

Issue 1 – Regulatory Objectives and Principles: Electricity Distribution Pricing

Is the set of regulatory objectives and principles relating to electricity distribution pricing and described in the annexure to Section 3 appropriate for all jurisdictions?

What other regulatory objectives and principles (if any) should the Australian Energy Regulator be required to apply in regulating prescribed electricity distribution service charges and excluded electricity distribution service charges?

Are there any particular jurisdiction-specific characteristics that need to be accommodated in the regulation of electricity distribution pricing? If so, can they be accommodated as part of a national set of electricity distribution pricing principles or only as specific jurisdictional deviations?

The commission considers the objectives and principles relating to electricity distribution pricing as outlined in the annexure to Section 3 of the Issues Paper to be reasonable.

The commission agrees with the proposed modification to allow distributors to recover reasonable costs arising from the compliance with legal requirements and decisions by other regulators that impact on the costs of their distribution business.

The commission also agrees that it would be *desirable* for the Australian Economic Regulator (AER) to establish regulatory control periods of at least five years but believes that unnecessarily *requiring* regulatory control periods of at least five years may restrict the regulator where market conditions or unforeseen events occur.

The commission believes that the AER should be guided by a set of high level principles similar to those that are currently set out in Section 6.10 of the National Electricity Code when regulating prescribed electricity distribution service charges and excluded electricity distribution service charges. The AER should work toward achieving these principles but be provided with sufficient flexibility to adopt approaches, techniques and processes to arrive at an efficient determination. If the approaches, techniques and processes under which the AER were forced to operate were too prescriptive and sought to strictly define the approach that must be adopted, there is a danger that the approach may be insufficiently flexible and may lead the AER to make inefficient pricing determinations. The AER may also be inadequately placed to deal with regional variations and unable to adopt improved approaches, techniques and processes that may emerge over time. Regulation may be constrained, as is now the case with the Gas Code.

The commission also believes that it would be desirable if the AER were granted the authorisation to make directions on a range of matters including pricing, rather than recommendations.

There are no particular jurisdictional specific characteristics within the ACT, of which the Commission is aware, that need to be accommodated as part of a national set of electricity distribution pricing principles.

Issue 2 – Consistency with Gas Distribution Price Regulation

To what extent should the principles relating to electricity distribution pricing be the same as those that relate to gas distribution pricing?

The commission considers that there should be an attempt to try and align not only the principles relating to electricity and gas distribution pricing but also the process involved in conducting reviews under both the National Electricity Code and the National Third Party Access Code for Natural Gas Pipeline Systems.

Currently there are similar principles but differing processes involved in conducting an electricity review compared with a gas review. An electricity review is initiated by the regulatory body, who issues the regulated business with an information request which it then reviews as part of the process involved in determining the annual average revenue requirement for the regulated distribution business. The regulatory body also has the ability to obtain information on an ongoing basis. This process and information collection ability differs from that available when conducting a gas review.

A gas review is initiated by the regulated firm who submits proposed revisions to the current access arrangement to the regulatory body. The regulatory body must then assess whether the revisions are reasonable in line with the requirements of the National Third Party Access Code for Natural Gas Pipeline Systems. There are also limited opportunities between reviews for the regulatory body to obtain information. Information gathering powers in relation to the Gas Code have been the subject of applications for code change in the past.

The commission considers the process involved in conducting an electricity review to be preferable to the current gas review process due to the greater information gathering opportunities and the ability to initiate reviews. As such, the commission would support movement towards aligning both the principles and processes of the electricity and gas distribution pricing in this manner.

Aligning the principles and process for conducting electricity and gas distribution price reviews also reduces the possibility of distortions in investment between electricity and gas infrastructure. As electricity and gas may be considered substitutes in some circumstances, the pricing principles and regulation processes should act to minimise the possibility of inefficient investment due to differing regulatory regimes.

Aligning the pricing principles and process would also impose similar compliance costs on both electricity and gas businesses. This would also act to minimise the possibilities for distortion between electricity and gas investment.

There would also be potential efficiency gains within both regulatory bodies and regulated businesses due to the alignment of pricing principles and processes. As staff within both agencies and businesses commonly deal with both electricity and gas issues, aligning the pricing principles may lead to potential efficiency gains in this area.

Issue 3 – Principles for Electricity Distribution Pricing Methodologies

What are the principles that should be included in any electricity distribution pricing methodology that may be applied in all jurisdictions?

In its recent Final Decision – Investigation into prices for electricity distribution services in the ACT, the commission developed its own Alternative Pricing Methodology (APM). The commission was of the opinion that the prescriptive pricing methodologies outlined in part E of the National Electricity Code were unnecessarily complex and should be varied. Most jurisdictional regulators have adopted their own APM. The commission developed the APM to reduce this administrative complexity and considers the following principles should be included in any Pricing Methodology:

- prices should be based on a well-defined and clearly explained methodology,
- prices should be cost reflective but they should not be derived solely from cost build up,
- prices should encourage economically efficient investment, and
- distribution prices should preserve transmission use of system charges.

Issue 4 – Role of Governments in Electricity Distribution Pricing

Should Governments be able to impose requirements in relation to the regulation of electricity distribution pricing, eg. by way of rules made with the agreement of all the Governments or by way of jurisdiction-specific rules made by the Government of that jurisdiction?

Should existing Government-imposed rules relating to electricity distribution pricing, as set out in any Government-imposed tariff or pricing order or in any Government direction, be retained? If so, how should the responsibility for their administration be transferred to the Australian Energy Regulator?

Should additional rules relating to electricity distribution pricing, eg. under a tariff or pricing order or in a direction, be able to be made by Governments in the future?

The commission, as a statutory authority, considers it is inappropriate for it to comment on government policy and as such has no comment on the role of governments in imposing requirements in relation to the regulation of electricity distribution pricing.

However, the commission notes that the Hilmer report, which provided the basis on which third party access arrangements were developed, supported a generally consistent approach between states while recognising that allowances for state differences may be required in some circumstances. On the other hand the Commission notes that the commonly held view that there is a substantial reduction in sovereign risk associated with independent decision making within broad policy parameters established by government and non-interference in those independent statutory processes which are also public, transparent and accountable.

Issue 5 – Impact of Existing Electricity Distribution Price Determinations

In making a future electricity distribution price determination, should the Australian Energy Regulator be required to conform with the statements of intention made by a jurisdictional economic regulator in the context of an existing pricing determination, or should the Australian Energy Regulator merely be required to consider whether to apply them?

If the Australian Energy Regulator is to be bound by statements of intention by a jurisdictional regulator in an existing price determination:

- **what is the nature of these statements of intention; and**
- **should these statements of intention be incorporated in any national set of electricity distribution pricing principles, either as a nationally applicable pricing principle or as a specific jurisdictional deviation?**

The commission considers that the AER should have to conform with statements of intent made by jurisdictional economic regulators in the context of an existing pricing determination. This would act to provide certainty to regulated businesses during the transition to the AER. The alternative view that the AER should not be bound raises some practical difficulties and inequities for utilities.

The commission also believes that the statements of intention should be incorporated into a national set of electricity distribution pricing principles. Establishing a nationally consistent set of pricing principles would act to limit the instances of inefficient investment decisions due to differing regulation regimes.

Issue 6 – Interaction of Australian Energy Regulator with Other Bodies

What consultation requirements should be put in place between the Australian Energy Regulator, on the one hand, and other regulators and Government departments and agencies, on the other hand, on matters that may impact on the Australian Energy Regulator's price regulation function, eg. should the Australian Energy Regulator be required to enter into memoranda of understanding with such other bodies in relation to such matters and for the purpose of obtaining information that is necessary for the performance by the Australian Energy Regulator of its functions?

The commission believes that consultation between the AER and other jurisdictional regulators is required to clearly establish their respective areas of responsibility. Once the roles of the jurisdictional regulators have been established, more certainty surrounding the level of consultation required can be given. For instance, if the AER were to take over control of all regulation currently carried out by the jurisdictional regulators including licensing and compliance, there would be little need for on-going consultation between the two. However, if the AER chooses to subcontract work back to the jurisdictional regulators, a higher degree of consultation would be required to achieve efficient outcomes.

The commission considers that the current uncertainty surrounding the roles of the AER and jurisdictional regulators should be resolved as soon as possible. The

uncertainty surrounding these roles makes staffing and other administrative decisions for both the AER and jurisdictional regulators difficult. If the current uncertainty surrounding the future role of jurisdictional regulators continues, it will also become increasingly difficult for jurisdictional regulators to retain staff, which may lead to a loss of corporate knowledge. The uncertainty surrounding the timeframe and role of the AER may also impact on regulated firms and their investment decisions.

Currently, jurisdictional regulators communicate with jurisdictional government departments and agencies about decisions that impact upon them. If the AER is to take over the role of jurisdictional regulators it is important that these communication networks be maintained.

The commission believes that it is appropriate that the AER enter into a MOU with jurisdictional regulators and other government departments and agencies to clearly establish the roles and relationships of each.

The commission also wishes to comment on the interaction between the AER and regulated businesses. The commission believes that the AER should have information gathering powers available to it to require regulated businesses to provide information sought by it in conducting its legitimate affairs. Information gathering powers should include the provision of documents as well as verbal testimony. This ability to gather information should also be matched by penalties for non-compliance. The commission considers that granting the AER strong information gathering powers matched with a transparent and accountable process will lead to efficient and reliable outcomes.

Issue 7 – Pricing Objectives and Principles: Gas Distribution

Should the pricing objectives and principles set out in the National Gas Access Code continue to apply under any national framework for the regulation of gas distribution pricing? Should any of the existing objectives or principles (including as recommended to be amended by the Productivity Commission) be modified or removed, or should any new objectives or principles be added? Are there any particular jurisdiction-specific characteristics that need to be accommodated in the regulation of gas distribution pricing?

As stated in the above response to Issue 2, the commission considers it important that the pricing principles and process involved in electricity and gas distribution pricing should be consistent. The commission has noted that while the principles associated with conducting either an electricity or gas review are similar, the advantages from the additional information gathering opportunities and ability to initiate reviews under the electricity code make it the preferred methodology. The commission believes that any revisions to the existing pricing objectives and principles of the National Third Party Access Code for Natural Gas Pipeline Systems should be made with this in mind.

In regard to the recent report on the Review of the Gas Access Regime by the Productivity Commission, the commission notes the terms of reference included a request to:

‘Identify any necessary improvements to the Gas Access Regime, its objectives and its application, and in particular the Gas Code, to ensure uniform third party access arrangements are implemented and applied on a consistent, national basis.’

The commission notes the approach to achieve a consistent national approach.

There are no jurisdictional specific characteristics within the ACT that need to be accommodated in the regulation of gas distribution pricing.

Issue 8 – Consistency with Electricity Distribution Price Regulation

To what extent should the principles relating to gas distribution pricing be the same as those that relate to electricity distribution pricing?

The commission has discussed the extent to which the principles and processes relating to electricity and gas distribution pricing should align in its response to issue 2 above.

Issue 9 – Impact of Existing Gas Distribution Pricing Arrangements

Should any of the existing fixed principles, or any existing requirements of any Government-imposed tariff or pricing order, be incorporated into the pricing objectives and principles contained in the National Gas Access Code?

The commission believes there are no existing fixed principles or existing requirements of any Government-imposed tariff or pricing order within the ACT that would need to be incorporated into the pricing objectives and principles contained in the National Gas Access Code. However, the commission notes the Productivity Commission’s recent review with the stated intention of achieving consistency across jurisdictions. The commission also notes that there are no fixed principles providing guidance in the conduct of reviews and the matters that the AER should consider when a reference is issued. The commission believes that the AER should have the option to consider elements of existing tariff orders and directions for either gas or electricity networks to determine whether or not those matters should be considered in future AER decisions. The commission believes that this approach may help lead to the establishment of consistency across jurisdictions with respect to non-revenue related conditions.

Issue 10 – Activities to be Licensed

What activities should be licensed under a national licensing scheme for the electricity and gas industries?

The commission can see no reason why the utility activities currently licensed should not continue to be licensed, namely electricity generation, electricity and gas transmission, electricity and gas distribution, and electricity and gas retail. Consideration should also be given to the range of utility related activities, some of which are accredited (for example electricity infrastructure construction in some jurisdictions) and others which are not (meter service provision, meter data service

provision). Whilst these activities may not need to be licensed, consideration should be given to applying a consistent set of rules to them.

Based on its experience the commission suggests that care should be taken in defining exactly what utility services are to be licensed. The difficulty with using a broad definition is that it can unintentionally capture activities that are not utility services, and that have to be exempted from the licensing regime. For example, in the ACT, the Utilities Act does not clearly exclude arrangements under which electricity is provided via an internal or embedded network from the definition of electricity supply (or retail). Large institutions, such as shopping centres, caravan parks, universities or office blocks, may have their own facilities and networks for the distribution and supply of electricity to tenants and so may be technically defined as utility services under the Utilities Act. In the commission's view it would be preferable to distinguish such arrangements from the provision of utility services in the first place, rather than capture them in the licensing framework and then exempt them.

Issue 11 – Suggested Licence Conditions

Is the allocation and coverage of existing licence provisions between the various regulatory instruments, as suggested in Appendix 1 to this Issues Paper, satisfactory?

Are the suggested licence conditions for electricity and gas retail licences and electricity and gas distribution licences, as described in Appendix 2 to this Issues Paper, satisfactory?

The approach to the allocation of licensee obligations suggested in the issues paper is essentially the approach adopted in the ACT. The overriding operating licensing regime and fundamental rights and obligations for both consumers and utilities (for example, utilities' obligations to provide services, customers' obligations not to damage or interfere with networks) are established in legislation, the *Utilities Act 2000*. Codes (industry and technical) set detailed performance standards, technical obligations and consumer protection requirements. Licences establish a utility's right to provide services and requirement to comply with codes and laws.

ACT utility licences contain a suite of generic, fundamental conditions that apply to all utilities covered by the Utilities Act, namely gas network operators (transmission and distribution) and retailers, electricity distributors and retailers, and water and sewerage service providers. Differences between utility services are provided for through licence schedules. It should be noted that there is only a small number of industry-specific conditions. Moreover, these conditions generally apply to all licensees in a particular utility service class. The exception to this rule is electricity retailers, only one of whom (the local retailer) has retailer of last resort obligations.

In the commission's experience the generic approach to licensing is simple and effective. The commission therefore supports the proposed model.

Issue 12 – Mandatory Licence Conditions

Are there any existing or suggested licence conditions which, as a matter of Government policy, should be included in electricity or gas retail licences or electricity or gas distribution licences and therefore should be specified in legislation as mandatory licence conditions?

Under the proposed model, and indeed, the model adopted in the ACT, utility licences are used primarily to give utilities the authority to provide utility services. Whilst the criteria used to assess a utility's suitability to provide utility services reflects government policy the licence itself should not. The commission considers that it is desirable that other means, for example regulations, and codes of practice, be used for the purposes of implementing government policy.

Issue 13 – Form and Variation of Licence Conditions

Should the Australian Energy Regulator be required to issue licences in an agreed form containing specified conditions?

Under what circumstances (if any) should the Australian Energy Regulator be able to vary a licence condition that is included in any agreed form of licence, eg. only with the approval of the Government of the relevant jurisdiction(s) or of all of the Governments?

Under what circumstances (if any) should the Australian Energy Regulator be able to include licence conditions that are in addition to those included in any agreed form of licence?

The commission agrees that utility licences be in an agreed form containing specified conditions. Likewise criteria for determining additional or varied licence conditions should be established but the AER should not be constrained by rules about adding or varying conditions other than by law.

The commission considers an accountable and transparent consultation process to be an essential part of the licence variation process. In the ACT the variation of licence conditions and the imposition of additional conditions are subject to consultation with licensees and other interested parties. The views of interested parties to licence variations or additional conditions must be taken into account when making changes. Although agreement is desirable it is not always possible and is therefore not mandatory in order for the variations or additions to be made. Where the changes are of a minor or technical nature or do not adversely affect licence holders, it is possible to waive the requirement to consult.

If licences were to contain only fundamental obligations there should be little need to amend licence conditions. Certainly this has been the commission's experience.

Issue 14 Ability of Government to Vary Licence Conditions

Under what circumstances (if any) should the Governments be able to require that issued licences be varied to include additional specified conditions?

If one accepts the premise that utility licences should not be used to implement government policy, there should not be any reason for governments to be able to require licences to be varied.

Issue 15 – Triangular or Linear Approach

Should a triangular or linear approach be adopted, on a national basis, to the relationship between retailers, distributors and end-use customers? Should the customer be able to decide which form this relationship is to take or should the form of the relationship be mandated under the regulatory regime?

Both the triangular and linear models are used in the ACT – triangular in electricity, linear in gas. The regulatory framework has been developed to reflect the different structures in the electricity and gas markets. Although both models work, the triangular model appears to be less problematic. Because the customer does not have a direct relationship with the distributor in the linear model any obligations the distributor has to the customer are via the retailer and vice-a-versa. These obligations may therefore be difficult to enforce. The triangular model is more transparent and more accountable and therefore, in the commission's view, the better of the two models.

Whichever model is adopted it will need to apply to all customers. Allowing customers to choose one model or another will prove unwieldy and difficult to regulate. Large customers should, however, continue to be allowed to have a direct contractual (as opposed to deemed) arrangement with distributors as is the case now.

Issue 16 – Suggested Licence Administration and Enforcement Arrangements

Is the suggested licence administration and enforcement regime described above suitable for application as a national regime? If not, in what respects should it be modified?

What role (if any) should the Governments play in the administration or enforcement of the licensing regime?

What role should the Australian Energy Market Commission (AEMC) (in its rule making and market development capacity) have in any licensing arrangements?

The commission considers the licence administration and enforcement regime suggested in the issues paper to be generally suitable for application as a national regime. The commission suggests, however, that consideration be given to a more graduated enforcement regime that includes interim disciplinary measures and feasible legal sanctions to address inadequate or unsatisfactory levels of compliance, rather than reliance on prosecution or licence revocation. The commission also queries the suggestion that licence-based decisions not be subject to appeal. Despite the commission's role as a specialised utility licensing body under the Utilities Act, the commission's decisions in relation to various licensing matters are still subject to review by the Administrative Appeals Tribunal.

The commission is of the view that the administration of the licensing regime should be the responsibility of the regulator (the AER). This is consistent with current jurisdictional practice. Neither the Government nor the AEMC should have a direct determinative role in the administration of the licensing regime (reporting excepted). The AEMC presumably has a direct role in making recommendations on licence obligations and in setting the rules that will be reflected in licence conditions.

It should be noted that in the ACT and a number of other jurisdictions, the regulator has responsibility for the making of operational rules (for example industry and technical codes of practice, guidelines with respect to ring fencing and retailer of last resort events), the monitoring and enforcement of rules as well as the administration of the licensing regime.

On another matter, Table 7 indicates that in the ACT licence exemptions are authorised by the commission. They are in fact authorised by the Minister.

Issue 17 – Suggested National Exemption Regime

Is there benefit in adopting a national system of exemptions from licensing requirements? Is the suggested national exemption regime described above acceptable? If not, in what respects should it be modified? In particular, should only the Governments be able to grant or authorise the granting of such exemptions?

Provided utility services are clearly enough defined, there should be little need to exempt anyone from having to hold a licence. The commission recognises that there may be circumstances where a service must be excluded from the licensing regime and provision needs to be made for licence exemptions. The few licence exemptions that have been granted in the ACT have been in exceptional or anomalous circumstances. For example, recently ActewAGL Distribution was exempted from having to hold a licence to provide gas transmission services. The exemption was granted to allow the transmission of gas through ActewAGL's distribution network to help ease the gas supply shortages in New South Wales resulting from the Moomba gas plant explosion. The circumstances surrounding the grant of the exemption were considered to be exceptional and of a short-term nature.

Whilst the exemptions may vary between jurisdiction, the criteria for determining licence exemptions should be clearly defined and consistent across jurisdictions. In principle, the Government should provide overarching policy direction and the body responsible for granting licences and administering and enforcing the licensing regime should have responsibility for granting licence exemptions.

Issue 18 – Process for Introducing New Licences and Exemptions

Should the replacement of existing licences and exemptions with the new agreed forms of licences and exemptions (if any) be effected through legislation or by way of a voluntary surrender and replacement, in either case with a transitional period?

It follows that once a new licensing regime is introduced existing licensees will need to apply for new licences in accordance with the rules and criteria of the new regime. To have a licence deemed by virtue of holding a licence under another licensing regime would defeat the purpose of having a national scheme. Accordingly, licensees would need to surrender their existing licences and apply for replacement licences. A transitional period is clearly essential.

Issue 19 – Alternatives to Licensing

Is there any alternative form of regulation (eg. registration) that it would be preferable to adopt instead of the licensing of electricity and gas retailers and distributors?

Whatever form of regulation is adopted, it would presumably place terms and conditions on utilities. Licensing is now well established and understood by utilities. A different form of regulation is unlikely to be better and is likely only to create confusion.

Issue 20 – Single Consumer Protection Code

Is there benefit in adopting a single consumer protection code that applies in respect of electricity and gas retail and distribution in each jurisdiction? If so, are all the relevant matters for inclusion in such a code listed in Table 9 above? What are the areas in respect of which justifiable jurisdictional differences are likely to arise?

The commission supports the development and adoption of a single consumer protection code. The ACT's own Consumer Protection Code outlines the basic rights of consumers and utilities with respect to access to, and provision of, utility services. It applies to all utilities licensed in the ACT (gas, electricity, water and sewerage network operators and electricity and gas retailers) although not all provisions apply to all licensees. The principle used in developing the code was that all customers have certain fundamental rights but some customers, namely franchise customers, need greater protection than small, non-franchise customers who, in turn, need greater protection than large, non-franchise customers. The code is structured to reflect these different needs and the different obligations they place on utilities.

The list of contents suggested for inclusion in a consumer protection code seems comprehensive and appropriate. The need for jurisdiction-specific requirements should be minimal. In order to accommodate any differences, the code should specify minimum terms and conditions. Any additional requirements should not be inconsistent with the requirements of the code and would need the agreement of the body that has responsibility for making the code.

Issue 21 – Responsibility for Making Industry Codes and Rules

Should industry codes or rules (such as a consumer protection code) be developed by, or be subject to the approval of, the Australian Energy Regulator or the Governments, or should the Australian Energy Market Commission be responsible for making such industry codes or rules?

The ACT has adopted a multi-tiered model for the making of industry codes. Thus, codes are developed by industry (possibly, but not necessarily, at the commission's behest). The commission has responsibility for approving industry codes. The technical regulator has similar powers with respect to technical codes. Codes are disallowable and must be notified and presented in the Legislative Assembly under the *Legislation Act 2001 (ACT)*.

If the Australian Energy Market Commission is the body responsible for making rules, then it should have responsibility for making codes. In the interests of good governance it would be desirable for codes to be subject to the views of the scheme administrator/regulator and to external scrutiny.

Issue 22 – Variation of, and Exemptions from, Industry Codes

If the Australian Energy Regulator is to have responsibility for making an industry code (such as a consumer protection code), under what circumstances (if any) should it be able to vary or add to the terms of that code, eg. only after a process of public consultation? Are there any consumer protection measures, that could be included in a consumer protection code, which should not be able to be varied without the approval of the Governments (eg. because they implement a particular policy or are of particular significance to one or more jurisdictions) and so should be enshrined in legislation?

Under what circumstances (if any) should the Australian Energy Regulator be able to exempt an electricity or gas retailer or distributor from complying with a provision of a consumer protection code?

The commission considers it appropriate for amendments to codes to be subject to consultation. Where the amendments are of a technical and minor nature (ie do not materially alter a code) or are as a result of legislative amendment this requirement could be waived. Ultimately, waivers should be subject to a cost/benefit analysis where the benefits of providing the exemption outweigh the cost to the community as a whole. Exemptions should be subject to conditions defining, among other things, when the exemption should cease.

Licensees may not all be fully compliant with codes in the first instance: presumably there will be a transitional period during which licensees will take steps to become compliant. The commission can see no other reason why a licensee would need to be exempted from having to comply with a provision of a code.

Issue 23 – Minimum Terms and Conditions for Distribution and Retail of Electricity and Gas

Should there be a form of nationally uniform regulation that applies to the minimum terms and conditions that must apply in relation to the distribution and retail of electricity and gas to (small) consumers? Should there be less prescription of such terms and conditions in relation to contestable customers as opposed to distribution customers and franchise customers?

In the ACT minimum terms and conditions are specified in the industry and technical codes of practice made under the Utilities Act. These terms and conditions must be included in customer contracts. A similar arrangement could be adopted nationally. The commission agrees that the rules applying to large non-franchise customers and, to a lesser extent, small, non-franchise customers, be less prescriptive than those applying to franchise customers (see comments against issue 20).

Issue 24 – Uniformity or Consistency in Associated Electricity and Gas Schemes

Should there be a single national approach to or consistency in the terms of:

- **the dispute resolution schemes;**
- **the retailer of last resort schemes;**
- **the customer transfer schemes; and/or**
- **the business to business information exchange schemes,**

that apply in each of the States and Territories?

What impediments are there to achieving such a national approach or such consistency in respect of any of these kinds of schemes?

The commission considers it would be desirable to adopt a national approach in the areas of retailer of last resort, customer transfers, and business to business information exchange. The commission notes that jurisdictions have been working towards achieving national consistency in these areas and that considerable advances have already been made.

However, the development of a national energy dispute resolution scheme may be more problematic as jurisdictional energy dispute resolution schemes are often intertwined with jurisdictional consumer protection schemes. Also, to be effective, dispute resolution schemes require local presence. Although consistency in dispute resolution principles is desirable, this matter is secondary to the primary principles of economic regulation and licensing.

Issue 25 – Community Service Obligations

How are electricity and gas retailers and distributors to be obliged to perform community service obligations under a national regime, eg. through a licence condition or Ministerial direction?

Community service obligations (CSOs) are matters of government policy and implemented, by arrangement with the government, through utilities. The determination and implementation of CSOs are therefore not the concern of the AEMC or AER. Given, however, that they impact on revenue, costs and performance requirements they will need to figure in the considerations of the national regulator.

Issue 26 – Uniformly Defined Service Measures

Are there advantages in employing a set of uniformly defined service measures to measure the standards of reliability and customer service provided by electricity

and gas retailers and distributors in each of the jurisdictions? If so, what are the appropriate measures and are there any issues specific to a particular jurisdiction that might preclude the adoption of these measures? [Note: This is not to be taken as suggesting that the same empirical service standards should be imposed on each retailer or distributor.]

Performance standards are generally of either a generic nature or reflect industry standards and as such, should be able to be adopted nationally. As with a number of other areas of regulation, jurisdictions have been working toward achieving consistency in performance measures in the areas of electricity retail and distribution, in particular. It should be noted though, that as performance standards reflect jurisdictional issues and policies there will be some differences between jurisdictions. However, this should not preclude the development and adoption of a minimum set of performance measures.

Issue 27 – Determination of Service Measures and Targets

Should the service measures used, and any related targets, be determined by the Australian Energy Regulator, the Governments or the Australian Energy Market Commission?

The commission sees this as a responsibility of the AER in consultation with utilities and the public. As part of the public review process all parties should have input into the development of service measures and targets.

Issue 28 – Use of Service Measures

Should the performance of electricity and gas retailers and distributors against any target levels for the relevant service measures:

- **be published?**
- **constitute the basis for an incentive/penalty scheme?**

Yes, service measures are published in all jurisdictions now and many of the measures have incentives and penalties attached to them. This practice should be enhanced so as to provide:

- greater access for market participants and consumers,
- performance information to consumers,
- further regulatory innovation, and
- measures of utility service quality incentives.

Issue 29 – Transfer of Ancillary Functions to Australian Energy Regulator

Which of the ancillary functions that the jurisdictional economic regulators currently perform in relation to electricity and gas retail and distribution regulation should be transferred to the Australian Energy Regulator? To the extent any of these ancillary functions (or any retail price regulation functions) are transferred to the Australian Energy Regulator, how should the costs of performing those functions be funded?

Like other regulators, the commission performs a number of ancillary functions, for example setting electricity retail prices for “franchise customers”¹, monitoring and enforcing the government’s greenhouse gas abatement scheme.

In principle ancillary functions that are directly related to the operation of the energy market should transfer to the AER, for example functions relating to retailer of last resort and metrology, and the approval of safety and emergency plans. However, functions that are adjuncts to jurisdictional government programs and are not essential parts of the operation of the energy market should not be transferred. The transfer of ancillary functions should therefore be assessed on a case by case basis, after giving consideration to such matters as the impact the transfer will have on prices, whether the function has general application or is jurisdiction specific, and whether or not the function is integral to the operation of the market.

Issue 30 – Provision of Advice to Governments

Will Governments still require the advice that is being provided to them by their jurisdictional economic regulators in relation to the electricity and gas industries? If so, will those regulators continue to be able to provide that advice once most of their electricity and gas retail and distribution regulation functions have been transferred to the Australian Energy Regulator?

Governments may obtain advice from whomever they wish and is best placed to provide the advice and governments will require advice from the appropriate regulator. It is unlikely that jurisdictional regulators will maintain information systems on a range of issues once responsibility passes to the national regulator hence advice from the jurisdictional regulators will not be as readily available in the future. Presumably advice will be available from the AER/AEMC although it may not be as immediately available as now. In the future governments will need to consider what roles their current independent advisors will play. A number of jurisdictional regulators will continue to have roles in ports, transport and water regulation, others will not. This will become a matter for governments and is not germane to the AER/AEMC.

Issue 31 – Impact of National Framework on Jurisdictional Regulators

To the extent that the existing jurisdictional economic regulators continue to have any functions to perform, will the removal of most of their electricity and gas retail and distribution regulation functions have an adverse impact on:

- **their viability and their ability to perform those functions;**
- **their ability to attract and retain qualified staff;**
- **the regulatory expertise that they would otherwise gain from regulating a range of industries;**
- **consistency in the application of a regulatory principle across a range of industries; or**

¹ Despite the opening of the electricity and gas markets to full competition, a customer remains a franchise customer until they elect to enter into a negotiated contract and therefore become a non-franchise customer. At this time, retail prices are regulated only for electricity “franchise” customers. Gas retail prices are not regulated.

- **their funding arrangements?**

The impact of the national regulator on jurisdictional regulators will depend on the model of regulation adopted. For example, if jurisdictional regulators are retained as agents of the national regulator, there will be little impact in terms of the day-to-day operations and therefore of the organisations' viability, skills sets, ability to attract staff, etc. However, if electricity and gas regulatory functions are transferred to, and performed by, the national regulator the impact on jurisdictional regulators will be significant. The larger regulators are likely to be able to continue in their own right, smaller regulators may not be able to.

The commission is a small organisation. It has approximately 10 staff, 3 of whom are administrative staff. Unless a new agenda is developed by the ACT government, the transfer of functions out of the commission will have a significant impact on the commission and its continued viability.

Issue 32 – Other Issues

Are there any other issues that are not canvassed in this Issues Paper that should be taken into account in the establishment of a national framework for electricity and gas distribution and retail regulation?

The commission had assumed the distribution of roles and responsibilities between the Government, the AEMC and the AER had been agreed. It appears from the paper that this is not the case. The commission feels that some of the questions raised in the issues paper cannot be properly addressed until the governance issue is resolved.