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Contact Officer: Susan Faulbaum
Contact Phone: 02 6243 4965

23 July 2007

Ms Kimberley Pattinson
Manager
MCE Secretariat
Department of Resources, Energy and Tourism
GPO Box 9839
Canberra ACT 2601
MCEMarketReform@industry.gov.au

Dear Ms Pattinson,

The Australian Energy Regulator (AER) welcomes the opportunity to comment on the MCE SCO Policy response paper and table of recommendations for the National Energy Customer Framework.

The AER supports the overall proposals for the national framework for non-economic distribution and retail regulation. Comments on specific recommendations are provided in the "AER Comments" column in the attached table of recommendations. Additionally some matters not considered in the SCO policy response have been included after the tables. The key focus of the AER's submission is in relation to:

- Exemption from retail authorisation requirements
- Performance Reporting
- Court order powers

Thank you for the opportunity to comment. I look forward to ongoing involvement in the development of the national customer framework.

Yours sincerely

Mark Wilson
A/g General Manager
Markets Branch

MCE SCO Table of Recommendations - National Energy Customer Framework

This table sets out the Ministerial Council of Energy (MCE) Standing Committee of Officials (SCO) policy response to the recommendations prepared by Allens Arthur Robinson (AAR) to assist in developing the National Energy Customer Framework (the national customer framework). The following Table of Recommendations takes into consideration submissions received by stakeholders after the initial release of the AAR Table of Recommendations.

SCO is presenting its policy recommendations in the same table format as that used by AAR in their Table of Recommendations. The table broadly retains the AAR numbered recommendations, so that stakeholders can use these as a reference point to identify the recommendations which SCO has adopted, rejected or modified. Part 6 contains those matters that are the subject of related work streams. Discussion surrounding each of the major policy issues can be found in the SCO Policy Paper.

The Table is divided into the following parts:

Part Number	Subject Matter of Recommendation	Recommendation Number/page
Part 1	Principal recommendations for obligation to supply, marketing, hardship regime, customer distribution services, retailer authorisation, enforcement.	Recommendations 1.1- 1.48 and 1.78– 1.86 (pp.2- 46)
Part 2	Regulation of standard retail & market retail contracts.	Recommendations 2.1- 2.48 (pp. 47- 66)
Part 3	Regulation of marketing conduct.	Recommendations 3.01- 3.11 (pp. 67- 70)
Part 4	Regulation of distributor-customer contract terms.	Recommendations 4.1- 4.11 (pp.71- 75)

Part 5	Regulation of distributor-retailer contract terms.	Recommendations 5.1- 5.23 (pp. 76- 84)
Part 6	Ring-fencing, retailer failure arrangements, customer registration and transfer, metering.	Recommendations 1.49 -1.76 (pp. 85- 100)

Part 1 – Principal recommendations

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	AER COMMENT
Retailer obligation to supply small customers				
1.1	Definition of the obligation	<p>The Law will provide that designated retailers must, in accordance with the Rules, offer to sell energy to small customers.</p> <p>The obligation is an obligation to supply for use in a customer's premises on standard terms and conditions and at the standing offer tariff published on the retailer's website.</p> <p>However, if a small non-residential customer consumes (or is expected to consume) more than an amount of electricity specified in the regulations [the initial level for this amount is 40MWh per annum], then the retailer may:</p> <ul style="list-style-type: none"> • Instead elect to offer that customer a market retail contract (that is, based on minimum terms and conditions) at a tariff nominated by the retailer; and • If the retailer has offered a market 	<p>SCO considers that energy is an essential service and small customers should be able to access a basic supply to meet their needs.</p> <p>SCO has considered that it is important to differentiate the obligation to offer supply to the higher consumption end of the small customer definition in electricity in order to recognise the potential for innovation and diversity in the price and non-price terms and conditions of supply. This is reflected in the two 'tiers' of electricity customer that benefit differently under the obligation to supply.</p> <p>Further details with respect to the two tiered obligation to offer supply to certain small customers is discussed in the</p>	

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	AER COMMENT
	<p data-bbox="331 608 607 635">Application procedures</p> <p data-bbox="331 852 562 919">Retailer information requirements</p>	<p data-bbox="734 268 1189 533">contract to such customers, then it will be taken to have fulfilled the obligation to offer supply, and would not be required to make an offer to supply under standard retail contract terms and conditions in respect of that customer.</p> <p data-bbox="636 549 1133 576">As matters of detail, the Rules will set out:</p> <p data-bbox="636 608 1093 675">Application procedures – including requirements for customers to provide:</p> <ul data-bbox="685 703 1144 826" style="list-style-type: none"> • acceptable identification (along the lines of the ESCV guideline); and • name and contact details. <p data-bbox="636 852 1084 919">Retailers will be required to provide to customers:</p> <ul data-bbox="685 948 1151 1406" style="list-style-type: none"> • a summary of the standing offer contract formed as a result of the application, and how copies of the contract may be obtained; • a summary of the retailer's and customer's respective rights and obligations concerning the supply under the Law and Rules, including relevant dispute resolution procedures; • particulars of any rebate or relief 	<p data-bbox="1218 268 1671 373">Policy Paper, and will be developed in the drafting of the exposure draft instruments.</p>	

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	AER COMMENT
	<p>Connection services</p> <p>Conditions to the obligation</p>	<p>available under any government funded energy charge rebate or relief scheme; and</p> <ul style="list-style-type: none"> • information in community languages about the availability of interpreter services for the languages concerned and telephone numbers for the services; <p>The retailer will be responsible to communicate to the relevant distributor within one business day of an application, to arrange connection services in respect of the customer's supply point.</p> <p>Conditions to the obligation: the circumstances in which the retailer may refuse to supply, i.e. conditions precedent are failure to provide:</p> <ul style="list-style-type: none"> • acceptable identification (along the lines of the ESCV guideline); and • name and contact details. <p>Conditions subsequent:</p> <ul style="list-style-type: none"> • failure to provide the security the retailer is entitled to require under the standing offer terms; • failure to pay an amount due to the retailer in respect of the new supply (such as connection charges); 	<p>The SCO seeks comment from stakeholders in relation to the failure to provide security as a condition subsequent. Where a customer is disconnected as a result of a failure to provide security, it may be sensible for subsequent connections to require</p>	

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		<ul style="list-style-type: none"> • failure to provide access to the premises meter; and • other circumstances beyond the retailer's control (eg where distributor is not obliged to connect). <p>The Law will provide that the standing offer terms take effect as a standard retail contract between the retailer and customer.</p>	<p>security as a condition precedent.</p> <p>Note that the retailer's obligations are also subject to the retailer's obligations under the hardship policy – including the retailer obligation to offer a payment plan to certain customers</p>	
1.2	Designating retailers and supply remits	<p>The Law will provide that, for the purpose of the obligation to supply, a designated retailer is a retailer designated as a local area retailer by a jurisdictional instrument (for new connections) and the Financially Responsible Retailer (FRR) for existing connections.</p> <p>A jurisdiction may designate the supply remit of a local area retailer by reference to:</p> <ul style="list-style-type: none"> • a geographical area; • particular premises or classes of premises; or • particular customers or classes of customers. 	<p>The SCO considers that the FRR model provides operational advantages as well as complementing and supporting the role of competition. It does not give an automatic advantage to a retailer simply on the basis of historical and geographical circumstance and so reduces barriers to entry. Rather, by encouraging retailers to maintain market share by becoming the relevant 'incumbent' it arguably encourages competition.</p> <p>Further, as the AEMC observes in its review of the effectiveness of competition in Victoria, it is a clear and simple approach to regulation of the obligation, imposes costs unlikely to be higher than under the alternative options and which are more likely to be fairly</p>	

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			distributed	
1.3	MCE principles for obligation to supply	No longer required	<p>AAR recommended that the MCE consider agreeing principles to be applied by jurisdictional ministers in determining whether or not to activate or de-activate the obligation to supply by making (or revoking) the relevant jurisdictional instruments.</p> <p>There is no need for such principles to be agreed in light of other decisions as to the designated retailer regime.</p>	
1.4	Definition of small customers	<p>The Law will provide that, for the purpose of obligating retailers to offer supply, a 'small customer' is:</p> <ul style="list-style-type: none"> • a residential customer; or • a non-residential customer whose actual or estimated energy consumption is less than a threshold level specified in the regulations. The initial threshold will be 100MWh of electricity per annum or 1 TJ of gas per year. <p>Small customers will receive equivalent benefits under the national customer framework across electricity and gas except to the extent that a retailer may elect to fulfil its obligation to offer supply in respect of some</p>	<p>SCO considers that there is no policy rationale for distinguishing between residential customers on the basis of consumption. However including all residential customers as “small” customers is consistent with the essential service nature of energy supplies. Further, small business customers should also receive the benefit of the obligation in order to facilitate competition and reduce the costs of these customers to participate confidently in the market.</p>	

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		<p>electricity customers, by making a market offer rather than a standing offer as discussed in recommendation 1.1.</p> <p>The Regulations will set out the mechanics of assessing customer consumption for the purpose of applying the threshold, including whether the threshold applies to individual premises or is aggregated.</p>		
1.5	MCE directed review of small customer definition	The MCE will undertake a review of non-residential small customer thresholds with a view to reducing the thresholds. This review would occur periodically at intervals of no more than five years.	In order to give industry and customers a level of certainty from the outset of the regime, SCO has considered and made a recommendation on the small customer definition and consumption threshold. As competition develops, SCO considers the thresholds should be reviewed over time with the objective of reducing the threshold level.	
1.6	Standing offer tariffs	<p>The Law will provide that standing offer tariffs and variations to those tariffs for the standard retail contract are those published by the designated retailers on their website (and on the AER's website) from time to time.</p> <p>Variations to standing offer tariffs may not be made more often than 6 monthly and any variations must be published 20 business days in advance of the variation taking effect.</p>	The standing offer tariff may be regulated in jurisdictions where retail price regulation continues.	
1.7	Specification of terms	The Law will provide that the standing offer,		

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	and conditions	incorporating the standard retail contract and standing offer tariff is to be published by designated retailers on their website. The terms and conditions of a standard retail contract published by retailers is not subject to prior regulatory approval, but would be lodged with the AER and subject to compliance monitoring and enforcement by the AER.		
1.8	Standard retail contract terms and conditions in Rules	The Rules will contain (in a separate schedule) the terms and conditions applicable to standard retail contracts, will be expressed as a model terms and conditions. Part 2 of this Table sets out the model terms and conditions for development of the initial Rules.		
1.9	Deemed supply arrangements	<p>With respect to circumstances where small customers are taking supply without having formally entered into a supply contract (including move-in supply) the Law will establish the existence of a deemed set of arrangements.</p> <p>The circumstances in which a deemed supply arrangement arises are matters of detail best dealt with in the Rules. On that basis it is proposed that the Law will provide that:</p> <ul style="list-style-type: none"> • the Rules may specify the terms and conditions that apply in any circumstance where a small customer 		

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		<p>is taking a supply of energy from a retailer without the customer and retailer having entered into a standard retail contract or market retail contract; and</p> <ul style="list-style-type: none"> the terms and conditions specified in the Rules take effect as a contract between the customer and the retailer in accordance with the Rules. 		
1.10	When a deemed supply arrangement arises	<p>The Rules will provide for deemed supply arrangements to arise in the following circumstances:</p> <ul style="list-style-type: none"> where a small customer occupies premises that are already connected to the distribution system and commences to take a supply of energy; and where a current standard or market contract terminates without new supply arrangements having been established, subject to any provision in the contract itself concerning the terms and conditions to apply on termination. 		
1.11	Tariffs, terms and conditions of deemed supply arrangements	<p>The Rules will provide that:</p> <ul style="list-style-type: none"> the tariff applicable to deemed supply arrangements is the standing offer 		

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		<p>tariff unless the retailer has published a deemed supply tariff; and</p> <ul style="list-style-type: none"> the terms and conditions applicable to deemed supply arrangements are the relevant designated retailer's standard retail contract terms and conditions. 		
1.12	Duration of deemed supply arrangements	<p>Deemed supply arrangements for residential and small non-residential customers will continue until the customer enters into another contractual arrangement.</p> <p>Small customers are required to take appropriate steps to enter into a supply contract and thereby exit deemed supply arrangements no later than six months after deemed supply taking effect. If after six months, the customer has not entered into a contract, the retailer will be entitled to arrange for disconnection of the premises.</p> <p>If the customer has already provided the required deemed supply notice under recommendation 1.13 (name, contact details and acceptable identification), and if not advised to the contrary, the retailer may take the customer to be requesting supply under the standing offer, and may transition the customer to the standard retail contract.</p>		
1.13	Notice requirements for	The Rules will require:	To the extent that a customer does not	

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	deemed supply arrangements	<ul style="list-style-type: none"> • small customers to give notice to the retailer equivalent to the application requirements for supply under a standard retail contract (i.e. name, contact details and acceptable identification); • the retailer to give the customer details of the tariffs, terms and conditions applicable to the supply and the customer's options for establishing a new supply arrangement. 	satisfy the application procedures, the retailer's obligation to offer supply is modified and may give rise to a retailer's right to disconnect.	

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Retailer – small customer market retail contracts				
1.14	Generic versus energy specific regulation	SCO proposes reliance on national and jurisdictional consumer protection laws where these provide a consistent national approach in dealing with the relevant subject matter.	SCO endorses an approach which relies on an effective national framework for consumer policy to provide effective customer protection. However, until a national approach to consumer protection is endorsed by all jurisdictions, SCO considers that the essential nature of energy services warrant ongoing, industry specific regulation where generic legislation is inadequate.	
1.15	Minimum terms and conditions of market retail contracts	<p>The Law will provide that market retail contracts with small customers, or categories of small customers, must comply with any requirements in relation to such contracts contained in the Rules.</p> <p>The Law will require a retailer to include minimum terms and conditions in a market retail contract to be offered to small customers.</p> <p>The Law will provide authority for the Rules to contain provisions which specify the minimum terms and conditions of market retail contracts.</p>		

No.	SUBJECT	SCO RECOMMENDATION	COMMENT	AER COMMENT
		The Rules will contain (in a separate schedule) the minimum terms and conditions that must be included in market retail contracts.	Part 2 of this Table sets out minimum terms and conditions for market retail contracts in the initial Rules.	
1.16	Definition of small customers for purpose of market retail contracts	The Law will provide that a small customer for the purpose of market retail contract regulation has the same meaning as for the purpose of the obligation to offer supply. In addition, there will be scope for the Rules to distinguish between residential and non-residential small customers in the application of market retail contracts to those customers.		

No.	SUBJECT	SCO RECOMMENDATION	COMMENT	AER COMMENT
1.16A	Prepayment meter systems	<p>The Law will authorise the Rules to regulate the use of prepayment meter systems for small customers.</p> <p>The Rules will contain (in a separate schedule) the minimum terms and conditions of market retail contracts pertaining to prepayment meter customers.</p> <p>The Rules will cover the following matters in relation to the use of prepayment meter systems for small customers:</p> <ul style="list-style-type: none"> • Prepayment meter contracts: <ul style="list-style-type: none"> • specific disclosure requirements to obtain a small customer's explicit informed consent to enter into a prepayment meter contract (this is a specific form of market retail contract); • prohibition on entering into a prepayment meter contract with a customer with a life support system; • additional requirements to provide information to a small customer who enters into a prepayment meter contract (for example, the operating instructions for the meter, information relating to the payment facilities available, credit retrieval and emergency credit); 	Retail contracts where prepayment meters are involved are to form a specific type of market retail contract.	

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		<ul style="list-style-type: none"> • variation of prepayment meter tariffs, undercharging, overcharging and recovery for illegal energy use. • Prepayment meter systems requirements: <ul style="list-style-type: none"> • specific requirements for the prepayment meter itself, including in relation to the information displayed, when the meter will disconnect and reconnect, emergency credit, provision of energy concessions, access to meter data; and • requirements in relation to payment facilities. • Other matters: <ul style="list-style-type: none"> • a requirement for the retailer to establish a specific telephone service for enquiries, complaints and emergencies relating to prepayment meter systems; • hardship and payment difficulties – the prepayment meter system must identify to the retailer instances of self disconnection, where the meter is technically capable, and the retailer must take action to revert a customer to standard metering in certain circumstances; and 		

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Retailer – small customer marketing				
1.17	Generic versus energy specific regulation	General consumer protection laws with respect to marketing conduct should be relied on where these provide a consistent national approach in dealing with the relevant subject matter, but energy-specific regulation is justified where general consumer protection laws are inconsistent.	SCO provides discussion on the policy framework for marketing in section 3.4 of the SCO Policy Response Paper.	
1.18	Marketing requirements	<p>The Law will require retailers engaged in energy marketing (whether directly or indirectly) to comply with energy marketing requirements set out in the Rules.</p> <p>The Rules will contain (in a separate schedule) requirements applicable to the marketing of energy. Part 3 of this Table sets out the marketing requirements for the initial Rules.</p>		
1.19	Retailers responsible for marketing activities	<p>The Law will ensure that retailers are ultimately responsible for marketing conduct, whether the marketing is carried out by:</p> <ul style="list-style-type: none"> ▪ the retailer's own staff or officers; ▪ persons acting as agents of retailers; ▪ persons who are otherwise 		

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		<p>contracted by the retailer;</p> <ul style="list-style-type: none"> ▪ persons who receive a commission from the retailers, <p>in relation to marketing conduct for the purpose of gaining new or retaining existing customers.</p>		
1.20	Definition of small customers	The Law will provide that a small customer for the purpose of marketing conduct regulation has the same meaning as for the purpose of the obligation to supply.		

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	
Hardship				
1.20A	Identifying hardship customers	A "hardship customer" is a residential customer who has been identified as a customer who is experiencing financial payment difficulties by a retailer under and in accordance with, that retailer's Customer Hardship Policy.	It should be noted that where small customers (who are not identified as hardship customers), experience payment difficulties from time to time, the retailer is obliged to provide certain payment options (see recommendation 2.24).	
1.20B	Obligation on retailers to have a hardship policy	<p>The Law will provide that retailers must develop, implement and publish a hardship policy for supply of energy to residential customers experiencing hardship. This policy must include the following elements:</p> <ul style="list-style-type: none"> • flexible payment options for payment of energy bills; • processes for the early response by both retailers and residential customers to energy bill payment difficulties; and, • processes for identifying appropriate government concession programs and financial counselling services to assist in hardship mitigation and notifying customers in hardship of their 	New recommendation included due to feedback from submissions to Composite paper and consultation with stakeholders.	

		existence.		
1.20C	Alternative payment arrangements for hardship customers	<p>The Rules will require retailers to offer hardship customers, alternative payment arrangements prior to disconnection. These payment arrangements must include the option of payment by instalments.</p> <p>Such instalment payment plans must:</p> <ul style="list-style-type: none"> • be established having regard to a customer's: <ul style="list-style-type: none"> • capacity to pay; • arrears; and • expected consumption needs over the following twelve month period. • include an offer for the customer to pay their energy consumption in advance or arrears by instalment payments; • inform the customer of: <ul style="list-style-type: none"> • the period or periods of the plan; • the amount of each instalment and the frequency of instalments; • if the customer is in arrears, the number of instalments 	New recommendation included due to feedback from submissions to Composite paper and consultation with stakeholders.	

		<p>to pay the arrears; and</p> <ul style="list-style-type: none"> if the customer is to pay in advance, the basis on which instalments are calculated. <p>The Rules will contain a general obligation for retailers to provide fair and reasonable procedures for dealing with payment difficulties that a hardship customer may experience under the plan.</p>		
1.20D	Disconnection of hardship customers	<p>The Law will state a general principle that disconnection of a hardship customer due to inability to pay should be the last resort.</p> <p>The Law will provide that hardship customers should be disconnected only where that customer has not paid a bill and has not:</p> <ul style="list-style-type: none"> agreed to an instalment payment plan or other payment option to pay a bill offered by the retailer; adhered to the customer's obligations to make payments in accordance with an agreed instalment payment plan or other payment option relating to the payment of bills. 	New recommendation included due to feedback from submissions to Composite paper and consultation with stakeholders.	
1.20E	Hardship indicators	<p>The Rules will provide that the AER must:</p> <ul style="list-style-type: none"> undertake performance reporting 	New recommendation included due to feedback from submissions to Composite paper and consultation with	

		<p>on specific hardship indicators as established by the AER;</p> <ul style="list-style-type: none">• have regard to hardship indicators established in jurisdictional frameworks and the effectiveness of those indicators when developing national hardship indicators.	stakeholders.	
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NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	AER COMMENT
Contractual model for customer distribution services				
1.21	Default model	The Law will provide for a contractual model incorporating deemed contractual arrangements between parties.		
1.22	Preferred model	<p>The Rules will describe the obligations to be imposed through the contractual model.</p> <p>A contractual model is proposed as the default model to apply in both the electricity and gas sectors to provide a framework for the development of the distributor-customer interface and the distributor-retailer interface arrangements.</p> <p>This model involves:</p> <ul style="list-style-type: none"> • a "deemed" contract between a distributor and each customer connected to the distributor's infrastructure governing the physical and operational aspects of the provision of customer distribution services to the customer, including liability issues; • a contract between the retailer and each of its customers which includes provisions governing the financial aspects of the provision of customer distribution services to the customer; and • a contract between a distributor and each retailer which sells energy to customers 	The national customer framework will not prevent negotiated distribution contracts but will also not prescribe the terms and conditions of any negotiated distribution contract.	

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		connected to the distributor's infrastructure governing relevant financial and coordination arrangements between the distributor and the retailer.		
1.23	Small embedded generators	See comment.	<p>At this stage, SCO does not propose dealing with possible contractual arrangements between distributors and embedded generators. This is subject to implementation of arrangements for distributed generation in the economic regulation work streams of the MCE being managed by the Network Policy Working Group (NPWG).</p> <p>The SCO intends to revisit the issue of contractual arrangements for embedded generation closer to the implementation of the new national customer framework to take account of progress in related work streams, with a view to making provision for deemed standard arrangements for small embedded generators.</p> <p>The intention is to facilitate ongoing efforts to promote distributed generation in the national energy</p>	

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	AER COMMENT
			market.	

No.	Subject	SCO RECOMMENDATION	COMMENT	AER COMMENT
Distributor obligation to provide customer distribution services				
1.24	Scope of obligation	<p>The Law will provide that distributors must, in accordance with the Rules, provide customer distribution services in respect of a retail customer's premises.</p> <p>A “distributor” will be defined in Law to mean:</p> <ul style="list-style-type: none"> • a distributor whose network services are subject to access regulation under the Rules; or • any other distributors identified by jurisdictional instruments under and for the purposes of the definition. <p>The reference to a retail customer's premises limits the obligation to customers acquiring (or intending to acquire) energy through a retailer, as distinct from a customer acquiring energy directly from a wholesale market.</p>	<p>SCO has also decided to enable the inclusion of distributors who are not subject to access regulation within the national customer framework where appropriate and where jurisdictions elect to do so. The details of this will be further developed in the drafting stages.</p>	
1.25	Definition of customer distribution services	<p>Customer distribution services will be defined in the Law, for the purposes of the new national customer framework. These may include:</p> <ul style="list-style-type: none"> • the connection of the premises to the distribution network to allow the flow of energy between the network and the premises; • where a physical connection already exists, 	<p>The nature, scope and content of initial customer connection services are being dealt with concurrently, as part of the distribution connection & planning requirements work stream of the Network Policy Working Group (NPWG).</p>	

No.	Subject	SCO RECOMMENDATION	COMMENT	AER COMMENT
		<p>activating or opening the connection in order to allow the flow of energy between the network and the premises (this is referred to throughout as '<i>energisation</i>' of the connection);</p> <ul style="list-style-type: none"> • maintaining the capability of the network to allow the flow of energy between the network and the premises through the connection; and • services relating to the delivery of energy to the customer's premises. 		
	<p>Rules may further define customer distribution services</p>	<p>The Law will enable the Rules to supplement the definition of customer distribution services for various purposes of the new national customer framework. For example, services relating to metering-related responsibilities.</p> <p>The Rules may distinguish between different components of customer distribution services including:</p> <ul style="list-style-type: none"> • initial customer connection services: comprising those services provided leading up to, but not including, the establishment of a physical connection of a customer's premises; and • ongoing customer distribution services; comprising those services 		

No.	Subject	SCO RECOMMENDATION	COMMENT	AER COMMENT
1.26	<p data-bbox="331 533 524 639">Application procedures and conditions</p> <p data-bbox="331 1246 479 1273">Timeframes</p>	<p data-bbox="786 264 1223 371">provided once a physical connection of a customer's premises is established.</p> <p data-bbox="600 400 1223 507">It is ongoing customer distribution services which will be the subject of the contractual model for the new national customer framework.</p> <p data-bbox="600 533 1099 560">As matters of detail, the Rules will set out:</p> <p data-bbox="600 585 1140 612">Connection application procedures, including:</p> <ul data-bbox="611 638 1223 1177" style="list-style-type: none"> <li data-bbox="611 638 1223 745">• permitting an application for connection to be made by either the customer or its retailer; <li data-bbox="611 770 1223 1002">• requiring a customer to provide acceptable identification; name and contact details and prescribed information relevant to the connection of equipment at the customer's premises (eg. life support, special plant and equipment. <li data-bbox="611 1027 1223 1177">• for applications by the customer, the customer will be required to provide evidence of a retail contract with a retailer prior to energisation of the connection. <p data-bbox="600 1246 1167 1401">The NPWG is currently undertaking work on standard connection types and associated timeframes for electricity and gas. Where appropriate, any changes will be included in the</p>		

No.	Subject	SCO RECOMMENDATION	COMMENT	AER COMMENT
	Distributor information requirements	<p>package for the national customer framework.</p> <p>Distributor information requirements, requiring the distributor to provide to a customer:</p> <ul style="list-style-type: none"> • the deemed standard terms and conditions ("deemed customer distribution contract") applicable to that customer; • details of applicable GSL payments and service standards; • details of applicable connection, energisation and re-energisation timeframes; and • notice of the customer's rights in respect of the negotiation of different terms. <p>This information must be provided in circumstances specified in the Rules, including:</p> <ul style="list-style-type: none"> • on application for connection of the customer's premises; • on energisation of the customer's premises (if information not already supplied); • on request; • following any changes to the approved terms and conditions; and • on a request by the distributor or the customer to negotiate different terms 	<p>While the specific details of service level and timeframes may vary from jurisdiction to jurisdiction (and hence cannot be specified within the standard model terms and conditions), customers should still be provided with the relevant information for their circumstances. The Rules will therefore require distributors to provide information about the applicable regulatory requirements.</p>	

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Distributor obligation to offer customer distribution services: customer connection				
1.26A	Scope of obligation to offer customer distribution services	<p>The Rules will provide that distributors must, as part of the requirement under the Law to offer customer distribution services, offer to connect a retail customer's premises to its network.</p> <p>This obligation will be expressed to be subject to the requirements of applicable Rules.</p>	<p>Issues relating to standard connection types and associated timeframes will be dealt with and addressed through the MCE's network planning and connection arrangements work stream in relation to the electricity sector.</p> <p>The various connection scenarios may be specified in economic regulatory instruments pertaining to that distributor (eg. distribution determinations and access arrangements) or may be specified in applicable Rules.</p> <p>Regulated distribution services which are provided for in the instruments governing economic regulation include "customer distribution services" to be provided to retail customers under the new national customer framework.</p>	
1.26B	Connection requirements	<p>The Rules will provide that the distributor is not obliged to make a connection until the customer has met any connection requirements that apply, namely:</p> <ul style="list-style-type: none"> • payment for any augmentation, 	<p>This rule will make the obligation to connect subject to the reasonable requirements which are provided for elsewhere in the applicable rules, whether jurisdictional or national.</p>	

	<p>Right to offer of customer distribution services once physical connection established</p>	<p>extension or other capital works to the distribution system if required to effect the connection;</p> <ul style="list-style-type: none"> • completion of any works required for connection which are not part of the distribution system; • compliance with technical and safety requirements in relation to the customer's installation or equipment; and • provision of safe and unhindered access to meters and other equipment of the distributor on the customer's premises. <p>For the avoidance of doubt, once a physical connection is established with a customer's premises, that customer will have the benefit of the distributor's obligation to provide customer distribution services to those premises, irrespective of the type of connection or contractual arrangements entered into concerning the initial establishment of that connection.</p>	<p>The NPWG will contribute further to these provisions in the context of the NER.</p>	
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NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	
Distributor interface with customers				
1.27	<p>Establishment of deemed distribution contract</p> <p>Duration</p> <p>Negotiated customer distribution contracts</p>	<p>The Law will provide that upon connection of a retail customer's premises to a distribution system, or on the date a customer moves in to premises that are already connected, a contract is deemed to arise between the customer and the distributor on the terms and conditions of the deemed customer distribution contract applicable to that customer, except where a negotiated distribution contract exists.</p> <p>The deemed distribution contract (as amended from time to time where a Rule change occurs) will remain in effect while the customer is responsible to its retailer for the consumption of energy at the relevant premises or until the customer enters into a negotiated distribution contract with the distributor.</p> <p>A distributor and a customer may agree different terms to those contained in the deemed customer distribution contract, subject to:</p> <ul style="list-style-type: none"> • in the case of small customers, 	<p>SCO notes that breaches of the terms of the deemed distribution contract by the customer may result in disconnection and termination of the contract after due process, and breaches of the terms by distributors may result in enforcement action by the AER as a breach of the Law or Rules.</p> <p>Coordination between distributors and retailers will be required where a negotiated customer distribution contract applies. This will be managed by communication and</p>	

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	
		<p>the provision of specified information in relation to their right to the application of the deemed customer distribution contract standard terms and conditions and an explanation of the implications of the proposed different terms;</p> <ul style="list-style-type: none"> • coordination with the customer's retailer; and • any other requirements contained in the Rules. <p>Where a small customer enters into a negotiated customer distribution contract, a retailer's obligation to offer supply in respect of that customer may be limited to the extent that the negotiated customer distribution contract terms and conditions differ from the retail contract terms and conditions.</p>	<p>coordination requirements in the Retail Support Contract.</p>	
	Access regime still applies	The deemed customer distribution contract provisions do not affect the rights of a customer to negotiate direct provision of distribution services in accordance with Chapter 5 and 6 of the NER or under an arrangement in accordance with the NGR.		
1.28	Deemed customer distribution contract terms and conditions	The Law will authorise Rules to be made for the terms and conditions of a deemed customer distribution contract.		
1.29	Rules provisions	The Rules will include the following provisions		

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT
	<p>Model terms for deemed distribution contracts</p> <p>Small customer definition</p> <p>Publishing of customer distribution contracts</p> <p>AER approval</p>	<p>to the distributor - customer relationship:</p> <ul style="list-style-type: none"> • Model terms for the deemed customer distribution contract applicable to small customers and all other retail customers (unless approved standard terms apply or a negotiated contract applies). • The model terms of the deemed customer distribution contract will be in a separate schedule of the Rules so that it can be used by distributors as a contract • Small customers will be defined in the same way as for the retailer obligation to supply • Distributors must adopt and publish a model customer distribution contract. <p>The AER will not be required to approve deemed customer distribution contracts applicable to small customers.</p>	<p>Model terms will be developed for the customer distribution contract. These model terms will form the basis for any other deemed distribution contracts which may be made under the Rules.</p> <p>Part 4 of this Table sets out model terms and conditions for the development of the initial Rules.</p> <p>SCO considers that as model terms will be drafted to allow adoption as the customer distribution contract, that further approval by the AER is unnecessary.</p> <p>Customer service and network performance standards as in force from time to time will be referred to but not specified in the model customer distribution contracts. The need for amendment and approval by the AER on this basis is therefore not necessary.</p>

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	
	<p>Variations during regulation</p> <p>Deemed customer distribution contracts for large customers</p>	<p>Amendment of the customer distribution contract to be through a Rule change process</p> <p>Distributors may prepare and submit for the AER approval, a customer distribution contract that is deemed to apply to one or more classes of customers (other than small customers) on terms which are reasonable ('AER approved customer distribution contract').</p>	<p>The AEMC in assessing a rule change that changes the model terms of the customer distribution contract would need to manage any transitional issues arising from existing economic regulatory instruments (determinations and access arrangements) and ensure that any material changes to obligations are dealt with appropriately and are capable of providing for any increases or decreases flowing from a change in a distributor's obligations.</p>	
1.30	Direct regulatory obligations - Law	<p>The Law will authorise (and oblige) distributors to disconnect, reconnect and interrupt supply in circumstances set out in the Rules.</p> <p>The Law will also expressly require that a distributor must comply with the Rules, and the terms and conditions of the relevant deemed customer distribution contract in respect of customers connected to the distributor's network.</p>		
1.31	Regulatory obligations - Law	The Rules will include the following direct obligations in relation to the distributor – customer relationships		

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT
	<p>Service standards</p> <p>Grounds for disconnection</p> <p>Restrictions on disconnection</p>	<ul style="list-style-type: none"> • A requirement that distributors must comply with any applicable service standards • The circumstances in which a distributor is entitled or required to disconnect customer premises, including: <ul style="list-style-type: none"> • in an emergency; • at the direction of a relevant authority; • for health and safety reasons; • at the request of the customer or retailer; or • for non-compliance by the customer with obligations under the distribution contract or customer distribution contract expressed to give rise to an entitlement to a right of disconnection (eg, failure to provide safe access or meet technical specifications, or taking unauthorised action to stop supply). • The circumstances in which a distributor must not disconnect customer premises, these being: <ul style="list-style-type: none"> • after 3pm on a weekday, and on weekends and public holidays (for small customers only); 	<p>SCO notes that there are some issues to be considered regarding implications of disconnection before or during certain public holiday periods.</p>

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT
	Interruptions and curtailments	<ul style="list-style-type: none"> • for electricity, if the address has a registered life support system; • where required notices have not been given; • where a complaint remains unresolved; or • if a distributor reasonably considers that disconnection would immediately endanger health or safety. <ul style="list-style-type: none"> • The circumstances in which a distributor is entitled or required to interrupt or curtail the supply of energy to customer premises, including: <ul style="list-style-type: none"> • planned interruptions subject to prescribed advance notice periods; • unplanned interruptions (faults etc) and circumstances beyond the distributor's control, subject to information requirements and obligations to minimise 	

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT
	<p>Reconnection</p> <p>Dispute resolution</p> <p>Information provision</p> <p>Fault reporting and correction</p> <p>Small customer negotiated customer distribution contracts</p>	<p>the duration and extent of interruptions; and</p> <ul style="list-style-type: none"> • for health and safety reasons or in an emergency, including at the direction of a relevant authority. • A requirement that distributors reconnect a disconnected customer if the reason for the disconnection has been removed. • A requirement that distributors must comply with any applicable jurisdictional dispute resolution requirements • Requirements for distributors to provide information to a customer or its retailer on request about the customer's consumption, network tariff or connection. • Requirements concerning the maintenance by distributors of a 24-hour fault information and reporting line. • Protections for small customers in relation to negotiated customer distribution contracts, including 	<p>SCO notes that the substantive obligations on distributors and protections relating to small customer contracts are to</p>

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	
	Distributor compliance with deemed customer distribution contracts	<p>protected terms and cooling-off periods.</p> <p>There is to be an express requirement in Law and Rules that a distributor must comply with the terms of the applicable deemed customer distribution contract in respect of customers connected to the distribution system.</p>	<p>be contained in Rules and as such, cannot be negotiated away from. Customers are entitled to the provision of information as outlined in 1.27 regarding the implications of entering into a negotiated customer distribution contract. As such, SCO sees no need to provide further specific obligations on distributors in relation to negotiated customer distribution contracts.</p> <p>SCO considers it important that compliance with the terms of customer distribution contracts and AER-approved distribution contracts and RSCs are regulatory obligations. Compliance with the terms of these agreements by distributors is important to deliver the new national customer framework. Therefore, breaches of the terms of a distribution contract should be subject to regulatory oversight and where appropriate, enforcement action.</p>	

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	
Distributor interface with retailers				
1.32	Nature of Retail Support Contract (RSC)	<p>The Law will include provision for a Retail Support Contract between each distributor and retailer that provides energy services to customers connected to the distributor's infrastructure.</p> <p>Both a RSC for electricity and a gas RSC must regulate the respective obligations consistently with the existing national access regimes applicable in each sector.</p> <p>For example, the new RSC will be designed to work consistently within the relevant access regimes under the NEL and the NER (for electricity) and the NGL and the NGR (in gas).</p> <p>The electricity and gas RSCs will otherwise cover the same subject matter, regulating the arrangements between distributors and retailers in relation to the provision of services to their joint customers.</p>	<p>Firstly, to distinguish between the various existing UoS and coordination contracts which cover considerably different ground, and to reinforce the goal of regulation in this space, SCO uses the term "Retail Support Contract" to denote the contractual relationship between distributors and retailers.</p> <p>In both electricity and gas, a RSC will be deemed to arise between a distributor and a retailer in respect of customers of the retailer connected to that distributor's network.</p>	
1.33	Establishment of default Retail Support Contracts	<p>The Law will provide that except where a negotiated RSC exists, an RSC is deemed to be entered into by each distributor and each retailer where the retailer sells energy to customers connected to the distributor's infrastructure.</p>		

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	
	<p>Negotiated Retail Support Contracts</p> <p>Customer variations</p>	<p>The Law will not preclude a distributor and retailer negotiating different terms and conditions of their RSCs. However, the default RSC will apply in the absence of any such agreement between the parties and will effectively operate as the starting point for any negotiated arrangements.</p> <p>The default RSC will provide that it does not apply in respect of particular customers to the extent that they have negotiated arrangements (in relation to the provision of customer connection and distribution services) with the distributor that require different arrangements.</p>	<p>Distributors and retailers will need to reach agreement where necessary to do so for such specific circumstances.</p>	
1.34	Default RSC terms and conditions	The Law will include authority for the Rules to make provision for the terms and conditions of a default RSC.		
1.35	<p>Rules provisions for RSC</p> <p>Model terms and conditions for default Retail Support Contract</p>	<p>The Rules will include the following provisions in relation to the distributor – retailer interface:</p> <ul style="list-style-type: none"> Model terms and conditions of the default RSC will be in a separate schedule to the Rules so that it can operate for distributors and retailers as a contract. 	<p>For the avoidance of doubt, SCO considers that a schedule capable of adoption means a schedule that is, for all intents and purposes, a framed as a contract, minus the specific details of the distributor and retailer concerned,</p>	

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	
		<p>obligations of retailers to customers; and</p> <ul style="list-style-type: none"> • The statutory objectives of the NEL and the NGL. <p>Where a distributor applies to the AER to vary the model terms of the default RSC, a consultation process in relation to the proposed variations will occur.</p>		
1.36	Regulatory requirements	<p>The Rules will include an obligation on distributors and retailers to comply with the terms of the relevant RSC, whether this is:</p> <ul style="list-style-type: none"> • a default RSC; • an AER approved RSC; or • a negotiated RSC. <p>Compliance will therefore be both a contractual obligation enforceable between the parties and a regulatory obligation enforceable by the AER.</p> <p>The terms and conditions of the RSC between a distributor and a retailer will not be subject to variation by the AER as an outcome of an access dispute.</p>		

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	AER COMMENT
Distributor interface with embedded generators				
1.37	Process for new Rules for embedded generation	<p>Having regard to the NPWG policy process adopted in relation to this issue, policy outcomes should be capable of being implemented by a Ministerial order or, where appropriate, by the normal Rule change process.</p> <p>Accordingly, the amendments to the Laws for the new national customer framework will authorise Rules relating to the connection and operation of embedded generation to be made by Ministerial order.</p>		

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	
Retailer business authorisation				
1.38	Substantive obligations as licence conditions	Substantive regulatory obligations will be contained in the Law and Rules rather than in licence conditions.		
1.39	Regulation of entry requirements	The Law will contain a general prohibition on a person engaging in the retail sale of energy, unless the person has obtained a retailer authorisation from the AER in relation to the carrying out of that activity, or is exempted from the requirement.	<p>No national distributor authorisation will be introduced as part of the new national customer framework legislative package.</p> <p>Therefore the new general prohibition will not extend to a prohibition on carrying on a distribution business without a national business authorisation. Jurisdictional licensing will remain in place for safety and technical matters.</p>	
1.40	Entry tests	The Law will set out the entry requirements to be satisfied by persons wishing to obtain energy business authorisations as retailers, and enable the AER to issue guidelines in relation to the authorisation procedures and its approach to assessing the criteria for authorisation.		

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	
	<p>Financial viability</p> <p>Suitable person</p> <p>Market operator registration</p>	<p>The criteria for business authorisation will include elements relating to the organisation and technical capacity necessary to meet the obligations of a retailer under the Law and Rules including:</p> <ul style="list-style-type: none"> • financial viability – that the applicant has the financial resources required to undertake the relevant activity; • A broad suitability criterion – that the applicant is a suitable person to hold the authorisation; • Criterion relevant to national energy and financial market participation– that the applicant is registrable by NEMMCO or the relevant gas market operator in accordance with any registration requirements under the NER or NGR. 		

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	
1.41	Removal of overlap with NEMMCO registration	<p>The existing registration requirements administered by NEMMCO under the NER will be modified to ensure there is no overlap with the processes and requirements for the new retailer authorisation administered by the AER. In particular:</p> <ul style="list-style-type: none"> • NEMMCO requirements with respect to financial viability will be limited to satisfaction of the market prudential requirements under chapter 3 of the NER; • NEMMCO requirements with respect to organisational and compliance capacity will be limited to the relevant entity's safe and reliable interaction with the market and with technical requirements applicable under national framework instruments (including metrology). 		
1.42	Corresponding changes to gas market registration requirements		The national requirements for gas market registration will be determined in due course as part of the single market operator work stream.	
1.43	Treatment of existing licensees	Retail businesses that hold current jurisdictional licences will transition to the national business authorisation without further processes.		

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	
1.44	Exemptions	<p>The Law will authorise the AER to exempt a person from the prohibition in accordance with the Law, the Rules and any guidelines issued by the AER. The Rules and AER guidelines will set out the matters to be considered by the AER in considering applications for exemptions, as well as general exemptions, in each case based initially on current arrangements. The making of guidelines and consideration of exemption applications will be subject to a consultation process.</p>	<p>The Rules will require the AER to develop "Exempt Retail Supply Guidelines" which must set out categories of exemptions, including:</p> <ul style="list-style-type: none"> ▪ Specific exemption for one or more retailer authorisation obligations; ▪ Exemptions for particular activities; and ▪ Holders of a jurisdictional exemption 	<p>The proposed framework provides for the transition of existing jurisdictional exemptions to the national framework. The AER is concerned that exemptions should not be allowed to continue indefinitely and that the AER have the ability to review exemptions and conditions and revoke or vary them if necessary. The AER suggests that sunset provisions apply to the jurisdictional exemptions.</p> <p>The proposed framework contemplates exemptions of persons who are providing retail-like functions only. In reality, the types of persons likely to require exemptions provide a combination of distribution and retail services (eg caravan parks, shopping centres, nursing homes, hostels, etc). As the distribution authorisation functions are to remain with jurisdictions there is potential</p>

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT
1.44	Exemptions (cont.)		<p>for duplication in the regulation of exemptions between the national framework and state / territory regulatory frameworks. It should also be noted that a further layer of regulation is added by the application of chapter 2.5 of the NER to network exemptions.</p> <p>Under the proposed framework an authorised retailer may apply for a specific exemption from one or more obligations. A retailer whose application is approved would continue to hold an authorisation and be able to continue retailing energy. The AER can see no need for such exemptions. However, if there were a genuine need it would be better addressed by derogation than exemption.</p>

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	
1.45	Exemption conditions and enforcement	<p>The Law will provide that an exemption may be subject to conditions covering similar matters that apply to retailers. Exempt suppliers are to be subject to monitoring and enforcement by the AER in relation to compliance with the conditions of the exemption.</p> <p>In the case of a general exemption, it may be necessary for the AER to establish a framework to ensure it is aware of the persons conducting activities covered by the exemption so that it is able to monitor and enforce compliance by those persons with the conditions of their exemption.</p>		
1.46	Revocation	<p>The national framework will include a regime for the AER to revoke a retailer authorisation. The details of a revocation regime will be developed having regard to the national Retailer of Last Resort project, but the key elements of such a regime would include:</p> <p>1. The relevant matters that must be satisfied before the AER can consider revoking an authorisation such as:</p> <ul style="list-style-type: none"> • There must be a history of demonstrated and persistent breaches of the Rules with material consequences for third parties. • That the AER has reasonable grounds for believing that there is a real likelihood that previous and further enforcement action has not and will not be likely to remedy or prevent the continuation of breaches in the future. 		

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	
		<ul style="list-style-type: none"> • A 'materiality' requirement will take into account both impacts on market participants and customers, and the cost and effort of compliance actions. <p>2. Procedural fairness requirements which would include:</p> <ul style="list-style-type: none"> • Notice and opportunity to rectify and be heard by the retailer. • Consultation with relevant market operators. • Provision of reasons for the decision to revoke. <p>3. Managing the orderly transfer of customers of the retailer and any other obligations.</p>		
1.47	Register of authorised persons	The Law will require the AER to maintain a public register of authorised persons and exempt persons (excluding those exempt under a deemed exemption) and include details of the information to be included in the register.		
1.48	Ancillary rights and powers	Ancillary rights and powers (such as those relating to compulsory acquisition and works on public and private land) will continue to be dealt with in jurisdictional legislation.	The general approach of not duplicating ongoing jurisdictional ancillary rights and powers will be adopted in the national framework.	

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	AER COMMENT
Enforcement mechanisms				
1.78	Compliance monitoring and enforcement functions of the AER	<p>The NEL and NGL will include provisions to support the AER's compliance monitoring and enforcement functions as follows:</p> <ul style="list-style-type: none"> • a requirement for regulated entities¹ to establish systems and procedures to monitor regulatory compliance, in accordance with reporting requirements issued by the AER; • a requirement for regulated entities to notify the AER of breaches of regulatory obligations, in accordance with guidelines issued by the AER; • a requirement for regulated entities to undertake compliance audits, and to co-operate with such audits being undertaken by the AER or an independent auditor, in accordance with guidelines issued by the AER; and • a requirement for the AER to report on its compliance monitoring and enforcement functions. 	<p>The regulatory reporting regime adopted by the AER would be modelled on current jurisdictional reporting requirements and are to be developed through a public consultation process. Any regulatory regime developed by the AER should reflect the relative importance of particular breaches of the Law or Rules.</p> <p>Consideration will be given to the extent to which regulatory information instruments will be used for these purposes.</p>	<p><i>Compliance monitoring</i></p> <p>The AER supports the SCO's proposed suite of mechanisms to assist compliance monitoring and enforcement. In determining its enforcement approach the AER will balance the regulatory costs of a particular compliance monitoring option with the likelihood of breach and the potential impact of a breach. The AER intends to use the complementary compliance tools of reporting and auditing to develop a cost-effective compliance monitoring framework.</p> <p>The AER notes that SCO has, as yet, not made a recommendation on how compliance audits will be funded.</p> <p><i>Performance Reporting</i></p> <p>There are strong grounds for the AER to assume responsibility for</p>

¹ References to 'regulated entities' in the paper are to distributors and retailers under the national customer framework.

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	AER COMMENT
				<p>national performance reporting.</p> <p>Firstly, in the absence of a specific general performance reporting role with the transfer of retail functions, the AER is concerned that the reporting of retail data may discontinue in some jurisdictions making it more difficult to locate retail data in future and the market correspondingly less transparent.</p> <p>Secondly, under the current proposal the AER will only be able to provide a partial picture of retailer performance (ie hardship), but not a complete picture of overall trends. Indeed, hardship data cannot be considered in isolation from wider performance data. For example, data on disconnection for inability to pay accounts is meaningless in absolute terms but must be considered in relation to the customer base as a whole.</p> <p>Thirdly, a national retail performance reporting scheme would facilitate the development of consistent and comparable performance indicators between</p>

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	AER COMMENT
				<p>jurisdictions. In its publication on the Australian energy industry, <i>State of the Energy Market</i>, the AER has highlighted differences in jurisdictional performance data that make national comparisons difficult. By locating information within a single report a national reporting scheme would reduce search costs as well as the present difficulties associated with inter-jurisdictional comparisons.</p> <p>The AER considers the continuation of performance reporting and publication of information, for instance through the <i>State of the Energy Market Report</i>, to be consistent with national energy law objectives. To use an example, one of the objectives in the National Electricity Law (NEL) concerns the promotion of efficient investment. Market participants (new entrants) rely on the detail of available information in making informed investment decision. The AER considers continued transparent performance</p>

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	AER COMMENT
				<p>reporting of retailers would help to promote efficient investment. Further, any performance reporting role should be on the basis of clearly defined powers to publish information within legislation. Section 28V of the NEL provides an example of explicit publication powers for the AER to publish information on network service providers (including performance information). Prior to the inclusion of this provision in the NEL, in order to publish the AER had been required to obtain individual parties' consent; thereby effectively preventing the disclosure of some information that otherwise would have been made available.</p> <p>Lastly, the AER wishes to know the rationale for not including performance reporting as one of its core roles, particularly as this is a role that jurisdictional regulators currently perform. The creation of a national regulator provides the opportunity for this role to be continued on a national scale with</p>

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	AER COMMENT
				attendant consistency of information reporting advantages.
1.79	Court based enforcement mechanisms	The court-based enforcement mechanisms provided for in sections 61, 63 and 68 of the NEL (and the equivalent provisions to be included in the NGL) should apply to the obligations to be included in the national customer framework. Compliance with these requirements should be designated as civil penalty provisions.	The identification of which provisions will be nominated as civil penalty provisions will be determined as part of the drafting of the legislative and rules package.	The AER supports the proposal to identify civil penalty provisions as part of the drafting process. The AER is of the view that the assessment of the cost of enforcing provisions against the impact of any breach to be an important consideration in setting up the enforcement framework.
1.80	Additional powers for courts to make orders	No longer required.	<p>AAR recommended that consideration be given to expanding the description of orders available to the Court.</p> <p>SCO has decided not to expand Court powers to compensatory or other orders for the following reasons:</p> <ul style="list-style-type: none"> • It is inappropriate for the regulator, as prosecutor, to decide if third parties affected by the conduct should be allowed to recover losses or damages; 	<p><i>Other court orders</i></p> <p>The AER notes SCO's reasons for not providing additional powers for courts to make orders.</p> <p>The AER also notes that SCO intends to consider the Commonwealth Government's response to the Productivity Commission's <i>Review of Consumer Policy</i> on the role of regulators in taking representative actions on behalf of consumer and compensatory issues.</p> <p>The AER supports consideration of:</p>

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	AER COMMENT
			<ul style="list-style-type: none"> • The regulator is not in a position to know or plead the quantum damage allegedly suffered by a third party; and • There may be undue pressure from third parties on the regulator because of the possible financial advantage they may get from the proceedings. 	<ul style="list-style-type: none"> • submissions to the Consumer Policy Review • the PC's recommendation to allow consumer regulators to take representative actions on behalf of consumers, whether or not they are parties to the proceedings and • the Commonwealth Government's response when it is issued. <p>The PC noted in its report:</p> <p>“By their nature, some contraventions of consumer law, especially misleading or deceptive claims, have detrimental effects on many consumers. The losses faced by each consumer would not generally be sufficient to justify the costs of an individual civil action. In any case, such actions would often be inefficient given that court resources would be spent on repetition of the same issue.”</p> <p>(PC, <i>Inquiry Report : Volume 2</i></p>

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	AER COMMENT
				<p>page 213)</p> <p>The ACCC submitted to the PC that in <i>Cassidy v Medibank Private [2002] FCAFC 290</i> it had been unable under the Trade Practices Act 1974 (TPA) to get compensation orders for unnamed parties (in this case somewhere between 100 000 and 300 000 consumers), resulting in a lack of redress for consumers totaling millions of dollars.</p> <p>Whilst the exact obligations under the national energy customer framework are yet to be finalised, the AER notes that breaches of certain obligations listed in part 2 of the table of recommendations could lead to detriment for a large group of consumers, for example, payment of prescribed interest rates on security deposits and early termination charges.</p> <p>Now it is possible that if such a breach occurred the matter would be resolved in a way which provides adequate redress for consumers (such as through</p>

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	AER COMMENT
				<p>section 87B type undertakings) - that is without needing to go to court. However, where a matter is contested, an appropriate legal framework should exist so that a court can adjudicate and consumers can obtain redress.</p> <p><i>ss82, 83 of the Trade Practices Act</i></p> <p>SCO comments that the existence of provisions such as s 83 of the TPA (which provides for findings of facts in one proceeding to form or be used as prima facie evidence in later related proceedings against the same party) in the energy framework would reduce arguments for the AER to be able to seek additional court orders of a compensatory nature. The AER would encourage SCO to consult with the ACCC on its practical experience with, and the difficulties encountered in, obtaining s 83 orders. The AER considers the existence of such provisions would not address the problems identified by the PC above. Namely, where small detriment exists on an</p>

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	AER COMMENT
				individual basis (but across a wide group of consumers), the absence of representative orders might mean private citizens not being able to get redress.
1.81	Infringement notices	The provisions currently contained in the NEL (and to be included in the NGL) giving the AER the power to issue infringement notices where the AER believes that there has been a breach of a civil penalty provision will apply to the new national customer framework.		For civil penalty provisions, infringement notices can be used to achieve quicker and less costly regulatory outcomes. The AER notes that in 2007 it served three infringement notices and one in 2006 when the parties involved exercised the option to pay the amount in the notice instead of further contesting the matter.
1.82	Administrative remedies	The NEL and NGL will include provisions that enable the AER to accept enforceable undertakings modeled on section 87B of the <i>Trade Practices Act 1974</i> (C'th).		The AER supports inclusion of provisions within the NEL/NGL modelled on section 87B of the <i>Trade Practices Act 1974</i> .
1.83	Revocation of business authorisation	The AER's power to revoke a business authorisation is only to be used as a last resort after all other enforcement mechanisms have been exhausted, and not as an enforcement mechanism to address one-off breaches.		
1.84	Additional enforcement issues – conduct	Certain obligations arising from the distribution and retail regulatory functions will be	The new NGL includes a regime by which certain obligations may be	

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	AER COMMENT
	provisions	enforceable as between the affected parties (distributors and retailers) for a specified and limited list of provisions that are identified as 'conduct provisions'.	<p>nominated as conduct provisions which allows enforceability as between the two parties. This type of regime will be introduced into the NEL.</p> <p>Generally, SCO considers that provisions imposing an obligation on a party for the purpose of conferring a benefit on distributors, retailers and/or large end users would be the type of provision best suited to being a prescribed conduct provision. However, which provisions are identified as conduct provisions will be the subject of further consultation in the drafting of the package.</p>	
	Other dispute resolution issues	<p>The dispute resolution provisions in Chapter 8 of the NER will apply in respect of the National Energy Customer Rules between NEM registered participants. Accordingly it will <i>not</i> apply to:</p> <ul style="list-style-type: none"> • disputes between regulated businesses and small customers; and • disputes between gas distributors and retailers. 	SCO notes that chapter 8 of the NER dispute resolution process is not designed for disputes between regulated businesses and small customers, and therefore chapter 8 dispute resolutions will not be available for these disputes.	<p><i>Dispute Resolution</i></p> <p>SCO's recommendation under Part 5.23 – Regulation of distributor-retailer contract terms – is that a dispute resolution procedure will be included within the Retail Support Contract (RSC). In addition, SCO recommends (Recommendation 1.84) that the dispute resolution processes in Chapter 8 of the NER would apply to distributor-retailer</p>

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	AER COMMENT
		<p>Where court based remedies are to be used, enforcement in the lower courts, including the Federal Magistrates Court, is to be allowed within the current court jurisdictions rather than (as at present) only in the Federal Court and Supreme Courts.</p>	<p>In relation to disputes between gas distributors and retailers, SCO considers that there are adequate mechanisms in place under the national gas access arrangements for resolving disputes between gas distributors and retailers.</p>	<p>disputes. The AER therefore seeks clarification on the application of the Chapter 8 processes, in particular will they replace the dispute resolution mechanisms available under the RSC or augment them, and if the latter, how will the two mechanisms interact.</p> <p>The AER notes that at a recent SCO stakeholder forum, members of the RPWG indicated that to facilitate the development of the Retail Support Contract (RSC) arrangements, a further working group would be established. The AER expects that this process will give clarification around dispute resolution arrangements.</p> <p><i>Lower courts</i></p> <p>The AER supports the making of provisions in the NEL and NGL for dispute-related proceedings to be brought in lower courts such as the Federal Magistrates Court. Making allowance for the use of lower courts has the potential to benefit not only market participants and energy users, but also the AER by</p>

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	AER COMMENT
				ensuring that the most appropriate and efficient forum can be selected for the particular breach.

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	AER Comment
Statutory objectives				
1.85	Statutory Objectives of the NEL and NGL	The current statutory objectives in the NEL and NGL are adequate to accommodate the transfer to the new national customer framework.		
1.86	Supplementary objectives	No supplementary objectives will be introduced for the new national customer framework.		

Part 2 – Regulation of standard retail and market retail contract terms

The recommended requirements as set out in this Part 2 of the Table will apply to both standard retail contracts and market retail contracts. The Table sets out the terms and conditions of the standard retail contract, some of which are also minimum terms and conditions that must be included in market retail contracts. Where the terms and conditions of market contracts can be varied, this is indicated by a 'Market Retail Contract Annotation' in the Table.

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT
Calculation of Charges			
2.1	Tariffs and charges	<p>Charges under the standard retail contract are to be made on the basis of a published standing offer tariff that must be referred to in the contract.</p> <p>The standing offer tariff must be published by the retailer on its website and provided to the AER for publication on its website.</p> <p>Any variation to standing offer tariffs and charges must be published 20 business days in advance of the variation taking effect.</p> <p>A retailer is limited to varying a standing offer tariff to 6 monthly.</p> <p>Upon request, a retailer must provide a customer with information reasonably available to the retailer on network charges, retail charges and any other charges relating to the sale or supply of energy.</p> <p>Market Retail Contract Annotation</p> <p>Publication requirements do not apply to market retail</p>	SCO notes that separate transitional provision will be made for jurisdictions where a regulated tariff continues.

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	
		contracts. Market retail contract tariffs must be included in the contract and variations must be notified to the customer in accordance with requirements set out in the contract.		
...	
CO	SUBJECT	SCO RECOMMENDATION	SCO COMMENT	AER COMMENT
2.43	Competitive pricing information	The Rules should permit (but not require) the AER to require pricing information to be presented in a format which enables comparison between competing offers.	SCO invites stakeholder comment on the potential for – and options for – presentation of comparative pricing of market retail tariff offers across electricity and gas in the national market.	<p><i>Who should provide price comparator services</i></p> <p>In Australia, price comparators are available, to varying degrees, on a number of jurisdictional regulator websites. At the same time the AER understands an increasing number of private price comparator services are now competing against each other (and any regulator-provided service). The evolution of market based price comparator services may counter against the need for the AER to provide this service.</p> <p><i>Presentation of comparative pricing</i></p> <p>Interestingly, in the United Kingdom there is now a voluntary code of practice for price comparator service providers. It is understood that twelve companies have been accredited under this scheme by</p>

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT
			<p>EnergyWatch, meeting the code requirements of how to rank and compare products. The code includes provisions on those aspects of a retail offering which must be included in any price comparison. Also it is part of the code that “details of non-cash offers (such as air miles and supermarket points) should be listed separately to the gas and electricity base prices.”</p> <p>http://www.energywatch.org.uk/uploads/confidence_code.pdf</p> <p>The AER supports the development of a voluntary code of conduct in conjunction with some form of accreditation to enhance consumer confidence in comparative information. In the United Kingdom, the development of a code of conduct appears to reflect a view that more impartial and accurate price comparison information will improve consumers’ confidence.</p>

Part 5 – Regulation of distributor-retailer contract terms

The following subject matters will be included in the model terms for Retail Support Contracts (RSC) to be included in the Rules. In general, the same terms and conditions apply to both electricity and gas RSCs. However, where necessary, the electricity and gas RSCs may be implemented with differences to accommodate the different national access regimes in electricity and gas. Note that negotiated RSCs may be entered into where the parties agree.

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT	
5.1	Connections at request of retailer or end customer	The RSC will require the retailer to pass on to the distributor connection requests within one business day of receipt.		
...	
NO.	SUBJECT	SCO RECOMMENDATION	SCO COMMENT	AER COMMENT
5.7	Credit support	A distributor will be able to require a retailer to provide credit support in certain circumstances (e.g. in response to evidence of past poor credit, default events or market suspension) and the RSC will set out the approach to determining the amount and nature of the credit support, when it may be drawn and other matters.	<p>Where the existing national regulatory regimes deal with credit support arrangements (e.g. under the NER or under the gas access arrangements), the RSC will adopt, refer to or incorporate these existing requirements as appropriate to support the new national customer framework.</p> <p>The SCO believes that the credit support arrangements should provide an appropriate balance between minimising the risk</p>	The AER is aware that the amount and nature of credit support requirements is a contentious issue. This is apparent from discussions it has had with retailers, issues raised in a recent 2007 decision on default credit support arrangements in Victoria and also overseas experiences. In a recent survey of small retailers in the United Kingdom, credit support was one of the most significant issues raised by small retailers who had exited / been forced out of the market in the United Kingdom.

NO.	SUBJECT	SCO RECOMMENDATION	COMMENT
			<p>exposure of distributors to the non-payment of distribution charges and the costs that the arrangements impose upon retailers. This may be achieved through providing the option to retailers of meeting credit support requirements through alternative means to bank guarantees</p> <p>(Littlechild 2005, Smaller Suppliers in the UK Domestic Electricity Market: Experience, Concerns & Policy Recommendations)</p> <p>The above example highlights the importance that should be placed on the considerations of credit support.</p> <p>The AER would encourage considerations to take into account previous analysis of this issue in Australia and overseas, in particular they should address:</p> <ul style="list-style-type: none"> • the relative exposure of the retailer and distributor to customer credit risk; and • the likely effects on competition, especially competitive entry, according to the amount and nature of credit support required.

Other matters not explicitly dealt with in the MCE SCO Policy Response Paper

Information sharing between the AER and the Ombudsmen

The AER reiterates its submission of 23 July 2007 on information sharing between the AER and Ombudsman / dispute resolution schemes. The AER seeks to be able to share information with Ombudsman and like dispute resolution schemes to enable it and the Ombudsman / dispute resolution schemes to carry out their respective roles effectively. As some of the information to be shared may be confidential, the AER is of the view that a memorandum of understanding will not be effective, as the Trade Practices Act restricts the AER from sharing confidential information with bodies that are not prescribed by regulation. On this basis the AER is seeking that information-sharing between the AER and the Ombudsman / dispute resolution schemes be enabled through legislation.