



Energy & Water  
Ombudsman NSW

*Response to*

*Ministerial Council on Energy  
Standing Committee of Officials*

National Energy Customer Framework (NECF)  
1<sup>st</sup> Exposure Draft 30 April 2009.

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*Submitted by the*

Energy & Water Ombudsman NSW

*12 June 2009*

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## Introduction

The Energy & Water Ombudsman NSW (EWON) is pleased to respond to the *National Energy Customer Framework (NECF) 1<sup>st</sup> Exposure Draft 30 April 2009*.

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 all the key stakeholders – providers, community, government and regulators – to improve the standard of service delivery for the benefit of NSW consumers.

EWON has previously contributed our views to the consultation in relation to Working Papers 1-5, the Allens Arthur Robinson composite paper and table of recommendations and the MCE SCO Paper National Framework for Regulating Electricity and Gas (Energy). We acknowledge that a number of the issues we raised have been addressed in the current Framework.

EWON welcomes the plain English style of the draft Law and Rules and the expression of policy positions in a Law and Rule approach. In the attached Comments Table we have suggested changes and improvements based on our experience of customer disputes with retailers and distributors. In this covering submission we focus on those broader policy matters where we have previously commented and which we feel significantly reduce existing customer protection or may have an unforeseen adverse impact on NSW customers.

We note that there are other energy reform programs occurring concurrently with this consultation. We suggest that of particular importance are Retailer of Last Resort arrangements, Business to business (B to B) rules concerning transfer of customers, and various programs concerning meters and metrology. It is critical that where such processes overlap with consumer protection matters covered in the National Framework, the Laws and Rules reflect all of the relevant considerations. There is a possibility of significant consumer detriment if reforms in these areas are not fully reflected in the Laws and Rules and vice versa.

EWON would be particularly interested in the opportunity to contribute our experience of customer issues to those processes which will not have a full public consultation, such as the B to B rules.

## 1 Definition of Small Customer

Throughout the process of establishing a National Energy Customer Framework EWON has consistently raised concern about the removal of protections for small business customers. We have provided a number of case studies in our previous submissions. We have pointed to the Utility Regulators Forum's concerns about the need for protections for small business<sup>1</sup>, and to the ABS definitions of small business<sup>2</sup>.

We remain concerned that the decision to reduce protections for small business through the significant redefinition of small customer will leave some customers exposed to a significant power imbalance when dealing with large retailers and distributors.

We would call on the MCE SCO to reconsider this policy position and provide a framework that maintains the current protections for small business.

We are also concerned about the position of residential customers who are covered by Strata Title. The electricity costs associated with common areas are borne by the residents without the protections afforded by access to standard supply arrangements. EWON has dealt with a number of cases where the Body Corporate has received a very large backbill, often tens of thousands of dollars, as the result of undercharging. Although the individuals are small residential customers, they are considered a large customer because of their collective consumption.

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<sup>1</sup> *Regulation of Retail Service Standards in the National Market, Utility Regulators' Forum Position Paper September 2006*, p13

<sup>2</sup> EWON Submission to MCE SCO Paper National Framework for Regulating Electricity and Gas (Energy) Distribution and Retail Services for Customers Policy Response 25 July 2008, p5-8

## 2 Shortened Collection Cycle

EWON is greatly concerned with the proposed introduction of the Shortened Collection Cycle (SCC). This provides for rapid de-energisation and appears to run counter to the welcome emphasis on hardship adopted by the NECF.

EWON has direct experience of the application of the SCC. A 2<sup>nd</sup> tier retailer inappropriately applied this process to some NSW customers. Despite consistent assurances by the retailer that this process is not directed at hardship customers it has been EWON's experience that almost without exception the customers affected by this provision have been in financial distress.

**The customer was disconnected for arrears of \$797 and then refused a payment plan when he offered \$200 and regular payments for the balance. The customer is Sudanese and had difficulty with English. The retailer informed EWON that the customer was on a shortened collection cycle. With EWON intervention reconnection and a payment plan was organised.**

As we understand it the process of SCC is automated. Given that at least one retailer has applied it inappropriately to NSW customers, EWON is not confident that retailers can always meet the requirements of Rule 223 (2) (a) which state that the SCC is only applied if the retailer is satisfied that the customer is not experiencing financial difficulty.

If this provision is retained then we expect to see a significant and unfortunate increase in the numbers of de-energisations occurring in NSW.

In the event of the retention of a Shortened Collection Cycle EWON would call for a more stringent pre-condition for its application and a less stringent requirement for its removal, to ensure that the number of customers adversely affected is reduced (see the EWON Comments Table for the specific proposals).

### 3 Meter Reading Obligations

The intention to reduce the obligation of an actual meter read to once every 12 months is also a significant concern. This proposal seems to be moving away from industry best practice. In EWON's previous submission we noted the UK experience and the adverse customer consequences that flowed from reduced actual reads<sup>3</sup>.

It is difficult to identify the rationale for this proposal. If there is a distributor concern about the practicality of regular reads in rural and remote areas, we suggest a provision for application to the AER for exemption from a requirement for a 6 monthly read. This would ensure adequate protection for the majority of customers who reasonably expect that their billing will be based upon actual meter data, while providing a process where undue cost for distributors could be reduced.

Such an approach would significantly reduce the need for estimations and the difficulties that inevitably arise around over and under charging. Actual meter data is often the only way customers become aware of a problem with their electricity infrastructure, eg a leak in their hot water system. An actual read only once every 12 months could mean that these problems are undetected for a long time, at significant cost to customers.

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<sup>3</sup> EWON Submission to MCE SCO Paper National Framework for Regulating Electricity and Gas (Energy) Distribution and Retail Services for Customers Policy Response 25 July 2008, p9

## 4 Termination of Contract

EWON disagrees with the provision for termination of a contract after a 10 day period to rectify de-energisation.

In EWON's experience, 10 days is often not sufficient for a customer in financial difficulties whose supply has been de-energised for non-payment to arrange sufficient financial assistance to meet the retailer's grounds for re-energisation. Appointments with financial counsellors and community agencies for financial assistance can often take more than 2 weeks to arrange. EWON appreciates that retailers require a signal for closing an account and starting recovery action, but we would recommend that the 10 days be increased to 30 days in recognition of the practical difficulties for some hardship customers in accessing the range of assistance they need.

A further negative consequence of terminating the contract after only 10 days following de-energisation is that if a customer is subsequently re-energised, the retailer will issue a new account number. This will impact on any existing direct debit or Centrepay arrangements, as well as pensioner rebates.

## 5 Other Matters

### *Network Liability*

EWON supports the inclusion of distributor responsibility for loss or damage where they have acted ‘negligently or in bad faith’, as this has clarified the protection for customers who may have complaints about loss suffered as a result of an event on the distribution network.

EWON notes the concern of distributors about the implications of uncapped liability in the current proposals. EWON also notes the Victorian experience where the introduction of the *Electricity Industry Guideline No. 11 Voltage Variation Compensation* significantly reduced disputes around compensation and provided assurance to both customers and distributors. It would appear that a national approach along these lines could address the needs of small customers while at the same time address some of the concerns of distributors.

### *Marketing*

EWON welcomes the inclusion of National Energy Marketing Rules. EWON is however not confident that the current move for harmonisation of Fair Trading legislation will provide the national consistency that a more detailed set of Rules could provide.

The major omission in the proposed Rules from current NSW protections under the Marketing Code of Conduct is the requirement for retailers to maintain a *Do not contact* list for door to door contact.

### *Hardship provisions*

EWON is pleased that the issue of hardship is given a position of prominence in the NECF. Our concern is that the definition of a customer in hardship is limited by being as identified ‘in accordance with the retailer’s customer hardship policies’.

These policies may not be flexible enough to pick up the emerging groups of customers in hardship, for example the ‘working poor’ who may previously have had good payment histories and may not be receiving any government benefits, but who are in genuine financial distress.

EWON strongly supports the proposal for the AER to develop hardship indicators and play an active role in monitoring and auditing retailer hardship programs. EWON also believes that the AER should approve the retailer hardship policies to ensure minimum standards are in place.



### *Life Support*

EWON recognises that the inclusion of the stringent life support requirements provides a basis for protection of customers. Our only concern is that given the responsibility on retailers for administering life support rebates there is a possibility for confusion between equipment eligible for a rebate and equipment eligible for de-energisation protection. EWON would encourage a further consideration of this issue with a specific consultation between retailers and distributors to ensure the best possible practice around this critical area of life support.

## Conclusion

In our previous submissions EWON has commented on the necessity to ensure that the role and responsibilities of the energy industry Ombudsman need to be considered carefully in this process of transition to a National Framework. EWON welcomes the recognition of Ombudsman powers in the First Exposure Draft but notes that the maintenance of current jurisdiction and powers depends on not just the NECF but also upon the equivalent jurisdictional instruments.

To ensure that this transition occurs without reducing the critical role of dispute resolution EWON believes that a specific consultation is required between SCO jurisdictional authorities and the Ombudsman schemes.

## 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 & Water Ombudsman NSW (EWON)**

Draft National Energy Retail Law		
Part 1 – Preliminary		
Section	Subject Matter	Comment
103	Definition of de-energisation	While EWON appreciates that this term is a more accurate description than ‘disconnection’ for turning off a customer’s supply, we are concerned that it is not a familiar term in everyday speech. It is vital that any communication to customers regarding an intention to de-energise is expressed clearly in plain language on notices and bills, as well as over the phone and in person. We have the same concerns for the terms energisation and re-energisation.
103	Definition of hardship customer	<p>EWON’s concern is that this definition is limited by customers in hardship being identified ‘in accordance with the retailer’s customer hardship policies’.</p> <p>These policies may not be adequate or flexible to pick up emerging groups of customers in hardship, for example the ‘working poor’ who may previously have had good payment histories and may not be receiving any government benefits, but are in genuine financial distress.</p>

103	Definition of financially responsible retailer	EWON would appreciate clarification as to how this concept will work during the transitional period while NSW still has price regulation across three different distribution areas.
113	NERL Objective	EWON would like to note our comments from a previous submission that <i>"We are concerned that the failure to include environmental and social policy objectives will ensure that there will be future difficulties in ensuring an integrated approach to the development and implementation of relevant regulation."</i> <sup>1</sup>

Draft National Energy Retail Law		
Part 2 – Relationship between retailers and small customers		
Section	Subject Matter	Comment
212	Satisfaction of designated retailer's obligation to make standing offer	EWON objects to the thresholds for small market offer customers as set out in clause 8 and 9 of the <i>National Energy Retail Regulation</i> . (see covering submission for details)
218	Informed consent	EWON welcomes these provisions, which clarifies the retailer's responsibilities in this area.
219	Nature of Informed consent	<p>This provision does not appear to deal with the situation where a customer's account can be terminated and the site transferred to another retailer due to the actions of a third party.</p> <p>EWON has received numerous complaints where another person such as a flat-mate, spouse, child, or visiting friend or relative has agreed to sign a contract. This has the effect of closing</p>

<sup>1</sup> EWON submission to National Framework for Distribution and Retail Regulation: *Consultation Paper (June 2007)*. August 2007, p4

		<p>the customer's existing account and transferring the site to another retailer in the name of the new customer. In these cases the transfer is without the knowledge or consent of the original authorised account holder, but if the provisions of 218 are complied with, it could be said to be with the informed consent of the new (unauthorised) customer.</p> <p>EWON recommends a provision requiring the explicit informed consent of the existing account holder at a property before a transfer can take place. Any transfer without the current account holder's consent should then be considered invalid, in the same way as in 218 (2).</p>
219 (2) (b) (ii)	Nature of Informed consent	In the context of telemarketing, EWON believes that a sound recording of the consent is an essential consumer protection and should occur in all cases. Therefore 219 (b) (ii) should not be an alternative to sound recording.

Draft National Energy Retail Law		
Part 3 – Relationship between distributors and customers		
Section	Subject Matter	Comment
		No comment

Draft National Energy Retail Law		
Part 4 – Relationship between distributor and retailers		
Section	Subject Matter	Comment
		No comment

Draft National Energy Retail Law		
Part 5 – Authorisation of retailers and exempt selling regime		
Section	Subject Matter	Comment
		No comment

Draft National Energy Retail Law		
Part 6 – Functions and powers of the Australian Energy Regulator		
Section	Subject Matter	Comment
		No comment

Draft National Energy Retail Law		
Part 7 – Functions and powers of the Australian Energy Market Commission		
Section	Subject Matter	Comment
		No comment

Draft National Energy Retail Law		
Part 8 – National Energy Retail Rules		
Section	Subject Matter	Comment
		No comment

Draft National Energy Retail Law		
Part 9 – National Energy Retail Regulations		
Section	Subject Matter	Comment
		No comment

Draft National Energy Retail Law		
Part 10 – Compliance and performance		
Section	Subject Matter	Comment
1016	National Hardship Indicators	Given the importance of hardship protections in the context of the National Framework, EWON supports the AER being given the role of approving retailer hardship policies.

Draft National Energy Retail Law		
Part 11 – Enforcement		
Section	Subject Matter	Comment
		No Comment

Draft National Energy Retail Law		
Part 12 – Evidentiary matters		
Section	Subject Matter	Comment
		No comment

Draft National Energy Retail Law		
Part 13 – General		
Section	Subject Matter	Comment
		No comment



Draft National Energy Retail Rules		
Part 1 – Preliminary		
Rule	Subject Matter	Comment
		No comment

Draft National Energy Retail Rules		
Part 2 – Customer retail contracts		
Rule	Subject Matter	Comment
205 (2) (b)	Pre-contractual duty of retailers	EWON strongly supports the policy rationale that it is a basic entitlement of all consumers to be informed of their right to a standing contract.
210 (2)	Actual read at least every 12 months	The move to a requirement for at least one meter read every 12 months is problematic and a significant change to current NSW arrangements. As we have previously argued, EWON believes that a move away from a six monthly read goes against industry best practice and has the potential to cause or exacerbate a range of customer billing and energy supply problems. Actual meter reads preferably quarterly, but at least every 6 months, are crucial for customers.
211 (1) (b)	Estimation	It is not clear from this wording if this section intends to authorise estimation by a retailer where interval metering data has been provided by the network operator, but the retailer's billing software is not able to process it. This has been a common experience in NSW with the roll-out of interval meters by a major network.
211 (1) (c)	Estimation – where metering data is not provided	Should there be a time limit in this section, for example if the read is not provided within a reasonable margin of the next scheduled quarterly reading?
211	Estimation – historical	EWON notes that the rules on estimation are currently supported by further NEMMCO

(2) (b)	data	Metrology Procedures – is a reference to the NEMMCO Metrology Procedures needed here?
212 (1) (c)	Bill smoothing	EWON notes that this appears to require an actual meter reading after 6 months in order to do a re-estimation – however the Rules elsewhere only require an actual meter reading every 12 months.
213	Frequency of bills	EWON recommends that this rule applies to market contracts, unless the contract states otherwise.
214 (1) (i)	Contents of bills – start and end read - ...‘the values of meter readings or metering data’ ...	<p>EWON receives a large number of complaints from customers with interval meters who no longer receive a previous and current cumulative read on their bills, just a total for the energy usage for that period. Customers complain that they have no way of checking the accuracy of their energy usage by comparing a meter read on the bill to the cumulative reading on their meter.</p> <p>It is not clear if the inclusion of the term ‘or metering data’ will allow this practice to continue, or whether a start and end read will now be required. Could this be clarified?</p>
217	Historical billing data requested by customer	The previous ‘free of charge’ period in NSW for billing history information was 2 years. The reduction to 12 months is at odds with the proposed change in the requirement for an actual meter reading only once every 12 months. Customers may now only become aware of a problem with their billing on receipt of an actual bill after receiving up to three estimated bills, and may wish to query the accuracy with their retailer. It would appear reasonable for a customer to be able to request historical billing data for up to two years free of charge to verify that the estimated bills had been correctly based on historical data, and this would not appear to be too onerous for a retailer. EWON would recommend that the references to 12 months in 217 (1) and (2) be changed to two years.
218 (5)	Meter test	This provision does not specify the margin of error over which a meter would be considered

		faulty. The current NSW Regulation 36 (4) specifies this margin as 2%. Is it intended to include a figure for compliance in this section?
219	Undercharging	In NSW the term 'undercharging' has been interpreted to include a failure to issue a bill at all. Could this be made explicit in this section to remove any potential ambiguity?
219 (2) (d)	Undercharging	EWON strongly supports the clarity of the obligation on the retailer to offer the customer an instalment plan.
221	Payment methods	The NSW Regulation 30 (3) prohibited the retailer from charging a small retail customer for their choice of payment methods and EWON recommends a similar provision added to this section.
222 (3)	Obligation to offer a payment plan	EWON recommends that the word 'may' is changed to 'must' – customers who self-identify as being in payment difficulties but may not have as yet been identified as a hardship customer by the retailer's internal hardship policies must also be entitled to a payment plan.
223	Shortened Collection Cycle (SCC)	<p>EWON has serious concerns about this as it appears to be at odds with the affordability issues developed through the hardship provisions in the NECF. EWON recommends the SCC be removed from the NECF (see covering submission for further comment on this).</p> <p>While the proviso in (2) (a) appears to give some protection to customers in financial difficulties, in our experience the shortened collection cycle procedures are automated, so there is reduced opportunity to identify customers experiencing payment difficulties. These customers need access to a hardship program, rather than a harsher regime of a shortened collection cycle which can exacerbate their vulnerability to de-energisation.</p>
223 (2) (b)	SCC	If there is a SCC provision in the NECF then EWON proposes that the SCC apply only after a customer has received two consecutive warning notices thus excluding a reminder notice as a

		trigger event.
223 (2) (c) (ii)	SCC	EWON proposes that the SCC be withdrawn when the customer has paid three bills without receiving a warning notice.
224	Request for final bill	EWON would like to see an additional subsection specifying that a separate meter reading fee may not be charged for a final meter read for customers on a standard retail contract.
226	Security deposit	EWON would like to see an additional subsection noting that a security deposit will not be required when a customer has agreed to pay by either a direct debit or Centrepay arrangement. This is an important current provision in NSW.
231	Refund of security deposit	EWON believes that the refund of the Security Deposit should be triggered after 4 on time payments. Under the proposed wording one late payment, even if not triggering a reminder notice, would trigger another 12 month period before repayment.
234 (1) (e)	Termination of contract 10 days after de-energisation	<p>In EWON's experience, 10 days is not sufficient for a customer in financial difficulties whose supply has been de-energised for non-payment to arrange financial assistance to meet the retailer's grounds for re-energisation. Appointments with financial counsellors and community agencies for financial assistance can take more than 2 weeks to arrange. EWON appreciates that retailers require a signal for closing an account and starting recovery action, but we recommend that the 10 days be increased to 30 days in recognition of the practical difficulties for some hardship customers in accessing the assistance they need.</p> <p>A further negative consequence of terminating the contract after only 10 days following de-energisation is that if a customer is subsequently re-energised, the retailer will issue a new account number. This will impact on any existing direct debit or Centrepay arrangements, as well as pensioner rebates.</p>

236 (4)	Cooling off period – notice of recession	<p>The current wording seems to require customers to cancel a contract in writing and does not appear to require retailers to acknowledge the cancellation.</p> <p>Retailers in NSW are required to have a process in place to receive and process oral cancellations, as well as written cancellations, and to acknowledge such cancellations in writing. <i>Clause 7 Schedule 2 Electricity Supply (General) Regulation 2001</i> is very clear about cancelling contracts within the cooling off period:</p> <p><b><i>“7 Cooling off period under negotiated customer supply contracts</i></b>  <i>(1) A negotiated customer supply contract must confer on the customer a right to terminate the contract (orally or in writing) within 10 days after the date that the contract is entered into, or the date that a copy of the contract is received by the customer, whichever is the later.</i>  <i>(1A) If a customer exercises any such right to terminate a negotiated customer supply contract, the contract must require the supplier to provide the customer with a record of that termination “.</i></p> <p>EWON recommends provision for oral as well as written cancellation, and also confirmation of the cancellation by the retailer.</p>
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## Draft National Energy Retail Rules

### Part 3 – Customer hardship regime

Rule	Subject Matter	Comment
301 - 304	Hardship	EWON welcomes these provisions. Our only concern is that the definition of hardship customer is limited by being as identified ‘in accordance with the retailer’s customer hardship policies’. These may not be adequate to pick up the emerging groups of customers in hardship, for example the ‘working poor’ who may previously have had good payment histories and may not be receiving any government benefits, but are in genuine financial distress.

Draft National Energy Retail Rules		
Part 4 – Relationship between distributors and customers		
Rule	Subject Matter	Comment
		No comment

Draft National Energy Retail Rules		
Part 5 – Relationship between distributors and retailers		
Rule	Subject Matter	Comment
		No comment

Draft National Energy Retail Rules		
Part 6 – De-energisation of premises		
Rule	Subject Matter	Comment
603 (2)	De-energisation	It could assist in the early identification of hardship customers if the Ombudsman contact details were included on the Reminder Notice as well as the Warning Notice (Rule 604).
605 (1) (d)	De-energisation for not paying bill	NSW retailers currently also have to attempt to make contact with the customer outside business hours, if previous attempts at contact are unsuccessful. This recognises that not everyone is contactable on a home or mobile contact number during business hours. As de-energisation can have such an adverse effect on customers and their families, EWON

		would support all measures designed to alert customers to imminent de-energisation and which encourage them to discuss the ongoing management of their account with their retailer. EWON recommends a requirement for out of business hours contact retained in the new Rules.
610	Restriction on de-energisation	Currently many retailers have informal/internal disconnection thresholds and some jurisdictions have formal provisions in law. EWON notes that there is no proposal for a disconnection threshold for lesser amounts of arrears. Given the serious consequences of de-energisation on customers and their families, EWON requests that further consideration be given to this consumer protection.
610 (1) (c)	Restriction on de-energisation	Current NSW Regulations also include the situation where a payment plan is 'pending'. This can cover the situation where a hardship customer is in the process of negotiating a payment plan, but the specific payments cannot be confirmed until the amount of an up-front payment a customer can make is factored in. Could a reference to pending payment plans be included in 610(1)(c)?
615	Re-energisation	EWON has already objected to the 10-day provision in Rule 234 (1) (e), and recommends this be increased to 30 days to allow the customer sufficient time to access financial and other assistance to comply with the grounds for re-energisation.

## Draft National Energy Retail Rules

### Part 7 – Life support equipment

Rule	Subject Matter	Comment
		(See covering submission for comment)

Draft National Energy Retail Rules		
Part 8 – Prepayment meter systems		
Rule	Subject Matter	Comment
		No comment

Draft National Energy Retail Rules		
Part 9 – Exempt selling regime		
Rule	Subject Matter	Comment
910	AER Exempt Selling Guidelines	EWON would like to see the current customer protection in the NSW exempt retailer provisions encompassed by the AER Guidelines. In particular, permanent residents in Residential Parks are often financially vulnerable and merit at least the same level of protection provided to other residential customers.

Draft National Energy Retail Rules		
Part 10 – Retail market performance reports		
Rule	Subject Matter	Comment
1003 (d) (e)	Retail market performance reports	EWON would like to see separate reporting on de-energisation and re-energisation for non-payment. The statistics are not helpful if they also include cases where de-energisation is requested when a customer moves house and closes the account.



## Draft National Energy Retail Rules

### Part 11 – Consultation for the National Energy Retail Framework

Rule	Subject Matter	Comment
		No comment

## Draft National Energy Retail Regulations

Regulation	Subject Matter	Comment
8	Business customers - upper threshold	EWON opposes this threshold, which is a significant reduction on the current NSW threshold of 160MWh per annum. EWON's experience with many small business customers is that they are not necessarily any more sophisticated than domestic customers in resolving disputes without the support of basic consumer protections (see covering submission for comment).
9	Business customers – lower threshold	EWON opposes this threshold, which is a significant reduction on the current NSW threshold of 160MWh per annum.

Draft Model Standard Retail Contract		
Clause	Subject Matter	Comment
4.2	When does this contract end	EWON's objections to the 10-day rule have been previously noted.
5.2	Distributor's responsibilities	The functions of meter reading and testing, and vegetation management are not included in this list. These are often the public face of the distributor, and it could be helpful to clearly distinguish these from the role of the retailer.
6.4	Life support	(See covering submission)
7.2	Liability	EWON supports the inclusion of retailer responsibility for loss or damage where they have acted 'negligently or in bad faith', as this has clarified the protection for customers who may have complaints about the conduct of retailers or their contractors.
9.3	Estimation	It is not clear from the wording if this is intended to cover situations where interval metering data has been supplied but the retailer's billing software is unable to issue invoices based on this data.
11 (b)	Meter reading	EWON has concerns about a 12 month read, that have been previously noted. (See covering submission)
12.1 (b)	Undercharging	The wording here is expressed differently from Rule 219 on undercharging, and consistency with these provisions will help eliminate unnecessary ambiguity. EWON recommends rewording to ensure consistency and that any rewording ensures maximum consumer protection for customers.

12.3	Reviewing your bill	EWON recommends a specific reference here to the Energy Industry Ombudsman. There is a reference to 'and otherwise in accordance with the Rules'. However, as this is a customer contract and it is not anticipated that customers would read the Rules, it would be beneficial to customers if their right to dispute resolution through an energy ombudsman was made explicit here.
13.1	Security deposit	The provisions of Rule 226 (2) (c) refer to the customer's right to dispute a decision of the retailer to apply a security deposit based on their unsatisfactory credit history. It may be helpful to the customer if this right was made explicit in the customer contract.
15	Re-energisation	EWON is concerned that for customers in financial difficulty this wording requires payment in advance for re-energisation. It also possibly implies that all arrears need to have been paid in advance. It is EWON's experience that disconnection is a critical point of intervention to assist customers in financial hardship, and payment arrangements for all arrears including re-energisation fees should be part of a payment plan.

Draft Default Retail Support Contract		
Clause	Subject Matter	Comment
		No comment

Draft Model Standard Distribution Contract		
Clause	Subject Matter	Comment
4.2	When does this contract end?	EWON's concerns on the 10 day limit have been noted previously.
5.5 (a)	Quality of energy	EWON queries the inclusion of the phrase "the technical limitations of the distribution system" in the list of events that are deemed to be beyond the distributor's control. Every other item in the list refers to external factors, but the 'technical limitations of the distribution system' appears to be a factor that is within the control of distributors.
7.2 (a)	Not liable	EWON supports the inclusion of distributor responsibility for loss or damage where they have acted 'negligently or in bad faith', as this clarifies the protection for customers who may have complaints about loss suffered as a result of an event on the distribution network.
7.2 (b)	Not liable	EWON would like clarification on whether the inclusion of the words in brackets, ' <i>however caused</i> ' contradict 7.2 (a) which specifically prevents exclusion for liability for negligence or bad faith.
8.2	Access to the premises	This section does not specifically refer to any notice required for entry on to a customer's premises – it would be helpful if this was included here.



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12 June 2009

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Thank you for the opportunity to comment on the National Energy Customer Framework (NECF) 1<sup>st</sup> Exposure Draft 30 April 2009.

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

Overall the proposed framework provides an adequate structure of law, regulation, rules and model contracts regulation for energy services for customers. However, EWON believes that there are some aspects of the proposals that reduce current protections for NSW consumers and we will address these in our submission and in detail in the attached Comments Tables.

For ease of reference in the Comments Tables we have adopted the same numbering as the National Energy Customer Framework (NECF) 1<sup>st</sup> Exposure Draft 30 April 2009.

If you would like to discuss this matter further, please contact me or Emma Keene, Manager Policy & Projects on 02 8218 5225.

Yours sincerely

A handwritten signature in blue ink that reads "Clare Petre". The signature is written in a cursive, flowing style.

**Clare Petre**  
**Energy & Water Ombudsman NSW**