be required to carry out their respective functions in a manner that will or is likely to contribute to the achievement of the objective. The objective focuses attention on consumer interests as the ultimate goal, but within an efficiency framework.
37. To avoid any unintended diminution of specific consumer protection measures such as hardship policies, where those policies may be interpreted by some as conflicting with the economically efficient operation of energy markets, the draft NERL provides the following new provision under section 113:

“The national energy retail objective should not be taken to prevent or restrict the development and application of consumer protections for hardship customers and other small customers, including the development, approval and application of customer hardship policies.”
38. This provision is further referred to as a note in various parts of the NERL, including under section 227 which sets out the requirement for approval of customer hardship policies, to ensure that consumer protections are given appropriate weight in the application of the general statutory objective.

2.2 Legal architecture

39. NECF2 retains a separate Law and Rules for the regulatory framework for the retail market.
40. NECF2 includes:
 - the draft NERL, including a proposed new Part 4 providing a framework for small customer dispute resolution; a RoLR scheme (Part 6), and a small compensation claims regime (Part 7);

- the draft NERR, which focuses on the sale and supply of energy to retail customers, including consumer protections and the model customer contracts;
 - the draft National Energy Retail Regulations;
 - the draft National Electricity (Retail Support) Amendment Rule 2010 and the draft National Gas (Retail Support) Amendment Rules 2010, which will amend the NER and the NGR. These amendments set out the retail support rights and obligations between distributors and retailers as Rules, including a credit support regime; and
 - the draft National Electricity (Retail Connection) Amendment Rules 2010 and the draft National Gas (Retail Connection) Amendment Rules 2010, which also amend the NER and NGR.
41. NECF2 does not include the following:
- consequential amendments to the NEL and the NGL flowing from NECF2 to enable the new connection regimes and to deal with other matters that are consequential to the NECF; and
 - consequential amendments to the NER and the NGR flowing from the NERL and NERR provisions.

2.3 National connection frameworks for electricity and gas

42. As noted above, the regulatory frameworks for network connections in electricity and in gas (including significant augmentations) are to be located in the NER and NGR as a new stand alone Chapter 5A of the NER and Part 12A of the NGR. An overview of the frameworks is included at Attachment A.

Part 3 Major amendments to NECF included in NECF2

43. A key focus of many stakeholder submissions in response to NECF1 was the need for enhanced customer protections in some areas. The changes highlighted in the following two sections result from RPWG considerations of these submissions.
44. In addition, in response to stakeholder comments, the legal architecture of the retail support provisions, which outline the obligations of retailers and distributors where they have shared customers, has been revised.

3.1 Hardship policies and support for customers experiencing financial difficulty

45. The NERL requires retailers to have customer hardship policies to assist hardship customers to better manage their payments and reduce the risk of disconnection. Retailers' customer hardship policies will now be subject to approval by the AER. While the NERL specifies minimum requirements for customer hardship policies, AER approval is considered necessary to ensure that customer hardship policies adequately cover the minimum requirements and achieve the purpose of assisting customers to better manage their energy bills on an ongoing basis.
46. Further, the obligation on a retailer to offer a payment plan to a hardship customer prior to taking action to disconnect a hardship customer has been extended to all residential customers who advise their retailer they are experiencing financial difficulty.

3.2 Changes to marketing rules

47. The National Marketing Rules are no longer contained in a separate schedule to the NERR. Division 11 of Part 2 of the NERR now contains provisions relating to marketing activities.
48. The NERR now includes regulation of the times for marketing contact with small customers. Prohibited contact times are based on those contained in existing jurisdictional energy marketing codes and rules and the Telemarketing (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007.
49. The NERR also now includes rules that require retailers to ensure that a “no contact list” is created and maintained for its retail marketers, to enable a small customer contacted by a marketer to request that they not be contacted in future. It is proposed that an entry for a small customer made in a no contact list will be valid for a minimum period of two years. This requirement was based on existing jurisdictional energy marketing codes and rules.
50. Retailers will be obligated to provide certain Required Information to small customers in the form of a written disclosure notice. To clarify the rights of customers it is now proposed that for contracts formed electronically (e.g. via the internet or over the telephone) the Required Information must be given to customers in writing after formation of the contract, even if this information is also provided electronically before formation of the contract. The NERR provide that the cooling-off period commences from the time the customer receives the Required Information.

3.3 Small customer dispute resolution

51. The NERL contains a new part (Part 4) relating to small customer dispute resolution. While the AEMA clearly identifies small customer dispute resolution (i.e. ombudsman arrangements) as a matter of State and Territory responsibility, many of the matters which will form the basis of a dispute between a customer and their distributor or retailer will arise under the NECF. As such, it is important that there is a legal link between the national framework and jurisdictional small customer dispute resolution arrangements.
52. The key elements of the new Part 4 of the NERL are as follows:
 - Each retailer and distributor must develop and publish its standard complaints and dispute resolution procedure in accordance with the relevant Australian Standard, and deal with customer complaints and disputes in accordance with the procedure;
 - The relevant energy ombudsman (identified for each jurisdiction in section 5 of the Regulations) is empowered to hear disputes that arise under the NERL and NERR, subject to the jurisdiction conferred on the ombudsman under its own State or Territory governing legislation, constitution or charter (known as energy ombudsman constitution provisions);
 - A requirement for retailers and distributors to be members of, or subject to, the recognised energy ombudsman scheme for each jurisdiction in which the retailer or distributor has small customers; and
 - Information sharing requirements.
53. Importantly, the small customer dispute resolution arrangements in the NERL do not:
 - extend the jurisdiction of an energy ombudsman beyond that provided in the instruments which establish and confer functions and powers on the ombudsman;

- impact on an energy ombudsman's ability to hear disputes outside the scope of the NECF in accordance with the ombudsman's relevant energy ombudsman constitution provisions; and
- deal with or affect the operational arrangements, procedures or practices of an energy ombudsman.

3.4 Small compensation claims

54. The NERL now includes a small compensation claims regime (Part 7). The scheme is generic in nature and will only apply in those jurisdictions that specifically provide for small claims compensation via a State or Territory instrument that nominates the specific circumstances for which the compensation regime will apply. For example, schemes in operation covering voltage variations outside of specified allowable ranges can operate under the national regime.
55. The introduction of a small compensation claims regime recognises that a variety of jurisdictional arrangements concerning the compensation of small customer claims exist in addition to external dispute resolution arrangements through ombudsmen schemes, and that there is an opportunity to harmonise small claims arrangements under the NECF.

3.5 Small customer definition thresholds

56. Submissions to NECF1 included concerns from some consumer advocates and energy ombudsmen that the proposed small business electricity customer threshold and the definition of a small market offer business customer will exclude small business customers in some jurisdictions from access to small customer protections that they have access to under current arrangements.
57. Businesses consuming above 100 megawatt hours (MWh) of electricity per annum and 1 terajoule (TJ) of gas per annum are generally small industrial facilities and medium sized commercial premises. The proprietors of such businesses are frequently required to negotiate a range of commercial supply arrangements not dissimilar to energy contracts. These businesses have diverse service needs and potentially different supply costs making it difficult to adequately assign mandatory obligations on retailers without potential price implications.
58. The SCO remains committed to adopting future harmonised national consumption thresholds, as well as the obligation to offer supply arrangements outlined in NECF1. The thresholds presented in NECF1 remain unchanged in NECF2 based on the view presented in the SCO Policy Response Paper, published in June 2008 (for electricity) and the explanatory materials accompanying NECF1, published in April 2009 (for gas).
59. It is therefore considered that the proposed thresholds (including the small market offer customer thresholds) are appropriate and achieve a balance between ensuring that adequate customer protection is maintained for residential customers and the majority of small business customers without imposing unnecessary regulatory costs on retailers.

3.6 Distributor – retailer relationship

60. The regulatory design for the distributor – retailer relationship in NECF1 was based on a contract model which contained mandatory minimum retail support terms and conditions that would apply between distributors and retailers.
61. The implementation of the contractual model in the different regulatory environments for electricity and gas proved on further development to be inefficient, particularly

given the terms of the contract needed to operate as direct obligations on both retailers and distributors rather than as negotiable terms and conditions. The treatment and relocation of the 'Retail Support Terms and Conditions' (previously Schedule 3 to the NERR) follows the decision to redesign these contractual terms and conditions as direct obligations for NECF2.

62. The retail support obligations will now be located in either:
- the NERR, where the obligations apply to both electricity and gas without modification, and focus on information flows to support other NECF obligations to customers; or
 - in the NER or NGR, where the obligations are related to commercial matters between distributors and retailers, (such as billing and payment) but are necessary minimum requirements to support the responsibilities of both retailers and distributors under the NECF. Imposing such direct obligations avoids potential disputes between distributors and retailers in relation to the essential requirements to apply between them and also enables the existing dispute resolution arrangements in Chapter 8 of the NER and Part 15C of the NGR to apply if required.
63. NECF2 therefore incorporates the following retail support requirements:
- the NERR (Part 5) sets out the rights and obligations of distributors and retailers in relation to exchange of information and other matters;
 - a draft Amending Rule to amend the NER to include obligations relating to distributor-retailer billing and payments for retail customers in a new Chapter 6B;
 - a draft Amending Rule to amend the NGR to include obligations relating to distributor-retailer billing and payments for retail customers in a new Part 21; and
 - the credit support rules developed as part of the retail support rules and outlined in section 3.7.

3.7 Credit support between retailers and distributors

64. NECF1 proposed to locate a credit support regime in AER Credit Support Guidelines to allow for greater flexibility.
65. The SCO accepts that distributors should be entitled to require credit support from certain retailers to enable distributors to manage the risk exposure of non-payment for services by a retailer in a regulatory environment where a distributor cannot refuse to provide such services. It is also accepted that such credit support arrangements should not be so onerous as to impose unreasonable costs on retailers or effectively create a barrier to entry in the retail market.
66. In response to NECF1, distributors strongly argued that the credit support arrangements should be codified in Rules rather than be the subject of guidelines developed by the AER. Most retailers agreed with this view. The SCO recognises the request for greater certainty and robustness around the credit support arrangements and as such, a credit support regime has been developed in the NERR as part of NECF2.
67. NECF2 locates the credit support rules in the NER and NGR, in a new Chapter 6B of the NER (for electricity) and in a proposed new Part 21 of the NGR (for gas). The credit support rules form part of the general retail support provisions.
68. The credit support rules provide for:
- determining the required credit support amount based on the retailer's credit outstanding with the distributor and the retailer's credit allowance;
 - calculation of a distributor's maximum credit allowance;

- acceptable forms of credit support, including bank guarantees or another form agreed between the parties;
 - when and how any existing credit support arrangements may be reviewed and revised.
69. While the rules do not provide explicitly for other acceptable forms of credit support, the SCO has attempted to create greater flexibility in the credit support regime by requiring less credit support to be provided where retailers pose a lower risk to distributors' overall revenues.
70. Noting that some stakeholders called for flexibility around the form of credit support that may be provided, the initial credit support rules provide only for bank guarantees and other agreed means between retailers and distributors. SCO considered the practicality of accommodating other forms during the development of these rules, but did not identify any other products in the market that are sufficiently robust to be prescribed as acceptable forms. The avenue exists for other forms of acceptable support to be introduced through Rule changes after the initial Law and Rules have been implemented.

3.8 Distributor liability and immunity provisions

71. In line with the existing liability regimes in the NEL, the NERL contains a statutory immunity from liability, excluding liability arising from negligence and/or bad faith. The NERL also contains a mutual indemnity provision between retailers and distributors.
72. By not extending immunity to liability for actions attributable to negligence and/or bad faith, the immunity provisions retain appropriate accountability and economic incentives for network service reliability.
73. Current arrangements for distribution networks in most States and Territories do not provide capped and/or statutory immunity for negligence. NECF2 reflects these arrangements.
74. General arrangements for immunity and liability provisions in the national energy markets have already been established. The arrangements are not being re-considered as part of the development of the NECF.

3.9 Retailer of last resort scheme

75. NECF2 includes a proposed national framework for a RoLR scheme, to provide common arrangements in the event of a retailer failure.
76. NERA Economic Consulting and Allens Arthur Robinson developed the *Retailer of Last Resort – Review of Current Jurisdictional Arrangements and Development of a National Policy Framework Report*. Stakeholders provided comment on this report in December 2008.
77. The scheme will be defined predominantly in the NERL, to retain its policy character, and to limit uncertainties and costs associated with varying the scheme through Rule changes.
78. Key elements of the proposed statutory scheme include:
- the definition of a RoLR event and associated trigger events;
 - appointment processes for RoLRs;
 - information provision arrangements for RoLRs from failed retailers;

- customer transfer arrangements including the duration of transfers, and the terms and conditions of supply of transferred customers; and
 - cost recovery arrangements, and relevant immunities.
79. The NECF will allow for jurisdictional variations to the national RoLR scheme where deemed necessary.
80. An outline of the scheme is provided at Attachment C.

Part 4 Other matters

4.1 Bill benchmarking

81. The Customer Information Implementation Committee, within the MCE's National Framework for Energy Efficiency, is undertaking an investigation into the establishment of a Bill Benchmarking Regime (BBR), which is subject to a RIS and MCE approval.
82. It is anticipated that before finalisation in 2010, the NERL will enable the making of Rules for the various agreed components of the BBR. Those components specified in the NERR may include the requirement for energy retailers to provide a benchmark that compares a household's energy use with an average for a comparative area (e.g. local or State average). It is envisaged that the benchmark would contain adequate information to allow for a useful comparison and motivate energy customers, especially those with above average consumption, to implement energy efficiency improvements. It is anticipated that there will be flexibility for the retailer to determine the metric used for the benchmark, placement on the bill and the provision of any additional information to assist the household reduce their energy use.
83. A Consultation RIS was released on 28 October 2009 for stakeholder comment and is available at www.mce.gov.au. Submissions on the Consultation RIS close on 9 December. Any provisions in the NECF to support the establishment of a BBR will be included in the final regulatory package. Consultation will be undertaken on any relevant Rule changes where necessary.

4.2 Electricity distribution network planning

84. The MCE in December 2008 directed the AEMC to review and report on arrangements for a national framework for electricity distribution network planning and expansion.
85. The AEMC published its final report on the review in September 2009. Subject to MCE consideration of the report's recommendations, final arrangements for a national framework for electricity distribution network planning and expansion will be progressed separately from the NECF consultation exercises.

Attachment A. Connections frameworks

A.1 Frameworks for new connections

1. The NECF2 consultation package incorporates new national arrangements for regulating new connections to electricity and gas networks.
2. To date, the new national electricity and gas connection frameworks have been developed separately from the NECF program, under the MCE SCO NPWG.
3. In August 2007 NERA Economic Consulting / Allen Consulting Group provided a report to SCO providing advice and recommendations on development of a national electricity connections framework as well as other outstanding items under the AEMA. SCO released a policy response to the report in December 2008. In February 2009, NPWG sought further advice on specific aspects of the electricity connections framework, and convened a roundtable forum on the proposed framework with a number of stakeholder submissions received.
4. The gas connection framework has been developed by NPWG based on the electricity connections framework, with adjustments made where components are required unique to gas connections. Following targeted consultation with key stakeholders, in September 2009 a SCO draft policy paper was released and a stakeholder workshop was held. Following receipt of stakeholder submissions to the draft policy paper, the gas connections framework has been drafted for release as part of NECF2. Further advice is being sought by NPWG on the proposed capital asset reimbursement scheme.
5. NECF2 includes completed rule provisions for the new national electricity and gas connection frameworks (Chapter 5A of the NER and Part 12A of the NGR). NECF2, however, does not contain the consequential amendments to the NEL and the NGL and their associated rules that may be necessary to fully implement the new connection frameworks.
6. The new connections framework covers arrangements for the establishment of a new physical connection to a distribution network, significant alteration of an existing physical connection, connection charges, capital works contributions, provisions for cost recovery for network extensions, and regulating the relationship between distributors, end use customers and embedded generators. Wherever substantial alterations to an existing physical connection are to take place, these will be treated in the same way as new connections under the regime.
7. The connections frameworks will sit within the NER and NGR, as these frameworks pertain to the provision of connection services which are integral to the economic regulatory regimes. However, the framework will work alongside the NERL and NERR to provide a comprehensive framework for the connection and supply of retail customers, including a single deemed customer connection contract (formerly the customer distribution contract) under the NERR.

A.1.1. Generic features of connections frameworks

A.1.1.1. DEFINED CONNECTION TYPES

8. The connections frameworks establish – in both electricity and gas – the concepts of basic, standard and negotiated connections. Basic connections serve to fulfil the needs of typical small customers within a distribution area, and other standard connections may be developed to efficiently serve the needs of any particular class of customer. Negotiated connections exist to meet the needs of customers where basic

and standardised connections are not appropriate or where a customer would prefer to negotiate the terms and conditions of their connection.

9. A distributor must have a standing offer to provide a basic connection, as approved by the AER. This standing offer must be published, and is accessible to retail customers by application either through a third party or directly to the distributor.

A.1.1.2. CONTRACTUAL MODEL

10. The connections frameworks adopt a contractual approach to the rights and responsibilities of the parties in establishing a connection. The terms and conditions covering the specifics of an individual distributor's standing basic or standard connection offer (approved by the AER) once accepted by a retail customer, will be deemed to be "additional terms and conditions" of the deemed standard connection contract formed under Division 4 of Part 3 of the NERL – thereby forming a single contract. For an 'expedited' connection, a retail customer will also be able to indicate on their original application their express acceptance of the published terms and conditions of a basic or standard connection offer.
11. During the prior consultations, some stakeholders advocated for both the ability:
 - to use a deemed contractual arrangement to enable expedient simple retail customer connections; and
 - to combine both the initial connection contract with the contract for ongoing distribution services.
12. Stakeholders also raised concerns about the degree to which timeframes in the connections frameworks may be inconsistent with previously set service standards for initiating and completing new connections.
13. To this end, the connections frameworks' contractual architecture allows for expedited connections under a contract with model terms and conditions. It also allows for single basic and standard connection contracts covering both the initial connection, as regulated in the NER and NGR, and ongoing supply services, as regulated by the NECF.

A.1.1.3. OBLIGATION TO OFFER CONNECTION

14. The connection frameworks provide the substance of the 'obligation to offer connection' placed on distributors. The arrangements for defined basic and standard connection services, with the addition of a formal negotiation framework, is intended to ensure that customers have access to new connections or alterations meeting their requirements in a fair and certain manner, and as quickly as reasonably possible.

A.1.1.4. NEGOTIATION FRAMEWORK

15. The connections frameworks establish a negotiation framework for negotiated connections. This is accessible to retail customers (and in the case of electricity, embedded generators) to negotiate the details of a new connection.
16. The negotiation procedure contains requirements for the exchange of information, negotiation in good faith, and overall timelines. At the conclusion of negotiations and within a specified timeframe, a distributor must take reasonable endeavours to make an offer which meets a customer's reasonable requirements.
17. In order to protect customers dealing with monopoly distributors, under the NECF small customers will have access to dispute resolution for connection-related matters, including the right to take disputes to jurisdictional energy ombudsmen. Further consideration is being given as to whether other dispute resolution arrangements should be made for large customers and (in electricity) non-retail embedded genera-

tors, including the possible treatment of such disputes as 'access disputes' for the purposes of the NER and NGR.

A.1.1.5. ENQUIRIES AND APPLICATIONS

18. The connections frameworks have been developed with flexible arrangements for applications in mind. Current practice across the jurisdictions reveals numerous ways in which applications for connection proceed, with a variety of formal and informal processes involving customers, retailers, distributors and other third parties. The connections frameworks aim not to disrupt current practices as there is a cost to doing so, but provide at a minimum that a customer must be able to apply to a distributor for a new connection.
19. Distributors are required to publish an application form for connection on their website, along with other relevant information.
20. An enquiry process is mandated, whereby a customer enquiring about a new connection is entitled to the timely provision of information which will assist them in making an application.
21. Applications may be made using the published application form or in another way which is acceptable to the distributor. Applications thus provided must be assessed by the distributor as either conforming to a basic or standard connection service or, if not, advise the customer appropriately.

A.1.1.6. ROLE OF THIRD PARTIES

22. The connections frameworks recognise that in practice many third parties act as facilitators of customer connections, particularly retailers, electricians, gas fitters and other technical service providers. The connections frameworks recognise the role of these parties and where the customer so elects, a third party can execute all relevant processes to gain connection in place of the customer.

A.1.1.7. CHARGES FOR CONNECTION

23. The charges levied by distributors for the provision of connection services are a critical feature of the connections frameworks. Broadly, charges may apply for the provision of dedicated connection assets, for contributions toward augmenting the shared network to support new connections, and for other miscellaneous services such as negotiations and design works.
24. The electricity and gas frameworks take different approaches in accordance with the different economic regulatory regimes for the two sectors. These are outlined further below.

A.2 Framework for electricity connections

A.2.1. Overview

25. The electricity connections framework will form a new Chapter 5A of the NER.
26. The electricity connections framework represents what SCO considers to be an appropriate level of regulation to establish core processes and arrangements which enable the timely and efficient provision of reliable distribution network connections.

A.2.2. Defined connection types

27. The electricity connections framework requires distributors to propose standing offers of two basic connection types: for customers with small loads and for customers with micro embedded generation equipment.

28. The basic connection for small load customers is to capture a substantial class of connections, envisaged to be sought by small, urban retail customers, for which minimal or no augmentation work is required.
29. The basic connection for micro embedded generation is to capture connections that comply with Australian Standard 4777 (Parts 1 – 3).
30. Further standard connection types may be proposed by distributors for other classes of customer or embedded generator. The distributor will be required to publish their standing offer for the basic or standard connections. Retail customers and embedded generators may also apply to negotiate the details of their connection through the negotiation framework (see section A.1.1.4).

A.2.3. Contractual model

31. Contractual arrangements in electricity facilitate a range of different connection scenarios.
32. Retail customers will have the benefit of the terms and conditions approved by the AER as part of their deemed contract with the distributors if they seek a basic or standardised connection.
33. For any standard connections for non-registered embedded generation, distributors will provide a standing offer for approval by the AER which must cover the minimum terms and conditions set out in the NER describing the connection service, including if relevant, requirements for ongoing supply services.
34. In relation to negotiated connections and contracts, stakeholders requested some further guidance on the form and content of the contract. In response, SCO has incorporated into the NER an additional schedule listing the minimum content requirements for retail customers and embedded generation respectively. For National Electricity Market (NEM) registered participants, Schedule 5.6 will continue to operate.
35. Where retail customers exercise the right to connect micro-embedded generation (e.g. solar panels) at their premises, some additional requirements were identified during consultation with stakeholders which are needed to support this right, in relation to the ongoing supply of those premises. These requirements are reflected in the model terms for the deemed standard connection contract under Schedule 2 of the NERR.

A.2.4. Role of third parties

36. There were stakeholder concerns that the original SCO policy response did not satisfactorily recognise or reflect the fact that in many instances, a retailer or other third party may act as an intermediary or interface between the distributor and customer with respect to the processes and through contestability, extending to the actual construction of some of the connection assets.
37. The electricity connections framework has been revised to more fully reflect these circumstances while recognising that, while a retailer or Accredited Service Provider (ASP) may facilitate a retail customer's connection through commercial or contestable arrangements, the distributor retains ultimate responsibility for the provision of accurate network information and technical requirements to customers.

A.2.5. Flexible basic and standard connections

38. In response to stakeholder concerns that the original connection service requirements and scope (particularly relating to the mandatory basic connection service) were too rigid – under the revised electricity connections framework, minor variations

to a basic or standard connection service are permitted without requiring the customer and distributor to go through a full and formal negotiation.

39. This is facilitated by the requirement that a distributor include in its connection standing offer a list of additional connection asset component costs, which is subject to approval by the AER. This provides for a basic connection service which is flexible enough to accommodate an individual customer's minor variations and reflects the reality that each connection is individualised to a degree.

A.2.6. Negotiation framework

40. There were significant concerns raised by stakeholders during consultation on the SCO policy response regarding the negotiation framework to apply to the negotiation of a connection. Stakeholders' key concerns centred around confusion about the interaction with NER Chapter 6 negotiations, and the regulatory burden associated with each distributor being required to develop their own framework.
41. Following consideration of stakeholder concerns, the policy was revised to include the establishment of a separate and simpler negotiating framework for retail customers and non-registered embedded generators in the proposed new Chapter 5A of the NER. This is proposed to apply uniformly to all distributors, customers and non-registered embedded generators seeking to negotiate a connection. For connection services that are also negotiable distribution services as classified by the AER, the negotiation framework contained in Chapter 5A will supersede any negotiation framework developed by a distributor to meet the requirements of Chapter 6 of the NER. This policy may need to be effected by some consequential amendments to the NER.

A.2.7. Charges for connection

42. Chapter 6 of the NER prescribes a range of potential regulatory treatments for services provided by Distribution Network Service Providers (DNSPs), and it is considered that these treatments should apply to the connection services described by the electricity connections framework. The framework also provides that a distributor may require customers in some circumstances to make a capital contribution towards the cost of reinforcing the shared network.
43. Customers will receive a refund of capital contributions paid for previously dedicated assets that have become shared assets within seven years.
44. Some stakeholders argued for various new principles, the continuation of various components of jurisdictional arrangements, and more detail pertaining to methodologies to be placed in the NER to regulate capital contributions. Because of the wide range of historical practices, it was considered appropriate that the NER contain only high level principles. The AER will develop a more detailed set of methodologies in its guideline development process. Stakeholders will have an opportunity to provide further input on the details of the methodologies at that point.

A.2.8. Other matters raised by stakeholders

A.2.8.1. AER'S ROLE

45. Some stakeholders argued for the role of the AER to be reduced to a more general compliance/oversight role rather than actively approving basic and standard connection services. However in giving regard to the balance between the regulatory burden on distributors and the need to ensure protection of small retail customers, SCO decided that the original policy would remain unchanged – with distributors required to

submit basic and standard connection services, including associated connection charges, to the AER for approval.

A.2.8.2. CONNECTION ENQUIRIES

46. Some stakeholders argued against any regulation of information or response timeframes for enquiries. However SCO considers that the requirements for the enquiry phase are minimal in terms of information provision and that some timeframe benchmarks are necessary to ensure that customers are dealt with in a timely fashion, so this minimal regulation of the enquiry phase will remain.

A.3 Framework for gas connections

A.3.1. Overview

47. The gas connections framework is to form Part 12A of the NGR, and will deal specifically with retail customer connections. In the future, as now, 'access' as defined by Part IIIA of the *Trade Practices Act 1974* (Cth) will be provided to Users seeking pipeline services under the NGR. In respect of retail customers, this will be the customer's retailer.
48. However, the NECF's focus on customers means particular connection-related services now provided by distributors to retailers will formally become accessible by customers themselves. Where a retailer acts as intermediary between customer and distributor in organising a new connection, the distributor will also have obligations under the gas connections framework to the customer. The basis for this decision is that customers will benefit from a direct customer-distributor relationship with mutual obligations.

A.3.2. Defined connection types

49. Stakeholder comments on the SCO policy paper highlighted the need to clarify the AER's approval role for basic connections, and this is reflected in the approval criteria in Division 2 of Part 12A.
50. The gas connections framework also provides for other standard connection services to be proposed by distributors and approved by the AER. These are to be approved by the AER having regard to the National Gas Objective.

A.3.3. Negotiated connections

51. Stakeholders queried the role of a retailer in relation to a customer negotiating a connection with a distributor. The framework applies only to retail customers and it is likely although not mandatory that retailers will be involved in many or most negotiations. If negotiations result in the construction of a new connection, the NERR obliges a distributor to energise the connection only when notified by a retailer that a retail contract exists for the premises.

A.3.4. Enquiries and application process

52. Stakeholders raised concerns about whether customers could be treated as sufficiently knowledgeable to arrange for connection in respect of matters such as safety obligations. In this regard, the gas connections framework is not intended to override any jurisdictional laws for example whereby a customer must provide a distributor with evidence that the customer's gas installation meets a certain standard. If a customer is not able to arrange connection in some respect, the option remains for them to organise for an entity to arrange connection on their behalf.

53. Stakeholders also expressed some concern over the operation of timeframes for applications, offers of connection, and the making of a new connection. Division 5 provides for both a formal offer-and-acceptance process and an expedited application process for basic and standard connections based on an apply-and-connect model. It will be at the customer's discretion which option is pursued. The timeframes for provision of an offer will not affect the timeframe for provision of a connection subsequent to application, as these timeframes will have been approved by the AER as part of the distributor's standing offer to provide a basic or standard connection.

A.3.5. Offers for new connections, contractual arrangements

54. Contractual arrangements for basic and standard connections are to be handled consistent with the framework for electricity connections outlined in section A.2.3.

A.3.6. Charges for connection

55. Stakeholder comments sought clarity on what the treatment of connection related capital expenditure would be under the gas connections framework, and whether a system of direct charges for connection assets outside of the regulated asset base of distributors was envisaged.
56. SCO has arrived at the view that for covered pipelines, existing practice with respect of connection related capital expenditure should continue – that is, distributors should make capital expenditure that is prudent, and to the extent that customers requesting connection would not otherwise meet the justifiable expenditure test under s. 79 (2) (b) of the NGR, they will need to make a capital contribution to the distributor in order to proceed to be connected.
57. Division 4 of Part 12A provides for connection charges to be set consistent with a set of connection charges criteria. This entails ensuring that to the extent the incremental costs of connecting a customer exceed the expected incremental revenue from connecting the customer, the charges should not exceed the shortfall.

A.3.7. Capital asset reimbursement scheme

58. SCO proposed in its policy paper that there should be a scheme allowing for the reimbursement of 'pioneer' customers who contribute to the extension of gas networks, if other customers subsequently connect to those extended networks.
59. Stakeholders noted that the costs and benefits of such a scheme are unknown and that there may be less use for such a scheme in the gas industry versus electricity, where such schemes are already operating. Nevertheless, the equity rationale underlying the proposal is considered to be worth pursuing. To this end, SCO is further investigating the costs and benefits of a reimbursement scheme.

A.3.8. Competition and contestability

60. SCO notes that there are circumstances where 'network' infrastructure may be constructed by parties other than the distributor itself. There are benefits to customers from being able to access competitive providers of construction services, or for distributors to obtain competitively priced services from third parties. SCO will consider how in future the gas connections framework might facilitate connection competition and connection contestability.

Attachment B. Customer registration and transfer

1. In developing provisions to support customer registration and transfers under the NECF, SCO has focused on the provisions required to:
 - Ensure AEMO is appropriately empowered to make and enforce the National Energy Retail Market Procedures (the Procedures) to support retail market operations; and
 - Ensure those registrations, transfers and related market 'transactions' are undertaken in accordance with the policy underpinning the NECF.
2. The Procedures will continue to contain the detailed operational matters that relate to customer registration and transfer under the NECF. Consequential amendments to the Procedures will be required to ensure they support the provisions of the NECF (rather than existing jurisdictional arrangements). These consequential changes are not considered in this package and will form the basis of a separate procedure review and change process once the NECF is settled.
3. SCO welcomes feedback from stakeholders on any of the matters relating to customer registration and transfer considered below.

B.1 Proposed provisions

4. The table below summarises the provisions to be included in the national Laws and Rules to support customer registration and transfer under the NECF. A number of these provisions are intended to be located in the NEL, NGL, NER or NGR and do not appear as draft provisions in this exposure draft package.
5. In some cases, the location of provisions between the NER/NGR and new NERR is not yet settled. While it is expected that the majority of these provisions will reside in the NER and NGR, the final location will be determined through the drafting process. In these cases, the provisions are simply identified as 'Rules' provisions.

Table 1: Proposed provisions for customer transfer

Provisions required	Rationale
<p>'Head of power' provisions are required in the NEL (similar to section 74(1) of the NGL) to allow Rules to be made in relation to the operation of electricity retail markets in the National Electricity Market.</p> <p>Provisions are also required in the NER for the making, by the Australian Energy Market Operator (AEMO), of:</p> <ul style="list-style-type: none"> ▪ the Market Settlement and Transfer Solution (MSATS) and Business to Business (B2B) Procedures for the following matters: ▪ the establishment and maintenance of a registry of information relating to each National Metering Identifier (NMI) that is eligible for contestability, and for access to and disclosure of that information; and 	<p>At present, the MSATS and B2B procedures are (loosely) empowered by the metering provisions in the NER and are justified on the basis that they deal with matters affecting wholesale settlements.</p> <p>By contrast, the NGR already empowers the making of procedures to support the gas retail markets administered by AEMO.</p> <p>While a much longer list of subject matter of procedures is listed in the NGR, given the different structures of the instruments and the pre-existing content in the NER, it is considered appropriate to locate these provisions in Chapter 7 of the NER where existing provisions about the MSATS and B2B procedures reside, rather than a stand-alone 'procedures' chapter.</p>

<ul style="list-style-type: none"> ▪ procedures for the efficient transfer of customers between retailers subject to all applicable laws; ▪ retail market procedures (more generally); and ▪ procedures to support the implementation and administration of RoLR arrangements. 	
<p>Retailers and distributors will be expressly required to comply with the relevant Procedures.</p> <p>This obligation will be included in the NEL (for electricity), the NGL (for gas) and also in the new NERL because compliance with these procedures is an essential obligation for the purposes of the customer regime (see section 1217).</p>	<p>Retailers and distributors should be required to comply with existing retail market procedures in relation to the operation of the retail market. This will ensure efficient and appropriate processes and practices are followed and customers receive the intended protections.</p>
<p>The NER and NGR will include a provision that requires customer transfers to be initiated in accordance with the applicable Procedures.</p> <p>Also, the Rules will include a provision requiring parties engaged by a retailer or distributor to also comply with the applicable procedures (i.e. meter data providers).</p>	<p>These provisions provide certainty and ensure customer transfers are undertaken in accordance with the relevant procedures. Most jurisdictional codes for electricity currently state this and it seems prudent, given that the detailed operational requirements of the procedures are not to be replicated in the Rules, to ensure appropriate practices are followed in customer transfers, providing protection for the individual customers involved.</p>
<p>The Rules will prohibit a retailer from submitting a transfer request unless:</p> <ul style="list-style-type: none"> ▪ it has obtained any applicable consents from the customer (account holder) to enter into the retail contract; and ▪ it has all necessary agreements in place to enable the sale of energy to the customer at that connection point. 	<p>While section 220 of the NERL already identifies entry into a market retail contract and customer transfers as matters requiring the explicit informed consent of the customer, these further requirements will be included to ensure that a transfer is not lodged unless a retailer has the necessary consents and agreements in place prior to lodging the transfer.</p>
<p>The Rules will enable a customer transfer to be lodged prior to the completion of the cooling off period, provided the retailer and market operator systems are capable of reversing a proposed transfer if the customer decides to cool off.</p>	<p>The cooling off period itself is already specified in Rule 236 of the NERL.</p> <p>As only a small minority of customers seek to exercise their cooling off right, it is considered more practical to allow transfers to be initiated and complete prior to the completion of the cooling off period, provided that the transfer can be reversed as if it never happened (with no disruption to the customer) should the customer cool off.</p>
<p>The Rules will require that a small customer transfer occur on an actual meter read.</p>	<p>A transfer of a small customer should only occur based on an actual meter read, which</p>

<p>A special meter read may only be used for a small customer transfer where:</p> <ul style="list-style-type: none"> ▪ the retailer has disclosed to the small customer any charge for undertaking the special meter read; and ▪ the customer has provided their explicit informed consent to both the transfer and any such charge. 	<p>will generally be either a scheduled or a special meter read.</p> <p>As a special meter read may incur an additional charge, a small customer's explicit informed consent will be required where a special meter read is proposed to ensure the customer is both aware of and agrees to pay any such charge.</p>
<p>The NER and NGR will <u>not</u> permit a (current) retailer to object to the transfer of a small customer to a new retailer for any of the following reasons:</p> <ul style="list-style-type: none"> ▪ debt; ▪ any other contractual reason; or ▪ the absence of a haulage contract. 	<p>These objections are not considered appropriate for small customer transfers and do not prevent a retailer from taking action to recover a debt or remedy a breach even where the customer has transferred to another retailer.</p> <p>This is not intended to affect a retailer (or another participant) objecting to a proposed transfer for procedural reasons, such as that the wrong information has been provided in the transfer request.</p>
<p>The Rules should require the following notice to be provided to customers:</p> <p>Where a retailer has advised a customer of the expected date of a transfer and that transfer does not occur, the retailer must, within 5 days of becoming aware of the non-occurrence of a transfer on the expected date, advise the customer:</p> <ul style="list-style-type: none"> ▪ that the transfer did not occur; ▪ the reason for the delay; and ▪ the new expected date of the completion of the transfer, if it is still proceeding. 	<p>If a transfer does not complete as expected, the customer should be advised promptly, including the reasons for the delay and the new expected transfer date to enable customers to understand when they should cease being billed by their old retailer and start being billed by their new retailer.</p> <p>Separate notification to a customer of a completed transfer is not considered necessary. If a new retailer does not advise their customer of a successful transfer, the customer will learn the transfer has completed when they receive their first bill from the new retailer.</p>
<p>The NER and NGR should provide for NMI discovery along the following lines (note drafting example below is for electricity – equivalent provisions are also required for gas using the appropriate terminology for gas):</p> <p>1. NMI and NMI checksum</p> <p>a) A distributor must within one business day of a retailer's request provide that retailer with the NMI and NMI checksum for a NMI premises.</p> <p>b) A request made by a retailer under paragraph (a) may be made by reference to a:</p> <p>(i). unique meter identifier held by the distributor;</p>	<p>Where information about the relevant meter identifier is available through market systems, retailers should use those systems to find information, as this is the most efficient method for market participants to share this information.</p> <p>However, where the information needed is not available in the market systems, a method for retrieving the information is required. This matter is currently dealt with in a number of jurisdictional codes.</p>

<p>(ii). street address; or</p> <p>(iii).for electricity, Delivery Point Identifier (DPID) (as that term is defined in the Consumer Administration and Transfer Solution (CATS) Procedures).</p> <p>c) Where a request made under paragraph (a) does not return a unique match, the distributor must provide all the returned matches to the retailer, provided that if there are more than 99 matches, only the first 99 returned matches need be provided to the retailer.</p> <p>d) Where a request made under paragraph (a) returns a unique match, the distributor must, unless otherwise advised by the retailer, provide that NMI and NMI checksum for the relevant NMI premises.</p> <p>2. NMI standing data</p> <p>a) A distributor must within one business day of a retail entity's request provide that retailer with the NMI standing data for a NMI premises.</p> <p>b) A request made under paragraph (a) may only be made by reference to a NMI.</p> <p>3. Information must not be available in MSATS</p> <p>A request under the above clauses may only be made by a retail entity if the relevant NMI, NMI checksum or NMI standing data are not available to that retail entity through MSATS.</p>	
<p>Definitions are likely to be required to refer collectively to the following:</p> <p>National energy market procedures (see section 102 of the NERL);</p> <p>Meter identifier, including:</p> <ul style="list-style-type: none"> ▪ NMI (NER/MSATS/B2B); ▪ MIRN (Qld, Vic and SA Gas Retail Market Procedures); ▪ DPI (NSW and ACT Gas Retail Market Procedures); and ▪ related terms such as the related meter identifier checksum and standing data. 	<p>These should be defined consistently across the national regulatory instruments.</p>

B.2 Matters which are already adequately covered

6. In the SCO Policy Response to the AAR/NERA Composite Paper, a number of other provisions were recommended to support customer registration and transfer. On review, the SCO believes these provisions are not required as part of the NECF legislative package as they are already adequately (although not necessarily consistently) dealt with under existing provisions in the NGL and NGR or existing gas and electricity retail market procedures.
7. These are provisions relating to:
 - the making of rules and procedures in relation to the gas retail market;
 - requiring distributors, or the appropriate participants, to maintain and provide NMI standing data to AEMO and notify changes to that data;
 - limiting disclosure of NMI standing data by AEMO to the financially responsible retailer and (on a limited basis to be defined in the Rules) to retailers (Market Customers) who specify the NMI or supply address and to ombudsmen for dispute resolution purposes (see above);
 - specifying the purposes for which a retailer may access and use NMI standing data;
 - specifying the period within which a transfer must be completed;
 - the circumstances in which transfers may be made retrospectively effective and the applicable retrospective periods;
 - 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);
 - permitting a transfer objection to be lodged within a prescribed time (e.g. 5 business days from the date of the transfer request) in accordance with the procedures;
 - 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;
 - permitting a retailer to withdraw a transfer request submitted by it at any time before the transfer has been registered by AEMO; and
 - requiring a transfer request to be accepted as valid if:
 - it contains all the prescribed information;
 - the connection point details in the request are consistent with the NMI standing data;
 - there is no outstanding transfer request in relation to the same connection point;
 - the metering installation complies with applicable requirements for contestability; and
 - the incoming retailer is registered with AEMO as a market participant.

Attachment C. Retailer of last resort scheme

C.1 Background

1. A Retailer of Last Resort (RoLR) scheme is one pursuant to which failure of electricity and gas retailers is provided for by there being named “backup” retailers who will take the customers of the failed retailer and continue to supply electricity and gas to those customers. RoLR schemes have long been a feature of retail regulation in jurisdictions that have retail competition albeit that in some jurisdictions they are referred to as “suppliers of last resort”.
2. As more retail trade occurs across jurisdictional boundaries, the necessity of creating a national framework for consistent, simple and cohesive Laws, Rules and Regulations became more apparent.
3. Energy is an essential service that plays an important role in maintaining living standards. Having a national RoLR scheme will provide security to customers regarding the continuity of supply, if their retailer happens to fail or exit the market.
4. The MCE engaged the services of NERA Economic Consulting and AAR to undertake a review of current jurisdictional and international RoLR frameworks and to advise the MCE on the development of an appropriate national policy framework for a RoLR scheme.
5. NERA/AAR released a draft report on 3 October 2008 for public consultation. A forum was held in Sydney for stakeholders on 16 October 2008, with written submissions also considered.
6. In developing the RoLR framework, SCO has considered NERA/AAR’s report, stakeholder submissions in respect of that report, the AEMA, the interests of customers across the NEM jurisdictions, and the feasibility of implementing consistent RoLR provisions across electricity and gas markets in those jurisdictions.

C.2 Overview

7. The RoLR scheme is embodied in Part 6 of the NERL and Part 11 of the NERR. The scheme pertains to “RoLR events” including “apprehended¹ RoLR events” which are defined in the NERL. These events concern the exit, particularly forced exit, of a retailer from the market(s).
8. The proposed RoLR scheme provides for the orderly handling of RoLR events without the termination of supply of retail customers. The principal mechanism is to appoint a RoLR, and transfer the responsibility for supplying the failed retailer’s customers to the RoLR.
9. To facilitate an orderly transfer a wide range of facilitating provisions are needed as discussed below.

C.3 Key powers

10. The scheme facilitates the registration of potential RoLRs by the AER. The AER must call for expressions of interest (EoIs) in undertaking the role of RoLR from interested retailers at least annually. The AER may register a retailer as a RoLR based on the RoLR criteria specified in the NERL. Regardless of whether any EoIs are received, the AER has the ability to appoint a retailer as a RoLR based on their fitness to per-

¹ An “apprehended” RoLR event is where the AER acts ahead of the exit of a failed retailer.

form the RoLR role, and must at all times ensure there is a default RoLR registered for each participating jurisdiction.

11. If the AER determines that a RoLR event has occurred or will occur, the AER may publish a RoLR notice advising all relevant parties of the event. The AER will in this event appoint a registered retailer as a designated RoLR. The NERL specifies the criteria on which the AER must make this judgment. The AER has the ability to appoint more than one designated RoLR per event.
12. The NERL provides that following a RoLR event, customer contracts with the failed retailer are terminated and deemed customer contracts commence with the designated RoLR. The terms, conditions and tariffs for supply of small customers will be the designated RoLR's standing offer, while large customers will be supplied under a tariff which is set based on the designated RoLR's wholesale energy costs plus a margin approved by the AER. Both classes of customers may also be subject to any further cost recovery mechanisms provided for under the provisions described in C.6 below.

C.4 Planning

13. The AER's powers to register potential RoLRs must be supplemented by supporting preparations by other parties.
14. Firstly, the AER is responsible for preparing RoLR plans (Division 7 of the NERL) in conjunction with all other affected bodies including AEMO, distributors and registered RoLRs. These plans must provide for the provision of necessary information between parties and to the public to facilitate the orderly handling of a RoLR event.
15. AEMO is empowered by the NERL to make RoLR procedures (Division 4 of the NERL). These procedures are necessary to accommodate the large scale handling of customer transfers from failed retailers to the designated RoLR(s).

C.5 Information requirements

16. Information requirements are provided for at two levels namely:
 - Provision of information to the AER and AEMO in the case of an apprehended RoLR event;
 - Provision of information to the AER, AEMO and a RoLR in the case of an actual RoLR event.
17. The AER may, if it considers it reasonably necessary, make or serve a Regulatory Information Order (RIO) or Regulatory Information Notice (RIN) (as the case may be) on a retailer.
18. The use of RoLR RIOs and RINs is considered necessary in light of the impact that inadequate provision of information may have in the performance of the AER's duty in respect of the RoLR regime, and consequently on the interests of the community at large. SCO has taken into account prior experience in Australia and internationally in coming to this view.
19. Division 6 of Part 6 of the NERL sets out a regime for RoLR RIOs and RINs. The framework for these information powers is broadly consistent with those provided under the NEL and NGL for regulatory functions, but the regime under the NERL is tailored to the specific needs of the RoLR regime, particularly in respect of obtaining urgent information.

C.6 Cost recovery

20. It is recognised that performing the role of RoLR may involve extra costs for the designated RoLR. Therefore, Division 8 of Part 6 of the NERL provides for RoLRs to apply to the AER for a cost recovery scheme. The AER is to approve a cost recovery scheme to reimburse a RoLR for the costs involved in preparing for and dealing with a RoLR event.
21. SCO notes that an AER cost recovery determination may provide for the recovery of costs incurred *ex-ante* and *ex-post* of a RoLR event. Both default RoLRs and other registered RoLRs may apply for such a determination to be made.
22. Cost recovery for a RoLR event will come from:
 - RoLR customers, through prices set at the designated RoLR's standing offer prices and possibly an up-front fee; and
 - All customers, through charges to recover any under-recovery of RoLR costs from RoLR customers during a RoLR event.
23. Establishment costs, being costs incurred by a RoLR prior to a RoLR event in order to be ready to undertake its RoLR obligations, may also need to be provided for.
24. However, SCO notes that there may be unwanted outcomes of allowing a wide range of costs to be passed through to customers where there exist RoLRs registered through the voluntary EoI process. In particular, the types of establishment costs which may be claimed in respect of participating in the scheme may not be efficient if each registered RoLR may recover them from energy customers at large. On the other hand, the scheme should not diminish the incentive for retailers to volunteer to be a RoLR as there are expected to be benefits to customers and the market from having a wider range of potential RoLRs available.
25. The NERA/AAR report recommended *ex-ante* cost recovery for default RoLRs to recover costs for setting up systems in order to handle large retailer failures. Stakeholder feedback indicated that there would be moderate costs involved as default RoLRs would typically have billing systems capable of handling the necessary transfers.
26. SCO intends for only the efficient costs of participation to be subject to explicit cost recovery within the RoLR framework. The regime presented allows the AER to limit the costs which may be recovered by RoLRs, and otherwise determine the efficient means of allowing cost recovery for registered RoLRs.
27. SCO requests stakeholder feedback on whether further guidance needs to be given in the Rules on what costs should be recoverable by registered RoLRs *ex-ante* and whether voluntary and default RoLRs should be treated differently with regards to the recovery of such costs. In particular, there may be different types of establishment costs involved in participating in the RoLR scheme. For instance, a default RoLR who was at short notice required to develop the necessary systems to handle a RoLR event may have different (both in nature and scale) costs to those of a voluntary RoLR who has over time developed those systems. Also a default RoLR needs to be able to deal with any kind of RoLR event which is not the case for voluntary RoLR's. This will also impact on their respective cost profiles.

Attachment D. Future smart meter customer protections

1. In December 2007 the MCE committed to work with stakeholders and the appropriate jurisdictional authorities to review customer protection and safety arrangements and ensure they remain appropriate where smart meters are rolled out. In August 2009 SCO released Draft Policy Paper One for consultation in support of MCE's commitment.² The paper contained draft policy proposals on the smart meter customer protection issues that are most relevant to the NECF, using the first exposure draft as a reference document. It also identified a number of areas where SCO considered further work is required.
2. That policy paper, and subsequent consideration of submissions, is highlighting that new metering functionality may require refinements to energy consumer protections that are currently oriented primarily to manually read meters.
3. The following are examples of some of the consumer protections that are currently included in the NECF2 package, and which may require further refinement as part of the ongoing smart meters work. These are just a few examples of the full range of consumer protections relevant to smart meters that will be required to be incorporated into the NECF in the future. These other customer protection policies are under development and will be subject to a separate further consultation.
4. Another paper is also being developed which discusses smart meter customer protection issues that are not related to the NECF. This paper will be expected to be released for consultation in 2010.
5. Stakeholders are invited to provide comment on the consequential implications of applying policies D.1 and D.2 below to existing interval meters installed at retail customers premises, where the meters are read as interval meters for billing purposes (i.e. the policy is not intended to apply to interval meters that are read as accumulation meters).

D.1 How energy consumption information is presented to customers

6. Rule 213 of the draft NERR provides that a customer's bill must include details of energy consumption or estimated consumption of energy.
7. SCO has proposed as part of the smart meters project that retailers should be required to provide customers with energy consumption information for each tariff segment (e.g. peak, off-peak, shoulder) on their bill to enable them to reconcile their bill charges. This will show customers how the bill was constructed and provide customers with information to assist them to manage their energy consumption. Presentation of energy consumption data in this form will also provide customers with more information when comparing offers from different retailers.
8. The requirement would be for a customer's bill to contain:
"details of consumption or estimated consumption of energy, including (if applicable) details for each relevant retail tariff segment."
9. This would have effect according to the structure of the retail tariff, rather than according to the type of meter that may be in place at a customer's premises. For a

² SCO, August 2009: *Smart Meter Customer Protection and Safety Review - Draft Policy Paper One* www.ret.gov.au/Documents/mce/emr/smart_meters/default.html

single-rate flat tariff, the provision would have the same effect as the current requirement to show total energy consumption for the billing period. For a multi-part tariff (including inclining block tariffs, time-of-use tariffs, seasonal tariffs) the provision would require energy consumption to be shown for each part or segment of the tariff.

D.2 How historical billing data may be presented

10. Rule 216 of the draft NERR requires retailers to provide historical billing information to customers on request. As currently drafted, the NERR is silent as to how that data should be presented, or the level of detail that must be available if a customer requests it. Once interval metering data is collected for a particular customer's premises, the question arises as to whether a customer has a right to access that data on request, over what period and on what terms.
11. SCO proposes that where a customer requests a copy of their historical billing data retailers must be able to provide:
 - the full set of billing data on which the bill was based; and
 - a summary of the billing data (including relevant metering data) on which the bill was based.
12. Customers should be able to choose which of these levels of detail they require. It is expected that where interval metering data is collected, a summary will be of most use to most customers and is likely to be the default option offered by retailers. Where historical billing data is based on accumulation metering, it may be easier for the retailer to simply provide the full set of billing data rather than summarising it, and this may be the default option.
13. This requirement accommodates the increased amount of consumption data smart meters provide and will obligate retailers to provide customers with billing data in a form that is usable to the customer. It complements the existing right for an electricity retail customer to access metering data relating to their metering installation, on request to their retailer, that is contained in Rule 7.7(a)(7) of the NER. Billing data may include metering data (actual, estimated and/or substituted) and any other applicable charges on which the bill was based. The data would be provided in accordance with other historical billing information requirements in the NECF (e.g. time to provide the information, any applicable charges).
14. This approach would again have effect according to the type of data used for billing purposes, rather than according to the type of meter in place at a customer's premises. This means it would apply equally where a smart meter is installed or where an existing interval meter is read as an interval meter to support billing.

D.3 Notifying customer that disconnection may be effected remotely

15. The manual disconnection of a customer by a visit to the site in some instances provides a "last minute" means by which any health or safety concerns can be identified. Some stakeholders are concerned that with remote disconnection, this opportunity is no longer available and that customers should be made aware of this.
16. It is proposed that this could be covered using two mechanisms in the NERR:
 - a new clause in the model standard connection contract that informs customers that they may be disconnected remotely; and/or
 - a warning in the disconnection warning notice that if their meter has remote capability, they will be disconnected without a person visiting the premises.

D.4 Undercharging provisions

17. SCO considers that the time available for retailers to identify and notify a customer of any undercharge amount should be reduced from the current proposed (fixed) period of 12 months, which was chosen in light of the minimum 3 monthly billing cycle and minimum 12 monthly meter reading requirement (see draft rule 218 NERR,), to a more flexible model which derives from the applicable billing cycle and meter reading cycle once smart meters are in place. This reflects the expectation that metering data for most customers will be available to the retailer for the preceding day.
18. It is appropriate to reduce the amount of time available to retailers to identify undercharged amounts, if meter reading cycles are shortened. However, consistent with the existing provisions in the NECF it is appropriate to align the time period for identifying and advising of an undercharge with the relevant billing cycle of the customer.
19. This proposed change would in effect mean that where a retailer chooses to bill monthly they would have four months to identify and notify the customer of any undercharge. If a retailer chooses to retain a three month billing cycle, they would continue to have up to 12 months to identify and notify the customer of any undercharge. SCO considers that retailers have an incentive to move to shorter billing cycles once metering data is available more frequently, and therefore monthly billing may be made more readily available under smart metering.
20. Further, with more frequent meter reading and remote reading retailers should be aware of any undercharge much sooner than is currently the case with manually read meters. The undercharge period will be aligned with billing cycles as this is likely to be when retailers will become aware of any undercharge.
21. Four billing periods will not lessen the protection currently available to small customers, and should not disadvantage retailers in recovering undercharged amounts as the draft NERR effectively allows four billing cycles to detect and recover undercharging based on quarterly billing.

D.5 Future process

22. The examples above are limited to the basic functionality of smart meters, that are likely to be those first available to the market, including remote reading, remote disconnection/reconnection and half-hourly measurement. Implementing these refinements to existing consumer protections is considered more pressing than developing the new consumer protections that may be required for more advanced functionality. Refinements to the current draft NECF consumer protections may also be required for other areas, such as presentation of information about substitutions used in metering data. Refinements to the current draft provisions of NECF as they may relate to the basic functionality of smart meters will be developed as a matter of priority, and an update will be provided in February 2010.
23. Consumer protections related to more advanced functionality will be further considered and developed following advice on technical and operational arrangements from the National Stakeholder Steering Committee, which SCO expects to receive in the second quarter of 2010. On completion of this work any necessary amendments to regulate more advanced functionality will be sought via an AEMC Rule change proposal.
24. The Smart Meters Working Group is developing a second policy paper outlining smart meter consumer protection issues that are not related to the NECF. This paper will be developed in parallel to the ongoing work on NECF issues and is expected to be released in the first half of 2010.

Attachment E. Relevant publications

National Energy Customer Framework - First Exposure Draft, April 2009

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

Decision Regulation Impact Statement -A National Framework for Regulating Electricity and Gas (Energy) Distribution and Retail Services to Customers, July 2009

http://www.ret.gov.au/Documents/mce/_documents/Energy%20Market%20Reform/decision_ris_necf.pdf

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

http://www.ret.gov.au/Documents/mce/_documents/MCE_SCO_National_Framework20080613111731.pdf – SCO Policy Paper

http://www.ret.gov.au/Documents/mce/_documents/MCE_SCO_Table_of_Recommendations20080613102115.pdf – Table of Recommendations

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

http://www.ret.gov.au/Documents/mce/_documents/National_Framework_for_Non_Economic_Distribution_and_Retail_Regulation20070619165729.pdf – Composite Paper

http://www.ret.gov.au/Documents/mce/_documents/National_Framework_for_Distribution20070619175259.doc – Table of Recommendations

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

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

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

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

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

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

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

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

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

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