



18 July 2007

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

By email: MCEMarketReform@industry.gov.au

Dear Sir/Madam,

ORIGIN ENERGY SUBMISSION TO RPWG COMPOSITE CONSULTATION PAPER

Origin Energy (Origin) welcomes the opportunity to comment on the Retail Policy Working Group's (RPWG) *National Framework for Distribution and Retail Regulation: Consultation Paper*. Please find attached Origin's submission.

As per our most recent submissions to the RPWG, Origin supports the continued shift toward a more consistent and predictable framework, in particular, one which seeks to reduce the regulatory burden where this is seen to be effective and in the public interest. The Consultation Paper reflects real progress in this area.

However, we have two specific concerns regarding approach and process.

Origin has had some concern that the process to date has focussed more than necessary on jurisdictional harmonisation of rules, and has neglected the key policy objectives that should underpin good regulation. Recent discussions with the RPWG have caused us to be optimistic that policy objectives will also be addressed as we move forward, but we seek clarification of this intent more formally.

Also, there is still only a short time left before the drafting needs to be well underway, and Origin seeks clarification on the nature of the timeframes and opportunities to view, and provide comment on, the substance of draft rules released by the SCO (rather than AAR as an independent party).

If you have any queries please feel free to call me on 03 9652 5878.

Yours faithfully

[signed]

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No.	Subject	Recommendation	Origin Comments
	<p>Connection services</p> <p>Conditions to the obligation</p>	<p>rights and obligations concerning the supply under the Law and Rules, including relevant dispute resolution procedures;</p> <ul style="list-style-type: none"> ➤ particulars of any rebate or relief available under any government funded energy charge rebate or relief scheme; and ➤ information in community languages about the availability of interpreter services for the languages concerned and telephone numbers for the services; <ul style="list-style-type: none"> • Connection services – the retailer's responsibility to arrange connection services in respect of the supply; and • Conditions to the obligation – the circumstances in which the retailer may refuse to supply, including: <ul style="list-style-type: none"> ➤ failure by the customer to satisfy the application requirements identified above; ➤ failure to provide any security the retailer is entitled to require under the standing offer terms; ➤ failure to pay an amount due to the retailer in respect of the new supply (such as connection charges); ➤ failure to provide access to the premises; and ➤ other circumstances beyond the retailer's control. <p>The Law should provide that the standing offer terms take effect as a contract between the retailer and customer.</p>	<p>Information about rebates and government programs and the existence and details of interpreter services are provided to the customer via their bill. It is not clear if such information is required in the application procedure for a standing offer.</p> <p>A further circumstance in which a retailer should have the right to refuse supply is outstanding debt owed to the retailer from customer consumption at another supply address.</p>
2.	Designating retailers and supply remits	The Law should provide that, for the purpose of the obligation to supply, a designated retailer is a retailer designated as such by a	Origin has made comments on this matter within its submission.

No.	Subject	Recommendation	Origin Comments
		<p>jurisdictional instrument of the jurisdiction or jurisdictions in which it supplies energy, and its designated supply remit is as specified in the instrument.</p> <p>A designated retailer's supply remit may be specified by reference to:</p> <ul style="list-style-type: none"> • a geographical area; • particular premises or classes of premises; or • particular customers or classes of customers. <p>Under this approach, whether the obligation applies or not will be a jurisdictional decision, depending on whether or not individual jurisdictions elect to make a designation. Similarly, the method of specifying the scope of the obligation (whether on the basis of geographical areas, financial responsibility for the supply point or some other means) will be a jurisdictional decision.</p>	
3.	MCE principles for obligation to supply	<p>The MCE should consider agreeing principles to be applied by jurisdictional ministers in determining whether or not to activate or de-activate the obligation by making (or revoking) the relevant jurisdictional instruments. However, there is no need for principles to be agreed at this stage concerning the retailers to be designated and the approach to specifying supply remits where the obligation is to be imposed.</p>	<p>The review of any activation or deactivation of an obligation should be undertaken via an independent regulator in order to ensure to the extent possible consistent application across the national market.</p>
4.	Definition of small customers	<p>The Law should provide that, for the purpose of the obligation to supply, a 'small customer' is a customer whose actual or estimated energy consumption is less than a threshold level specified in the Rules. The initial Rules should specify the existing jurisdictional thresholds.</p> <p>The Rules should set out the mechanics of assessing customer consumption for the purpose of applying the threshold, including</p>	<p>We disagree that the definition should be explicitly linked to consumption thresholds. See Origin submission.</p>

No.	Subject	Recommendation	Origin Comments
		whether the threshold applies to individual premises or is aggregated.	
5.	MCE directed review of small customer definition	The MCE should direct the AEMC to undertake a review of small customer consumption thresholds with a view to establishing a nationally consistent threshold, having regard to any policy principles specified by the MCE and the need for any transitional arrangements.	Origin seeks an amendment to the recommendation that provides for AEMC to review the coverage of the obligation to supply without this being limited to consumption thresholds. See Origin submission.
6.	Tariffs	The Law should provide that standing offer tariffs are those published by designated retailers from time to time.	The Law has a role to play in ensuring consistency in the timing of publication of standing offer tariffs that include any revisions to network tariffs (in the case of bundled tariffs). Any Law should support, rather than inhibit the removal of price regulation in the future.
7.	Specification of terms and conditions	The Law should provide that standing offer contract terms and conditions must be published by designated retailers and may either adopt the minimum terms and conditions set out in the Rules or provide for alternative terms and conditions which are not inconsistent with those set out in the Rules. Terms and conditions published by retailers should not be subject to prior regulatory approval, but would be subject to compliance monitoring and enforcement by the AER.	Agree.
8.	Standing offer terms	The Rules should contain (preferably in a separate schedule) the minimum requirements applicable to standing offer contracts, expressed in a manner which can take effect as contractual terms. Part 2 of this document sets out summary terms and conditions for development of the initial Rules.	
9.	Deemed supply arrangements	With respect to deemed supply arrangements (including move-in supply) the Law should establish the existence of a deemed contract, but the circumstances in which this arises are matters of detail best	Agree.

No.	Subject	Recommendation	Origin Comments
		<p>dealt with in the Rules. On that basis it is proposed that the Law should provide that:</p> <ul style="list-style-type: none"> • the Rules may specify the tariffs, terms and conditions that apply in any circumstance where a customer is taking a supply of energy from a retailer without the customer and retailer having entered into a standing offer contract or market contract; and • the tariffs, terms and conditions specified in the Rules take effect as a contract between the customer and the retailer in accordance with the Rules. 	
10.	When a deemed supply arrangement arises	<p>The Rules should provide for a deemed contract to arise in the following circumstances:</p> <ul style="list-style-type: none"> • where a customer occupies premises that are already connected to the distribution system and commences to take a supply of energy; and • where a current contractual arrangement terminates without new supply arrangements having been established, <p>subject to any provision in the contract itself concerning the terms and conditions to apply on termination.</p>	The Rules need to allow for the potential for a customer to roll over onto new terms and conditions under their agreed market contract, rather than simply defaulting to the deemed arrangement (with reference to the second point).
11.	Tariffs, terms and conditions of deemed supply arrangements	<p>For designated retailers, the Rules should provide that the tariffs, terms and conditions applicable to deemed supply arrangements are the relevant retailer's standing offer tariffs, terms and conditions. This will automatically apply for those jurisdictions that assign the obligation to supply to the FRMP. For other retailers, the retailer may publish tariffs, terms and conditions to apply to deemed supply arrangements, which must be consistent with the standing offer terms set out in the Rules. If the retailer does not do so, the standing</p>	Agreed. Origin has commented further on this recommendation in its submission.

No.	Subject	Recommendation	Origin Comments
		offer terms contained in the Rules will apply. In either case, while jurisdictional tariff regulation continues the tariff must not exceed the tariff that would apply if the premises were being supplied by the designated retailer.	
12.	Duration of deemed supply arrangements	The duration of deemed supply arrangements should be 6 months unless terminated earlier. For jurisdictions that assign the obligation to supply to the FRMP, the supply obligation may continue indefinitely in that, if the customer takes no action, the supply will continue on the retailer's standing offer tariffs, terms and conditions.	Agree. Refer to further comments made by Origin in its submission.
13.	Notice requirements for deemed supply arrangements	<p>The Rules should require:</p> <ul style="list-style-type: none"> • the customer to give notice to the retailer equivalent to the application requirements for supply under a standing offer; and • the retailer to give the customer details of the tariffs, terms and conditions applicable to the supply, the customer's options for establishing a new supply arrangement (including, where applicable, the availability of supply under a standing offer) and what will happen at the end of the deemed supply arrangement if the customer does not do so (including the retailer's entitlement to disconnect the supply and the tariffs, terms and conditions that will apply to the customer if the supply continues). 	

No.	Subject	Recommendation	Comments
Retailer – small customer market contracts			
14.	Generic versus energy specific regulation	<p>National and jurisdictional consumer protection laws should be relied on where these provide a consistent national approach in dealing with the relevant subject matter. Energy specific regulation is justified where general consumer protection laws are inconsistent or silent and the characteristics of the energy market justify additional regulation.</p> <p>General consumer protection laws are at present largely silent on the regulation of contract terms. The characteristics of the energy market that justify additional regulation are the essential service nature of energy supply and the new and developing state of competition in the energy market. This suggests that market contract regulation should be assessed primarily against the objectives of:</p> <ul style="list-style-type: none"> • ensuring that contractual processes do not result in customers ceasing to have a supply of energy without having an adequate opportunity to address the causes of the potential for disconnection, either independently or by recourse to assistance measures provided by governments or other agencies (recognising that ensuring a supply is ultimately a matter for governments); and • encouraging the development of the competitive market by facilitating consumer choice based on readily comparable market contract offers, recognising that further deregulation of market contract terms can be addressed through the AEMC Rule change process, having regard to the extent and nature of competition and the capacity of consumers to participate in the competitive market. 	<p>For business customers, energy is one of many elements in their cost structure. Therefore, there may be merit in distinguishing the need for energy specific regulation on the basis of business and residential consumers, as businesses are procuring energy as one input in conjunction with numerous other negotiable inputs.</p> <p>Origin does not agree that the energy market exhibits characteristics with regard to the level of competition that distinguish it from any other market for goods and services. Refer to additional comments made by Origin in its submission.</p>

No.	Subject	Recommendation	Comments
15.	Terms and conditions	<p>The Law should provide that market contracts with small customers, or categories of small customers, must comply with any requirements in relation to such contracts contained in the Rules.</p> <p>The Law should provide authority for the Rules to contain provisions which specify:</p> <ul style="list-style-type: none"> • terms and conditions which must be included in market contracts; • requirements with which the terms and conditions of market contracts must not be inconsistent; and • terms and conditions which must not be included in market contracts. <p>The Rules should contain (preferably in a separate schedule) the minimum requirements applicable to market contracts. This could be done by annotations to the schedule of standing offer terms. Part 2 of this document sets out summary market contract annotations to standing offer terms for development of the initial Rules.</p>	
16.	Definition of small customers	<p>The Law should provide that a small customer for the purpose of market contract regulation has the same meaning as for the purpose of the obligation to supply, except that the Rules may distinguish between domestic and business small customers, may apply sub-thresholds and may allow for aggregation of consumption at separate premises for the purpose of specific regulatory requirements.</p>	<p>Aggregation is a necessary feature of the Rules governing the definition of small customers.</p>

No.	Subject	Recommendation	Comments
Retailer – small customer marketing			
17.	Generic versus energy specific regulation	<p>General consumer protection laws with respect to marketing conduct should be relied on where these provide a consistent national approach in dealing with the relevant subject matter. Energy specific regulation is justified where general consumer protection laws are inconsistent and adopting consistent energy specific requirements will have material benefits in terms of:</p> <ul style="list-style-type: none"> • reducing retailer compliance burden or cost (this implies such requirements apply in place of general consumer protection laws); or • consumer protection, having regard to the distinguishing characteristics of the energy market. <p>Energy specific regulation of marketing conduct is justified where the marketing conduct has the potential to influence energy contract formation and terms (or compliance with requirements relating to such marketing conduct) but not in relation to general consumer issues (such as contact times).</p>	<p>Origin does not agree that specific regulation governing energy contract marketing is necessary. Marketing conduct can influence the terms of any contractual arrangement for a wide range of goods and services. Justification of energy specific regulation is necessary via a regulatory impact assessment.</p>
18.	Marketing requirements	<p>The Law should require retailers and other persons engaged in energy marketing to comply with energy marketing requirements set out in the Rules.</p> <p>The Rules should contain (preferably in a separate schedule) requirements applicable to the marketing of energy. Part 3 of this document sets out a summary set of marketing requirements for development of the initial Rules.</p>	
19.	Entities subject to regulation	<p>The Law will need to include a definition of persons engaged in marketing activities. This should include:</p>	

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		<ul style="list-style-type: none"> • retailers; • persons acting as agents of retailers for the purpose of gaining new or retaining existing customers; • persons acting as agents of one or more customers in respect of retail energy supply; and • persons otherwise acting as an intermediary between retailers and customers in respect of retail energy supply. 	
20.	Definition of small customers	The Law should provide that a small customer for the purpose of marketing conduct regulation has the same meaning as for the purpose of the obligation to supply.	The Rules should further allow the classification of small customers as residential or business consumers. Refer to comments on Recommendation 16.

No.	Subject	Recommendation	Comments
Contractual model for distribution services			
21.	Need for a default model	A contractual model is required as a default model to apply in both the electricity and gas sectors to provide a framework for the development of the distributor - customer interface and the distributor - retailer interface arrangements.	
22.	Preferred model	<p>A hybrid model is proposed as the default model to apply in both the electricity and gas sectors to provide a framework for the development of the distributor - customer interface and the distributor - retailer interface arrangements.</p> <p>This model involves:</p> <ul style="list-style-type: none"> • a direct contract between a distributor and each customer connected to the distributor's infrastructure governing the physical and operational aspects of the provision of distribution services to the customer, including liability issues; • a contract between the retailer and each of its customers which includes provisions governing the financial aspects of the provision of distribution services to the customer; and • a contract between a distributor and each retailer which sells energy to customers connected to the distributor's infrastructure governing the financial and coordination arrangements between the distributor and the retailer. 	
23.	Small embedded generators	Consideration should be given to including contractual arrangements dealing with small embedded generators in the framework for the hybrid contractual model.	

No.	Subject	Recommendation	Comments
Distributor obligation to provide connection services			
24.	Scope of obligation	<p>The Law should provide that distributors must, in accordance with the Rules, provide distribution services in respect of a retail customer's premises.</p> <p>The reference to a distributor means a distributor whose network services are subject to access regulation under the Rules.</p> <p>The reference to a retail customer's premises is intended to limit the obligation to customers acquiring (or intending to acquire) energy through a retailer, as distinct from a customer acquiring energy directly from the wholesale market.</p>	<p>Where retailers have obligations to customers in uncovered gas distribution networks or embedded electricity networks, consistent obligations are necessary for distributors.</p>
25.	Definition of distribution services	<p>Distribution services should be defined in the Law as:</p> <ul style="list-style-type: none"> • the connection of the premises to the distribution network to allow the flow of energy between the network and the premises; • where a physical connection already exists, activating or opening the connection in order to allow the flow of energy between the network and the premises (this is referred to throughout as '<i>energisation</i>' of the connection); and • maintaining the capability of the network to allow the flow of energy between the network and the premises through the connection. <p>The definition of distribution services in the Law should be capable of being supplemented by the AEMC in the Rules.</p>	

No.	Subject	Recommendation	Comments
26.	<p>Application procedures and conditions</p> <p>Timeframes</p> <p>Connection requirements</p> <p>Distributor information requirements</p>	<p>As matters of detail, the Rules should set out:</p> <ul style="list-style-type: none"> • Connection application procedures, permitting an application for connection to be made by either the customer or its retailer and requiring customer contact details and prescribed information relevant to the connection of equipment at the customer's premises (eg. life support, special plant and equipment). For applications by the customer, evidence of a retail contract would also be prescribed information prior to energisation of the connection. • Timeframes for 'standard' new connections and energisations. • Connection requirements and conditions, including: <ul style="list-style-type: none"> ➤ payment for any augmentation, extension or other capital works to the distribution system if required to effect the connection; ➤ completion of any works required for connection which are not part of the distribution system; ➤ compliance with technical and safety requirements in relation to the customer's installation or equipment; and ➤ provision of safe and unhindered access to meters and other equipment of the distributor on the customer's premises. • Distributor information requirements, requiring the distributor to provide to a customer the approved standard terms and conditions (deemed distribution contract) 	

No.	Subject	Recommendation	Comments
		<p>applicable to that customer and notice of the customer's rights in respect of the negotiation of different terms. This information must be provided in circumstances specified in the Rules, including on application for connection of the customer's premises, on request, following any changes to the approved terms and conditions and on a request by the distributor or the customer to negotiate different terms.</p>	

No.	Subject	Recommendation	Comments
Distributor interface with customers			
27.	<p>Establishment of deemed distribution contract</p> <p>Duration</p> <p>Negotiated distribution contracts</p> <p>Access regime still applies</p>	<p>The Law should provide that upon connection of a retail customer's premises to a distribution system, or on the date a customer moves in to premises that are already connected, a contract is deemed to arise between the customer and the distributor on the terms and conditions of the deemed distribution contract applicable to that customer, except where a negotiated distribution contract exists.</p> <p>The deemed distribution contract will remain in effect while the customer is responsible to its retailer for the consumption of energy at the relevant premises or until the customer enters into a negotiated distribution contract with the distributor.</p> <p>A distributor and a customer may agree different terms to those contained in the deemed distribution contract, subject to:</p> <ul style="list-style-type: none"> • in the case of small customers, the provision of prescribed information in relation to their right to the application of the approved standard terms and an explanation of the implications of the proposed different terms; • coordination with the customer's retailer; and • any other requirements contained in the Rules. <p>The deemed distribution contract provisions do not affect the rights of a customer to negotiate for the direct provision of distribution services in accordance with Chapter 5 of the NER or under an access arrangement in accordance with the NGR.</p>	<p>The Rules need to address the circumstance where there is no customer present, but the distributor still seeks payment for network services. If a retailer is unable to recover such costs it is unreasonable for the distributor to continue to levy them.</p>
28.	Deemed contract terms and conditions	The Law should include authority for the Rules to make provision for the determination and approval of the terms and conditions of a	

No.	Subject	Recommendation	Comments
		deemed distribution contract, which may include (but will not be limited to) matters specified in the Schedule to the Law (these would include the subject headings in the table in Part 4 of this document).	
29.	<p>Rules provisions</p> <p>Model terms for deemed distribution contracts</p> <p>Small customer definition</p> <p>Standard deemed distribution contracts</p> <p>AER approval</p>	<p>The Rules should include the following provisions in relation to the distributor - customer relationship:</p> <ul style="list-style-type: none"> • Model terms to be included in a deemed distribution contract applicable to small customers, preferably in a separate schedule capable of adoption by distributors as contractual terms. Part 4 of this document sets out summary model terms for the development of the initial Rules. • Small customers should be defined in the same way as for the retailer obligation to supply. • Distributors must adopt and publish a standard deemed distribution contract which has been approved by the AER as part of the revenue determination/access arrangement approval process. • The AER would be required to approve proposed standard deemed distribution contracts that adopt the model terms set out in the Rules, with guidance for the AER in relation to the approval of variations to those terms. The AER would be permitted to allow variations that the AER considers reasonable having regard to: <ul style="list-style-type: none"> ➤ customer service and network performance standards applicable to the distributor; ➤ any specific characteristics of the distributor's network; and 	<p>Agree, however all distribution contracts must allow for consistency with retail-customer relationships and retailer-distributor relationships. That is, they cannot impose obligations upon retailers that expose retailers to uncontrollable risks and unrecoverable costs associated with distribution services.</p>

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> ➤ the object of the Law. 	
	<p>Variations during regulatory period</p> <p>Deemed distribution contracts for large customers</p>	<ul style="list-style-type: none"> • Distributors should be permitted to apply to vary the terms of an approved deemed distribution contract during a regulatory period subject to the AER's approval. Provisions relating to any resulting cost increases or decreases should be dealt with in the revenue determination/access arrangement approval. • Distributors may also prepare, and submit for the AER's approval, a standard deemed distribution contract applicable to one or more classes of customers, other than small customers, on terms which are fair and reasonable. 	Again, variation of the terms must be reflected where required in retailer-customer and retailer-distributor contractual arrangements.
30.	Regulatory obligations - Law	The Law should authorise or oblige distributors to disconnect, reconnect and interrupt supply in the circumstances prescribed in the Rules.	
31.	<p>Regulatory obligations - Rules</p> <p>Service standards</p> <p>Grounds for disconnection</p>	<p>The Rules should include the following provisions in relation to the distributor – customer relationship:</p> <ul style="list-style-type: none"> • A requirement that distributors must comply with any applicable service standards. • The circumstances in which a distributor is entitled or required to disconnect customer premises, including: <ul style="list-style-type: none"> ➤ in an emergency, including at the direction of a relevant authority; ➤ for health and safety reasons; ➤ at the request of the customer or its retailer (subject to certification by the retailer that the disconnection is permitted under the Rules); 	<p>Certification from a retailer that a disconnection is permitted is not required. A retailer must comply with the rules when making a request to disconnect. As highlighted in the comments, the Rules should provide that the retailer has deemed to have certified merely by the fact</p>

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

No.	Subject	Recommendation	Comments
	Information provision	<ul style="list-style-type: none"> Requirements for distributors to provide information to a customer or its retailer on request about the customer's consumption, network tariff or connection. 	
	Fault reporting and correction Small customer contracts	<ul style="list-style-type: none"> Requirements concerning the maintenance by distributors of a 24-hour fault information and reporting line. Protections for small customers in relation to negotiated distribution contracts, including protected terms and cooling-off periods. 	

No.	Subject	Recommendation	Comments
Distributor interface with retailers			
32.	Nature of UoS agreement/ interface contract	<p>The Law should include:</p> <ul style="list-style-type: none"> • in electricity, provision for a UoS agreement between each distributor and each retailer which sells electricity to customers connected to the distributor's infrastructure; and • in gas, provision for an interface contract between each distributor and each retailer which sells gas to customers connected to the distributor's infrastructure. <p>The distinction between an electricity UoS agreement and a gas interface contract is that:</p> <ul style="list-style-type: none"> • the electricity UoS agreement covers the provision of and payment for distribution services, and prudential requirements; • the gas interface contract would not cover these matters as they would already be addressed in the access terms and conditions of the distributor's access arrangement. <p>The electricity UoS agreement and gas interface contract would otherwise cover the same subject matter, regulating the arrangements between distributors and retailers in relation to the provision of services to their joint customers.</p>	

No.	Subject	Recommendation	Comments
33.	<p>Establishment of deemed UoS agreement/interface contract</p> <p>Negotiated agreements</p> <p>Customer variations</p>	<p>The Law should provide that except where a negotiated UoS agreement/interface contract exists, a deemed UoS agreement/interface contract is deemed to arise between each distributor and each retailer where the retailer sells energy to customers connected to the distributor's infrastructure.</p> <p>The Law would not preclude a distributor and retailer negotiating different terms and conditions of their UoS agreement/interface contract. However, the deemed UoS agreement/interface contract would apply in the absence of any such agreement between the parties.</p> <p>The UoS agreement/interface contract should provide that it does not apply in respect of particular customers to the extent that they have negotiated inconsistent arrangements in relation to the provision of distribution services with the distributor.</p>	<p>Origin agrees with this recommendation as it appropriately recognises the need for retailer's to rely on some form of default arrangement in the absence of agreement with a distributor.</p>
34.	<p>Deemed contract terms and conditions</p>	<p>The Law should include authority for the Rules to make provision for the determination and approval of the terms and conditions of a deemed UoS agreement/interface contract, which may include (but would not be limited to) matters specified in the Schedule to the Law (these would be based on the subject headings in the table in Part 5 of this document).</p>	
35.	<p>Rules provisions</p> <p>Model terms for UoS agreements/interface contracts</p>	<p>The Rules should include the following provisions in relation to the distributor – retailer interface:</p> <ul style="list-style-type: none"> Model terms to be included in a deemed UoS agreement/interface contract, preferably in a separate schedule capable of adoption by distributors as contractual terms. Part 5 of this document sets out summary model terms for development of the initial Rules. 	

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

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

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

No.	Subject	Recommendation	Comments
	<p>compliance capacity</p> <p>Suitable person</p>	<p>has the organisational capacity to carry on the activity for which it is seeking authorisation and to comply with its regulatory obligations;</p> <ul style="list-style-type: none"> • suitable person – that the applicant is a suitable person to hold the authorisation; 	
	<p>Jurisdictional licensing</p> <p>Market operator registration</p>	<ul style="list-style-type: none"> • jurisdictional licensing – in the case of distribution businesses, that the applicant holds any jurisdictional licence or authorisation required with respect to technical and safety matters; and • market operator registration – that the applicant has been registered by NEMMCO or the relevant gas market operator in accordance with any registration requirements under the NER or NGR. 	
41.	Removal of overlap with NEMMCO registration	<p>The existing registration requirements administered by NEMMCO under the NER should be modified to remove overlap with the new business authorisation requirements to be administered by the AER. In particular:</p> <ul style="list-style-type: none"> • NEMMCO requirements with respect to financial viability should be limited to satisfaction of the market prudential requirements under chapter 3 of the NER; • NEMMCO requirements with respect to organisational and compliance capacity should be limited to the relevant entity's safe and reliable interaction with the market and with technical requirements applicable under national framework instruments (including metrology). 	
42.	Corresponding changes to gas market registration	Corresponding modifications should be made to existing gas market rules to be 'grandfathered' under the national framework.	

No.	Subject	Recommendation	Comments
	requirements		
43.	Treatment of existing licensees	Distribution and retail businesses that hold current jurisdictional licences should transition to the national business authorisation without further processes.	Agree
44.	Exemptions	The Law should authorise the AER to exempt a person from the prohibition in accordance with the Law, the Rules and any guidelines issued by the AER. The Rules and AER guidelines should set out the matters to be considered by the AER in considering applications for exemptions, as well as general exemptions, in each case based initially on current arrangements.	The approach to exemptions is inconsistent across jurisdictions for both inset network exemptions and on selling activities. The designation of exemptions from authorisation should be dealt with in the Law, rather than through guidelines. Existing exemptions should be re-evaluated under any new framework.
45.	Exemption conditions and enforcement	The Law should provide that an exemption may be subject to conditions, which are to be subject to monitoring and enforcement by the AER in the same way as if they were obligations under the Rules. In the case of a general exemption, it would be necessary for the AER to establish a framework to ensure it is aware of the persons conducting activities covered by the exemption so that it is able to monitor and enforce compliance by those persons with the conditions of their exemption.	
46.	Revocation	The Law should authorise the AER to revoke a business authorisation or exemption if the AER determines that the holder ceases to satisfy the entry requirements or, in the case of an exemption, ceases to satisfy the conditions of the exemption. The Law should set out the process for revocation, including requirements for the AER to disclose the basis on which it considers the entry requirements have ceased to be satisfied and to have regard to any submissions made by the holder of the business authorisation in determining whether to revoke the authorisation.	
47.	Register of authorised	The Law should require the AER to maintain a public register of	

No.	Subject	Recommendation	Comments
	persons	authorised persons and exempt persons and include details of the information to be included in the register.	
48.	Ancillary rights and powers	Ancillary rights and powers (such as those relating to compulsory acquisition and works on public and private land) should continue to be dealt with in jurisdictional legislation. The national framework business authorisation can be used as a basis for defining the entities that have the benefit of such rights and powers.	

No.	Subject	Recommendation	Comments
Ring-fencing (also refer to OE submission WP3)			
49.	Provisions to be included in the NEL	<p>Electricity ring-fencing requirements should be included primarily in the NEL, modelled on the equivalent requirements included in the exposure draft of the NGL (but incorporating changes proposed to be made by the SCO in response to submissions on the NGL). This would include requirements relating to:</p> <ul style="list-style-type: none"> • legal separation of the entity conducting distribution network services from other related businesses; • keeping separate and consolidated accounts for distribution services and other services; • cost allocation principles and methodologies in relation to the allocation of costs between distribution services and other services; • limitations on sharing of staff between the network service provider and related businesses; and • measures to ensure the network service provider's dealings with related parties are not on preferential terms. <p>Requirements relating to the use and disclosure of confidential information obtained by the network service provider should be dealt with in the NER.</p>	Agree.
50.	Additional ring-fencing requirements	The NEL should authorise the AER to impose additional ring-fencing requirements on individual network service providers or their associates in equivalent terms to the AER's power under section 120 of the exposure draft of the NGL.	
51.	Waiver of ring-fencing requirements	The NEL should authorise the AER to grant waivers from the ring-fencing requirements in equivalent terms to section 121 of the	

No.	Subject	Recommendation	Comments
		exposure draft of the NGL (but incorporating criteria to be applied by the AER in granting waivers).	
52.	Regulatory information instruments	The NEL should authorise the AER to issue Regulatory Information Instruments in equivalent terms to the AER's powers under Division 4 of Part 2.1 of the exposure draft of NGL.	
53.	Alternative approach to legal separation	The requirement for legal separation would require transitional arrangements in those jurisdictions where operational separation is currently permitted and exists in practice. As an alternative to including a requirement for legal separation in the NEL, the NEL could authorise the making of Rules in respect of the operational separation of the business of providing network services from related businesses conducted by the same entity.	Operational separation is not sufficient to provide confidence among market participants that arrangements observe competitive neutrality.

No.	Subject	Recommendation	Comments
Retailer failure arrangements			
54.	Statutory framework for RoLR scheme	<p>The NEL and NGL should authorise the AEMC to make Rules in relation to the establishment and operation of a scheme to address the risks and consequences of retailer failure (RoLR scheme) and set out the objectives of the scheme. The objectives could be expressed as being, as far as practicable:</p> <ul style="list-style-type: none"> • to ensure that customers of the failed retailer continue to be supplied with energy; • to manage the risks and costs of retailer failure for the benefit of customers and of the designated RoLR; and • to ensure the integrity of the wholesale market settlements and network balancing arrangements in the relevant market. 	The Rules supporting the NEL and NGL objectives need to make clear the meaning of a retailer failure event.
55.	Description of matters to be included in the Rules	<p>The Law should set out the matters to be addressed in the Rules by way of general description along the following lines:</p> <ul style="list-style-type: none"> • provisions authorising the AER to appoint one or more entities to act as RoLR, with such appointments to be made on a basis which the AER considers will contribute to the achievement of the objectives of the scheme; • provisions specifying the process for and method of appointment; • provisions defining the events that trigger the RoLR's supply obligations; • provisions setting out the RoLR's obligations in terms of preparing for the occurrence of a trigger event, including the 	Provisions are also required for cost recovery for the RoLR, which is not governed by any jurisdictional regulatory framework around tariffs.

No.	Subject	Recommendation	Comments
		<p>submission of plans and proposed supply prices, terms and</p>	
		<p>conditions to the AER;</p> <ul style="list-style-type: none"> • provisions establishing the basis for determining the prices and terms and conditions of supply, and defining the duration of the RoLR's supply obligation. 	
56.	Consequences of a RoLR event	<p>The Law should describe the legal consequences that can arise as a result of the occurrence of a trigger event and permit the Rules to define the manner in which those legal consequences occur. This would include provisions to the effect that, in circumstances described in the Rules:</p> <ul style="list-style-type: none"> • a contract may be deemed to exist between the RoLR and the customers of a failed retailer; and • contracts between the failed retailer and its customers may be deemed to be terminated or varied. 	Agree
57.	Obligations on other market participants	<p>The Law should also authorise the Rules to impose obligations on other market participants in connection with the operation of the scheme, including the failed retailer, distributors and market operators.</p>	Agree
58.	Insolvency issues	<p>Further consideration should be given to provisions imposing obligations on insolvency administrators or dealing with the use and application of funds of the failed retailer. Such provisions would need to be included in the Law rather than the Rules and may require complementary Commonwealth legislation.</p>	There needs to be recognition of the scenario where a retailer has failed, but is not insolvent and is instead effectively withdrawing from the market.
59.	Process for making initial Rules	<p>No Rules should be made by Ministerial order as part of the 2007 legislative package. The Law should direct the AEMC to make Rules for a RoLR scheme by a date specified in the Law. The direction to the AEMC should enable the AEMC to make different</p>	Agree.

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

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

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> • limiting disclosure of NMI standing data by NEMMCO to retailers (Market Customers) who specify the NMI or supply address; • specifying the purposes for which a retailer may use NMI standing data; and • requiring distributors to provide NMI standing data to Market Customers on request within a prescribed time (eg 1 business day), if they specify the NMI, supply address, or other unique meter number, provided the data is not available through MSATS systems. 	
63.	<p>Electricity consumer transfers</p> <p>Initiation of transfers</p> <p>Transfer requests and process</p>	<p>The NER should include provisions:</p> <ul style="list-style-type: none"> • requiring transfer requests to be initiated only by an incoming retailer submitting a request in accordance with the MSATS procedures; • requiring a transfer request to be accepted as valid if: <ul style="list-style-type: none"> ➢ 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 NEMMCO as a market participant; 	

No.	Subject	Recommendation	Comments
	Objections	<ul style="list-style-type: none"> • prohibiting a retailer from submitting a transfer request unless: <ul style="list-style-type: none"> ➢ it has obtained any applicable consents from the customer 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; • requiring the transfer process to take into account applicable cooling-off periods by not enabling transfers to be completed before expiry of the cooling-off period; • permitting a retailer to withdraw a transfer request submitted by it at any time before the transfer has been registered by NEMMCO; • 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 (eg 5 business days from the date of the transfer request) in accordance with the MSATS 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; 	<p>Origin remains of the view that objections for debt are valid if the debt is material in nature. The cost of bad debt is inevitably paid for by all customers of a retailer.</p>

No.	Subject	Recommendation	Comments
	<p>Transfer period</p> <p>Meter reading</p> <p>Notice to customer</p>	<ul style="list-style-type: none"> • specifying the period within which a transfer must be completed (being within 65 business days after a transfer request), the circumstances in which transfers may be made retrospectively effective and the applicable retrospective periods; • requiring a transfer to be based on an actual meter reading (with the Rules to specify whether this should be based on a scheduled, special or customer's own reading), obtained within a timeframe prescribed in the MSATS procedures; • requiring notice to the customer on completion of the transfer. 	<p>This requirement needs to be relaxed in the event of retailer failure.</p>
64.	Gas registration and transfer framework	<p>The NGL should authorise the Rules to provide for:</p> <ul style="list-style-type: none"> • the establishment and maintenance of a registry of information relating to each gas supply point that is eligible for contestability, and for access to and disclosure of that information; and • procedures for the efficient transfer of consumers between retailers subject to all applicable laws, <p>for the purposes of facilitating the efficient and effective billing of retail and network tariffs and charges, wholesale market settlement and/or gas pipeline balancing.</p>	

No.	Subject	Recommendation	Comments
65.	Grandfathering of retail market rules	<p>The NGL should authorise the NGR to provide for those matters by requiring compliance with a retail market instrument (to be defined as an instrument identified in the NGR, or any other instrument approved by the AEMC for that purpose), and deeming the provisions of any such instrument to take effect as Rules, subject to the Rule-change procedures in the NGL.</p> <p>The existing gas retail market rules should be brought within the national framework in their current form by being deemed to take effect as Rules under the NGL authorising provision described above.</p>	
66.	Process for review of grandfathered instruments	<p>In progressing the work program of the GMLG or other process for development of national gas market arrangements, the SCO should consider a process for the development at a later stage of nationally consistent customer registration and transfer arrangements. This could be included as part of the process for development of the rules associated with the STTM or could be a direction to the AEMC to undertake a review after the initial Rules have been made.</p>	
67.	Gas retail market rule changes	<p>The Rule change procedures in the NEL and NGL should be amended in a manner which permits the AEMC to consider changes to Rules (including the instruments deemed to be made under the NGR) in accordance with a fast-track process which takes into account prior consultation. The amendments should be in accordance with the SCO proposed amendments to the AEMC Rule change process (subject to the suggestion that SCO consider whether the requirement for prior consultation must be with all relevant stakeholders or must be a public consultation).</p>	

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

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

No.	Subject	Recommendation	Comments
	metering	<p>metering in the NGR in similar terms to Schedule 1 of the NEL, for example, that the NGR may contain rules in relation to:</p> <ul style="list-style-type: none"> • the metering of gas to record the production or consumption of gas; • the registration of metering installations used to meter gas; and • the regulation of persons providing metering services relating to the metering of gas. 	
74.	<p>Grandfathering</p> <p>Gas retail market rules</p> <p>Other jurisdictional metering instruments</p>	<p>The NGL should authorise the NGR to provide for those matters by requiring compliance with another instrument (to be defined as an instrument identified in the Rules, or any other instrument approved by the AEMC for that purpose), and deeming the provisions of any such instrument to take effect as Rules, subject to the Rule-change procedures in the Law.</p> <p>The metering provisions contained in the gas retail market rules would be grandfathered as part of those rules, as discussed in the customer registration and transfer recommendations above.</p> <p>The regulatory requirements currently contained in additional jurisdictional instruments would also be grandfathered. However, in relation to these requirements, it may be appropriate in some cases to create new stand-alone instruments that either extract relevant metering regulation from a broader jurisdictional instrument (Victoria), or bring together the requirements of a number of jurisdictional instruments (New South Wales and Western Australia). This process would be undertaken by Ministerial order as part of the 2007 legislative package.</p>	

No.	Subject	Recommendation	Comments
75.	Process for review of grandfathered instruments	In progressing the work program of the GMLG or other process for development of national gas market arrangements, the SCO should consider a process for the review at a later stage of the grandfathered instruments to establish (as far as practicable) nationally consistent gas metering arrangements. This could involve the GMO/NEMO undertaking a process similar to that undertaken by NEMMCO for electricity metering, with Rule changes to be submitted to the AEMC under the normal Rule change process.	
76.	Supplementary regulation of gas metering Contractual/regulatory interface provisions Incidental jurisdictional legislative provisions	As for electricity, relevant metering provisions considered in relation to retail contracts (Part 2 of this document) and in relation to the distributor - retailer and distributor - customer interfaces (Parts 4 and 5 of this document) should apply. Potential overlap with the grandfathered metering regulation will need to be considered in respect of the specific provisions adopted for the retail contracts and interface arrangements, with unnecessary duplication being removed. Current jurisdictional legislative provisions incidental to metering (in relation to access to premises and theft / diversion of gas) would not be included in the NGL. Rather, these matters would continue to be regulated as part of the ongoing jurisdictional legislative regimes.	
Prepayment meters			
77.	Prepayment meter systems	The Law should authorise the Rules to regulate the use of prepayment meter systems for small customers. The Rules should cover the following matters in relation to the use of prepayment meter systems for small customers: • Prepayment meter contracts:	Existing instruments in Tasmania and South Australia address the regulation of prepayment metering. Such instruments should be used as the basis for regulating market contracts involving prepayment metering. There may be local prepayment functionalities associated with the meter, however it is increasingly likely that such

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> ➤ specific disclosure requirements to obtain a small customer's explicit informed consent to enter into a prepayment meter contract (this is a specific form of market contract); ➤ prohibition on knowingly entering into a prepayment meter contract with a customer with a life support system; ➤ additional requirements to provide information to a small customer who enters into a prepayment meter contract (for example, the operating instructions for the meter, information relating to the payment facilities available, credit retrieval and emergency credit); ➤ minimum terms and conditions of a prepayment meter contract (for example, a mandatory trial period, provisions relating to the fees and charges that may be recovered through the prepayment meter system); ➤ variation of prepayment meter tariffs, undercharging, overcharging and recovery for illegal energy use; and ➤ termination of the prepayment meter contract by the customer, including a request to revert to normal metering or as a result of a transfer to another retailer. • Prepayment meter systems requirements: <ul style="list-style-type: none"> ➤ specific requirements for the prepayment meter itself, including in relation to the information displayed, when the meter will disconnect and reconnect, emergency credit, provision of energy concessions, access to meter data; and 	<p>functionalities will be remote. For example, the customer may be able to purchase prepayment credits from an agency (e.g. Post office) or via the internet.</p>

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> ➤ requirements in relation to payment facilities. • Other matters: <ul style="list-style-type: none"> ➤ a requirement for the retailer to establish a specific telephone service for enquiries, complaints and emergencies relating to prepayment meter systems; ➤ hardship and payment difficulties – the prepayment meter system must identify to the retailer instances of self disconnection and the retailer must take action to revert a customer to standard metering in certain circumstances; and ➤ retention of records in relation to the above. 	

No.	Subject	Recommendation	Comments
Enforcement mechanisms			
78.	Compliance monitoring and enforcement functions of the AER	<p>The NEL and NGL should include provisions to support the AER's compliance monitoring and enforcement functions as follows:</p> <ul style="list-style-type: none"> • a requirement for regulated entities¹ to establish systems and procedures to monitor regulatory compliance, in accordance with guidelines issued by the AER; • a requirement for regulated entities to notify the AER of breaches of regulatory obligations, in accordance with guidelines issued by the AER; • a requirement for regulated entities to undertake compliance audits, and to co-operate with such audits being undertaken by the AER or an independent auditor, in accordance with guidelines issued by the AER; and • a requirement for the AER to report on its compliance monitoring and enforcement functions. 	<p>The AER needs to contemplate the costs of compliance systems and procedures against any benefits to customers in developing its monitoring framework.</p> <p>Obligations to notify should be based on a test of materiality.</p>
79.	Court based enforcement mechanisms	<p>The court-based enforcement mechanisms provided for in sections 61, 63 and 68 of the NEL (and the equivalent provisions to be included in the NGL) should apply to the non-economic distribution and retail regulatory obligations to be included in the national framework. Compliance with these requirements should be designated as civil penalty provisions.</p>	<p>Origin disagrees with this recommendation. The need for court-based enforcement has not been required for a failure of a retailer to comply with non-economic regulation. Court based action would be required in the circumstance where a licensee repeatedly and systematically failed to meet its material obligations. Civil penalties should not refer to specific obligations but to instances where remedial action was not taken by a regulated entity following systematic non-compliance of a</p>

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

No.	Subject	Recommendation	Comments
			material nature.
80.	Additional orders	<p>Consideration should be given to expanding the description of orders available to the Court to include:</p> <ul style="list-style-type: none"> • an order directing the participant to pay to the Commonwealth an amount up to the amount of any financial benefit attributable to the breach; • an order directing the participant to compensate any other person who has suffered loss or damage as a result of the breach; and • any other order that the Court considers appropriate. 	This recommendation is not supported. It substantially extends upon current arrangements including the Trade Practices Act.
81.	Infringement notices	The provisions currently contained in the NEL (and to be included in the NGL) giving the AER the power to issue infringement notices where the AER believes that there has been a breach of a civil penalty provision should apply to the non-economic distribution and retail regulatory obligations to be included in the national framework.	
82.	Administrative remedies	The NEL and NGL should include provisions that enable the AER to accept enforceable undertakings modelled on section 87B of the <i>Trade Practices Act 1974</i> (C'th).	
83.	Revocation of business authorisation	The AER's power to revoke a business authorisation should be limited to circumstances where a distributor or retailer ceases to satisfy the entry tests and not be available as an enforcement mechanism to address one-off breaches.	
84.	Additional enforcement issues	<p>Consideration should be given to the following additional enforcement issues when the substantive regulatory obligations are settled and the drafting of the Law and Rules is further progressed:</p> <ul style="list-style-type: none"> • whether obligations arising from the distribution and retail 	

No.	Subject	Recommendation	Comments
		<p>regulatory functions should be enforceable as between the affected parties or only by the AER;</p> <ul style="list-style-type: none"> • whether the dispute resolution provisions in Chapter 8 of the NER should apply in respect of the distribution and retail rules; and • where court based remedies are to be used, whether there is a case for allowing enforcement in the lower courts rather than (as at present) only in the Federal Court and Supreme Courts. 	<p>The regulator has a range of options available to it in dealing with non-material, non-systematic breaches without resorting to the use of the lower courts, which include enforceable undertakings and infringement notices.</p>

No.	Subject	Recommendation	Comments
Statutory objectives			
85.	Objectives of the NEL and NGL	There is no need to amend the statutory objectives to be included in the NEL and NGL to accommodate the transfer of the non-economic distribution and retail regulatory functions to the national framework.	
86.	Supplementary objectives	To the extent that the contrary view is taken and it is considered that the general objectives are not adequate to provide guidance for the non-economic distribution and retail regulatory functions, this will be better addressed by more specific direction targeted at the particular regulatory functions concerned rather than at the level of the general objective. This could be achieved by the inclusion of supplementary objectives to which the AEMC and AER must have regard in giving effect to the primary statutory objective.	

Part 2 – Regulation of standing offer and market contract terms

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

No.	Subject	Recommendation	Comments
Calculation of Charges			
	Tariffs and charges	<p>Charges are to be made on the basis of tariffs and charges specified in the contract or published in accordance with prescribed, uniform publication requirements (such as in the Gazette and/or a general circulation newspaper and/or on the retailer's internet site). [Note: the level of tariffs and charges remains subject to jurisdictional regulation.]</p> <p>Any variation to standing offer tariffs and charges must be published in advance of the variation taking effect.</p> <p>Upon request, a retailer must provide a customer with information reasonably available to the retailer on network charges, retail charges and any other charges relating to the sale or supply of energy.</p> <p>Market Contract Annotation</p> <p>Publication requirements do not apply to market contracts. Market contract tariffs must be included in the contract and variations must be notified to the customer in accordance with requirements set out in the contract.</p>	<p>The publication schedule for tariffs and charges should be made consistent across jurisdictions and between retailers and distributors. Retailers changing standard tariffs require sufficient advance notice of changes to network charges, which should be provided at least one month prior to the scheduled change in regulated retail tariffs. Retailers subject to regulation should publish their standard tariffs at least two weeks prior to the change taking effect, in order to provide adequate time for competitor retailers to make any changes to their market contract prices.</p> <p>The annotation for market contracts is supported as the additional cost of prior notification is likely to be material and will impose a regulatory cost significantly in excess of its benefit. The cost of advance notification of price changes will amount to between \$1 and \$2.50 per customer account (assuming only one notification per annum). The quantum of compliance costs for South Australia and Victoria is likely to be more than \$6 million per annum for retailers.</p>

No.	Subject	Recommendation	Comments
	Use of meter data	<p>Unless otherwise permitted, a retailer must base the calculation of charges for a small customer's bill on metering data provided by the distributor or other Responsible Person in accordance with the Rules.</p> <p>A retailer may base the calculation of charges under a bill on an estimation of a small customer's consumption of energy in the following circumstances:</p> <ul style="list-style-type: none"> • where the customer consents to the use of estimates by the retailer; • where the retailer is not able to reasonably or reliably base the bill on a meter reading; or • where metering data is not provided to the retailer by the distributor or other responsible person. <p>Market Contract Annotation</p> <p>May be varied by agreement in market contracts.</p>	<p>Note that "responsible person" has a specific meaning under the NEL. Metering data is provided by either distributors (for types 5, 6 and 7) or meter data agents/providers for metering types 1 to 4.</p>
	Meter reads	<p>A retailer must use its best endeavours to ensure that a meter reading takes place at least once in each 12 month period.</p>	<p>Whether distributors or meter data agents are responsible for providing meter data to retailers, they must use best endeavours to read the customer's meter (for whom a retailer is a FRMP) for each agreed billing cycle, and firm obligation to read meters at least once annually. It is likely that meter reading arrangements will change significantly over time with the introduction of advanced metering infrastructure ("smart meters").</p>
	Estimations	<p>Where estimations are permitted to be used as the basis for the calculation of energy charges under a bill for a small customer, the estimations may be based on:</p> <ul style="list-style-type: none"> • the customer's reading of the relevant meter; 	<p>The provision of estimated reads to retailers or the Responsible Person is catered for within the Metrology Procedures.</p>

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> historical meter data for the relevant customer reasonably available to the retailer; or where there is no historical meter data for the relevant customer, the average usage of energy by a comparable customer over the corresponding period. 	
	Bill smoothing	<p>Where a retailer is entitled to use estimations as the basis for the calculation of charges under an energy bill, estimated bills may be provided under a smoothing arrangement if:</p> <ul style="list-style-type: none"> the amount payable each month is initially the same; the retailer's estimate is based on the customer's historical billing data or, if no such data exists, the average consumption of a similar customer; the retailer re-estimates consumption after six months; and the difference between the initial estimate and the re-estimate is greater than 10%, the retailer resets the amount payable under each of the remaining bills to reflect the difference. <p>Market Contract Annotation</p> <p>May be varied by agreement in market contracts.</p>	<p>Agree with flexibility allowed through the market contract annotation.</p>
	Meter access	<p>A customer must allow the retailer or its representative (ordinarily the distributor) safe and unhindered access to the supply address for the purposes of reading the meter.</p> <p>If a failure to provide access results in a charge being based on an estimation and the customer subsequently requests an actual read, the retailer may charge the customer its reasonable costs of complying with the request.</p>	
Termination			

No.	Subject	Recommendation	Comments
	Retailer termination	<p>A retailer may terminate a small customer supply contract where:</p> <ul style="list-style-type: none"> • the retailer has a contractual right to disconnect, disconnection has occurred and there is no contractual right to reconnection; • the small customer and the retailer have entered into a new customer contract; or • the small customer has transferred to another retailer. <p>Market Contract Annotation</p> <p>Market contracts may provide for additional termination events, but must not vary the provisions relating to disconnection.</p>	
	Customer termination	<p>A small customer may terminate a standing offer contract upon five business days notice to the retailer.</p> <p>Market Contract Annotation</p> <p>A small customer is required to give no more than 28 days notice to terminate a market contract.</p>	
Security			
	Provision of security	<p>A retailer may require a small customer to provide a security deposit where:</p> <ul style="list-style-type: none"> • the small customer still owes that retailer in relation to the supply of electricity to another address; • the customer has unlawfully acquired energy within the past two years; • the customer has refused to provide acceptable identification to the retailer; or • the retailer reasonably considers that the customer does not 	<p>The additional requirement in the fourth dot point (that the customer has refused an instalment plan offered by the retailer) should be removed (retaining the assessment of a customer's credit history) as a retailer will not have sufficient knowledge of a new customer's consumption to develop a meaningful instalment plan.</p>

No.	Subject	Recommendation	Comments
		<p>have a satisfactory credit history and the customer has refused an instalment plan offered by the retailer.</p> <p>Market Contract Annotation</p> <p>May be varied by agreement in market contracts.</p>	
	Information about credit history	<p>If a retailer requires a security deposit on the basis that a small customer has an unsatisfactory credit history, the retailer must inform the customer:</p> <ul style="list-style-type: none"> • that the retailer has decided the customer has an unsatisfactory credit history; • the reasons for the retailer's decision; • of the customer's rights to raise a complaint; and • that the customer has the right to obtain details in relation to the information on which the retailer's decision was based. 	Existing protections developed by the Office of the Privacy Commissioner (such as the Credit Reporting Code of Conduct) sufficiently deal with consumer credit history matters. The case for extending regulation for gas and electricity supply arrangements for small customers has not been made.
	Amount of security	<p>The amount of security may not exceed 1.5 times the average quarterly bill (for customers on a quarterly billing cycle) or 2.5 times the average monthly bill (for customers on a monthly billing cycle).</p> <p>Average quarterly and monthly bills should be determined by the AER.</p> <p>Market Contract Annotation</p> <p>May be varied by agreement in market contracts.</p>	Average security deposit amounts are imprecise and should instead reflect the relative size of a customer based on historic consumption or billing.
	Interest	The retailer must pay interest on a security deposit to the customer in accordance with an interest rate specified initially in the Rules and subject to periodic review by the AER.	A market contract annotation is required allowing negotiation of interest to be applied for business customers.
	Application of security	The retailer may only apply a security deposit to off-set amounts owed to it where the customer:	A market contract annotation is required allowing negotiation of the application of security amounts for

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> • has failed to pay a bill which results in disconnection by the retailer and there is no contractual right to reconnection; • vacates the property; • requests disconnection; or • transfers to another retailer. <p>The retailer must account to the customer within 14 days after application of the security deposit.</p>	business customers.
	Repayment of security	The retailer must repay a security deposit to the customer after the customer has completed 12 months of on-time payment of energy charges or where the customer ceases to take supply from the retailer at the relevant address.	For business market contracts, contract terms defining the conditions governing the return of security deposits should be a matter for negotiation.
Billing, apportionment of payment, disputes			
	Frequency of bills	<p>Energy bills must be issued by the retailer at least every three months.</p> <p>Market Contract Annotation</p> <p>May be varied by agreement in market contracts.</p>	
	Content of bills	<p>A bill should include the following content:</p> <ul style="list-style-type: none"> • customer's name, account number and address; • meter identifier; • bill period; • due date; • amount of arrears or credits; • relevant tariff; • whether the bill was issued as a result of a meter read or an 	

No.	Subject	Recommendation	Comments
		<p>estimation and, if issued as a result of a meter read, the date of the meter reading;</p> <ul style="list-style-type: none"> • values of meter readings (or, if applicable, estimations) at the start and end of the billing period; • details of consumption or estimated consumption; • pro rata billing information (if applicable); 	
		<ul style="list-style-type: none"> • any amount deducted, credited or received under a Government rebate or concession scheme or under an instalment plan; • the amount of any security deposit; • the network charge and details of any other miscellaneous charges; • details of the available payment methods; • details of any available government funded concessions or rebates; • telephone number for account and fault enquiries; • contact details for complaints; and • availability of interpreter services in community languages. <p>Amounts billed for goods and services (other than the supply of energy) must be included in a separate bill or as a separate line item on an energy bill.</p>	<p>Small customers are not typically billed on an unbundled basis. Network fees and charges not relating to the use of the distribution or transmission system are itemised.</p> <p>The inclusion of “details” in reference to government concessions or rebates is nebulous. Instead, retailers should be required to make reference to such concessions or rebates.</p>
	Payment terms	<p>The due date for payment of a bill may not be less than a prescribed period after the date on which the bill is sent out.</p> <p>Market Contract Annotation</p> <p>May be varied by agreement in market contracts.</p>	Origin supports the variation of payment terms by agreement and negotiation under market contracts.
	Apportionment	If a bill includes amounts payable for other goods and services	

No.	Subject	Recommendation	Comments
		<p>provided by the retailer (apart from the supply of energy), any payment made in relation to such a bill must be applied firstly to the payment of the energy charge, unless otherwise directed by the customer or agreed by the customer.</p> <p>Market Contract Annotation</p> <p>May be varied by agreement in market contracts.</p>	<p>Origin supports for variation in the apportionment of payment under a market contract</p>
	<p>Historical billing information</p>	<p>A retailer must provide historical billing data for the previous 12 months on request and without charge to a small customer. Any information provided prior to that period or more than once in any 12 month period may be subject to a reasonable charge.</p>	
	<p>Billing disputes</p>	<p>A retailer must review a bill upon the request of a small customer in accordance with the retailer's standard complaints and dispute resolution procedures and in accordance with any time limits applicable under those procedures.</p> <p>The customer may require the retailer to undertake a meter test, with the cost of the test to be borne according to the outcome of the test.</p> <p>Retailers may require a customer to pay the greater of:</p> <ul style="list-style-type: none"> • the portion of the bill under review which is not in dispute; or • an amount equal to the average amount of the customer's bills over the previous year (excluding the bill in dispute), <p>and any future bills that are properly due.</p> <p>Where, after conducting a review of the bill, a retailer is satisfied that the bill is:</p> <ul style="list-style-type: none"> • correct, the customer must pay the amount outstanding; or • incorrect, the retailer must adjust the bill accordingly and refund any fee paid in carrying out any metering test. 	<p>Payment of a meter test should be in advance, in order to avoid requests that may be vexatious. If the meter is found to be in error, the customer would be refunded the amount paid in advance.</p>

No.	Subject	Recommendation	Comments
Undercharging and overcharging			
	Undercharging	A retailer may recover from a customer any amount undercharged during the previous 12 months (unless the undercharging arises as a result of the fault or unlawful action of the customer, in which case the 12 month limitation does not apply). Interest is not payable on the amount undercharged and the customer must be given a period of time to pay any undercharged amount commensurate with the period of the undercharging. Any amount undercharged must be listed and explained as a separate item on the customer's next bill or on a separate bill.	Undercharging due to unlawful actions should extend to an occupier of a supply site or sites (see for example clause 4.8.1 of the Queensland Electricity Industry Code). The restriction of recovery to 12 months for business customers is not sufficient. Business customers are liable for inputs to their business supplied by third parties in the normal pursuit of their commercial objectives. There is no reason why this limitation should be restricted to 12 months.
	Overcharging	A retailer must promptly inform the customer upon becoming aware of an overcharge and must repay any amount overcharged. If the amount overcharged is less than a threshold amount, the retailer must credit that amount to the next bill. If the amount overcharged exceeds the relevant threshold, the retailer must repay the amount as directed by the customer or, where there is no such direction, credit the customer's next bill.	Origin would recommend the application of the Victorian model, which does not incorporate a threshold amount. Customers are informed of the overcharge and may request an alternative repayment arrangement, otherwise the overcharge by default is credited to the customer's bill.
Payment methods and difficulties			
	Payment methods	A retailer must accept payment by a small customer by any of the following payment methods: <ul style="list-style-type: none"> • in person; • by telephone; • by mail; or • by direct debit. Where a direct debit arrangement is entered into, the retailer and the small customer must agree the amount, date and frequency of the	

No.	Subject	Recommendation	Comments
		<p>direct debits and the customer's cancellation options.</p> <p>Market Contract Annotation</p> <p>May be varied by agreement in market contracts. If direct debit is provided for in the market contract, the last paragraph must be complied with.</p>	
	Payment difficulties	<p>A retailer must offer a small customer an instalment plan where the customer informs the retailer that it is experiencing payment difficulties [or it becomes apparent to the retailer that the customer is experiencing payment difficulties]. Where customers are experiencing payment difficulties, retailers must provide information to those customers in relation to available concessions or Government assistance, independent financial counselling services and their ability to have the bill redirected to a consenting third party.</p> <p>A retailer is not required to offer an instalment plan if the customer has had two instalment plans cancelled due to non-payment in the previous 12 months.</p>	The bracketed term should be removed. Retailers are not able to assess or identify when a customer is experiencing payment difficulties.
	Shortened collection period	Conditions under which a customer may be placed on a shortened collection period and under which the customer must be returned to the normal collection period.	Terms for a shortened collection cycle need to be negotiable under a market contract. Requires an annotation reflecting this.
Disconnection			
	Grounds for disconnection	<p>A retailer may disconnect or discontinue supply where:</p> <ul style="list-style-type: none"> • a small customer has not paid a bill; • access to a meter has been denied by a small customer for three consecutive scheduled readings without reasonable excuse; • the customer has refused to provide acceptable identification or security; 	The denial of access to a meter referred to in the second dot point over three scheduled readings as grounds for disconnection should not be qualified by the reasonableness of the denial of access. This qualification should be deleted since the allowance of nine months to provide access for a domestic customer provides adequate time for access to be granted and disconnection

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> • a customer has acquired energy illegally; • a customer has obstructed an authorised person in relation to acts to be done under the contract; or • a market contract has been terminated in accordance with the terms of the contract. 	avoided.
	Limitations on disconnection	<p>Other limitations will apply to the right to discontinue supply in circumstances where a small customer has not paid a bill on account of having insufficient income. In these circumstances, the retailer is required to comply with its obligations in respect of customer payment difficulties (eg to offer instalment plans or special payment arrangements and to make referrals to counselling services, etc) before proceeding to disconnect a customer. Retailers are not entitled to disconnect while an application for Government assistance or a payment plan is pending. In addition, premises registered as containing life support or other medical equipment may not be disconnected and retailers may only carry out disconnections before specified times of the day and on specified days.</p>	
	Notice	<p>Disconnection may not be effected until the retailer has provided the customer with:</p> <ul style="list-style-type: none"> • a reminder notice; and • a disconnection notice, <p>containing prescribed information and at prescribed minimum intervals.</p> <p>In addition, where the customer is experiencing payment difficulties the retailer must make a reasonable attempt to contact the customer by telephone or other specified means.</p>	Current retail codes furnish retailers with options to contact customers prior to disconnection. The retention of this flexibility is important in the development of a national framework, rather than a prescriptive approach.
	Reconnection	A retailer must notify a small customer of the arrangements which	The second sentence in the first paragraph should be

No.	Subject	Recommendation	Comments
		<p>the customer will need to make in respect of reconnection, including any costs payable by the customer. Any payment arrangements for reconnection must allow for fair and reasonable payments at fair and reasonable intervals.</p> <p>A retailer must reconnect premises if the breaches described above are remedied within 10 business days. Retailers must make appropriate arrangements with the relevant distributor to ensure that reconnection occurs as soon as possible for the customer.</p>	<p>deleted. It is not supported by current jurisdictional code requirements and has the effect of perpetuating the basis for disconnection in the first place, for example, failure to meet previous instalment plans.</p>
Liability and warranties			
	Liability and warranties	<p>A retailer must not include any term or condition in an energy contract that limits the liability of the retailer for breach of the contract or negligence by the retailer, provided that:</p> <ul style="list-style-type: none"> • the retailer's liability may be limited as contemplated by section 68A of the <i>Trade Practices Act</i> or by equivalent State or Territory legislative provisions; and • there is no variation or exclusion of relevant legislative provisions which provide that the retailer is not liable for damages for failure to supply due to circumstances beyond its control (ie section 120 of the NEL). <p>A retailer may not include in an energy contract with a small customer a term pursuant to which the customer indemnifies the retailer, so that the retailer may recover from the customer an amount greater than the retailer would otherwise have been able to recover at general law for breach of contract or negligence by the customer in respect of the contract.</p>	
Miscellaneous			
	Prepayment meters	A customer may agree but cannot be required to use a prepayment	Existing codes have been developed in other jurisdictions

No.	Subject	Recommendation	Comments
		meter.	that address this.
	Dispute resolution and complaints	A retailer must handle a complaint made by a small customer in accordance with the relevant jurisdictional dispute resolution process.	The treatment of supplier/customer disputes is not distinct in the case of gas and electricity supply, nor should processes be unique to jurisdictions. Current Australian Standards for dispute resolution should be utilised.
Additional provisions required in market contracts			
	Cooling-off period	<p>Market Contract Annotation</p> <p>A retailer must ensure that each market contract entered into with a small customer enables the customer to rescind the contract within 10 business days after the contract is entered into or, if later, after the customer receives prescribed information relating to the cooling off period.</p>	
	Dual fuel contracts	<p>Market Contract Annotation</p> <p>In the case of dual fuel bills, payment is to be made as agreed with or directed by the customer. If there is no such agreement or direction, payment is to be applied in proportion to the relative value of the electricity and gas charges.</p> <p>If disconnection is permitted, a retailer must ensure that a small customer on a dual fuel contract is initially disconnected from gas supply and that disconnection from electricity supply occurs within a certain period after the disconnection notice, unless otherwise directed by the customer or agreed by the customer.</p>	
	Early termination charges	<p>Market Contract Annotation</p> <p>The retailer may only impose an early termination charge under a small customer market contract if:</p> <ul style="list-style-type: none"> the market contract includes details of the amount or manner of 	Early termination charges should be fair and reasonable, however competition within the market place should be the primary determinant of the level of termination fees. The existence, calculation and application of early termination fees should be made prominent and obvious to consumers

No.	Subject	Recommendation	Comments
		calculation of the early termination charge; and <ul style="list-style-type: none"> • the early termination charge is a reasonable estimate of the cost to the retailer resulting from the early termination. 	when signing a market contract.
Provisions included for consideration in Working Paper 1 but not proposed to be included in standing offer or market contract terms			
	Assessing credit risk (limiting assessment to utility related debt)	In deciding whether a small customer has an unsatisfactory credit history, a retailer may only have regard to any relevant utility related default by that small customer.	Agree with the exclusion of this provision.
	Customer consultative groups	A retailer must establish a customer consultative group.	Agree with non-inclusion. The principal avenue for customer complaint should be the dispute resolution process.
	Discrimination based on customer supply or use of alternative energy sources	A retailer must not refuse to supply or supply on inferior terms on the basis that the customer supplies or uses alternative forms or sources of energy or services that reduce the demand for energy.	Agree with non-inclusion.
	Fees for late payment	Prohibition on fees for late payment.	
	Compensation for wrongful disconnection	Retailers must pay compensation to customers who are wrongfully disconnected.	
Provisions to be included in the Rules (and not as standing offer or market contract terms)			
	Communications with customers	A retailer must provide access to multi-lingual services (for languages common to the relevant customer base) in order to meet the reasonable needs of its small customers.	
	Customer information	A retailer must make available on request and without charge standardised information to a small customer concerning his or her rights, entitlements and obligations.	
	Competitive pricing information	The Rules should permit (but not require) the AER to require pricing information to be presented in a format which enables comparison	

No.	Subject	Recommendation	Comments
		between competing offers.	
Provisions subject to separate policy review			
	Consumption graphs	Bills to include comparative consumption data.	
	Provision of energy efficiency advice	On request, a retailer must provide energy efficiency advice to a small customer.	
	Greenhouse gas emissions information on bills	Bills must include information concerning greenhouse gas emissions in accordance with guidelines.	
	CSOs	Retailers may be required to deliver government funded CSOs.	
	Service standards	Retailers must comply with specified service standards.	

Part 3 – Regulation of marketing conduct

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

No.	Subject	Recommendation	Comments
	Pre-contractual disclosures - timing/form	<p>A retailer must provide a small customer with certain prescribed information as follows:</p> <p>(a) prior to formation of a market contract: where the prescribed matters may be disclosed in writing, electronically or verbally; and</p> <p>(b) as soon as practicable after formation of a market contract: pursuant to a single written disclosure statement (unless such disclosure statement has already been provided).</p>	
	Pre-contractual disclosures - required disclosures	<p>The information which a retailer must provide in the manner described above is information in relation to:</p> <p>(a) prices, charges, penalties, billing and payment arrangements: all applicable prices, charges, early termination payments and penalties, security deposits, service levels, concessions or rebates, billing and payment arrangements and how any of these matters may be changed;</p> <p>(b) contract duration: the commencement date and duration of the contract, the availability of extensions and whether the contract can be transferred to other premises if the customer moves out during the term of the contract;</p> <p>(c) cooling-off period: any rights to rescind the contract, including how to exercise these rights;</p>	<p>Origin does not agree with the inclusion of (e) as a disclosure requirement. Standing Offer contracts are an artefact of pre-contestability and requires a marketer to inform a potential customer of the existence of a (potential) competitor's product.</p>

No.	Subject	Recommendation	Comments
		<p>(d) electronic transactions: if any marketing requirement is to be complied with by an electronic transaction, how the transaction is to operate and, as appropriate, that the customer will be bound by the electronic transaction or will be recognised as having received the information contained in the electronic transaction; and</p> <p>(e) standard supply contracts: the availability of standing offer supply contracts and the relevant regulator's contact details.</p>	
	Cooling-off period	Unless such information has previously been supplied to the small customer, a retailer must send documentation to the small customer providing details of the customer's right to rescind the market contract, including information about how to exercise this right, at least 10 business days prior to the expiry of the cooling-off period.	Sending documentation to customers 10 business days prior to the expiry of their cooling off period will not provide a full 10 business day cooling of period to the customer. Retailers must be taken to fulfil their obligation if the information is sent after contract formation within a specified timeframe. Retailers are unable to guarantee information provision within a specified time as they are dependent on third parties (such as Australia Post).
	Dispute resolution and complaints	A retailer must advise a small customer of its right to complain to the retailer in respect of any marketing activity conducted on behalf of the retailer and, if such complaint is not satisfactorily resolved by the retailer, of the customer's right to complain to the relevant industry ombudsman.	
	General conduct standards	<p>Marketers must, and retailers must ensure that marketers, comply with all applicable Commonwealth and State and Territory laws in relation to:</p> <p>(a) misleading, deceptive or unconscionable conduct;</p> <p>(b) undue pressure, harassment or coercion; and</p> <p>(c) the quality, form and content of marketing information.</p>	Inclusion of specific reference to conduct standards does not add to existing obligations already placed upon retailers under existing consumer protection law. If this obligation is to be included, then it must be made unambiguous that the requirement is covered by consumer protection law to avoid misinterpretation or a need to increase the scope and coverage of the obligation.

No.	Subject	Recommendation	Comments
		<p>Marketers should have, and retailers should ensure that marketers have, adequate product knowledge. Adequate product knowledge covers knowledge of matters such as tariffs, billing procedures and the availability of rebates and concessions.</p>	
	<p>Duties of marketers</p>	<p>At all times in connection with any marketing activity, a marketer must identify his or herself to a small customer. Identification involves the marketer using best endeavours to provide the small customer with:</p> <ul style="list-style-type: none"> (a) the marketer's first name; (b) any relevant identification number; (c) the name of the retailer on whose behalf the marketing contact is being made and contact details for the retailer; (d) sufficient contact details to enable the customer to contact the marketer; and (e) advice as to the purpose of the marketing contact. <p>Where marketing is conducted in person, a marketer must wear an identification badge showing the marketer's photograph, first name and the name of the retailer on whose behalf the marketing contact is being made.</p>	
	<p>Training</p>	<p>Retailers must ensure that marketers are appropriately trained in relation to compliance with marketing obligations.</p>	
	<p>Record keeping</p>	<p>Retailers must keep records of all marketing related activities, including details of marketing visits which have been conducted, and telephone marketing calls which have been placed. Retailers must also retain records of any explicit informed consent obtained by a marketer for two years after such consent is obtained.</p>	

No.	Subject	Recommendation	Comments
	Compliance audits	A retailer may be required by the AER to conduct a compliance audit in respect of the compliance by marketers with their marketing obligations.	
	Contact times	Not included.	
	Contact records	Not included.	

Part 4 – Regulation of distributor-customer contract terms

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

No.	Subject	Recommendation	Comments
	Commencement of contract (as between the distributor and the customer at particular premises)	<p>When the deemed contract commences in relation to a particular customer and premises, being:</p> <ul style="list-style-type: none"> • the date specified in the contract (not earlier than the date of publication of the contract by the distributor); or • if later, the date the premises were connected to the network or the customer moved in to the premises. 	
	Collection of charges	An explanatory term may be included noting that charges for distribution services are paid to the retailer and that the distributor may not charge the customer directly for services unless it has a separate agreement with the customer.	
	Termination of services	<p>When the deemed contract ends in relation to a particular customer and premises, being the earlier of:</p> <ul style="list-style-type: none"> • the date the customer is disconnected in accordance with the disconnection procedures and any right of reconnection has expired; • the customer ceasing to be responsible for energy consumption at those premises following a specified period of notice to its retailer; • the effective date of a negotiated distribution contract for the premises; or 	

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> • the date otherwise agreed between the customer and the distributor. 	
	Interruptions to supply	The contract should adopt the provisions of the Rules in relation to interruptions and curtailments to supply.	
	Service standards/Guaranteed service levels	<p>The setting of service standards and any associated GSL payment levels may be a matter to be determined individually as part of the AER's approval of the default contract. This is not addressed in this paper. However, following is an indicative list of potential requirements:</p> <ul style="list-style-type: none"> • frequency and duration of supply interruptions; • timely notice of planned interruptions; • quality of supply (excluding frequency) for electricity (this could include voltage variations); • wrongful disconnection; • timeframes for reconnection; • being on time for appointments; • response times for fault calls; and • provision of fault information. 	
	Liability and warranties	<p>The following limitations of liability may be included:</p> <ul style="list-style-type: none"> • implied terms and warranties may be excluded to the extent permitted by law; • no liability for supply interruption or disconnection to the extent the distributor is entitled to do so under Law, Rules or contract; 	Where a retailer has requested disconnection and a distributor fails to do so, the distributor will be liable for its own network charges and any energy costs associated with continued consumption until the site is disconnected.

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> • no liability for reliability or quality of supply, except to the extent caused or contributed to by the distributor's default or negligence; and • contractual force majeure. <p>The contract should state that none of these limitations will limit any obligation to make a GSL/compensation payment.</p>	
	Provision of information	May include an obligation on the distributor to provide information to a customer or its retailer on request about that customer's consumption, applicable network tariff or connection.	
	Disconnections and reconnections (excluding temporary supply interruptions)	<p>The contract should adopt the provisions of the Rules in relation to the circumstances in which a distributor may, or must, disconnect. The contract should also specify when a distributor must not disconnect. These circumstances may include (subject to emergencies):</p> <ul style="list-style-type: none"> • time of day and weekend/holiday restrictions for small customers; • for electricity, if the address has a registered life support system; • where required notices have not been given; • where a complaint remains unresolved; or • if a distributor reasonably considers that distribution would immediately endanger health or safety. <p>Reconnection should be effected:</p> <ul style="list-style-type: none"> • as soon as practical and within one business day after the reason for disconnection has been removed and the 	Refer to Origin comments contained within attached submission.

No.	Subject	Recommendation	Comments
		<p>customer requests; and</p> <ul style="list-style-type: none"> • if a retailer requested disconnection, as soon as practical and within one business day after the retailer requests reconnection, <p>subject to payment of the reconnection fee.</p> <p>A time limit for reconnection should be included, after which a request for connection would be treated as a new connection.</p>	
	Fault reporting and correction	Provision of 24-hour fault information and reporting line.	
	Dispute resolution	The contract should include details of the applicable complaints/dispute resolution process and require the distributor to comply with the relevant rules or procedures.	
	Customer obligations	<p>To be clearly expressed in the contract, together with the consequences of non-compliance (eg disconnection) and provision for appropriate notice of non-compliance and an opportunity to remedy if applicable. Customer obligations may include matters relating to:</p> <ul style="list-style-type: none"> • theft/unauthorised supply; • provision of safe and unhindered access to meters and other equipment of the distributor; • protection of/tampering with distributor equipment on premises; • safety of customer installation; • compliance with any restrictions on consumption or use of energy; and 	

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"><li data-bbox="651 363 1317 421">• requirements to notify certain events (eg faults, leaks, change of use, safety requirements).	

Part 5 – Regulation of distributor-retailer contract terms

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

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

No.	Subject	Recommendation	Comments
		<p>Payment provisions would cover matters such as invoicing, use of meter data/estimates, adjustment of accounts for changes to meter data or correction of errors, over/under charging, interest on late payments and disputes. Provisions concerning over/under charging should be consistent with the requirements applying between the retailer and customer (see Part 2 of this document).</p> <p>These provisions may also cover the pass through of GSL payments owed by distributors to customers or provide for the direct payment of GSL payments by distributors to customers.</p>	<p>Where illegal use or fraud has taken place, the retailer should not be liable for unrecovered costs associated with the distributors services.</p>
	<p>Changes in network tariffs or distribution services</p>	<p>The UoS agreement/interface contract would cover:</p> <ul style="list-style-type: none"> • interaction between the retailer and distributor in relation to the network tariff applicable to a particular customer, in particular, for the distributor to respond to retailer requests to change a customer's applicable network tariff and for the retailer to inform the distributor of changes to the use of customer premises which may alter the applicable network tariff; and • notification by the distributor to the retailer of general changes in its network tariffs or other relevant charges. 	<p>Distributors should inform retailers of proposed tariff changes at the time such changes are brought to the attention of the regulator.</p>
	<p>Information sharing to facilitate single billing, billing disputes</p>	<p>The UoS agreement/interface contract would require:</p> <ul style="list-style-type: none"> • the distributor to provide certain information to the retailer to facilitate customer billing by the retailer; and • the parties to cooperate in relation to customer billing disputes. 	

No.	Subject	Recommendation	Comments
	Credit support*	The UoS agreement would require the retailer to provide credit support in certain circumstances and set out the approach to determining the amount and nature of the credit support, when it may be drawn and other matters.	
	Termination	<p>The UoS agreement/interface contract would provide for termination rights for the distributor and retailer respectively.</p> <p>However, to protect customers in these circumstances, the relevant provisions should require a distributor to continue to provide services until the UoS agreement/interface contract has ceased to apply to all of the retailer's customers (for example, because they have transferred to a retailer of last resort).</p>	
	Interruptions to supply*	The UoS agreement would contain an acknowledgement of the distributor's right to interrupt supply in accordance with the Law and the Rules.	
	Allocation of liability between retailer, distributor and customer	<p>The UoS agreement/interface contract would provide for the liability of the distributor and the retailer and, in particular, for:</p> <ul style="list-style-type: none"> • the distributor to indemnify the retailer for customer claims for which the distributor would have been liable if the customer had made the claim under its contract with the distributor; • mutual indemnities, for example, in relation to customer claims for unlawful disconnection caused by the respective parties; • third party claims procedures; and • liability caps, exclusion of warranties and implied terms, preservation of statutory instruments. 	

No.	Subject	Recommendation	Comments
	Disconnections at request of retailer, distributor or end customer	<p>The UoS agreement/interface contract would provide for:</p> <ul style="list-style-type: none"> • disconnections at the request of the retailer (subject to certification by the retailer that the disconnection is permitted under the Rules), which may include a requirement for the distributor to compensate the retailer where it fails to action such a request (subject to carve outs, eg. where the failure is due to health and safety reasons); • disconnections at the request of a customer (parties obliged to inform each other if they receive such a request); • acknowledgement by the retailer of other circumstances where the distributor is entitled to disconnect; • requirements for reconnection. 	
	Enforcement of distributor's rights	The UoS agreement/interface contract may provide for the distributor to notify or consult with the retailer before enforcing its rights against a customer (including disconnection), and to indemnify the retailer for any assistance provided by the retailer.	
	Information sharing to facilitate connection, disconnection	See comments in relation to connection and disconnection above.	
	Handling of fault complaints	<p>The UoS agreement/interface contract would provide for:</p> <ul style="list-style-type: none"> • the retailer to transfer or refer to the distributor customer calls in relation to faults or emergencies; • the information to be provided by the distributor to the retailer in this regard, and what information the retailer may provide to the customer. 	
	Handling of complaints	The UoS agreement/interface contract would provide for each party	

No.	Subject	Recommendation	Comments
	(including re billing)	to otherwise transfer or refer to the other any customer complaints received that relate to the other party, and may also include provisions requiring the parties to cooperate in addressing such complaints.	
	Other customer inquiries and claims	The UoS agreement/interface contract would similarly provide for the transfer or referral of customer inquiries and may also include provisions requiring the parties to cooperate in relation to addressing such inquiries/claims. Such provisions may specifically relate to cooperation in relation to disputes referred to the Ombudsman. See also above in relation to allocation of liability.	
	Metering	See comments above in relation to billing. Other relevant provisions in relation to metering would be: <ul style="list-style-type: none"> • obligations imposed on the party responsible for metering to use best endeavours to read meters at a particular frequency and to provide metering data to the other party; • obligations on both parties to notify the other if they become aware of any change to access conditions to a customer premises. 	There is a requirement for distributors to read meters at least once annually. Failing this, the distributor needs to compensate the host retailer for energy net of measured second-tier load associated with unread meters.
	Information sharing in relation to customer information and planned and unplanned outages	The UoS agreement/interface contract would include additional obligations for the parties to share information: <ul style="list-style-type: none"> • the provision of customer details by the retailer to the distributor and of any customer details held by the distributor (eg. in relation to life support systems) to the retailer; • the provision of information in relation to planned and unplanned outages by the distributor to the retailer (and associated referral provisions, similar to faults, as 	

No.	Subject	Recommendation	Comments
		<p>discussed above); and</p> <ul style="list-style-type: none"> a general obligation to provide information required by the other party to carry out its obligations under the agreement. 	
	Information to be provided to the customer	The UoS agreement/interface contract would require each party to refer to the other customer requests for information relating to the other party, but may also provide for the retailer to provide information to customers on behalf of the distributor in some circumstances.	Retailers will provide information to customers on behalf of the distributor if the distributor agrees to compensate the retailer for the cost of doing so on a commercial basis..
	Information sharing to facilitate churn	See comments above in relation to sharing customer information.	
	Communications generally	The UoS agreement/interface contract may provide for the parties to develop communications protocols.	
	Cooperation generally	The UoS agreement/interface contract would require the parties to provide information to, and generally cooperate with, the other to enable the other party to carry out its obligations under the agreement and under its agreements with customers.	
	Dispute resolution	Dispute resolution procedure to be included.	

Appendix B: Provision of standing offer contracts: extract from Origin submission to Working Paper 1

Defining the policy objective

The current Allens Arthur Robinson (AAR) *Working Paper 1*, which seeks to build on the earlier [Gilbert +Tobin/NERA] consultation, actually takes a different approach. Page 19 states that:

Clearly the objective of the [small customer who receives the benefit of the obligation to supply] definition is to capture those customers considered vulnerable in the sense that they may not be able to secure a supply of energy at an affordable price and on reasonable terms and conditions in the competitive market.

Statements are then made to the effect that defining this group is problematic and that the benefit of the standing offer contract should be provided to customers consuming below an amount to be determined by jurisdictional ministers (but according to general principles set by MCE).

This takes us from the more procedural approach of the Gilbert and Tobin/NERA Consultation Paper into the far more difficult policy environment of the purpose of, and mechanisms related to, standard or standing offer contracts as they relate to customer protection from potentially negative market outcomes. This is the one policy matter that despite much interest and stakeholder debate has continued to elude policymakers; or at the very least, a solution that meets customer needs *as well* as being true to the premises of the market and moves toward FRC has been problematic.

The AAR paper raises the issues of the affordability and reasonableness of the contracts available to vulnerable customers and then appears to leave the debate hanging, with the suggestion that consumption levels set by jurisdictional governments will somehow address the issue. We understand that this approach has most likely come about from a jurisdictional need to stay with the status quo regarding policy mechanisms, in order to expedite national law and the national rules; however, we believe this is not appropriate. If the matter of customer protection through the standing offer contract is to be addressed in this forum, we believe it should be given the attention it deserves. Given the resources already committed to achieving a national regulatory framework, Origin believes it is important to get this significant issue *right*.

To avoid doubt, the rest of [this section] will focus on the revised approach of the AAR paper, specifically commenting on the standing offer contract from a customer protection (that is 'vulnerable' customer) perspective. The more procedural deemed and explicit contracts that need to be in place pre-FRC, for 'move-in' customers and other specific circumstances will not be directly addressed, although we believe these can generally fall into place behind the proposed Origin standing offer framework.¹

The current policy approach

The current standing offer regime lacks a clear policy objective, and there still seems to be misunderstanding among stakeholders about whether the point of the standing contract in a general sense (that is, outside of the more procedural needs covered in the Gilbert and Tobin/NERA paper) is:

- (a) to assist customers in the transition from a non-market environment to one with effective FRC, where once effective FRC has been determined, the standing offer contract will fall away; or

¹ The one exception is for the provider of deemed contracts, where we suggest this should be the retailer financially responsible for the site.

- (b) as a customer protection mechanism, because of a belief that the characteristics of some customers will make them unappealing to retailers, or perhaps they are seen as lacking the sophistication or other means to negotiate in the market. This version of the standing offer contract is a permanent feature of the market.

Across the jurisdictions, the current standing offer contract has covered both policy objectives without managing either one particularly successfully. It also does not lend itself to evolution toward true FRC, that is, with no specific energy price regulation (versus general consumer protection legislation). In neither case has FRC been built into the model, either to demonstrate when the transition to no standing offer contract was necessary for (a), or to sit alongside the standing offer contract in (b) but also allow for a shift to no price regulation.

Origin has been a keen participant in the many discussions over the years on the matter of what services should be regulated as minimum standards to customers in the financial hardship or 'vulnerable' customer group. We strongly agree that defining this customer group is deeply problematic, but we think that this means we need to be more creative in consideration of this issue, not just embed the existing approximations of 'vulnerable' customers into the national regulatory framework.

A revised policy objective

If the issue of how to best serve 'vulnerable' customers is to be addressed at all in this policy forum, we argue that it must be addressed fully, and perhaps redefined, with due recognition of the work carried out to date as well as the range of elements of the standing offer contract that may be modified to result in a more effective policy instrument. A policy model that merely replicates the current approach for the sake of expediency will not assist the further development of the market.

Further, the appropriateness of ensuring 'affordability' as an element of the policy objective for standing offer contracts through this process needs to be evaluated. Given that only the content of the contract, who offers the contract and who receives it are being addressed through this process, the affordability of the resulting contract can hardly be ensured.

We would also argue that the point of the standing offer contract is *not* to guarantee supply at affordable prices in any event. Affordability will depend on any individual's current financial position, consumption levels and budgeting approach. All that can be guaranteed by retailers is that prices should be at the most efficient levels given competitive forces are in effect. We also assist customers who require payment support through our range of hardship programmes. Any further means of assuring affordability of energy bills needs to be managed through government policy and community funding; this is where government and community support are important as a supplementary measure to the market. Government social programmes, community and industry initiatives have evolved considerably in recent years, and can be depended upon to provide the necessary support to those in hardship.

Origin believes that the policy objective for the standing offer contract needs to be broadened beyond coverage of 'vulnerable' customers, but limited to issues of access and conditions of supply. The need to be broader than just trying to define the 'vulnerable' customer base is due to the definitional issues addressed later in this submission.

Origin supports a broader policy approach that sees the standing offer contract as providing a 'back up' contract market for FRC, both for the customer protection purpose and for the more administrative circumstances such as a shift from a deemed to standing contract for 'move-in' customers. The principle of such a contract obviously also has a role for pre-FRC environments, whether this is a deemed or explicitly agreed with the customer.

(While as a matter of principle, Origin does not actually believe that a standing offer contract as a customer protection mechanism *is* warranted where there is effective competition,² we provide this proposal in the recognition that the market is not able to embrace that possibility at this stage.)

Protecting ‘vulnerable’ customers might be within this objective, but only in the sense that these customers, as well as the larger residential customer group, will have guaranteed access to supply on what are seen as reasonable terms.

Further, the specific policy objective needs to ensure that the standing offer contractual framework *is able to provide for the removal of price regulation according to the AEMA* without jeopardising customers’ current access to supply on reasonable terms and conditions. This is where the current approach is deficient, as will be any decision that is taken to merely embed the current approach into the national rules.

Separating price controls from the obligation to supply

While Origin supports a policy approach which recognises that the provision of a standing offer contract is separate from the regulation of the price of that contract, we are concerned with any approach that de-links these two issues to the point where they are discussed and administered through completely separate processes.

This is currently the case, where the contractual rights and obligations of the obligations associated with the standing offer contract are being addressed through the Retail Policy Working Group, and the nature of price regulation is being managed separately through the AEMA and AEMC FRC processes. Table 1 below shows the elements of the standing offer contract and the responsible decision-makers.

Table 1: Elements of the standing offer contract and the responsible decision-makers

Element of the standing offer contract	Issue	Responsibility
Provider of the offer: which retailer(s)	Deciding one retailer or many	RPWG/MCE
	Allocating the responsibility to provide a standing offer contract	Jurisdictional Governments
Recipient of the offer: which customers	Deciding which customers or customer group	RPWG/MCE
	Allocating the right to an offer	Jurisdictional Governments
Terms and conditions of the offer	Deciding minimum standards	RPWG/MCE
Pricing of the offer	Removal of government price regulation as FRC becomes effective	MCE/AEMC

We are concerned that under this approach the capacity for any one standing offer contract model to meet a specific policy objective is limited.

² There has been no evidence to date to support an argument that any customer group will be left out of the market based on socio-economic characteristics. As found by ESC in Victoria and ESCOSA in South Australia, customers of all types are being offered and are taking up market contracts. There are also no apparent data to support the argument that customers are being disadvantaged through inappropriate contractual terms and conditions. Further, this group is essentially unable to be defined and targeted effectively in an objective, or systems focussed, way. This means retailers could not leave ‘vulnerable’ customers out of the market or seek to disadvantage them even if they wanted to.

There has also been no evidence to date that retail competition exacerbates customers’ experiences of hardship. In fact, in Victoria the disconnection rates and assistance for customers in hardship have improved significantly since competitive reforms (and privatisation) were carried out.

Origin believes that discussions about standing offer contract terms and conditions cannot proceed without some understanding of the costs and benefits involved, or some recognition of the different variables within the standing offer contract that may be modified to create the most responsive policy instrument. It is important to unpick these issues but to always be aware they are related, and in fact, where one element changes (such as removal of price controls), another element can also be modified to manage any residual stakeholder concerns.

The means of achieving the policy objective: the proposed AAR model

Customer coverage of the retailers' obligations to make a standing offer

Based on the AAR *Working Paper 1*, Origin assumes that the primary policy objective for the Retail Policy Working Group's, and MCE's, considerations of the standing offer contract is the customer protection objective addressed in (b) above, in addition to the rules required for the more procedural 'move-in' circumstances. This is because the Paper raises the issue of 'vulnerable' customers, as also mentioned above. The current recommendation of the *Working Paper 1* is then for the responsible retailer to provide a standing offer contract to those customers who consume below a certain threshold, with the consumption threshold to be set by jurisdictional ministers.

While the approach in *Working Paper 1* neatly fits within existing policy, it also dismisses the real problems experienced to date with actually identifying customers who require support, or those who are 'vulnerable'. It will therefore most probably perpetuate the existing concerns stakeholders have with over- and under-coverage of the standing offer.

Currently the thresholds across the jurisdictions are set high, that is, to include most, if not all, residential customers. However many stakeholders would argue that only a small proportion of the residential customer base could be considered 'vulnerable', and thus that the policy mechanism need to be better targeted. The problem then is that no party has been able to develop a better targeted approach.

The problem with defining 'vulnerable' customers

There has been much work to date on trying to find a means of objectively identifying customers who are in financial hardship, or are vulnerable to falling into hardship or being disadvantaged by the market.³ Most of the work to date has had as its purpose (whether explicit or implicit) a need to 'define' vulnerability and hardship, or at least find common indicators.

The one thing that most, if not all, investigations into the causes and characteristics of financial hardship have had in common is a finding that defining hardship or vulnerability in the retail energy context in a way that is operationally meaningful is deeply problematic, if not impossible. Targeting approaches or locating indicators involves unpicking a range of complicated issues that affect people's lives, such as:

- differentiating long-term problems with bill affordability (e.g. high medical appliance bills and sole reliance on a disability pension for income) from short- to medium-term hardship (e.g. sudden loss of unemployment when there are multiple bills due); and

³ In Victoria alone, this work has included (but is not limited to): the work of the Essential Services Commission (ESC, and the Office of the Regulator-General before 2002) in the development of the Retail Code (1999-2004), subsequently mirrored in South Australia Victorian Department of Human Services (DHS) Roy Morgan Research report (2002) *Victorian Utility Consumption Survey 2001*; The Consumer Law Centre Victoria and Consumer Utilities Advocacy Centre (2004) report *Access to Energy and Water in Victoria*, the Committee for Melbourne's (2004) Utility Debt Spiral Project; Victorian Committee of Inquiry into Hardship (2005).

- differentiating those who are having difficulty paying for preventable reasons (e.g. poor prioritising in budgeting, or use of energy inefficient appliances) and assisting them through financial counselling or energy efficiency advice, from customers whose difficulty paying is more chronic and pervasive, and whose issues are less able to be resolved.

These combined issues mean that the only reliable method of detecting and assisting customers who are having difficulty paying their energy bills is to provide the environment where customers feel confident and comfortable enough to *self-identify* through communicating their current inability to pay. This obviously has serious implications for any policy mechanism that seeks to target a contractual approach to customers who are 'vulnerable' or in hardship.

The costs and benefits of targeting an approach

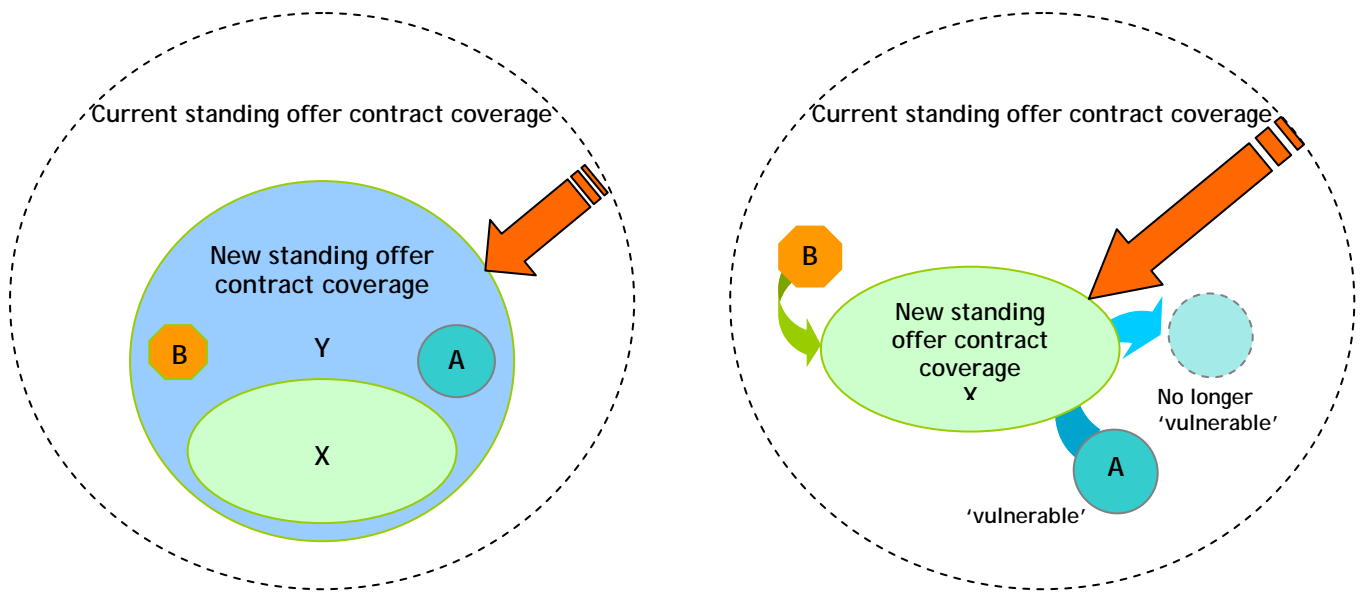
The benefits of a targeted regulatory approach - assumed to be more efficient from a market perspective - may be outweighed if the transaction or co-ordination costs of identifying and managing a customer sub-population are significant. For example, according to one perspective, possibly it is only a core group of customers who have a Health Care card who may 'need' protection in the longer term. However, while this identifies the people who really 'need' protection on an objective level, it does not account for the range of political and administrative problems that this approach could entail.

Even once the decision has been made about default coverage and initial implementation issues have been addressed, there will be ongoing issues of implementing the targeted standing offer contract. These include the management of transition for some customers - those who are not included in the core default ('passive') group, but who need to be effectively captured (swiftly and sensitively) and also need to be able to be shifted out when appropriate. This adds costs to the system, and if the number of these potential customers is high, and/or if the costs to the retailer of processing them (and reviewing their status after a period on the regulated contract) are high, greater 'passive' contract coverage may be warranted.

This issue of needing to trade off various costs and benefits is represented in Figure 1 below. This shows two 'pure' models of regulated offer coverage. In each model, Type X customers are those covered by default; customer Type A represents customers who need to be captured by the regulated offer in a temporary capacity (they should be shifted out when appropriate); and customer Type B represents the (inevitable) group of customers who are not captured within the default group (they may possess exceptional characteristics that warrant protection) but should be covered in an ongoing sense.

The key message is that if the costs of identifying and managing customer Types A and B in Model II outweigh the benefits of the reduced safety net coverage, it may be more effective to opt for the broader coverage approach of Model I.

Figure 1: Two 'pure' models of standing offer
← BROAD COVERAGE → LIMITED COVERAGE



Model I - greater default or 'passive' coverage to minimise political and administrative costs

Model II - targeted 'passive' coverage to minimise over-capture, with additional manual 'active' processing expected

Table 2 below sets out a range of customer types generally considered to require 'protection' (that is, potentially members of the 'vulnerable' customer group) and seeks to tie these to objective criteria to establish means of targeting standing offer contracts.

Table 2: Options for the optimal coverage of regulated contracts

	Options	Coverage and Issues
Consumption	Medium consumption (eg 8MWh/yr, 70GJ/yr)	<i>eg 50% customer base</i> <ul style="list-style-type: none"> Useful as an interim measure but unlikely to suit a longer term approach given its lack of targeted coverage. While significant proportion of customer base covered, still leaves out those high usage consumers who might require support.
	Only 'low' consumption (eg 3MWh/yr, 25GJ/yr)	<i>eg 5% customer base</i> <ul style="list-style-type: none"> Does not adequately cover 'hardship' cases or credit risk customers - these may be high consumers. Problem of arbitrary number of 'low' consumption - retailer approaches to this may not be the same.
Concessions customers	All concessions	<i>~40% customer base</i> <ul style="list-style-type: none"> Comes closest to capturing socio-economic status (if this is seen as primary issue), and also covers low use customers. However still not targeted: covers large amount of customer base but covers customers who are not in hardship, and in fact may have less difficulty paying than the average (eg OAPs). There are still customers who are 'vulnerable' but who are not on concessions.
	Health Care Card holders	<i>~20% customer base</i> <ul style="list-style-type: none"> Better proxy for hardship, given card covers unemployment, financial hardship. However there are still customers who are 'vulnerable' but who are not on concessions. These cards can be issued on a 3 monthly basis: how to remain updated?

	Options	Coverage and Issues
Credit	Credit risk customers	<p>~6% customer base</p> <ul style="list-style-type: none"> Covers customers who may not be able to obtain a market offer at all. However, also covers people who are not in hardship, and who may be fraudulent or criminal. Does not address 'vulnerable' issue satisfactorily and retailers will have different views on what is a risk.
	Income or proportion of income spent on energy	<ul style="list-style-type: none"> Covers those who have low income or likely to have payment difficulties Not feasible, as would not want to asset test people, and not really possible.
Other	Annual spend	<ul style="list-style-type: none"> Sub-optimal compared to consumption as tariffs mean not apples with apples across customer base.

This table demonstrates that there is no meaningful proxy for 'vulnerable' customers. Middle to higher consumption levels are the only way to capture all the customers who might require the standing offer contract, but also capture far more than the required customer base.

Origin's preferred approach

As discussed above, Origin believes that the policy objective needs to be clarified, and within that, that coverage of the standing offer contract needs to be beyond 'vulnerable' customers. Among other reasons, this is because if the policy objective is to address 'vulnerable' customers through a targeted standing offer contract, the impossibility of defining this customer group effectively will render the whole approach meaningless. The jurisdictional governments responsible for setting consumption thresholds are not really being provided with an opportunity to make a meaningful decision given the decision making framework is not aligned to the policy objective (protecting vulnerable customers and promoting FRC).

Origin supports a broader policy approach that sees the standing offer contract as providing a 'back up' contract market for FRC, where the essential nature of energy might warrant this.⁴ Protecting 'vulnerable' customers might be within this objective, but only in the sense that these customers, as well as the larger residential customer group, will have guaranteed access to supply on reasonable terms.

With such a policy objective, it makes sense to keep identification of customers to be covered by the standing offer contract to a consumption level. Origin would be comfortable to keep the standing offer contract to *all* residential customers. We will make an offer to anyone who asks for it. This approach will eliminate the risk of over or under-coverage of what is seen as a key customer protection, and it is what Origin practices in any event.

However, general coverage of the standing offer contract will only make policy sense if, in addition to the policy objective being redefined, the following is in place:

- There is a genuine commitment by jurisdictions to fulfil the requirements of the AEMA regarding removal of price regulation; that is, where there is effective FRC there is no need for government regulation of retail energy prices.
- The standing offer contract should be more concise than current practice.
- *All* retailers are subject to this requirement.

⁴ As noted above, as a matter of principle, Origin does not actually believe that a standing offer contract as a customer protection mechanism *is* warranted, however we provide this proposal in the recognition that the market is not able to embrace that possibility at this stage.



**Submission to the Retail Policy
Working Group on the National
Framework for Non-Economic
Distribution and Retail
Regulation**

July 2007

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1. Introduction and general comments

Origin Energy (Origin) welcomes the opportunity to comment on the Retail Policy Working Group's *National Framework for Distribution and Retail Regulation: Consultation Paper*.

As per our most recent submissions to the RPWG, Origin supports the continued shift toward a more consistent and predictable framework, in particular, one which seeks to reduce the regulatory burden where this is seen to be effective and in the public interest. The Consultation Paper reflects real progress in this area.

However, we have some remaining concerns about the process to date, as discussed below. Comments on the detail of the Recommendations are provided in Section 2.

1.1 Opportunities for consultation on the detail

Origin notes recent advice to the industry that the current delays to the process will provide some extra time to address the detail of the policy and rules themselves. We have been advised that the SCO will provide its own views on the detail of the policy and overall approach, and an Exposure Draft of the rules will be available for consultation around the second quarter of 2008.

The first of these announcements is a welcome outcome, in the sense that at least the industry will be able to comment on a formal RPWG/SCO document, rather than a consultant's document that has not been officially signed off by the SCO or MCE. The second is also welcome in the sense that at least there is some opportunity to provide comment on the detail, but we still question if viewing an Exposure Draft is adequate consultation.

As Origin submitted to the January 2006 Gilbert and Tobin/NERA Consultation Paper *Public Consultation on a National Framework for Energy Distribution and Retail Regulation*, the devil will be in the detail when it comes to implementing the regulatory principles in rules. In the 18 months since then, the detail in many areas has not been forthcoming. While this is understandable to an extent and we recognise the enormity of the task undertaken, the lack of detail in many areas is still of concern to Origin.

There is still only a short time left before the drafting needs to be well underway, and Origin seeks clarification on the nature of the timeframes and opportunities to view, and provide comment on, the substance of draft rules released by the SCO (rather than AAR as an independent party).

1.2 Regulatory process versus policy

As per previous comments to the RPWG, Origin has had some concern that the process to date has focussed more than necessary on jurisdictional harmonisation of rules, and has neglected the key policy objectives that should underpin good regulation.

1.2.1 Background to the current rules and problems with harmonisation

The current jurisdictional regulations were, by and large, created per jurisdiction prior to competition opening in the mass market, and as such, were based on theory about how competition would unfold, concerns about practices from other industries, and some stakeholders' concerns that existing consumer affairs and fair trading regulations would not be enforced as stringently as it was believed energy retail would require (given its status as an essential service).

In the subsequent years, competition has commenced across most of the jurisdictions, and the national wholesale market has also evolved. However, in the states where competition is arguably effective – that is, Victoria and South Australia – while the state-based regulatory frameworks have changed over time, they have largely retained their foundations. The basic policy premises from pre-competitive times have not been questioned, even though in many instances they were expedient outcomes from specific points in history rather than objectively the best policy approach.

For example, the 160MWh/year threshold for the small customer electricity definition across Victoria, NSW, South Australia was based on technical market requirements and metering rules at the time. This was never a number that resulted from an objective assessment of the customers who would require consumer protection, but a number arrived at for convenience from a technical standpoint. That this figure has persisted as the foundation for most of the consumer protection coverage for Australian jurisdictions (and we note, counter to recommendations by the Victorian ESC in 2004) is an irrational outcome.

It is also worth noting that some degree of harmonisation was sought from the start, with other states generally using Victoria as their model as it was the first jurisdiction to address FRC rules.¹ This means that national precedents were set by policymakers in one jurisdiction prior to competition commencing. To reiterate, these precedents were largely set by political and technical, rather than objectively rational, objectives.

We believe that the world has changed significantly in the seven years since the first Victorian discussions were had about required minimum standards for FRC, and the years since FRC commenced in key jurisdictions. This needs to be reflected in our consideration of how to best move forward with a national regulatory framework.

1.2.2 Principles to achieve optimal policy outcomes

As suggested above, seeking to merely harmonise existing regulations across the jurisdictions is sub-optimal. Some of the existing regulations lack a clear objective, and others no longer meet the objectives that were perhaps the cause of their creation. Harmonising regulations across the jurisdictions without addressing their objectives, or costs and benefits, merely perpetuates existing problems.

We argue that key policy and regulatory approaches need to be reviewed and considered from first principles. It will be important that as regulations are considered that the following is stated, and tested:

1. The policy objective of that particular regulatory approach, and how it facilitates the national energy market objective and, where relevant, principles under the Australian Energy Market Agreement.
2. How well the approach has met its objective to date.
3. If the objective has changed from the past, and if it needs to change. Are there other policy or market objectives now? What has experience taught us so far?
4. The costs and benefits of the regulatory approach proposed and the costs and benefits to change the approach to better meet a policy objective, or range of objectives, for the future. The regulatory approach chosen should not unnecessarily limit or hamper future policy innovation.

¹ Competition in NSW commenced at the same time as in Victoria, but it was well known at the time that the minimum standards developed in Victoria provided the benchmark for the approach in NSW, even though some effort was taken to make the final regulatory mechanisms look different.

2. Topics for consultation

See Appendix A for a detailed commentary on the recommendations. This Section 2 describes some of the policy issues that arise.

2.1 Retailer obligation to supply small customers

2.1.1 *Small customer definition*

Recommendation 4 of the Composite Consultation Paper (Consultation Paper) proposes that a 'small customer' should be defined by customer threshold, with the initial Rules to specify the thresholds and the AEMC to develop a longer term, and nationally consistent consumption threshold.

As described in Origin's submission to Working Paper 1, the definition of customers covered by the minimum standards and obligation to supply requires a clarification of the policy objective to be served. This has not happened to this point. Further, even if we assume certain policy objectives, the coverage by consumption threshold meets no objective. See Appendix B for an extract from our previous submission that explains the issues in some detail.

As noted in Section 1, the consumption threshold approach taken to date was based on technical and political concerns, each of which no longer applies to the current market. There is no longer a convincing reason to use consumption thresholds as a basis for customer protections.

Origin's own belief is that the obligation to offer should:

- (a) apply to all domestic customers, by tariff;
- (b) be linked to customer protections such as the application of contractual minimum standards; and
- (c) be explicitly de-linked from price controls and discussions about 'vulnerable' customers. These customers cannot be captured through consumption thresholds and require specialised assistance.

Origin seeks an amendment to the recommendation that provides for AEMC to review the coverage of the obligation to supply without this being limited to consumption thresholds. In particular, we seek a decision-making framework that can allow for Origin's preferred model, as above, should the AEMC find this appropriate.

2.1.2 *Duration of deemed supply arrangements*

Recommendation 12 of the Consultation Paper is that the duration of deemed supply arrangements should be 6 months, unless terminated earlier, and that where jurisdictions assign responsibility to the FRMP, the supply obligation continues indefinitely, on the retailer's standing offer tariffs, terms and conditions.

Origin does not agree with this approach for FRMP jurisdictions.

First, there needs to be some differentiation between what we call default or deemed and standing offers. This situation is a default situation, not a standing offer situation.

Second, we believe that applying the rate from a previous customer indefinitely to the subsequent customer is not correct. This leads to uncapped exposure for the retailer. We submit that a strict time limit also required for this situation, or that the retailer in question has the freedom to reset the contract price.

2.1.3 Designating retailers and supply remits

Origin remains of the view that the approach adopted, while administratively simple, preserves an increasingly redundant concept within the market that certain retailers are obliged to supply, where at the minimum, the FRMP at a customer site should be obliged, and ideally, all retailers would be obliged to supply a customer (in the case of the removal of price regulation).

2.2 Retailer - small customer market contracts

Recommendation 14 suggests that market contract regulation should be assessed against an objective that includes the comparability of contractual information. Origin agrees that the AEMC Rule change process can address further deregulation of terms; however, Origin is concerned that the objective presupposes that the energy market is somehow uniquely different from others with regard to the capacity of consumers to assess information presented. Origin believes that key contractual information should be easily accessible and comparable, but does not agree that some form of template or standardisation among retailer market contracts is in the interests of innovation or customer choice.

2.2.1 Tariffs

Origin supports the market contract annotation referred to in the table set out on page 210 of the Consultation Paper. The market contract annotation is consistent with current practice in Queensland, Victoria and South Australia.

The cost of providing advance notice to market contract customers is prohibitive and will increase over time as more customers accept market contracts. Origin estimates the cost of prior notification for Victoria and South Australia at present (with around 50 per cent of customers being served on market contract arrangements) would cost retail market participants more than \$5 million annually, a figure that will grow as more customers accept market contracts and/or multiple notices are sent within a year.

2.2.2 Meter reading

Whether distributors or meter data agents are responsible for providing meter data to retailers, they must use best endeavours to read the customer's meter (for whom a retailer is financially responsible in the market) for *each* billing cycle, and firm obligation to read meters at least once annually.

Origin notes that it is likely that meter reading arrangements will change significantly over time with the introduction of advanced metering infrastructure ('smart meters').

2.2.3 Market contract annotations

There are a number of elements set out in table contained in Part 2 that require reference to a market contract annotation. These components of an energy contract should be included as negotiable terms:

- Interest paid on security deposits lodged by business customers;
- Repayment of security lodged by business customers; and
- The terms around a shortening of a billing collection cycle.

2.3 Retailer - small customer marketing

Origin does not agree that there are distinguishing characteristics of the energy market that require specific regulation. Page 31 of the Consultation Paper refers to a justification of specific regulation of small customer marketing where 'conduct has the potential to influence energy contract formation and terms (or compliance with requirements relating to such marketing conduct)'.

Origin would seek to understand further the influence that conduct may have over contract formation and terms over the course of a marketing contact with a customer. Terms and conditions around market contracts are likely to be the same for all customers accepting a particular energy product. By making reference in Recommendation 17 to energy specific regulation there is a risk that in the development of national regulation, additional regulation of small customer marketing will be developed without an objective reason for doing so. In any event, the nature of the any justification for energy specific regulation of marketing needs to be established through a robust assessment of the benefits and costs.²

2.4 Contractual models for distribution services

Origin broadly supports the recommendations in the Consultation Paper.

However, we have some concerns that the model has still not been specified in any detail. There is significant room in drafting the rules to diverge from the approach Origin would be comfortable with. Origin would like to see a statement of principles made on how the contractual issues will be dealt with, and have a chance to provide input to rule-making well before the Exposure Draft is released.

2.5 Obligation to provide connection services

Origin is generally comfortable with the recommendations; however, we have some concern that the framework applies only to gas networks subject to economic regulation and thus specifically excludes uncovered natural gas distribution pipelines (and presumably LPG reticulations). In many of these latter areas the retailer has the same retail obligations to consumers regardless of whether the gas pipelines are covered or not.

While we have managed situations like this - where there are customer obligations for the retailer but none for the distributor - in the past through negotiated arrangements based on corresponding Access Agreements, it is not clear whether there is a gap in the national framework moving forward.

In the past, these situations have been relatively limited. However, recent developments in the application of the National Gas Code, the '15 year' regulation holiday etc, suggest that the situation where the retailer is subject to retail obligations but the network is not (necessarily) so bound will increase.

In Origin's view therefore, to the extent retailers are governed by consumer protection regulation in gas and electricity markets, similar obligations (including the obligation to offer connection services and responsibility for distribution specific functions) should be placed upon distributors in uncovered gas networks and embedded electricity networks.

² Origin notes that during the deregulation of the telecommunications industry, specific regulation was not established covering direct marketing to consumers in forming contractual relationships for fixed line telephony services, but rather an industry code was drafted through the Australian Communications Industry Forum. Specific governance of conduct in addition to Fair Trading provisions was not made a condition of licensing in the telecommunications industry.

While formal economic regulation of such networks may not be required, distributors should be directly responsible for those risks and services that they are best placed to manage. In addition, this responsibility should be captured in the general national framework rather than dependent on individual negotiations between distributors and retailers for each relevant region. Not only would the latter be a costly exercise for both parties (given multiple retailers), but there is considerable inequity in negotiation power between distributor and retailer. When the distributor knows the retailer is under various obligations, the distributor is not necessarily exposed to direct commercial incentives to negotiate reasonable terms.

2.6 Distributor interface with customers

Origin supports the AAR proposal on this issue. We particularly support the recommendation that the deemed contract terms and conditions are linked to the revenue determination process, and that a distributor must comply with applicable service standards. (We assume this obligation will sit alongside the current economic based incentives for service standards.)

2.7 Distributor interface with retailers

Origin agrees with the strengthening of this area to include a regulatory as well as contractual requirement (on both distribution and retail) to comply with the relevant UoS agreement or interface (gas) contract.

At the next level of detail, Origin seeks that the regulatory standards include the reliability, timeliness and quality of meter data provision, to the extent that the distributor is the provider of meter data, and of other related services. This will be of increased importance with the Victorian advanced interval meter roll-out (AIMRO). Further, data integrity will become even more important with the introduction of the Short-Term Trading Market, since users potentially face significant risks if they are rely on late or inaccurate data.

For these reasons, there should be minimum performance standards on data providers across the board.

2.8 Distributor interface with embedded generators

The current proposal to take account of decisions in this area in other fora, and specifically the work of the EMRWG, through Ministerial order, seems reasonable.

However, it is still not clear to Origin how issues we have previously commented on will be accounted for. As we submitted to Working Paper 2, the primary issue Origin has had with the approach taken to date is that there is inconsistency between the way that customers are dealt with by networks and the way that retailers are dealt with. Networks then are able to operate their monopoly power through complex, and we argue unnecessary, connection agreements. In our submission we provided examples of the problems experienced to date.

A draft National Code of Practice for Embedded Generation (CoPEG) was prepared by PB Power for the Utility Regulators' Forum in February 2006. It is not clear how this work will be utilised through the MCE EMRWG process, or what further consultation might occur on this topic.

We note that the CoPEG says that a distributor must develop and publish a standard connection agreement for an embedded generator of less than 2kW (a micro unit) and must only develop a standard connection agreement for 2kW - 1MW units (a small unit) 'where practicable, and using reasonable endeavours'. This does not address our concerns as previously outlined, and, in fact, further facilitates the inefficient and onerous approach taken to date.

Origin submits that provided the equipment is approved reverse load up to 5kW should be allowed to be installed by a REC and the meter change over facilitated through the Electrical Work Request process. If there is to be any form of network agreement there should be a single (plain English) connection agreement across all distributors.

2.9 Business authorisation

With regard to Recommendation 39, Origin believes that arrangements for embedded networks need to be made consistent across jurisdictions and that the impact on retail market competition of licence exemptions should be considered in the development of the rules. Exempt retailers or on sellers within inset networks may not be monitored to ensure they are meeting the same obligations as licensed retailers serving customers on conventional networks. For example, the regulator may not be able to determine if customers served by embedded networks are receiving government rebates and concessions, or if the tariffs levied satisfy regulatory requirements.

Origin agrees with Recommendation 40; however we note that while the prudential requirements of market operators (such as NEMMCO) protect the market from financial exposure in the wholesale market, financial viability of a retail entity extends beyond these obligations in the event of retailer failure. Recent retailer failure has not resulted in the insolvency of the failed retailer (as was widely believed to be the case in the past). The risk to Retailers of Last Resort needs to be appropriately recognised if insufficient assessment of a retailer's capacity and willingness to operate as a going concern in the market has been undertaken when the business applied for authorisation.

2.10 Ring-fencing

Recommendation 53 suggests an alternative to legal separation through operational separation. Origin does not agree with the alternative, noting that even with the development of rules that place obligations on operationally separated related businesses, the degree of transparency remains inferior to that provided by legal separation of entities. Origin accepts that networks and related businesses currently separated operationally will need time to transition to legal separation, but does not support an alternative or exemption from legal separation on a permanent basis.

2.11 Retailer failure arrangements

Recent events have revealed that the current Retailer of Last Resort arrangements in various jurisdictions are unsatisfactory and may not be conceptualised properly. This is particularly relevant when under the current arrangements a failing retailer has the option to hand back its customers to the RoLR and continues to hold a wholesale position that could return a profit in the market. Further work on the detail processes for RoLR are required with one area being the authorisation criteria which could benefit from a more robust assessment of the financial standing of the retailer and options for access to their wholesale book in the event of a default.

2.12 Customer registration and transfer

Overall, Origin believes that the proposed customer registration and transfer rules seem reasonable. We are particularly pleased that there is a proposal to grandfather existing gas arrangements under a national forum, while being mindful of the work being undertaken by the GMLG and the fact that many of these systems

have recently been developed and that any harmonisation should be done progressively.

However, we have a serious concern about any decision taken to remove the capacity to object to transfer for reasons of existing debt. While objections for debt have not been used widely in the market to date, this is a capacity we would expect to see maintained. Recent Origin figures show a significant proportion of our outstanding aged debt relates to recently transferred customers. Current trends suggest that customers are transferring to avoid debt and that retailers require this discretionary tool.

We seek that the capacity to object to debt should be available nationally, as it currently exists in Queensland and Victoria for both gas and electricity. No retailer would have to take up this capacity, so the status quo in other jurisdictions could continue if this is what the market requires.

2.13 Metering

Origin understands that matters incidental to metering will continue to be dealt with by jurisdictional provisions as set out in Recommendation 71. However, the national regulator should be involved with any review or consultation process where market participants raise issues that have cross-jurisdictional implications. Current jurisdictional provisions for theft (for example use of system agreements) do not sufficiently protect retailers from liabilities generated by theft. To the extent that similar risks are identified across a number of jurisdictions, there would be a role for a national process to address any deficiencies that may exist in jurisdictional provisions.

2.14 Enforcement mechanisms

Recommendation 78 (page 93 of the Consultation Paper) requires regulated entities to 'establish systems and procedures to monitor regulatory compliance, in accordance with guidelines issued by the AER'. While Origin understands the need for such systems, and has such systems in place to monitor its own compliance with current obligations across jurisdictions, the cost of development and operation of any new compliance systems must not exceed any potential benefits to market participants. The AER should review the extent of change required to existing compliance monitoring systems and consult with participants on the costs of any development required.

Recommendation 78 also requires regulated entities to advise the regulator of breaches of regulatory obligations. Origin believes that reporting of breaches should be dependent on the materiality of the regulatory breach and that compliance monitoring functions of the Law and Rules need to contain a test of materiality.