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**Ministerial Council on Energy Standing Committee of Officials – Proposed  
Framework Schedule for Transfer of Distribution and Retail Functions**

AGL is Australia's leading energy retailer and also has significant interests in distribution networks. AGL therefore welcomes the opportunity to contribute to the development of the national regulatory framework.

AGL looks forward to assisting in the development of a framework, which delivers a more streamlined, efficient and lower cost basis for economic regulation. Our detailed comments on the Proposed Framework Schedule for Transfer of Distribution and Retail Functions are attached.

Maintaining a process for consultations that is transparent and which ensures active involvement of all stakeholders is critical to the successful development of a national regulatory framework.

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Yours Sincerely,

Sean Kelly  
General Manager Retail Regulation

Robert J Wiles  
General Manager Regulation and Policy

**The Australian Gas Light Company**

**Submission to the Ministerial Council on Energy**

**Standing Committee of Officials**

**NATIONAL FRAMEWORK FOR ELECTRICITY AND GAS  
DISTRIBUTION AND RETAIL REGULATION**

**Response to the Proposed Framework Schedule for Transfer of  
Distribution and Retail Functions**

**15 November 2005**

## EXECUTIVE SUMMARY

AGL is Australia's leading energy retailer and also has significant interests in distribution networks. AGL therefore welcomes the opportunity to provide comments on the categories of functions that should be transferred to a national framework, those that should remain with the states and territories and those that should be abolished<sup>1</sup>. The current complexity and differences in regulatory requirements across the various jurisdictions impose significant compliance costs upon participants in the energy market. This, in turn, diminishes the benefits that would otherwise flow from energy market reform.

AGL strongly supports the development of a national framework for electricity and gas retailing and distribution in order to promote and deliver greater efficiencies in the energy market, and notes that it is important to agree on the broad responsibilities and identify where each function within the gas and electricity market should be placed. AGL does however note that there are some elements that are already well established within a national framework, such as national consumer protection under the TPA, gas access pricing under the National Gas Code and electricity access pricing under the National Electricity Law.

In AGL's view, the description of the proposed functions to be transferred is at a high level, which makes it difficult to make a fully informed decision on the extent to which these functions should remain at a jurisdictional level, be transferred to the national level, or be abolished.

Subject to the above limitations, AGL broadly supports the transfer of the majority of energy market regulatory responsibilities currently undertaken by the jurisdictions to the national regulator except where it was agreed that the responsibilities will remain with the States (safety, technical, environmental and retail pricing). However, there are some functions for which we have provided an alternative allocation, and some on which we express concerns at the apparent approach adopted in the proposed schedule.

AGL submits that a clear process going forward for determining rules and regulations on a national and jurisdictional basis is required and must be effectively communicated to industry.

Among other things, this should involve clarifying the proposed role of the Gilbert and Tobin/NERA consultation paper (May 2005) in contributing to development of the national framework. For example, industry is unaware of how much importance should be attached to the Gilbert and Tobin/NERA proposals set out in the paper, and is also unclear how stakeholder responses to the paper will be factored into further MCE/SCO deliberations.

It is important that all stakeholders are fully aware of current progress and consultations being undertaken and are provided with adequate opportunity to provide feedback into the consultation process, and that regulatory objectives and principles that underpin the national regulatory framework must be clearly articulated before any decisions are made. In that regard, we believe the national regulatory framework for distribution and retail must ensure the following outcomes to deliver a best practice regulatory framework:

- A substantial reduction in the overall costs of regulation and increased efficiency in terms of participation in a competitive energy market;

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<sup>1</sup> Ministerial Council on Energy, *Energy Market Reform Bulletin No 50 and Proposed Framework Schedule for Transfer of Distribution and Retail Functions*, 13 October 2005.

- Energy specific regulation that is limited to matters where there has been demonstrable market failure, or there is a lack of existing customer protection law, with every energy specific provision developed using a structured and transparent process that ensures that all provisions are justified against clearly defined objectives and criteria, and tested against the principles of best practice regulation;
- A market environment which is conducive to promoting competition through achieving a “level playing field” for all participants, and is supported by appropriate terms and conditions of access;
- Fully utilising national frameworks already in place, for example for gas distribution pricing under the National Gas Code and electricity distribution pricing under the National Electricity Law and Rules; and
- An effective rule change process allowing for consultation with all stakeholders.

AGL notes the following main areas of concern with respect to the proposed allocation of functions:

- There are currently MCE processes under way which will further consider distribution access pricing matters, such as responding to the PC review of the Gas Regime and the Expert Panel on Pricing Principles. For these reasons, AGL considers that the schedule of functions to be transferred should not deal with the individual features of distribution access pricing (which would pre-empt the outcomes of other MCE consultations and deliberations). Rather, the schedule should treat distribution access pricing collectively as a single function to be transferred;
- Retail pricing not be transferred to the national regulator, but should remain with the jurisdictions in the transition to removal of price regulation, whilst opportunities for harmonisation of aspects of safety, technical and environmental regulation should be pursued where it makes sense;
- AGL strongly supports the retention/extension (under a national authorisation process) of the current co-regulatory (industry/government) approaches for the operation and management of the market, such as that of the Gas Market Company (GMC) in NSW, and Retail Energy Market Company (REMCo) in SA/WA. However, we also support the longer term transition of those jurisdictional co-regulatory schemes to a nationally authorised industry scheme; and
- We do not support the abolition of licences for retailers and distributors, but rather support a single national energy licence for retailers and a single national energy licence for distributors, which requires the holder of the licence to demonstrate operational, commercial and technical competencies and financial adequacy prior to entry to the market.

Further to our comments on the broad allocation of functional responsibilities, we expect the process for the development of a national regulatory framework will provide for the approved arrangements to be tested against the objectives recommended above for the national framework, as well as for continued consultation with stakeholders.

## Specific Comments on each function

### **National:**

#### **Items 1 – 12 Distribution Access Pricing – Terms and Conditions**

##### **(General comment)**

AGL observes that items 1-12 of the proposed framework schedule are currently covered under:

- national rules for gas distribution through the Gas Access Regime (including possible amendments by the MCE in responding to the PC review of the GAR); and
- the National Electricity Law (NEL) and Rules (including future distribution rules to be implemented via the MCE reform process) or jurisdictional electricity legislation as a derogation from the NEL.

Hence, distribution access regulation is already covered by established national access regimes for gas and electricity, although they are administered at a jurisdictional level.

AGL supports national consistency in distribution access regulation through the transfer of regulatory responsibilities from jurisdictions to the AER and by placing the responsibility for ongoing rule changes with the AEMC. AGL understands that, for gas distribution, this will be achieved through the Gas Legislative package that will convert the Gas Pipelines Access Law and the Gas Code to the National Gas Law and the National Gas Rules. Similarly, for electricity distribution, an appropriate (uniform) economic regulatory regime will need to be developed and incorporated in the NEL and Rules, with the AEMC and AER becoming (respectively) the sole rule maker and sole regulator.

Given these imminent changes, AGL is concerned that items 1–12 of the proposed transfer schedule are not the *function* to be transferred, that is “distribution access and pricing matters”, but are instead possible *features* of distribution access pricing arrangements. If these possible features are specified in the schedule presented to the AEMA Ministers, they will have made decisions about particular aspects of access pricing policy without an appropriate and adequate level of consultation and consideration. Importantly, these matters are currently being considered as part of processes already put in train by the MCE, namely the Response to the PC’s Report on the GAR and the Expert Panel on Pricing Principles and Matters announced in the MCE’s Communique of 4 November 2005. Incorporating particular access pricing features in the AEMA will effectively pre-empt these processes.

AGL submits that it is preferable for items 1-12 to be replaced by a separate (one-line) item – “Distribution Access Pricing, Terms and Conditions”. To provide clarity on what is intended, many of the elements in items 1–12 could be included in italics in manner that avoids pre-empting the review of these matters by the Expert Panel and the MCE’s decisions on the GAR.

Subject to the additional comments below, AGL supports distribution access pricing *as a whole* being part of the national framework.

### ***Service Performance Targets – Item 4***

AGL agrees that it is appropriate to develop a distribution service standard regulatory framework and standard definitions at a national level. However, this does not imply nationally uniform targets. The AER should be required to make allowances for jurisdictional target differences in its determinations.

### ***Network planning – Item 13***

Distribution network planning is undertaken by distribution businesses as part of their normal business operation and is not overseen by jurisdictional economic regulators.

Network investments are already addressed in the context of access pricing approvals, and do not need to be further addressed through the national retail and distribution framework.

### ***Metering – Item 14***

Obligations to install, maintain and read meters should be nationally consistent. To the extent that jurisdictional differences exist, these should transition to a national approach over time.

### ***Retail Price Regulation – Item 15***

AGL strongly opposes the transfer of retail pricing functions to the national regulator.

We believe that a national approach to retail pricing is not practical given the differing levels of maturity in competitive markets at a jurisdictional level. Some jurisdictions are showing compelling signs of effective competition, whilst others are yet to introduce competition in the small customer market.

AGL believes that retail prices should not be regulated in markets where it is determined that effective competition exists.

It is AGL's view that regulation of retail prices is a potential impediment to the achievement of effective competition, and that while price controls remain, efficient market outcomes will be distorted and market innovations and price signals for appropriate supply and demand side investment will be inhibited. AGL recognises that governments may wish to pursue social equity and/or affordability goals. To the extent that governments identify these issues, they should be addressed not through price controls that inhibit competition, but through direct and transparent payments.

Retail price paths in the jurisdictions are designed to achieve a transition to market based prices. Accordingly, at the end of these price paths AGL considers that there should be no further regulation of retail prices. Where transitional price regulation is maintained, it should remain within the jurisdictions and be light handed.

The priority for policy makers should be identifying and removing any barriers to effective competition to an agreed timetable in the jurisdictions that are open to competition.

AGL supports retail price regulation being removed in accordance with an agreed process and timetable. This approach is also consistent with Recommendation 10.5 of the Productivity Commission's Final Report on the Review of National Competition Policy:

"In retail infrastructure markets, once effective competition has been established, regulatory constraints on prices should be removed. Ensuring that disadvantaged groups continue to have adequate access to services at affordable prices should be pursued through adequate, well targeted and transparent community service obligations (or other appropriate mechanisms), that are monitored regularly for effectiveness."

AGL supports that where any market failures or barriers to competition are identified, a binding timetable be set to:

- Take action to correct or remove the identified market failures and barriers to competition before the expiry of the paths;
- Address the transitional and distributional impacts through direct and transparent Government funded Community Service Obligations (CSO's); and
- Undertake further periodic reviews of effectiveness of competition in jurisdictions where competition is demonstrated to be not yet effective.

AGL considers the Australian Energy Market Agreement ("AEMA") to be an appropriate vehicle to achieve these outcomes.

**Retailer obligation to supply to small end-customer – Item 16**

**Retailer failure arrangements – Item 17**

**Retailer: Small end-customer market contracts – Item 18**

**Retailer: Small end customer marketing – Item 19**

AGL supports the transfer of these responsibilities to the national regulator under a national regulatory regime consistent with the objectives and principles outlined in the executive summary to this paper.

**TPA and Privacy Act Provisions relevant to market contracts and marketing – Item 20**

We do not understand the purpose of this item as it would be expected that provisions relevant to market contracts and marketing under the Trade Practices Act and Privacy Act will continue to apply.

AGL supports market contracts and marketing continuing to be administered under a national regime. AGL does not support the duplication of the provisions of the Trade Practices Act and the Privacy Act relevant to market contracts and marketing, or any other energy market related activity in energy specific regulations.

**Other retail related market rules not covered elsewhere – Item 21**

**Balancing regime and settlements, effecting customer transfer in balancing and settlements system – Item 22**

AGL supports a national approach to the operation and management of energy markets, and that such operation and management should be administered by authorised industry schemes.

Existing industry based schemes such as the Gas Market Company ("GMC"), and the Retail Energy Market Company ("REMCo") which involve the development and administration of rules by the industry have proven successful. Consideration should be given to adopting the industry-based co-regulatory model for other aspects of energy market regulation similar to that currently taking place within the wholesale gas market, where industry is developing a best practice market model in accordance with the principles determined by the MCE.

AGL also considers that where market rules are currently administered by authorised industry schemes, this model should continue in place. Gas Retail Market Rules (which include rules relating to balancing/trading, settlements, and customer transfers) are

currently developed under the co-regulatory approaches of the existing government/regulator authorised schemes. AGL supports a continuation of this approach, with an explicit requirement in the charters of the various organisations to seek harmonisation of rules to the extent possible and to seek efficiencies through joint processes.

A co-regulatory approach to the development and administration of market rules is consistent with recommendation 10.2 of the Productivity Commission in its report on the Review of National Competition Policy Reforms<sup>2</sup>.

AGL supports the transition of current jurisdictional co-regulatory schemes to a nationally authorised industry scheme for gas. The potential merger of the Gas Market Company (NSW/ACT) and the Retail Energy Market Company (SA/WA) may be an initial step to this transition.

The market rules that are currently administered by jurisdictional regulators outside the authorised schemes should be transferred to the relevant authorised scheme. It is AGL's view that the industry should have a greater role in the development of codes and rules to ensure that the outcomes are prudent and adhere to principles of good regulation.

AGL notes that the electricity market is currently operated nationally for settlements by the National Electricity Market Management Company ("NEMMCO").

### **Merits and judicial review – Item 23**

AGL supports the application of merits and judicial review at a national level. This is an essential part of developing a national regime for energy and is consistent with the governance arrangements based around the national institutions, the AEMC and the AER. It would not be consistent to have state-based bodies such as courts undertaking reviews of decisions that are made under a national framework.

### ***States/Territories:***

### ***Business Authorisation – Item 24 (Distributor Authorising and Licensing)***

In AGL's view, business authorisations/licences for distributors should cover a number of important requirements in addition to technical capability. Distributors should be required to demonstrate financial adequacy, operational competence and general commercial ability. While recognising that technical matters will be continue to be regulated by jurisdictions, AGL notes that a distribution licence confers wide-ranging rights and obligations on the holder, and licence requirements should be searching enough to give assurance that the licensee will be a reliable member of the energy supply chain. This implies much more than technical capability.

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<sup>2</sup> Review of National Competition Policy Reforms, Productivity Commission Inquiry Report, February 2005, page 283.

There are no grounds for considering that the required competencies for a licence holder would differ among jurisdictions. Consequently AGL supports a single national licence for distributors.

See item 32 for a fuller discussion of AGL's views on licences.

**Distributor – Small end-customers dispute resolution – Item 25**

**Retailer – Small end-customer dispute resolution – Item 26**

With regard to item 25, distributor interface with small users is generally minimal compared with that of retailers.

For items 25 and 26, while AGL agrees that it makes sense to continue the existing alternate dispute resolution schemes that are currently in place, it is important that any arrangements do not preclude an independent national scheme for dispute resolution for energy if one is seen to be more effective and efficient in the future.

While the current arrangements are maintained, a national approach to the charter, governance, operating principles, procedures, and reporting is warranted to ensure effectiveness and efficiency for national retailers. It is important that alternative dispute resolution schemes continue to be independent.

Where due consideration is given to an independent national dispute resolution scheme in the future, AGL will support such a proposal provided that it achieves national consistency and delivers increased efficiency for both the industry and the customers.

A national approach to the overarching principles and guidelines will assist the energy industry in providing an effective and efficient solution to customer dispute resolution.

***Load Shedding and curtailment – Item 27***

Load shedding and curtailment operations are currently undertaken by various arrangements for gas and electricity and overseen by jurisdictional governments under their emergency powers. It is recognised that jurisdictions will continue to have a significant interest in load shedding priorities.

For gas, load shedding at an operational level is at present appropriately handled through the terms and conditions attached to individual access agreements, subject to approval at a national level by the AER. It would be expected that these operational arrangements would be consistent with jurisdictional oversights and powers.

### ***Community Service Obligations – Item 28***

AGL recognises Community Service Obligations (“CSOs”) may be required by jurisdictional governments to meet their policy objectives, and that these obligations may be managed by jurisdictional Departments.

The important issue here is that the CSOs must be appropriately funded. Retailers operating within the jurisdictions should be able to negotiate funding agreements on a commercial basis. Any CSOs implemented through distributors must be fully recognised and funded through the regulatory framework.

### ***Environmental Obligations – Item 29***

AGL supports the management of environmental issues such as greenhouse being carried out under a national regulatory framework. However, there are a number of general environmental management obligations and it would be logical for these to remain within the relevant jurisdictions.

There would need to be a transition period for the transfer of environmental functions to a national framework.

### ***Local gas market arrangements – Item 30***

AGL strongly supports the continuation of co-regulatory authorised industry models for the management of gas market arrangements.

AGL recognises that a national approach to gas market arrangements provides a prudent and cost effective option, and agrees that there is no evident need for residual jurisdictional rules. However there still remain certain characteristics and specific geographical arrangements that would required differing operation and management solutions.

Refer also to comments on this function under items 21 and 22.

### ***Fair trading legislation provisions relevant to market contracts and marketing – Item 31***

AGL notes that the existing arrangements under the Fair Trading Act contain provisions relevant to market contracts and marketing.

AGL does not support the transfer or inclusion of energy specific regulation under the jurisdictional Fair Trading Acts. AGL also does not support the duplication of provisions the Fair Trading legislation relevant to market contracts and marketing or any other energy market related activity under the national regulatory framework for energy distribution and retail.

Whilst harmonisation of Fair Trading legislation is not the scope of this consultation, AGL fully supports recommendation 10.2 by the Productivity Commission, which outlines the requirement for a national review into consumer protection policy and administration in Australia<sup>3</sup>.

### ***Abolish:***

#### ***General business authorisations (licensing) for retailers and distributors – Item 32***

***(see also comments on item 24)***

AGL does not support the abolition of licences for retailers and distributors, but strongly supports the introduction of a single national energy retail licence and a single national energy distribution licence that entitles the holder to operate in specified States or Territories.

As a matter of principle, AGL considers that there is no validity to separate the requirement for technical competence in licences from the equally important requirements for financial adequacy and general commercial competence.

Licence conditions should be limited to entry, participation and exit provisions. Where other obligations exist, these should be transferred to regulation under appropriate legislation or incorporated into the national Electricity Law and National Gas Law.

In providing an essential service, AGL considers that it is imperative for licensing requirements to demonstrate the operational, commercial and technical competencies and financial adequacy of retailers and distributors prior to their entering the energy market. This will ensure the ongoing integrity of, and participant confidence in, the energy market.

#### ***Taxes and levies – Item 33***

AGL supports the proposal that taxes and levies should be abolished.

#### ***Redundant regulatory instruments – Item 34***

AGL supports the proposal that where a regulatory instrument is determined to be redundant, it should be abolished following consultation with the relevant parties.

Further, AGL supports abolishment of redundant provisions of existing jurisdictional legislation and regulations following full consultation with all stakeholders to determine their continuing need or relevance.

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<sup>3</sup> *ibid*, page 283