

Our Ref: M2007/26
Contact Officer: Michelle Groves
Contact Phone: 03 9290 1423

23 July 2007

General Manager
MCE Secretariat,
Department of Industry, Tourism and Resources,
GPO Box 9839
Canberra ACT 2601
MCEMarketReform@industry.gov.au

Dear Ms Constable,

The Australian Energy Regulator (AER) welcomes the opportunity to comment on the Composite Consultation Paper prepared by Allens Arthur Robinson (AAR) for the Retail Policy Working Group.

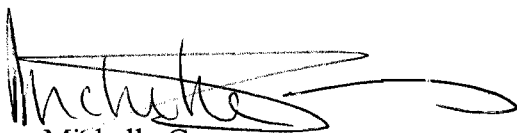
The AER supports the overall proposals for the national framework for non-economic distribution and retail regulation. Comments on specific recommendations are provided in the “Comments” column in the attached table of recommendations. The key focus of the AER’s submission is in relation to:

- the case for generic versus energy-specific regulation (please see comments on recommendations 14 and 17)
- retailers’ inability to request intra-period requests for variation of use of system agreements / interface contracts (please see comments on recommendation 35)
- the AER’s concerns with the proposal for it to administer a “financial viability” entry test as part of business authorisation for retailers and distributors, with the ability to revoke business authorisation if the test ceases to be met (please see comments on recommendation 40)
- the need for the Rules to address policy issues affecting customers in embedded networks (please see comments on recommendation 44) and the need for the embedded networks exemption framework to be streamlined (please see comments on recommendations 44 to 47)
- the AER’s support for electricity distribution ring-fencing arrangements based on the proposed new gas regime (please see comments on recommendations 49 to 53), and

- the need to develop national retailer of last resort arrangements as a matter of priority, and the desirability of taking into account overseas experience of retailer failure events (please see comments on recommendation 54).

Thank you for the opportunity to comment on the Composite Consultation Paper. I look forward to ongoing involvement in this consultation.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Michelle Groves', with a long, sweeping flourish extending to the right.

Michelle Groves
Chief Executive Officer
Australian Energy Regulator

National Framework for Distribution and Retail Regulation Consultation Paper - Recommendations

This table reproduces the recommendations from the Consultation Paper prepared by Allens Arthur Robinson for the Retail Policy Working Group dated June 2007.

Persons wishing to make submissions in response to the Consultation Paper are requested to do so by completing the 'Comments' column in the table.

Part 1 – Principal recommendations

No.	Subject	Recommendation	AER Comments
Retailer obligation to supply small customers			
1.	Definition of the obligation Application procedures	<p>The Law should provide that designated retailers must, in accordance with the Rules, offer to sell energy to small customers for use in premises falling within the retailer's designated supply remit on standing offer terms and conditions.</p> <p>As matters of detail, the Rules should set out:</p> <ul style="list-style-type: none"> • Application procedures – including requirements for customers to provide: <ul style="list-style-type: none"> ➢ acceptable identification; and ➢ contact details, and requirements for retailers to provide: <ul style="list-style-type: none"> ➢ a description of the standing offer contract formed as a result of the application, and how copies of the contract may be obtained; ➢ a description of the retailer's and customer's respective rights and obligations concerning the supply under the 	
		<ul style="list-style-type: none"> ➢ Law and Rules, including relevant dispute resolution procedures; 	

No.	Subject	Recommendation	AER Comments
	<p>Connection services</p> <p>Conditions to the obligation</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; • 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>	
2.	Designating retailers and supply remits	<p>The Law should provide that, for the purpose of the obligation to supply, a designated retailer is a retailer designated as such by a jurisdictional instrument of the jurisdiction or jurisdictions in which it supplies energy, and its designated supply remit is as specified in the instrument.</p>	

No.	Subject	Recommendation	AER Comments
		<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 AER supports implementing a process to develop a uniform national approach to the obligation to supply. In time, principles would be useful to assist in arriving at a uniform approach to the obligation.</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 whether the threshold applies to individual premises or is aggregated.</p>	

No.	Subject	Recommendation	AER Comments
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.	
6.	Tariffs	The Law should provide that standing offer tariffs are those published by designated retailers from time to time.	
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.	<p>The AER supports the proposal for compliance monitoring and enforcement to apply to retail standing offers.</p> <p>The question of whether or not terms and conditions published by retailers are inconsistent with those set out in the Rules is a difficult question. To facilitate the AER's role, some guidance may need to be included in the Rules. The Law should specify whether terms and conditions which are inconsistent with those in the rules are void, and if so, whether the equivalent terms and conditions set out in the rules will apply in place of the void terms and conditions.</p>
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 dealt with in the Rules. On that basis it is proposed that the Law	

No.	Subject	Recommendation	AER Comments
		<p>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>	
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 offer terms contained in the Rules will apply. In either case, while</p>	

No.	Subject	Recommendation	AER Comments
		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.	
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 	<p>The AER generally supports this principle. Once the Productivity Commission’s review of general consumer protection laws is completed, and jurisdictions have responded to its recommendations, this principle should be reconsidered. The case for implementing energy specific regulation may diminish where general consumer laws are consistent, particularly where general consumer laws address the fairness of contract terms. The AER recognises that there may be an ongoing role for pre-contractual disclosure requirements in the energy sector, and supports the required pre-contractual disclosures in Part 3 of this table.</p> <p>Some further issues which could be taken into account in determining whether industry-specific regulation should be used include:</p> <ul style="list-style-type: none"> ▪ whether a particular industry practice is causing consumer detriment; ▪ whether an industry-specific regime can address a particular problem in a way that could not be done by generic regulation, without imposing restrictions on other markets; ▪ whether the industry-specific regime is likely to complement rather than duplicate generic fair trading and consumer protection laws.

No.	Subject	Recommendation	Comments
		participate in the competitive market.	
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>	<p>The question of whether or not terms and conditions published by retailers are inconsistent with those set out in the Rules is a difficult question. Some guidance may need to be included in the Rules. The Law should specify whether terms and conditions which are inconsistent with the requirements in the rules for market contracts are void. If they are void, the Law should also specify whether the equivalent terms and conditions set out in the rules will apply in place of the void terms and conditions.</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>	

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>The AER generally supports the proposed principles for generic versus energy specific regulation.</p> <p>Once the Productivity Commission's review of general consumer protection laws is completed, and jurisdictions have responded to its recommendations, the principles should be reconsidered. The case for implementing energy specific regulation to reduce retailer compliance burden diminishes where general consumer laws are consistent.</p> <p>Where there is currently overlap between generic and energy-specific regulation, pending the recommendations of the Productivity Commission, no energy-specific marketing provisions should be required to the extent of the overlap.</p> <p>The AER supports the paper's proposal to rely on generic consumer protection laws for general consumer issues (for example, the "Do Not Call Register" legislation for addressing unwanted telemarketing).</p> <p>The AER also supports the proposed pre-contractual disclosure requirements. In the AER's view, these disclosures are required due to the complex nature of energy contractual arrangements, and the need to promote competition in the energy market, rather than because the marketing conduct has the potential to influence energy contract formation and terms.</p>
18.	Marketing requirements	The Law should require retailers and other persons engaged in	It is unclear whether or not the AER can hold a retailer

No.	Subject	Recommendation	Comments
		<p>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>	<p>responsible as principal for the actions of its marketers as agents of the retailer. To ensure that retailers are incentivised to manage their marketing arrangements, the AER should be able to hold a retailer responsible as principal for the actions of its marketing agents.</p> <p>Please refer to Part 3 of this document for specific comments on the proposed marketing requirements.</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> <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	<p>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.</p>	

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>	
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 	

No.	Subject	Recommendation	Comments
		terms and conditions (deemed distribution contract) 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.	

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 recommendations for deemed distribution contracts and negotiated contractual arrangements between distributors and customers are largely consistent with the approach recommended by AAR in working paper #2. The AER reiterates its support for the general approach taken.</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 deemed distribution contract, which may include (but will not be	

No.	Subject	Recommendation	Comments
		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 	<p>The recommendation that the AER approve deemed distribution contracts at the regulatory reset is noted. This will provide for consistency of approach so that all standard deemed distribution contracts are subject to regulatory approval at the outset.</p>

No.	Subject	Recommendation	Comments
		<p>network; and</p> <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. 	
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 	<p>The AER's submission to AAR's second working paper noted that many customer service performance standards are generic in nature. Whereas network service performance standards may need to take into account the unique characteristics of particular networks, customer service performance standards are amenable to regulation on a nationally consistent basis.</p>

No.	Subject	Recommendation	Comments
		<p>relevant authority;</p> <ul style="list-style-type: none"> ➤ 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); ➤ for non-compliance by the customer with 	
	<p>Restrictions on disconnection</p> <p>Interruptions and curtailments</p>	<p>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).</p> <ul style="list-style-type: none"> • 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. 	

No.	Subject	Recommendation	Comments
	<p>Reconnection</p> <p>Dispute resolution</p>	<ul style="list-style-type: none"> <li data-bbox="651 368 1379 464">• A requirement that distributors reconnect a disconnected customer if the reason for the disconnection has been removed. <li data-bbox="651 488 1379 552">• A requirement that distributors comply with any applicable jurisdictional dispute resolution requirements. 	<p>The AER considers that the relationship between ombudsmen/small customer dispute resolution schemes and the regulator is an important one, and it could benefit from recognition in the Law or Rules of the role that ombudsmen play in being a key point of contact for consumers with disputes with participants. Taking account of the role of small customer dispute resolution schemes in the national framework would be consistent with cl. 14.6(a) of the Australian Energy Market Agreement.</p> <p>Furthermore, the AER and ombudsmen will likely need to be able to share information to carry out their respective roles effectively. Some of this information may be confidential. Whilst jurisdictional regulators and ombudsmen frequently address protocols for information sharing through memoranda of understanding (MOUs), these are informal documents and the basis for information sharing between jurisdictional ombudsmen and the cross-jurisdictional AER is less clear.</p> <p>The Trade Practices Act provisions restricting the AER from sharing confidential information allow certain bodies to be prescribed by regulation to be authorised recipients of such information. Ombudsmen could be so prescribed where information (such as referral of complaints received by the AER) needs to be shared with them. Conversely, ombudsmen will likely need to be able to share information</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. 	(such as compliance reports, and information on systemic issues) with the AER. The Law or Rules could provide for this.
	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>	
34.	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 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).	
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>Consideration should be given to whether the AER's remit should be extended to the approval of further terms and conditions (as well as variations) having regard to a further category, "innovations in the market". The need for such a further term is subject to consideration of AER issues raised below next to the intra-period variation recommendation.</p> <p>The AER suggested this new recommendation in its submission to the second working paper. The AER considered capacity for a variation process may introduce a required degree of flexibility in response to innovation (interval meters, solar PVC) or observed market outcomes (credit support terms) to allow for changes to the distributor – retailer relationship to better facilitate service to customers.</p>

No.	Subject	Recommendation	Comments
			<p>The AER has two queries.</p> <p>1. Are the same factors relevant to the AER's discretion to approve variations to model terms and conditions at a regulatory reset also intended to apply to an intra-period variation request?</p> <p>In particular, how would the AER consider a request for a variation which involves an innovation which does not fit within existing model terms or significantly varies away from them. It is possible that the request might be considered to justify change to the model terms and therefore may be better addressed by a rule change applicable to the whole market.</p> <p>2. What is the rationale for only the distributor having the power to apply for a variation?</p> <p>The AER noted in its submission how the Victorian Essential Services Commission had required each distributor to submit a revised default use of system agreement in 2006 to address a developing market issue concern of retailers. Origin in its submission to the second working paper provided a case for a re-opener provision to potentially account for innovations. It noted that technological innovations and progress in such areas as solar PV (and associated export of power into the network by consumers) and interval metering might require such a capacity in the future.</p> <p>The recommendation is to provide this flexibility to distributors to apply for variations. The AER supports the</p>

No.	Subject	Recommendation	Comments
			<p>recommendation to allow a variation but is unclear on the rationale to restrict the ability to apply to distributors in the absence of any comments in the consultation paper. That is, what is the rationale for allowing distributors to apply as opposed to the regulator being able to allow a change in approved terms and conditions in response to either distributors' or retailers' concerns.</p> <p>It is not clear to the AER that distributors would always be sufficiently motivated to act in a timely fashion to change default terms. It is possible that even if cost increases will be accounted for, if the primary need for the change lies with retailers then there may be delays caused by only allowing distributors to apply.</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 not be subject to variation as an outcome of an access dispute.</p>	

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>	

No.	Subject	Recommendation	Comments
Business authorisation			
38.	Substantive obligations as licence conditions	Substantive regulatory obligations should be contained in the Law and Rules rather than in licence conditions.	
39.	Regulation of entry requirements	<p>The Law should contain a general prohibition on a person:</p> <ul style="list-style-type: none"> • engaging in the retail sale of energy; and • (in the case of electricity) owning, controlling or operating an electricity distribution system; and • (in the case of gas) owning, controlling or operating a distribution pipeline, <p>unless the person has obtained an energy business authorisation from the AER in relation to the carrying out of that activity.</p>	<p>The prohibition on owning, controlling or operating an electricity distribution system without an energy business authorisation insofar as it applies in electricity should only extend to electricity distribution networks which form part of the interconnected transmission and distribution system. This would ensure consistency with subsection 11(2) of the National Electricity Law.</p>
40.	Entry tests	<p>The Law should set out the entry requirements to be satisfied by persons wishing to obtain energy business authorisations as retailers or distributors, and enable the AER to issue guidelines in relation to the authorisation procedures and its approach to assessing the criteria for authorisation.</p>	<p>The AER supports having an ability to issue guidelines in relation to business authorisation procedures and its approach to assessing the criteria for authorisation. The AER generally supports the proposed entry requirements.</p> <p>Specific comments in relation to the “financial viability” entry test are set out below. If a decision is taken to include a “financial viability” entry test, it may be preferable to include this entry requirement in the Rules rather than the Law, to enable its relationship to retailer of last resort (ROLR) event triggers to be considered as ROLR rules are developed.</p> <p>The AER notes that the entry requirements are in substance ongoing requirements, as recommendation 46 would enable the AER to revoke a business authorisation if the AER determines that the holder ceases to satisfy the</p>

No.	Subject	Recommendation	Comments
	Financial viability	<p>The criteria for business authorisation should include:</p> <ul style="list-style-type: none"> • financial viability – that the applicant has the financial resources required to undertake the relevant activity; 	<p>entry requirements. Comments on this issue in the context of the “financial viability” entry test are set out below.</p> <p>The AER does not support the imposition of a “financial viability” entry test, as the AER has not been established as a prudential regulator. The AER recognises that the energy market has certain characteristics which need to be accommodated in the regulatory arrangements. These characteristics are:</p> <ul style="list-style-type: none"> ▪ the collective risk exposure associated with wholesale energy markets; ▪ the need to ensure that customers are assured of supply continuity in the event that a retailer fails, and ▪ the risk exposure to retailer(s) of last resort if a retailer fails. <p>These issues are already addressed through other mechanisms. Retailer of last resort arrangements address the last two characteristics. The collective risk exposure associated with wholesale energy exchanges is addressed through prudential arrangements overseen by the market operator. It is not necessary for the AER to have a role in overseeing financial viability for the integrity of the wholesale market to be maintained.</p> <p>While the customer and wholesale market issues are the</p>

No.	Subject	Recommendation	Comments
			<p>key reasons to regulate this area, the AER also notes that for a retailer to operate in the energy market, they must be able to provide credit support to distributors in relation to network charges. Hedging counterparties can also require retailers to provide security. The exposure of smaller customers as creditors of a failed retailer is limited, as most customers pay in arrears. Further, security deposits and billing arrangements will be subject to regulatory oversight under the national framework.</p> <p>While the AER recognises the cost and disruption associated with retailer failure, the entry test of “organisational and compliance capacity” should alleviate concerns about retailers entering the energy market which are ill-equipped to participate in the energy market. Specific concerns on ROLR arrangements are set out on p 41 onwards. A financial viability entry test duplicates the existing arrangements to protect parties which have financial transactions with energy retailers. The AER will not be able to “value add” to these arrangements, and may be left in the position where it is must try to “pick winners” amongst potential retail market entrants.</p> <p>The AER is also concerned that its ability to revoke a business authorisation if an entity ceases to meet entry tests implies that its role would extend to monitoring the financial position of energy businesses. Without access to a retailer’s hedge book, the AER is not well placed to understand a retailer’s financial position, in particular where retailers are not subject to the continuous disclosure requirements applying to listed companies. The</p>

No.	Subject	Recommendation	Comments
	Organisational and compliance capacity	<ul style="list-style-type: none"> organisational and compliance capacity – that the applicant has the organisational capacity to carry on the activity for which it is seeking authorisation and to comply with its regulatory obligations; 	<p>NER already defines a number of events which may lead to suspension from the electricity spot market, and consequently trigger a ROLR event (please see further the comments on the following page on the entry test of “market operator registration”).</p> <p>Consideration should be given to reviewing these triggers and defining specific events which will lead to revocation of an energy business authorisation. For example, an issue to be resolved is whether or not a retail business authorisation should be automatically revoked if a retailer is suspended from the spot market, and the suspension of the retailer triggers a ROLR event. Revocation of business authorisation is inter-related to ROLR matters and should be considered in the development of rules for ROLR events.</p> <p>Finally, the AER notes that the “financial viability” entry test is unnecessary for distribution. Distributors will only be able to take on as much debt as capital markets consider will allow the distributor to remain financially viable. Capital markets will consider the distributor’s gearing ratio and ability to service debt. Existing market mechanisms therefore provide adequate checks and balances in relation to the viability of distributors.</p>

No.	Subject	Recommendation	Comments
	Suitable person	<ul style="list-style-type: none"> suitable person – that the applicant is a suitable person to hold the authorisation; 	
	Jurisdictional licensing Market operator registration	<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. 	<p>The arrangements for business authorisation should preserve sufficient flexibility to enable parties which require both a business authorisation and market operator registration to first seek to obtain a business authorisation, followed by market operator registration where this is required.</p> <p>While to date most retailers have been registered as market customers with NEMMCO, the arrangements should not preclude retailers which rely on onselling by market customers, rather than registration with NEMMCO, from retailing to end customers.</p> <p>In relation to electricity retailing, consideration should be given as to whether eligibility to participate in the spot market, rather than NEMMCO registration, should be an ongoing condition of business authorisation. A retailer may have been suspended from participation in the spot market, triggering a ROLR event, but they can still remain registered with NEMMCO, and can in theory resume participation in the spot market once they have rectified their default.</p>

No.	Subject	Recommendation	Comments
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 requirements	Corresponding modifications should be made to existing gas market rules to be 'grandfathered' under the national framework.	
43.	Treatment of existing licensees	Distribution and retail businesses that hold current jurisdictional licences should transition to the national business authorisation without further processes.	The AER supports the proposed transition arrangements.
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.	<p>The AER supports the proposal for it to administer exemptions from the requirement for energy business authorisation.</p> <p>Currently, small scale and embedded networks are accommodated by exemptions and variations to jurisdictional licensing regimes as well as exemption from network service provider (NSP) requirements under the Rules.</p> <p>One of the chief opportunities of the RPWG process is the</p>

No.	Subject	Recommendation	Comments
			<p>potential to bring the current NER exemption process together with licensing regime matters, which would be brought under the rules according to AAR's proposals.</p> <p>In order to streamline the exemption arrangements, the initial framework should enable classes of exemption to be set out in the Rules for particular categories of persons, as well as determined by the AER. Current arrangements vary across jurisdictions, in particular in relation to embedded networks and on-selling arrangements. A range of policy issues will need to be addressed before the AER can merge its current network service provider exemption role under cl 2.5.1 of the NER with current jurisdictional arrangements in electricity. Similar policy issues will also arise in gas. Examples of these policy issues include the following:</p> <ul style="list-style-type: none"> • To date, no national policy position has yet been taken on whether (and to what extent) customers connected to embedded networks should have access to retail contestability. This policy decision is critical to guide an efficient exemption regime, and the policy objective should be spelt out in the Rules. • Where the RPWG considers that there should be blanket <i>exemptions from certain Rules requirements</i> (in addition to the obligation to register as an NSP) for general exemption categories, these can be addressed in the Rules. • Likewise, blanket <i>conditions of exemption</i> could be

No.	Subject	Recommendation	Comments
			<p>addressed in the Rules (eg. a requirement to have a dispute resolution procedure).</p> <ul style="list-style-type: none"> • The Retailer of Last Resort arrangements to apply to customers in an on-selling arrangement. • The extent to which exemption from registration as an NSP – where the network owner is in an on-selling arrangement with its customers – should be contingent upon some measure of pricing protection for its customers (and what permissible forms this might take, assuming pricing in on-selling arrangements remains a jurisdictional concern consistent with the AEMA). <p>The AER can then adopt the provisions of the Rules (regarding categories, exempted provisions, and conditions) in preparing guidelines which implement and fill out the exemption framework.</p> <p>It would be preferable that the Rules do not lock the AER into assessing exemption applications against specific network criteria based on the current guidelines, as these will need to be reviewed in future, with the objectives of streamlining the current exemption processes and improving compliance arrangements. The AER considers that embedded network owners, when contemplating <i>charges for network services</i>, should be required to demonstrate that their customers suffer no disadvantage compared to the conditions they would have received from the local distributor. The Rules should provide a head of power for the AER to promulgate the no-disadvantage</p>

No.	Subject	Recommendation	Comments
			<p>test.</p> <p>In the longer term, it may be necessary to reconsider whether exemption under the Rules is the best mechanism for regulating small scale networks at all. Difficulties experienced by NEMMCO¹ in accepting metrology and connection information from non-registered participants suggest that there may be advantages in either devolving some current NSP-specific functions (such as issuing NMI) to exempt networks, or establishing a tailored class of registered participant. This could involve imposing a small subset of the rules obligations to accommodate the circumstances of embedded networks. The AER intends to investigate these options further, and these options should not be closed off by the initial framework approved by the RPWG.</p>
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.	<p>Some conditions attaching to particular classes of exemption may be generic in nature. The model adopted should enable conditions of exemption to be specified in the Rules, as well as to be imposed by the AER. This model will ensure that matters which may be outside the AER's powers, for example retail pricing, can be addressed by conditions of exemption.</p> <p>The AER notes that given the proliferation of embedded networks and on-selling arrangements across jurisdictions, it may not be realistic for the AER to be aware of each of</p>

¹ for example, cl. 5.3.7 of the NER provides for NEMMCO to process connection agreements only with network service providers (ie. registered participants).

No.	Subject	Recommendation	Comments
			<p>the persons conducting activities covered by any exemption for embedded networks. To the extent it is considered necessary for the AER to be aware of persons conducting activities covered by a general exemption, the Rules should require such persons to notify the AER of their existence. Any such framework should be non-intrusive and minimise the regulatory burden on such persons. The AER can then develop a low cost notification scheme such as web-based notification.</p> <p>The framework should also anticipate the wide variety of possible embedded networks which may need to be exempt, and the general exemption categories should be drawn as widely as possible to reduce the number of applications for specific exemption the AER must process. General exemptions should incorporate general pricing arrangements, so that exceptional pricing arrangements would be subject to specific exemption.</p>

No.	Subject	Recommendation	Comments
46.	Revocation	<p>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.</p> <p>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.</p>	<p>The AER supports the ability to revoke a business authorisation or exemption.</p> <p>In addition to revocation of exemptions, the framework should clarify the consequences of non-compliance with the terms and conditions imposed through an exemption. Presumably, the possibility of AER revocation of an exemption will not be the only consequence if conditions of an exemption are breached. An exemption should automatically cease to be effective if a party does not comply with the conditions of the exemption.</p> <p>Where notification/registration by parties of exempt activities is required, the exemption should be made contingent on notification.</p>
47.	Register of authorised persons	<p>The Law should require the AER to maintain a public register of authorised persons and exempt persons and include details of the information to be included in the register.</p>	<p>In the absence of a notification requirement, it will only be feasible for the AER to maintain a public register of exempt persons where exemptions have been granted to individual legal entities. If the AER is required to maintain a public register of persons which are subject to general exemptions, the AER will not be aware of persons falling within the general exemption unless they notify themselves to the AER. If a notification system is envisaged, a head of power for the AER to establish such a system should be included in the Rules.</p>
48.	Ancillary rights and powers	<p>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.</p>	

No.	Subject	Recommendation	Comments
Ring-fencing			
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>	<p>The AER supports recommendations 49 to 53. Incorporating the high level ring fencing requirements in the National Electricity Law provides the basis for robust and enforceable legal and operational separation between business units. Provision of more detailed requirements in the Rules provides appropriate flexibility in the regime while being a transparent form of regulation.</p>

No.	Subject	Recommendation	Comments
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 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.	<p>The operational separation of business units and legal separation are not mutually exclusive goals. Operational separation refers to the situation where business units operate independently of each other, and do not attempt to competitively advantage the other unit. Legal separation carries with it substantial obligations to separate business activities and is therefore a major contributor to effective operational separation. In the absence of legal separation, greater reliance on specific operational separation requirements is anticipated, but even where legal separation is required (for example, the Queensland, ACT and South Australian electricity ring fencing guidelines), some operational separation caveats also apply.</p> <p>The AER considers that Rules should be made concerning those operational separation requirements which are needed presuming legal separation is in place, and specific operational separation requirements should be put</p>

No.	Subject	Recommendation	Comments
			in place where legal separation is not required.

No.	Subject	Recommendation	Comments
Retailer failure arrangements			
54.	Statutory framework for RoLR scheme	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>The AER sets out below some matters for consideration in the development of a fully specified national retailer of last resort (RoLR) scheme. Some comments are then made on the statutory framework.</p> <p><i>Preserving the integrity of markets and customer supply</i></p> <p>Preserving the integrity of markets through facilitating arrangements, particularly RoLR appointment terms and conditions, which do not lead to cascading RoLR events should be a primary consideration. Another primary consideration is the uninterrupted continuance of customer supply.</p> <p><i>Fully specified schemes to address retailer failure</i></p> <p>A RoLR event has the potential to cause a large degree of market harm. When TXU failed in Britain, a 2,000,000 customer RoLR event was narrowly avoided when a buyer came forward while TXU was in administration. The AER notes that schemes to deal with arrangements should a large (first tier) retailer fail are less developed than if a small (second tier) retailer were to fail. The TXU example highlights the importance of having schemes which cover all contingencies. It is noted that TXU held a number of large contracts with counter-parties such that if it were to fail it may have affected the financial viability of other suppliers of last resort. The AER understands that the problems of first tier failure have been contemplated in Australia and that opinions may differ as to the best</p>

No.	Subject	Recommendation	Comments
			<p>approach to ensure the stability of the market in such circumstances. It is important however that options are identified now, before any event occurs and that any necessary legal basis for those arrangements put in place.</p> <p><i>Consideration of schemes in other jurisdictions</i></p> <p>Increasingly, like Australia, other countries have opened their markets to competition and developed RoLR schemes. In the United Kingdom, the energy regulator, Ofgem informed the AER that a RoLR was appointed by tender in 5 instances during a period of high wholesale gas prices around 2005/06. Ofgem reported that the successful tenderer in each case agreed to take on the customers at its standard deemed contract price and elected not to exercise its right to include a one-off levy based charge. Licence conditions in the United Kingdom oblige certain retailers to become the RoLR if directed. However, because of the success of this tender process the licence conditions have not needed to be used. A tender process there has served the market, customers and competition well during a time of volatile wholesale prices.</p> <p>The AER considers it would be prudent in developing the national scheme to review schemes put in place in other countries and any relevant practical experiences with retailer failure.</p> <p><i>Potential benefits of allowing for a tender process</i></p> <p>A key benefit of a tender process is to facilitate the role of RoLR being conducted by a party willing and financially</p>

No.	Subject	Recommendation	Comments
		<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 	<p>able to take on the role. The willingness and financial ability of a RoLR should be a key concern. A host retailer may not always want to become, be best placed or offer the best terms to be the RoLR.</p> <p>The AER notes that there are reviews underway considering the case for removal of price caps. In the United Kingdom, where there are no price caps, a tender process has resulted in a competitive process with prices driven down for residents and business to market levels.</p> <p>The AER further notes that retailing of energy is increasingly being conducted by small and large retailers across jurisdictions and fuel sources. A tender process could result in one party being selected to take on a joint role for all electricity/gas customers (as has occurred in the United Kingdom) limiting the potential instance of dual fuel customers acquiring two different RoLRs and customers with multiple sites acquiring multiple RoLRs.</p> <p>The AER considers that the objectives in the Law appear to reflect the key concepts however the AER has specific comments on the first two objectives.</p> <p>The first objective refers to the continuation of the customer's supply of energy. It may be preferable to more broadly refer to "continues to receive energy services" to reflect the fact that energy services include supply but also</p>

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> • to ensure the integrity of the wholesale market settlements and network balancing arrangements in the relevant market. 	<p>requires metering, retail services such as billing and knowledge by the customer of who their retailer is. Timely and accurate facilitation of these services mentioned should be the goal of a RoLR scheme.</p> <p>The AER considers that the second objective “to manage the risks and costs of retailer failure for the benefit of customers and of the designated RoLR” should not be so specific, especially by reference to the designated RoLR. Preferably the objective might simply state “to manage the risks and costs of retailer failures”. This would facilitate a wider group of parties’ risks and costs being considered. The risks and costs for creditors and the failing retailer also will need to be contemplated in the RoLR framework in respect to trigger events.</p>
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 	<p>Consideration should be given to other schemes and</p>

No.	Subject	Recommendation	Comments
		<p>appointment;</p> <ul style="list-style-type: none"> • 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 submission of plans and proposed supply prices, terms and 	<p>ultimately it may be desirable for the Rules to contemplate the market being able to determine the RoLR (through a tender process) as one method of appointment.</p> <p>A special area of consideration should be the grounds to appoint a RoLR after a business enters administration. In the United Kingdom the regulator in practice has acted on the administrator's advice, relying on the earliest possible advice as to the viability of a trade sale. This issue has not been tested in the Australian framework where Rules envisage suspension when a business enters administration.</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 	

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> contracts between the failed retailer and its customers may be deemed to be terminated or varied. 	
57.	Obligations on other market participants	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.	
58.	Insolvency issues	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.	
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 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>	As a matter of urgency, a timeline needs to be put in place to facilitate the making of policy decisions and for the development of workable legislation and arrangements to support desired policy outcomes. The AER considers that, in order to give appropriate priority to the resolution of outstanding policy issues and the development of robust retailer failure arrangements, it may be preferable for the MCE / AEMC to facilitate the creation of a specialised panel to commence this process prior to the introduction of the legislative package.

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
		<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; 	<p>Consistent with this approach, the AER recommends that the RPWG examine AAR's proposed requirement for retailers seeking customer transfers to comply with 'applicable consents'. AAR, elsewhere in the working paper, recommends defining 'informed consent' and applying it to national retail matters (such as alteration of market contract terms and installing prepayment meters). Defining 'informed consent' in the context of customer transfer and applying it in a consistent manner would enhance the protection of consumers against inappropriate transfers occurring, which has proven a problem in some jurisdictions to date.</p>

No.	Subject	Recommendation	Comments
	Objections	<ul style="list-style-type: none"> • 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>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. 	
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 	

No.	Subject	Recommendation	Comments
		<p>information relating to each gas supply point that is eligible for contestability, and for access to and disclosure of that information; and</p> <ul style="list-style-type: none"> 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>	
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</p>	

No.	Subject	Recommendation	Comments
		<p>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>	
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 metering	The NGL should authorise the inclusion of Rules in relation to metering in the NGR in similar terms to Schedule 1 of the NEL, for	

No.	Subject	Recommendation	Comments
		<p>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>	
75.	Process for review of	In progressing the work program of the GMLG or other process for	

No.	Subject	Recommendation	Comments
	grandfathered instruments	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.	<p>Supplementary regulation of gas metering</p> <p>Contractual/regulatory interface provisions</p> <p>Incidental jurisdictional legislative provisions</p>	<p>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.</p> <p>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.</p> <p>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.</p>	
Prepayment meters			
77.	Prepayment meter systems	<p>The Law should authorise the Rules to regulate the use of prepayment meter systems for small customers.</p> <p>The Rules should cover the following matters in relation to the use of prepayment meter systems for small customers:</p> <ul style="list-style-type: none"> • Prepayment meter contracts: <ul style="list-style-type: none"> ➤ specific disclosure requirements to obtain a small 	

No.	Subject	Recommendation	Comments
		<p>customer's explicit informed consent to enter into a prepayment meter contract (this is a specific form of market contract);</p> <ul style="list-style-type: none"> ➤ 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. <ul style="list-style-type: none"> • 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 ➤ requirements in relation to payment facilities. 	

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none">• 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 entities² 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 supports recommendations 78 to 84 on enforcement mechanisms.</p> <p>The AER notes that while it will be required to report on its compliance monitoring and enforcement functions, there is no provision for the AER to report on the performance of energy retail businesses (using customer service indicators, performance indicators and affordability indicators). This may result in some information currently collected by Jurisdictional Regulators no longer being publicly available, or only becoming publicly available where compliance issues have arisen. For example, under the proposed regime, it may be possible for the AER to report on wrongful disconnections but not on overall disconnection trends.</p>
79.	Court based enforcement mechanisms	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.	
80.	Additional orders	Consideration should be given to expanding the description of orders available to the Court to include:	

² 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
		<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. 	
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.	Further comments on the AER's role of revoking business authorisations in the context of the financial viability entry test are set out opposite recommendation 40.
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 regulatory functions should be enforceable as between the affected parties or only by the AER; • whether the dispute resolution provisions in Chapter 8 of 	<p><i>Private rights of action</i></p> <p>The AER supports giving further consideration to whether certain obligations arising from the distribution and retail regulatory functions should be enforceable as between the affected parties. The parties themselves may have the best understanding of the information and facts involved and may be best placed to present these to a court.</p>

No.	Subject	Recommendation	Comments
		<p>the NER should apply in respect of the distribution and retail rules; and</p> <ul style="list-style-type: none"> 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><i>Chapter 8 NER dispute resolution arrangements</i></p> <p>Consideration should be given to making explicit provision for the dispute resolution mechanisms which apply to distribution and retail disputes. Tailored dispute resolution arrangements may be required for the different types of disputes which may arise, including access disputes, small customer-related disputes, and non-access related disputes. Any distribution and retail dispute resolution arrangements should be consistent across gas and electricity regulation. If a decision is made to apply the chapter 8 NER dispute resolution process to non-access related disputes arising in both electricity and gas distribution and retail, consideration should be given to tailoring the process to suit the circumstances of those disputes.</p> <p><i>Enforcement in the lower courts</i></p> <p>The AER supports making provision in the NEL and NGL for proceedings to be brought in lower courts such as the Federal Magistrates Court for matters within the jurisdictional limits of the lower courts. Making allowance for the use of lower courts has the potential to benefit not only market participants and energy users, but also the AER by ensuring that the most appropriate and efficient forum can be selected according to the nature of enforcement proceedings.</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.	In the AER's view, any establishment of supplementary or targeted objectives would result in implementation difficulties for the AER. To the extent that supplementary or targeted objectives are required, this suggests that there is a conflict with the primary objective. The AER would be faced with resolving a conflict between primary and secondary objectives. Requiring the regulator to resolve conflicting objectives creates substantial implementation difficulties for the regulator. The substantive provisions of the regulatory framework should provide sufficient guidance on the regulator's execution of its functions.

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>	
	Use of meter data	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.	

No.	Subject	Recommendation	Comments
		<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 May be varied by agreement in market contracts.</p>	
	Meter reads	A retailer must use its best endeavours to ensure that a meter reading takes place at least once in each 12 month period.	
	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; • 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; 	

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> • 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>	
	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			
	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</p>	

No.	Subject	Recommendation	Comments
		must not vary the provisions relating to disconnection.	
	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 have a satisfactory credit history and the customer has refused an instalment plan offered by the retailer. <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 	

No.	Subject	Recommendation	Comments
		<p>credit history;</p> <ul style="list-style-type: none"> • 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. 	
	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>	
	Interest	<p>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.</p>	
	Application of security	<p>The retailer may only apply a security deposit to off-set amounts owed to it where the customer:</p> <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>	

No.	Subject	Recommendation	Comments
	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.	
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 estimation and, if issued as a result of a meter read, the date of the meter reading; • 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); 	

No.	Subject	Recommendation	Comments
		<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>	
	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>	
	Apportionment	<p>If a bill includes amounts payable for other goods and services 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>	

No.	Subject	Recommendation	Comments
	Historical billing information	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.	
	Billing disputes	<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. 	
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	

No.	Subject	Recommendation	Comments
		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.	
	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.	
Payment methods and difficulties			
	Payment methods	<p>A retailer must accept payment by a small customer by any of the following payment methods:</p> <ul style="list-style-type: none"> • in person; • by telephone; • by mail; or • by direct debit. <p>Where a direct debit arrangement is entered into, the retailer and the small customer must agree the amount, date and frequency of the 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	A retailer must offer a small customer an instalment plan where the	

No.	Subject	Recommendation	Comments
		<p>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>	
	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.	
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; • 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. 	
	Limitations on	Other limitations will apply to the right to discontinue supply in	

No.	Subject	Recommendation	Comments
	disconnection	<p>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>	
	Reconnection	<p>A retailer must notify a small customer of the arrangements which 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</p>	

No.	Subject	Recommendation	Comments
		reconnection occurs as soon as possible for the customer.	
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 meter.	
	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 AER considers that the relationship between ombudsmen/small customer dispute resolution schemes and the regulator is an important one, and it could benefit from recognition in the Law or Rules of the role that ombudsmen play in being a key point of contact for consumers with disputes with participants. Taking account

No.	Subject	Recommendation	Comments
			<p>of the role of small customer dispute resolution schemes in the national framework would be consistent with cl. 14.6(a) of the Australian Energy Market Agreement.</p> <p>Furthermore, the AER and ombudsmen will likely need to be able to share information to carry out their respective roles effectively. Some of this information may be confidential. Whilst jurisdictional regulators and ombudsmen frequently address protocols for information sharing through memoranda of understanding (MOUs), these are informal documents and the basis for information sharing between jurisdictional ombudsmen and the cross-jurisdictional AER is less clear.</p> <p>The Trade Practices Act provisions restricting the AER from sharing confidential information allow certain bodies to be prescribed by regulation to be authorised recipients of such information. Ombudsmen could be so prescribed where information (such as referral of complaints received by the AER) needs to be shared with them. Conversely, ombudsmen will likely need to be able to share information (such as compliance reports, and information on systemic issues) with the AER. The Law or Rules could provide for this.</p>
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</p>	

No.	Subject	Recommendation	Comments
		the customer receives prescribed information relating to the cooling off period.	
	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 calculation of the early termination charge; and • the early termination charge is a reasonable estimate of the cost to the retailer resulting from the early termination. 	
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.	
	Customer consultative groups	A retailer must establish a customer consultative group.	

No.	Subject	Recommendation	Comments
	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.	
	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 between competing offers.	The RPWG should also consider alternative models for facilitating price comparison including the role of web-based price comparator services in facilitating customers' choice of retailer. There may be scope for some regulatory oversight of retailers' provision of pricing information and the provision of price comparison services. The regulator's role could be limited to some form of oversight to increase consumer confidence in the accuracy and consistency of results obtained from price comparison services.
Provisions subject to separate policy review			
	Consumption graphs	Bills to include comparative consumption data.	

No.	Subject	Recommendation	Comments
	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> <ul style="list-style-type: none"> (a) prior to formation of a market contract: where the prescribed matters may be disclosed in writing, electronically or verbally; and (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). 	
	Pre-contractual disclosures - required disclosures	<p>The information which a retailer must provide in the manner described above is information in relation to:</p> <ul style="list-style-type: none"> (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; (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; (c) cooling-off period: any rights to rescind the contract, including how to exercise these rights; (d) electronic transactions: if any marketing requirement is to be 	

No.	Subject	Recommendation	Comments
		<p>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.	
	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> <ul style="list-style-type: none"> (a) misleading, deceptive or unconscionable conduct; (b) undue pressure, harassment or coercion; and (c) the quality, form and content of marketing information. <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>	The obligations to have adequate product knowledge should be expressed as mandatory – that is, “marketers <i>must</i> have, and retailers <i>must</i> ensure that marketers have, adequate product knowledge.”

No.	Subject	Recommendation	Comments
	Duties of marketers	<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>	
	Training	Retailers must ensure that marketers are appropriately trained in relation to compliance with marketing obligations.	
	Record keeping	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.	
	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.	

No.	Subject	Recommendation	Comments
	Contact times	Not included.	The AER supports the recognition that contact times are a matter best addressed by generic consumer protection legislation.
	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	<p>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.</p>	
	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. 	<p>Regarding customer and network service standards; although AAR has decided not to make recommendations for the service standards framework at this stage, the division of responsibilities outlined in the AEMA still needs to be translated into a workable national framework. This particularly involves finalising which measures and instruments are classified as 'customer' service performance standards and 'network' service performance standards, and allocating responsibility for determining the former to achieve national consistency. The AER's submission to AAR's second working paper noted that many customer service performance standards are generic in nature. Whereas network service performance standards may need to take into account the unique characteristics of particular networks, customer service performance standards are amenable to regulation on a nationally consistent basis.</p> <p>The AER urges the RPWG to commit to following up its work on service standards, and to recommend to the MCE the form of the national customer service standards framework.</p>
	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 	

No.	Subject	Recommendation	Comments
		<p>permitted by law;</p> <ul style="list-style-type: none"> • no liability for supply interruption or disconnection to the extent the distributor is entitled to do so under Law, Rules or contract; • 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. 	

No.	Subject	Recommendation	Comments
		<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 customer requests; and • 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; 	

No.	Subject	Recommendation	Comments
		<ul style="list-style-type: none"> • safety of customer installation; • compliance with any restrictions on consumption or use of energy; and • 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.	

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>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>The AER notes that the framework for assessment and review of capacity demand and determination of capacity charges has been considered by NERA in its April 2007 report to SCO on network incentives for demand side response and distributed generation. Any rule changes arising from the NERA recommendations may impact on this recommendation.</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>	The AER supports this proposal. The AER considers that the Rules should specify whether termination constitutes a trigger for a retailer of last resort event.
	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.	

No.	Subject	Recommendation	Comments
	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 (including re billing)	<p>The UoS agreement/interface contract would provide for each party 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.</p>	
	Other customer inquiries and claims	<p>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.</p> <p>See also above in relation to allocation of liability.</p>	
	Metering	<p>See comments above in relation to billing. Other relevant provisions in relation to metering would be:</p> <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. 	
	Information sharing in	<p>The UoS agreement/interface contract would include additional</p>	

No.	Subject	Recommendation	Comments
	relation to customer information and planned and unplanned outages	<p>obligations for the parties to share information:</p> <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 discussed above); and • 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.	
	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.	