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**Ministerial Council on Energy Standing Committee of Officials -
National Framework for Electricity and Gas Distribution and Retail Regulation
Foreword and Issues Paper**

Thank you for the opportunity to comment on the issues paper - National Framework for Electricity and Gas Distribution and Retail Regulation. TXU Retail (TXUR) supports national energy reform and the delivery of an efficient national regulatory regime.

Any review should seek in the first instance to re-establish the key purposes and objectives of the Retailer and Distribution regulatory framework and not work from the assumption that the existing State based Licensing or regulatory regimes were established from those principles and therefore represent the necessary benchmark. Beyond this, regulatory intervention should only be permitted for those purposes and relevant objectives identified in the foreword and issues paper.¹

Amongst these reform objectives, and of particular interest to us, is to streamline and improve the quality of economic regulation across energy markets. To achieve this will require clear agreement between the jurisdictions on:

- Reason for regulating – What are the national policy objectives for energy? and;
- Quality of regulation – What are the threshold tests that will apply to assess the effectiveness of regulation in meeting the above reform objective?

TXUR is concerned that the scope of this review does not include transmission planning standards and generation licenses. It is TXUR's view that these issues should be accommodated within this review due to relative simplicity of execution and the large potential for positive impacts on competition.

TXUR believes that the value of harmonizing national regulatory environments is severely limited if inappropriate scope exists for jurisdictional derogations. We believe that

¹ MCE SCO, Development of a National Framework for the Regulation of Electricity and Gas Distribution and Retailing, Policy Framework, Foreword to the Issues Paper, p.2 August 2004.

jurisdictional differences should only be approved where unambiguous net benefit can clearly be demonstrated through transparent processes.

Specific comment regarding issues canvassed in this paper follow.

Issues 10, 11 & 12 - Activities to be licensed and license conditions

Licences should confer the authority to undertake the licensed operations, and should only include the fundamental obligations that accompany that authority. The licence should not include obligations that are more appropriately imposed on licensees by legislation, regulations or other regulatory instruments. In general terms, the license describes how a retailer will enter, operate and exit the retail energy market. In each case, the license should apply at an organisational level, and not address the functional requirements of a license. These headline organisational requirements should be generally limited to:

Authorisation	Purpose of the license;
Term	Date of effect and conditions of revocation or surrender;
Prudential obligations	Arrangements with any relevant Market System Operator;
Access Arrangements	Arrangements with any relevant distributors;
Community Service Obligations	Requirements for agreements with the States to comply with any direction to perform a community service fully funded by instruments of the State.

Examples: Retailer of Last Resort Schemes;
 Concessional Rebate Schemes;
 Membership of Dispute Resolution Schemes;
 Queensland Community Ambulance Cover Charge.

General compliance clauses General obligations requiring compliance with all applicable laws, rules, determinations and decisions, as well as functional compliance with any relevant Codes Guidelines, binding directions or standards.

Variation and Transfer Reference to relevant legislation.

Matters such as Embedded Networks, Contracts with Customers and specific Obligations to Offer to Sell and performance or compliance reporting are functional requirements of the retailer independent of the purpose of the licence, and as suggested by the issues paper fit in Codes or Guidelines specific to these particular needs.

TUX does not support the accommodation of jurisdictionally specific differences in either the organisational (licence) or functional (Codes etc) obligations of retailers and these should be limited to matters related to the timing of the introduction of full retail contestability. Public policy should be enabled through legislation, rather than via licence conditions. The general "compliance with all applicable laws" clauses within licences will then be sufficient to impose the legislative or regulatory obligation upon the licensee.

We acknowledge that the inclusion of a requirement for agreements with the States to provide community service obligations may prove problematic in this regard, and support the inclusion in the AEMC of a merits process review to prevent the authorisation by the States

of additional and jurisdictionally specific differences, in matters such as RoLR or B2B schemes, concealed in this manner.

We have reviewed the Principal Licence Conditions put forward by the Issues Paper (Table 6) and we generally agree with the proposed conditions subject to the variations we have described above.

Issue 13 & 14 – Form and Variation of Licence Conditions

The role of the industry regulator should be separate from the industry rule maker. This means that:

- The AEMC be responsible for making of rules;
- Standard form licences will be issued and enforced by the AER;
- The AER may not vary or incorporate any licence condition, and;
- The AEMC may vary or incorporate a licence condition only after a formal consultation process and with the consensus of affected jurisdictions’.
- Jurisdictions’ may not unilaterally require that issued licences be varied to include additional provisions.

Jurisdictions’ may make submissions to the AEMC to vary licence conditions in a formal consultation process.

Issue 15 – Triangular or linear approach

There is some confusion as to the exact nature of either the triangular or linear approach amongst stakeholders. Our understanding is as follows:

Triangular Relationship

- The distributor and retailer each have a separate contract with the user.
- These contracts may be deemed as a standard form of contract in the absence of any other direct agreement between the parties.
- The distributor and the retailer have exclusive and separate credit risk to the user.

Linear Relationship

- The retailer contracts directly with the user, either by negotiated, standard form or default contract for the bundled delivered supply of retailer and distribution services (energy).
- The retailer issues one consolidated bill to the user comprising all standard or negotiated distributors, retailer and other charges.
- The retailer manages the credit risk.

Recommended Approach

Whilst there are some differences between jurisdictions, all have implemented a model that incorporates linear relationships. For all practical purposes in the mass market, as well as for consumer confidence and continuity, we propose that this arrangement be the basis of the connection agreement for retailers in any consumer protection code.

Issue 16 – Suggested Licence Administration and Enforcement Arrangements

TXUR supports the establishment of a uniform national licence administration and enforcement regime.

A national licensing regime must:

- Be nationally consistent - A national licence administration and enforcement regime must enable retailers to operate in multiple states in an environment of uniform functional obligations.
- Require the AEMC to determine the contents of a licence – this function is consistent with the AEMC’s role as “rule maker”.
- Require the AER to monitor compliance with licences – As the body that is responsible for administration of and compliance with other regulatory instruments, the AER is best placed to manage the licence compliance process.
- Provide retailers with the opportunity to appeal the merits of a decision made by the licensing authority - Most jurisdictional licensing arrangements provide appeal mechanisms for licensing related decisions. These appeals must be provided for where a Licensee believes a decision is founded in part or whole on an error of fact or bias.
- Manage apparent licence breaches consistently – Licence breaches must be managed in a way that differentiates between systemic or significant breaches and other apparent breaches.

Benefits of a national licensing regime include:

- Reduce compliance costs associated with:
 - Regulatory performance reporting;
 - Customer contact on a jurisdictional basis;
 - Accidental non-compliance and public censure and default risks;
 - Integration of operational improvements across jurisdictional boundaries;
 - License reporting obligations, such as operational and compliance Audits;

Licenses need not be “stand alone” documents of the retailers’ functional obligations. These are best captured by relevant codes, guidelines or regulation.

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

The MCE Ministers should develop the policy framework for the AEMC.

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

The AEMC must determine the licence conditions, and ensure that there is no duplication with other regulatory obligations. The AER must focus on monitoring compliance.

Issue 17 & 18 – Suggested National Exemption Regime

A nationally consistent licensing regime is critical for achieving reductions in compliance costs. This will not be realised if licence exemptions are issued on a jurisdictional basis. This is because:

- Jurisdictional social policy objectives should be decoupled from the regulatory objectives of the AEMC;
- Consumers should have equal access to the benefits of national licensing;
- Obligations contained in licences comprise the essential regulatory benchmark. Exemptions must only be considered where demonstrable exceptional circumstances exist and net benefits are clear.

In these exceptional circumstances, the AER will be best placed to assess the details of applications for exceptions and determine appropriate outcomes.

Issue 19 – Alternatives to Licensing

The features of any legitimate alternative to licensing must include:

- Efficiency in administration and compliance costs;
- Equitable treatment for all existing and potential market participants;
- Adequate opportunity for public consultation in relation to both the obligations imposed on participants and the entrance of new operators into the market; and
- Rights for retailers to appeal the merits of a licensing decision.

Issue 20 – Single Consumer Protection Code

TXUR supports the adoption of a single consumer protection code that applies in respect of electricity and gas retailing.

The current complexity of consumer protection arrangements and differences in regulatory requirements across jurisdictions imposes significant compliance costs upon retailers, which in turn diminishes the benefits that would otherwise flow from energy market reform to customers.

The Ministerial Council of Energy, in their *Reform of Energy Markets* report to COAG, identified the guiding principle of the national regulatory framework;

Streamline and improve the quality of economic regulation across energy markets, to lower the cost and complexity of regulation facing investors, enhance regulatory certainty and lower barriers to competition.

The development of a Single Consumer Protection Code must be set against this and would be further assisted through the establishment of a number of supporting principles:

- Competition is to be preferred over regulation;
- The Trade Practices Act, Privacy Act and Fair Trading legislation provide for a comprehensive “National Consumer Protection Regime” across all jurisdictions;
- Duplicating provisions within energy regulation increases compliance cost and complexity with no corresponding improvement in consumer protection;

- The regulatory framework should allow for efficient regulatory change management processes to enable regulatory arrangements be improved or modified when necessary; and
- National consistency is also a means to improving the quality of regulation.

All jurisdictions currently provide consumer protection frameworks. When assessing the need, effectiveness and efficiency of regulation, a “holistic” approach needs to be adopted, for example, whether the combined effect of the Trade Practices Act, and jurisdictional acts such as fair trading, door-to door sales acts etc. achieve the objectives alone.

- To the extent that deficiencies in current consumer protection legislation are considered, it is recommended that these be addressed through the Ministerial Council of Consumer Affairs. This will ensure that energy is treated consistently with other comparable industries.
- In a competitive market, competition will ensure efficient service standards are provided to consumers, and that consumers dissatisfied with the service provided by their retailer have an opportunity to transfer to another.
- Product innovation is limited by terms that are precluded from customer contracts. In a competitive market, customers are best placed to determine the terms upon which they are supplied.

Retailers must have an opportunity to be involved in the detailed clause-by-clause development of the Code, similar to recent reviews conducted by the Victorian ESC and ESCOSA. Our view is that recent code review processes in Victoria and South Australia, whilst accommodating detailed stakeholder review, preceded in the absence of clearly articulated objectives and as a consequence delivered sub-optimal outcomes. The more recent intervention in the minutiae of customer contracts by the Victorian Government has further interrupted the considered development of the consumer protection framework.

Issue 21 – Responsibility for Making Industry Codes and Rules

Under the proposed structure, and consistent with general legal principles, the roles of rule-making and enforcement must be subject to institutional separation. This approach mitigates conflict of interest. We recommend the AEMC be made responsible for the making of industry codes. This would mirror arrangements for the wholesale energy market, and provide an opportunity for further efficiencies.

Issue 22 – Variations and Exemptions

TXUR recommends that a National Electricity Rule Change Process is adopted for changes to the Consumer Protection Code under the authority of the AEMC. Use of legislation for specific requirements undermines the independence of the industry regulator and the code.

In accordance with current regulatory practice across jurisdictions, the AER should, at its discretion, be authorised to provide short-term exemption to a licenced retailer experiencing temporary non-compliance with a specific non-material code provision, subject to taking all reasonable steps to remedying the non-compliance as soon as practicable.

Issue 23 – Minimum Terms and Conditions

Coverage of any benchmark customer contract in the form of a Consumer Protection Code should be restricted to those customers who have not accepted a Market or Negotiated contract.

The priority must be to extend any Code coverage only to those customers who genuinely require a customer protection framework outside of the more general National Consumer Protection Regime. Providing adequate requirements are in place with respect to obtaining customer consent, and that the licensing framework provides for appropriate audit requirements, the consumer protection framework will remain undiminished whilst encouraging the differentiation of new and innovative products to provide greater consumer choice.

Issue 24 & 25: Uniformity or Consistency in Associated Electricity and Gas Schemes, and Community Service Obligations

Dispute Resolution Schemes

TXUR believes that the synergies and efficiencies created by national uniformity or consistency of retail and distribution regulation would be diluted in the absence of a consistent approach to associated gas and electricity dispute resolution schemes.

The principles of the existing industry funded independent ombudsman schemes reflect a strong consumer focus. It is clear that such schemes should run efficiently, effectively and uniformly.

A national dispute resolution scheme should extend to residential and small business customers only, as generally defined within the coverage of the safety net in each jurisdiction. For national consistency however, this must be limited to all residential customers and any non residential-customers consuming less than 160 MWh (electricity) or 1 TJ (gas) per annum. Sophisticated large energy consumers, often with complex cases, have recourse to the regulator or to the courts consistent with their management of any other material or services procurement issue or contract dispute. Large customers should not be cross-subsidised by industry or congest a scheme established to provide assistance to small customers.

It is TXUR's view that the current jurisdictional Ombudsman schemes would be significantly improved by providing their respective boards with greater accountability for the scope, efficiency and effectiveness of the schemes. Charters need to be designed to establish clear lines of accountability to the schemes board and membership. Boards should consist of a balanced number of industry and consumer representatives with an independent Chair acceptable to all board members. Genuine benchmarking and performance indicators should be established to measure key output ratios of efficiency, effectiveness and improvement. These matters are essential to the confidence of Government, stakeholders and the schemes funding members. TXUR believes that the MCE has a genuine opportunity to establish a single national dispute resolution scheme that can leverage from the positive elements of the current jurisdictional Ombudsman schemes whilst avoiding their inefficiencies and parochial imbalances.

Public reporting by the national dispute resolution scheme must be limited to data and not include speculation upon that data. The scheme's purpose is to provide a dispute resolution scheme. It does not have a role in leading consumer protection policy development. The scheme must not be (or seen to be) representative of distinct or special interests, either of consumer or industry.

It is TXUR's view that a single national dispute resolution scheme has the opportunity to capture efficiencies and economies of scale if it can be established in a single national office. Consumer disputes are generally universal across states and energy sectors and typically occur in identical themes - supply reliability (planned or unplanned); connection timing; billing issues; disconnections for non payment etc. As the current jurisdictional schemes do not operate as shopfronts, regional or State offices are not necessary to provide a seamless transition to a single national dispute resolution scheme. As such TXUR strongly recommends a single national location for a single national dispute resolution scheme.

Retailer of Last Resort Schemes

"Retailer of Last Resort" Schemes (RoLR) are Community Service Obligations (CSO). RoLR schemes fulfil public policy objectives of continuity of supply under default or "off market" contractual arrangements in the event of a failure of a market participant. RoLR decouples the benefits of a market contract from the risks underwriting those benefits, appropriating the benefits to the end user and the risks to the RoLR. The end user benefit is continuity of supply and a protection from price volatility. The retailer risk is the profile of any discrete RoLR portfolio, the exposure to price volatility and the costs of operational capacity in remission to administer this RoLR event.

The CSO nature of RoLR must be recognised if there is to be progress in the establishment of any practical solutions to the matter of customers' ongoing contractual relations within the context of a RoLR scheme. To date the relevant Retailers and Regulators have yet to agree on the preconditions to any CSO RoLR scheme. For example:

1. A retailers required margin above 'safety net tariff' for a RoLR tariff;
This consideration is required for:
 - (i) additional costs in establishing and maintaining a RoLR capability - regardless of whether a RoLR event occurs, and;
 - (ii) additional operational costs for transferring RoLR customers, and;
 - (iii) reasonable costs for the purchase of energy, which may need to be obtained at short notice in a high VOLL period, given this is a likely market characteristic for a RoLR event.

2. Decoupling of RoLR load and RoLR customers;
For example:
 - (i) a RoLR will not automatically have access to the wholesale hedging instruments established for the RoLR load by the defaulting retailer, and;
 - (ii) a retailer with an increased customer base due to a RoLR event may have RoLR customers churn away without making payment.

3. Other remaining impediments include:
- Further defining what to do with larger customers under a RoLR event. The role for NSP's to provide [estimated] reads at RoLR event - NSP's need to be party to the exchange of information, eg. billing addresses;
 - The role (if any) for second tier retailers as RoLR is not yet clear, especially in the event of the failure of a first tier retailer.
 - In any appointment of an Administrator to a failed retailer whether RoLR will in fact comply with Corporations law;
 - How the RoLR risk will be allocated. Should the regulator allocate risk unilaterally or should the remaining retailers compete at market rates for a market share?
 - Finally, it is not yet clear how RoLR will be identified.

For all of these reasons we remain concerned about any licensing regime that is used to extend what are essentially undefined arrangements. TXUR acknowledges the social policy objectives of maintenance of security of supply, customer interest, cost to customers, and continuing viability. It is TXUR's view that it would be highly imprudent to seek any expansion of the licensees RoLR obligations whilst these matters remain outstanding.

Notwithstanding this, we recognise that the synergies and efficiencies created by national uniformity or consistency of retail and distribution regulation would be diminished without a consistent approach to any associated RoLR schemes, and a single uniform national approach is required.

Business to Business Information Exchange Schemes

Participants in the NEM have made good progress towards the establishment of a national B2B environment. TXUR has sponsored a Code Change proposal that has been submitted to NECA by NEMMCO on behalf of market participants. TXUR remains concerned that the approval process for this Code Change proposal may be negatively affected by the transition of responsibilities from NECA to AEMC.

Customer Transfer Schemes

Electricity customer transfer schemes are national via NEMMCO's MSAT system. The Gas customer transfer scheme via the VENCORP (now NEMMCO) hub in Victoria should be viewed as the benchmark for capacity and capability. Separate schemes currently exist in NSW and SA/WA however it is planned that all of these schemes will incorporate under B2B (inc B2M) in the near future. TXUR supports this uniform and national approach to consolidating these schemes.

Issue 26 – Uniformly Defined Service Measures

Are there advantages in employing a set of uniformly defined service measures to measure the standards of reliability and customer service provided by electricity and gas retailers and distributors in each of the jurisdictions?

For the avoidance of doubt these comments do not relate to services provided by distributors to retailers.

TXUR competes for customers as a retailer on the basis of price and/or service propositions and fulfillment. Open competition is the best way to guarantee retailer service standards. As these standards depend upon the services provided by distributors, it is necessary that uniform service standards are established through appropriate mechanisms. This includes uniform cost recovery mechanisms where a retailer administers the distributor's delivery of customer service.

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

Most distributor customer service indicators relate to reliability of supply, timeliness of connection and delivery, and accuracy of meter data. In establishing any customer service measures we must consider:

- The value placed on the service by customers; and
- Customer willingness to pay for a service.

Issues 27 & 28 – Use of Service Measures

As discussed above, regulated standards of performance should only be considered where monopoly power exists or where competition will not provide incentives to deliver. Community Service Obligations captured within this definition to which "off market" incentives or penalties may apply should be based on the costs and benefits to the community of undertaking the activity and the community's willingness to pay.

Issue 32: Other Issues

Retailers have previously concluded and advocated that the way to maximise market efficiencies is to achieve consistency in the regulatory approach across jurisdictions. From our view, that means when considering any application for a function or power to remain with a jurisdictional regulator the threshold test must include the advantages being weighed against the loss in market and regulatory efficiency.

It will not suffice to establish the national structure alone. There must be a positive obligation and burden of proof to identify the benefits upon the States to make the case for divergent regulatory requirements.

Should you wish to discuss any of the above mentioned comments, please feel free to contact either Bruce Page on telephone 03 8628 1233 or myself directly.

Yours Sincerely,

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