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Thank you for the opportunity to comment on the Retail Policy Working Group - National Framework for Distribution and Retail Regulation: *Working Paper 2*.

The Energy & Water Ombudsman NSW investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers.

As we emphasised in our submission to Working Paper 1, EWON believes that the key consideration in national regulatory reform of the energy industry is to ensure the promotion and enhancement of the long-term interests of consumers. Clarity in the relationships between customers, retailers and distributors must be a fundamental consideration in this process, particularly as confusion in this area gives rise to complaint, delay and dissatisfaction for all parties. In EWON's experience, service failures in the interface between the three have a particularly noticeable impact on customers, including those in vulnerable circumstances.

For ease of reference our submission follows the same structure as Working Paper 2, with a particular focus on the consolidated conclusions and recommendations outlined in Attachments 2, 3 and 4.

If you would like to discuss this matter further, please contact Brendan French, Deputy Ombudsman, on 02 8218 5251.

Yours sincerely

A handwritten signature in black ink that reads 'Clare Petre'.

Clare Petre
Energy & Water Ombudsman NSW



Energy & Water
Ombudsman NSW

Response to

Retail Policy Working Group

National Framework for
Distribution and Retail Regulation
Working Paper 2

29 January 2007

Submitted by the

Energy & Water Ombudsman NSW

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Introduction

The Energy & Water Ombudsman NSW (EWON) is pleased to respond to the Retail Policy Working Group – National Framework for Distribution and Retail Regulation: Working Paper 2.

Established in 1998, EWON is the approved independent dispute resolution mechanism for customers of electricity and gas providers in NSW, and some water providers. Our aim is to provide fair, equitable and independent investigation and resolution of customer complaints. We work with the key stakeholders – providers, community, government, regulators – to improve the standard of service delivery for the benefit of NSW consumers.

EWON has a jurisdiction to investigate complaints relating to both retail and distribution functions.¹ In the 2005-06 financial year, EWON closed 6066 files relating to retail complaints and enquiries, and 1134 regarding distribution issues.

For ease of reference, we have provided EWON's responses under the same headings as the Working Paper, with a particular focus on the consolidated conclusions and recommendations outlined in Attachments 2, 3 and 4. We have also included comment of a more general nature immediately below.

Relationships

As outlined in greater detail below, EWON considers that national regulation should articulate an obligation on distributors to provide a distribution service to customers in their designated areas. For customers, this is and should remain a realistic presumption. Starting from this premise, then, the most immediate consideration is to ensure that the relationships between the two key service providers – distributors and retailers – are defined in such a way as to provide surety to the businesses and clarity to consumers.

On any given day EWON receives 100 or more contacts from customers, most of whom wish to raise a complaint about a retail or distribution problem they face. Our experience suggests that while the issues raised by these complaints are enormously varied, the causes can generally be distilled as failures in communication and failures in customer service. Not infrequently, these problems arise from a lack of clarity regarding the relative rights and responsibilities of the distribution and retail businesses, and of their customers. For this reason, we welcome the attention that Working Paper 2 places on articulating these relationships in a comprehensive way.

¹ At present electricity retailers, electricity distributors and gas retailers are required to be members of an approved Ombudsman scheme (EWON) as a condition of their operating licence/authorisation. At present, gas distributors do not have such an obligation.

Customers tell us repeatedly that in their dealings with energy service providers, they look for simplicity, reliability and clarity. Customers have an expectation that any queries or concerns they raise with their retailer or their distributor will be taken up straight away and that, importantly, if a referral to the other party is required, it is done immediately and appropriately. Customers do not appreciate being told by their retailer that “we aren’t responsible – you should call your distributor and, if you don’t have the number, look in the Yellow Pages”, or by their distributor that they should call their retailer. Further, customers will likely consider any confusion between the retailer and distributor in addressing their concerns as poor administration at best, and ‘buck passing’ at worst.

While retail competition in the energy sector has been the primary focus of those *in* the sector for the last several years, our observation is that it is still a novelty to many consumers. Many people who contact EWON struggle to appreciate the distinction between a retailer and a distributor, and we continue to speak with consumers who assume that by switching retailers their quality or reliability of supply will improve. While consumer awareness of contestability is growing, national regulation should take account of the relative newness of competition and seek to ensure that wherever possible customer confusion is minimised.

Law, rules and other instruments

As for Working Paper 1, EWON endorses the general approach of the Working Paper in which high level policy and framework matters are intended to be encapsulated in statute while matters of implementation and administration are detailed in rules or other regulatory instruments. We consider that this has the advantage of allowing for easier amendment of regulation as the market develops. It also has other advantages, such as that outlined in an earlier EWON submission:

Our experience in seeking advice about interpretation of a particular aspect of an obligation differs significantly depending on whether the obligation is legislative or administrative. It has proved difficult to obtain an interpretation of a legislative requirement. On the other hand seeking an interpretation of an administrative obligation has usually been a more straightforward process of writing to the regulator.²

² Energy & Water Ombudsman NSW, [Comment on National Framework for Energy Distribution and Retail Regulation](#) [Ministerial Council on Energy Standing Committee of Officials consultation paper, May 2005], January 2006, p10.

Distributor obligation to provide connection services

Provisions to be included in the Law

As noted above, EWON is supportive of the requirement that a retail customer's premises located in a distributor's designated area must be provided with distribution services. We consider that such obligations should apply equally to electricity and to gas distribution.

The approach of defining a 'local distribution service network' as the distributor nominated with respect to a defined geographic area (in an equivalent manner to the nomination of Local Network Service Providers in the NER) is sensible and avoids potential for overlap and confusion.

While the recommended distribution services outlined in the Working Paper appear to be comprehensive, given the speed of change in the sector EWON agrees that there would be value in ensuring that the AEMC be empowered to supplement the definition of these services as required.

Provisions to be included in the Rules

The Working Paper lists a range of matters that are intended to be included in Rules governing distribution services to customers (eg. connection application procedures; connection requirements and conditions; distributor information requirements). EWON presumes there would be opportunity to suggest further inclusions for such Rules at a later time. That noted, the Working Paper suggests that a distributor would be required to provide to the customer a copy of the standard terms and conditions applicable to that customer. We consider that this recommendation has merit, particularly as EWON's experience indicates that only a small minority of customers is even aware that they (and, importantly, the distributor) are subject to the terms of such a contract. Nevertheless, we believe such contracts – at least in the form they currently take in New South Wales – are not always well understood by customers and could be augmented by other, more accessible information, eg. summaries of rights/obligations.

Other matters

1. Benefit of the obligation

EWON supports the Working Paper's recommendation that the obligation to provide distribution services should be applied to all retail customers, rather than solely to small customers (however defined). We note the Working Paper endorses the approach taken in the previous Consultation Paper that there should be a 'greater level of prescription for small customers'.³ While EWON considers

³ [Allens Arthur Robinson] *Retail Policy Working Group – National Framework for Distribution and Retail Regulation: Working Paper 2*, December 2006, p23 at 3.4(a)(ii).

that prescription of certain elements of distribution services is of critical importance for small energy users, in certain circumstances this can be equally important for small businesses with energy consumption disproportionate to their size. In fact, many of the disputes raised with EWON by low-end large customers are also commonly raised by small customers (ie disconnection for credit; delays in facilitating connection of new developments; disputes over responsibility for the cost of network augmentation; and issues about Type 5 metering and its associated tariff packages). That noted, there are some issues that are peculiar to large customers (ie disputes over responsibility for meeting the cost of asset upgrades where larger developments are concerned – eg upgrading from standard metering to Direct Current metering).

As we noted in our response to Working Paper 1, EWON's experience suggests that while energy consumption can be – and currently is – used as a means of establishing the protections to be made available to a consumer, the equation is not an exact one. While EWON receives few complaints from large retail customers (ie. those above the NSW thresholds for electricity [160 MWh/yr] and gas [1 TJ/yr]), it is clear that some of those who contact EWON would not be considered large businesses under standard definitions⁴ but are simply small enterprises with large energy demands (small food handling businesses that use freezers or small workshops with high energy use tools or equipment). Customers in these circumstances – who might otherwise be small owner-run businesses – are not infrequently in positions of significant disadvantage where their level of consumption has disallowed them access to the benefit of consumer protection regulation currently available to those whose consumption falls below the threshold. Indeed, the considerable reliance of certain small businesses on energy and water places them at a significant disadvantage when trying to resolve disputes with providers, especially when the latter have strong sanctions available to them (eg disconnection of supply, credit listing). In EWON's experience, such sanctions may in certain circumstances have even more dramatic implications for small businesses than for residential customers. For this reason EWON considers that consideration should be given to customers with particular vulnerabilities – such as the small businesses listed above or small business owners with language or other difficulties – particularly in terms of access to fundamental protections, notably distributor disconnection/reconnection and external dispute resolution.

⁴ There are several means to define a business as small or large, eg. through annual turnover (see s6D of the *Privacy Act 1988* [Cth]) or staff size (the Australian Bureau of Statistics recommends a small business to be one that employs fewer than 20 people: see [Small Business in Australia, 2001](#)). The latter appears to be the definition currently most favoured legislatively.

2. Enforcement mechanisms

EWON notes the comment in Section 3.4(d) of the Working Paper concerning enforcement mechanisms and welcomes consideration of this issue in greater detail in the forthcoming Working Paper 3. As noted in previous responses, we again raise our concern over the apparent limitation of enforcement procedures to court proceedings. While a crucial avenue for enforcement, we consider this to be one among a range that should be available to the AER in order to address matters expeditiously, effectively and economically.

Contractual models for distribution services

It is clear that various contractual models are currently in place to govern relationships between customers, retailers and distributors in State jurisdictions. There are also marked differences between the electricity and gas sectors, both within and across jurisdictions. The Working Paper acknowledges that whichever contractual model is ultimately favoured (linear, triangular, modified linear etc.), there will always be a degree of ‘artificiality’ involved simply due to the fact that sale and supply are conducted by separate entities.⁵ Inevitably, many customers will continue to regard their retailer as their sole contact point for all sales and supply issues. Others, particularly those exposed to regular retail marketing, may well appreciate the distinction more fully and approach their local distributor in relation to network matters. No contractual model will alter this.

EWON does not propose to indicate a preference for one particular model over another. That said, the crucial consideration for customers will be seamless communication between retailer and distributor, including (where appropriate) timely and accurate referrals between businesses, and consistency across jurisdictions and energy sectors. This matter was addressed in our submission to the Consultation Paper:

On the issue of the nature of the contractual relationships between customer, retailer, and distributor, EWON suggests that whether a triangular or linear approach is adopted, it is essential that end-use customers are made fully aware of the nature of their relationship with their retailer and network operator, the rights and obligations they have in relation to each party, and when and how to contact the appropriate party. In our experience, the introduction of full retail competition has caused some difficulties for customers in knowing which retailer or network operator to contact in relation to any problems with supply, billing etc. These difficulties are more pronounced in situations where both the retailer and distributor are involved in a customer’s complaint.

We suggest that clear lines of communication and effective business to business processes need to be developed between retailers and distributors regardless of whether the approach is linear or triangular. We also suggest that protocols for dealing with customer complaints that involve both retailer and distributor should be considered in this context.⁶

⁵ Working Paper 2, p33 at 4.4(b).

⁶Energy & Water Ombudsman NSW, [Comment on National Framework for Energy Distribution and Retail Regulation](#) [Ministerial Council on Energy Standing Committee of Officials consultation paper, May 2005], January 2006, p6.

EWON also considers that there should be an appropriate balance between rights/responsibilities articulated in contract and those guaranteed by regulation, particularly as the latter are perhaps more amenable to compliance auditing and non-judicial enforcement and remedy. It is EWON's experience, for instance, that regulatory non-compliance – particularly of a relatively minor kind – is often easier to address than 'black letter law' argument over interpretation of contract terms.

It is important to note that regulated protections are often more successful in shielding vulnerable consumers than are contracts. In EWON's experience, there are certain groups of consumers who are at a particular disadvantage in dealing with contracts. A significant proportion of complaints received by EWON in this regard have been from or on behalf of customers from non-English speaking backgrounds, customers with literacy issues, the elderly and frail, and people with an intellectual or physical disability. It is arguable that in various ways these customers may well be better served via a regulated rather than a contractual relationship with their providers. This situation is also impacted by the considerable jurisdictional variation in fair trading legislation and the absence in most States of unfair contract provisions in law (for further detail see below).

Distributor interface with customers

Introduction

As noted in EWON's submission to Working Paper 1, although consumers are to some degree accustomed to the reality of contract terms when it comes to large purchases (cars, houses etc), they have not historically been required to think of utility accounts in the same way. EWON's experience is that although most energy customers in NSW are bound by standard form contracts, only a tiny minority are aware of the fact, let alone aware of the terms under which they are supplied – until such time, for instance, as a compensation claim is denied 'on contract grounds'. If such contracts are to continue to be the contractual basis for the distributor interface with customers then it is crucial that such terms are

- comprehensible
- readily communicated to customers
- as far as possible, standard across jurisdictions
- closely regulated
- fair.

Deemed distribution contracts

The Working Paper favours that provision be made for statutorily deemed distribution contracts and that these be underpinned by

More prescriptive regulatory guidance, sufficient to determine the contractual relationship, and allowing distributors to adopt those terms or their own terms which are consistent with them.⁷

This recommendation ('Option 3') is proposed as a middle-ground regulatory model, and one that avoids the presumed arbitrariness of unregulated terms as well as the presumed heavy-handed prescription of a default, entirely regulated contract. In practice, this alternative suggests that minimum requirements for a deemed distribution contract would be outlined in regulation but distributors would be free to vary the terms on 'fair and reasonable' grounds.⁸

It has been EWON's experience that differences between distributors' standard form contracts can add complexity and confusion unnecessarily. Further, as noted in our response to Working Paper 1, some New South Wales suppliers have satisfied the minimum content requirements for their contracts but then *added* other elements (such as liability waivers) that are, to all intents and purposes, unregulated. It is difficult to see any competitive or other advantage in there not being a single, standing contract regardless of geography or jurisdiction. This model would remove one layer of complexity for customers and, it can only be presumed, would ultimately reduce rather than increase regulatory burdens on the

⁷ Working Paper 2, p39 at 5.4(a)(ii).

⁸ Working Paper 2, p44 at 5.4(c).

distributors. To this end, EWON favours Option 5, which recommends the use of a model contract as currently operates in Queensland and South Australia. Such an approach also has the advantage of avoiding the necessity for the distributors or the AER seeking to determine precisely if a suggested term is ‘fair and reasonable’.

The Working Paper suggests that the establishment of a default contract ‘is unlikely to be appropriate for a national framework because each distribution system may have different characteristics, standards or jurisdictional requirements which might affect the terms on which the distributor provides distribution services to customers’.⁹ While there may be some limited elements of a default contract that require jurisdictional tailoring, EWON considers that there would nevertheless be significant value in considering the inclusion of a default distribution contract as a schedule to the NER/NGR.

Provisions to be included in the Law

The Working Paper suggests that allowance should be made for a distributor and a customer to agree to terms for a deemed contract that would differ from the standard terms. While it is apparent that a very large customer acquiring energy from the wholesale market may seek tailored terms, it is difficult to imagine circumstances in which a small (or even a reasonably large) retail customer would have such a need. It is arguable that given the imbalance of bargaining power, a small retail customer may feel they possess little option other than to accede to the terms offered by the distributor, particularly if they are not otherwise aware that the distributor has an obligation to connect (presuming, of course, that such an obligation remains). On this basis consideration might be given to ensuring that non-standard terms may only be offered to large retail customers, thus ensuring that the terms of the standard contract protect as many – and as many potentially vulnerable – customers as possible.

Provisions to be included in the Rules

The Working Paper notes that the ‘subject matter for the standard terms and conditions’ will be decided only ‘following stakeholder consultation and further consideration by the RPWG’. EWON welcomes the opportunity to respond more fully to the content of such rules at that time. In responding to the limited discussion in the Working Paper, we suggest initial consideration of the following:

1. Distributors’ right to disconnect customer premises should be restricted to faults, emergency and health/safety issues.
2. As noted in Working Paper 1, it is envisaged that industry dispute resolution schemes will remain a matter for jurisdictional regulation.

⁹ Working Paper 2, p40 at 5.4(a)(ii).

Nevertheless, there may be advantage in ensuring that provision for customers to be informed about (and, where appropriate, referred to) independent dispute resolution is included as an element of deemed distribution contracts. Such a provision should also articulate the requirement for a distributor to comply with the determinations of the relevant scheme. (Details of such a scheme should also be part of the distributor information requirements and provided to customers upon application for connection of their premises.)

Contract terms

In New South Wales, standard form contracts are written by the local network service providers themselves, and often contain waivers of liability for all manner of events. While it is clear that a number of network events (particularly those relating to *force majeure* events), for instance, are beyond the control of the distributor, a number of the waivers contain elements that are somewhat surprising and that potentially blur the relationship between retailer and distributor. The following extract is an example of some of the restrictions included in New South Wales connection contracts (emphasis added):

Retailer A Standard Form Customer Connection Contract (Feb 05)

16.3 Exclusion of liability for supply interruptions, distortions or fluctuations Subject to the above, and as far as the law permits [Retailer A] is not liable for any loss the customer may suffer (including, without limitation, where caused by any negligent or wilful act or omission by [Retailer A]) arising from:

- a) any fluctuation or distortion (in voltage magnitude, voltage waveform or frequency) or interruption to the supply (by the customer's retail supplier) of electricity to the customer's premises or from any such supply not being or remaining continuous;*
- b) the customer's retail supplier discontinuing supply of electricity to the customer; or*
- c) [Retailer A] interrupting the supply of electricity by the customer's retail supplier to the customer's premises.*

16.4 To the extent that [Retailer A] has any liability to the customer despite the effect of paragraph 16.3, [Retailer A]'s liability (under contract, tort or any other basis), is limited, as far as the law permits, as follows:

- a) [Retailer A] is not liable for any indirect, economic, special or consequential losses of any kind suffered by the customer (including corruption of data losses, business interruption losses, loss of profits or any other indirect costs of any kind), and*
 - b) [Retailer A]'s liability for all other losses suffered by the customer is limited to the lesser of:*
 - i. The total amount billed to the customer's retail supplier*
-

(or to the customer under clause 7.4) for network charges relating to the use of [Retailer A]'s distribution system for the supply of electricity by the customer's retail supplier to the customer's premises) during the year that [Retailer A]'s breach, act or omission (which gives rise to the claim) occurred, or

ii. \$5,000 (GST inclusive, if any),

for all claims the customer makes in any one calendar year.

Such exclusion clauses are frequently relied on by distributors to deny claims submitted by customers for compensation for damaged appliances. The denial of the claim can have a significant effect on customers, and the operation of the exclusion clause certainly attempts to limit “the consumer’s right to sue the supplier”.¹⁰

In our experience there appears to be no consistency in the terms of the various connection contracts applying across New South Wales. In the absence of specific regulation, it is often the case that consumers are reliant on the good will of the distributor in paying compensation for damaged goods and it does not seem reasonable that there should be differences in the criteria used to assess the claim based on the location of the consumer.

In our view there does not appear to be any sound reason for an inconsistent approach by electricity distributors in NSW to customer claims for damage measured against reasonable minimum standards. We cannot see any competitive advantage to a different approach by distributors, and it does not seem equitable for customers to be treated differently in relation to claims depending on the distribution area in which they live. We have called for discussion of these issues by relevant stakeholders, including electricity distributors, regulatory bodies, and consumer groups.

In the absence of any clear guidelines for customer claims in NSW, it has been left to EWON to investigate claims that have been denied by distributors. Since 1998, the Energy & Water Ombudsman NSW has made 58 Determinations under clause 6.1 of the EWON Constitution. Of these, 57 have related to distributor claim matters.

The following case study is an example of how the application of the exclusion clause can be used by a distributor in a way that potentially leads to the limitation of a consumer’s rights:

¹⁰ Under section 32X(k) of the *Fair Trading Act 1999 (Vic)*, this consideration is a factor to be considered in assessing whether a particular term is unfair.

George contacted EWON in relation to a claim for compensation for damage to his dishwasher following an interruption to his electricity supply.

George's electricity supply had been interrupted for about four hours, and when power was restored, his dishwasher made a buzzing noise, and was later found to have malfunctioned. George had made a claim to the distributor for the \$1090 that it had cost to repair the dishwasher. The distributor rejected the claim on the basis that although there had been an interruption to George's electricity supply, the connection contract excluded any liability.

During EWON's investigation, the distributor advised that the cause of the interruption to George's supply in this case was damage to underground cables by a hole borer operated by a field operator employed by the distributor. Independent technical advice confirmed that the outage that followed the event was likely to have caused the damage to George's dishwasher. Even though their worker caused the outage, the distributor continued to deny the claim on contractual grounds.

EWON carefully considered the available information and determined that the distributor should pay George's claim, as the cause of the event, and the damage, were within the distributor's reasonable control.

If the terms of a customer's contract can substantially limit the right of a customer to recover compensation from a distributor for damaged property, they can have a significant detrimental impact on consumers. Complaints regarding damaged property are often highly technical, complicated matters that are largely beyond the layperson's knowledge. Therefore, EWON would support moves to regulate and simplify the use of such exclusion clauses in energy contracts. Such clauses also serve to emphasise the critical importance of close regulatory oversight of connection contracts.

Distributor interface with retailers

As the Working Paper emphasises – and as regularly articulated by independent dispute resolution agencies as well as advocacy groups – customers seek seamless service provision, predicated on effective communication and cooperation between retailers and distributors. In our experience, where inadequate communication or cooperation exists, a customer complaint will only be exacerbated by poor handling and delay, leading to frustration for the customer.

EWON agrees that the most likely means of ensuring a workable interface between distributors and retailers is via an agreement in which the retailer bundles services to the customer while paying the distributor for those services as principal.¹¹ Beyond this, EWON has no particular comment as to the form of the agreement.

The Working Paper notes that there may be a certain degree of overlap between current use of system agreements and other regulatory arrangements ('B2B' provisions, etc).¹² EWON would welcome attention by the RPWG to this issue in Working Paper 4 and to the content of such arrangements as some elements of these have been the source of customer complaints or, in some instances, have hindered their resolution. Though there are several variants, typical of these are the following:

Mona received a final bill and, upon enquiring, found that her retailer had closed her account as the site has been transferred to another retailer. Mona disputed this, stating that she had not signed with another retailer. The (original) retailer informed her that they were unable to provide details as to the identity of the new retailer 'because of the Privacy Act ["BOTPA"]'. Mona was forced to call multiple retailers to determine who now owned the site. (This situation tends to occur when a site has been transferred in error.)

¹¹ *Working Paper 2*, p57 at 6.4(a)(iii).

¹² *Working Paper 2*, p48 at 6.1(a); p58 at 6.4(a)(iii).

Honami's supply was disconnected for non-payment. After paying the arrears at a local post office on a Friday morning, she contacted her (second tier) retailer at 3.30pm to request reconnection. The retailer informed her that the B2B arrangements require that same-day reconnection will only occur if an account is paid before 3pm. Had Honami been supplied on a standard form contract, though, same-day reconnection would have been guaranteed until 4pm. The retailer informed Honami that the reconnection request would not even be submitted and that she should try to contact the distributor's call centre herself at some stage during the weekend.

Pete discovered, without warning, that a technician was removing his meter and replacing it with a Type-5 advanced meter. Pete contacted the distributor and was informed that the new meter will mean he will be billed using time of use tariffs. This confused Pete as he recently signed a market contract that does not entail such tariffs.

Ramos moved into a property and signed with (second tier) Retailer A. There was a delay and Ramos left the address before the transfer occurred. Meanwhile, Stephanie moved into the property and signed a standard form contract with the standard supplier. The transfer then took place but Ramos made no payment as he was no longer at the address. Retailer A requested the standard supplier to disconnect supply, and this occurred. When Stephanie returned home from work she found a disconnection notice left by the standard supplier. Stephanie was confused how it is possible for her retailer to have disconnected supply for a bill not yet issued. When she contacted the standard supplier, she was told no arrears were owed and that there must be a fault in her electrical installation.

John had a previous gas connection in the 1970s and when he requested the connection be re-established he was satisfied with the retailer's indicative quotation. Soon after, however, he was informed by the distributor that the costs had risen by nearly 500%. Given that he had just purchased an expensive gas stove based on the quotation, he felt that he had little other option than to continue with the connection. When he asked about the difference, the retailer informed him that the distributor does not provide them with a breakdown of contribution charges so they did not know why his was not the standard cost he had originally been quoted.

Susan was about to leave home to drop her child at school on her way to work when a representative of her gas distributor arrived to replace the gas meter. As the meter was located behind a locked gate, Susan had to remain at home until the work was done so she could lock the access gate again. She complained that neither her gas distributor nor her retailer had notified her of the work in advance, and that this lack of notice caused her major inconvenience. The distribution company advised EWON they were unable to provide advance notice of the work to the customer because they do not have access to her personal details. However, the distributor knew the address, and could have at least sent a 'Dear Customer' notice or notified Susan's retailer of the scheduled meter replacement.

A standard supplier failed to provide notice of a planned outage to Joanne's property because she was supplied by a second-tier retailer. Joanne lodged a claim for damage to her computer with the standard supplier who then referred her to her retailer, saying the responsibility to handle the claim was theirs.

Thuyên moved into his new rental home and discovered the electricity had been disconnected. He contacted the standard supplier in his area to arrange for the power to be put back on but was told that they ‘no longer own the site’. Thuyên then had to call round the various retailers to find out who could help him. When he finally found out who held the site, he was told that if he wanted a standard form contract he would have to recontact the standard supplier and have them request a site transfer. Thuyên, who didn’t feel very confident in English, felt very confused by this process.

Stephanie contacted EWON after receiving several estimated accounts. She had spoken with her retailer about leaving a self-read card at the premises as the meter is behind a locked gate and cannot be accessed externally. The retailer had assured Stephanie that they had put instructions on their system for the meter reader to leave a self-read card for her to use and that there was nothing more that the retailer could do to help. In frustration after receiving a large ‘catch up’ bill, Stephanie called EWON to see if we could get the retailer and distributor to ‘talk to each another’.

Conclusion

A recurrent observation in Working Paper 2 is that customers in a contestable market are seeking seamless service delivery. As we have described in this and in our previous submission, our experience suggests that many New South Wales customers remain unaware of the nature and implications of the relatively recent business separation of distribution and retail services. Those customers who are aware nevertheless often see the separation in administrative rather than corporate terms, and believe that whichever access channel they choose in order to discuss their concerns – and most will select their retailer – that entity should respond in a way that is efficient, effective and purposeful.

The Working Paper recommends that the relationships between customers and their distributors be underpinned primarily by contract rather than specific regulation. While such contractual relationships have existed in NEM jurisdictions for some time, an increased reliance on contracts creates a potential for power imbalance between the parties, arguably to the detriment of consumers (and particularly, perhaps, vulnerable customer groups). Consumers rely heavily on energy distributors to maintain their quality of life, and any loss of fundamental protections for these essential services would severely impact individual consumers and families. In New South Wales at present, distributors draft the connection contracts that govern the consumer-distributor relationship and it is probably fair to say that the contracts seek to operate primarily for their benefit. Because the contracts arise in the context of monopoly supply, EWON believes that the need for consumer protection in this area is particularly high. Consequently, careful regulatory oversight, auditing mechanisms, and various and explicit enforcement powers would operate to the benefit of all parties in ensuring rights and responsibilities are clearly articulated and communicated to customers.

Attachment 2 - Regulation of distributor-customer contract terms

Subject	Comments	Comments by EWON
Commencement of contract (as between the distributor and the customer at particular premises)	It is proposed that the law will provide for the deemed contract to arise on connection, however this should be restated in the deemed distribution contract. The deemed distribution contract should also state when the terms will come into effect (as they may be varied from time to time) in relation to existing customers.	Agreed. However, of equal importance in EWON's opinion is that the customer is made aware of the existence of the connection contract. EWON suggests that any customer commencing a contract with a distributor as a result of having entered a supply agreement with a retailer, should be provided, as soon as is practical, with advice from their retailer about the existence of the direct contractual relationship that also exists between the customer and the relevant distributor, and a copy of that contract (see p25 of Working Paper 2). We presume that the contract will be accompanied by agreed service standards.
Calculation of distribution charges (amount or basis of calculation)	Based on the contractual model recommended in this paper, this term is relevant to the distributor-retailer interface and should not be included in deemed distribution contracts.	Agreed.
Billing and meter reading	On the basis that the retailer is primarily liable for charges, distributor billing and meter-reading obligations are a matter to be addressed in the distributor-retailer interface. However, customer obligations in respect of meter access should be included in deemed distribution contracts. (See separate customer obligations heading in this table).	Agreed. EWON considers that it is critical that customers are aware of their obligations arising under the distribution contract (as noted above) as failure to provide access to a meter, for instance, may be a ground for disconnection.
Collection of charges	Based on the contractual model recommended in this paper, retailers are primarily liable for payment of distribution charges and this term should not be included in the deemed distribution contract.	Agreed.
Security requirements	Based on the contractual model recommended in this paper, as the retailer is primarily liable for distribution charges, customers should not be required to provide security under deemed distribution contracts.	NSW customers generally arrange connection through a retailer (either the standard supplier for the area in which the customer resides or their retailer of choice). Embedded generation in residential areas where a direct distributor-customer relationship might exist without the need for a third party retailer to act as an interface between the distributor and customer, may occur in the near future, but has not yet been an issue for EWON. EWON therefore agrees that any security requirement

Subject	Comments	Comments by EWON
		should exist only as part of the contractual relationship between the customer and their retailer.
Billing disputes	Similarly, this is a matter to be addressed in the distributor –retailer interface.	Agreed. EWON has found that delays in investigation (by the retailer or EWON) of billing disputes are not infrequently caused by a lack of timeliness in the distributor providing data to the retailer. EWON would recommend that there be clear and well articulated timeliness requirements placed on distributors (perhaps as part of the UoS agreements).
Termination of services	The deemed contract should cover the period during which particular premises are connected to the distribution system, for as long as a particular customer remains responsible for consumption at those premises, in the absence of a negotiated contract. Depending on the extent of standard terms regulating connection and reconnection, the contract may need to extend further in order to effectively cover the period during which any reconnection rights and obligations apply.	Agreed.
Interruptions to supply	The circumstances in which a distributor is permitted to interrupt or curtail supply, and the distributor's obligations in relation to the provision of notice and information to customers, should be set out in the Rules and incorporated in the deemed distribution contract.	Agreed.
Service standards/Guaranteed service levels	Consideration should be given to the extent to which regulation of these service levels should be at a national or jurisdictional level. It is proposed that the deemed distribution contract would require the distributor to comply with any jurisdictionally imposed service level obligations. Provision for the payment of compensation for service levels is a matter to be included in the distributor-retailer interface.	EWON supports the development of nationally consistent service standards / guaranteed service levels. EWON notes that while quality/reliability of supply are to some degree geographically determined, an appropriate standard of supply should be universally enjoyed by consumers, and that consumers in one State or Territory should not be disadvantaged because the service standards or guaranteed service levels which apply to distributors in their jurisdiction involve lesser standards than those that apply in another jurisdiction. EWON has argued in previous contexts that any compensation payable to customers should not be contingent on action by the customer ('opt-in') but should be automatic. To require agency on the part of the customer disadvantages those with accessibility challenges (language, disability etc).

Subject	Comments	Comments by EWON
Liability and warranties	<p>Force majeure relief for failure to supply is currently addressed in the NEL and in regulatory instruments in a number of jurisdictions. The distributor's entitlement to interrupt supply should be set out in the Rules and incorporated (by reference or possibly restatement) into the deemed distribution contract, so there is no need to separately limit contractual liability for supply failure in circumstances where the Rules permit interruption.</p> <p>Limitation of liability provisions in the deemed distribution contract should reflect general consumer contracts, eg exclusion of implied terms and warranties to the extent permitted in consumer protection legislation.</p> <p>Due to the nature of energy supply, particularly electricity, it is also appropriate to include a clear acknowledgement by customers of the need to protect against quality and reliability problems.</p> <p>Limitation of liability clauses should not affect any obligation of distributors to make guaranteed service level payments if applicable.</p>	<p>EWON considers that a model for the way in which compensation claims for physical (and perhaps other forms of) loss are handled should be adopted at a national level. This is a critical area of consumer concern in which there are significant – and unsupportable – jurisdictional differences. EWON would be pleased to provide the RPWG and/or the AER further information in this regard.</p>
Disconnections and reconnections (excluding temporary supply interruptions)	<p>Rights and obligations of a distributor to disconnect or reconnect must be consistent with the equivalent rights under standard form retail contracts. That is, a distributor must disconnect if retailer requests, and certifies that it is entitled to disconnect under its retail contract.</p> <p>The only circumstances in which a distributor may disconnect other than at retailer or customer request should be for matters relating to: emergency, health and safety; non-compliance with customer obligations which would entitle a distributor to refuse to connect the premises (eg failure to provide access, equipment specifications or safety); or non-compliance with other customer obligations for which the contract specifies the distributor may disconnect, such as unauthorised supply or tampering with distributor system (eg meter bypass).</p> <p>Distributor rights in relation to non-payment of distribution charges</p>	<p>Agreed. For a customer to be disconnected for failure to provide access or other (non-health/safety) reasons, it is appropriate that the customer would have had reasonable opportunity to remove the ground for disconnection (eg. by providing access). In EWON's experience customers require a reasonable time to accommodate this, particularly where, for instance, the meter room is locked and a building manager is difficult to contact.</p>

Subject	Comments	Comments by EWON
	<p>would be a matter for the distributor – retailer interface and should not give rise to direct distributor disconnection rights.</p> <p>The deemed distribution contract should specify circumstances in which a distributor must not disconnect. Some, such as time of day, may be limited to residential customers.</p> <p>With respect to reconnection, some jurisdictions (eg Vic, Qld) the right to reconnection applies for a limited time (eg 10 business days) after disconnection. It is relevant to distinguish between a right to reconnection (eg if premises have been wrongly disconnected or after removal of the cause of disconnection) and a right to connection (which arises as a statutory obligation).</p>	
Fault reporting and correction	<p>The deemed contract should include a requirement for the provision of known fault information by the distributor.</p> <p>The handling of fault reporting by customers is also a matter for regulation within the distributor-retailer interface.</p>	<p>Agreed. (EWON considers that there is value in the UoS and/or the NER/NGR requiring distributors to make available to retailers and customers a 24-hour emergency fault reporting phone line. This number should appear on bills, notices and be included in the contract documentation provided by the retailer to the customer, and be published in printed and online versions of the White Pages.)</p>
Dispute resolution	<p>As noted in working paper 1, the AEMA envisages that industry dispute resolution schemes will be a matter for jurisdictional regulation. A dispute resolution clause to be included in deemed distribution contracts should require the inclusion of an obligation to comply with the rules of the relevant scheme.</p> <p>Disputes are a matter which is also likely to require coordination with retailers</p>	<p>Agreed. As noted above, there may be advantage in ensuring that provision for customers to be informed about (and, where appropriate, referred to) independent dispute resolution is included as an element of deemed distribution contracts. Such a provision should also articulate the requirement for a distributor to comply with the determinations of the relevant scheme. (Details of such a scheme should also be part of the distributor information requirements and provided to customers upon application for connection of their premises.)</p>
Customer obligations	<p>One of the main purposes of a direct contractual relationship is to provide for the customer's obligations. These should be clearly expressed and the consequences of not complying with obligations should be specified. If any non-compliance may lead to disconnection, this should be stated in the contract.</p>	<p>Agreed. In a related vein, EWON notes from experience in handling complaints about claims customers have made against their electricity distributor that in general, there appears to be a low level of awareness even among business customers, of customer obligations to ensure their own energy installation remains adequately protected from the incidence of electricity supply quality variation or interruptions. Few such</p>

Subject	Comments	Comments by EWON
		<p>customers appear to be aware of, let alone ever read, the contract which articulates the relationship between the customer and their distributor. Certain customer classes (eg. those supplied via a three phase connection) may require very specific advice about how they may best protect their installation/appliances.</p>

Attachment 3 - Regulation of distributor-retailer contract terms

Subject	Comments	Comments by EWON
Connections at request of retailer or end customer	<p>The agreements generally do not cover the obligation of the distributor to connect at the request of a retailer on behalf of a customer. Rather, they proceed on the basis that this obligation is covered elsewhere and have limited provisions on this subject which oblige the retailer to pass on connection requests to the distributor in a timely manner. The exception to this is the NSW gas code, which deals with the substantive connection issues (obligation to connect and exceptions to that obligation).</p> <p>This working paper has proposed that the obligation to connect, in this sense, should be addressed by regulatory requirements outside of the contractual arrangements, and therefore propose that the former approach would be appropriate for the model terms.</p> <p>It is also proposed that it is appropriate in the context of the contractual model for the retailer to arrange connection on behalf of its customers, unless the customer requests otherwise. While this is not really an issue for the model terms (as it is an issue between the retailer and the customer, rather than the retailer and the distributor), it would be appropriate to otherwise address this issue as part of the regulatory requirements.</p>	Agreed
Obligation to supply	<p>While the terms and conditions of the UoS agreement which are determined through the existing access regime may cover this obligation in more detail, it is proposed that, at a minimum, a provision of this nature should be included as part of the model terms, reflecting the modified linear contractual model.</p>	Agreed. As noted above, this obligation should extend to all classes of customer (eg. small and large retail).
Customers covered by the agreement	<p>Provisions such as this are useful in defining the scope of the services being provided by the distributor to the retailer from time to time. It may be appropriate for a uniform approach to be adopted by including such provisions in the model terms. (Consistency in this respect may also be</p>	EWON has no comment on this matter.

Subject	Comments	Comments by EWON
	appropriate in the context of market rules dealing with customer transfer – to be discussed in Working Paper 4).	
Collection and on payment of network charges by retailer	<p>The approach proposed in this working paper is slightly different to that suggested in the Consultation Paper. It is proposed that, rather than the retailer 'collecting network charges' from customers for 'on-payment' to the distributor, the retailer pays for the services provided to it by the distributor as principal. The retailer then provides a bundled service to the customer, and charges the customer accordingly.</p> <p>It may therefore be considered that the payment obligations are not part of the specific arrangements for interface between the distributor and the retailer. However, it is proposed that it would be appropriate to include provisions of this nature in the model terms, given the interaction between these billing arrangements and those required under the retailer customer contracts.</p> <p>Further, given the close interaction between amounts charged by the distributor to the retailer, and the amounts then charged by the retailer to its customers, it is proposed the model terms would also include provision for adjustments between the parties in relation to overcharging or undercharging customers.</p> <p>Pass through of GSL payments is also a matter which it may make sense for the distributor to coordinate through the retailer, since the retailer has the billing relationship with the customer.</p>	Agreed.
Changes in network tariffs or distribution services	<p>The provisions relating to the assignment of customers to particular network tariffs are appropriate interface provisions, as the distributor's charges (imposed on the retailer) are based on the relevant tariffs for the retailer's customers. The customer should be able to seek a change in the network component of its energy bill with its retailer, and so the retailer needs to be able to effect that change with the distributor. It is also likely that the retailer will be more likely to be aware of a change in the use of a customer's premises which may mean that a different network tariff is appropriate.</p>	<p>This is an area for customer complaint in so far as the customer's circumstances change (eg. a business downsizes) and there is disputed responsibility for which entity should look to alter the network tariff. EWON would welcome clarity as to how regularly such tariffs should be reviewed by the retailer and/or the distributor.</p>

Subject	Comments	Comments by EWON
<p>Information sharing to facilitate single billing, billing disputes</p>	<p>It would be appropriate for the distributor to provide certain information to the retailer in respect of the determination of its bills, which would include some degree of breakdown (for example, by tariff category).</p>	<p>In EWON's experience, some 2nd tier retailers who have entered into a supply arrangement with a customer have subsequently had to withdraw from the arrangement when it has become apparent that the type of meter-read information supplied to them by the distributor is incompatible with the retailer's billing software system (for example with some data extracted from Type 5 Time of Use meters). If consistency can be achieved in the type and format of meter-read data, EWON agrees that this will lead to a more efficient competitive market for consumers.</p> <p>With regard to single billing, EWON notes that the meter reading schedules of distribution companies can vary to the extent that single billing for both electricity and gas is not always practical or possible. It is possible this issue could be resolved if all distribution companies conducted meter readings at around the same times, but EWON acknowledges the logistical and financial burdens this may impose on distribution companies.</p>
<p>Credit support</p>	<p>Credit support is a key issue in the context where the retailer pays the distributor as principal for the distribution services provided by the distributor to the retailer. As the distributor does not bill the customer, it does not manage the customer credit risk (for example, by seeking a security deposit from relevant customers). The distributor's entire credit risk rests with the retailer. Accordingly, the distributor will want to seek to manage the risk of its exposure to the retailer. It is also usually a controversial issue and, accordingly, it would be appropriate for a default position to be prescribed in the model terms. As has been noted, the Victorian Essential Services Commission has recently undertaken a review of the credit support provisions in the Victorian electricity default UoS agreements, and has proposed an alternative approach to determining the amount of credit support to be provided. This new approach may be worth considering in the development of the model terms.</p>	<p>EWON has no comment on this matter.</p>

Subject	Comments	Comments by EWON
Termination	<p>Although this is not really a matter of interface between the distributor and the retailer, it is an important issue in relation to the ongoing provision of services to a retailer's customers. For this reason, it may be appropriate for such provisions to be included in the model terms.</p> <p>In particular, the model terms should contain provisions acknowledging (or perhaps requiring) that the distributor continue to provide services to the retailer until the agreement has ceased to apply in respect of all of the retailer's customers (for example, because a retailer of last resort has been appointed). This puts the distributor at risk (highlighting the importance of the credit support provisions) but protects customers from potential disconnection due to the fault of their retailer.</p>	EWON has no comment on this matter.
Interruptions to supply	<p>The general acknowledgement in relation to the distributor's right to disconnect or interrupt supply forms part of the agreement between the distributor and the retailer about the level of service being provided to the retailer. For example, this may be equivalent to the more detailed provisions generally found in gas haulage contracts relating to curtailment. As the underlying contractual model proceeds on the basis that the distributor provides services to the retailer, this would be an appropriate provision to include in a UoS agreement. On the basis it is proposed that the interface provisions should include an obligation imposed on the distributor to provide distribution services to the retailer, it would be appropriate for an acknowledgement of this nature to also be included.</p>	Agreed.
Allocation of liability between retailer, distributor and customer	<p>A provision of this nature seems appropriate in the context of a modified linear contractual model where, although the distributor provides services to the retailer, there is also a direct contractual relationship between the distributor and the customer in relation to those services.</p> <p>Such a provision does not deal with the allocation of liability as between the retailer and the customer, or the distributor and the customer, respectively. These allocations should be addressed in the direct contractual</p>	Agreed.

Subject	Comments	Comments by EWON
	<p>relationships between those parties. The relevant provisions in the model interface terms for UoS agreements should align with standard form liability provisions in contracts between retailers and customers, and between distributors and customers. It may not be appropriate to include caps on liability in the model terms. However, this is something which the regulator may approve as part of a particular distributor's default terms and conditions, or which the distributor and retailer may negotiate separately.</p>	
<p>Disconnections at request of retailer, distributor or end customer</p>	<p>The provisions relating to disconnection are a key area where interaction is required between the distributor and the retailer as, generally speaking, the retailer will have rights to disconnect the customer but the distributor must undertake the physical disconnection.</p> <p>To the extent the distributor does have rights to disconnect the customer, it is also important for the distributor to inform the retailer if it exercises those rights. See further comments on this issue below in relation to enforcement of distributors' rights'.</p> <p>Provisions regarding responsibility may be controversial, in particular, the liability of the distributor to meet the energy charges incurred by the retailer in respect of a customer where the distributor has failed to disconnect the customer in accordance with the agreement. Accordingly, it is proposed that this is an issue which is appropriate to address in the model terms (with the ultimate position to be determined on a policy basis).</p>	<p>Agreed.</p>
<p>Enforcement of distributor's rights</p>	<p>These provisions are concerned primarily with disconnection by the distributor, requiring the distributor to notify, consult with, or inform the retailer if it proposes to disconnect or disconnects a customer of the retailer. This seems an appropriate addition to the provisions relating to disconnection described above.</p> <p>In one case, the standard agreement also included a more general obligation on the distributor to consult with the retailer before enforcing any rights against the customer, and to indemnify the retailer if it assisted.</p>	<p>Agreed. Given the retailer's billing relationship with the customer, EWON supports the recommendation that the standard distributor-retailer contract include as a minimum a requirement for the distributor to notify the retailer of any impending action the distributor plans to take to disconnect the customer's supply.</p>

Subject	Comments	Comments by EWON
Information sharing to facilitate connection, disconnection	Information sharing in relation to connection and disconnection is discussed above. The additional requirements imposed under the NSW rules may also be useful requirements to include in the model terms.	Agreed.
Handling of fault complaints	Faults is another area where interaction between the distributor and retailer is important, given that the customer is likely to contact its retailer, but it is the distributor that will be managing the fault. Provisions such as those described would be appropriate for inclusion in the model terms.	Agreed. The important thing from EWON's perspective is that at the outset of the connection process, the customer be notified what number they should call to report supply faults or interruptions. As noted above, EWON considers that the distributor should operate a 24-hour phone service for fault reporting but there clearly also need to be provisions for retailers to refer customers to this number in set circumstances.
Handling of complaints (including re billing)	As above, complaints is an area where interaction between the distributor and retailer is appropriate, other than in relation to billing where (in the context of a modified linear model) the issue is a retailer issue. Provisions such as those described would be appropriate for the model terms.	Agreed. We would note, though, that there is a range of billing complaints that do require significant involvement by the distributor, specifically when the query relates to the accuracy of meters or meter readings.
Other customer inquiries and claims	As noted above in relation to complaints, customer inquiries is an area where interaction between the distributor and the retailer is important, and it would be appropriate to include relevant provisions in the model terms. A third party claims procedure is also appropriate where the parties indemnify each other in relation to certain claims made by customers.	Agreed.
Metering	Metering is addressed by other regulatory requirements, and would not seem to be an issue that needs to be addressed in the model interface terms for UoS agreements.	Some customers have complained in the past to EWON of a lack of notification from their distributor prior to the replacement of a gas or electricity meter at their premises. It would be of some benefit in EWON's view if the distributor-retailer contract clarified the responsibility for notification to customers when a meter is replaced.

Subject	Comments	Comments by EWON
Information sharing in relation to customer information and planned and unplanned outages	<p>Further information sharing and interface provisions (in addition to those discussed above) would also be appropriate to include in the model terms.</p> <p>Additional requirements which may be relevant are:</p> <ul style="list-style-type: none"> a general information sharing obligation; the provision of customer details by the retailer to the distributor (note comments above on this issue) the provision of information in relation to unplanned and planned outages by the distributor to the retailer; a referral procedure for customer calls in relation to planned and unplanned outages. 	Agreed.
Information to be provided to the customer	<p>Again, this is clearly an issue relating to interface between the distributor and the retailer. Each is required to provide certain information to customers, and customers may seek the information from the other party.</p> <p>It may be appropriate to consider provisions pursuant to which the distributor can request the retailer to provide information on its behalf (for example, it may be appropriate for non time critical information to be provided as part of the retailer's billing process).</p>	Agreed.
Information sharing to facilitate churn	<p>Information sharing in relation to churn may be a matter which is more appropriately dealt with in the context of market rules and B2B procedures. This may be considered in Working Paper 4. However, one such issue which is dealt with in the agreements is the provision by the retailer to the distributor of certain customer information (discussed below). This assists the distributor in relation to its obligations to maintain such customer data for the purposes of the various transfer rules.</p>	Agreed. EWON recommends the RPWG include discussion of this issue in Working Paper 4, as suggested.
Communications generally	<p>This is another area where there may be overlap with market rules and B2B procedures. Such provisions may not be necessary in the model interface terms for UoS agreements.</p>	Agreed.
Dispute resolution	<p>It may be appropriate to deal with dispute resolution procedures in the model terms (at least to the extent that a standard procedure already exists, such as that applying under the NER).</p>	Agreed.