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### **National Energy Consumer Framework (NECF) – Second Exposure Draft**

The Energy Retailers Association of Australia (ERAA) is the peak body representing the core of Australia's energy retail organisations. Membership is comprised of businesses operating predominantly in the electricity and gas markets in South Australia, Victoria, New South Wales, ACT, Queensland, Western Australia and Tasmania. These businesses collectively provide electricity to over 95 per cent of customers in the NEM and are the first point of contact for end use customers for both gas and electricity.

In making this submission on the second exposure draft of the NECF the ERAA would like to refer to Section 14.5(e) of the Australian Energy Market Agreement (AEMA), under which Ministers agreed that the initial Rules for the national framework for retail and distribution will minimise the regulatory compliance burden and associated cost. The ERAA believes that the second exposure draft fails to adhere to this criterion on the following grounds:

- Several sections impose a greater regulatory burden in excess of what currently applies in any single jurisdiction
- Several sections adopt current obligations from jurisdictions that involve the highest compliance costs from among the range of approaches in the jurisdictions
- The scope for variations in a market contract have diminished considerably across the consultation process

In addition:

- The ERAA supports the inclusion of retailer-distributor obligations within the Rules. However, imbalances in the distributor to retailer relationship remain, reflecting the initial drafting being undertaken by distribution businesses operating as monopoly service providers, and this has not been adequately addressed in the second exposure draft.
- The ERAA supports the underlying principle of the proposed ROLR scheme in providing the potential for a market based solution. However adequate consideration has not been given to all areas of the proposed scheme. Of particular concern are the potential powers for information gathering granted to the AER under an "apprehended" ROLR event.

- There was no public consultation on amendments to the national objective and ombudsman schemes prior to these being drafted into the Law. These provisions are not supported by the ERAA.

A summary of these issues is provided in the sections below, with more a detailed response provided in the attached table.

#### Regulatory burden in excess of current arrangements:

The agreement of Ministers to “minimise the regulatory compliance burden and associated cost” is undermined in several sections of the Second Draft exposure, which continues to impose obligations upon retailers beyond those which currently apply in any jurisdiction.

The fact that in over nine years of successful retail competition, no jurisdiction has regarded these obligations as justified demonstrates that there is no case for them to be imposed in the national framework. Examples include;

- The application of the de-energisation provisions in Part 6 to Large customers. In all jurisdictions disconnection provisions apply only to small customers through the relevant code or regulations. Large customers are appropriately regarded as having sufficient bargaining power to negotiate fair and reasonable contract terms, including those relating to disconnection.
- The requirement for reconnection costs to appear on disconnection warnings (rule 604(2)). The actual cost of reconnection will differ according to distribution area, the type of disconnection required, and whether any safety or metering work will be required at the site. Any advice provided by retailers would either be potentially misleading, or so broad to be of little use, but in either case impose additional costs on retailers, whilst any customer benefit is unclear.
- In section 222 of the rules, customers described as “not experiencing payment difficulty,” are excluded from the shortened collection cycle provisions. The ambiguity of such a description may be interpreted (incorrectly) by a regulator as excluding any customer receiving the required number of reminder or disconnection notices.
- Rule 610 prohibits retailers from disconnecting customers on a payment plan or applying for government assistance, except in the case of illegal usage. However these exceptions should also not apply if the reason for disconnection is denying access to the meter or refusal to provide acceptable identification.

#### Regulatory burden at the level of the most onerous jurisdiction:

The objective to “minimise the regulatory compliance burden and associated cost” is also undermined in several sections through adopting obligations from the most onerous and costly jurisdictions. The NECF should be viewed as an opportunity to provide a

more efficient regulatory outcome; whereby adopting obligations from the least onerous and lowest cost jurisdiction should be viewed as an opportunity to provide a more efficient regulatory outcome whilst maintaining adequate customer protections.

Whilst the ERAA does not support the use of jurisdictional derogations, given they undermine any efficiency benefits to be gained from a consistent national framework, on these issues they may be preferable to imposing more onerous and higher cost obligations in jurisdictions, which have not previously seen the need for such heavy handed regulation.

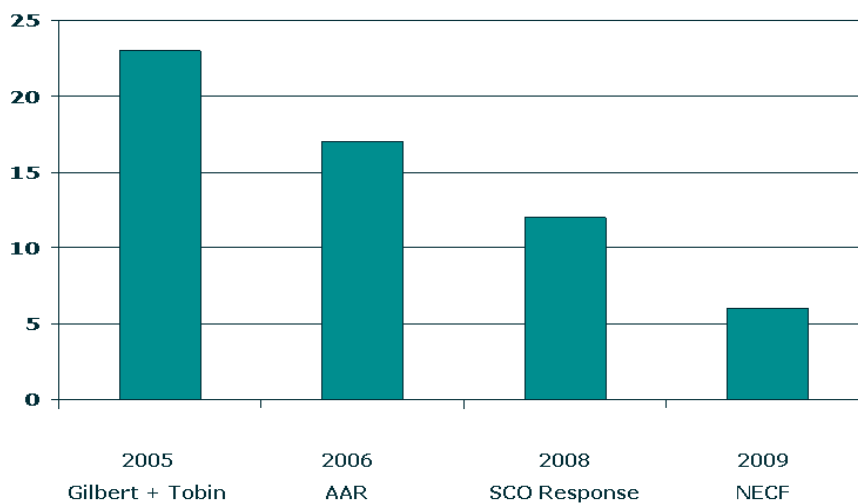
- Section 205 of the Law requires retailers to advise potential customers of their right to a standing offer contract. Of the two jurisdictions that have adopted the financially responsible retailer model, Victoria imposes no such obligation, whilst in Queensland the obligation only applies if the retailer has first refused to offer the customer a market contract. The experience of ERAA members in New South Wales is that there is little to no customer benefit to come from the requirement, further the additional scripting required to inform the customer and comply with the obligation is both confusing and annoying to the customer and that additional (avoidable) costs are incurred as a result of longer call handling times.
- The New South Wales regulatory framework does not discriminate between reminder notices and disconnection warnings. As a consequence two obligations in NECF which have adopted the New South Wales approach are beyond those which apply in other jurisdictions:
  - The requirement to place details of the ombudsman on reminder notices (rule 603). Outside New South Wales this is only required for the disconnection warning, with retailers referring customers to their internal processes in the first instance. Consistent with the operation of the ombudsman schemes, retailers must be afforded the first opportunity to address and resolve a customer's issue. Earlier reference to the ombudsman scheme inevitably results in more calls to that office with the majority of those calls having to be referred back to the retailer. The requirement to include ombudsman details on reminder notices will only serve to add costs that would otherwise be avoided.
  - The requirement for two disconnection warnings for refusing to provide access, security or acceptable identification. Under each scenario customer contact would have already taken place and an additional warning is therefore costly and unnecessary.
- Section 219(6) sets an overcharge threshold of \$50. This represents the mid-point of the current Victorian, New South Wales and South Australian requirements, whilst Queensland does not apply any threshold. If the current approach is to be maintained compliance burden would be minimised by adopting the highest current threshold amount, i.e. \$100.
- All states other than Victoria allow retailers to retain 1% of the interest accrued on security deposits to cover the associated administrative and compliance costs. This should be reflected in the NECF.

- No jurisdiction other than Victoria requires bills smoothing accounts to be reviewed after 6 months. This imposes additional costs on retailers which are deemed as unnecessary in other jurisdictions.
- A number of jurisdictions explicitly provide a right for retailers to pass through to customers merchant service fees for credit card transactions and to charge a fee for dishonoured payments. Such provisions, such as clause 7.5 of the Victorian Retail Code should be included in the standard model terms.

### Variations in a market contract

In consideration of the extent to which retailers should be allowed to amend minimum terms and conditions under a market contract, the 2008 SCO response stated that “the minimum terms and conditions should not overwhelmingly compromise retailers’ capacity to innovate and therefore compete for customers. Nor should it deny customers’ the opportunity to benefit from a different term or condition that it has chosen to ‘trade’ for some offsetting benefit.”

It is the ERAA’s view that retailer’s capacity to innovate has been substantially compromised, and this is demonstrated by the reduction in the number of clauses which could be varied in a market contract across the NECF consultation process.



The wind-back in the scope for varying a market contract has been most pronounced in the area of security deposits, where most recently, rule 225, requirement for security, was changed from NECF1 to NECF2 to a clause that can no longer be varied. Restricting the application of security only serves to restrict the level of access credit risk customers would otherwise have to market offers. The proposed obligation to allow security deposits to be paid by instalment will impose additional costs on retailers, create an uncertain compliance obligation, and add an unwarranted level of complexity in

managing customer accounts. Finally it is unclear whether the ability to refuse re-connection to a customer who has continued to refuse to pay a security would extinguish after ten business days.

### Retail Support Arrangements

Current jurisdictional use of system agreements and co-ordination agreements are generally based upon documents drafted by distribution business acting as monopoly service providers with little intervention by regulators to redress their inherent power imbalance. The ERAA supports the NECF approach to bringing retail support arrangements into the regulatory framework, and to create greater reciprocity in the distributor-retailer relationship.

However, the following sections have not been adequately addressed

- Rule 217 requires retailers to reimburse customers the cost of a meter test if the meter is found to be faulty. However, there does not appear to be a reciprocal obligation on the distributor to reimburse the retailer in those circumstances, remembering the meter is the property and responsibility of the distributor
- Rule 514 requires the distributor to pay charges for the energy consumed at a premise if the distributor fails to disconnect in accordance with the retailers instructions. However, the current South Australian and Victorian agreements require the distributor to pay the spot market price to the retailer. This requirement should be retained in the NECF
- Rule 6B2.2 allows the distributor to initiate direct billing arrangements with the customer. However there is no provision for retailers to initiate such an arrangement, as per the existing Victorian and New South Wales frameworks.
- Rule 6B3.2 imposes network tariff reassignment obligations upon retailers, but no such obligations are placed on distributors. Network tariff reassignment by distributors as part of the Victorian smart meter roll-out, and the absence of any requirements to notify retailers, has created significant systems and customer handling problems for retailers.
- Section 6B3.3 requires payment following a dispute to be made to the other party within 3 business days of the dispute. Although this is a reciprocal clause, it is most likely to be the retailer making the payment. Given the potential for large monetary values to be involved, requiring, for example board approval to make payment, a 5 business day requirement would be more reasonable, and consistent with the Queensland and South Australian co-ordination agreements.
- Retailers are required to pay network charges regardless of whether or not the retailer has been able to recover those charges from the customer. However in the case of theft or illegal usage it is the distributor who identifies the breach and instigates legal proceedings against the customer. As the distributor is best able to manage this risk, retailers should not be required to collect any network charges on its behalf where theft or illegal consumption has occurred.

### Retailer of Last Resort

The ERAA generally supports the NECF's proposed ROLR framework, in particular the opportunity for a market-based mechanism to facilitate the provision of ROLR services. However, contrary to the extent of consultation during the earlier stages of the ROLR scheme development, no consultation was conducted between the release of the final consultant report and the NECF drafting. As a consequence, we consider there are significant issues in the current drafting, and request that a separate industry briefing is conducted on the scheme in coming weeks.

Our specific concerns include:

- The regulation of large customer margins and terms and conditions. This is inconsistent with all existing retailer-based ROLR schemes and the regulation of retail prices generally. Large customers have the bargaining power to negotiate their own prices and terms, even in a ROLR event.
- The ERAA is concerned with the scope of information that may be requested by the AER in relation to the scheme. It is unclear what specific information would be requested, from which parties, or how the information would assist the AER in performing its duties. Whilst the UK ROLR model has been identified as involving a similar information provision regime, Ofgem's ROLR information requirements are in fact more targeted (e.g. there is a distinction between information required from a potentially failing retailer and a potential ROLR) and less prescriptive (e.g. description of a retailer's financial position, rather than provision of financial statements, is deemed adequate). Additionally, the NECF, as currently drafted, does not in our view effectively limit the AER's information-gathering powers. Under section 648 of the Law and rule 1122 respectively the AER may limit recoverable costs, and retailers may cover "at least the efficient costs." Given the financial and operation risk that the ROLR is subjected to, and the market-wide benefit that the ROLR service provides, the retailer should be entitled to recover all reasonable costs.

### National Objective

The ERAA supports the SCO response under section 8.4 of the June 2008 Policy Response Paper, that the market objective "will drive the best outcome, giving to the AEMC when exercising its rule making function, appropriately balanced guidance between the objectives of protecting consumers and minimising the cost and burden of regulation."

We are concerned that this position is undermined by the "interpretive clause", which applies a carve-out for hardship and other consumer protection measures. In particular, this clause may undermine the application of the efficiency objective to the framework. We also note that the only example provided in the explanatory note and by members of the RPWG referred to customer hardship policies, whilst the clause covers the entire consumer protection framework. Hardship policies should be justifiable on economic grounds, as they encourage customers to pay who otherwise would not have paid.

If there is concern regarding the status of hardship policies in the framework, which is understandable given SCO's previous view that such consumer protections are



appropriately dealt with through legislation rather than regulation, this could be done through other interpretive measures, including the second reading speech.

### Ombudsman Scheme

The ERAA remains of the view that the RPWG and SCO are yet to make the case why it is not sufficient to require retailers to be members of an approved ombudsman schemes, as currently applies in most jurisdictions. Despite the claim that the intent is not to alter the functions and powers of the schemes, the inclusion of the Ombudsman functions in the law currently does just that. The functions listed in the Law do not reflect the functions and powers of current schemes as specified in their respective constitutions. Under existing Ombudsman schemes, the relevant Board through the Constitution provides appropriate checks and balances on the actions of the Ombudsman. These checks and balances are removed if the functions and powers are provided through legislation.

We request that a more detailed briefing note is provided to explain the position adopted in NECF to provide stakeholders with an opportunity to respond directly to those issues.

Thank you for your consideration of these important issues identified by ERAA member companies in the course of their review of the second exposure draft. We look forward to further consultation on the NECF as it reaches its final form.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Cameron O'Reilly', is written over a faint, larger version of the same signature.

Cameron O'Reilly  
Executive Director

**Energy Retailers Association of Australia**

## Comments – Second Exposure Draft of the National Energy Customer Framework: Law, Rules, Regulations and Contracts

Organisation commenting: Energy Retailers Association of Australia Limited (ERAA)

Draft National Energy Retail Law		
Part 1 - Preliminary		
Section	Subject Matter	Comment
102	Carry-over customer	A carry-over customer is defined through sub-clause (b) as a customer who has not applied to a retailer for the provision of retail services. However, any application must be in accordance with Law, and the definition of carry-over customer should make this explicit. The definition should be amended to:  (b) without applying to a retailer <u>in accordance with the Law</u> for the provision ....
102	Move-in customer	The term “move in customer” is a commonly used industry term that denotes a customer that is moving into a premise when they have applied to a retailer for the provision of a retail service. Changing this term to indicate a person using energy without a contract will lead to considerable confusion.  We suggest that the term be changed to “unknown customer”. This term is commonly used within the industry to describe this particular circumstance and customer type.
102	Public holiday	Current drafting refers to “ <i>the area concerned.</i> ” Current jurisdictional definitions are more specific: NSW; a holiday throughout the State: SA; a bank holiday in Adelaide: Vic & Qld; in accordance with relevant Acts. To remove uncertainty and ambiguity, the NECF should be drafted accordingly.
104	Civil Penalties	Consistent with the Do Not Call Register Act and the Australian Consumer Law, civil penalties should only be imposed with regard to a limited number of breaches, not all provisions. In addition both the DNCR and ACL take into account the record of the party, and apply multiple breaches of a single provision as a single breach.

		<p>The ERAA is also concerned with the level of overlap of civil penalty provisions in the Law and Rules, whereby a retailer could be subject to a penalty in accordance with both instruments for the same offence.</p> <p>The civil penalty regime should only apply as follows:</p> <ul style="list-style-type: none"> <li>• to provisions that are specific (unambiguous) and do not require subjective assessments for compliance to such provisions;</li> <li>• where an assessment of whether a monetary penalty for non compliance to a provision is in the best interests of the general operation of the market;</li> <li>• where it is clear that non-compliance was intentional and not caused by inadvertent system or process errors;</li> <li>• where the application of a monetary penalty is not disproportionate to the impact of the breach causing undue risk and increased costs of compliance to retailers;</li> <li>• to a provisions that are not duplicated in the rules and the law: and</li> <li>• where it is consistent with existing similar penalty regimes.</li> </ul>
105(3)	Large customers	To cater for new customers the large customer definition should include "is likely to consume energy" above the threshold.

113(2)	National energy retail objective	<p>Sub-section (2) waives the national objective for consumer protection. This is contrary to the SCO response under section 8.4 of the June 2008 Policy Response Paper.</p> <p><i>The SCO agrees with the AAR recommendation not to amend the existing objectives. In the SCO's view this will drive the best outcome, giving to the AEMC when exercising its rule making function, appropriately balanced guidance between the objectives of protecting consumers and minimising the cost and burden of regulation.</i></p> <p><i>The SCO's view is also consistent with the Beale report recommendations in relation to the ESCV. In particular, the SCO agrees with Mr Beale that the most appropriate bodies to protect the interests of consumers are Governments. Indeed, the interests of consumers will necessarily be protected by various SCO recommendations on the structure of the new national customer framework. Good examples of this are the recommendations that the obligation to supply and the existence of deemed contracts are located in the Law. The existence of the obligation and deemed contracts in turn requires 'consumer protection' Rules dealing with the minimum terms and conditions of those contracts.</i></p> <p><i>In this way, Government acting through the Parliament drives and controls consumer protection. Consistent with the observations made in the Beale report, this regulatory design is the most appropriate means by which Governments may drive social and environmental outcomes.</i></p> <p><i>In summary, the SCO considers that the AAR recommendations in relation to the adequacy of the current statutory objectives should be accepted.</i></p> <p>ERAA supports the original SCO response and are concerned that such a significant reversal of a fundamental policy position has occurred with no consultation. Whilst the explanatory note only refers specifically to the avoiding the diminution of hardship policies, and this was the only issue identified by the RPWG at the NECF2 briefing, the clause goes further and actually applies to all consumer protections. We are concerned that the clause would dilute consideration of the efficiency objective with respect to the entire NECF package,</p>
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		It is understood that the intent is to provide an interpretative clause, but this could be achieved through alternative references, such as in the second reading speech.
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Draft National Energy Retail Law

Part 1 – Relationship between retailers and small customers

Section	Subject Matter	Comment
205	Variation of standing offer prices	<p>Throughout this section references are made to varying <u>the</u> standing offer prices. For example sub-section (6) refers to the proposed 6 month restriction for varying <u>the</u> standing offer prices. However, standing offer prices are a collection of numerous individual prices, which may or may not all be varied at the same time. An unintended consequence of current drafting if only some standing offer tariffs are varied at any point in time, none of the tariffs which were not varied at that time could be varied with the following six month period.</p> <p>References to <u>the</u> standing offer prices should be amended to <u>a</u> standing offer price.</p>
209	Obligation to comply with standard retail contract	<p>This section appears superfluous as it replicates section 204(4).</p>
219	Presentation of Market Offers	<p>Presentation of Market Offers is appropriately regulated through the competitive market, whereby retailers who do not provide clear and relevant information to consumers will lose market share.</p>

222(1)(b)	Record of informed consent	<p>Retaining consent records imposes costs on retailers, whereby the consumer benefit must be weighed against compliance costs. If a customer disputes that consent has been given, this will be done reasonably within a very short time after the point which consent is claimed to have been obtained. Consequently a 12 month requirement to maintain consent records is more than adequate to deal with any reasonable dispute. A two year requirement would double compliance costs with no customer benefit.</p> <p>The obligations are also inconsistent with section 223(2)(b) which requires the customer to raise an objection regarding explicit informed consent within 12 months.</p>
223(5)(b)	No or defective Explicit Informed Consent	<p>The new retailer should not be required to pay the old retailer the wholesale and network charges related to the customer, if the new retailer has itself incurred these costs and is unable to recover them. Otherwise the original retailer will receive a windfall gain for network and wholesale costs that it did not incur. The clause should also be subject to the customer providing access to the meter (if required) for the purpose of transferring the customer to the original retailer. Otherwise the arrangement could continue indefinitely.</p> <p>This clause appears to extend the rights of rescission to all items of explicit consent (see 220 (d)). The section should be limited to transfers where a customer clearly did not agree specifically to the transfer.</p>
231(1)(b)	Payment plans	<p>The reference to "other residential customers experiencing payment difficulties" should be "other residential customers who inform the retailer, either directly or through a third party, they are experiencing payment difficulties." In the absence of customer or third party advice the retailer is not in a position to assess whether the customer is experiencing payment difficulty.</p>
232	Definitions – retail marketer	<p>The words "or an associate of a retailer" should be deleted from the definition of "retail marketer" and the definition of "associate" should be removed. Associates of a retailer are captured by the term "another person" in paragraph (b) of the definition of "retail marketer", and as currently drafted all associates of a retailer would be captured, regardless of whether or not they engage in marketing.</p>
235	Deemed customers	<p>For clarity a "move-in customer" should be redrafted as an "unknown move-in customer," to ensure that those customers that do move-in and appropriately apply for retail services are not considered to be in this category.</p>

240(1)	Small customers on life support	This clause should be amended to "is a registered life support customer"
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Draft National Energy Retail Law

Part 3 – Relationship between distributor and retailers

Section	Subject Matter	Comment
307	Direct billing arrangements	<p>Inconsistent with the National Electricity Rules and existing jurisdictional arrangements this section appears to provide distributors with the discretion as to whether retailers can establish energy only contracts with their own large customers. For example;</p> <ul style="list-style-type: none"><li>• Vic Use of System Agreement 3(a)(1)<ul style="list-style-type: none"><li>• The parties agree that the DB will provide distribution services to the Retailer in respect of each customer except to the extent that the Retailer and the Customer have entered into an agreement under which the Retailer does not provide or procure and UoS services to the customer</li></ul></li><li>• NSW Market Operations Rule (NUSA) No.2<ul style="list-style-type: none"><li>• Where a customer (who is not a small retail customer or a Registered Customer) and a Retail Supplier agree, the DNSP may require payment of, and issue bills for, NUOS Services Charges, in respect of that customer's Agreed Points of Supply.</li></ul></li><li>• NER 6.20.1(c):<ul style="list-style-type: none"><li>• If a Distribution Customer and the Market Customer from whom it purchases electricity agree, the Distribution Network Service Provider may bill the Distribution Customer directly for distribution services used by the Distribution Customer in accordance with paragraph (a)(2)."</li></ul></li></ul>

Draft National Energy Retail Law

Part 4 – Small customer complaints and dispute resolution

Section	Subject Matter	Comment
Part 4	Small customer complaints and dispute resolution	The ERAA does not support the inclusion of this section as it relates to ombudsman schemes. It should be adequate to require retailers to be members of an AER approved ombudsman scheme. Under existing Ombudsman schemes, the relevant Board through the Constitution provides appropriate checks and balances on the actions of the Ombudsman. These checks and balances are removed if the functions and powers are provided through legislation. The ERAA does not support the contention that the drafting of Part 4 simply provides the legal architecture to transition current jurisdictional arrangements to the national framework; rather, it diminishes the governance arrangements for member-based ombudsman schemes by lessening the power of boards to oversee the operation of these schemes. An alternative may be to give the AER power to monitor and ensure an ombudsman continues to operate within the scope of its powers and functions.
401(1)(a)	Definitions – relevant matter	Sub-section (vi) refers to a decision of a distributor or retailer under Division 3 of Part 7. However, Division 3 of Part 7 exclusively deals with distributors. To ensure that it is unambiguous that it does not deal with retailers, the definition of relevant in 401(1)(a)(vi) should not include the word “retailer.”
402	Role of energy ombudsman	The roles of energy ombudsman are determined in accordance with their respective constitutions or legislative authorities and should not be specified in the NERL.
406	Functions and powers	The role of the energy ombudsman in Victoria, New South Wales and South Australia does not extend to resolving the dispute, only facilitating the resolution. In these schemes, the Ombudsman’s powers are already specified in the schemes’ respective charters.
407	Information and Assistance	The ability for the Ombudsman to decide what assistance is required to assist in facilitating the resolution of a dispute without consideration of cost impacts imposes additional costs on retail and distribution businesses.

		As there is no specification as to whether they are party to the dispute or not this could mean that where industry advice is sought there could be requirements, with costs associated, imposed on retail and distribution business that are unrelated to the matter.
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Draft National Energy Retail Law		
Part 5 – Authorisation of retailers and exempt selling regime		
Section	Subject Matter	Comment
Part 5	Authorisation of retailers and exempt seller regime	Any transitional provisions should include streamlined application procedures for existing retailers to transition their jurisdictional licences into a national authorisation.
520(2)(b)	Power to revoke	Given the severity of revocation it should only be considered after all other enforcement procedures have been exhausted. In addition, “reasonable expectation that the retailer will not be able to meet its obligations” is a more appropriate test than “reasonable apprehension.”
529	Exempt related factors	<p>The criteria listed are generally inconsistent with the policy principles listed in section 529. In particular sub-sections (e) and (f) do not apply to authorised retailers and it is inequitable to apply them to exempt sellers. If there are other laws to govern the applicant’s behaviour, then these other laws should also be adequate to govern an authorised retailer’s behaviour. Similarly if the costs of regulation exceed the benefits, then the regulations should also not apply to authorised retailers.</p> <p>These principles should apply to Authorised Retailers and the national rules generally. Clearly they do not. It is therefore inequitable to apply such a principle to the obligations imposed on exempt retailers. Sub-rules (1)(e) and (f) should be deleted.</p>

Draft National Energy Retail Law		
Part 6 – Retailer of last resort scheme		
Section	Subject Matter	Comment
606(1)	ROLR register EOI's	An annual EOI process is costly and unnecessary. As an alternative approach, the ERAA suggests an initial EOI process be run, followed by an open-ended opportunity for retailers modify or withdraw their EOI, or express interest where they have not already done so.
614	Transfer of customers	Consistent with some existing jurisdictional industry processes, this section should allow pending transfers to complete at the time of a ROLR event to allow customers to transfer to their preferred retailer.
622(4)	Large customers	<p>Consistent with existing jurisdictional arrangements the prices charged to large ROLR customers should be fair and reasonable, and not subject to regulatory approval. It is important to note that large customers are allowed to nominate a designated ROLR, and therefore negotiate their terms and conditions in advance of a ROLR event.</p> <p>Reference to the "actual wholesale energy cost" should be to the half-hour price at the regional reference node, consistent with existing commercial arrangements with large default customers.</p>
624	Duration for large customers	Given their negotiating power, it should be sufficient for large customer deemed ROLR arrangements to be terminated after 3 months, following a notice after 2 months.
627	General regulatory information order	<p>The purpose of a GRIO and the circumstances under which it would be enacted are unclear. Given the extreme powers it provides the AER, further consultation is required, and we request that a separate briefing is held.</p> <p>It was claimed at the NECF2 that the General Information Order was based upon the information requirement regime established by Ofgem. However, Ofgem's "Supplier of Last Resort – Revised Guideline, November 2008" is considerably more targeted and limited, than proposed in NECF2:</p> <p>We are also concerned that by its nature issuing a General Information Order may give cause to an</p>

		unwarranted apprehended ROLR event (if financial statements are incorrectly interpreted), or may increase the likelihood of a ROLR event being triggered (by precipitating panic and defensive responses by counter-parties).
634(1)&(2)	Information described in a ROLR RII	The purpose of requiring financial information and how that information will be used is unclear. Given the commercial sensitivity of such information, further consultation is required. As above, the broad scope of information that may be required is in contrast to that specified by Ofgem.
634(4)(e)	Information provided in a ROLR event	Rather than "average consumption" the ROLR will require actual metering data.
643(7)	ROLR plans	Annual ROLR plan reviews are costly and unnecessary
648	ROLR cost recovery	Given that the provision of ROLR services is providing a market-wide benefit to all participants there should be no limits on the costs that are recoverable.  Furthermore, the Law makes no reference to the rights of a ROLR to set an up-front fee, consistent with paragraph C20 of the explanatory note, and as discussed in the consultants report.
652(2)	ROLR information	It is unnecessary, costly and excessive for the AER to impose a standard form for the ROLR information notice, and specify how the notice is to appear in the contract. No jurisdiction currently adopts such an approach.

Draft National Energy Retail Law		
Part 8 – Functions and Powers of the AER		
Section	Subject Matter	Comment
812	Disclosure of Confidential Information	Given the impact of disclosing confidential information it would be more appropriate if the introduction to subsection (1) read: Despite sections 809, 810 and 811 but subject to this section, the AER is authorised to disclose information given to it in confidence after the restricted period if the AER <u>is of the reasonable opinion that the disclosure is necessary and:</u>

Draft National Energy Retail Law		
Part 8 – Functions and Powers of the AEMC		
Section	Subject Matter	Comment
906	AEMC Rule Making Powers	It appears that the reference to Part 8 in this section is incorrect
914(b)	Confidentiality of information	The paragraph should be amended to read ‘the AEMC reasonably decides that the information is confidential information’

Draft National Energy Retail Law

Part 10 – National Energy Retail Rules

Section	Subject Matter	Comment
1003	Subject matters of the Rules	This section (coupled with the expanded national objective) has greatly shifted the balance between protecting consumers and minimising the cost and burden of regulation. As identified in the comments to s113, the ERAA is concerned that such a significant reversal of a fundamental policy has occurred without consultation.
1003(3)(c)	Subject matters – Ombudsman	The section states that the Rules may confer functions or powers on an energy ombudsman. Most existing energy ombudsmen have their powers and functions conferred by their relevant constitution. Given that the policy intent is not to amend existing functions and powers this reference should be deleted.
1003(4)	Subject matters – contract variation	While the Rule must specify a date on which an amendment to the model terms and conditions must apply, there does not appear to be any allowance for the retailer to make the necessary amendments and meet publishing obligations when required. In addition, Rule changes should not apply retrospectively unless there is a strong case to do so.
1007	Criminal Offences	The AEMC should not only be prohibited from making a Rule that creates an offence for a breach or provides for a criminal penalty or civil penalty for a breach, but the AEMC should also be prohibited from amending a Rule which has those effects.
1008(2)	Documents	Para (a) and (b) should be cumulative (i.e. "or" should be replaced with "and")
1012	Content of requests for Rules	Insert "market initiated proposed" in front of the first use of "Rule"

Draft National Energy Retail Law		
Part 12 – Compliance and Performance		
Section	Subject Matter	Comment
1206	Carrying out of compliance audits	Audits required by the AER should only be in response to evidence of systemic and material non-compliance, and should take into consideration the compliance record of the retailer.  At the very least, the circumstances in which an audit would be required should be set out in the AER Compliance Procedures and Guidelines.
1209(d)	Contents	A report on any additional matters that the AER considers appropriate for inclusion, should be subject to a reasonableness test.
1210	AER Compliance Procedures and Guidelines	The circumstances in which an audit would be required should be set out in the AER Compliance Procedures and Guidelines.

Draft National Energy Retail Law		
Part 12 – Enforcement		
Section	Subject Matter	Comment
1320(3)	Costs in review	There does not appear to be a basis for the Tribunal to not have the power to order the AER to pay costs in the same way it can order other parties to pay costs. If costs are appropriate then the Tribunal's power should not be limited by paragraphs (a)-(c) and 1320(2) should apply equally to all parties.

## Draft National Energy Retail Rules

### Part 1 – Preliminary

Rule	Subject Matter	Comment
105(2)(b)	Aggregated business customers	<p>Under the business aggregation rules, Part 2 of the Rules (Customer retail contracts) does not apply. This is consistent with jurisdictional arrangements. However within those jurisdictional frameworks disconnection rules also only apply to small customers, whereby both large business and relevant aggregated small business are not covered. The sections should be amended such that Part 6 of the Rules does not apply.</p> <p>More broadly, consistent with all current jurisdictional arrangements, the Rules should be explicit that Disconnection rules do not apply to large customers.</p> <p>In addition, Parts 3 (customer hardship and payment difficulties) Part 7 (life support) and Part 8 Pre-payment meter systems, should not apply to large customers.</p>
Div 3	Classification of customers	<p>The ERAA supports provisions which provide a mechanism to determine a customer classification, i.e. residential vs business, small business vs. large business, which is what Division 3 appears to be designed to achieve. However, further thought needs to be given to B2B processes, some of which do not currently exist, and which may not be workable in the NECF's current form. For example, a retailer will not be able to rely, at the point of sale, on a distributor classification of a customer as less than one more than 40 MWh pa, although it may be able to rely on such information if it is contained in MSATS.</p>
106(c)(ii)	Classification	<p>It is confusing to categorise customers as "small market offer", given that some small customers will be small market offer customers, in the sense of being a small customer on a market offer, but below the "small market offer" customer consumption threshold. An alternative description, such as 'medium customer' should be adopted for clarity.</p>

Draft National Energy Retail Rules

Part 2 – Customer retail contracts

Rule	Subject Matter	Comment
205 (2)	Pre-contractual duty of retailers	<p>The only circumstances in which it is of benefit to the customer to remind them of their rights to a standing offer contract (when a market offer is available to that customer), is if, due to regulatory failure in retail price setting arrangements, standing offer tariffs have not been transitioned to cost-reflective levels. This regulatory failure should not be resolved by imposing additional regulation upon retailers.</p> <p>Furthermore, ERAA members have found the New South Wales obligation to be counter productive, leading to customer frustration at the volume of information required at the time of contracting, and confusion as to why an additional product is being offered. It can also lead to the customer choosing a sub-standard product compared to the market contract on offer.</p> <p>Consistent with the efficient operation of clause 4.2.10 (a) of the Queensland Electricity Industry Code, the obligation on a financially responsible retailer to advise of the obligation to provide a standing offer should only apply if the retailer has refused to offer the customer a market contract, or the customer has not accepted that offer. Victoria also currently operates efficiently under the FRMP model with no such requirement.</p> <p>If there are concerns regarding the level of understanding on the availability of standing offer contracts, this is more appropriately addressed through other communications, including the regulator's website and a government funded awareness campaign. This was the approach adopted by the Victorian and Queensland governments.</p>
207 (3)(a)	Pre-contractual request to designated retailer – Acceptable identification	<p>Victoria, South Australia and Queensland all permit the retailer to request from the customer contact details for the owner (or the agent of the owner) of the premises if the application is for a rental property. This is at no cost to the customer and should be included.</p>

207(5)	Pre-contractual request to designated retailer – Unpaid account	The section refers to “an unpaid account in relation to other premises” . However, if the customer has applied for connection at the same address following disconnection, the unpaid account may relate to the current premises. The words “in relation to other premises” should be deleted.
207(6)	Pre-contractual request to designated retailer – conditions precedent	<p>The draft significantly weakens existing pre-contractual requirements. Both South Australia (4.1.1(h-j)) and Queensland (4.7.1(h-j)) require the customer to pay any required security deposit, and to either repay an existing debt from a previous supply address or enter into a payment plan for that debt. Removing these obligations would lead to higher prices for all customers (including those who meet their obligations), and increase the likelihood of subsequent disconnection for those who do not, with a corresponding increase in financial and emotional stress.</p> <p>We also note that under rule 615, a customer seeking re-energisation must rectify the matter that led to the de-energisation prior to the re-energisation. This would include the payment of debt or the provision of a security deposit. Rule 207 creates an anomaly whereby a customer who moves premises is not required to provide either outstanding payments or a security deposit prior to energisation, but a customer remaining at a premise must do so.</p>
208(1)(c)	Responsibilities	Retailers will not know the relevancy of any government schemes etc at the time of request for the sale of energy. General information of these schemes is therefore provided to customers. The words “any relevant” should be deleted.
209	Basis for bills	<p>The section requires retailers to use best endeavours to read the meter quarterly and in any even at least once every 12 months. As responsibility for small customer meter reading rests with distributors, so too should the obligation to read the meter.</p> <p>At the very least, a reciprocal requirement is required for distributors to read the meter as frequently as required to allow the retailer to meet its obligations.</p>
210(1)(c)	Estimations	The word “where” is repeated and should be deleted.
210(4)	Estimations	The reference to 209(2) should be to 210(2)

211	Bill smoothing	<p>The requirement for 6 monthly reviews of bill smoothing arrangements, which currently only applies in Victoria, imposes additional costs that will only deter retailers from making this customer service available.</p> <p>If the clause is retained, 6 month should be amended to 7 month, to allow 6 months data to be used in reconciliation.</p>
212	Frequency of billing	<p>The obligation to provide a bill at least once every three months should be subject to availability of accurate metering data from the responsible person. If the metering data provides values outside of the tolerable range, retailers will query the distributor as to the accuracy of the data. Resolving the issue will require some time, whereby retailers may not be able to meet this obligation through no fault of their own. Additionally as this is a penalty clause retailer risk either disputing the network billing and failing to bill the customer to receive a penalty or billing the customer for something that is more than likely incorrect and risk causing a complaint that may be investigated by one of the Ombudsman Schemes of which is an additional cost.</p>
217(5)	Billing disputes	<p>The retailer must reimburse the cost of a meter test if the meter or metering data proves to be faulty. There does not appear to be a reciprocal obligation on the distributor to reimburse the retailer in those circumstances.</p>
219(6)	Overcharge threshold	<p>Consistent with clause 6.6.1(a) of the South Australian Code the threshold amount should be \$100, not \$50 as currently drafted. The \$100 threshold has operated effectively in South Australia since market start, and has not been changed or questioned through several code review processes.</p>
220	Payment methods	<p>Telephone and ETF are not current requirements in jurisdiction arrangements, and are potentially onerous for niche retailers.</p>
222	Shortened collection cycle	<p>Sub-rule 2(a), restricts shortened collection cycles to customers not experiencing payment difficulties. This restriction does not currently apply in any jurisdiction. The Victorian Retail Code, the only code which applies a restriction, refers in clause 11.2 to the customer contacting the retailer and advising they are experiencing financial difficulty or the retailer "otherwise believing the customer is experiencing payment difficulties."</p> <p>If any restriction applies, it should be limited to residential customers, and only those on the retailer's</p>

		Hardship scheme.
223	Request for final bill	The clause should be deleted as it serves no purpose. If it is retained the words in brackets “(but not de-energisation)” should be deleted to avoid confusion regarding the rights of the retailer to de-energise a site for which it is financially responsible, but for which no customer is contracted to take supply.
225	Payment for security deposit	<p>Current jurisdictional arrangements allow retailers to request a security deposit at any time when the security deposit provisions are triggered, and not just when supply is requested, as is currently drafted (whilst it may be claimed there is some ambiguity in Queensland and South Australia, no restriction applies in Victoria, and in New South Wales there is only a one year restriction for standard contract customers).</p> <p>Otherwise the framework would treat those customers who move supply address (from whom retailers could make a request) differently to customers who do not move (and no request could be made). The words “at the time when the customer requests the sale and supply of energy under a customer retail contract” should be deleted, as should sub-section (6).</p> <p>The list of circumstances in which a retailer can request a security deposit should also include money owed to the retailer in relation to the sale and supply of energy at the current premises, as the customer may have been disconnected at the current premise, and may be seeking reconnection. Rule 225(1)(a) should be amended to read “the customer owes money to that retailer in relation to the sale and supply of energy; or”.</p> <p>Sub-section (2) should be simplified whereby a security deposit cannot be requested from hardship customers.</p> <p>Current jurisdictional arrangements do not provide for the payment of security deposits by instalments as per sub-section (3). Such a process would be unworkable, creating uncertainty regarding what form the instalments must take, when the disconnection provisions could be triggered, and complexity in the calculation of interest payments. If a customer requires instalments to pay a security related to debt, they should be on the retailer’s hardship program.</p> <p>Under sub-section (7) a retailer is not obliged to reconnect a customer if the customer has refused to provide a security deposit after connection. However it is unclear whether this provision applies if the security deposit remains unpaid 10 business days after disconnection.</p>

226	Payment of security deposit	Sub-rule (1) does not prescribe a time period in which the customer must provide a security deposit. Consistent with clause 4.17.1 of the Queensland Electricity Industry Code, the customer should be required to pay a security deposit within 5 business days of the request.
228	Interest on security	Consistent with current arrangements in most jurisdictions, NECF1 deducted 1% from the bank bill rate to allow retailers to cover the costs of managing security deposits. This approach should be retained and the words "less one full percentage point" reinstated.  Bank Bill Rate has not been defined. The definition should also reflect an annual reset date of the BBR for all retailers (perhaps as at the 1 <sup>st</sup> of July each year). Reviewing and resetting the bank bill rate each month is administratively burdensome.
229(1)(a)	Use of security deposit	South Australia (8.7.1(a)), Queensland (4.17.10) and New South Wales (22.6) allow security deposits to be used upon disconnection, with no condition requiring "no contractual right of re-energisation." The NECF should be drafted accordingly with those words deleted from the section.
230	Obligation to return a security deposit	The circumstances under which a security must be returned should be subject to variation under agreement in a market contract, in accordance with NECF1 and all previous RPWG and SCO papers.
234	Termination of a standard contract	Retailers must have a right to terminate a contract if the customer's consumption exceeds the small market offer consumption threshold, otherwise the retailer may never be able to transition the customer to a market offer.
235	Termination of a market contract	Consistent with the SCO response, market contracts should be able to specify additional circumstances under which a retailer may terminate, providing that there is no inconsistency with section (1)(a-g). This section should make such a right explicit.
235(3)(b) and (4)	Termination of a market retail contract	Reference to early termination fees being based on retailers' "costs" should be replaced with "loss suffered".
236 (2)	Right of rescission	Consistent with clause 17(b) of the model terms and conditions for standard retail contracts, the information required to be provided to customers in accordance with rule 4 of the Marketing Rules should be deemed to have been received within two business days of being posted.

237(4)	Retail notice of contract expiry	Contracts may be evergreen, whereby reference to the expiry date should only apply "if applicable."
247	No contact times	<p>Telephone contact times and procedures are governed by Commonwealth Law and Standards, without a need to regulate in Energy Law.</p> <p>Reference to "in person" should be to "door-to-door" (On Premise sales) to ensure that canvassing in shops or public places (Off Premise sales) is not captured.</p>
253	Record keeping	The section refers to retailers maintaining records of visits "conducted" and calls "placed", whereas existing jurisdictional instruments refer to marketing contacts. The NECF2 drafting may be interpreted as requiring unsuccessful contacts to be recorded, significantly increasing record keeping costs, with no identifiable benefit, and inconsistent with current arrangements.

Draft National Energy Retail Rules

Part 5 – Relationship between distributors and Retailers – Retail support obligations

Rule	Subject Matter	Comment
		<p>The following obligations should appear in Part 5:</p> <ul style="list-style-type: none"><li>• where distributors are the responsible party, a requirement to read a meter as frequently as required by retailers to meet their obligations, given that retailers are subject to a civil penalty provision to issue a bill at least once every three months</li><li>• a non-discrimination clause, which requires distributors to treat customers and retailers equally</li><li>• where meter or metering data proves to be faulty or incorrect, an obligation on the distributor to reimburse a customer for the cost of the check or test</li><li>• in the case of theft or illegal use of energy, an obligation to reimburse retailers network charges as it is the distributor who identifies the breach and instigates legal proceedings against the customer. As the distributor is best able to manage this risk, retailers should not be required to collect network charges on its behalf</li></ul>
513	Notice of de-energisation	It is important that retailers are advised that the distributor has completed the de-energisation if it has been requested by the retailer. The section should be reworded so that the distributor is only required not to advise the distributor of the reason for de-energisation if requested by the retailer.

514	Liability for ongoing charges	<p>Sub-section (1)(b) requires distributors to “pay charges for energy consumed.” The Victorian Use of System Agreement (6.3(c)) and the South Australian Co-ordination Agreement (13.2(a)) requires the distributor to pay to the retailer “the costs incurred by the Retailer payable to NEMMCO in connection with the consumption of energy by the Customer. . It is important that the types of charges be specifically identified in this way.</p> <p>A distributor should not only be liable for energy charges where they have failed to de-energise after a lawful request from a retailer but also to charges that a retailer is unable to recover from a customer due to the distributors acts or omissions (such as distributor caused cross metering or incorrect network codes).</p> <p>The ERAA does not believe that retailers should be required to use ‘all reasonable endeavours’ to recover the charges from a customer before being compensated by the distributor for failing to fulfil their obligations. It is more appropriate (and a greater incentive for a monopoly service provider to perform its duties) for the party who has breached its duties to wear any credit risk.</p> <p>The phrase ‘within the timeframes for de-energisation in accordance with a distributor service standard’ seems to be limiting a distributor’s liability to a few very specific incidences and should be deleted.</p>
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Draft National Energy Retail Rules

Part 6 – De-energisation of premises

Rule	Subject Matter	Comment
602	De-energisation limited by this Part	The SCO response (2.26) included the following grounds for disconnection: <i>(in the case of a market retail contract) the contract has been terminated in accordance with the terms of the contract, and the customer has not entered into another retail contract.</i> The rules should reflect this decision.
603(2)	Reminder notices	Contrary to NECF1, and all existing jurisdictional arrangements outside New South Wales, NECF requires details of the Ombudsman scheme to be included in reminder notices, in addition to disconnection warnings. Retailers must be given first opportunity to resolve any issues directly with their customers, and this is consistent with the practice of advising customer of the retailer’s internal complaint arrangements in the first instance on reminder notices, and of the ombudsman scheme in the subsequent disconnection warning. It is wrong and misleading to suggest that receipt of reminder notice is related to a potential unresolved dispute. There are also cost implications given that retailers are charged for each related call to the ombudsman, and that a high proportion of customers receive reminder notices.
604(2)(d)	Costs of re-energisation	It is not feasible for retailers to inform customers in a disconnection warning of the “associated costs” of a re-energisation, given that those costs vary by distributor, site conditions, and disconnection type performed, and vary over time. In addition, the customer may also be required to pay to rectify any safety or metering works identified as necessary by attendance at the site.  It is not a current requirement in any jurisdiction. It should be sufficient to inform the customer that reconnection costs will apply.
605(1)(d)	De-energisation for not paying bill – contact customer	The obligation for an additional customer contact prior to disconnection currently only applies in specified circumstances; In Victoria (13.2) and South Australia (9.2.1) if the customer has a lack of sufficient income, and in Queensland (4.18.3) if the customer is experiencing financial difficulty. A similar restriction should apply in the national rules.

605(2)	Non-payment of payment plan	In sub-rules 605(2)(b) and 605(2)(c) reference is made to "non-payment:" under a payment plan. To avoid any doubt that a part payment should not be regarded as payment, the clause should be redrafted to refer to the customer's "failure to comply" with a payment plan. This would be consistent with the drafting of clause 11.2(3) of the Victorian Retail Code.
606(1)	De-energisation – security deposit	De-energisation should be due to the customers "failure" to pay the security rather than "refusal." It is the act of not paying, rather than conveying to the retailer that they will not pay which is the appropriate trigger.
606(9)	Disconnection	Inconsistent with general obligations in all jurisdictions other than New South Wales, these sections require retailers to send two disconnection warnings of their intention to disconnect in the case of not providing security, denying access to the meter, and not providing acceptable identification. Given that retailers would have attempted or made contact with these customers in pursuit of the security, access or identification, the obligation for a further contact in addition to the disconnection warning is unnecessary costly and should be deleted.
610(1)	Restrictions on de-energisation	Paragraphs (1)(c-e) should not apply where the reason for de-energisation is denying access to the meter.

Draft National Energy Retail Rules

Part 10 – Retail market performance reports

Rule	Subject Matter	Comment
1002	Content of retail market report - Overview	Second tier retailers do not currently collect data on the number of customers on a standard contract, and any requirement to do so would impose significant system costs. This was recognised in the development of the Queensland Code whereby under clause 8.5.2 retailers are not required to provide this information to the QCA. The intent in the national rules is understood to be to allow for the identification of regulatory failure, in the case of standing offer tariffs not transitioning to cost-reflective levels whereby customers remain, or revert, to the standing offer tariff. However regulatory failure should not be monitored by imposing additional costs on retailers, particularly when available aggregate data, including customer transfer statistics, number of active retailers etc, can provide an adequate indication at no cost.
1003(1)(d)	Content of retail market report – De-energisation	The bracketed text distinguishes between two categories of customers, those in hardship and “other residential customers experiencing payment difficulties).” The words “experiencing payment difficulty” should be deleted, as only some non-Hardship customers de-energised will be experiencing payment difficulty, and this may or may not be known to the retailer at the time of disconnection. The reference should be to “hardship customers and other residential customers.’
1003	Content of retail market report - Review	Large customers are not currently covered by retail market performance reports.

Draft National Energy Retail Rules

Part 11 – Retailer of Last Resort Scheme

Rule	Subject Matter	Comment
1115	Arrangements for large customers	Pricing and terms and conditions for large customers are not currently regulated in any jurisdiction, in any circumstances (including ROLR), and should not be regulated here.
1122	Decision (on cost recovery)	ROLR should be able to recover reasonable costs rather than efficient costs
1124	Information to be included	Given the likelihood of a ROLR event applying to a customer, and the absence of any benefit to the customer of knowing this information in advance, it is unreasonable for the retailer to be required to place a ROLR notice in a “prominent position” in the contract or to require it to be in a standard form published by the AER. This is not a feature of current jurisdictional arrangements.

Draft National Energy Retail Regulations		
Regulation	Subject Matter	Comment
5	Recognised energy industry ombudsman	The corresponding obligation in Victoria, South Australia, and New South Wales is for retailers to participate in an approved ombudsmen scheme, whereby the schemes in those jurisdictions are established by industry, not legislation. A consistent approach should be adopted in the national framework whereby retailer should be required to participate in a scheme approved by the AER.
10	Review of consumption thresholds	The minimum review period of 5 years is too long, particularly given that the AEMA requires the AEMC to review the effectiveness of retail competition biennially. Reviews of the consumption threshold should also be conducted biennially, ideally in conjunction with the competition reviews.
Schedule 1	Civil penalty provisions	Civil penalty provisions should only be attached to sections which have the potential for material impact upon the functioning of the market.
Schedule 2	Conduct Provisions	The obligations contained in Part 5 of the Law, in the Retail Support Arrangements, in the National Retail Connection Rules for both electricity, and in Rule 413(3) should be marked as conduct provisions.

Draft Model Standard Retail Contract		
Clause	Subject Matter	Comment
3.2	Application	These terms also apply under a deemed contractual arrangement, and this should be made explicit. A new sub section (d) is required - <i>"when you use energy at a residential premise under a deemed arrangement"</i> .
4.1	Commencement	Under a deemed arrangement this contract would commence when a customer used energy at the premise. This also needs to be reflected in this provision.
6	Your general obligations	The ERAA suggests that customers should have an obligation to inform their retailer if they are suffering hardship or having payment difficulties that will affect their ability to pay their energy bills. Insert a new sub clause under 6.1 to cover this obligation.
6.4	Life support equipment	In some jurisdictions customers may not qualify for the Life Support Rebate but they may qualify for 'do not disconnect'. This needs to be made clear under this obligation to avoid confusion.
8.1	Tariffs and Charges	Consistent with clause 9.1 of the South Australian standard retail contract, a clause should be included to allow the pass-through of taxes and charges in accordance with other instruments:  <i>In some cases we can pass through to you certain taxes and other charges in accordance with applicable regulatory instruments. We can do this by either changing the tariffs and charges, or including the amount as a separate item in your bill.</i>
8.3(b)	Information relating to eligibility for type of tariff	Retailers and/or distributors may need to transfer tariff types retrospectively for a variety of reasons. For example, where a customer's circumstances have changed or where a customer's assumptions were incorrect. A retailer's ability to transfer a customer should not be limited to where a customer fails to tell us of a change in circumstances. The phrase "if you fail to tell us of your change in circumstances" should be deleted.

9.4	How bills are issued	This must also allow electronic billing, whereby address should explicitly allow for an electronic address as an alternative to a physical address
Section 10	Fees and Charges	A new clause needs to be inserted that will allow the retailer to charge various other fees including; merchant service fees (credit card fees) and cheque dishonour fees. These fees exist in various jurisdictions now and should continue to exist as they appropriately allocate the addition cost to serve to the causing party.
10.2	Issue of reminder notices	Reference is made to a "further due date" on reminder notices. Different terminology should be used to distinguish between the due date, which doesn't change, and the payment date specified in the reminder notice.
10.5(a)	Difficulties in paying	The obligation should be that the customer must contact retailers if they are having trouble paying their bill.
11	Meters	Meter reading obligations are specified in section 3.3 of the Metrology Procedures, and require the responsible person, which in almost all circumstances for small customers is the distributor, to use best endeavours to read the meter at least once every 3 months. Contrary to clause 11(b), there is no absolute obligation on any party to read the meter at least once in any 12 month period.
14.1(a)	When can we arrange for de-energisation	The words 'or payment option offered by us' should be deleted from this clause as a payment plan is all that is required to be offered.

Model Terms and Conditions for Deemed Standard Connection Contracts		
Clause	Subject Matter	Comment
5.1(e)	Distributor services	A new sub-clause 5.1(e) should be inserted "where we are the responsible party for metering services we will provide meter reading services as frequently as required to allow your retailer to prepare your

		bill".
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Chapter 6B - Retail Support Rules (and corresponding sections for Gas)

Clause	Subject Matter	Comment
1.1	Application of this part	Similar to the Victoria UoSA, a provision should be inserted that establishes application of this part "applies where retailers and customers agree".
1.2	Definition	The definition of 'Distribution service charges' is so broad that it could involve any charge that a distributor wishes to invoice a retailer, regardless whether a retailer has the ability to recover those charges. The definition should explicitly exclude new connection charges. New connection charges (such as augmentations and extensions) are currently excluded from network charges and should not be included as part of the network settlement process. For example, the following phrase (from the South Australian Co-ordination Agreement) could be added to the definition "but excludes any amount payable by that customer to a Distributor on account of new connections, augmentation or extensions".
2.2	Direct customer billing	There is no provision for retailers to initiate an energy-only contract with its large customers. Notice to the retailer under sub-section (b) should be at the time of the agreement, not commencement of eth arrangement.
2.4(a)	Statement of Charges	In the case of theft or illegal use of energy, the retailer should not be invoiced by the distributor. It is the distributor who identifies the breach and instigates legal proceedings against the customer. As the distributor is best able to manage this risk, retailers should not be required to collect network charges on its behalf  Many billing disputes between retailers and distributors evolve around charges that are not linked to a particular retailer service request or that do not contain sufficient information to permit the retailer to verify the charges and prove to the customer (or a court if necessary). Distributors should be expressly prohibited from charging for distributor initiated service orders, unless the service and amount was previously approved by the customer or retailer.

		<p>For drafting purposes, clause 7.8 of the Queensland Electricity Standard Coordination Agreement could be a good starting point:</p> <p>“Each statement of distribution charges issued by the distributor to the retailer must contain sufficient information so that to enable the Retailer to either:</p> <p>a) Include that information in the retailers next bill to a particular shared customer; or</p> <p>b) Reconcile the statement of distribution charges with the amounts included in a retailer’s bill to a particular shared customer.”</p>
2.4(b)	Statement of charges	Under sub-section (b), in default of an agreement the statement of charges is as reasonable determined with the distributor. Current jurisdictional arrangements require the statement to be in a format consistent with industry practice.
2.5 (b)	Time of payment	<p>10 business days to pay an invoice is based upon a quarterly billing cycle, with a third of customer sites billed in each invoice.</p> <p>In an interval meter environment, with the potential for monthly invoices for all customer sites, the processing of the invoice would become unmanageable. The time for disputing the monthly network invoice should be increased to 20 business days to accommodate this extra work.</p>
3.2	Tariff reassignment	<p>The rule should distributors to:</p> <ul style="list-style-type: none"> <li>• provide 20 business days notice to retailers of any tariff reassignment.</li> <li>• respond within 10 business days of a retailer request</li> </ul>
3.3(e)	Billing Disputes	Payment should be in five business days, rather than the proposed three business days, consistent with the South Australian (10.6(c)) and Queensland (8.5(d)) Co-ordination Agreements. Given the potential for significant monetary sums to be involved, that board approval may be required, and that the clause is reciprocal, the longer time period is reasonable and preferable.
8.3	Application of credit support	Consistent with the proposed changes to clause 110(e), the notice period for the application of credit support should also be five business days.

15.5	Notices	Notices sent by post should be deemed to have been received within two business days of being sent, consistent with the standard retail contract. NECF1 identified three business days.
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Attachment B – Customer Registration & Transfer

Clause	Subject Matter	Comment
Box 5	Cooling-off period	<p>The ERAA supports the right for retailers to initiate a transfer request prior to expiry of the cooling-off period to facilitate a smooth customer transfer process. However in a move-in scenario, in which the customer is unlikely to be aware of the financially responsible retailer (FRR), if the customer cools-off the market contract does not apply, but the customer should be placed on that retailer’s standing contract under a deemed arrangement, rather than reversing the transfer to the previous FRR.</p>
Box 6	Transfer on estimate	<p>The provision suggests that the customer’s explicit informed consent is required to allow a transfer on a special meter read. It is reasonable that EIC is required when the customer is paying for the cost of the special meter read. However, it should be clear that if the retailer is paying for the read, then EIC is only required for the transfer and not the special meter read.</p>
Box 7	Objections	<p>The ERAA supports the right of retailers to object on the grounds of debt and the network should have the ability to object in the absence of a haulage contract.</p> <p>Debt objections are currently allowed in Victoria and Queensland, with no customer protection concerns raised. This provides is a valuable debt management tool to retailers to the benefit of all participants in the market as it restricts debt laden customers from jumping between retailers rather than gaining assistance from their current retailer to manage this debt. For example under a hardship program.</p> <p>Distributors should maintain the ability to object for haulage contract reasons as they are the only party aware of the existence of specific haulage contracts.</p>

Attachment D – Future Smart Meter Customer Protection

Clause	Subject Matter	Comment
D2	Historical Billing	Any obligation to provide historical billing information to customers free of charge must consider frequency of request, method of delivery, and costs involved. This is recognised in current jurisdictional arrangements.
D3	Re-remote disconnection	The ERAA recognises the concern that a disconnection notice should inform the customer that the disconnection may be performed remotely. However, we do not support any requirement to impose an additional contact requirement on remotely disconnected customers, given the additional costs that would be incurred and the extensive number of previous contact attempts required under the required disconnection procedure. Furthermore the remote disconnection process is subject to a risk analysis in Victoria and the findings in this study will assist to address all issues related to remote disconnection and the NECF 2 should not be finalised until this is determined.
D4	Undercharging Provisions	Undercharging often relates to complex issues including crossed meters, changed addresses etc. These require an extended time before than can be identified and remedied, unrelated to the number of billing cycles. In many cases seasonal consumption variations trigger billing issues which are also unrelated to billing cycles. At a minimum, undercharging could be identified only up to 6 months later in line with final settlement periods in the NEM.

National Gas (Retail Connection) Amendment Rules		
Clause	Subject Matter	Comment
	GST	The former retail support contract in NECF1 included a clause covering "GST Charge for Taxable Supplies". There is no similar clause in these amendment rules. A GST clause is required.
119u	Negotiated connection offer	20 business days is insufficient time for an offer to remain open for acceptance. The customer will need to obtain a retail contract and make other arrangements prior to accepting the offer. The time period should be extended to 40 business days.

National Electricity (Retail Connection) Amendment Rules		
Clause	Subject Matter	Comment
	GST	The former retail support contract in NECF1 included a clause covering "GST Charge for Taxable Supplies". There is no similar clause in these amendment rules. A GST clause is required.
Part E	Connection charges	Consistent with section 119O of the draft National Gas (Retail Connection) Amendment Rules a section is required to clarify the circumstances in which the distributor is not permitted to charge the customer via the retailer.