

12 June 2009

Manager, MCE Secretariat
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Dear Sir/Madam

RE: Response to First Exposure Draft of the National Energy Customer Framework: Law, Rules, Regulations and Contracts

Thank you for the opportunity to comment upon the first exposure draft of the National Energy Consumer Framework (NECF).

As the Retail Policy Working Group would acknowledge from our previous submissions, the draft adopts a number of policy positions not supported by the ERAA which will impose additional administrative and compliance costs on retailers with no commensurate consumer benefit. However, there are also benefits to be derived from the implementation of the NECF as soon as is reasonably practical, and, whilst not perfect, we generally support the overall approach of the draft. Consequently we have chosen not to reopen policy debates, but focus our comments on matters of detail to facilitate the framework's progression.

Conversely, the ERAA is concerned that the momentum generated by the current release may be lost through the intention to include the outcomes from a number of concurrent policy work streams (including retailer of last resort, bill benchmarking, new connections and smart meters) in the second draft due for release later in 2009. It is our view that these matters are not required in a functional national framework, and could be considered at a later date. Any expectation that they must be included in the current package will only unnecessarily delay implementation of the NECF, and the benefits it will provide.

With respect to implementation, we believe the Retail Policy Workshop Group should immediately begin consideration of the transition process. The ERAA supports the establishment of a National Implementation Steering Committee chaired by the Commonwealth. The committee would consider the legislative readiness of jurisdictions as well as the broader readiness of the market to implement the framework, and monitor and report on the progression of transitional arrangements. Consisting of government, industry consumer and regulatory body representatives, the committee should be established through amendments to the Australian Energy Market Agreement which also commits

jurisdictions to delivery no later than a specified date, and penalties and/or incentives attached to specific milestones.

Whilst the national framework will provide long-term benefits, retailers will incur short-term costs through the system and process changes required to comply with the national regime. These costs will be exacerbated if retailers are required to make the changes on a jurisdiction by jurisdiction basis rather than in one process. Once the NECF has been passed through the South Australian parliament, if a retailer demonstrates compliance in other jurisdictions which may not yet have implemented the NECF, action should not be taken against the retailer in those other jurisdictions. It would be most certain if compliance with the NECF could be explicitly stated to be a defence for any alleged breach of a jurisdictional provision which is covered by the NECF. However, as an alternative, it would be acceptable for this to be recognised on a per regulator basis.

Finally, we note that, for appropriate reasons, the draft default retail support contract is based upon existing jurisdictional arrangements. It is important to recognise that those arrangements commenced from a distributor proposed model, and have shown little movement towards a more balanced approach. Our initial comments in response to the first draft are made in the context of the current arrangements. However, the ERAA will be further investigating how a more even balance to the contractual relationship could be established, and will provide that advice to the RPWG when available.

- Removal of retail price regulation;
- Removing red tape barriers to direct market participation, around technical standards, metering and NEM registration for small players. The concept should be that generators at small scale should have similar metering and registration requirements to customers of similar size.

Any case for increased subsidy – such as the proposed enhancements to reserve trader, or other government or policy assistance should be avoided unless clear market failures can be identified, and the policy can be specifically targeted to address these.

Should you require any further information in relation to this matter please feel free to contact me on (02) 9437 6180.

Yours sincerely

[Transmitted Electronically]

Cameron O'Reilly
Executive Director
Energy Retailers Association of Australia

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

This table provides a template for stakeholders to make comments on the National Energy Customer Framework (NECF). The NECF package released for public consultation includes a first draft of the National Energy Retail Law, National Energy Retail Rules and National Energy Retail Regulations. Included in the package are three contracts: the model standard distribution contract, default retail support contract and model standard retail contract.

Organisation commenting: Energy Retailers Association of Australia (ERAA)

Draft National Energy Retail Law		
Part 1 – Preliminary		
Section	Subject Matter	Comment
103	Definitions – De-energisation and energisation	The opening and closing of a connection point has the reverse impact for electricity and gas. The definitions need to be re-drafted to refer to, for example, allowing or preventing the supply of energy at the connection point.

Draft National Energy Retail Law

Part 2 – Relationship between retailers and small customers

Section	Subject Matter	Comment
205	Standing offer prices	The ERAA does not support restricting price variations to once every 6 months. If a significant wholesale price increase occurred shortly after a retailer published new standing offer prices, the retailer would be obliged to maintain prices below cost for the remainder of the period. The potential for wholesale cost instability will be further exacerbated by the proposed CPRS. The alternative is for retailers to “price for uncertainty” and increase prices to account for potential future price increases. Restrictions on price variations also increases the likelihood of a retailer of last resort event, and a cascading effect through the market. At the very least there should be a provision whereby the AER may permit price variations within 6 month period, in response to a significant market event.
206(5)	Required alterations	The provision for jurisdictional exemptions is contrary to the National Energy Law Objective as specified in section 113.
208	Obligation to comply with standard contract	It should be explicit that this clause only applies to standard retail contracts.
209 (4)	Variation of a standard retail contract	4(a) should refer to the “retailer’s” rather than the “distributor’s.” 4(b) is confusing and should be re-drafted to make clear that required alterations include amendments to the standard model terms. The provision for jurisdictional exemptions is contrary to the National Energy Law Objective as specified in section 113.
215(4)	Minimum terms	The provision for jurisdictional exemptions is contrary to the National Energy Law Objective as specified in section 113.
218(1)(b)	Requirement for informed consent	The scope of informed consent required for the entry by the customer into a market retail contract in paragraph (b) is not clear. It should be made clear that this only requires informed consent to the fact that the customer is agreeing to a ‘market retail contract’ as distinct from a ‘standard retail contract’.
218(2)	Invalid transition if informed consent not	Current industry practice is for retailers to facilitate the retrospective transfer of customers back to their previous retailer if a customer queries the validity of a transfer. This process works effectively in the absence of regulation, and the case for regulation to address a market failure has not been demonstrated. Whilst we understand the

	obtained	<p>intent of the rule, it may have intended consequences. In particular, under the current drafting, the liability of the customer for energy charges to the retailer accepting the retrospective transfer is unclear. We recommend that the rule be deleted. If it is to remain, then it should be explicit that the customer is liable for energy supplied under the contract that would have applied if the invalid contract had never taken place.</p> <p>A further unintended consequence is that the rule may be open to abuse by customers querying a transfer well beyond the point at which such a query may be regarded as a reasonable. Therefore any restriction on retailers recovering an amount for energy supplied as a result of an invalid transaction should be conditional on the customer making a claim within 12 months of the transaction.</p>
219(2)(b)(i)	Nature of informed consent	For clarity it should be explicit that, consistent with industry practice, "written notation" includes notation by electronic means.
220(1)(b)	Record of informed consent	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. Furthermore, the current drafting does not recognise the proliferation of evergreen contracts with no fixed end date, which would require a record to be kept potentially for the life of the customer.
220(4)	Written procedures for recording informed consent	The reason for requiring retailers to make "procedures for receiving and recording informed consent given verbally by customers" available to a customer on request is not understood. In practice, customers do not request this information. This clause should be removed.
220(6)	Overcharge threshold	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.
232	Hardship policies	The ERAA does not support AER approval of retailer hardship policies. Such an approach would fundamentally alter the underlying framework from a performance regime to a command and comply regime. Sufficient powers and penalties are available to the AER within the framework to ensure compliance with the minimum requirements under section 233.
238	Service standards	The efficient provision of customer services in the competitive retail market is appropriately determined through competition. Any service standards determined by a regulator are arbitrary, and cannot be responsive to consumer preferences for the appropriate cost/service trade-off. Such a trade-off is an important source of retailer differentiation, and provides the potential for innovation and differentiation in response to the segmentation of consumer preferences. An example of this is grade of service, where a small variation in required telephone response rates can have significant cost implications.

Draft National Energy Retail Law

Part 4 – Relationship between distributor and retailers

Section	Subject Matter	Comment
409	Gas service agreements	The ERAA strongly supports the RPWG's approach to harmonising arrangements between electricity and gas and, in the context of the DB-RB relationship, the mechanism proposed for adopting the retail support terms and conditions as part of gas service agreements. A single set of contractual terms across the two fuels will deliver operational efficiencies and lower compliance costs.

Draft National Energy Retail Law

Part 5 – Authorisation of retailers and exempt selling regime

Section	Subject Matter	Comment
501	Authorisation	There does not appear to be a mechanism for authorising retailers with existing jurisdictional retail licences in accordance with the SCO recommendation – see 6.3 on page 85 of the Policy Response Paper. Existing retailers should not be required to re-apply for an authorisation under the national scheme.
516	Deciding transfer application	Sub-section (4) should require the AER to provide reasons for the decision not to approve a transfer application, consistent with section 510, and sub-section 518(5).
520(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.”
522(4)(b)	Revocation process	The period in which a retailer must respond to a revocation notice should be expressed in business days, rather than 14 days as currently drafted. As a general comment, all time periods with the national framework should be expressed in business rather than calendar days.

Draft National Energy Retail Law

Part 10 – Compliance and performance

Section	Subject Matter	Comment
1005	Compliance Audits	In recognition of the high cost of conducting compliance audits, any audit request made to a retailer by the AER should be “reasonable” in the context of being in response to evidence of systemic and material non-compliance.

Draft National Energy Retail Rules

Part 1 – Preliminary

Rule	Subject Matter	Comment
Definition	Public holiday	The definition of Public Holiday should be in accordance with relevant State or Territory legislation

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>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	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	Pre-contractual request to designated retailer – conditions precedent	<p>The draft significantly weakens existing pre-contractual requirements. For example, 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 pay any existing debt, or enter into a payment plan for that debt, from a previous supply address. 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 premises must do so.</p>
207(2)	Pre-contractual request to designated retailer –	<p>Retailers should not be obliged to allow customers to make a request for the sale and supply of energy “in person.” Retailers do not have customer shopfronts, or facilities to allow in person applications. This reflects an</p>

	application in Person	absence of demand for such a service, and the prohibitive costs of providing it.
208(1)(c)	Responsibilities of designated retailer	The obligation to provide “information about any rebate, concession or relief available under any government funded energy charge rebate, concession or relief scheme” should be rephrased as “information about the availability of rebates, concessions or relief available under any government funded energy charge rebates, concessions or relief schemes”.
209(2)	Classification of small customers	Change in site classification is extremely rare. Retailers should not be obliged to inform the distributor unless there has been a change in classification.
210(1)(b)	Basis for billing	For clarity it should be made clear that “metering data” includes estimated data from the responsible person.
210(2)	Meter reads	Ensuring that an actual meter read is undertaken is beyond the control of the retailer, and the clause should be deleted. Furthermore, the rule suggests a weaker obligation on the distributor than which currently applies under NEM Metrology Procedures Part A (3.3.6(c)) which is to use best endeavours to collect an actual read once every 3 months.
211 (4)	Actual read after an estimated read	The sub-rule requires any adjustment due to an actual read following an estimated read to be in accordance with the general overcharging and undercharging provisions. However, because the adjustment is part of the routine billing cycle such an approach is not always appropriate. For example, under current processes if the customer has been “overcharged” due to an estimated read, the adjustment identified from the subsequent actual read would be automatically applied directly to the customer’s next bill, and the threshold and option for repayment provisions should not apply as per Rule 220. Similarly if there has been an undercharge under the same circumstances, the amount would not be listed separately on the account, as per Rule 219. Clause 4.10.3 of the Queensland Electricity Industry Code and clause 6.4.3 of the South Australian Retail Code provide examples of separate provisions which should apply.
213 (1)	Frequency of billing	The obligation to provide a bill at least once every three months should be subject to availability of metering data from the responsible person, and variations to the billing cycle that may occur due to holiday periods. It is not practical for retailers to issue their own estimate in these circumstances as retailer billing systems are not configured to calculate ad-hoc estimates, and the cost of system upgrades to enable such estimates to be calculated would be prohibitive
214(i)	Content of bills – start and end reads	Meter readings for the start and end of the billing period are not relevant for interval meters. Whilst there may be an accumulation register which records those readings (although the provision of such a register is not mandatory in all jurisdictions), they will not be the basis upon which the customer is billed and will only cause customer confusion. Under clause 4.2(g) of the Victorian Retail Code, start and end meter readings are only required for accumulation meters and similar provisions should apply in the national rules.
214 (o)	Content of bills -	Current jurisdictional codes (Victoria; 4.2(n): South Australia; 6.3.4(s): Queensland; 4.9.6(o)) require bills to refer

	concessions	to the “availability” of concessions, rather than “available” concessions as per this sub-rule. The latter may be interpreted to require all available concession to be included on the bill, which would impact on available space, require detailed and costly bill re-designs, and limit the availability of efficiency gains by allowing a single national bill template.
218(5)(c)	Billing disputes	The rule reasonable requires that the retailer must refund the customer of the cost of the meter test if the meter proves to be faulty. However, there does not appear to a corresponding requirement for the distributor to refund the retailer.
220	Overcharging	It may not be practicable to notify customers of overcharging within 10 business days of becoming aware of the overcharging. This should be rephrased as “...the retailer must inform the customer as soon as practicable after the retailer becomes aware of the overcharging.”
221(2)	Payment Methods – Centrepay	<p>As currently drafted the obligation may be taken to apply to existing customers on a payment method-specific product, under which the customer benefit is contingent upon payment through a specific channel. For these products the customer benefit is derived from restricting payment methods, whereby extension to other channels, including Centrepay, would render the product uneconomic. This has broader market implications for product innovation and retailer differentiation.</p> <p>The Rule should be deleted, with an additional obligation included in the Hardship provisions whereby a customer in hardship must be offered a product with a Centrepay facility. Alternatively, sub-rule (2) should be limited in its application to standard retail contracts.</p> <p>If the Rule is maintained as a minimum condition for market contracts, then for existing customers it should be subject to the terms and conditions of the existing customer contract.</p>
223	Shortened collection cycle	<p>Sub-rule 2(a), restricts shortened collection cycles to customers that the retailer is satisfied is not experiencing payment difficulties. This restriction does not currently apply in any jurisdiction, and it is unclear how it will be interpreted or applied, with potential impact on retailer working capital and customer debt. If any restriction applies, it should be limited to Hardship customers.</p> <p>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>
224	Request for final bill	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.
226(1)	Payment for security deposit	Inconsistent with current jurisdictional arrangements, the current drafting of sub-rule 226(1) limits the occasions on which a retailer can require the provision of a security deposit to “the time when the customer requests the sale and supply of energy...”. The effective management of debt requires retailers to assess the need for a security

		<p>deposit from a retail customer at times other than when the customer requests supply. The words “at the time when the customer requests” (the sale and supply of energy under a customer retail contract) should be replaced with “in relation to”.</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. Rule 226(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>
227(1)	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	Amount of security	The amount of security should be based on a fixed percentage of annual expenditure, as this represents the financial risk to the retailer. Victoria adopts a 37.5% requirement, which is also consistent with the 1.5 times average for quarterly billed customers in SA and Qld. However the amounts of 2.0 and 2.5 times average for bi-monthly and monthly customers are arbitrary and represent only 33.3% and 20.8% of annual expenditure. A fixed 37.5% of annual consumption should apply regardless of billing frequency.
230(3)	Use of security deposit	The period in which the retailer must account to the customer in relation to the application of a security deposit should be expressed in business days, not in calendar days as currently drafted.
232	Liabilities and immunities	<p>For clarity, we recommend the following:</p> <p>A retailer, in a market retail contract with a small customer:</p> <p>(a) may limit or exclude its liability to the extent permitted by [section 68A] of the Trade Practices Act 1974 (Cth) or any equivalent State or Territory legislation; and</p> <p>(b) must not otherwise limit the liability of the retailer for breach of the contract or negligence by the retailer</p>
235	Termination fees	<p>Sub-clause (4) limits the fee to “administrative costs”, inconsistent with all current jurisdictional arrangements, and the SCO response (2.35) which referred to the “reasonable estimates of the cost.” It should be sufficient that under law the fee must be a genuine pre estimate of a company’s loss. This will be further strengthened by forthcoming national consumer protection legislation under which fees and charges will be subject to provisions relating to unfair contract terms.</p> <p>Victoria is the only jurisdiction to be more prescriptive, but in doing so allows early termination fees to include pro-rata procurement costs and value of the hedge imbalances, in addition to administration costs referred to in the current draft.</p> <p>Sub-rule (4) should be deleted and sub-rule 3(b) relied upon to ensure that the charge is a “reasonable estimate of the costs to the retailer”, in addition to general consumer law provisions. If sub-rule (4) is retained, then it should be broadened to be consistent with clause 31(c) of the Victorian Retail Code.</p>

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.
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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.
604 (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. It is not a current requirement in any jurisdiction. It should be sufficient to inform the customer that reconnection costs will apply.
605(1)(b)	De-energisation for not paying bill – shortened collection cycle	The sub-rule requiring the retailer to provide the customer with a reminder notice prior to disconnection should not apply if the customer has been placed on a shortened collection cycle in accordance with rule 223. This would be consistent, for example, with clause 13.1(b) of the Victorian Retail Code, and clause 4.18.4 of the Queensland Electricity Industry Code.
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.
607(1)(f)	De-energisation for denying access to a meter	The customer may have rectified a specific matter that previously prevented access to a meter but access may still not be possible. Paragraph 607(1)(f) should be replaced with “the customer has given access to the meter to the responsible person.”
608	De-energisation for illegally using electricity	Sub-rule (1) refers to the “customer” raising doubts as to whether this clause could be applied in the case of someone other than the customer at the supply address obtaining energy fraudulently or illegally. The test should be whether or not energy has been fraudulently or illegally obtained at the supply address. This is the approach

		adopted in sub-rule 610(3).
610(1)	Restrictions on de-energisation	Paragraphs (1)(c), (d) and (e) should only apply where the reason for de-energisation would have been non-payment of a bill.
611	Dual fuel	<p>“Synchronised billing,” as a source of disconnection restriction, should be redrafted to apply to customers receiving a single bill for both gas and electricity. Synchronicity suggests an underlying pattern, which may also include the non-simultaneous billing of gas and electricity accounts, but which does occur on a regular or synchronised basis.</p> <p>The definition of Dual Fuel contract should refer to contracts generally rather than to market contracts</p>

Draft National Energy Retail Rules

Part 9 – Exempt selling regime

Rule	Subject Matter	Comment
908(1)(c)	Exempt selling policy principles	The principle that the costs of providing consumer protections should not outweigh the likely benefits 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-rule (1)(c) should be deleted.
909(1)(a)	Exempt selling policy factors	Whether selling energy is done for commercial purposes is a more appropriate test than whether it is incidental to the applicant's business. For a large diversified corporation, energy selling may be incidental, but if it is undertaken as a commercial operation they should not be exempt.

Draft National Energy Retail Rules

Part 10 – Retail market performance reports

Rule	Subject Matter	Comment
1002	Content of retail market report	<p>The rule is too specific with regard to the information which the report must include. Contents should be subject to consultation by the AER, and developed in consideration of the objectives of the report, and the costs and benefits of the data collection. The rule appears to establish the data to be collected in the absence of both a defined objective, and any cost/benefit analysis.</p> <p>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.</p> <p>Similarly, the number of customers transferring between large and small categories is not currently captured by retailers, and doing so would impose significant system change costs. It is also unclear what benefit this data would provide.</p>

Draft National Energy Retail Regulations

Regulation	Subject Matter	Comment
5	Recognised energy industry ombudsman	<p>In Victoria, South Australia, and New South Wales, retailers are required to participate in an ombudsman scheme approved by the jurisdictional regulator or Minister. Regulation 5, by expressly specifying individual ombudsman schemes, departs significantly from this. Unlike for jurisdictional regulators (Regulation 4), ombudsman schemes in these jurisdictions are not established by legislation and therefore the scope of their functions and powers are not limited by statute or regulation. In current arrangements, members of an ombudsman scheme are entitled to seek membership of alternative ombudsman schemes (with the approval of the regulator), and this acts as a control over abuse of the ombudsman powers.</p> <p>'Recognised energy industry ombudsman' should not be specified in the Regulations; rather the power to approve an energy industry ombudsman should be transferred to the AER.</p>
9 & 10	Consumption threshold	<p>The draft Regulations suggests an ongoing calculation of annual consumption which may repeatedly place customers above and below the threshold. Monitoring and implementing such an obligation would impose additional and unnecessary costs on retailers. This is particularly the case with the lower thresholds which will exponentially increase the number of customers within the vicinity of the threshold.</p> <p>The ERAA supports the Victorian approach, as adopted most recently in the <i>Victoria Government Gazette No. S 315 Tuesday 25 November 2008</i>. The threshold is expressed as "unless, in relation to a supply of electricity from a supply point, the person's aggregate consumption of electricity taken from the supply point has been or, in the case of a new supply point is likely to be, more than 20 megawatt hours in any calendar year." This would lower operational costs, whereby the lower thresholds could be practically applied.</p>
10	Review of consumption thresholds	<p>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.</p>
Schedule 1	Civil penalty provisions	<p>Civil penalty provisions should only be attached to sections which have the potential for material impact upon the functioning of the market.</p>

Draft Model Standard Retail Contract

Clause	Subject Matter	Comment
5.3	Quality of energy	It should be explicit in the contract that quality of supply is subject to a range of factors that “are” beyond our control, not “may” be beyond our control, as currently drafted.
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>
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)	De-energisation	Retailers are obliged to offer “payment plans”, but not “payment options”, the reference to which should be deleted.

Draft Default Retail Support Contract

Clause	Subject Matter	Comment
4.5	Adjustment of distribution charges	There is a typographical error – the full stop in the second line of paragraph (c) should be a comma.
4.6	Notification of distribution network tariffs and charges	Distributors should be required to advise retailers of proposed tariff changes within two business days of submitting the proposal the regulator, and of final tariffs within two business day of approval. This is at virtually no cost to distributors, and has a significant impact on the retailer's ability to manage network price risks. It is consistent with the current approach of the Victorian Use of System Agreement under section 9.8(c)(1) and 9.8(c)(2).
4.7	Tariff reassignment	The rule should also require distributors to provide advance notice to retailers of any tariff reassignment.
5.2(d)	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, and that the clause is reciprocal, the longer time period is reasonable and preferable.
5.3	Interest	A reciprocal clause is required, whereby distributors are obliged to pay interest to retailers on overcharged amounts, outside the billing dispute process. This is a current and material issue - retailers are currently seeking repayment of millions of dollars from a Victorian Gas Distributor. Even where a distributor admits it has overcharged a retailer, the distributor has no incentive to make the repayment. Applying interest to amounts overcharged by distributors would at least provide an incentive for repayment, and would be consistent with the right of Distributors to include undercharged amounts on a subsequent invoice, and to charge interest for any unpaid amounts.
7.4	Application of credit support	Consistent with the proposed changes to clause 5.2(d), the notice period for the application of credit support should also be five business days.
8.1(b)	Information sharing	The requirement is inconsistent with current industry practice, and is adequately dealt with by section 4.7 which requires the retailer to notify the distributor if it becomes aware of a change in the site's status.
10.1 and 10.2	Telephone numbers	As currently drafted the distributor may provide two separate telephone numbers; one for faults and another for emergencies. This is inconsistent with current industry practice whereby a single contact number for distributors is provided.

12.3	Liability for ongoing distribution charges	In the current Victorian default Use of System Agreement (6.3(c)), the South Australian (13.2(a)) and Queensland (11.1(a)) Co-ordination Agreements, and the Victorian Gas Access Arrangements terms and conditions (6.2(c)) the distributor is also liable for ongoing energy charges. The national rules should be amended to be consistent with this approach.
15.2	Dispute resolution	It is understood, from the definitions in Schedule 1 to the contract, that the relevant dispute resolution procedures will be as per the National Electricity Rules and the National Gas Law. However, there does not appear to be any advantage to requiring people to look to the definitions in the Schedule to determine the relevant dispute resolution procedures and it should be made explicit in the clause.
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, not three business days as currently drafted.

National Energy Marketing Rules

Clause	Subject Matter	Comment
5(d)	Duties of retail marketers	Information requirements are sufficient without the need under sub clause (d) to provide sufficient contact details to enable the customer to contact the marketer. There are personal safety concerns with providing any more direct contact details for the customer to contact the marketer.
7	Record Keeping	Consistent with current arrangements in all jurisdictions, the record-keeping obligation should be restricted to 12 months from the date of contact, not 2 years as proposed.