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 and Water Ombudsman (Victoria)**

Draft National Energy Retail Law		
Part 1 – Preliminary		
Section	Subject Matter	Comment
103	Definitions of energisation and de-energisation	As a matter of technical correctness, a connection is established by closing and de-energisation is established by opening or vice versa depending on electricity or gas. As discussed during the workshops, the term de-energisation may confuse customers who are more familiar with the term disconnection especially in the context of warning notices. EWOV believes the term disconnection is preferable when referring to stopping the flow of energy without the customer's consent.
103	Definition of a hardship customer	EWOV is concerned by the vagueness of the wording 'is identified as a customer experiencing financial payment difficulties'. There is some potential for a formal process of identification to become a barrier to entry to hardship programmes. We would like to see 'by any means' or 'whether by the retailer, the customer or a third party such as a financial counsellor' inserted.
103	Definition of supply point	As outlined during the workshops, EWOV notes that this definition is not reflective of a technical term. The Victorian Essential Services Commission distinguishes between electricity

		and gas supply, underground and overhead supply as well as considering private poles or agreed points of supply. It may be useful to expand the definition to reflect various situations.
106 (2)	Small customer	EWOV continues to have concerns about lowering the upper consumption threshold to 100 MWhrs/annum. As previously advised, EWOV notes through its case handling experience that small business despite their annual usage exceeding 100 MWhrs/annum may not hold the negotiation powers expected. EWOV strongly encourages setting the upper threshold to 160 MWhrs. This point is elaborated in the accompanying letter.
113	Objectives	EWOV recognises the importance of the objectives outlined in this section but believes there was scope to include some supplementary objectives specific to the area of consumer protection. In particular, a reference to the social responsibility of retailers and distributors as providers of an essential service would have been welcome.

Draft National Energy Retail Law		
Part 2 – Relationship between retailers and small customers		
Section	Subject Matter	Comment
205(4)	Limitations on commencement of variation	EWOV welcomes the limitation on variations of standing offer prices to being no more frequent than once every six months
212	Making market offer to certain small customers	EWOV is concerned that the effect of this section is that some small market offer customers may find it difficult to obtain energy services. Considering that the retailer could require the payment of a security deposit, it is hard to understand why the designated retailer is not required to make the business customer a standing offer. This may present difficulties for start-up businesses without a credit history.
218 (1)	Informed consent for certain transactions	EWOV welcomes the clear requirement for informed consent, but notes that in Victoria the requirement is for explicit informed consent. Please see our comment on section 219 for an explanation of the reason for concern about the omission of the term 'explicit'.
218 (2)	Informed consent for certain transactions	EWOV welcomes this acknowledgment that customers do not have to bear the costs of a transaction made without the necessary informed consent. Our experience is that more incorrect transfers are the result of administrative error than of a transfer in spite of informed consent not being given. We would welcome the clarification that subsection (2) applies in the case of administrative error as well as what might be deemed 'wrongdoing'.
219	Nature of informed consent	Section 219(2)(b)(ii) allows for consent to be evidenced by a written notation made contemporaneously. This allows for the marketer to make the notation and claim there has been consent, leaving the matter as one person's word against another. Explicit consent is absent in this situation. This is the only way in which consent can be evidenced that does not require the active participation of the customer. Presumably it has been included to allow for a situation where a customer has rung a retailer and requested one of the kinds of transactions listed in 218(1). If this provision is to remain in the Law, it should be specified that it only applies where the customer has initiated the transaction.

220	Record of informed consent	EWOV welcomes the requirement for retailers to provide customers with access to its records at no charge. EWOV would find it beneficial to also highlight that this requirement extends to Ombudsman requests.
222	Energy Marketing - Definitions	EWOV welcomes the inclusion of (c) in the definition of associate because it appears to have the effect of including the providers of comparative websites who accept commissions. This serves to clarify the obligations of these websites, without placing a regulatory burden on them.
225	Deemed customer retail arrangement	EWOV has been unable to find in the Exposure Draft any mention of an obligation on the retailer to inform a customer of the imminent end of the contract, or to offer that customer another market contract as it is currently a requirement outlined in Clause 23.4 of the Victorian Energy Retail Code. Given this, the effect of the deemed customer arrangements could be harsh on carry-over customers. EWOV believes retailers should be obliged to give notice of the end of a contract before moving a customer to a standard contract.
230	Small customers on life support systems	EWOV supports this provision, proscribing prepayment meters for customers on life support.
Division 9	Customer hardship	EWOV welcomes this Division and is pleased to see the planned introduction of hardship policies across the NEM that will meet minimum standards.
233	Minimum requirements for a customer hardship policy	The statement of the minimum requirements of the policy is generally good. EWOV is particularly supportive of processes to identify hardship customers, since the retailer's call centre can be focussed on other matters. 233 (2) (c) should highlight the requirement to assess a customer's capacity to pay in regards to developing flexible payment options. EWOV refers to the definition of a payment plan (section 103 of the Rules) and notes that a payment plan including <u>all</u> arrears plus a customer's ongoing usage may not be easily achieved taking into account a customer's capacity to pay. Please refer to our comments on section 103 of the Rules. Presumably (e) could refer to incentive programs or programs to help customers source cheaper appliances. A note here giving examples of the programs that might be included could encourage best practice in the provision of hardship programs. As outlined in the covering letter, EWOV strongly believes that the provision of energy efficiency advice should be one of the minimum requirements of a hardship policy. We see it

		as in the interests of both the retailer and the hardship customer because it offers some prospect of aligning usage and affordability.
236	General principle – de-energisation and hardship	EWOV welcomes the articulation of this principle.
239(3)	AER Pricing Information Guidelines	EWOV welcomes the enabling of the making of pricing guidelines since an easy way to compare offers is crucial to the exercise of informed choice.

Draft National Energy Retail Law		
Part 3 – Relationship between distributors and customers		
Section	Subject Matter	Comment
311 (a)	Duration of deemed standard distribution contracts	EWOV queries whether the implication of this sub-section is that upon account closure with a retailer, the tariff set for the supply address will be reset to a standard tariff. This would be beneficial for sites with a demand or default tariff (unless of course this tariff arrangement is subject to a negotiated distribution contract). EWOV notes that it is crucial that once there is a change in occupancy, a tariff reset is considered taking into account any changes to usage.
315 (2)	Negotiated distribution contracts	EWOV welcomes the requirement for distribution businesses to provide small customers with conclusive information regarding any differences between a standard and a negotiated distribution contract. EWOV notes that distributors objected to the requirement in 315 (2) (b) (ii) during the workshop. It was argued that any advice given in regards to implications of differences could result in inappropriate legal advice. EWOV notes however that general implications such as a potential change in charges, termination requirements, etc. should be pointed out to a small customer to enable informed consent.

Draft National Energy Retail Law		
Part 4 – Relationship between distributor and retailers		
Section	Subject Matter	Comment

Draft National Energy Retail Law		
Part 5 – Authorisation of retailers and exempt selling regime		
Section	Subject Matter	Comment
503	Entry criteria	Drawing from previous experience, EWOV is conscious of the importance of ensuring a retailer's financial viability when authorisation is granted by the regulator. EWOV has had the experience of a second-tier retailer asking to pay EWOV's start-up fee of $5,000 in instalments. This request raised concerns about the retailer's long-term financial viability which were taken up with the ESC. There was some lack of clarity about the ESC's power to ensure that a licensee was financially viable. It is important that the financial viability criterion is comprehensive and that the AER has adequate authority to look into the matter thoroughly.
516	Deciding transfer application	EWOV queries whether the arrangements outlined in section 516 (2) (b) also include the transfer of liability for outstanding ombudsman complaints.
523	Transfer of customers following revocation	EWOV notes that Division 5 will be part of the RoLR scheme. In light of potential fees resulting from a customer transfer/RoLR event, EWOV takes this opportunity to stress that fees to be paid by customers should be eliminated or at least minimised, especially for hardship customers.

Draft National Energy Retail Law		
Part 6 – Functions and powers of the Australian Energy Regulator		
Section	Subject Matter	Comment

Draft National Energy Retail Law		
Part 7 – Functions and powers of the Australian Energy Market Commission		
Section	Subject Matter	Comment

Draft National Energy Retail Law		
Part 8 – National Energy Retail Rules		
Section	Subject Matter	Comment

Draft National Energy Retail Law		
Part 9 – National Energy Retail Regulations		
Section	Subject Matter	Comment

Draft National Energy Retail Law		
Part 10 – Compliance and performance		
Section	Subject Matter	Comment
1004	Compliance audits by AER	EWOV welcomes the specific mention of hardship policies as something of which the AER may conduct a compliance audit.
1012	Performance audits-hardship	EWOV welcomes the specific mention of hardship policies as something of which the AER may conduct a performance audit
1014	Retail market performance report	EWOV welcomes the provision requiring the AER to publish a retail market performance report but is aware of potential duplication of the AER's valuable report, *The State of the Energy Market*.
1016	National hardship indicators	As set out in our accompanying letter, EWOV believes that this approach of developing hardship indicators does not set a standard for hardship policies and that there needs to be such a standard. EWOV believes that the AER should be given the role of approving hardship policies.

Draft National Energy Retail Law		
Part 11 – Enforcement		
Section	Subject Matter	Comment

Draft National Energy Retail Law		
Part 12 – Evidentiary matters		
Section	Subject Matter	Comment

Draft National Energy Retail Law		
Part 13 – General		
Section	Subject Matter	Comment
1301	Immunity in relation to failure to supply energy	This section appears to exclude liability in all cases except where bad faith or negligence is involved. EWOV believes this clause is drawn too widely and that liability should be excluded only where the failure to supply is due to circumstances outside the control of the distributor. Having to establish bad faith or negligence weights the clause too much against consumers. This provision does not reflect what currently happens and EWOV wonders why a retrograde step is being taken. See also our comments on sections 5.5 and 7 of Schedule 2 – Model terms and conditions for deemed standard distribution contracts and also our covering letter.

Draft National Energy Retail Rules		
Part 1 – Preliminary		
Rule	Subject Matter	Comment
103	Definition of payment plan	EWOV considers that the definition provided of a payment plan is in conflict with rule 302. That rule states that the customer's capacity to pay is one of the factors to be taken into account. This definition specifies that the payment plan must cover **all** arrears. EWOV cannot see how these two requirements can be reconciled. Furthermore, the mention of all arrears would seem to rule out incentive plans or debt waivers. When a case that turns out to involve hardship is brought to an Ombudsman, an element of the resolution can be the waiving of de-energisation or re-energisation charges. EWOV believes the definition as currently drafted takes away options that should be available to retailers as part of their hardship programmes. As outlined in the covering letter, EWOV believes that the answer may be to have two definitions, one for instalment plan using the existing wording and one for payment plan which would have the reference to all arrears deleted and be applicable only to hardship customers. EWOV believes the restrictiveness of this definition has the potential to undermine the otherwise excellent work on hardship undertaken by the Retail Policy Working Group.
105 (3)	Aggregated application of upper consumption threshold by agreement	In line with EWOV's suggestion regarding negotiated distribution contracts (see comments on section 315(2) of the Law), EWOV notes that for a customer' to form informed consent, a retailer should be required to provide small customers with clear information regarding any general implications such as a potential change in charges, termination requirements, the loss of certain customer protections for small customers, etc.

Draft National Energy Retail Rules		
Part 2 – Customer retail contracts		
Rule	Subject Matter	Comment
205	Pre-contractual duty of retailers	205(2)(b) would impose a clearer obligation on the retailers if it said that the retailer must advise the customer not just of the standing offer but also that it is available to the customer. Current phrasing may enable a retailer to avoid making a clear offer. EWOV welcomes section 205(3). It imposes a clear obligation on the retailer to refer the customer to the distributor in order to obtain the required information.
206	Pre-contractual duty of distributors	EWOV welcomes this clear obligation on distributors, without which the placing of responsibility on the FRR would not work.
207	Pre-contractual request for sale/supply of energy	EWOV notes retailers' concerns expressed during the workshops that small customers may expect to be able to make requests in person where retailers do not cater for in-house facilities. To accommodate retailers' individual circumstances, EWOV suggests inserting 'in person (where available)'.
208	Responsibilities of designated retailers	EWOV would welcome a reference in section 208 (1) (b) regarding available external dispute resolution processes as provided by jurisdictional energy ombudsmen. Suggested wording is the insertion of 'internal and external Ombudsman' before 'dispute resolution procedures'. To complete the list of available assistance to customers, 208 (1) (c) should also include information about a life support register.
210	Basis for bills	EWOV notes that in subsection (2) the requirement is for a meter reading only every 12 months. This is in line with current Victorian regulation, but we see a number of reasons to adopt the New South Wales standard of once every six months. These reasons include: • the bill smoothing provision for review every 6 months (see subsection 212 (1) (c) (i)) • the inability of an interval meter to hold a year's worth of data, and • the ability of a retailer to disconnect a customer for denying meter access.
211	Estimation as basis for bills	EWOV welcomes the option for customers to present their own meter readings as outlined in subrule 211 (2) (a).

		Subsection (3) would be enhanced if it required the notification of an estimated bill to be prominent. A small 'e' next to the 'reading' should not be deemed adequate.
212	Bill smoothing	EWOV welcomes the requirement of a customer's informed consent prior to establishing a bills smoothing arrangement. EWOV further welcomes the clarification that undercharging or overcharging under a bill smoothing arrangement is to be adjusted in accordance with rule 219 or 220, but is puzzled as to why the bill smoothing rule does not apply to market retail contracts.
213	Frequency of bills	EWOV is puzzled as to why this rule would not apply to market retail contracts. We note the wording 'small customer' but cannot think of circumstances in which a retailer would want to bill less frequently than three monthly.
214	Contents of bill	EWOV welcomes 214 (1) (i) requiring the provision of information about the value of the meter reads at the start and end of the billing period. It has been an issue in Victoria that where customers have an interval meter only a consumption figure has been provided. Some customers have been distressed at this because it denies them the opportunity to confirm the bill. EWOV believes distributors should be providing start and end readings to the retailer, as well as consumption data. EWOV would welcome a provision to the effect that a jurisdictional ombudsman's phone number is to be included in the information provision on 214 (1) (r) (at least on one bill every 12 months). EWOV would also welcome the inclusion of a usage graph allowing a customer to compare their previous with current usage. Is it an oversight that there is no date of issue? EWOV recommends a new subsection to this Rule requiring retailers to include the details of the relevant recognised energy industry ombudsman once a year. This is already standard practice in Victoria.
215	Pay-by date	EWOV would like to see this section being made applicable to market retail contracts allowing for small market offer customers to budget within set timeframes.
217	Historical billing information	EWOV notes that this is a lessening of the provision for Victorian customers who can currently request two years of historical billing information. If a customer was trying to work out the

		reasons for a high bill, records over two years of seasonal variation would give them a better basis than just one.
218	Billing disputes	While EWOV welcomes the note about recourse to an Ombudsman, it believes customers would be better served by the note being made a provision that clearly establishes that a customer may take the matter to the jurisdictional ombudsman if the retailer's billing review has not settled the dispute. We also believe that the phrase 'completion of a retailer's review' is unnecessarily restrictive. A customer should be able to take the matter to an Ombudsman if the retailer's review is taking an unreasonably long time
219	Undercharging	Compared to the current provisions in clause 6.2 of the Victorian Energy Retail Code, which provides for a 9-month backbilling limit under certain circumstances, subrule 219 (2) is a detriment for Victorian consumers. EWOV considers that this rule and clause 12.1 of the Model terms and conditions for standard retail contracts are not consistent. The rule refers to the 'small customer's fault or act or omission', while the clause talks about 'our, or your distributor's act or omission'. It is not true that an undercharge is clearly due to one or the other. Our experience is that there are many cases where it is not clear. EWOV's preference is that the wording in the model contract be used for the rule. This Rule refers to the date on which the customer is 'notified' of an undercharge (which is similar to the wording in Victoria's *Energy Retail Code*). However, we have had difficulty with this in attempting to resolve complaints. EWOV believes 'notification' should include the amount of the undercharge and ideally should be the invoice issued to the correct customer at the correct address.
220	Overcharging	EWOV considers the term 'as reasonably directed' in subrule 220 (2) (a) as being too broad. Clarification of acceptable repayment methods such as refund cheques or credit on bank accounts provides more clarity.
221	Payment methods	EWOV generally welcomes the inclusion of this range of payment methods, and particularly welcomes the provision that Centrepay must be an option for hardship customers. Our experience is that Centrepay has been excellent for eligible consumers and also provides

		assurance to the retailer that the plan entered into will be adhered to. EWOV would like to see a requirement that a retailer confirm the details of a direct debit arrangement in writing, especially any end date. We have a reservation about the fact that there is no mention of electronic methods of payment. BPay is now widely available and a popular payment method.
222	Payment difficulties	EWOV welcomes the clarity of the rule that a retailer must offer a payment plan to a hardship customer.
223	Shortened collection cycles	EWOV has previously argued against the allowing of shortened collection cycles and maintains the position that they are not helpful to customers and only marginally helpful to retailers. They are a poor tool as they are directed towards those very customers who need all notices and the additional time to pay. However, given that the provision is there, EWOV makes the following comments: - we welcome the requirement that retailers not place customers experiencing payment difficulties on a shortened collection cycle (subrule 223(2)(a) - we note that two consecutive reminder or warning notices – as outlined in subrule 223 (2)(b) - is providing a shorter timeframe as currently provided in Victoria (reminder notices for three consecutive bills or disconnection warnings for two consecutive bills). EWOV would welcome the inclusion of ombudsman contact details on warning notices expressed in the definition given in subrule 223 (4).
224	Request for final bill	EWOV recommends including a time limit to organise a final meter reading. EWOV queries whether a meter reading request will automatically incur a fee. EWOV notes that this section should also apply to market retail contract customers.
226	Requirement for security deposit	EWOV is extremely disappointed that a decision has been made to require the payment of a security deposit, where required, as a condition of obtaining a supply of energy. We believe that the retailer is sufficiently protected by a requirement to pay it after connection given that the retailer can de-energise if it is not paid. EWOV is also concerned about the possible impact of this provision on people, primarily young adults, who do not have a credit history. Are they deemed to have an unsatisfactory credit history? It has been EWOV's recent experience that customers may be asked to pay a security

		deposit merely because they have no credit history with that retailer and we consider that this is unreasonable. The way around this could be to make 'unsatisfactory credit history' a defined term. EWOV notes that if a security deposit is required, a threshold amount should be included. The Victorian Energy Retail Code (clause 8.1a) allows for a security deposit request if the amount owed on a utility account is more than $120. There is not a provision that customers paying by Centrepay or direct debit should be exempted from having to pay a security deposit. EWOV believes that a retailer's interests are sufficiently protected where a customer commits to paying by one of these methods.
227	Payment of security deposit	It should be possible for a customer to pay a security deposit by instalments if the customer so chooses, not if the retailer and the customer agree. The retailer is adequately protected by the power to de-energise. We do not understand why this rule would not apply to market retail contracts where these contracts have a provision relating to security deposits.
228	Amount of security deposits	In line with the above comments, EWOV notes that this rule should be applicable to market retail contracts.
231	Obligation to return security deposit	EWOV is concerned that a customer on a payment plan may not be able to comply with the condition required to achieve repayment of a security deposit. Perhaps subrule 1(a) could say, in addition to completing the year's payment by the pay-by date, or complies with a payment plan for a year. EWOV notes that this rule should also apply in relation to market retail contracts.
234	Termination of standard retail contract	EWOV believes that 234(1)(e), terminating a contract after 10 days of de-energisation, is harsh and does not take into account the likely personal circumstances of those people whose premises have been de-energised. De-energisation is a sufficient 'punishment' without imposing a new contract on the customer. Further, and without detracting from the point just made, is it sufficiently clear that the retailer which de-energised, as the current FRR, has an obligation to re-connect, subject to the customer satisfying the conditions?
235	Termination of market	As mentioned in our comments on section 225 of the National Energy Retail Law, EWOV

	retail contract	believes that a retailer should be subject to a requirement to give a customer notice that their contract is about to expire and to be clear about whether it is offering that customer another market retail contract. EWOV commends the clarity with which it is said that an early termination fee cannot include costs based on lost supply or lost profits.
236	Cooling off period and right of rescission	EWOV is pleased that the cooling off period dates from the receipt of the required information rather than the date of entry into the new contract. This preserves the intent of the cooling off period. EWOV queries though whether the customer needs to provide notice in writing as it is currently not clear whether this is a requirement and clarification may assist in avoiding complaints to the retailer or the jurisdictional industry ombudsman.
238	Obligation of move-in customers and carry-over customers	As stated previously, EWOV believes these provisions have a harsh effect on a carry-over customer who may not have been informed that their contract was coming to an end.
242	Complaints and disputes procedure	EWOV welcomes the clarification that small customers are entitled to access a retailer's dispute resolution process in respect of pre-contractual matters. We also welcome the references to the procedures of the recognised energy industry ombudsman. However, the Rule could make it clearer that recourse to the Ombudsman's procedures only arises if the internal dispute resolution has been unsuccessful. This point is elaborated in our covering letter. .

Draft National Energy Retail Rules		
Part 3 – Customer hardship regime		
Rule	Subject Matter	Comment
301	Obligation of retailer to communicate customer hardship policy	EWOV welcomes this provision. It clarifies how retailers' call centre should proceed once a customer has been identified as a hardship customer.
302	Payment plans	As stated earlier in relation to the definition of payment plans, EWOV believes that definition and this rule are somewhat in conflict. If a payment plan is to cover all the arrears as well as the ongoing consumption within a set period, it cannot take the customer's ability to pay into account. The only flexibility is the period of the payment plan which, in EWOV's experience, is usually one year or, less often, two years. To mitigate this, we suggest both a changed definition of payment plan and the inclusion of an (e) to subrule 2, 'any flexible payment options'. Please see our covering letter for further explanation. One valuable and helpful tool to assist customers experiencing payment difficulties is to provide energy efficiency advice, either over the phone or online. EWOV notes that such advice can significantly improve a customer's understanding of energy consumption with the potential to decrease their usage charges.
303	Waiver of late payment fee for hardship customer	EWOV welcomes that late payment fees are to be waived for hardship customers, but is concerned by the lack of a rule relating to late payment fees which would limit them to a reasonable amount. Small Victorian customers are not currently subject to late payment fees, so that their introduction is not to their benefit. The introduction of unregulated late payment fees is to the disadvantage of consumers nationally. There is wording in the Victorian *Energy Retail Code* which is suitable: 'The amount of any late payment fee must be fair and reasonable having regard to the related costs incurred by the retailer'.
304	National hardship indicators	As mentioned previously, EWOV welcomes the provision that the AER must develop national hardship indicators.

Draft National Energy Retail Rules		
Part 4 – Relationship between distributors and customers		
Rule	Subject Matter	Comment
403	Application for customer distribution services	Subrules 403(3) and 403(4) refer to companies' timeframes 'as soon as practicable'. EWOV notes that timeframes for service orders can often be an issue in dispute and recommends including a reasonable timeframe for retailers (such as 'by the end of the next business day') and distributors ('within 5 business days if not agreed otherwise').
404	Information to be provided by distributor to customer	It is noted that the information is only to be provided on request. While we agree it would be burdensome to provide the listed information to every customer, we believe that the distributor should be obliged to tell a customer that there is a standard distribution contract to which the customer is subject. As EWOV has said in previous submissions we are concerned by customers having obligations which they do not know about. A provision such as the one suggested is an incremental step towards equalising the information imbalance.
406	Liabilities and immunities	EWOV would welcome the inclusion of small market offer customers in this rule as small business owners may not have the necessary negotiating power to discuss any liability and immunity issues with their local distributor.
408	Fault reporting and correction	This capability needs to be two-way, so that a customer can report a fault and also obtain information about where there are faults. EWOV assumes that this is what is meant by 'fault information and reporting telephone line'.
409	Dispute resolution	EWOV welcomes the placing of clear responsibilities on distributors in relation to a deemed standard contract, but thinks the inclusion of the word dispute before contract is a mistake. We believe that distributors should also have to comply with the requirements of the energy industry ombudsman in relation to any dispute to which the actions or omissions of the distributor are a factor. Should it be specified that this obligation only comes into effect once internal dispute resolution has failed to resolve the matter? EWOV notes that a distributor's internal dispute resolution

		processes need to comply with the Australian Standard and only once the complaint remains unresolved and the case is registered with an ombudsman office, the ombudsman's processes need to be followed.
410	Provision of information	EWOV notes distributors' concerns expressed during the workshops regarding their requirement to provide information to customers due to their limited capability to identify customers. Details such as supply address and meter number should however be sufficient to address queries relating to the FRR/LRA and meter reading data (instead of energy consumption).
414	Unplanned interruptions	EWOV applauds this rule. It will provide a better level of service to customers when there are unplanned interruptions than they have received in Victoria in recent years.

Draft National Energy Retail Rules		
Part 5 – Relationship between distributors and retailers		
Rule	Subject Matter	Comment

Draft National Energy Retail Rules		
Part 6 – De-energisation of premises		
Rule	Subject Matter	Comment
601	Definition	This section rectifies an omission in the earlier paper, which is good. EWOV notes however that the timeframe in 601(a) extending to 3.00pm is longer for domestic customers compared to 2.00pm in the Victorian Energy Retail Code (clause 14(d)). Customers who seek re-energisation on the same day and request the distributor to do so after 3.00pm could incur an after-hour re-energisation fee that could be avoided if de-energisation only occurred until 2.00pm. It is good to see the formalisation of current industry practice of ceasing disconnection activity over the Christmas period.
604	De-energisation warning notices	EWOV is pleased by the inclusion of subrule 604(2)(e). The phrase 'the existence and operation' of the recognised energy industry ombudsman goes beyond the current Victorian requirements and suggests some text as well as just the details. We are pleased to see the clarification that de-energisation warning notices issued by a distributor must also include that information.
605	De-energisation for not paying bill	Subrule 605(1)(d) outlines a retailer's contact methods including mail, fax and email. While applauding the recognition of a range of communication methods, EWOV would like to see a subrule to the effect that a retailer must use at least two different methods of communication, and that methods that enhance the chance of a dialogue with the customer are to be preferred. EWOV notes that the timeframes of pay-by dates on bills, reminder, notices and disconnection warnings are not outlined in the current version of subrule 605(1)[1]. Furthermore, EWOV notes that no reference is made on timeframes where customers are placed on a shortened collection cycle to when de-energisation can occur[2].

[1] Clause 13.1 of the Victorian Energy Retail Code outlines timeframes when bills, reminder notices and disconnection warnings can be sent and what pay-by dates have to be included prior to disconnection of supply. EWOV notes that timeframes in Victoria are more extensive than the ones currently proposed in the NERL.
[2] Clause 13.1(b) of the Victorian Energy Retail Code outlines modified timeframes for customers on shortened collection cycles.

		Subrule 605(2) refers to two previous payment plans in the previous 12 months. In EWOV's case handling experience it is important to note that payment plans take into account a customer's capacity to pay and reference in this subrule to such assessment would be highly beneficial taking into account the consequences of a de-energisation of supply. This subrule should further outline the offer content of a payment plan as detailed in subrule 302(2) to avoid any doubt of what was offered to date.
606	De-energisation for not paying security deposit	The phrase 'if the customer has refused to pay a security deposit' suggests that a retailer cannot arrange for de-energisation if the customer has offered to pay by instalments even if the offer was unacceptable to the retailer. Since this rule does not apply to market retail contracts, does this mean no de-energisation in these circumstances can occur?
610	When retailer must not arrange de-energisation	This section contains valuable consumer protections, which EWOV is pleased to see, especially subrule 610 (1) (b). EWOV queries whether a threshold amount for de-energisation will be considered. In Victoria no de-energisation occurs if a customer owes less than $120 on their utility account (clause 14 (a) of the Victorian Energy Retail Code) and we note a workshop comment that Queensland's threshold is $200 outstanding. EWOV points out that this rule should also apply to market retail contracts (subrule 610(5) containing a potential drafting error).
611	Timing of de-energisation (dual fuel contract)	As dual fuel contracts are market retail contracts, subrule 611(7) should read that this rule also applies to market retail contracts.
612	Request for de-energisation	EWOV assumes a drafting error occurred in subrule 612(3) and this rule should be applicable to market retail contracts.
614	When distributor must not de-energise premises	EWOV welcomes this rule, especially subrule 614(1)(b).
615	Obligation on retailer to arrange re-	EWOV is uncertain about the implications of the period of 10 business days mentioned in this rule. Does it mean that if the customer is not able to rectify the matter within that period, their

	energisation of premises	request for re-energisation will be treated as a new connection? This could be seen as punitive, given that it is in addition to rectification and the payment of various charges. (See also our comments on clause 4.2(a)(v) of the Model terms and conditions for standard retail contracts.)

Draft National Energy Retail Rules		
Part 7 – Life support equipment		
Rule	Subject Matter	Comment
702	Retailer obligations	EWOV regards this as a clear and useful statement of retailer obligations in respect of premises where there is life support equipment. To provide for timely information provision, EWOV suggests that a retailer must 'as soon as practicable' perform actions outlined in subrules 702(1)(a)-(e).
703	Distributor obligations	EWOV regards this as a clear and useful statement of distributor obligations in respect of premises where there is life support equipment. To provide for timely information provision, EWOV suggests that a distributor must 'as soon as practicable' perform actions outlined in subrules 703(2)(a)-(c).

Draft National Energy Retail Rules		
Part 8 – Prepayment meter systems		
Rule	Subject Matter	Comment
802	Disclosure requirements	The disclosure requirements should also include the tariff which the customer will be paying if they choose a prepayment meter.
803	System requirements	EWOV is pleased to see that the system requirements include a capability to identify instances of self-disconnection
805	Operating instructions to be provided	With regard to rule 822, EWOV recommends including reference to approximate meter exchange costs for a customer's information in the event that a retailer transfer results in the replacement of a prepayment meter.
815	Rebate, concession or relief schemes	There is a mistake in the drafting of this section: 'must ensure that ensure'.
816	Payment difficulties and hardship	It is particularly pleasing to see an obligation on retailers to act in response to instances of self-disconnection. The retailer should also have to tell the customer about its hardship program and the availability of payment plans should they decide to swap to a standard meter.
820	Different retailer	There seems to be a potential inconsistency between 820(2) which says a former retailer can recover the cost of a meter changeover and 822(6) which says a customer can change to a standard meter without charge. Why does the fact of a transfer make a difference?

Draft National Energy Retail Rules		
Part 9 – Exempt selling regime		
Rule	Subject Matter	Comment
908	Exempt selling policy principles	EWOV supports the inclusion of these principles, but notes that one customer protection not generally available to exempt supply customers is recourse to an industry ombudsman scheme. There are significant obstacles to providing this recourse, although it is clearly desirable as a matter of principle. This is a matter requiring further attention.
920	Public register of authorised retailers and exempt sellers	EWOV welcomes this rule as it provides for clarity and comprehensive information.

Draft National Energy Retail Rules		
Part 10 – Retail market performance reports		
Rule	Subject Matter	Comment
1002	Contents of retail market performance report – market overview	(c) presumably means retail market share of each retailer in each state. This could be clearer. (d) it could be difficult for the AER to source data for (i) and (ii). Customers transferring from a standard retail contract to a market one with the same retailer will have to be excluded from (i). A retailer will not necessarily know which kind of contract a new customer was on with his previous retailer.
1003	Contents of retail market performance report – retail market activities report	It would be beneficial if the report identified not only the de-energisation of premises but how many of those related to non-payment of bills. It is also of valuable information to include the number of ombudsman complaints received. EWOV recommends including this information provision in reporting requirements.

Draft National Energy Retail Rules		
Part 11 – Consultation for the National Energy Retail Framework		
Rule	Subject Matter	Comment
1101	Customer Consultative Group	(3) Should this provision specify that the persons appointed should have an interest in energy matters as they pertain to small residential or business customers? It is very broad as currently drafted. EWOV also notes that ombudsman representatives often attend as observers. This should be reflected by appointing 'members and observers'. In the case of the AER CCG an observer from ANZEWON would be appropriate.

Draft National Energy Retail Regulations		
Regulation	Subject Matter	Comment
8	Business customers – upper consumption threshold	EWOV continues to oppose an upper consumption threshold of 100 MWhrs, which is the lowest threshold of all jurisdictions. As previously noted, a threshold is not only important for access to regulated prices. It is also important for access to dispute resolution in jurisdictions where this is governed by a threshold. In EWOV's experience, it is just wrong to assume that customers with large usage are able to negotiate successfully and equally with energy retailers. Therefore they benefit from a customer protection framework.
9	Business customers – lower consumption threshold	In EWOV's experience the threshold of 40 MWhrs/400 GJ - distinguishing a small customer from a small market offer customer and the implication that a retailer must only offer a standing offer to small customers – is too onerous considering that small market offer customers may not have the negotiating power to find the best market offer when discussing an account set-up with a retailer. EWOV would rather welcome setting this lower consumption threshold to 100 MWhrs/1 TJ with the upper consumption threshold to be set at 160MWhrs/400Gj.
10	Review of consumption threshold	EWOV is pleased to see that the MCE will review these thresholds on a regular basis.

Draft Model Standard Retail Contract		
Clause	Subject Matter	Comment
4.2(a)(v)	When does this contract end?	This term makes clearer than did the rule that there is to be a new contract after 10 days of de-energisation. As stated previously, EWOV considers that this term could have a harsh impact on customers struggling to raise enough money to obtain re-energisation.
5.3	Quality of energy supplied to your premises	EWOV notes that this clause also appears in the standard distribution contract and wonders at its inclusion here when the preceding clause has said the quality of energy is the responsibility of the distributor. A reference to the existing customer-distributor contract may be useful for a customer wishing to address their supply address to the relevant party. In any event, EWOV regards the clause as being far too one-sided. At the very least, it should refer to the distributor's responsibility to maintain and operate the system with due care and skill, and to the fact that the customer may be entitled to compensation for damage to their equipment where that damage occurred because of an event not out of the control of the distributor. In particular, EWOV objects to the inclusion of the 'technical limitations of the distribution system' because the operation of that system is under the control of the distributor. EWOV has previously strongly argued for the national adoption of Victoria's *Voltage Variation Guideline*. We are most disappointed that not only has this been disregarded, the clause has been drafted in such a one-sided manner.
6.3	Preconditions	This clause is vague and does not provide sufficient information to the consumer. It should include examples of the kinds of pre-conditions (acceptable identification, payment of connection charges etc)
6.4	Life support equipment	EWOV acknowledges that the distributor maintains the life support register but since a customer registers life support equipment with the retailer, a customer should also de-register with a retailer for consistency in the process and to avoid confusion. EWOV queries whether a retailer is also required to advise a customer registering life support of available rebates and whether a retailer administers such rebate information.
6.5	Obligations if you are	EWOV notes that it may be too onerous for tenants 'to ensure' that a responsible person fulfils

	not the owner	obligations. EWOV recommends rewording this clause ('advise' or 'inform').
7	Our liability	We have commented on this clause and its equivalent in the deemed distribution contract in our covering letter. In brief we regard these clauses as one-sided. At the very least, subclause 7 (2) (b) should also conclude with the phrase '(…), unless we have acted negligently or in bad faith'.
8.2	Variations to tariffs and charges	EWOV notes that under section 35 of the Electricity Industry Act 2000, retailers must publish standing offer tariffs in the Government Gazette at least one month before they take effect. This is in addition to any obligation to publish information on a website. EWOV notes that the proposed model terms and conditions are considerably less beneficial to customers than the existing Victorian requirements.
8.3	Information relating to eligibility for type of tariff	EWOV considers this clause is being too one-sided and recommends re-structuring it as follows: (a) You must tell us if your circumstances relating to your eligibility for a type of tariff change. (b) If you think you satisfy all the conditions applying to another type of tariff, you can ask us to review your current circumstances to see whether that type of tariff can apply to you. (b) Once we notice substantial changes in your usage pattern, we will contact you to discuss whether a tariff change may be appropriate. (c) If you fail to tell us of your change in circumstances, we may, on providing written notice to you, transfer you retrospectively to the appropriate tariff.
9.7	Bill smoothing	To enhance a customer's understanding of this payment option, this clause should not only refer to a future explanation of the arrangement but should outline such arrangement in the contract. It is also important for customers to know that the arrangement will be reviewed every six months, thus this information is to be included in the clause as well.
10.4	Late payment fees	EWOV is concerned by this clause because there is no corresponding rule which would limit a late payment fee to a retailer's reasonable administrative costs or prohibit it from being a punitive amount.
11	Meters	EWOV would be pleased if clause 11(b) included 'unless access to the meter is provided for an actual meter read to be obtained for every billing period'. EWOV would also welcome any reference to a retailer using 'best endeavours to obtain an actual meter read' as it is currently

		outlined in clause 5.1 (b) of the Victorian Energy Retail Code.
12.1	Undercharging	As mentioned in our comments on Rule 219, we believe that the wording there and in this model contract do not align, and we prefer the wording here. We are pleased that acts and omissions of the distributor are included in 12.1(b). In association with Clause 11.3 of the Retail support terms and conditions, this provides a sound basis for ensuring a reasonable balance of the competing interests.
12.2	Overcharging	Clause 12.2(b) is somewhat at odds with Rule 220(2)(a) which states that the overcharge must be repaid as the customer reasonably directs. This clause says that the retailer will credit the amount to the next bill unless you request otherwise. It detracts from the customer's right to decide how the overcharge will be paid back. Clause 12(d)'s time limit is new to Victorian customers and reflective of either • non-timely information by a customer of any change in circumstances warranting a different tariff (for example, change from small business to residential); or • previous over-estimated accounts due to no meter access. EWOV does not consider a 12 month redress limitation as being fair and reasonable. There can be instances where overcharging has continued for years and we do not see the rationale for the limitation.
13.4	Return of security deposit	As mentioned in our comments on Rule 231, we are concerned that this provision makes no allowance for people on payment plans. Completion of a year's payment on a payment plan should also qualify for the return of the security deposit.
14	De-energisation of supply	To provide consistency and an outline of a customer's rights, EWOV recommends including an additional clause (14(3)) which outlines when a retailer cannot arrange for de-energisation similar to the provisions outlined in clauses 11.3 to 11.5 of schedule 2 (the model contract terms and conditions for the deemed standard distribution contract). This list of situations in which de-energisation cannot take place needs to include when there is an open Ombudsman complaint relating to the reason for the de-energisation.
15	Re-energisation after de-energisation	As commented on Rule 615 and 616, EWOV believes a 10-business day timeframe for customers in hardship may be too short to collect the necessary funds for re-energisation.
17	Notices and bills	EWOV notes that notices and bills should be sent to a customer's nominated contact address

		only in consistency with clause 9.4 of this contract. A retailer may additionally send notices and bills to a supply address to further ensure receipt.
18.2	Disclosure	EWOV would welcome a reference to the relevant recognised energy industry ombudsman regarding the disclosure of information to it in subclause 18.2 (a).
19.2	Queries and complaints: our obligations	EWOV would like to see 19.2(b)(ii) specify that the Ombudsman's contact details also be supplied.

Draft Default Retail Support Contract		
Clause	Subject Matter	Comment
4.7	Tariff reassignment	EWOV notes that clause 4.7(a)(ii) only allows for one tariff reassignment request every 12 months per supply address. This may be too onerous in the case of a change in occupancy especially in regards to business premises with a demand tariff in place. EWOV misses a timeframe as to when a distributor tariff assignment applies: as of the day of retailer request? This is crucial for customers in regards to network charges. Also missing is a clear obligation on a distributor and a retailer to tell the customer when either becomes aware that customer is on an inappropriate tariff. .
11.1	Enquiries or complaints relating to retailer	It is pleasing to see that where a customer has taken a query or complaint to the distributor when it should have gone to the retailer, the distributor will be responsible for providing the retailer with details of the customer and the issue, so that the customer does not have to tell the story twice.
11.2	Enquiries or complaints relating to distributor	It is pleasing to see that where a customer has taken a query or complaint to the retailer when it should have gone to the distributor, the retailer will be responsible for providing the distributor with details of the customer and the issue, so that the customer does not have to tell the story twice.
11.3	Ombudsman complaints	EWOV understands the thinking behind this provision but has some reservations as to workability. In particular, the ombudsman scheme would be unable to become involved in a dispute between two industry participants as to the reimbursement due, since disputes

		between industry participants are outside jurisdiction. For further detail about our thoughts on this term, please see our covering letter.
13	Liability and Indemnities	As set out in our covering letter, we are most disappointed at the NECF's current statements on liability. However, we are somewhat encouraged by discussion at the workshops of other possibilities such as adoption of Victoria's *Voltage Variation Guideline*, or a cap system to protect end-consumers (cap on claims per customer per event – related to jurisdictional GSL regimes) including a small claims regime.

Draft Model Standard Distribution Contract		
Clause	Subject Matter	Comment
5.5	Quality of energy supplied to your premises	As mentioned in our comments on this section which also appears in the model terms and conditions for standard retail contracts, we consider that this provision is one-sided and unfairly tilted to benefit distributors. The exclusion of any responsibility for the quality of energy is far too broadly drawn as is the term 'technical limitations of the distribution system'. This clause should include the distributors' obligations to provide supply services. The placing of responsibility on small customers to take action to mitigate possible risks is out of keeping with the current Victorian framework and is unreasonable in a unilateral contract that the customer is unlikely to see. This provision will give rise to complaints, entrench both sides in their positions and make conciliation extremely difficult. EWOV urges reconsideration of this clause.
5.6	Compliance with energy laws	EWOV notes that the reference to energy laws should clearly include set standards for quality and reliability of supply as they are currently outlined in part 4 and 5 of the Victorian Electricity Distribution Code and part 2 of the Victorian Gas Distribution System Code.
6.1	Full information	The sentence 'we have rights if information you provide is incorrect, misleading or deceptive' is vague, minatory and adds nothing to the clause.
6.5	No interference	How is it to be established that a customer has acted fraudulently or in the ways listed in this clause? While it may be fairly straightforward to determine that a meter has been tampered with or that there has been illegal use, it is by no means straightforward to determine who has been responsible. It is an unwarranted leap to assume that the current account holder is responsible.
6.6	Wrongful use	Given the point made in 6.5, EWOV believes that this clause is too broadly drawn, and that its first part should set some standard of proof. Perhaps 'if it has been established that you have breached clause 6.5 …' This clause seems to give rise to a right for a distributor to bill a customer directly. This seems odd. Why wouldn't it be done through the retailer who has also suffered a loss from wrongful use?

6.7	Obligations if you are not the owner	It appears to be too onerous for a tenant 'to ensure' a responsible person's compliance. EWOV suggests rewording this clause by using the term 'inform or advise' as being the reasonable step when liaising with the owner of the supply premises.
7.2	Not liable	As previously stated, we believe the liability clauses in this contract are unfair to consumers and unreasonable. In this clause we object to the phrase 'unless we have acted negligently or in bad faith'. Distributors should have liability if the matter causing the loss or damage was within their control, not just if they acted negligently or in bad faith. Furthermore, distributors should not be the ones deciding that matter – that is against natural justice. EWOV considers the way liability clauses are drafted in this and the preceding contract are a major flaw in the National Energy Customer Framework. The degradation from the standard of consumer protection currently holding in Victoria is impossible to justify, especially since, as we have previously argued, a sound alternative exists: national adoption of Victoria's *Voltage Variation Guideline.*
8.1	Your obligations	EWOV assumes that except in an emergency, access requirements are based on detailed notifications by distribution businesses as to when access is required, for how long and what purpose. EWOV also assumes that a reasonable timeframe is given to a customer in advance to make necessary arrangements (see clause 9.3). To ensure this prerequisite, EWOV suggests including 'upon our notification' and outlining this requirement further in 8.2 'our obligations'.
8.2	Our obligations	As outlined above, EWOV suggests including the requirement of detailed customer notification in advance except in an emergency. Details should include date and time, timeframe and purpose of works.
9.6	Life support equipment	For consistency and referring to clause 6.4, a customer should register life support equipment with the retailer.
11.2	Our rights to de-energise	Subclause 11.2(d) is too vague. This is a crucial clause for customers to understand what their obligations are so 'anything else' should be specified as much as possible.
11.5	Times when the premises must not be de-energised	There is an important omission here. De-energisation should be prohibited when there is an open Ombudsman complaint relating to the reason for the proposed de-energisation.

12.1	You and your obligations	As commented on Rules 615 and 616, EWOV points out that a 10 business day timeframe may be too short for hardship customers or customers with payment difficulties to arrange all necessary steps for re-energisation.
13	Notices and bills	As outlined in the comments on clause 17 (a) of Schedule 1, EWOV notes that notices and bills should be sent to a customer's nominated contact address only. A distributor may additionally send notices and bills to a supply address to further ensure receipt.
14.2	Disclosure	EWOV would welcome a reference to the relevant recognised energy industry ombudsman regarding the disclosure of information to it in subclause 14.2 (a).

National Energy Marketing Rules		
Clause	Subject Matter	Comment
2	Requirement for and timing of disclosure to small customers	EWOV considers this clause to be too loose. Customers need to be provided with all required information to form explicit, informed consent before entering into a contract. 2(1)(a) is the preferred option. It should be made clear that 2(1)(b) only comes into effect where it is impossible to comply with 2(1)(a).
3	Form of disclosure to small customers	EWOV notes that subclause 3.1 currently reads as if the information provision is optional rather than the way it is provided. EWOV suggests that 'information must be provided in writing, electronically or verbally' not just 'may'.
4	Required Information	The required information should include the name and contact details of the retailer. All applicable prices should include network charges. Currently EWOV finds that some retailers do not include them, giving customers a false idea of the costs of the contract EWOV is pleased that the cooling off period starts when the customer has received the required information, not at the time of agreeing to the contract.
Part 2	Marketing activities	EWOV believes these rules should also contain: • a requirement that marketers use their best endeavours to conduct marketing negotiations with the account holder at the premises • a re-iteration that there must be (explicit) informed consent for a valid contract to be created and that marketers should desist from marketing where the customer is unable for reasons of incapacity or language to form informed consent • a requirement that the marketer use plain English • a requirement that retailers maintain a 'do-not-contact list' • .a requirement that marketers respect no canvassing signs.
5	Duties of retail marketers	EWOV questions the need for a customer to be able to contact the marketer. Even if the marketer has not observed these rules, he or she is not in a position to make redress. That must be done by the retailer represented.