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Ms Kris Palmer
Manager
MCE Secretariat
Department of Resources, Energy and Tourism
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Dear Ms Palmer,

The Australian Energy Regulator (AER) welcomes the opportunity to comment on the Second Exposure Draft of the National Energy Customer Framework (NECF).

The AER supports the overall content of the NECF. This submission focuses primarily on those parts of the NECF that were not included in the first exposure draft, and on issues of workability and integration with other parts of the energy laws.

The main areas of concern are set out below. Comments on specific provisions of the legislative package are also provided in the attached table.

Retail Law, Regulations and Rules

Process for obtaining a retailer authorisation (ss 502-513)

There is a lack of clarity in the process for obtaining a retailer authorisation. This is particularly the case in situations where the AER imposes conditions on the retailer relating to satisfaction of the entry criteria.

As the AER understands the process to work, the AER can grant an application for authorisation, with or without conditions. When an application is granted without conditions, the retailer can begin selling energy once the AER has *issued* the authorisation (a separate step from the initial *grant* of the application). Where an application is granted with conditions, the retailer can begin selling energy once the AER is satisfied that the conditions have been fulfilled and has issued the authorisation. The two step process, of first granting an application and then issuing an authorisation, needs to be made clearer.

The AER recommends the following changes to these provisions:

- Section 509 requires that, where a retailer authorisation is granted with conditions relating to the entry criteria, the authorisation cannot be issued until the applicant satisfies the AER that the conditions have been met. This provision appears inconsistent with s. 506(2) which states that a condition may provide that the retailer authorisation only authorises the selling of energy to customers on or after the condition is satisfied. If the intention of the Retail Law is that a retailer cannot begin selling energy until an authorisation is issued, s. 506(2) is unnecessary and should be deleted.

- The AER considers that the provisions would be clearer by deleting the words 'on the retailer authorisation' in s. 506(1) and 507(c). These words imply that the authorisation is already in existence.

- Section 507(b) can be read to authorise the retailer to sell energy from the time of the notice—rather than just indicating the forms of energy to which the authorisation will apply. To provide clarity, is should state '(b) stating whether the application is granted for the sale of electricity or gas or both, as the case requires; and....'

- Section 501(1)(a) states that a person must not engage in the activity of selling energy unless the person is the holder of a current retailer authorisation. The words 'is the holder of' are unclear. Of concern is that the provision may be read as allowing a retailer to sell energy where their application has been granted but the authorisation has not yet been issued.

- To provide clarity, it should state '(a) *the person has been issued with, and holds, a current retailer authorisation and* [remaining text unchanged]'. A subsequent change may be required in s. 516 to the effect that 'where the AER grants a transfer application, the AER is taken to have issued the retailer authorisation to the transferee'.

Dual Fuel retailer authorisations (s. 513)

The Retail Law enables the AER to issue electricity authorisations, gas authorisations, or dual fuel authorisations. However, the implications of issuing dual fuel authorisations are unclear. For example, if a retailer is suspended from the gas market but not the electricity market, the effect of this may be that the retailer's authorisation to participate in both markets is revoked. To remove uncertainty about the operation of the revocation and surrender provisions in the context of dual fuel authorisations, it would be preferable for the Retail Law to require separate gas and electricity authorisations, and to ensure that existing gas and electricity licences of dual fuel retailers are transitioned as separate gas and electricity authorisations.

Retail contestability and consumer protection for customers of exempt sellers (s. 526)

The AER supports the proposed policy principle in s. 528(1)(b) that, as far as practicable, exempt customers should be afforded the right to a choice of retailer. However, the ability of customers to choose their own retailer in the competitive market depends on network configuration and metering, which are usually determined at the time a building is constructed. Planning and building laws do not mandate the provision of individual meters for each dwelling in multi-dwelling complexes, and technical and safety regulations do not take a uniform approach to meter placement. We recognise that this issue is not one that can, or should, be addressed in the National Energy Retail Law or Rules. However, to facilitate customer choice of retailer in new developments, jurisdictions should consider changing planning and building laws to mandate the provision of accessible metering for each dwelling in multi-dwelling complexes, to ensure that electricity metering arrangements are conducive to full retail contestability. Individual gas metering may also be required if significant gas usage will occur.

The AER also supports the proposed policy principle in s. 528(1)(c) that exempt customers should, as far as practicable, not be denied customer protections afforded to retail customers under the NECF. Currently, exempt supply customers in most jurisdictions do not have the same access to an Ombudsman or alternative dispute resolution scheme that is afforded to customers of a retailer. As the AER cannot affect the operation of industry-based and statutory Ombudsman schemes (for example, through a condition requiring that an exempt seller participate in such a scheme), jurisdictions and ombudsman schemes should consider whether it is necessary to extend the jurisdiction of the schemes to customers of exempt sellers to give full effect to this principle.

Compliance by Exempt Sellers (s. 526)

The AER will be reliant on the umbrella provision in s. 526(2) of the Retail Law as a basis for enforcing compliance by exempt sellers with any conditions imposed under this section. Given the uncertainty as to the power of energy ombudsman to deal with matters concerning exempt sellers, enforceability is of particular importance.

For that reason, we recommend that the Retail Law attach a civil penalty to s. 526(2), and a conduct provision to capture the allowance for damages in s. 1306 for isolated instances, in relation to which civil penalties may not be a proportionate response, or where civil penalties might not be adequate in terms of compensating the affected consumer.

The Retail Law and Rules should also provide for a revocation process where an exempt seller has not complied with conditions of exemption and cannot show cause why the AER should not revoke the exemption.

Retailer of last resort (Part 7 of NERL)

The proposed RoLR scheme appears to establish a framework which will enable the market to facilitate, in an efficient manner, the continuity of supply for customers in the event of retailer failure.

The situations which may trigger a RoLR event under the Retail Law include the appointment of an administrator, which is also a trigger for market suspension under the Electricity and Gas Rules. The AER notes that this approach to a retailer entering administration has

disadvantages which may merit further consideration. In particular, a major disadvantage is that it precludes any possibility of a "quick-fire" sale of customers by the administrators (as has occurred in the United Kingdom), which may avert the need for a RoLR event to occur. The AER recognises that such sales may still occur before a retailer enters administration, but this is not always possible as the appointment of an administrator may take place rapidly. The AER considers that entering administration, of itself, should not necessarily be a trigger for a RoLR event. The AER considers that both the existing wholesale market triggers for suspension in the Electricity and Gas Rules, as well as relevant definitions in s. 602 of the Retail Law, should be reviewed to consider whether a RoLR event must occur where a retailer enters administration. RoLR events should be considered to be a last resort mechanism.

The AER supports the NECF provisions which enable the AER to conduct an 'Expressions of Interest' process seeking voluntary retailers of last resort (RoLR). This process is to occur at two levels. First, an annual process would produce a list of registered RoLRs. When an apprehended RoLR event arises, a second, expedited process under which only registered RoLRs would be approached would occur. The AER considers that the benefits which may be derived for customers and the market as a whole from an expression of interest process merits the availability of this option. However, the AER notes that a RoLR tender process has not been used in the national energy markets before, and that it may be desirable to provide for the process in the Retail Rules rather than the Law. This would enable the Rules to evolve according to the lessons learnt from the implementation of the new arrangements (in particular if annual calls for expressions of interest do not attract a sufficient number of retailers), and from any future RoLR events.

The AER is also concerned about the workability of the RoLR cost recovery scheme in its current form. It may be desirable to relocate some aspects of the cost recovery scheme in the Retail Rules rather than the Law. Some specific points to note on cost recovery are:

- The Electricity and Gas Rules should distinguish between RoLR costs that distributors may recover under the pass through provisions of distribution determinations and access arrangements from those under the RoLR cost recovery scheme distributor payment determination.

- The Electricity and Gas Rules should clarify the manner in which distributors will be able to recover the costs provided for by the RoLR cost recovery scheme distributor payment determination, including for existing and future distribution determinations and access arrangements. The AER considers that the most appropriate mechanism for distributors to recover these costs is through tariff variation.

- The principles that guide the AER when determining a cost recovery scheme (r 1122(2)) require further development. To maintain the integrity of the expressions of interest process, these principles should explicitly empower the AER to:

    - have regard to any commitments made by a retailer in a RoLR registration process. For example, if a retailer registered its interest for up to 10,000 electricity customers in a particular jurisdiction on the basis that it will not seek RoLR cost recovery of more than $50 per customer, then the AER needs to be able to hold the retailer to that commitment; and

- have regard to both the costs and benefits that the RoLR may receive when assessing the RoLR's costs. For example, a RoLR which takes on 5000 customers when wholesale market prices are low may be considered to receive a significant benefit. Under rule 1122(2)(a), this benefit should be taken into account when assessing the RoLR's efficient costs.

Finally, the AER notes that the proposed national RoLR scheme does not provide for the application of an administered price cap in the National Electricity Market when a RoLR event occurs. This is inconsistent with the current arrangements for the Victorian gas market and the future arrangements for the Short Term Trading Market.

The AER supports including the option of administered price caps which may be invoked at the time of a RoLR event. The AER does not believe, however, that an administered price cap should always be invoked. A RoLR event that involves a "small" retailer failure (e.g. less than 5,000 customers) would not justify this level of market intervention.

The AER further recommends that the decision on the timing of an administered price cap should not lie with the RoLR(s), as is currently the case in the Victorian Gas Market. The AER considers an independent body should, at the time of a RoLR event, oversee how long (if at all) an administered price cap is imposed. The AER anticipates that if most failures involve small retailers, as has been the case in the United Kingdom, an administered price cap would not be required.

Power to obtain information and documents (ss. 804 and s. 814)

Section 804 of the Retail Law gives the AER the power to compulsorily acquire information relevant to the performance of its functions and powers under the Retail Law and Rules. This section mirrors equivalent powers in the Electricity and Gas Laws. While it is appropriate to limit the AER's power to gather information under the Retail Law to matters under the Retail Law and Rules, we are concerned that the corresponding restriction on the "use" of this information in s. 814 has the potential to obstruct or prolong investigations in areas where the energy laws intersect — for example in an investigation pertaining to both a connection contract arising under the Retail Law and a related connection offer under chapter 5A of the Electricity Rules — so that information gathered initially for Retail Law purposes may reveal a potential breach of provisions of other parts of the energy laws.

The likely practical outcome of the current restriction is that the AER would be forced to issue a second notice — in this example under s. 28 of the Electricity Law — asking the relevant person to provide the same information a second time.

A more practical option would be to maintain the restriction on the purposes for which the AER can use its power under s. 804, but to alter the current restriction on "use" of information in s. 814 with one that enables the AER to using the information for any purpose connected with the performance or exercise of its functions and powers.

Flexibility to combine related guidelines and reports

Sections 1210 and 1215 of the Retail Law allow for consolidation of AER Compliance Procedures and Guidelines and AER Performance Reporting Procedures and Guidelines with similar guidelines under the Retail Law, Electricity Law or Gas Law. The flexibility that

these provisions provide will allow the AER to streamline its reporting arrangements to ensure that all requisite information is gathered with minimum imposition on retailers and distributors.

Extending this approach to other areas of the Retail Law and Rules, and to reports published by the AER as well as guidelines and other instruments, would provide similar benefits. We therefore recommend the inclusion of a general provision in the Retail Law that allows any report or guideline under the Retail Law or Rules to form part of similar reports or guidelines under the Retail Law, the Electricity Law or the Gas Law.

The benefits of this approach are particularly apparent in the context of s. 1214(d) of the Retail Law, which requires the AER's retail market performance report to include a report on the performance of distributors by reference to distributor service standards and associated Guaranteed Service Level schemes. These are already appropriately covered in the regulatory and performance reporting frameworks in the Electricity Rules and Gas Rules. This is because there is a direct link between the regulatory revenue allowance approved for (and spent by) each business and the service standards it is required to meet (see, for example, the opex (6.5.6(a)) and capex (6.5.7(a)) factors in chapter 6 of the Electricity Rules).

If the regulatory and performance reporting frameworks in the Electricity and Gas Rules are not considered to adequately capture the desired information, the AER should have the flexibility to decide where best to report this information (for example in annual DNSP regulatory reports rather than the retail market performance report). This captures the benefits of combining related reports as well as related reporting requirements.

Reporting on Distributor Service Standards

The proposed requirements for the AER to report on distribution service standards, associated Guaranteed Service Level schemes and performance of distributors in relation to the small compensation claims regime (see s 1214(d) and (e)) on a financial year basis, and by 30 November each year, are likely to create additional burdens on distribution businesses and the AER for two reasons. First, reporting periods currently differ from jurisdiction to jurisdiction, with some jurisdictions operating on a calendar year rather than a financial year basis, and time for adjustment will be required to avoid duplication of reporting. Secondly, where a jurisdictional regulator retains a compliance and reporting function in these areas, it would be preferable that this function is not also performed by the AER. Flexibility to accommodate these matters will reduce the regulatory burden these requirements would otherwise impose. The AER can cooperate with jurisdictional regulators to ensure that all information is readily accessible to interested parties to the extent that a jurisdictional function is retained.

Duplication of obligations in other parts of the energy laws

Obligation to comply with National Energy Retail Market Procedures (s. 1217 and r. 515)

Section 1217 of the Retail Law imposes an obligation on retailers and distributors to comply with the National Energy Retail Market Procedures. Rule 515 of the Retail Rules imposes a second obligation to do so in the specific context of re-energisation of a customer's premises. Both obligations carry a civil penalty if breached. Section 1304(1) provides that a Court may make an order, on application by the AER under the Retail Law on behalf of the

Commonwealth, declaring that a person is in breach of a provision of the National Energy Retail Market Procedures.

The procedures identified under the definition of National Energy Retail Market Procedures in s. 102 are already binding on retailers and distributors under the Electricity Rules and the Gas Law.[1] It is not necessary to impose a second obligation on the same participants in the NECF.

The obligations to comply with the identified electricity procedures already carry civil penalties under the National Electricity Law (see schedule 1 of the National Electricity Regulations). The provisions and classifications in the Retail Law and Rules add nothing to the enforceability of the procedures, and create undesirable duplication and room for inconsistency over time.

Of more concern is the inconsistency that already exists in the proposed treatment of the gas Retail Market Procedures in the Retail Law and Rules and their treatment in the Gas Law. When provisions relating to gas Retail Market Procedures were introduced to the national framework, an active decision was taken **not** to assign civil penalties to a breach of the Retail Market Procedures. Section 91MB of the Gas Law sets out a process by which AEMO (and not the AER) will assess the materiality of any breach of the Retail Market Procedures and may, if materiality is established, direct the person responsible to rectify the breach and/or take measures to ensure future compliance. It is only a breach of that direction (and not a breach of the procedures themselves) that attracts a civil penalty. The intention of these provisions was that the AER would not be empowered to take action on a breach of the Retail Market Procedures without a referral from AEMO. The approach taken in the Retail Law and Rules is inconsistent with the Gas Law and with policy decisions made in the amendment of the Gas Law less than a year ago. If there has been a change in position on this issue, it would be appropriate for it to be dealt with in the Gas Law. Inconsistency between the Gas and Retail Laws creates confusion for stakeholders and for the AER and AEMO as to how a breach of the procedures is to be treated, and opens the door to forum shopping between frameworks, and between the regulator and the market operator.

For these reasons we recommend that s. 1217 of the Retail Law and related references to the National Energy Retail Market Procedures in sections. 102, 104 and 1304(1) and Rule 515 be removed. If it is considered necessary to include an informational provision confirming that the Retail Law and Rules do not apply to the exclusion of other energy laws (as defined in s. 102), it is more appropriate that it be cast as such, and not as an obligation.

Obligation to comply with distributor service standards and GSL schemes (r. 408)

Similar issues arise in relation to the obligation in rule 408(1) to comply with any applicable service standards and Guaranteed Service Level (GSL) schemes contained in jurisdictional energy legislation. These standards are imposed by jurisdictional energy legislation and compliance with them is appropriately monitored and enforced by the relevant jurisdictional authorities. Duplication of these obligations in the Retail Rules and the imposition of a civil penalty within that framework is unnecessary, and will dilute distributors' accountability to the responsible jurisdictional agency.

[1] See clauses 7.2.4(b) (B2B procedures), 7.2.5(d) (metrology procedures) and 7.2.8(d) (MSATS procedures) of the Electricity Rules, and section 91MB of the Gas Law (Retail market procedures).

Large customer dispute resolution arrangements

The Retail Law and Rules are currently silent on resolution of large customer disputes with retailers and distributors.

Under the NECF, energy ombudsman schemes will continue to have jurisdiction over complaints between small customers and retailers/distributors, but will not have jurisdiction over large customer complaints unless the relevant jurisdictional dispute resolution scheme provides for this.

One possible avenue for connections disputes between large customers and distributors is the access dispute regimes in the Electricity and Gas Laws for determination by the AER. At present there is a prescribed $2750 application fee payable on notification of an access dispute, which cannot be waived by the AER. Nor can the AER make costs orders in an access dispute (so that if a dispute were determined in favour of the customer, the customer would still have to bear their costs and the cost of the application). In considering options for large customer disputes, regard should be had to how the chosen approach might impact upon customers who only marginally exceed the upper consumption threshold that delineates large and small customers (100MWh p.a. for electricity and 1TJ p.a. for gas), particularly in their dealings with monopoly distributors.

The AER recommends that the current obligations in the Retail Law for retailers and distributors to develop, publish and implement standard internal complaints and dispute resolution procedures for small customers should be extended to large customers. These obligations are not onerous and operate by reference to AS ISO standards on complaints handling that are generic, widely accepted and equally applicable to large and small customers. We consider it particularly important that distributors' standard complaints and dispute resolution procedures cover large customer connection issues, and recommend that exhaustion of those processes in good faith be a pre-requisite to bringing a dispute to the AER under the Electricity or Gas Law.

Enforcement

Section 104 of the Retail Law provides for specification of civil penalty and conduct provisions within the Retail Law and Rules.

While civil penalty provisions have now been put forward for consultation, no conduct provisions have been specified in the second exposure draft. At the public forums held in Melbourne on 3 and 4 February, representatives of the RPWG noted their intention to consider specification of key retailer-distributor obligations within the national energy customer framework as conduct provisions. We support this direction. We would also encourage consideration of core provisions defining the relationship between customers and their retailers and distributors (such as obligations to supply and connect and notifications regarding customer classification, management of customers in hardship, and disconnections) as conduct provisions. This approach is consistent with that taken in other consumer laws, including the Trade Practices Act, which generally enable customers to institute proceedings for declaration that a person is in breach of an obligation.

We would also encourage the RPWG to look beyond the National Gas and Electricity Laws in their consideration of what orders might be made by a court where a breach of the Retail Law, Regulations or Rules has been established.

The current level of civil penalties proposed in s. 104(1) of the Retail Law is the same as that specified for the National Gas and Electricity Laws. The penalties available under the Trade Practices Act, and those under consideration for the Australian Consumer Law, provide a more appropriate benchmark for the purposes of the Retail Law and Rules. In a framework developed to protect consumers in their dealings with retailers of essential services and natural monopoly distributors, a penalty regime commensurate with that of national consumer protection laws would provide a stronger deterrent to non-compliant behaviours, the long-term financial benefits of which may well exceed the maximum penalties currently specified in s. 104.

For similar reasons, we direct the RPWG's attention to the provision for non-party redress under the Australian Consumer Law. While it is vital that the civil penalties attached to breaches of the Retail Law and Rules are adequate to deter undesirable conduct, a punitive order can not correct the impact of that conduct on affected customers. The inclusion, in s. 1304, of facility for an order for non-party redress akin to that in the Australian Consumer Law would allow the AER to seek, and a court to order, payment of redress, providing a remedy that both discourages further breaches of the Retail Law and Rules and directly addresses the impact of non-compliance.

Consequential changes to the Electricity and Gas Laws

The AER welcomes the inclusion of enforceable undertakings provisions in Part 13 of the Retail Law. This measure provides for co-operative and efficient solutions to identified compliance issues without recourse to confrontational and resource intensive civil proceedings. The AER notes SCO's intention to replicate these provisions in the Electricity and Gas Laws, and supports including these provisions as part of the consequential changes to those required as a result of the NECF.

The consequential amendments should also bring the Electricity Law enforcement provisions into line with those of the Gas Law, the Trade Practices Act and the Retail Law, by enabling the AER to take enforcement action against "any person". Currently under the Electricity Law, the AER can only take enforcement action against "relevant participants" as defined in the electricity regulations.

The amendments to the Electricity and Gas Rules to introduce the new frameworks for retail customer connections and credit support contemplate referral of disputes to the access dispute regimes in Part 10 of the Electricity Law and Part 6 of the Gas Law. For this to take effect, consequential amendments to the Gas Law will be required to allow the specification of access disputes in the Gas Rules. This is already permitted under s. 2A of the Electricity Law.

Thank you for the opportunity to comment on the Second Exposure Draft of the National Energy Customer Framework.

Yours sincerely

Michelle Groves
Chief Executive Officer

ATTACHMENT

Draft National Energy Retail Law		
Section	**Subject Matter**	**Comment**
Part 1 Preliminary		
Division 1 Citation and interpretation		
102	Defn. of "AER exempt selling regulatory function or power"	The definition of "AER exempt selling regulatory function or power" in s. 102 of the Law includes a decision to revoke an individual exemption, however, the Law and Rules are silent on the process for non-consensual revocation of an individual exemption. We note that rule 907(2) does require the AER Exempt Selling Guidelines to include information about procedures for applying for revocation of an individual exemption. Please refer to our comments below on rules 907 and 908.
104(1)	Civil penalty provisions	For the reasons outlined elsewhere in this submission, we recommend: ▫ classifying the following additional provisions as civil penalty provisions: 225(3), 314(2), 523, 526(2) ▫ removing the civil penalty classification from the following provisions: 1217
104(2)	Conduct provisions	For the reasons outlined elsewhere in this submission, we recommend classification of section 526(2) as a conduct provision (as well as a civil penalty provision).
Division 5 Application of this Law, the Rules and Procedures to forms of energy		
116	Application of Law, Rules and Procedures to Energy	The application of the National Energy Retail Market Procedures and the manner in which they are to be construed and applied to retailers and distributors is more appropriately determined in the NER and NGL, under which those procedures are made.
Part 2 Relationship between retailers and small customers		
Division 4 Market retail contracts for small customers		
217	Variation of market retail contract	We note that the Rules do not contain any requirements in relation to the variation of market retail contracts, and presume that this is intentional.
Division 5 Explicit informed consent		
223(5)(c)	Proceeding under section 1306	Section 223(5)(c) makes reference to proceedings under section 1306, however it has not been nominated as a conduct provision so it is not clear that proceedings for loss or damage may be taken by the original retailer.
Division 6 Customer hardship		
225(1)(c)	Customer hardship policies	To clarify the intent of this provision, we recommend that the obligation on retailers be extended to explicitly require them to implement, maintain *and comply with* the policy.
Division 8 Energy Marketing		
232	Energy marketing definitions	Should the definition of "marketing" be tied to intent? E.g. *intended* to result in a small customer entering into a retail contract, rather than *anything that may* result in it?

Division 9 Deemed customer retail arrangements		
235(1)(b)	Deemed customer retail arrangement	The words "previously current" are confusing and in any case redundant.
Part 3 Relationship between distributors and customers		
Division 2 Obligation to provide customer connection services		
302	Obligation to provide customer connection services	The note to this section allows Rules to provide that a retailer *may* arrange connection services – r. 403(3) *requires* this of retailers where there is an existing connection. This is the assumed outcome for most if not all small customers, but clarification may be useful.
Division 3 Customer connection contracts generally		
303	Kinds of customer connection contracts	The note to this section is not consistent with drafting of Chapter 5A of the NER or Part 12A of the NGR, which deal with "offers", which on acceptance become part of the relevant NERL contract. This may create the impression that a customer requiring a new connection has not one, but two contracts with the relevant distributor.
Division 5 AER approved standard connection contracts		
312 (also 306(4), 310(a), 311(5)	Formation of AER approved standard connection contract	It is not clear when an AER-approved standard connection contract commences. There is no provision for notice of the formation of an AER approved standard connection contract in the Rules, as contemplated by section 312(3). This is of concern if the intent is that a person who is already the customer of the distributor on a deemed standard connection contract under section 306 be transferred to an AER approved standard connection contract that becomes operative during the term of their initial contract. It appears from this Part that there are a number of possible commencement dates for an AER approved standard connection contract: ▫ For existing customers of the distributor: ○ for all customers in the relevant category at the point of AER approval (311(5)); or ○ for all customers in the relevant category on a date specified in the contract itself (312(1)), which may be later than the date of approval; or ▫ For new customers to the distributor who fall within the relevant category: ○ at the time the affected premises is re-energised or the customer commences to take supply (306(2) by way of 311(5)).
313(4)	AER approved standard connection contracts	The requirement to provide notice of the replacement or amended AER approved contract should be written in the active voice, so that it is clear that distributors must provide this notice.
Division 6 Negotiated connection contracts		
314(1)(a)	Negotiated connection contracts	314(1)(a) assumes that negotiated connection contracts will only apply to *new* connections under the NER or NGR. What if a new large customer moves into premises with an existing connection (purely energisation)? Or a negotiated contract ends and the customer wants to renegotiate another?
314	Negotiated connection contracts	314(1)(b) and 314(2) should apply to large customers, who are entitled under sections 302 and 306 to the deemed standard connection contract unless there is an applicable AER-approved standard connection

		contract. (See also 303(a)(ii), which makes it clear that the deemed standard connection contract is for both large and small customers).
Part 4 Small customer complaints and dispute resolution		
This Part is not appropriately limited to small customers – see in particular sections 403 and 404, and section 409.		
401(1)	Definition of ***relevant matter***	This section should refer to customers, not small customers, to leave room for differences in the jurisdiction of the energy ombudsman. The chapeau to the definition of ***relevant matter*** limits the scope of the entire definition to small customers, and not just the specific matters listed in (a)(iii), (iv) and (v).
401(1)(a)(vi)	Definition of ***relevant matter***	The reference to "or retailer" in the context of small compensation claims against distributors should be removed.
403	Standard complaints and dispute resolution procedures	This section should apply to all "NECF" customers as defined in section 105 of the NERL. The absence of appropriate internal mechanisms for complaints handling and dispute resolution will encourage undesirable levels of direct referrals to the regulator and jurisdictional authorities, where no reasonable attempt has been made to resolve an issue or complaint or dispute between the parties.
404	Complaints made to retailer or distributor for internal resolution	This section should apply to all "NECF" customers as defined in section 105 of the NERL. The absence of appropriate internal mechanisms for complaints handling and dispute resolution will encourage undesirable levels of direct referrals to the regulator and jurisdictional authorities, where no reasonable attempt has been made to resolve an issue or complaint or dispute between the parties. Section 404(5) could be drafted to apply "where applicable", to accommodate complaints that are not in relation to ***relevant matters***.
405	Complaints made or disputes referred to energy ombudsman	This section should refer to customers, not small customers, to leave room for differences in the jurisdiction of the energy ombudsman. It is not clear that the definition of ***relevant matter*** is limited to matters concerning small customers, as this section assumes – see comments above on 401(1).
406	Functions and powers of energy ombudsman	This section should refer to customers, not small customers, to leave room for differences in the jurisdiction of the energy ombudsman. It is not clear that the definition of ***relevant matter*** is limited to matters concerning small customers, as this section assumes – see comments above on 401(1).
407	Information and assistance requirements	The distinction between the ***energy ombudsman*** and the ***energy ombudsman scheme*** is important in this provision. We recommend that: ▫ 407(1) refer to provision of information and assistance to the ***energy ombudsman scheme*** on request by the ***energy ombudsman scheme*** ▫ 407(2) refer to the ***energy ombudsman***. As drafted, this section could be taken to require a request to come from the ***energy ombudsman*** (the appointed individual or Tribunal) before it must be complied with. These amendments would allow requests at case manager level, with recourse to the energy ombudsman only to be required in the event of dispute.
407(3)	Information and assistance requirements	There is no equivalent obligation on the ombudsman to share information with the AER. Reports from the energy ombudsman in each jurisdiction will be essential to the AER's compliance and performance monitoring functions. A provision allowing that exchange to take place will provide comfort to the AER and energy ombudsman and certainty and transparency to the market as to the fact of that exchange.

408	Retailers and distributors to be members of a scheme	This section should refer to jurisdictions in which a retailer or distributor has "***customers***", not small customers, to leave room for differences in the jurisdiction of the energy ombudsman.
409	Rules	This section should refer to "customer complaints and disputes", not "small customer complaints and disputes", to allow the Rules to make provision for all NECF ***customers***.
Part 5 Authorisation of retailers and exempt seller regime		
Division 1 Prohibition on unauthorised selling of energy		
501	Requirement for authorisation	Section 501 requires retailers (other than exempt sellers) to register as a participant of a wholesale energy market. The AER considers that there may be situations where it is appropriate to require large onsellers of energy to obtain a retailer authorisation. The current drafting of section 501 may prevent this as it would impose a potentially large and unnecessary cost of wholesale market registration on those businesses. Section 501 should be redrafted so that the obligation to register in a wholesale energy market is only imposed on those businesses that purchase, or intend to purchase, wholesale energy.
501(1)(a)	Requirement for authorisation	This provision states that a person must not engage in the activity of selling energy unless the person is the holder of a current retailer authorisation. The words 'is the holder of' are unclear. Of concern is that the provision may be read as allowing a retailer to sell energy where their application has been granted but the authorisation has not yet been issued. To provide clarity, it should state '(a) the person has been issued with, and holds, a current retailer authorisation and [remaining text unchanged]'. A subsequent change may be required in section 516 to the effect of 'where the AER grants a transfer application, the AER is taken to have issued the retailer authorisation to the transferee'.
501(2)	Requirement for authorisation or exemption	The intent of this subsection appears to be to require registration for direct purchase through the wholesale market. Rule 502 provides for a ***NEM Representative*** as an alternative to this, which should be recognised in this section.
503(5) & 653(3)	Definition of 'associate'	The basic definition of 'associate' is provided in section 11 of the *Corporations Act 2001*. A modified definition is provided in section 12 in relation to Chapters 6 to 6C of the Corporations Act and for certain specified matters. The wording of sections 503(5) and 653(3) of the Law allows for reference to this modified definition. It is unclear, however, how the modified definition of 'associate' applies to the Retail Law
Division 2 Application for and issue of retailer authorisation		
506(1)	Grant of an authorisation application with conditions	The AER considers that this provision would be clearer by deleting the words 'on the retailer authorisation'. These words imply that the authorisation is already in existence when this is not the case until it has been issued by the AER.
506, 509	Grant of an authorisation application with conditions and commencement of	Section 509 requires that, where a retailer authorisation is granted with conditions relating to the entry criteria, the authorisation cannot be issued until the applicant satisfies the AER that the conditions have been met. This provision appears inconsistent with section 506(2) which states that a condition may provide that the retailer

	retailing activity	authorisation only authorises the selling of energy to customers on or after the condition is satisfied. If the intention of the Retail Law is that a retailer cannot begin selling energy until an authorisation is issued, section 506(2) is unnecessary and should be deleted.
507(b)	Notice of the grant of an authorisation application	This provision can be read to be authorising the retailer for the sale of energy from the time of the notice—rather than just indicating the forms of energy to which the authorisation will apply. To provide clarity, is should state '(b) stating whether the application is granted for the sale of electricity or gas or both, as the case requires; and'.
507(c)	Notice of the grant of an authorisation application	The AER considers that this provision would be clearer by deleting the words 'on the retailer authorisation'. These words imply that the authorisation is already in existence when this is not the case until it has been issued by the AER.
512	Variation of authorisations	This section should include a provision for the automatic amendment of an authorisation when required to comply with a change in the Retail Law
513	Form of energy authorised to be sold	Section 513(1) provides for the AER to grant 'dual fuel' authorisations. It is unclear how the Retail Law intends to operate where the AER seeks to revoke an authorisation to sell one form of energy under a dual fuel authorisation. This is also a consideration where there is a RoLR event that affects only part of a retailer's business or where a retailer seeks to transfer or surrender an authorisation for one form of energy under a dual fuel authorisation. The AER supports separate retailer authorisations to sell electricity and gas respectively, as this would simplify the operation of the transfer, surrender and revocation provisions. It would also prevent arbitrary outcomes under the RoLR provisions according to whether a retailer had separate gas/electricity authorisations or a dual fuel authorisation.
514-517	Transfer of retailer authorisation	Consideration could be given to the possibility that the AER could assess changes in ownership - for example, where there is a change in ownership of a class of shareholder of greater than 20% or any significant change in structure altering effective control of the business. The AER would provide guidance to parties on whether it considers an application for approval of a transfer is required or whether simple notification of the change is sufficient.
516(5), 518(5) & 522(7)	Imposing conditions on a transfer, surrender or revocation	These sections allow the AER to require a person who is not otherwise subject to a specified requirement in the energy laws to abide by the requirement (with any modification). They also appear, however, to allow the AER to impose a condition that requires the relevant person to abide by an obligation in the energy laws (with any modification) which the person is already subject to in the absence of the condition. If this is the intention of the sections, there will potentially be two inconsistent requirements the person has to comply with, one imposed by the energy laws and the other imposed in the condition. In this situation, it is not clear which requirement takes precedence.
Division 3 Transfer of retailer authorisation		
516	Deciding transfer application	This provision allows the AER to impose conditions on a transfer, but the consequences of non-compliance with a condition are not clear. (For example: section 519 requires compliance with conditions imposed by the AER for transfer of customers on surrender of an authorisation; s526(3) allows the AER to deal with a breach of an exemption condition as if it were a breach of the Rules.)

Division 5 Revocation of retailer authorisation		
522(4)	Revocation process	A retailer's response under section 522(4) showing cause why the AER should not revoke its authorisation should be required to be in writing.
Division 6 Exemptions		
526	Conditions (Exempt sellers)	The AER will be reliant on the umbrella provision in section 526(2) as a basis for enforcing compliance by exempt sellers with any conditions imposed under this section. Given the uncertainty in the power of energy ombudsman to deal with matters concerning exempt sellers, enforceability is of particular importance. For that reason, we recommend that the NERL attach a civil penalty to section 526(2), and a conduct provision to capture the allowance for damages in section 1306 for isolated instances, in relation to which civil penalties may not be a proportionate response, or an adequate one in terms of compensating the affected consumer. For clarity and consistency with the language used throughout Part 13 of the NERL, section 526(3) should be amended to refer to "this Law, the National Regulations or the Rules".
Part 6 Retailer of last resort scheme		
Division 1 Preliminary		
602	Definitions	As a consequential amendment, in the NERL "ROLR cost recovery scheme distributor payment determination" should be defined in section 602 (by reference to section 649(1)) of the NERL.
Division 2 Registration of RoLRs		
606	Registration of RoLRs	As the process of seeking expressions of interest for retailers to act as a retailer of last resort is untested in the national energy markets, it may be preferable to move some of the more detailed requirements of Part 6 to the Retail Rules.
Division 3 Appointment of designated RoLRs		
608	Designation of registered RoLR	There are no obligations in the Retail Law or rules to ensure that a retailer which is appointed RoLR for an apprehended ROLR event is subject to any confidentiality obligations surrounding the potential failure of another retailer. There should be an ability for the AER to require adherence to confidentiality obligations where information about the impending failure is not in the public domain.
Division 4 Declaration of RoLR event		
612(1)	Issue of RoLR notice	It is unclear why the AER must believe "on reasonable grounds" that a RoLR event has occurred. The events listed in s. 602 seem fairly clear as to when they occur, and under s. 625 AEMO has an obligation to advise the AER of an event which gives rise to a RoLR event. The wording should be changed to "When the AER considers that". Further, AEMO's obligation in section 625(1)(b) and retailers' obligations in section 625(2)(b)

		should be taken account of in the drafting of section 612(1).
612(3) and 617(2)	Issue of RoLR notice	Subsection 3 of 612 and section 617(2) contemplate the AER giving a notice to Minister(s) in relation to a RoLR event. These sections appear to contemplate that measures beyond the default appointment regime might be necessary to preserve the integrity of the market. In our 13 November 2008 submission we urged the RPWG to consider what such emergency measures might involve and how they could be enacted in the market. We anticipate that the RPWG will be providing more instruction on this issue in the near future.
Division 8 RoLR cost recovery schemes		
649	RoLR cost recovery scheme	As a general comment, it is considered that the proposed RoLR cost recovery scheme should be refined to provide clarity regarding the cost recovery process and in particular, to ensure that the provisions provide for the policy intent of the scheme. In relation to the specific provisions, we note that the RoLR cost recovery scheme, while still at the discretion of the AER, provides that costs incurred in preparation of RoLR events may be included. The AER will be required to consider this on a case-by-case basis, however the AER will need to take into account whether RoLR capability costs should be passed on to customers when many of these RoLRs, particularly voluntary RoLRs, may never take on the role. The RoLR cost recovery division currently does not also specify how certain costs of a RoLR event are to be recovered, although the explanatory material suggests costs "possibly" will be recovered through an up-front fee. We consider that up-front fees should, if they are to be allowed at all, be restricted to the charging of administrative costs. The reference in section 649(4) to "their liability" is unclear – is it referring to retailers' liability under a RoLR cost recovery scheme, or to the distributor's liability to make payments towards the costs of the scheme? Is the AER's determination meant to set out how much each retailer must pay the distributor, or does the distributor determine this? Rule 1122 suggests that liability is determined according to the retailer's customer base. However, if retailers are to make payments to distributors, it may be more appropriate to determine liability in proportion with a retailer's liability for network charges to a particular distributor. Section 649(3) should state that all retailers which use the relevant distribution system are required to make payments.
Division 9 Miscellaneous		
653	Application for authorisation by a failed retailer	Section 653(1)(b) provides that the AER can grant a retailer authorisation to a failed retailer (or an associate) on the condition that the applicant pay for some or all of the costs of the prior RoLR event. It is unclear how this provision would operate in practice. If it is intended that this payment is meant to be used to compensate those persons who incurred costs under the prior RoLR event, the AER is concerned that it will not be feasible to identify and distribute the compensation to those persons who have borne the final cost (for example, where

		retailers have passed on the cost to customers). If the provision is meant to act as a penalty, this should be clarified.
654(3)(e)	Immunity	The immunity provision in s. 654(3)(e) purports to provide immunity to officers or employees of the AER. However, the AER does not have any employees. Under section 44AAC of the Trade Practices Act, staff assisting the AER are employed by the ACCC. The immunity should be extended to staff engaged by the ACCC under s. 27 of the Trade Practices Act and assisting the AER under section 44AAC.
Part 7 Small compensation claims regime		
Division 1 Preliminary		
704 - 707	Compensable matters – meaning; Maximum, Minimum and Median amounts - meaning	▫ What is meant by "local instrument"? Where must a local instrument be published? How are customers and distributors to identify and locate them for the purposes of administering this regime? ▫ Maximum, minimum and median amounts are more appropriately determined by jurisdictions opting to apply this regime, with default amounts prescribed if necessary in the regulations.
708	Repeat claimant – meaning	The repeated claims maximum number is more appropriately determined by jurisdictions opting to apply this regime.
709	AER determinations of maximum, minimum and median amounts, repeated claims maximum number	709(b) requires the AER to have regard to current or proposed amounts. The AER's role in determining these amounts is triggered by their absence (i.e. where there is no current amount). There is no provision for proposing an amount.
Division 3 Claims process		
717(1)	Claims for amounts in the discretionary range	This section should only apply where it is established that a claimable incident occurred – see 716(1)(c) for equivalent in relation to claims for mandatory amounts. The remaining subsections of s 717 would force payment in the absence of an established incident.
720	Rejection of claims	This section should reference 717 also – see above on 717(1).
Part 8 Functions and powers of the AER		
Division 4 Miscellaneous matters		
814	Use of information provided under a notice under Division 2	While it is appropriate to limit the AER's power to gather information under section 804 of the Retail Law to matters under the Retail Law and Rules, we are concerned that the corresponding restriction on the use of this information in section 814 has the potential to obstruct or prolong investigations in areas where the energy laws intersect. We suggest redrafting this section to permit the AER to using the information for any purpose connected with the performance or exercise of a function or power of the AER.
815	AER to inform certain persons of decisions	The AER considers that where a consumer's complaint is addressed through referral to the recognised energy Ombudsman scheme in their jurisdiction, the AER should not be required to notify the person in writing of a decision not to investigate the breach. In some circumstances thousands of consumers may be affected by a potential breach.
Part 12 Compliance and performance		

Division 1 AER compliance regime		
Suggest inclusion of a note similar to that at the commencement of Part 12, Division 2, to clarify the intent that the AER is to consider retailer and distributor compliance (and any related reporting obligations) with related provisions of the NER/NGR and procedures developed under them together with related provisions of the NECF.		
1201	Obligation of AER to monitor compliance	This provision unnecessarily duplicates the core function in section 801.
1204(2)(a)	Compliance audits by AER	A reference to "Division 6 of Part 2 *of this Law*" would be clearer.
1208	Compliance reports	A provision that "The AER ***compliance report*** may form part of similar reports under this Law or the NEL or NGL" would be consistent with provisions in 1210 and 1215 that allow for consolidation of AER Compliance Procedures and Guidelines and AER Performance Reporting Procedures and Guidelines with similar guidelines under the NERL, NEL or NGL, and would provide similar benefits to the market.
1210(2)	AER compliance procedures and guidelines	This subsection should remain permissive. We need to find out where the new "musts" are going. Current distribution of "must" and "may" in 1210 is appropriate.
1210(3)	AER compliance procedures and guidelines	This provision should read "date or dates".
Division 2 AER performance regime		
1213, 1214	Retail market performance reports	A provision that "The ***retail market performance report*** may form part of similar reports under this Law or the NEL or NGL" would be consistent with provisions in 1210 and 1215 that allow for consolidation of AER Compliance Procedures and Guidelines and AER Performance Reporting Procedures and Guidelines with similar guidelines under the NERL, NEL or NGL, and would provide similar benefits to the market. This is particularly the case in relation to section 1214(d), which requires the AER's ***retail market performance report*** to include a report on the performance of distributors by reference to distributor service standards and associated GSL schemes. These are already appropriately covered in the regulatory and performance reporting frameworks in the NER and NGR. This is because there is a direct link between the regulatory revenue allowance approved for (and spent by) each business and the service standards it is required to meet (see, for example, the opex (6.5.6(a)) and capex (6.5.7(a)) factors in chapter 6 of the NER). If the regulatory and performance reporting frameworks in the NER and NGR are not considered to adequately capture the desired information, the AER should have the flexibility to decide where best to report this information (e.g. in annual DNSP regulatory reports rather than the retail market performance report). This captures the benefits of combining related reports as well as related reporting requirements. This flexibility will also allow the AER to deal with the different reporting periods (financial year vs. calendar year) that jurisdictions have assigned to their distribution service standards, which would otherwise compromise the AER's ability to meet the NERL obligation to report on a financial year basis by 30 November deadlines (or require overlapping reporting requirements at cost to businesses and therefore consumers). In any case, consideration should be given to whether it is appropriate for the AER to be required to monitor,

		enforce or report on compliance with jurisdictional performance standards to the extent that a compliance and reporting function is retained by the jurisdictional regulator. Duplication of these functions both increases regulatory burden and dilutes accountability. The AER can cooperate with jurisdictional regulators to ensure that all information is readily accessible to interested parties e.g. by providing references in reports, links to websites etc.
1215(3)	AER performance reporting procedures and guidelines	This provision should read "date or dates".
1216	National hardship indicators	Suggest adding provision that the National Hardship Indicators may form part of the AER performance reporting procedures and guidelines (given that their purpose is to measure performance).
Division 3 Miscellaneous		
1217	Obligation to comply with National Energy Retail Market Procedures	Section 1217 of the NERL imposes an obligation on retailers and distributors to comply with the National Energy Retail Market Procedures. ▫ Section 102 defines the National Energy Retail Market Procedures as including B2B, MSATS and metrology procedures and other procedures or instruments made under the NER, and Retail Market Procedures made under the NGR. ▫ Section 1217 is a NECF civil penalty provision – see section 104. ▫ Rule 515, which requires retailers and distributors to act in accordance with the National Energy Retail Market Procedures, also carries a civil penalty – see National Regulations Sch. 1 ▫ Section 1304(1) provides that a Court may make an order, on application by the AER on behalf of the Commonwealth under the NECF, declaring that a person is in breach of a provision of the National Energy Retail Market Procedures. (The procedures are not otherwise referenced in part 13.) The procedures identified under the definition of National Energy Retail Market Procedures are already binding on retailers and distributors under the NER and NGL. See NER 7.2.4(b) (B2B procedures), 7.2.5(d) (metrology procedures) and 7.2.8(d) (MSATS procedures), and section 91MB of the NGL (Retail market procedures). It is not necessary to impose a second obligation on the same participants in the NECF. The obligations to comply with the identified electricity procedures already carry civil penalties under the National Electricity Law (see schedule 1 of the National Electricity Regulations). The NERL provision and classification add nothing to the enforceability of the procedures, and create undesirable duplication and room for inconsistency over time. When provisions relating to gas Retail Market Procedures were introduced to the national framework, an active decision was taken **not** to assign civil penalties to a breach of the Retail Market Procedures. Section 91MB of the NGL sets out a process by which AEMO (and not the AER) will assess the materiality of any breach of the Retail Market Procedures and may, if materiality is established, direct the person responsible to rectify the breach and/or take measures to ensure future compliance. It is only a breach of that direction (and not a breach

		of the procedures themselves) that attracts a civil penalty. The intention of these provisions was that the AER would not be empowered to take action on a breach of the Retail Market Procedures without a referral from AEMO. The approach taken in the NERL is inconsistent with the NGL and with policy decisions made in the amendment of the NGL. If there has been a change in position on this issue, it is more appropriately dealt with in the NGL. Inconsistency between the NGL and the NERL creates confusion for stakeholders and for the AER and AEMO as to how a breach of the procedures is to be treated, and opens the door to forum shopping. Recommendations: 1. That section 1217 and related references to the National Energy Retail Market Procedures in sections 102, 104 and 1304(1) and Rule 515 be removed. 2. That, if it is considered necessary to include an informational provision confirming that the NECF does not apply to the exclusion of other energy laws (as defined in section 102), it be cast as such, and not as an obligation. (Rule 254 of the NERR provides a good model for informational provisions. Suggest: *This Law, the National Energy Retail Regulations and National Energy Retail Rules, apply in addition to the duty of retailers and distributors to comply with the NEL, NER, NGL and NGR, and procedures or instruments made under them.*
Part 13 Enforcement		
Division 3 Proceedings for breaches of this Law, the National Regulations or the Rules		
1304(1)	AER proceedings for breaches of this Law etc	See comments above on 1217 and NECF obligation to comply with National Energy Retail Market Procedures, which are already (appropriately) enforceable under the NEL and NGL.
1311	Persons involved in breach of civil penalty provision or conduct provision.	This section prohibits conduct that aids, abets, counsels, procedures or knowingly contributes to breaches of civil penalty and conduct provisions, with the effect that a person who does so its taken to have breached the provision itself. Section 1302 allows the AER to institute proceedings in relation to any breach of the Law, Regulations or Rules (other than breach of an offence provision). The scope of this section should be extended to correspond with that of section 1302, and should not be limited to civil penalty and conduct provisions.

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Civil penalty and conduct provisions:

- For the reasons outlined elsewhere in this submission, we recommend:
  - classification, in the National Energy Retail Regulations, of the following provisions as civil penalty provisions: 108(3), 110(3), 210(3), 304, 305
  - removing the classification of the following provisions as civil penalty provisions in the National Energy Retail Regulations: 408(1), 515, 1003(2), 1003(3)
- Consideration should be also given to the assignment of conduct provisions to Part 5 of the NERR, to allow distributors or retailers to initiate proceedings independently of regulatory intervention. This approach is appropriate for bilateral commercial arrangements between regulated entities.

Section	Subject Matter	Comment
Part 1 – Preliminary		
Division 2 Consumption threshold matters		
105(5)	Business premises – aggregated application of consumption thresholds	The intent of this sub-rule appears to be to prohibit aggregation in the absence of an agreement under 105(2). We suggest rephrasing to make this clearer, particularly when a civil penalty is attached: *The retailer must not treat the upper consumption thresholds as applying to two or more premises of a business customer on the basis of the aggregation of premises unless the business customer and the retailer have entered into an agreement to that effect under 105(2).*
Division 3 Classification of customers		
108(3), 110(3))	Retailer/distributor reclassification of customers	No civil penalties have been attached to notifications of customer reclassification. This notification is important given the potential impact on contracts available to the customer – particularly where AER approved standard distribution contracts displace the deemed connection contract, or a customer becomes a small market offer customer (thereby losing entitlement to the standing offer). Reclassification from small to large may also affect access to the relevant ombudsman scheme (if that scheme is not authorised to deal with large customer issues).
109-111	Distributor classification decisions	Ombudsman schemes should be empowered to resolve any disputes about distributor classification decisions, including where a customer has been reclassified as "large" and therefore may be outside the jurisdiction of the relevant Ombudsman scheme.
Part 2 Customer retail contracts		
Division 2 Market retail contracts – terms and conditions generally		
204(2)(a)	Application of provisions of these Rules to market retail contracts	The cross reference in 204(2)(a) should be to section 216(1) of the NERL, not just to section 216(1)(a). Individual provisions in the Rules have been drafted so that those specific to small customers are clearly identified as such. The current drafting will override the generality of rule 204(1), limiting the application of rule 204(1) to market retail contracts for small customers, where the NERL allows the rules to set out minimum requirements that are to apply in relation to the terms and conditions of any market retail contract (see section 216(1)(b)).
Division 3 Customer retail contracts – pre-contractual procedures		
205(3)	Pre-contractual duty of	205(3) is unnecessarily restricted to the offer of a market retail contract. A retailer who is not the designated

	retailers	retailer for premises may still offer its own standing offer to a customer.
Division 4 Customer retail contracts - billing		
210(3)	Estimation as a basis for bills	The obligation to inform a customer, on the customer's bill, that the bill is based on an estimation should carry a civil penalty. This is consistent with treatment of other obligations in relation to the contents of bills for SRC and MRC (see 213(1) and (2)). Without this information, a customer will not know that their rights under rule 210(4) or 209(2) have been triggered.
211(1)(c)	Bill smoothing	Consideration should be given to how the requirement to re-estimate consumption every 6 months on the basis of any actual meter reads or actual metering data will interact with the minimum obligation to ensure (on a best endeavours basis) that actual readings are carried out only once every 12 months (see rule 209(2)).
213(1)(v)	Contents of bills	The requirement to have a separate 24 hour telephone number for fault enquiries and emergencies should be a more explicit requirement to include the 24 hour telephone number established by the customer's distributor under rule 409 (as contemplated by the Note to rule 507).
215	Apportionment	The apportionment arrangements for dual fuel customers are unclear. Usually, if the customer does not specify otherwise, electricity charges are paid first.
217	Billing disputes	217(1)-(6) (and 217(7) "where applicable") should cover large and small customers, so that a retailer must review a bill if requested to do so by any of its customers. See comments below on the need to extend the standard complaints and dispute resolution procedures to cover both small and large customers.
223	Request for final bill	This rule makes no provision for whether or not a retailer may charge a customer for an otherwise unscheduled meter reading and bill.
Division 5 Customer retail contracts – security deposits		
225(1)(a), (6)	Requirement for security deposit	Unless the intent is that no customer retail contract need be offered by a retailer until a review of a bill is resolved, 225(1)(a)(i) and (ii) will act in conjunction with 225(6) to prevent a retailer from requiring a security deposit where a bill is under review regardless of the outcome of that review. This could encourage customers to initiate frivolous reviews to avoid payment of security deposits.
229	Use of security deposit	There is no provision in this rule (or in rule 230) for how the amount of the security deposit (together with accrued interest) that exceeds the amount owed to the retailer is to be returned to the customer.
Division 6 Market retail contracts – complaints and disputes		
231	Small customer complaints and dispute resolution information	This requirement should apply to all market retail contracts, not just to small customers (noting that 231(1)(d) would only apply where the relevant energy ombudsman had jurisdiction to deal with large customers).
Division 8 Customer retail contracts - termination		
234(1)(c), (d) *(235(1)(d), (e))*	Termination of standard retail contract	Wording of these clauses is different to that in clause 4.2(a)(iii) and (iv) of the model terms and conditions ["starts receiving customer retail services" vs. "starts to purchase energy"]. Is the intention simply that one contract terminates when the other commences? *(Note that rule 235(1)(d) and (e) use different language again in relation to termination of a market retail contract, referring to "when the provision of customer retail services to the premises commences".)*
234(2)	Termination of standard	This rule makes no provision for whether or not a retailer may charge a customer for an otherwise unscheduled

	retail contract	meter reading and bill. It is not clear that the prohibition on termination fees would cover such a charge.
Division 10 Other retailer obligations		
240	Referral to interpreter services	▫ It is not clear why this provision is limited to residential customers. ▫ Is there an equivalent requirement for a distributor to refer customers to an interpreter service?
241	Provision of information to customers	Retailers (and distributors, where relevant) should be required to display information on their website in a manner that ensures that it is prominent / readily accessible to consumers.
Division 11 Retail marketing		
245(3)	Form of disclosure to small customers	Is provision of information by email information provided electronically, or information provided in writing? Presumably if the required information was provided in a single written disclosure statement by email that would suffice, and further provision of that information under 245(3) would not be required.
Part 3 Customer hardship and payment difficulties		
304, 305	Payment by Centrepay, Review of hardship customer's customer retail contract	These are the only two hardship provisions that don't attract civil penalties. For consistency in treatment of like provisions, we recommend that civil penalties be attached to obligations under rules 304 and 305.
Part 4 Relationship between distributors and customers		
With the exception of rule 403, this part should capture contracts formed on acceptance of a standing offer for a basic connection service or an offer for an AER-approved standard connection service under the new chapter 5A (NER) and part 12A (NGR).		
Division 1 Preliminary		
401	Application of this part	401(a) suggests that this part is specific to existing connections. In terms of content, only the application process in rule 403 is specific to existing connections. Rules 404-414, which relate to the ongoing relationship between a distributor and a customer after a connection is in place, should apply to all customers. See section 306(1) of the NERL, cl. 5A.F.4 of the NER amendments, and rule 119V of the NGR amendments. (By operation of cl. 5A.F.4 of the NER amendments, and rule 119V of the NGR amendments, the deemed standard connection contracts and AER approved standard connection contracts references in sub-rules 401(b) and (c) should capture contracts formed on acceptance of a standing offer for a basic connection service or an offer for an AER-approved standard connection service under the new chapter 5A (NER) and part 12A (NGR))
402	Variation or exclusion of provisions of this Part by AER approved standard connection contracts	This Part contains basic obligations that should be reflected in all standard connection contracts. The discretion to exclude or vary them in a standard connection contract will make it difficult for the AER to achieve this in practice through its approval role – by virtue of this rule a proposed standard connection contract that excluded or varied provisions of Part 4 would be technically compliant.
Division 2 Customer connection services		
404(1)	Provision of information to customers	This rule should include a requirement to publish the 24 hour fault information and reporting telephone number established under rule 409.
Division 4 Negotiated connection contracts		
406	Small customer complaints and dispute resolution	This rule should apply to large customers also (with referral to the energy ombudsman "where applicable", noting that not all energy ombudsman schemes may be empowered to deal with large customer complaints).

	information	
Division 5 Distributor obligations to customers		
408(1)	Distributor service standards and GSL schemes	This section imposes an obligation on distributors to comply with any applicable distribution service standards and GSL schemes. Schedule 1 of the National Regulations makes this a civil penalty provision. The primary obligation to comply would no doubt be in the relevant jurisdictional instrument – if this is the case, that is where they should be enforced and where any penalty should be determined. Consideration should be given to whether it is appropriate for the AER to be required to monitor, enforce or report on compliance with jurisdictional performance standards to the extent that a compliance and reporting function is retained by the jurisdictional regulator. Duplication of these functions both increases regulatory burden and dilutes accountability.
Note under 408	GSLs	The note under clause 408 suggests that guaranteed service level (GSL) payments are found only in jurisdictional energy legislation. GSL payments are also a feature of the national energy legislation and may be set by the AER (see for example clause 6.6.2 of the National Electricity Rules, which allows the AER to set GSLs as part of its service target performance incentive scheme). The AER's distribution Service Target Performance Scheme includes GSL payments at clause 6, though these will not be implemented while a distributor is subject to a jurisdictional GSL scheme.
410	Provision of information	The equivalent provision for retailers (rule 216: historical billing information) requires provision of customer information in relation to the previous 12 months free of charge, but allows a reasonable charge for data requested for an earlier period or more than once in any 12 month period. Suggest similar provision here.
Division 6 Distributor interruption to supply		
414(a)	Unplanned interruptions	The requirement to provide an estimate of the time when supply will be restored should be a requirement to provide a time estimate for each affected suburb or geographic area, as customers do not usually know their nearest zone substation.
Part 5 Relationship between distributors and retailers – retail support obligations		
Consideration should be given to the assignment of conduct provisions to Part 5 of the NERR, to allow distributors or retailers to initiate proceedings independently of regulatory intervention. This approach is appropriate for bilateral commercial arrangements between regulated entities.		
Division 1 Preliminary		
502	Definitions	▫ Should the definition of ***distribution charges*** include connection charges? The intent of the new connections frameworks (as explained at the public forum on 4 February 2010) is that recovery of these charges through the retailer will be an option available to distributors, in which case this part should come into play. ▫ The definition of ***NEM Representative*** suggests that an authorised retailer need not be registered as a Market Participant with AEMO. This is inconsistent with (but preferable to the narrower requirement in) section 501(2) or the NERL.
Division 3 Information requirements		
508	Information on planned	This rule should include an equivalent to 509(2), so that information made available by the distributor is not

	interruptions	required to distinguish between customers of the retailer and customers of other retailers.
Division 4 Shared customer enquiries and complaints		
510(3), 511(3)	Enquiries or complaints relating to the retailer/distributor	Rules 510 and 511 (and Part 5 generally) should not be not specific to small customers – they should cover large shared customers as well. See comments on section 403 of the NERL in relation to the need to extend the requirement for standard customer complaints and dispute resolution procedures developed by retailers and distributors to cover both large and small customers.
Division 5 De-energisation and re-energisation of shared customer's premises		
515	Re-energisation	▫ The obligation in rule 515 to comply with the National Energy Retail Market Procedures duplicates that in section 1217 of the NERL. Civil penalties have been attached to both. ▫ The obligations in rule 515 and section 1217 to comply with the National Energy Retail Market Procedures create unnecessary and undesirable duplication of existing obligations in the NER and NGL. Classification of these provisions as civil penalty provisions in the NECF duplicates the classification of the relevant provisions in the NER, and is inconsistent with the classification of the relevant provision of the NGL. See comments above on section 1217.
Part 6 De-energisation (or disconnection) of premises		
Division 2 Retailer-initiated de-energisation of premises		
606(1); 607(1)(d), (e); 609(2)	De-energisation for not paying security deposit/denying access to meter/non-notification by a move-in or carry-over customer	▫ 606(1)(b), 607(1)(e) and 608(2)(b) rely on the expiry of a period specified in a written notice, but 606(1)(a), 607(1)(d) and 608(2)(a) do not require specification of any such period in the written notice. ▫ Suggest extension of definition of "reminder notice" in rule 603(1) to cover written notices in relation to each of these provisions, and use of consistent terminology for these 'first stage' notices in this Part.
610(1)(c)	When retailer must not arrange de-energisation	610(1)(c) should be amended to clarify that customers who have applied to join a retailer's hardship program, and are waiting for acceptance into the program, cannot be de-energised.
612	Request for de-energisation	There is no provision as to whether or not the retailer can charge a fee for arranging an otherwise unscheduled meter reading or bill.
Division 3 Distributor de-energisation of premises		
614(2)	When distributor must not de-energise premises	In relation to 614(1)(a), this exception should only apply where the request for de-energisation is made in writing.
Division 4 Re-energisation of premises		
616(2)	Obligation on distributor to re-energise premises (where de-energisation was not retailer-initiated)	The status of a customer re-energised under this sub-rule should be clarified. Are they to be on the same deemed retail arrangements that would apply to a carry-over customer?
Part 7 Life support equipment		
702(2)	Retailer obligations (Cessation of requirement for life support equipment)	Notification from the customer to the retailer that life support equipment is no longer required at the premises should be in writing.

Part 8 Prepayment meter systems		
804(3)(b)	Trial period	The requirement to provide information about and a general description of customer retail contract options should explicitly include information about a small customer's right to the retailer's standing offer.
806(1)	Consumption information to be provided	Equivalent clauses in relation to non-prepayment meter customers provide for provision of consumption information periods for earlier periods at a charge – should these be included here also?
807	Limitation on recovery of debt.	If this rule is intended to cover debt related to the sale of energy (so that debt is not covered by rule 818 – Billing for other goods and services), suggest a more direct provision that prohibits recovery of debt for services other than pre-paid energy services though customer or emergency credit paid under a prepayment meter market retail contract, to allow the contract to deal with recovery of debt in other ways – e.g. through a direct invoice or bill to be paid in arrears.
816(2)(d)	Payment difficulties and hardship	Rule 816(2)(d) should specify that retailers are obliged to provide customers with details about the hardship program and payment plans available.
816(3)	Payment difficulties and hardship	Suggest expanding this provision to require maintenance of verifiable records sufficient to demonstrate compliance with this rule.
821(6)	Deemed customer retail contracts	This subsection should exclude carry-over customers who have not taken appropriate steps to enter into a new contract despite the retailer having complied with all requirements of rule 237 (retailer notice of expiry of market retail contract). *(In the absence of such provision, rule 820(2) will not apply to carry-over customers.)*
822	Notice requirements	To clarify its application, heading of this rule should be changed to "*Notice requirements for deemed customer retail arrangements*".
Part 9 Exempt selling regime		
Division 2 AER power to exempt		
902	Individual exemptions	Rule 902(2) outlines that an individual exemption comes into force from the date on which the AER issues the instrument of exemption. We suggest provision be made for the AER to specify an alternative commencement date in the exemption, and if no commencement date is specified, the exemption would come into force on the date it is issued.
903(3), 904(3)	Determinations	The relationship between exempt selling "determinations" (rules 903 and 904) and Exempt Selling Guidelines (rule 907) is unclear. Is the intention of rule 907(2)(e) that all determinations of classes of deemed exemptions and registrable exemptions, and associated conditions, must be replicated in the Exempt Selling Guidelines?
Division 4 Provisions relating to individual exemptions		
907(2)(a), 908(1)	Application for individual exemption	Rule 907(2)(a) states that the AER Exempt Selling Guidelines must include information on the procedures for applying for the revocation of an individual exemption. However, section 908(1) only contemplates that a person may apply to the AER for an individual exemption or the variation of an individual exemption and not a revocation. Further, the Law and Rules are silent on the process for non-consensual revocation of an individual exemption. As it is more costly and complex for the AER to enforce conditions of individual exemptions where no civil penalty applies to non-compliance, we consider it important for the Law and/or rules to address the process for revocation of an individual exemption for non-compliance with the conditions imposed on the exemption.

910(2)	Deciding application	From this provision, we infer that the grounds for refusing an application for an individual exemption or variation of an individual exemption are that the AER is not satisfied that the application meets applicable requirements of the Law and the AER Exempt Selling Guidelines. Is this the intention?
912(1)	Form of energy	Form of energy is defined in the Law as "electricity or gas or both". We would prefer to administer dual fuel exemptions under separate electricity and gas exemptions to avoid potential issues.
915	Issue and public notice of individual exemption	Rule 915 addresses the issue and publication of the grant of an individual exemption or variation of the exemption. Should it also cover revocation of an individual exemption so that an instrument for this event is issued to the exempt seller, and published on the AER's website?
917(2)	Public Register of Authorised Retailers and Exempt Sellers	Rule 917(2) allows the AER to include "other particulars and information" relating to authorised retailers and exempt sellers on the Public Register. Will the AER have the ability to obtain up-to-date information from exempt sellers on these matters, or will it be necessary to rely on information provided at the time of an application?
Part 10 Retail market performance reports		
1003(2), 1003(3)	Contents of retail market performance report – retail market activities review	These rules impose obligations on the AER, and should not be classified as civil penalty provisions.
Part 11 Retailer of last resort schemes		
Division 4 RoLR Cost recovery schemes		
1122	Decision on RoLR cost recovery	In addition to our comments on s. 649 of the Retail Law, the AER considers rule 1122 should be amended to provide for the AER to assess any proposed efficient costs of the RoLR against any potential or realised gains the RoLR may receive from the RoLR scheme. To provide for this, it is proposed that the following two amendments are provided for to rule 1122: *Amendment 1:* In rule 1122(2)(a) of the draft National Energy Retail Rules, insert the word "net" before the words "efficient costs". *Amendment 2* In rule 1122 add a new rule 1122(3a) which provides: "(3a) For the purposes of rule 1122(2)(a), the net efficient costs are to be determined by setting off any gains derived (or expected to be derived) from the ROLR scheme against the efficient costs incurred with respect to the ROLR scheme."

Draft Model Standard Retail Contract – Schedule 1		
Glossary	Definitions	The Retail Law definition of "customer retail services" should be included in the definitions in the standard retail contract.

Deemed standard connection contracts – Schedule 2		
Glossary	Definitions	The Retail Law definition of "customer retail services" should be included in the definitions in the standard retail contract.
General	Faulty meters and testing	The deemed standard distribution contract makes no provision for faulty meters and testing. It is unclear whether reimbursement of the cost of a test for a faulty meter is solely a retailer responsibility under clause 217(5)(c) of the Retail Rules or whether the distributor is required to reimburse the customer if they are found to have provided a faulty meter.
9.3	Interruptions	Clause 9.3(b) should more explicitly allow for situations where it is reasonable to give no notice at all – eg "whatever notice (if any) is reasonable" or words to that effect.
Schedule 1 – Dictionary, and clause 5.4	Definitions – "GSL scheme"	The definition of "GSL scheme" suggests that guaranteed service level (GSL) schemes are found only in jurisdictional energy legislation. GSL schemes are also a feature of the national energy legislation and may be set by the AER (see for example clause 6.6.2 of the National Electricity Rules, which allows the AER to set GSLs as part of its service target performance incentive scheme).

Draft National Electricity (Retail Support) Amendment Rule 2010		
Section	**Subject Matter**	**Comment**
6.6 (Item 3)	Amendment of Rule 6.6	To distinguish between the costs that may be recovered under the pass through provisions from those under the RoLR cost recovery scheme payment determination, this provision should explicitly state that any amount the subject of a ROLR cost recovery scheme distributor payment determination may not be considered as a pass through amount. Therefore it is proposed that in the National Electricity (Retail Support) Amendment Rule 2010, the following is added to the end of the new clause 6.6.1(l) referred to at item 3: "..., and any amount the subject of a ROLR cost recovery scheme distributor payment determination."
Chapter 6B Retail market matters		
Consideration should be given to classification of core obligations in Chapter 6B as conduct provisions, to allow distributors and retailers to take action independently of regulatory intervention.		
Part 1 Retail support obligations between distributors and retailers		
Division 1 Application and definitions		
6B.1.1	Application of this part	This part is expressed as applying where a retailer is a Market Customer. ActewAGL is not a Market Customer. There are currently inconsistencies between the authorisation requirements in the NERL, which require a retailer to be registered, and the concept of a NEM representative in Part 5 of the NERR (Retail support obligations), which suggest that this is not required.
6B.1.2	Definitions	The definition of ***shared customer*** is reproduced here, rather than cross-referenced to the NERR as other defined terms have been. Cross-referencing is preferable, as it reduces the risk of inconsistency over time.
Division 2 General retail support matters		
6B.2.3	Calculating distribution service charges	It would be preferable for this clause to refer to clause 6.20.1 in its entirety, or to Chapter 6 Part J as a whole, so that the potential for internal inconsistency in the NER is reduced and any subsequent amendments to the billing and settlements process in chapter 6 are captured.
6B.3.3(d)	Disputed statements of charges	▫ The dispute resolution process in Chapter 8 has two distinct stages. If the intention is that disputes under chapter 6B are to be referred directly to Stage 2 of the dispute resolution process set out in chapter 8 of the NER, clause 6B.3.3(d) should be amended to refer explicitly to clause 8.2.5(a) of the NER, to enable the Dispute Resolution Adviser to properly administer the Stage 2 dispute resolution process: *(d) The retailer must, if the dispute is not resolved by agreement of the parties within 10 business days after the date the retailer gave notice under paragraph (a), immediately submit the dispute for resolution or determination in accordance with chapter 8 by serving on the Dispute Resolution Adviser an Adviser Referral Notice in accordance with clause 8.2.5.*

		▫ 6B.3.3(d) should make it clear that clause 8.2.5(e) does not apply to a dispute referred to the Dispute Resolution Adviser under that clause. [2]
6B.3.3(e)	Disputed statements of charges	▫ In order to make use of the flexibility within Stage 2 of the Chapter 8 process, clause 6B.3.3(e) should be amended to remove the reference to a determination by the DRP, to allow for resolution by the Dispute Resolution Adviser under the Stage 2 process if the parties agree. This option allows less intrusive (and less costly) avenues for facilitated resolution. ▫ The application of the default resolutions in 6B.3.3(e)(1) and (2) should be made subject to any determination or resolution reached in accordance with Chapter 8 (so that they apply only where a DRP has determined, or the parties have agreed, otherwise). *(e) Subject to ~~any determination of the DRP, if, following~~ any resolution or determination in accordance with chapter 8, if the amount due to the distributor is…*
6B.3.4	Interest	The Rules should clarify whether this clause is intended to apply to amounts that are outstanding under a disputed statement of charges under 6B.3.3.
Consequential amendments to address Retailer of Last Resort matters		
Chapter 10		
	Glossary	To distinguish between the costs that may be recovered under the pass through provisions from those under the RoLR cost recovery scheme payment determination, the RoLR cost recovery scheme payment determination should be defined under the Rules. The following amendment to chapter 10 is proposed: *"ROLR cost recovery scheme distributor payment determination* has the meaning assigned in the NERL".
Chapter 6 & Transitional Chapter 6 (Chapter 11)		
6.18.1	Application of this part	To provide for the treatment of ROLR cost recovery scheme distributor payment determinations by the distribution pricing rules in the Electricity Rules, it is proposed that clause 6.18.1 in chapter 6 and transitional chapter 6 be amended with the following words inserted at the end of the current clause: "… and ROLR cost recovery scheme distributor payment determinations."
6.18.2	Pricing proposal	Rule 6.18.2 should be amended to provide for the pass through of costs determined under the RoLR cost

[2] 8.2.5(e) provides that, where the *Adviser* refers a dispute to a *DRP,* the *Adviser* must promptly *publish* to all *Registered Participants*, as well as promptly notify *AEMO*, the *AER* and the *AEMC* of, the fact that the referral has been made.

		recovery payment determination as a tariff variation. To provide for this, it is proposed that the following amendment is provided for as a new rule (5A) under rule 6.18.2 (b) of chapter 6 and as a new rule (5B) under rule 6.18.2 (b) of transitional chapter 6: (5A)/(5B) set out how any costs imposed on the *Distribution Network Service Provider* under a *ROLR cost recovery scheme distributor payment determination* are to be passed on to customers"; and

Draft National Gas (Retail Support) Amendment Rule 2010		
Section	**Subject Matter**	**Comment**
Part 21 Retail support obligations between distributors and retailers		
Consider classification of core obligations in Part 21 as conduct provisions, to allow distributors and retailers to take action independently of regulatory intervention.		
Division 1 Application and definitions		
102	Definitions	The definition of ***shared customer*** is reproduced here, rather than cross-referenced to the NERR as other defined terms have been. Cross-referencing is preferable, as it reduces the risk of inconsistency over time.
Division 3 Other general billing and payment matters		
110(d)	Disputed statements of charges	▫ The dispute resolution process in Part 15C has two distinct stages. If the intention of the drafters is that disputes under Part 21 are to be referred directly to Stage 2 of the dispute resolution process, clause **110(d)** should be amended to refer explicitly to clause 135HB of the Gas Rules, to enable the Dispute Resolution Advisor to properly administer the Stage 2 process. (d) The retailer must, if the dispute is not resolved by agreement of the parties within 10 business days after the date the retailer gave notice under paragraph (a), immediately submit the dispute for resolution or determination in accordance with Part 15C by serving on the Dispute Resolution Adviser an Adviser Referral Notice in accordance with clause 135HB. ▫ Clause **110(d)** should make it clear that clause 135HB(5) does not apply to a dispute referred to the Dispute Resolution Adviser under that clause.[3]

[3] 135HB(5) provides that, if the Adviser refers a relevant dispute to a dispute resolution panel, the Adviser must promptly:
(a) publish notice of the referral to all Registered participants; and
(b) give notice of the referral to AEMO, the AER and the AEMC.

		▫ In order to make use of the flexibility within Stage 2 of the Part 15C process, clause **110(e)** should be amended to remove the reference to a determination by the DRP, to allow for resolution by the Dispute Resolution Adviser under the Stage 2 process if the parties agree. This option allows less intrusive (and less costly) avenues for facilitated resolution. ▫ The application of the default resolutions in 6B.3.3(e)(1) and (2) should be made subject to any determination or resolution reached in accordance with Chapter 8 (so that they apply only where a DRP has determined, or the parties have agreed, otherwise). *(e) Subject to ~~any determination of the DRP, if, following~~ any resolution or determination in accordance with* Part 15C, *if the amount due to the distributor is…*
111	Interest	The Rules should clarify whether this clause is intended to apply to amounts that are outstanding under a disputed statement of charges under rule 110.
Division 4 Credit support regime		
126	Credit support disputes	New rule 126 provides that a dispute between a distributor and a retailer in relation to any matter arising under the credit support rules is an aspect of access to a distribution pipeline service to which Chapter 6 of the NGL applies. The definition of "access dispute" in section 178 of the NGL does not contemplate the specification by the Rules of aspects of access to which the access dispute provisions in the NGL apply. This is different from the NEL, which allows the rules to specify aspects of access to which the access dispute provisions apply (see section 2A). The making of new rule 126 is potentially invalid unless there is an amendment to the NGL to accommodate it.
133	Cost pass through for RoLR event	To distinguish between the costs that may be recovered under the pass through provisions from those under the RoLR cost recovery scheme payment determination, this provision should explicitly state that any amount the subject of a ROLR cost recovery scheme distributor payment determination may not be considered as a pass through amount. Therefore it is proposed that in the National Gas (Retail Support) Amendment Rule 2010, the following is added to the end of new rule 133(3) as follows: "…, and any amount the subject of a ROLR cost recovery scheme distributor payment determination."
Consequential amendments to address Retailer of Last Resort matters		
The following consequential amendments are proposed to address related retailer of last report matters:		
Part 1 Preliminary		
3	Interpretation	A definition of the Retail Law should be added to the National Gas Rules.
Part 8 Access arrangements		

Division 10 Supplementary power to vary applicable access arrangement		
67A	Decision on access arrangement variation proposal	For access arrangements that already exist, there appears to be no possibility for unilateral amendment by the AER to apply a RoLR cost recovery scheme distributor payment determination. Therefore it is proposed that the following amendment be proposed as a new rule 67A: "**67A Variation for ROLR Cost Recovery Scheme** (1) A service provider may submit to the AER a proposal for the variation of the reference tariff variation mechanism in its access arrangement to take account of a ROLR cost recovery scheme distributor payment determination (a **ROLR cost recovery scheme variation proposal**). (2) A ROLR cost recovery scheme variation proposal must set out how the reference tariff variation mechanism in the access arrangement should change to take into account a ROLR cost recovery scheme distributor payment determination. (3) A ROLR cost recovery scheme variation proposal may not, however, be submitted between a review submission date for the applicable access arrangement and the commencement of the new access arrangement period. (4) The AER must, within [x] business days after receiving a ROLR cost recovery scheme variation proposal, decide whether or not to approve the proposal. (5) If the AER does not approve a ROLR cost recovery scheme variation proposal, it must advise the service provider of the amendments to the proposal that are required to make the proposal acceptable to the AER. (6) Within [x] days of being advised by the AER of the amendments required to make the proposal acceptable to the AER, the service provider must resubmit the proposal to the AER in accordance with the AER's required amendments. (7) In this rule: **ROLR cost recovery scheme distributor payment determination** has the meaning assigned in the NERL."

Part 9 Price and revenue regulation		
Division 8 Tariffs		
97	Mechanics of reference tariff variation	To allow access arrangements that the AER approves in future to provide for RoLR cost recovery scheme amounts, the Gas Rules should be amended as follows: In the Gas Rules, add a new rule 97(1)(d) as follows: "(d) as a result of a ROLR cost recovery scheme distributor payment determination; or" and rename the previous rule 97(1)(d) as rule 97(1)(e). Add a new rule 97(6) as follows: "(6) In this rule: **ROLR cost recovery scheme distributor payment determination** has the meaning assigned in the NERL."

Draft National Electricity (Retail Connection) Amendment Rules 2010

Section	Subject Matter	Comment
Chapter 5A Electricity connection for retail customers and embedded generators		
▫ Transitional arrangements need to address the lapse in time between the commencement of these rules and the point at which the AER will be able to approve the required offers, to avoid a window in which compliant connections offers cannot be made because standing offers have not yet been submitted by distributors. ▫ Transitional arrangements need to make provision for how the introduction of chapter 5A will impact on current distribution determinations. ▫ In adopting this framework, the MCE should be aware of its implications for classification of distribution services under chapter 6 of the NER, in particular where connection charges are subject to direct price controls. ▫ Chapter 5A is currently silent on the mechanisms available for resolving disputes under it, though the NERL contemplates access to the relevant energy ombudsman scheme for small customers (see NERL section 401(1)(b)). In the absence of specific provision, disputes under chapter 5A are likely to be directed to the access dispute provisions in chapter 10 of the NEL to the extent that they are classified as distribution services under chapter 6, thereby invoking clause 6.22.1.		
Part E Connection charges		
5A.E.1	Connection charge principles	This section prescribes different treatments for an extension to the network, an augmentation of the network and dedicated connection assets. The definitions do not provide enough clarity on the distinction between the different types of work that could be required. It appears that an extension to a network to connect a single customer would also be a dedicated connection asset. An extension to the network appears to be a subset of augmentations based on the NEL definition. As small customers are not required to pay for augmentations, this creates a conflict because they are required to pay for extension of DNSP's network. In addition, this overlap in definitions will create uncertainty for customers, DNSPs and the AER in determining how different connections will be treated , especially for the purposes of developing the AER's connection charge guidelines as required: ■ "Dedicated connection assets" means connection assets that are installed solely for the purposes of a particular connection. ■ "Extension" is an **augmentation** that requires the connection of a power line or facility outside the present boundaries of the transmission or distribution network owned, controlled or operated by a Network Service Provider. ■ "Augmentation" of a transmission or distribution system means work to **enlarge** the system or to increase its capacity to transmit or distribute electricity.
5A.E.1(a)	Connection charge principles	The definitional issues outlined above impact on the clarity of the connection charge principles.
5A.E.3 (e)	Connection charge principles	The wording "a previously dedicated extension asset" appears to combine the concepts of an extension and a dedicated connection asset.

Draft National Gas (Retail Connection) Amendment Rules 2010		
Section	**Subject Matter**	**Comment**
Part 12A Gas connection for retail customers		
▫ Transitional arrangements need to address the lapse in time between the commencement of these rules and the point at which the AER will be able to approve the required offers, to avoid a window in which compliant connections offers cannot be made because standing offers have not yet been submitted by distributors. ▫ Transitional arrangements need to make provision for how the introduction of Part 12A will impact on current distribution access arrangements. ▫ Part 12A is currently silent on the mechanisms available for resolving disputes under it, though the NERL contemplates access to the relevant energy ombudsman scheme for small customers (see NERL section 401(1)(b)). The definition of "access dispute" in section 178 of the NGL does not contemplate the specification by the Rules of aspects of access to which the access dispute provisions in the NGL apply. This is different from the NEL, which allows the rules to specify aspects of access to which the access dispute provisions apply (see section 2A). If the intention is for disputes under Part 12A to be directed to the access dispute provisions in Chapter 6 of the NGL, amendments to the NGL may be required.		
Division 4 Connection charges		
119M(2)	Connection charges criteria	▫ The requirement to use assumptions that are consistent with the relevant provisions of the distributor's applicable access arrangement will not hold for light regulation pipelines or uncovered pipelines. ▫ This clause draws on assumptions that information is provided about new connections in access arrangements. However, as new connections are not necessarily considered a reference service no costs and limited demand information is provided in the context of an access arrangement review. There may also be some disconnect where the costs are covered by developers that relate to new connections and therefore subject to a capital contribution. For example, if most of the new connections (meter equipment and services) are paid for by developers, there may not be a reference point in access arrangements for these costs. Therefore reliance on assumptions about expected gas consumption for new connections, costs for new connections will need to be a new access arrangement information requirement under the rules.