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National Framework for Electricity and Gas Distribution and Retail Regulation

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Introduction

- Identified issues do not confine submissions
- Underlying approach
 - identify key policy decisions
 - address in detail possible elements of national framework
 - underpins available policy options
 - identifies jurisdictional differences - what are the reasons for them?
 - movement to national framework requires understanding jurisdictional regulatory regimes

Introduction

- Proposed elements of national framework put forward to stimulate debate
- Uniformity subject to accommodation of justifiable jurisdictional differences and differences between electricity/gas

Why have a National Regulatory Framework?

- Different State and Territory regulatory regimes
 - Different regulatory requirements
 - Different regulatory instruments
 - Different regulators
- Costs of separate regulatory regimes
 - Impedes development of national energy market (economies of scale)
 - Increases regulatory compliance costs

Why have a National Regulatory Framework?

- Benefits of national regulatory regime
 - increases competition (at least between retailers)
 - reduces regulatory compliance costs for “national” businesses
 - facilitates convergence between electricity and gas

Regulatory Parameters

- Parameter 1: Existing institutional framework
 - Australian Energy Regulator (AER): economic regulator (other than for retail pricing)
 - Australian Energy Market Commission (AEMC): rule maker
- Issue 1: Scope of retail and distribution-related functions included in national framework
 - distribution charges
 - retail and distribution licensing
 - reliability standards

Regulatory Parameters

- customer service standards
- consumer protection measures
- ancillary functions
- Issue 2: Allocation of functions between AER and AEMC
- Parameter 2: Matters subject to national framework
 - economic
 - not environmental, occupational health or safety
 - but there is a link through price regulation

Issues Paper

- Section 1: Consolidated list of issues
- Section 2: Executive summary
- Section 3: Distribution pricing - electricity
- Section 4: Distribution pricing - gas
- Section 5: Licensing
- Section 6: Industry codes and rules
- Section 7: Associated electricity and gas schemes
- Section 8: Service standards
- Section 9: Other functions of jurisdictional regulators
- Section 10: Other issues
- Section 11: Next steps



Electricity Distribution Pricing

- National Electricity Code contains broad objectives and principles
- National Electricity Code requires prescribed distribution services to be regulated using “CPI-X” methodology and excluded distribution services to be regulated using a more “light handed” approach
- National Electricity Code allows different pricing methodologies

Electricity Distribution Pricing

- Differences
 - price/revenue cap
 - efficiency carryover mechanisms
 - reliability performance incentive schemes
 - rebalancing constraints
 - WACC
 - excluded vs. prescribed distribution services
 - pricing methodologies
- Jurisdiction-specific requirements

Electricity Distribution Pricing

- Reasons for differences:
 - Regulatory inconsistency
 - Broad regulatory objectives
 - Justifiable jurisdictional deviations
- AER as single regulator will remove inconsistencies arising out of regulatory discretions being exercised by different bodies
 - will still be different parameter values
 - may still be jurisdictional/network differences

Issue 1 - Regulatory Objectives and Principles: Electricity Distribution Pricing

- Is the set of regulatory objectives and principles relating to electricity distribution pricing [as set out in Chapter 6 of the National Electricity Code] 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?

Issue 1 - Regulatory Objectives and Principles: Electricity Distribution Pricing (cont.)

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?

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?

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?

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 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?

Issue 4 - Role of Governments in Electricity Distribution Pricing (cont.)

- 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?

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?

Issue 5 - Impact of Existing Electricity Distribution Price Determinations (cont.)

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?

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?

Gas Distribution Pricing

- National Gas Access Code sets out reference tariff principles
 - overarching objective of promoting economic efficiency so as to promote effective upstream and downstream competition
 - expected revenue to cover efficient costs
 - return on investment to be commensurate with risks
 - incentives to reduce costs or improve productivity

Gas Distribution Pricing

- Differences
 - calculation of total revenue requirement
 - establishment of initial capital base
 - rate of return
 - incentive mechanisms
 - pricing methodology
 - tariff adjustments

Gas Distribution Pricing

- Reasons for differences:
 - Regulatory inconsistency
 - Broad regulatory objectives and wide range of acceptable methodologies
 - Justifiable jurisdictional deviations
- AER as single regulator will remove inconsistencies arising out of regulatory discretions being exercised by different bodies
 - will still be different parameter values
 - may still be jurisdictional/network differences



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?



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?

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?

Sections 5 to 7: Activities to be Licensed

Principal theme 1: nature of retail and distribution activities to be regulated under the national regulatory framework.

Issue 10

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

Sections 5 to 7: Regulatory instruments

Principal theme 2: nature of regulatory instruments.

- Kinds of regulatory instruments
 - legislation and regulations
 - licences and authorisations
 - industry codes and rules
 - guidelines
- Rights and obligations contained in regulatory instruments

Uniformity in Use of Regulatory Instruments

- Legislation - basic elements of regulatory framework (changes require Parliamentary approval)
- Regulations - fleshes out basic elements (changes subject to Parliamentary scrutiny)
- Licences and authorisations - authorisation and fundamental associated obligations (changes subject to agreement or, in limited circumstances, may be made unilaterally)
- Industry codes, rules and guidelines - detailed and technical requirements (may be changed unilaterally, subject to consultation)

Uniformity in Rights and Obligations

- “Model” elements of national regulatory framework
 - model national electricity and gas retail and distribution licences
 - model national licensing and exemption regimes
 - model national consumer protection code
- Uniformity subject to justifiable jurisdictional deviations
- “Model” elements do not represent settled views but are put up for debate

Suggested re-allocation of licence conditions

Licence Requirement	
ACT gas retail licence – ICRC may suspend licence for breach	Legislation (in fact no suspension – only revocation)
Victorian electricity retail licence – retailer must have electricity purchase contracts	Legislation
Queensland gas distribution authority – distributor must not sell gas and provide connection services	Ringfencing guideline



Suggested re-allocation of licence conditions (cont.)

Licence Requirement	
NSW gas retail authorisation – standard retail supplier must operate payment plan for small residential customers	Consumer protection code
SA electricity distribution licence – distributor must establish, periodically review and comply with safety, reliability, management and technical plan	Not in national regulatory framework

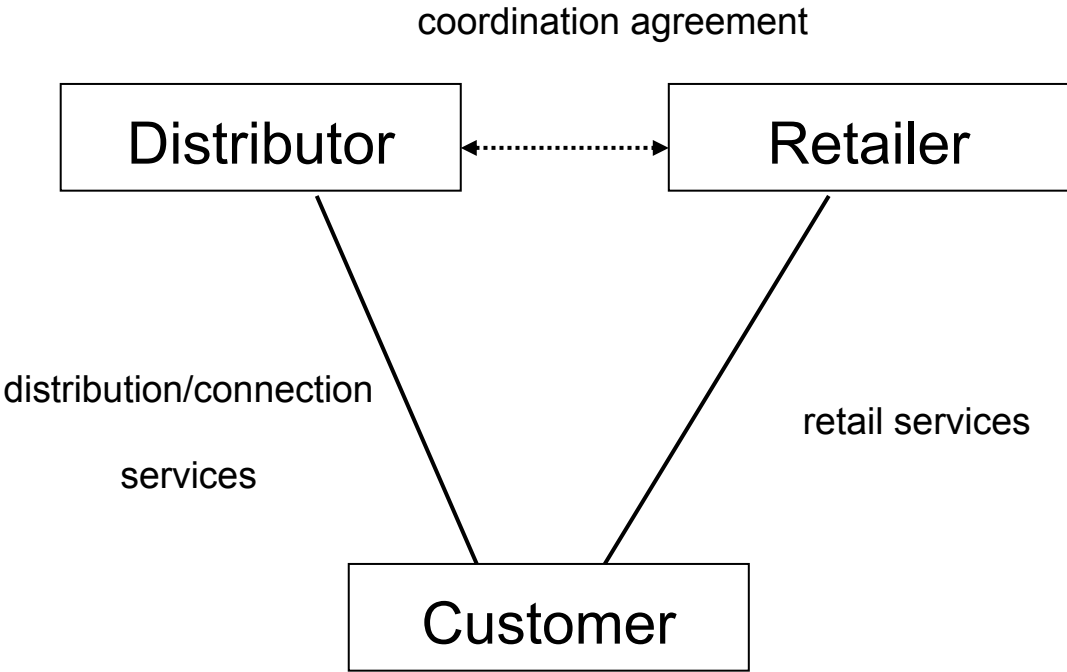


Issue 11 - Suggested Licence Conditions

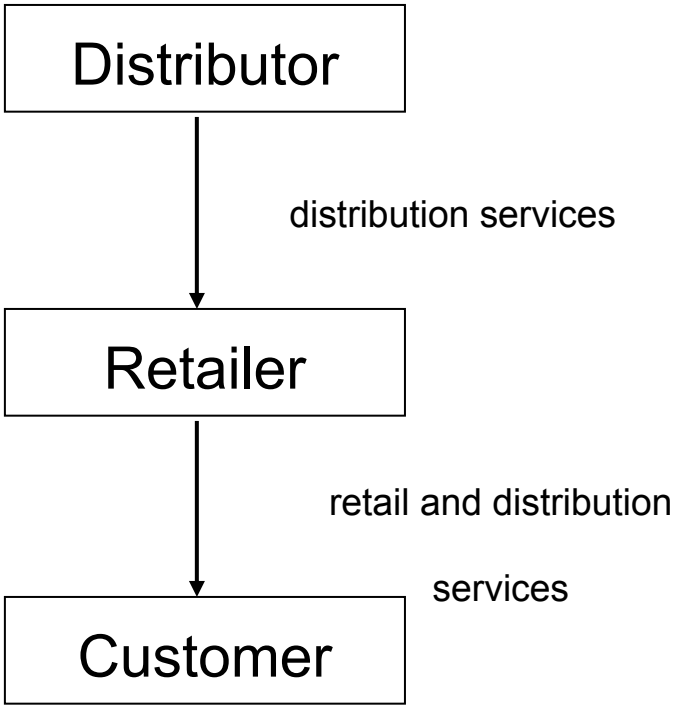
- Is the allocation and coverage of existing licence provisions between the various regulatory instruments, as suggested in Appendix 1 to [the] Issues Paper, satisfactory?
- Are the suggested licence conditions for electricity and gas retail licences and electricity and gas distribution licences, as described in Appendix 2 to [the] Issues Paper, satisfactory?

Possible Contractual Relationships

Triangular Relationship



Linear Relationship



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?

Basic Elements of Model Licensing Regime

- Prohibition on engaging in activities without licence.
- AER to issue licences - public consultation.
- AER must issue licence if certain criteria satisfied, eg. relating to resources, suitability and compliance with law.
- Licences may be transferred with AER's approval (only to be given if issue criteria are satisfied) - public consultation.
- Licences may be varied by agreement or unilaterally by AER (subject to submissions)
 - may be public consultation
 - must have regard to desirability of national uniformity

Basic Elements of Model Licensing Regime (cont.)

- Licences may be surrendered by AER
- Licences may be revoked by AER (subject to submissions)
 - breach of licence
 - licence granted on basis of incorrect or misleading information
 - licensee ceases to satisfy issue criteria
 - licensee ceases to carry on licensed operations
 - licensee fails to commence licensed operations

Basic Elements of Model Licensing Regime (cont.)

- Breach of licence - court-imposed financial penalty
- Review by AER of licence-related decisions on application of licensee
- Judicial (not administrative review) of licence-related decisions

Issue 16 - Licence Administration and Enforcement Arrangements

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

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Basic Elements of Model Exemption Regime

- Nationally uniform regulations that specify circumstances in which exemption from requirement to hold licence applies.
- AER able to grant exemptions.

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 [in the Issues Paper] acceptable? If not, in what respects should it be modified?

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Model Consumer Protection Code

- Repository of all industry-specific consumer protection-type requirements that apply to customers of electricity and gas distributors and retailers.
- Broad definition of consumer protection.
- Offers scope for national uniformity.
- Need not be single omnibus code.
- National uniformity subject to cost-benefit analysis.
- Best practice requirements.

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 [of the Issues Paper]? What are the areas in respect of which justifiable jurisdictional differences are likely to arise?

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?

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

- Should there be a single uniform 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?

Sections 5 to 7: Government Involvement

Principal theme 3: the role of Government in the issuing and development of non-legislative regulatory instruments (eg. licences, industry codes and rules).

- Threshold issue: must Government powers be exercised with the agreement of all/majority of Governments or can Government powers be exercised by one Government?
- Administration and enforcement of the licensing regime.
- Setting of licence conditions.
- Regime for exemptions from the licensing regime.
- Making and variation of industry codes and rules.

Issue 16 - Suggested Licence Administration and Enforcement Arrangements

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- What role (if any) should Governments play in the administration or enforcement of the licensing regime?
- What role should the Australian Energy Market Commission (in its rule making and market development capacity) have in any licensing arrangements?

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?

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?



Issue 14 - Ability of Governments 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?

Issue 17 - Suggested National Exemption Regime

. . .

[S]hould only the Governments be able to grant or authorise the granting of exemptions ... [from the uniform licensing requirements].

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?

Issue 22 - Variations 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?

Issue 22 - Variations of, and Exemptions from, Industry Codes (cont.)

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?

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?

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?

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?

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?

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?

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?

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?

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?

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
- their funding arrangements?



Issue 32 - Other Issues

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