

TOTAL ENVIRONMENT CENTRE

**HOW SHOULD ENVIRONMENTAL AND SOCIAL POLICIES BE
CATERED FOR AS THE REGULATORY FRAMEWORK FOR
ELECTRICITY BECOMES INCREASINGLY NATIONAL?**

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Further Information:

Total Environment Centre
4/78 Liverpool Street, Sydney, NSW 2000
PO Box A176, Sydney South 1235
Ph: 02 9261 3437
Fax 02 9261 3990
jane.castle@tec.org.au
www.tec.org.au

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Executive Summary

The recent National Electricity Market (**NEM**) reforms identified (amongst other things) an explicit single market objective for the NEM (**NEM Objective**) and that network and non-price retail regulation should be moved into the national framework. Similar reforms are now in the process of being extended to the gas industry.

To date less effort and less reform drive would appear to have been devoted to environmental and social policies. The slower progress on these issues is perhaps one reason why they are not included as part of the current move towards a national framework. This paper examines whether, and if so how, the similar reforms could be undertaken for environmental and social policies relevant to electricity.

The first step in Section 1 of this paper is to identify the objectives that these policies seek to address which can guide the analysis of social and environmental policies, and, potentially also guide institutions performing any national environmental or social functions. Drawing on the market objective and (in respect of the Market Social Objective) the approach in the UK with amendments to take account of Australian conditions, the paper posits the following environmental and social objectives:

Environmental

"The Market Environmental Objective is to contribute to achieving ecologically sustainable development and is to have regard to the effect on the environment of the generation, transmission, distribution, supply and use of electricity and related activities including achieving a permanent reduction in the total global emissions of greenhouse gases."

Social

"The Market Social Objective is to promote the long term interests of consumers with respect to the supply of electricity as an essential service including addressing the particular vulnerabilities that particular classes of consumers may have such as customers who are: disabled or chronically sick; of pensionable age; of low income; and/or residing in rural areas."

A review of the current environmental and social objectives in Section 2 (and Appendices A and B) is used as a basis to identify the linkages between social and environmental policies and the National Electricity Market generally and its objective in particular (Section 3).

Section 4 summarises the Jurisdictional Direction mechanism proposed in the Gilbert + Tobin / NERA paper by which state-by-state environmental and social policies can be given effect in what is otherwise a national framework.

Section 5 identifies key historical events that assisted in the progression towards the National Electricity Market and draws implications for what would be necessary if a similar National approach was pursued in respect of environmental and social policies.

Section 6 identifies criteria for assessing whether environmental and social policy should be designed and implemented on a separate state-by-state basis (Model 1); on a uniform basis by the states but implemented by each state (Model 2); or designed and implemented nationally (Model 3). The criteria include certain changes to the institutions and frameworks before Model 2 or 3 can realistically be pursued.

Section 7 focuses in more detail on significant institutional and framework changes that would be needed for Model 3.

Section 8 makes preliminary observations as to whether the criteria identified in section 6 apply in respect of the environmental and social programs typically observed in the separate states that

participate in the National Electricity Market (that is, the programs identified in Section 2 and Appendices A and B).

In summary, it would appear that there is a case for moving towards a national framework for environmental regulation and that it is possible that a case may exist for doing so in respect of social programs, or at least some types of social program. However, to do so would require significant work towards intergovernmental and community wide acceptance of what the aims of these policies are and the method of delivery. Work would also be needed to put in place reforms to the legislative and institutional frameworks.

1 Policy objectives

1.1 Current objective

The National Electricity Law (**NEL**) and the former National Electricity Code which is a creature of the NEL have recently been reformed and one element of that reform package has been the adoption of a single National Market Objective. That Objective (a very similar version of which has now also been included in the national gas law) is:

“The national electricity market objective is to promote efficient investment in, and efficient use of, electricity services for the long term interests of consumers of electricity with respect to price, quality, reliability and security of supply of electricity and the reliability, safety and security of the national electricity system.”

That objective replaced a series of objectives of variously appearing in chapters 1, 2 and 6 of the National Electricity Code (and, likewise, the single gas objective has now been inserted to over-ride a similar disparate group of objectives in the Gas Code).

The purpose of adopting a single objective in the place of the previous disparate lists of objectives was that decision makers (such as regulators) were often confronted with contradictory objectives without a framework for reconciling them or according each objective with an appropriate weighting. The consequence for industry and other interested parties was that it was difficult to predict decision making and difficult to hold regulators to account where such industry or other interested party considered there to have been an incorrect judgement exercised by the decision maker.

The synthesis of the above multiple objectives into a single objective was facilitated by the fact that all the previous objectives were outworkings of, and fell squarely within, a traditional economic rationalist framework of analysis.

So in summary:

- the single objective was a means (and note that this is not the only means) to reconcile disparate objectives; and
- there was a natural commonality between the disparate objectives that they could be synthesised into a single objective.

It is relevant to this paper, however, that adopting a single objective was not the only way to address the problem of a multiplicity of potentially conflicting objectives – for example, it would have been possible for the National Electricity Law or the Rules to list the multiple objectives that were found in the Code in priority order or provide a framework for decision makers to prioritise them.

1.2 Does the market objective encapsulate environmental and social policy objectives?

One of the key elements of the new single market objective is that it focuses the decision maker on the long term interests of consumers.

A key tenant of this paper is that the long term interests of consumers can only properly be advanced if:

- a socially responsible approach is adopted which recognises that consumer protections are required reflecting the essential service characteristic of electricity and the particular vulnerabilities of particular classes of consumers; and
- a ecologically sustainable approach is adopted which recognises the environmental damage that the supply and use of energy can pose.

Without those approaches, there are a range of ways in which the long term interests of consumers would suffer including:

- (a) that businesses which will often have superior information at their disposal and greater bargaining power could unjustly enrich themselves at consumers' expense;
- (b) the issues in (a) are particularly the case in respect of vulnerable consumers and, if vulnerable consumers are taken advantage of, it offends the compassion and sensibility of vulnerable and non-vulnerable consumers alike and can even lead to counterproductive tension between "haves" and "have nots"; and
- (c) if excess or poor current production and consumption practices are adopted that do not recognise the full impact of energy consumption on the environment the result would most likely be more severe restrictions in the future when the full impacts are recognised or loss of amenity resulting from any irreversible damage caused.

Each (or most) of the jurisdictions currently have these kinds of policies/programs in place. The range of policies and programs already in place clearly demonstrates that there is broad consensus among all the jurisdictions that action or regulation needs to be taken to elicit or facilitate social and environmental outcomes.

However currently there are a variety of over-lapping reasons which appear to result in social and environmental policies not being included within the National Electricity Market regulatory framework.

First, not all industry participants and not all existing National Electricity Market institutions recognise that the NEM objective is sufficiently broad to include social and environmental policy aims.

Most of these parties are in fact supportive of the need for social and environmental policies but consider that those policy aims can be separated from the other policy aims that they see as falling squarely within the NEM regulatory framework. Often the assumption is that social and environmental policies are addressed in regulations outside the NEM framework such as:

- in respect of the environment, the regulations covering land use and development approval;
- in respect of social policy, the energy ombudsman schemes and State and Territory direct assistance schemes.

But the reality is that the above assumption is often largely misplaced. For example, planning and development approvals often focus on localised environmental problems without adequately taking account of broader environmental issues such as greenhouse gas emission issues. Also, those land use and development approvals often start from the position that some form of project is required and the issues are how the project's impact is to be minimised.

A further example currently evolving concerns the roll-out of interval meters to small electricity consumers. Each state and territory regulatory system is currently making its own decision as to whether and how fast distributors should roll-out such meters. The meters will better enable small consumers to actively participate in demand side management. The meters will enable a more economically efficient dispatch of electricity but they will also have potential partially over-lapping environmental benefits (eg enabling consumers to curtail consumption at times when the marginal

generators emit high quantities of greenhouse gas) and social benefits (lowering over-all energy bills by enabling demand to shift between periods). It is highly artificial to attempt to achieve the best possible policy outcome where environmental and social aspects of the regulatory decision as to whether and how rapidly to roll-out the meters have been separated from the traditional economic aspects of the decision. Indeed it can't be done.

Second, even when industry participants or institutions do recognise that a proper reading of the objective is broad enough to include social and policy issues, they often struggle with reconciling tensions that they perceive emerge between immediate commercial benefits to participants and less immediate or less tangible social or environmental impacts. In other words, there can be perceived complications in weighing up between long run effects and short run effects of policies or where some effects can be quantified and others can only be described in qualitative terms.

Finally, there are a small minority of parties who are not supportive of social or environmental policy aims and, focusing on the particular words of the current market objective, some of these parties are in active denial that social or environmental considerations form part of it because:

- they see social protection as benefiting sectoral rather than aggregate consumer interests; or
- focuses on the word “consumers” in the objective as persons’ limited capacity as consumers of electricity rather than persons’ equally relevant capacity of being members of society.

It is rare for parties to explicitly record any of the above positions but they can often be discerned from decisions and behaviours.

However, NEMMCO (which goes to particular lengths to make its approaches transparent) itself notes the following in respect of the interaction between the NEM and the environment:

“Under the Rules, NEMMCO’s charter focuses specifically on efficiency, security and reliability of power supply, and excludes favouring one fuel source over any other. Consequently, NEMMCO has neither the power nor the authority to make decisions based on considerations of sustainability and balance in resource management.”¹ (emphasis added)

On the other hand, it is encouraging to see that NEMMCO is in fact taking initiatives to facilitate the integration of significant quantities of renewable energy into the electricity system. For example, NEMMCO is procuring a tool (the Australian Wind Energy Forecasting System) to enable it to better predict wind patterns which will enable it to provide the market with plant and system availability data that takes into account the effect of changes in wind. This is an important means by which generators are encouraged to make their capacity available when it is most needed both reducing prices and improving reliability. In this way, the tool should also enable a higher quantity of wind generation to be connected to the system without affecting reliability.

In the long run, it is the thesis of this paper that the above full long term effects of decision making will be recognised as part of an analysis conducted under the existing market objective. However, that may only emerge after further evolution in the thinking of industry participants and institutions or even litigation on the meaning of the objective.

There is the significant potential that this realisation may take so long that, in waiting for the realisation to dawn, significant consumer protection or environmental damage could result.

A clearer pathway is needed to get these preserved and enhanced at the national level. Consequently, there is an interim role for a specific and immediate focus to be applied to environmental and social considerations where those considerations most matter.

One way to achieve that specific and immediate reform, while steering well clear of the problems that previously emerged when disparate objectives were listed without a framework for weighting or prioritisation is:

¹ NEMMCO, *An Introduction to Australia’s National Electricity Market*, June 2005, p 27.

- to identify specific environmental and social policy objectives; and
- to identify with sufficient precision in what circumstances and in what way those social and environmental objectives should be weighted or prioritised vis a vis other considerations.

While that is the approach adopted in this paper, it is adopted without in any way conceding that the long term better solution for which to aim is a complete synthesis of social, environmental and economic considerations within the current single market objective.

1.3 Specific environmental and social policy objectives

In order to guide the analysis and make policy recommendations, it is necessary to identify the objectives of policies concerning social and environmental issues.

Broadly, these objectives could be characterised as:

Environmental

"The Market Environmental Objective is to contribute to achieving ecologically sustainable development and is to have regard to the effect on the environment of the generation, transmission, distribution, supply, use and abatement of use of electricity including achieving a permanent reduction in the total global emissions of greenhouse gases."

One particular current issue that is given inadequate attention under the current national framework is the role that demand management can play in meeting environmental objectives. To correct this problem, the legislation that would adopt the above environmental objective should include in the explanatory memorandum and second reading speech a specific mention of demand management.

That mention should elaborate that demand management includes both the management of peak loads and energy efficiency as a way of meeting capacity requirements most cost effectively and includes a diverse array of activities that meet energy needs, including cogeneration, standby generation, fuel switching, interruptible customer contracts, and other load shifting mechanisms.

Demand management includes all of the following related concepts: 'demand response', 'demand side management', 'demand side response', 'energy efficiency' and 'non-network solutions'.

Social

"The Market Social Objective is to promote the long term interests of consumers with respect to the supply of electricity as an essential service including addressing the particular chronic or temporary vulnerabilities that particular classes of consumers may have such as customers who are: disabled or chronically sick; of pensionable age; of low income; of indigenous or other ethnic background and/or residing in rural areas."

The form of the Market Environmental Objective and the Market Social Objective is drawn from the Market Objective and the content of the Market Social Objective is, in part, drawn from the analogous UK electricity regulatory framework's treatment of social policies.

Sub-section 3A(1) of the UK *Electricity Act 1989* sets out the principal objective and general duties of the Secretary of State and the Gas and Electricity Markets Authority as follows:

"The principal objective of the Secretary of State and the Gas and Electricity Markets Authority (in this Act referred to as "the Authority") in carrying out their respective functions under this Part is to protect the interests of consumers in relation to the electricity conveyed by distribution systems or transmission systems, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the generation, transmission, distribution or supply of electricity or the provision or use of electricity interconnectors."

Sub-section 3A(2) then provides that in carrying out their functions, the Secretary of State and the Authority shall do so in the manner which he or it considers is best calculated to further the principal objective, having regard to (a) the need to ensure that all reasonable demands for electricity are met; and (b) the need to secure that licence holders are able to finance the activities that are the subject of obligations imposed by legislation. Sub-section 3A(3) requires the Authority to have regard to the interests of:

- (a) individuals who are disabled or chronically sick;
- (b) individuals of pensionable age;
- (c) individuals with low incomes; and
- (d) individuals residing in rural areas.

In respect of environmental considerations, the Secretary of State and the Authority are required by sub-section 3A(5) to, *subject to sub-section (2)*, carry out their respective functions in the manner which is best calculated to, amongst other things, contribute to the achievement of sustainable development, and have regard to the effect on the environment of activities connected with the generation, transmission, distribution or supply of electricity.

Under section 3B, the Secretary of State is able to issue guidance about the making by the Authority of a contribution towards the attainment of any social or environmental policies. Where such guidance has been issued, the Authority is required to have regard to this guidance in carrying out its functions.

Under section 41A, the Secretary of State may impose on each electricity distributor and on each electricity supplier an obligation to achieve the energy efficiency target to be determined by the Authority.

The Authority is required to carry out impact assessments of 'important' proposals. A proposal is considered to be important when, amongst other things, its implementation would be likely to have significant effects on the environment.

In short, the UK model creates a framework in which considerations of efficiency (with the benefits of economic efficiency being made available to consumers generally). However, the Secretary of State and the Authority, in performing its or their functions **must** have regard to the interests of vulnerable consumers, and **subject to** ensuring reasonable demands for electricity are met and licence holders can finance their activities, perform their functions in the manner which is best calculated to contribute to sustainable development and have regard to the effect on the environment of the activities concerned. Guidance issued by the Secretary of State may increase the emphasis that the Authority is required to place on social and environmental considerations.

2 Current regulatory instruments

Appendix A to this paper sets out the current initiatives to further the greenhouse gas abatement objective. Appendix B to this paper sets out the current initiatives in the various states to address social policy objectives.

In summary, it can be seen from Appendix A that there are a variety of approaches taken by the States to regulate each of their electricity systems in relation to greenhouse gas emissions. While there are a number of similar approaches between jurisdictions, such as licence conditions requiring attainment of benchmarks or renewable energy targets and requirements for reporting greenhouse gas information on bills, they do not apply in every state and the details vary. There are also instances in which particular jurisdictions depart markedly from the other states (for example, the Queensland 13 per cent gas scheme and the absence of any detailed Tasmanian program on account of the high level of indigenous hydro generation)

It can be seen from Appendix B that there are a variety of initiatives taken to address social objectives in the various states. While it is generally uniform that there are rebates for pensioners and veterans, the details of eligibility and the size of the rebate varies. There are also initiatives that are specific to particular states such as drought relief rebates (Queensland), network tariff rebate for rural and regional consumers (Victoria) and a means tested heating rebate (Tasmania). Several jurisdictions also have life support rebates for those with electrically powered life support.

3 Linkages with the National Electricity Market

3.1 Greenhouse Gas Abatement

With respect to the programs for greenhouse gas abatement, there are a number of relevant linkages with the NEM including:

- (a) the NEM enables power generated in any one state to be consumed locally or in any other interconnected jurisdiction and for retailers to comply with the targets and bill disclosures they must take account of those interregional flows;
- (b) the fact that power can shift between regions also means that the Market Environmental Objective should be better able to be met than if flows between regions were not possible. It should be possible to seek the maximum greenhouse abatement for a given cost wherever that abatement can most effectively be delivered. By contrast if abatement initiatives are focused at a jurisdiction-by-jurisdiction level, there is the potential for opportunities to be lost. For example, on the basis that Tasmania has largely hydro based power, there is no specific greenhouse gas abatement initiative in that state. The effect may be that other projects that could abate a relatively larger amount of greenhouse gas in Tasmania (such as wind) may not be invested in. Similarly, without any encouragement in that State to curtail new emissions, “dirty” generators may be attracted to that State to avoid the effects of policies in other states;
- (c) the fact that power can be transported between regions *can* also result in higher greenhouse gas emissions than if power was locally generated. For example, the amount of power lost in interstate transport is typically in the order of ten per cent per region and therefore when power is being transported between states, it logically follows that for power flowing from one region to an adjacent region there must be approximately ten per cent more electricity generated, and ten per cent more emissions resulting;
- (d) the national regulatory instruments of the NEM go to considerable lengths to provide a level playing field between generators located in different regions and if the greenhouse gas abatement initiatives differ, the level playing field can be significantly undermined; and
- (e) differing greenhouse gas abatement initiatives in different states can undermine other aspects of the NEM without necessarily improving environmental outcomes. For example, if a retailer in one state is considering retailing in another state, it may be required to prepare special billing formats and/or different pricing structures to reflect the different costs of targets that vary only at the margin. The result will necessarily be higher compliance costs and, potentially, lesser retail competition with retailers delaying or limiting interstate expansions.

Even though there are the linkages identified above between the NEM and greenhouse gas abatement initiatives, it should not be assumed that there is unanimity amongst industry participants and NEM institutions that the NEM legislative framework as it currently exists could cater for national greenhouse gas abatement initiatives. In particular, for the reasons set out in sections 1.2 some parties assert:

- the NEM objective is unlikely to provide a basis for regulations to achieve greenhouse gas abatement and, in many respects, the objective may be hostile to the implementation of greenhouse gas abatement regulatory initiatives; and
- with the exception of the Ministerial Council on Energy (**MCE**) (which does consider greenhouse gas to be part of its responsibilities) the other NEM institutions such as the Australian Energy

Markets Commission (**AEMC**), Australian Energy Regulatory (**AER**) and NEMMCO are not specifically tasked with greenhouse policy nor do they have the specialist skills to manage such initiatives. Rather, in each case, they focus on system security, reliability and economic regulation.

The first of these issues is particularly significant because the NEM objective is relevant to a number of important processes including:

- the MCE may issue a statement of policy principles in relation to any matters that are relevant to the exercise and performance by the AEMC of its functions and powers, but any such statement may only be issued if the MCE is satisfied that the statement is consistent with the NEM objective;
- in performing or exercising an AER economic regulatory function or power, the AER must, among other things, perform or exercise that power in a manner that will or is likely to contribute to the achievement of the NEM objective;
- similarly, in performing or exercising any function or power under the National Electricity Law, the AEMC must have regard to the NEM objective, as well as to any relevant MCE statement of policy principles; and
- the AEMC may only make a rule if it is satisfied that the rule will or is likely to contribute to the achievement of the national electricity market objective.

The NEM is an open access market which essentially operates such that any generator of electricity is able to bid their generation capacity into the electricity pool. As one unit of electricity is indistinguishable from any other unit, explicit distinction is not made in the NEM between particular generators of electricity or between particular sources of electricity.

Many policy makers and incumbents say that the NEM currently does not discriminate between sources of electricity. But there is, in fact, positive discrimination towards fossil fuels, since a variety of externalities are not taken into consideration eg the environmental and social cost of emissions. Further, that position by policy makers overlooks the fact that many 'green' sources of electricity (wind, wave and solar) may be indirectly discriminated against by the NEM Rules because the technical standards were developed initially with coal, gas and hydro plant in mind and alternative generation technologies that have changeable and unpredictable generation (such as wind farms) are typically not able to be scheduled as 'base load' and their participation is, as a result, generally limited to the spot-market.

Under the National Electricity Rules (**Rules**)², the NEM is operated by the National Electricity Market Management Company Limited (**NEMMCO**). NEMMCO is required under Rule 3.2.1 to, amongst other things, operate and administer the NEM in accordance with Chapter 3 of the Rules. Chapter 3 of the Rules is intended to give effect to a number of market design principles, which, relevantly for the purposes of this memo, include:

- avoidance of any special treatment in respect of different technologies used by market participants; and
- equal access to the market for existing and prospective market participants.

Quoted in section 1.2 is a statement from NEMMCO concerning its view as to the interaction (or lack of it) between the NEM and the environment.

² The Rules were initially made under section 90 of the National Electricity Law. Amendments to these initial Rules are dealt with through section 34 of the National Electricity Law, which provides for the AEMC to make Rules in accordance with Division 2 of the National Electricity Law.

As can be seen from the above, the current national regulatory arrangements relating to the NEM do not adequately accommodate social or environmental considerations to be taken into account in the operation of the NEM.

3.2 Social policies

The linkages between the NEM and initiatives to address social policies are not as great as the linkages between the NEM and greenhouse gas abatement initiatives. Almost all the social policy programs apply directly to retailers (and in limited cases distributors) and, unlike targets that relate to the type of generation, with respect to social programs, there is no explicit link to the wholesale market or generation sector.

Of course it should be noted that the retail and distribution sectors are about to undergo regulatory changes that will transfer certain state regulations into the national framework. Initially all distribution regulation and retail non-price regulation is to be transferred. Over time, states are also able to transfer their retail price regulation responsibilities to the national level.

Over time, therefore, the linkages between the NEM and initiatives to address social policies will tend to increase.

Further, just as with the greenhouse gas initiatives, for the reasons set out in sections 1.2 some parties assert:

- the NEM objective is unlikely to provide a basis for regulations to achieve social objectives and, in many respects, the objective may be hostile to the implementation of initiatives designed to achieve social objectives; and
- the NEM institutions are not specifically tasked with social policy nor do they have the specialist skills to manage such initiatives.

Rebates for vulnerable consumers that are in effect funded by less-vulnerable consumers is an example of the type of inconsistency that could arise between the NEM Objective and a social policy. It could be difficult for some parties to reconcile such a policy with the NEM Objective of efficiency.

However, as discussed in Section 7 with suitable legislative amendments and institutional reforms these issues would not be insurmountable.

4 The Jurisdictional Direction mechanism

Each Australian jurisdiction has a number of government greenhouse gas emission policy objectives that impact on the generation, transmission, distribution and retail businesses.

The paper prepared by NERA Economic Consulting and Gilbert + Tobin in May 2005 suggested a national approach to the regulation of the national electricity system consistent across all jurisdictions.

The paper proposed mandatory Jurisdictional Directions as a way of incorporating government policies from various jurisdictions into the national framework. The way the mechanism would work is that each jurisdiction would separately determine (according to its own policy development process) the environmental and social initiative to be adopted and they would be established under the laws of the State or Territory concerned. The function of the Jurisdictional Direction would be to require the national regulatory framework to accommodate those initiatives. For example, if a State adopted a law requiring network businesses to charge the same use of system charges to all domestic consumers whether they be metropolitan or rural, the AER would be required to permit the network business to earn the additional revenue that would be required to meet the costs of the cross-subsidy.

It was suggested that a Jurisdictional Direction would be required to be published in the Government Gazette for the purpose of the National Electricity Law and prior to doing so, the jurisdiction would be required to notify other jurisdictions of what the Jurisdictional Direction would provide to ensure that all

participants could readily identify the requirements in each jurisdiction that the national system is required to give effect to.

Generally the initiatives discussed in Appendices A and B are obligations on retailers or network businesses and the Jurisdictional Direction mechanism should enable all these programs to be given full effect.

However, there are indications that other participants (whose activities are not directly governed by the Rules) could be included in future initiatives. For example, some of the initiatives apply on a compulsory basis to some parties and on a voluntary basis to other sectors (such as large users who buy directly from the wholesale market). It is therefore conceivable that in the future it may be most appropriate to apply initiatives to other markets participants such as generators or large customers and the Jurisdictional Direction mechanism would not cater for such changes. That provides another, albeit second order reason why bringing these initiatives into a national regulatory framework could be desirable.

5 Implications for environmental and social policy development to be drawn by analogy from the path towards national economic and technical regulation

In considering whether and how environmental and social regulation might be taken to a national level, it is instructive to consider how a national approach to NEM economic and technical regulation evolved. It did not occur overnight.

Rather, there were a number of important steps, each one adopted incrementally on its own merits:

- policy inquiries analysed and quantified the desirability of moving towards interstate trade in energy such as the Hilmer Report and the Industry Commission report³;
- there was intergovernmental agreement to adopt the recommendations of those bodies of inquiry underpinned by Commonwealth Government funded incentive payments to the states;
- Victoria, NSW and Queensland each established within-state wholesale power exchanges;
- extensive interstate consultative processes involving all parts of the industry were engaged in by the participants in those states and South Australia to establish the arrangements for the NEM (but note that the consultation was generally limited to industry not the wider community);
- largely common approaches were identified for network regulation and retail non-price regulation but all states retained extensive and long lasting transitional arrangements known as “derogations” to facilitate a smooth shift to the national uniform regime;
- it was only after ten years of separate state regulators administering largely the same regulatory framework and acting very similarly that it has now been decided that network and non-price retail regulation will be shifted to the national sphere; and
- there is considerable work yet to be done with respect to the implementation of uniform arrangements and retail price regulation continues to be a matter that no state has committed to transferring to the national regime.

³ Industry Commission, *The Growth and Revenue Implications of Hilmer and related Reforms: A Report by the Industry Commission to the Council of Australian Governments – Final Report*, March 1995. The Industry Commission noted that the ‘separation of utility activities and the creation of a national grid will encourage competition, cost reductions and productivity improvements’, at p 242.

There are many similar examples of successfully migrating different state and territory regulations to uniform national regulation. In the process it is also often necessary to have detailed and principled debates and analysis in identifying what form the common regulation should take.

Other examples include:

- on a more focused level within the NEM, the implementation of full retail contestability was facilitated through the introduction of metrology procedures which were initially conceived of as different in each state and territory but which have become common;
- more broadly, the process by which the former state and territory Companies Acts and corporate law enforcement were transformed from eight different bodies of law and law enforcement agencies, through a uniform law with separate regulators to a single law with a single regulator; and
- also more broadly, the process by which separate food packaging and labelling laws in each of the states, territories and New Zealand were harmonised and then a single authority created to prepare national laws.

In each of the above contexts it was necessary to take a stepped approach to bring about a nationally consistent framework. With respect to any move to nationally uniform social or greenhouse gas abatement regulation, there have been few, if any, analogous steps yet undertaken.

6 Criteria for determining how social and environmental policy programs can best be accommodated in the regulatory framework

In principle, social and greenhouse gas regulatory initiatives could be addressed through:

- (a) the functions, regulations and initiatives remaining part of the state specific regimes and each jurisdiction implementing its own state and territory obligations reflected in different Jurisdictional Directions to ensure that the national regulatory system accommodated these state requirements (**Model 1**);
- (b) the functions, regulations and initiatives remaining part of the state specific regimes but with sufficient commonality for there to be common Jurisdictional Directions (**Model 2**); or
- (c) the functions, regulations and initiatives being transferred to the uniform National Electricity Law framework (**Model 3**).

For an initiative to be suitable for Model 1, the following criteria should apply:

- (i) If the policy behind the initiative is geographically localised, the initiative should be state specific.

Possible examples of such initiatives are the means tested heating rebate offered only in Tasmania or the drought related rebate offered only in Queensland which appear to be aimed at a class of vulnerable consumer only in those states.

- (ii) If the initiative is part of a broader package of measures which are predominantly state based then the initiatives should be state specific.

This may be the case in respect of some social programs where an energy rebate is part of a broader package of other initiatives such as rent assistance, health care or transport concessions. For example, it may be that one state has more generous transport concessions and less generous electricity concessions. Arbitrarily adopting a uniform

electricity concession could see some vulnerable consumers not receiving sufficient assistance while others receive more than they require.

For example, there is significant interaction between protections, regulation and energy-specific social programs. When South Australia introduced retail price head room to encourage churn and new entrant retailers, it was equally necessary to offer a new rebate to pensioners who sought to change contracts. In NSW, tightening access to the Energy Account Payment Assistance scheme has required stronger disconnection protections to be placed on all retailers.

On the other hand, if it has been determined that some parts of this package are to move to a national level (say disconnections), then it may also be necessary or appropriate to also shift the other parts of the package (say payments assistance). Indeed, that may indicate that the current policy split between retail price regulation (which is to remain State based) and retail non-price regulation (which is to be moved to the national level) is inappropriate.

- (iii) If there are policy reasons for the details of the initiatives to vary between states then the initiatives should remain state based.

For example, in South Australia the cost of electricity to the domestic consumer is higher than in other states in part because South Australian consumption is more “peaky” than elsewhere meaning that consumers consume electricity more intensively when prices are high. That is because air conditioning (which now drives peak demand in almost all parts of the NEM) is an even more significant driver of peak demand in South Australia than elsewhere. Consequently, it may be that vulnerable consumers require a greater sized rebate to off-set the higher price of electricity in South Australia than elsewhere even if common eligibility and delivery mechanisms were agreed between states.

- (iv) Even if environmental or social programs could generally be made uniform between the states, it may continue to be necessary or appropriate for state specific transitional Jurisdictional Directions to apply as state specific unique programs that pre-dated the uniform approach are wound down.

For example, *if* it were decided that a national series of initiatives for greenhouse gas should replace the state based ones and *if* it was decided at a national level that other schemes achieved a greater greenhouse gas abatement outcome than a gas scheme, it may nevertheless be important for those who had participated in the Queensland gas program to be able to continue to earn revenues for business decisions made in reliance on the existence of that program.

For an initiative to be suitable for Model 2, the following criteria should apply:

- (i) there would need to be an identified benefit of national uniformity;

In the case of the establishment of the NEM it was the ability to increase competition and reduce the need for multiple generation reserves to be maintained in every state. We have identified in Section 3.1 benefits of national approaches to greenhouse abatement policies and it is quite possible that there could be benefits to some uniformity in social programs. For example if uniformity made it easier for availability of the programs to be communicated to potential recipients or if it was cheaper for industry to comply with a single set of uniform programs. Another possible benefit is that a transparent, carefully conceived, national policy may be superior than each state attempting to “reinvent the wheel” to reach as good a policy outcome with more limited resources.

- (ii) there would need to be consensus between the governments as to the way that social or greenhouse gas abatement programs should be designed and implemented;

For example, the MCE would need to adopt common policy objectives (such as endorsing the Market Environmental Objective and the Market Social Objective proposed in this paper). A Standing Committee of Officials (**SCO**) work party would need to identify candidate initiatives and a process for determining which should be pursued.

- (iii) there would need to be consultations with relevant community and industry stakeholders on that approach;

There is a reasonably well worn path for such NEM consultation, although to enable the relevant stakeholders to participate properly it may be necessary to provide additional funding to relevant representative bodies.

- (iv) uniform programs would need to be designed consistent with that approach; and

Again this could be a SCO exercise.

- (v) each State would need to implement those programs.

That would largely be a matter of using the existing legislative frameworks that apply in each State (although some states may need to augment aspects of their legislation depending on what initiatives were adopted).

For an initiative to be suitable for Model 3, the following criteria should apply:

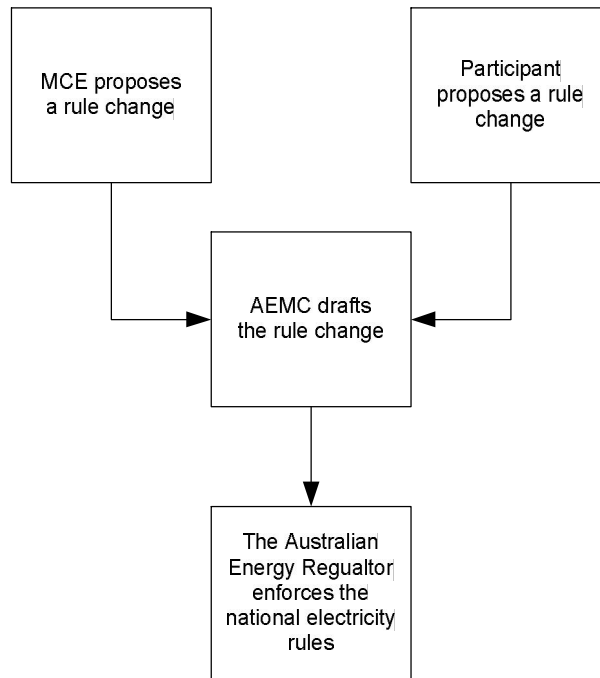
- (i) there would need to be a proven track record that a uniform state approach to social and environmental policy initiatives met the needs of each state and territory community before the states would cede their individual implementation mechanisms to a national implementation mechanism such as the National Electricity Law;
- (ii) points (i) and (ii) set out above in relation to uniform Jurisdictional Directions would need to occur;
- (iii) a decision making process and institutional framework for establishing national environmental and social policies would need to be adopted; and
- (iv) legislation would need to be drafted and passed (either an amendment to the National Electricity Law or new special purpose law).

The next section of this paper proposes a framework for items (iii) and (iv).

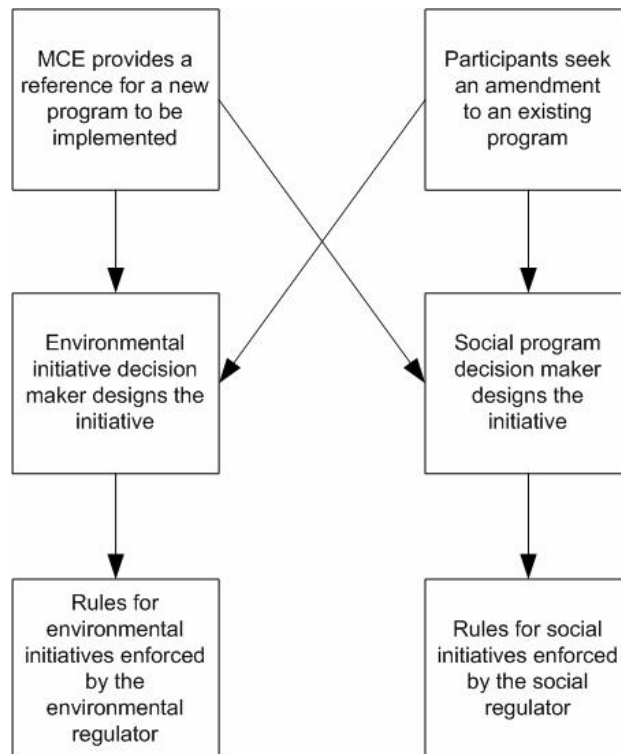
7 Framework for the taking social or environmental policy determination and implementation national

As noted in Section 3, the existing legislative framework and the Market Objective in particular are not appropriate to adequately design and implement Model 3 as described in Section 6 (that is, nationally determined and nationally implemented environmental or social initiatives).

The amendments to adopt Model 3 necessary to the National Electricity Law (or a new law) could be framed along similar lines to the rule making procedure that exists in respect of the Rules. In broad concept that existing framework works as follows:



A framework for environmental or social programs would work as follows:



Step 1: Any new program would be initiated by the MCE with the terms of reference to include the key parameters that the initiative is to achieve. Such parameters could be:

- an input parameter such as a limit on the maximum total cost of the program to all parties be they retailers, networks, one group of consumers or another; or

- an output parameter such as any minimum outcomes that the policy must achieve (eg ensure that upon all credible contingencies pensioners or those on life support are able to obtain a reasonable quantity of electricity for no more than X per cent of their income or achieve a reduction of X tonnes of greenhouse emissions).

Step 2: The bodies responsible for crafting the initiatives (in the above diagram the environmental initiative decision maker and the social program decision maker) would draft the details of the initiatives such as:

- with respect to a social program the work could include identifying the eligibility criteria and quantum of rebate for energy and how the costs of the rebates should be recovered; and
- with respect to an environmental program the work could include deciding whether a tradeable certificate based approach or a levy and grants based approach would be preferable or a mixture and what should be the details of those approaches.

In each case the bodies responsible would need decision rules similar to that which the AEMC uses in respect of the National Electricity Rules.

We consider that appropriate decision making rules that would harmonise best with the existing National Electricity Law framework are:

Environment

The environmental initiative decision maker must establish the initiative and set out the relevant rights and obligations of market participants and consumers:

- within any parameters set out in the MCE reference;
- subject to paragraph (a), such that the Market Environmental Objective is furthered to the maximum extent possible; and
- subject to paragraphs (a) and (b), where there are several options that can equally meet the Market Environmental Objective within any parameters set out in the MCE reference, the option to be adopted should be that which furthers the Market Objective.

Social

The social initiative decision maker must establish the initiative and set out the relevant rights and obligations of market participants and consumers:

- within any parameters set out in the MCE reference;
- subject to paragraph (a), such that the Market Social Objective is furthered to the maximum extent possible; and
- subject to paragraphs (a) and (b), where there are several options that can equally meet the Market Environmental Objective within any parameters set out in the MCE reference, the option to be adopted should be that which furthers the Market Objective.

Step 3: The enforcement or program administration would then need to be allocated and undertaken to bodies that we have referred to as the environmental regulator and social regulator.

Ideally the above framework would not require additional institutions. The best approach would be to augment the skills base of the existing institutions so that:

- the AEMC would be the environmental initiative design decision maker and the social program design decision maker; and

- the AER would be the environmental regulator or the social regulator.

Indeed given the institutional linkages between the AER and the Australian Competition and Consumer Commission (which enforces national fair trading laws) it may be well placed to undertake the social regulator role without any material augmentation to its skill base.

Step 4: Over time, with a body of environmental and social initiatives in place, it would be possible for participants (including both industry and representatives groups) to proposed improvements to the body of initiatives in place by proposing amendments to the initiatives such that:

- they better achieve the environmental or social policy aims at the same cost;
- perform equally well at achieving the environmental or social policy aims but at a reduced cost; or
- both.

8 Applying the section 6 criteria to the current social and environmental initiatives

It is beyond the scope of this paper to conclusively determine whether and which social and environmental programs would be best:

- undertaken separately by the states and be subject to a state-specific Jurisdictional Direction (Model 1);
- undertaken on a uniform basis by each state and subject to uniform Jurisdictional Directions (Model 2); or
- designed and implemented through the national framework (Model 3).

To undertake that process properly, consultation with stakeholders including governments and community groups would be necessary.

However the following preliminary observations can be made about each of the key species of initiatives and programs currently in place:

8.1 Requirements concerning demand management

There would appear to be benefits of uniformity because the Market Environmental Objective can be furthered more effectively and for a lower compliance cost for industry with the savings available to be passed on to consumers or used for other social or environmental programs. For instance, there may be some loads that can be curtailed which affect networks in more than one state or territory. A nationally uniform approach to networks seeking out demand management options could make some such curtailment offers viable where the benefit to a single network may be insufficient to fund the offer.

8.2 Requirements that the levels of greenhouse gas emissions resulting from the electricity consumed be presented on electricity bills

There would appear to be benefits of uniformity because the Market Environmental Objective can be furthered for a lower compliance cost for industry with the savings available to be passed on to consumers or used for other social or environmental programs. Other benefits of national uniformity could include:

- that retailers are able to more cost effectively and swiftly expand their business from one state to another while continuing to comply in full with this environmental regulatory requirement; and

- that there is no scope for evasion of the requirement by industry shifting from one state to another – for example it would overcome avoidance techniques such as attributing high emissions generation to customers in states that do not have the requirement or agree with national customers to issue bills for national consumption in a state that did not have the disclosure requirement.

The disclosure requirements are common amongst several NEM jurisdictions (but not universal), implying that there is already (or at least there are reasonable prospects for) broad governmental and community acceptance of them.

These facts tend to suggest that these policies are candidates for Model 2.

If, in time, a successful nationally uniform approach demonstrates that separate state provision of that uniform approach is unnecessarily duplicative, these policies would be candidates for Model 3.

8.3 Requirements that retailers or generators meet abatement targets

There would appear to be benefits of uniformity because the Market Environmental Objective can be furthered primarily by a system that seeks and implements the projects with the maximum abatement for a given cost wherever in the National Electricity Market that they occur. Additionally:

- retailers may be able to more cost effectively and swiftly expand their business from one state to another while continuing to comply in full with this environmental regulatory requirement; and
- a national approach may reduce the scope for evasion by moving “dirty” generation or “dirty” consumption projects to the states with the weakest targets.

The target approach is common amongst several NEM jurisdictions (but not universal), implying that there is already (or at least there are reasonable prospects for) broad governmental and community acceptance of the approach.

These facts tend to suggest that these policies are candidates for Model 2.

If, in time, a successful nationally uniform approach demonstrates that separate state provision of that uniform approach is unnecessarily duplicative, these policies would be candidates for Model 3.

8.4 Funding of research into greenhouse gas abatement

There would appear to be benefits of uniformity because the Market Environmental Objective can be furthered by seeking the best research opportunities wherever in the National Electricity Market that they may be located. Uniformity may reduce the risk of wasted duplicated effort or failures of one research finding being shared with others.

The concept of funding research in this area is common amongst several NEM jurisdictions (but not universal), implying that there is already (or at least there are reasonable prospects for) broad governmental and community acceptance of the concept.

These facts tend to suggest that these policies are candidates for Model 2.

If, in time, a successful nationally uniform approach demonstrates that separate state provision of that uniform approach is unnecessarily duplicative, these policies would be candidates for Model 3.

8.5 Queensland gas generation scheme

This is an example of a state specific project on the one hand that may suggest that consensus is lacking and that the program is a candidate for Model 1 and not Model 2 or Model 3.

However, if the design and delivery of environmental programs were moved as a whole to the national framework using Model 2 or 3 it may be that the design and implementation framework would

recognise a case for furthering the Market Environmental Objective by programs of this sort being extended from just the one state to being implemented nationally.

8.6 Requirements for retailers to give pensioners, veterans and life supported persons rebates

With some degree of variation, these programs are available in all states, implying that there is already broad governmental and community acceptance of them (although that initial observation may need to be revisited after comparing the quantum of the rebates available).

It is, however, not manifestly apparent what would be the advantage of a uniform national approach to these issues. One possible way in which the Market Social Objective could be furthered by a national approach would be if a uniform approach was more easily communicated to the recipients and potential recipients of the rebates.

If a tangible benefit of national uniformity could be identified, these programs are candidates for a Model 2, and in time Model 3 framework.

8.7 Requirements for distributors to charge common prices or provide temporary rebates for drought affected persons

There would not appear to be government or community consensus on the need for rebates for drought affected areas and therefore these sorts of programs are candidates for Model 1.

However, if the design and delivery of social programs were moved as a whole to the national framework using Model 2 or 3 it may be that the design and implementation framework would recognise a case for furthering the Market Social Objective by these programs being made available nationally.

Appendix A Review of environmental policy initiatives

Note that the purpose of this appendix is to provide an overview of the types of initiatives that can exist and for which the national regulatory framework needs to cater. This appendix should not be relied upon as complete or necessarily current.

Commonwealth

(a) Renewable Energy (Electricity) Act 2000

MRET commenced on April 2001. It requires the generation of 9,5000 gigawatt hours of extra renewable electricity per year by 2010, with this level to be maintained until 2020. A variety of programs have been established to complement MRET (eg Renewable Energy Development Initiative: 7 year program). Based on a system of tradable renewable energy certificates (RECs).

(b) Energy Efficiency Opportunity Act 2006

Intended to encourage large energy-using businesses to improve their efficiency. Participants will be required to complete an energy efficiency assessment and report on the outcomes. Due to commence July 2006; regulations have not yet been developed. Businesses required to do energy audits, but not required to implement the savings. Excludes generators, DNSPs and TNSPs for three years.

Multi-jurisdiction

(a) Building Code of Australia 2006

The requirements apply to all classes of new homes, commercial and public buildings from 1 May 2006. Buildings are required to meet minimum levels of energy efficiency (5 star energy rating) through building fabric and performance-based provisions – new buildings as well as renovations.

(b) Green Power

Nationally from 2000, ongoing initiative. Coordinated by NSW, administered by each jurisdiction. The scheme allows customers to purchase new renewable energy, usually at a premium that is intended to support renewable generation by providing additional income to renewable generators.

(c) Renewable Energy Targets

Expansion of MRET – NSW, Victoria, South Australia and Tasmania are investigating the elevation of their state targets above the federal target.

Victoria

(a) Electricity Industry Act 2000 (Vic)

Under the *Electricity Industry Act 2000* (Vic), a licence to sell electricity is deemed to include a condition requiring the licensee to include in each bill issued to a customer for the supply or sale of electricity, information concerning greenhouse gas emissions connected with the generation of the electricity supplied or electricity generation in general that the Essential Services Commission specifies for this purpose in its guidelines (section 23A).

Clause 20 of each distribution licence requires a distributor to cooperate with VENCORP (as the electricity planning authority) in the establishment of demand reduction procedures, including load-shedding procedures.

The objectives of the Essential Services Commission, contained in the *Essential Services Commission Act 2001* (Vic), include.

- to ensure that regulatory decision making has regard to the relevant health, safety, environmental and social legislation applying to the regulated industry (section 8(2)(e)); and
- to promote consistency in regulation between states and on a national basis (section 8(2)(g)).

(b) Electricity Guideline No. 13

The purpose of the guideline is to set out the minimum information concerning greenhouse gas emissions connected with the generation of electricity which a retailer must include on each bill issued to a customer. The regulatory objective is to increase customer awareness of the link between energy use and greenhouse gas emissions and to enable the customers to monitor emissions associated with their energy consumption.

(c) Electricity Distribution Code 2002

A distributor must report on opportunities for demand management; and any potential for avoidance or deferral of network augmentation.

(d) State Environmental Planning Policy (Air Quality Management); and Environment Protection (Scheduled Premises and Exemption) Regulations 1996

A Protocol for Environmental Management was established in 2001 within the SEPP, relating to energy efficiency and greenhouse gas emissions. Applies to businesses operating under EPA Victoria licences, which are to take up cost-effective opportunities for greenhouse gas mitigation plus integrate greenhouse gas emissions and energy issues within their management procedures.

(e) Building (Interim) Regulations 2005 No. 608

5 Star Homes: rating system for residential homes which sets energy ratings for new residences (houses and multiple occupancy) and renovations.

(f) Victorian Greenhouse Strategy Action Plan

The key policies contained in the Victorian Greenhouse Strategy Action plan are:

- (i) Greenhouse Challenge for Energy including processes to develop an energy technology and Innovation Strategy and a Victorian energy Efficiency Strategy; and
- (ii) Sustainable Energy programs to be delivered through the Sustainable Energy Authority Victoria.

(g) Renewable Energy Strategy

The objectives of the Renewable Energy Strategy are to:

- (i) facilitate achievement of the Victorian Government's renewable energy policy commitments;
- (ii) meet Victoria's future energy needs through increased reliance on clean and secure renewable sources in the long-term;
- (iii) develop a Victorian renewable energy industry; and

- (iv) support the achievement of the Government's greenhouse abatement strategies.

The Renewable Energy Strategy will:

- (i) build on existing policies and initiatives to accelerate the uptake of renewable energy; and
- (ii) cover a broad range of renewable energy applications, including electricity generation, heat provision and transport; and consider a range of renewable energy resources, including biomass, geothermal, hydro, solar, wave and tidal, and wind.

The relevant authority for this policy is the Sustainable Energy Authority Victoria and Department of Infrastructure, coordinated by the Renewable Energy Working Group.

(h) State Based Mandatory Renewable Energy Target Scheme

On 26 June 2004, after a meeting of State Ministers for Energy from the NSW, Victorian, South Australian and Tasmanian Governments, the Ministers noted that leaving the Federal Mandatory Renewable Energy Target unchanged means that Australia's renewable energy industry will remain small and it will lose investment for projects in the short term. The Ministers therefore established an Inter-jurisdictional Working Group to recommend ways to increase the Mandatory Renewable Energy Targets from the current level and time frame; noting the recommendations of the Federal Government commissioned Tambling report as a minimum outcome. Victoria currently chairs this Inter-jurisdiction Working Group.

The relevant authority for this scheme is the Department of Infrastructure.

(i) Renewable Energy Support Fund

The State Government has allocated \$8 million to the Renewable Energy Support Fund to provide up to 20 per cent of the capital costs of medium-scale renewable energy projects. By demonstrating successful applications of renewable energy, the Fund will help reduce the barriers to future projects, enabling widespread replication.

The responsible agency for this fund is the Sustainable Energy Authority Victoria.

(j) Ten per cent Government Green Power purchase

The object of the policy is to demonstrate Government leadership and increase Green Power uptake. The various departments and agencies are required to purchase ten per cent of their electricity consumption (measured against 1995/96 levels) from Green Power by 2006.

(k) Centre for Energy and Greenhouse Technologies

The aim of the Centre is to facilitate investment in new sustainable energy and greenhouse pollution reduction technologies and capitalise both on Australia's specific energy sector requirements and the existing clear global export opportunities.

The Centre provides investment funds and support services for the development of new sustainable energy and greenhouse pollution reduction technologies. Technology application can be across the entire energy spectrum from generation, transmission and distribution to end use applications, focussing on energy efficiency and greenhouse pollution reduction outcomes. While the Centre's investments are across the entire Research, Development, Demonstration and Commercialisation (RDD&C) spectrum, the main focus is on the Development to Demonstration phase, bridging the gap between R&D and Commercialisation.

Originally the Department of Innovation, Industry and Regional Development was the responsible authority, however, the Centre is now a private company.

(l) Victorian Renewable Energy Target (VRET)

VRET will require electricity retailers purchase a minimum of 10 per cent renewable energy by 2016, up from the current level of around 4 per cent.

South Australia

(a) Electricity Act 1996 (SA)

A distributor's licence must contain a condition requiring the distributor to conduct investigations on the cost effectiveness of implementing demand management strategies that may permit a proposed expansion of the distribution network or the capacity of the distribution network to be avoided or postponed. A distributor must also publish annual reports on such strategies. As part of pricing determinations, they must undertake demand management programs as directed by the Essential Service Commission of SA. (Note ETSA Utilities provides virtually all the distribution services in SA, therefore this effectively applies only to ETSA. They have been required from 2005-2010 to trial, develop and introduce initiatives to lower customer demand during peak periods.) (section 23)

Under the *Electricity Act 1996 (SA)*, a licence authorising retailing of electricity must be subject to a condition requiring the electricity entity to include, in each amount for electricity charges sent to small customers, information relating to greenhouse gas emissions associated with the customers electricity consumption, (section 24(da)(iv)).

The *Electricity Act 1996 (SA)* also provides that a licence authorising retailing of electricity must be subject to a condition requiring the electricity entity to investigate strategies for achieving a reduction of greenhouse gas emissions to such targets as may be set by the EPA from time to time or such levels as may be binding on the entity from time to time, including strategies for promoting the efficient use of electricity and the sale, as far as is commercially and technically feasible, of electricity produced through cogeneration or from sustainable sources, and to prepare and publish reports on the implementation of such strategies (section 24(m)).

Under the *Electricity Act 1996 (SA)* it is an offence to contravene a licence condition (section 24) maximum penalty \$1,000,000 (section 25(i)).

Licences are issued by the Essential Services Commission of SA which is established under the *Essential Services Commission Act 2002 (SA)*. Under this Act, the Essential Services Commission of SA is the regulatory body issuing, enforcing and monitoring licenses (section 5).

(b) Demand Management for Electricity Distribution Networks Electricity Industry Guideline No.12, 2003

This outlines a requirement for ETSA Utilities (see above point) to meet its obligations to report and consult on its system constraints and demand management plans.

(c) Strategy

The draft strategy includes an objective regarding energy which includes:

- (i) to improve efficiency of energy use;
- (ii) to reduce the greenhouse emissions per unit of energy supplied; and
- (iii) to ensure energy investment and markets follow a transition pathway to low greenhouse emissions.

(d) Renewable Energy Target: State Strategic Plan

The Renewable Energy Target: State Strategic Plan increases the use of renewable energy with a target of 15 per cent within ten years.

(e) Sustainable Energy Research Advisory Committee

The objectives of the Sustainable Energy Research Advisory Committee are to facilitate further development of sustainable and renewable energy technologies, demand side management technologies that enable more efficient use of energy, reduce peak energy demand and reduce energy related greenhouse gas emissions. Energy SA together with the directorate of the Department of Further Education, Employment Science and Technology provide energy research and development grants for competitive proposals that have strong commercialisation prospects, environmental benefits and could potentially reduce costs for SA energy consumers. Significant projects are sought that are likely to have a major impact on the State.

(f) The Climate Change and Greenhouse Emissions Reduction Bill 2006

The South Australian state government has released a draft bill that would put ambitious greenhouse emissions reduction and renewable energy targets into law.

The Bill would mandate a target of reducing greenhouse emissions 60 per cent below 1990 levels by 2050, a target first announced in February, along with a renewable energy target for the state of 20 per cent by 2014.

Queensland

(a) Electricity Amendment Act 2004

The *Electricity Amendment Act 2004* (Qld) introduced the 13 per cent gas scheme. The main purposes are:

- (i) to reduce growth in greenhouse gases associated with electricity use in the State;
- (ii) to contribute to the diversifications of the State's energy mix towards the greater use of gas in electricity scheme; and
- (iii) to encourage the development of new gas sources and gas infrastructure to meet the State's future energy requirements.

These purposes are to be achieved with the introduction of a certificate based scheme. The scheme consists of 'accredited generators' who generate, or are involved in the generation of, particular gas-fired electricity that supports the State's electricity load and 'liable persons' who are generally retail entities and others selling electricity in the State, who have liability under the scheme.

Accredited generators can create gas electricity certificates (GEC's) which they can sell to liable persons and any other registered and the liable person must surrender to the regulator the number of GEC's that equate to 13 per cent of the electricity used or sold by them for each year from 2005 to 2019.

Under the *Electricity Act 1994* the Chief Executive of the department of Energy is the regulator (D-G).

It is a function of the regulator to monitor compliance with the *Electricity Act 1994* including compliance with conditions of authorities, approvals and licences.

Under section 42 of the *Electricity Act 1994* (Qld) a distribution authority must take into account the environmental effects of its activities.

Further, section 55D provides that a retail authority is subject to a number of conditions which includes that the retail entity must consider both demand side and supply side options to provide, as far as technically and economically practicable, for the efficient use of electrical energy.

Under the *Electricity Act 1994* (Qld), a liability is imposed on retailers in relation to the Queensland government's 13 per cent Gas Scheme. That is, retailers must source 13 per cent of the electricity sold from gas-fired generators (section 135EP).

(b) Green Energy Purchase Program

The object of this policy is to support the establishment of new renewable energy projects in Queensland. The Queensland Government will spend around \$1.4 million per year purchasing green energy to an amount up to 5 per cent of its energy consumption.

(c) Queensland Sustainable Energy Innovation Fund

The objective of the fund is to promote innovation in energy efficiency and renewable energy technologies and practices. The responsible agency is the EPA together with the Queensland Sustainable Energy Innovation Fund which seeks to promote innovation in energy and water efficiency and renewable energy technologies and practices. The fund seeks projects from businesses or the community to establish Queensland as a market leader in energy innovation and sustainable energy. Funds are focussed on innovative projects dealing with research, development, demonstration or commercialisation of energy and water efficiency or renewable energy.

(d) Centre for Low Emission Technology

The object of the policy is for the commercialisation of low emission technology. The policy focuses on clean coal technologies and the commercial potential of coal-renewable hybrid technologies such as cogeneration using biomass.

(e) Geothermal Exploration Act 2004 (Qld)

One of the objects of the *Geothermal Exploration Act 2004* (Qld) is to encourage and facilitate the efficient and responsible encourage and facilitate the efficient and responsible exploration for the State's geothermal resources and provide an effective and efficient regulatory system for geothermal exploration (section 3). The Agency responsible for the administration of the *Geothermal Exploration Act 2004* (Qld) is the Queensland Department of Natural Resources and Mines. The government is facilitating development of geo-thermal technology, which is recognised as having the potential to supply large amounts of base load power. A competitive tender process for geothermal exploration permits occurred late in 2005.

Tasmania

(a) Tasmania Greenhouse Statement

The Tasmania Greenhouse Statement notes that Tasmania is the only state where electricity supplies are met largely from hydro-electricity. Further, the State's forests provide the State with a significant capacity to capture and store greenhouse gas emissions. Therefore, greenhouse gas emissions are not as significant as in other states.

New South Wales

(a) Electricity Supply Act 1995 (NSW)

The objects of part 8A of the *Electricity Supply Act 1995* (NSW) are to reduce greenhouse gas emissions associated with the production and use of electricity and to encourage participation in activities to offset the production of greenhouse gas emissions. To achieve this, the *Electricity Supply Act 1995* (NSW):

- establishes State greenhouse gas benchmarks and individual greenhouse gas benchmarks for the reduction of greenhouse gas emissions that are to be met by retail suppliers, market customers and certain other persons who supply or consume electricity;

- provides for greenhouse gas benchmarks to be complied with by acquiring certificates relating to the carrying out of activities that promote the reduction of greenhouse emissions; and
- provides an economic incentive to undertake activities resulting in the reduction of greenhouse gas emissions by imposing a penalty on greenhouse gas emissions above the specified benchmark.

The *Electricity Supply Act 1995* (NSW) sets out State greenhouse benchmarks for benchmark participants which includes retail suppliers, a prescribed electricity generator or other prescribed person, a market customer, a large customer electing to be subject to a benchmark, a person engaged in carrying out State significant development who has elected to be subject to a greenhouse gas benchmark.

It is a condition of a retail supplier's licence that the retail supplier complies with its greenhouse gas benchmark.

A benchmark participant who fails to comply with the participants greenhouse gas benchmark is liable to pay the greenhouse penalty in respect of the excess emissions. The amount of greenhouse penalty is \$10.50 per tonne of carbon dioxide equivalent of greenhouse shortfall. A greenhouse penalty imposed under the *Electricity Supply Act 1995* (NSW) may be recovered in any court of competent jurisdiction as a debt due to the Crown.

Each benchmark participant must lodge a greenhouse gas benchmark statement outlining the participant's benchmark for the previous year, an assessment of the participant's liability for greenhouse penalties for the previous year (if any) and an assessment of liability for a greenhouse penalty in respect of a greenhouse shortfall carried forward from the year before the previous year. A benchmark participant that fails to lodge a statement is guilty of an offence, 250 penalty units for a corporation and 100 penalty units for an individual.

The *Electricity Supply Act 1995* (NSW) provides for the creation of abatement certificates. Each abatement certificate equates to one tonne of carbon dioxide equivalent of greenhouse gas emissions abated by the activity in respect of which it was created. An abatement certificate has no force or effect until it is registered by the Scheme Administrator. A registered abatement certificate will remain in force until it is cancelled by the Scheme Administrator. The Scheme Administrator may require abatement certificates to be surrendered. The surrendered certificates are then cancelled. Failure to comply with an order to surrender is an offence and carries a maximum penalty of 100 penalty units and an additional one penalty unit for each certificate that is not surrendered in accordance with the order.

The *Electricity Supply Act 1995* (NSW) establishes two types of abatement certificates, transferable and non-transferable. The certificates are referred to as NGACS or NSW Greenhouse Gas Abatement Certificates.

The Independent Pricing and Regulatory Tribunal (**IPART**) established under the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW) has the following functions:

- (i) to determine the State and electricity sector benchmark;
- (ii) to assess and determine the greenhouse gas benchmark for a benchmark participant and whether it has been complied with;
- (iii) to assess and determine the greenhouse shortfall and liability for penalty payable by the benchmark participant; and
- (iv) to conduct audits.

The Scheme Administrator is to be appointed by the Minister or in absence of such appointment, the functions are to be carried out by the Tribunal. The functions of the Scheme Administrator include:

- (i) functions relating to abatement certificates;
- (ii) to monitor and report on the extent to which accredited abatement certificate providers comply with the Act; and
- (iii) to conduct audits.

IPART is the current Scheme Administrator. The Act establishes greenhouse gas benchmark rules. A benchmark participant or an accredited abatement certificate provider must not contravene a benchmark rule. Further, it is a condition of a retail supplier's licence that it must comply with the benchmark rules.

The *Electricity Supply Act 1995*'s Schedule 2 at 6(5) states the Minister must impose on a distributor's licence: (1) before expanding the distribution system or its capacity, investigations must be carried out to determine whether it would be cost-effective to avoid or postpone the expansion through demand management strategies; (2) the distributor must publish an annual report in relation to those investigations.

Further, the Demand Management Code of Practice made pursuant to the Act requires distribution networks to investigate and report on cost-effective non-network solutions to network constraints, and includes requirements for disclosure of information.

- (b) Independent Pricing and Regulatory Tribunal determination 2004/5-2008/09

Distribution networks are able to pass through the costs of DM actions to customers and approved revenue foregone as a result of DM (through the "D-factor" in the weighted average price cap).

- (c) Energy Administration Amendment Act 2005 and Energy and Utilities Administration Act 1987 – Energy Savings Order (Dept of Energy, Utilities and Services)

These instruments provide for a levy on distributors towards energy savings initiatives by large private sector users, government and the residential sector. \$40 million per year allocated over 5 years.

Also, high electricity users (eg designated businesses who use more than 10 gigawatt hours pa) are obliged to prepare Energy Savings Action Plans.

- (d) Ten per cent Green Power Policy

A retail license condition is being developed to oblige retailers to offer 10% Green Power as the default contract to new customers; customers are given the option to revert to non-Green Power; yet to be implemented.

- (e) Environmental Planning and Assessment Act 1979 –Environmental Planning and Assessment Amendment (Building Sustainability Index: BASIX) Regulations from 2004

BASIX is a planning instrument that sets targets for water and greenhouse gas emission reductions for new residences (houses and multiple occupancy), and will be expanded to include renovation work from July 2006; target to be increased from July 2006.

- (f) Electricity Supply (General) Regulation 2001

The *Electricity Supply (General) Regulation 2001* (NSW) makes provision for aspects of the operation of NGACs. Parts 8A and 8B provide details of the eligibility requirements for elective

benchmark participants, the CPI adjustment of the greenhouse penalty and the assessment of compliance of benchmark participants with their greenhouse gas benchmarks by the Scheme Administrator (IPART).

(g) Greenhouse Gas Benchmark Rules

The rules provide the technical details required to apply GGAS in practice. Each Rule governs a specific area of GGAS:

Compliance Rule: provides the calculation methodology for benchmark participants to measure their compliance with their annual Greenhouse Gas Benchmarks;

Generation Rule: provides additional eligibility requirements and the calculation methodology for people wishing to create NSW Greenhouse Abatement Certificates (NGACs) from supplying electricity to the NSW electricity network or an interconnected electricity network;

Demand Side Abatement (DSA) Rule: provides additional eligibility requirements and the calculation methodology for people wishing to create NGACs from reducing electricity demand on the NSW electricity network by electricity users in NSW;

Large User Abatement Certificate (LUAC) Rule: provides additional eligibility requirements and the calculation methodology for people wishing to create LUACs from reducing non-electricity related greenhouse gas emissions from industrial processes in NSW;

Carbon Sequestration Rule: provides additional eligibility requirements and the calculation methodology for people wishing to create NGACs from storing carbon in eligible forests in NSW.

Responsibility for developing the policy framework, drafting Rules and consulting on proposed changes to the Rules belongs to the Department of Energy, Utilities and Sustainability. IPART then administers GGAS through the application of these Rules in its roles as Scheme Administrator and Compliance Regulator; and

Green Power Scheme: This scheme was developed by the Sustainable Energy and Development Authority (now incorporated into the NSW Department of Energy, Utilities and Sustainability) and is a national accreditation program that sets stringent environmental and reporting standards for renewable energy products offered by electricity retailers to households and businesses across Australia. This scheme provides a certification mechanism for the provision of zero emissions electricity to consumers across Australia. Organisations who purchase Green Power (usually as a given percentage of their total electricity consumption) cannot claim that initiative as an emissions reduction under GGAS. Green Power is administered by the NSW Department of Energy, Utilities and Sustainability.

Australian Capital Territory

(a) Electricity (Greenhouse Gas Emissions) Act 2004 (ACT)

The objects of the *Electricity (Greenhouse Gas Emissions) Act 2004 (ACT)* are:

- (i) to reduce greenhouse gas emissions associated with the production and use of electricity; and
- (ii) to encourage participation in activities to offset the production of greenhouse gas emissions.

To achieve these objectives, the *Electricity (Greenhouse Gas Emissions) Act 2004 (ACT)*:

- (i) establishes Territory greenhouse gas benchmarks and individual greenhouse gas benchmarks for the reduction of greenhouse gas emissions that are to be met by retail suppliers, market customers and certain other people who supply or consume electricity;

- (ii) provides for greenhouse gas benchmarks to be complied with by acquiring certificates relating to the carrying out of activities that promote the reduction of greenhouse gas emissions; and
- (iii) provides an economic incentive to undertake activities resulting in the reduction of greenhouse gas emissions by imposing a penalty on greenhouse gas emissions above the benchmark.

Under the *Electricity (Greenhouse Gas Emissions) Act 2004* (ACT), the following people are benchmark participants:

- (i) retail suppliers;
- (ii) market customer in relation to a market load; and
- (iii) a large customer who has elected to be subject to a greenhouse gas benchmark.

The *Electricity (Greenhouse Gas Emissions) Act 2004* (ACT) specifies how a benchmark is to be calculated, how compliance with benchmarks is to be calculated and the content of annual greenhouse gas benchmark statements.

It is a condition of each retail supplier's licence that the retail supplier comply with its greenhouse gas benchmark and this *Electricity (Greenhouse Gas Emissions) Act 2004* (ACT).

A benchmark participant who fails to comply with its benchmark for reduction of greenhouse gas emissions for the year is liable to pay a greenhouse penalty to the Territory.

The *Electricity (Greenhouse Gas Emissions) Act 2004* (ACT) establishes the Greenhouse Gas Abatement Scheme introducing abatement certificates which represent 1 tonne of carbon dioxide equivalent of greenhouse gas emissions abated by the activity in relation to which it was created. The certificates must be registered by the Scheme Administrator to be effective.

The Scheme Administrator may require the surrender of certificates, generally in circumstances where there has been a commission of an offence.

There are two kinds of abatement certificates which may be created, transferable and non-transferable. Further, provision may be made in relation to the registration of any mortgage, assignment, transmission of, or other dealing in, an abatement certificate.

Under the *Electricity (Greenhouse Gas Emissions) Act 2004* (ACT), the Regulator is the ICRC (Independent Competition and Regulatory Commission) which has the following functions:

- (i) to assess and determine greenhouse gas benchmarks for benchmark participants and whether the benchmark has been complied with;
- (ii) to assess and decide greenhouse shortfall and any liability for greenhouse penalty payable by a benchmark participant;
- (iii) to conduct audits or require the conduct of audits; and
- (iv) to monitor and report to the Minister, on the extent to which retail suppliers comply with licence conditions.

The Scheme Administrator under the Act is IPART (Independent Pricing and Regulatory Tribunal established under the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW)). The Scheme Administrator has the following functions:

- (i) administering the abatement certificate scheme;

- (ii) to monitor and report on the extent to which accredited abatement certificate providers comply with the Act; and
 - (iii) conduct audits.
- (b) ACT Planning and Land Authority
- All new residential buildings are required to meet 4 star energy efficiency requirements; new subdivisions are required to maximise energy efficiency and solar energy access.
- (c) Electricity (Greenhouse Gas Emissions) Regulation 2004
- The regulations provide detail on the scheme established under the Act.
- (d) Greenhouse Gas Benchmark Rules
- The Greenhouse Gas Abatement Scheme in the ACT and NSW have a partially integrated system of Rules to ensure that administrative processes are streamlined.
- The Greenhouse Gas Benchmark Rules detail calculation methodology for benchmark participants to measure their compliance and for accredited abatement certificate providers to calculate the eligible number of abatement certificates they can create.
- (e) Electricity (Greenhouse Gas Emissions) Benchmark Compliance Rule 2005 (No 1)
- This rule provides for specific arrangements for the calculation of Greenhouse Gas Benchmarks Attributable Emissions, and any greenhouse shortfall.

Appendix B Review of social initiatives

Note that the purpose of this appendix is to provide an overview of the types of initiatives that can exist and for which the national regulatory framework needs to cater. This appendix should not be relied upon as complete or necessarily current.

New South Wales

It is a condition of both retailers' and distributors' licences that they must comply with any direction from a relevant Minister to facilitate the delivery of the Government's social programs for energy. The aim is to ensure that electricity supply is available to those in need, including those who suffer financial hardship and those who live in remote areas. The companies are reimbursed for their costs. Current programs incorporate the following:

- Pensioner and life support equipment rebates;
- Energy Account Payment Assistance (for emergency relief); and
- Offer of payment plans to small residential customers in financial difficulties.

The *Electricity Supply (General) Regulation 2001* (NSW) defines a social program for energy as a program to ensure that energy services (including connection services and electricity supply) are available to those who are in need, including those who suffer financial hardship and those who live in remote areas, and includes:

- any program for electricity bills payment assistance;
- any program for rebates to eligible pensioners; and
- any program for rebates with respect to electricity used for life support systems.

Clause 74 of the *Electricity Supply (General) Regulation 2001* (NSW) sets out that a Minister may (with the concurrence of the Treasurer and within the Minister's administrative responsibility) direct a service provider to take such action to facilitate the delivery of any aspect of the Government's social programs for energy. Amongst other things, the direction:

- may specify that particular services are to be provided to particular classes of persons free of charge, at specified charges or subject to specified discounts or rebates; and
- must specify the amount or a methodology by which that amount may be assessed as the estimated efficient cost to the service provider of complying with the direction.

Before making a direction, the Minister must:

- consult with the service providers proposed to be made subject to the direction; and
- give the service providers written notice of the criteria on which the estimated efficient costs of complying with the direction are to be assessed.

Clause 75 of the *Electricity Supply (General) Regulation 2001* (NSW) sets out that a Minister may (with the concurrence of the Treasurer and within the Minister's administrative responsibility) direct a supplier to take such action to facilitate the delivery of any aspect of the Government's social programs for energy. Amongst other things, the direction

- may require specified classes of customers to be supplied with electricity at discounted charges or to be given rebates on the charges paid by them for the supply of electricity;
- may require the supplier to establish and maintain facilities to ensure that Government payments that are provided to finance the supply of electricity at discounted charges are applied in accordance with the direction;
- may require the supplier to establish and maintain trust accounts in which Government payments that are provided to finance the supply of electricity at discounted charges are to be held pending their application in accordance with the direction;
- may require the supplier to furnish the sponsoring Minister with periodic reports as to the supplier's compliance with the direction;
- may require the supplier to establish and maintain accounting procedures to enable such reports to be prepared, and
- must specify the amount or a methodology by which the amount may be assessed by the sponsoring Minister as the estimated efficient cost to the supplier of complying with the direction.

Before making a direction, the Minister must:

- consult with the suppliers proposed to be made subject to the direction, and
- give the suppliers written notice of the criteria on which the estimated efficient costs of complying with the direction are to be assessed.

Clause 78 of the *Electricity Supply (General) Regulation 2001* (NSW) sets out that market operations rules may be made for or with respect to the administrative arrangements for delivery of social programs for energy. Market operations rules have been made in respect of the following:

- pensioner energy rebates;
- life support rebates; and

- the Energy Accounts Payment Assistance Scheme.

Victoria

(a) General community service obligations

Section 21(f) of the *Electricity Industry Act 2000* (Vic) provides that a licence may be subject to a condition requiring a retailer to enter into an agreement with the State for the provision of community services. Section 47 defines an agreement by a retailer with the State for the provision of community services as an agreement:

“...for a term of not less than 5 years for the provision by the retailer of electricity to a class of domestic customers specified by the Secretary to the Department of Human Services—

- (a) at such concessional rates and in such manner and at such times as are determined by the Secretary; and
- (b) on such other terms and conditions as are agreed between the retailer and the State or, in default of agreement, as are determined by the Secretary.”

In determining terms and conditions of an agreement by a retailer with the State for the provision of community services, the Secretary must have regard to the risks and costs associated with the obligations imposed on the retailer under the agreement and must ensure that the terms and conditions are consistent with any relevant concession order.

(b) Rebates

Various rebates on seasonal energy bills are provided by the Victorian Government to consumers holding concession entitlements, including winter, off-peak concessions, and - for eligible consumers in short-term hardship - utility relief grants.

Part 2 of the *State Concessions Act (Vic) 2004* provides for Ministerial Concession Orders. In particular, section 5 provides:

- “(1) The Minister, by Order published in the Government Gazette, may determine concessions in relation to user costs payable under an Act or otherwise by eligible persons or a class or classes of eligible persons.
- (2) If a concession order relates to a user cost payable under an Act, before making the concession order under sub-section (1), the Minister must consult with the Minister administering the provision of the Act under which the user cost is payable.
- (3) A concession order may be expressed—
 - (a) as a pro rata reduction of the user cost to which it applies; or
 - (b) as an amount payable in respect of, or to be deducted from, the user cost to which it applies in relation to a particular period; or
 - (c) in any other manner.
- (4) Without limiting the subject matter or content of a concession order, a concession order may—
 - (a) be of general or limited application;
 - (b) differ according to differences in time, place or circumstance;
 - (c) be expressed to apply subject to specified conditions;

(d) specify the manner in which an application for the granting of a concession in relation to a particular user cost may be made;

(e) apply in relation to a class or classes of eligible persons specified in the order.”

To receive the Winter Energy Concession, a person must have either a:

- Pensioner Concession Card;
- Health Care Card; or
- Gold Card.

To receive the Off-peak concession, a person must have either a:

- Pensioner Concession Card;
- Health Care Card; or
- Gold Card.

(c) Capital grants

The Victorian Government provides assistance to consumers holding concession entitlements to replace/repair essential appliances: *State Concessions Act 2004 (Vic)*.

To receive the payments under the Capital Grants Scheme, a person must have either a:

- Pensioner Concession Card;
- Health Care Card; or
- Gold Card.

(d) Network tariff rebate

The Victorian Government provides a rebate for eligible rural and regional consumers to address structural cost disadvantages: *Electricity Industry Act 2001 (Vic)*. Division 5 of the *Electricity Industry Act 2001 (Vic)* sets out Terms and Conditions of Sale and Supply of Electricity. In particular, section 35 provides:

“Without limiting the generality of section 20(2) or (3) or section 21, the conditions to which a licence to sell electricity, being a licence under which electricity may be sold to domestic or small business customers, is subject, include a condition requiring the licensee to offer to supply and sell electricity to domestic or small business customers, subject to this section and to any Order in force under section 13 and to the conditions of its licence—

- (a) at tariffs determined by the licensee and published by the licensee in the Government Gazette at least 2 months before they take effect; and
- (b) on terms and conditions determined by the licensee and approved by the Commission and published by the licensee in the Government Gazette at least 2 months before they take effect.”

In general terms, eligible NTR customers are those covered by the Government’s statutory safety net framework for Victorian electricity customers, and who are located in either the Powercor or TXU electricity network areas.

The Order-in-Council made under section 35 of the *Electricity Industry Act 2000* (Vic) (and published in the Government Gazette on 11 January 2002), provides that a relevant customer for purposes of the safety net is defined as:

“a customer in relation to a supply of electricity from a supply point unless the person’s aggregate consumption of electricity from the supply point has been, or, in the case of a new supply point, is likely to be, more than 160 megawatt hours in any year commencing on or after 1 January 1997”.

South Australia

Retailers and distributors must comply with any Government scheme for the provision of customer concessions or the performance of community service obligations. The SA Government provides an Energy Concession which is administered via the electricity account, for concession card holders: *Electricity Act 1996* (SA).

Section 21 of the *Electricity Act 1996* (SA) provides that the Commission must make a licence subject to conditions licensed by the Commission:

“requiring the electricity entity to comply with the requirements of any scheme approved and funded by the Minister for the provision by the State of customer concessions or the performance of community service obligations by electricity entities.”

To be eligible for the Energy Concession, the application must be or hold one of the following:

- a Pensioner Concession Card;
- A DVA Gold Card;
- A British or NZ War widow;
- State Concession Card
- Centrelink Allowee
- Austudy or Abstudy Recipient
- New Enterprise Incentive Scheme Recipient
- Community Development Employee Program ;Participant; or a
- Commonwealth Seniors Card Health Card

Queensland

(a) General community service obligations

Part 9 of Chapter 3 of the *Government Owned Corporations Act 1993* (Qld) requires community service obligations to be specified in the statement of corporate intent. This part also contains the operation and application of Community Service Obligations for Government Owned Corporations.

Section 121 provides the following meaning of “community service obligations”:

“The community service obligations of a GOC are obligations to perform activities that the GOC’s board establishes to the satisfaction of the shareholding Ministers—

- (a) are not in the commercial interests of the GOC to perform; and
- (b) arise because of a direction, notification or duty to which this section applies; and

- (c) do not arise because of the application of the following key principles of corporatisation (and their elements)—
 - (i) Principle 3—Strict accountability for performance;
 - (ii) Principle 4—Competitive neutrality.

Section 122 provides the following in relation to the specification of community service obligation in the statement of corporate intent:

Community service obligations to be specified in statement of corporate intent

- “(1) The community service obligations that a GOC is to perform are to be specified in its statement of corporate intent.
- (2) The costings of, funding for, or other arrangements to make adjustments relating to, the GOC’s community service obligations are also to be specified in its statement of corporate intent.
- (3) The statement of corporate intent is conclusive, as between the Government and the GOC, of—
 - (a) the nature and extent of the GOC’s community service obligations; and
 - (b) the ways in which, and the extent to which, the GOC is to be compensated by the Government for performing its community service obligations.”

(b) Pensioner rebates

In Queensland, an electricity rebate is available to pensioners and seniors.

Section 90 of the *Electricity Act 1994* (Qld) provides that that the Minister may set prices for non-contestable customers. Part 5 of the Queensland Government Gazette, Number 56 (4 November 2005) sets out the conditions for the payment of the electricity rebate

To be eligible for the electricity rebate, a person must hold either a:

- Pensioner Concession Card issued by either Centrelink or the Department of Veterans’ Affairs;
- Repatriation Card for All Conditions (Gold Card) and be in receipt of either of a War Widow or Special Rate T.P.I pension; or
- Queensland Government Senior’s Card.

(c) Life support concession

The Department of Health supplies an electricity life support concession through the Department of Communities. To be eligible for the Electricity Life Support Concession Scheme, people must use home based life-support systems and be medically assessed in accordance with the eligibility criteria specified by Queensland Health

(d) Drought relief

There are special conditions for customers who are farmers in a drought-declared area, involving varied tariffs, waiving of some charges and deferral of payment.

As noted above, section 90 of the *Electricity Act 1994* (Qld) provides that that the Minister may set prices for non-contestable customers. Part 6 of the Queensland Government Gazette, Number 56 (4 November 2005) provides for relief from electricity charges where drought declaration in force. The

Gazette provides that where a farmer is in a drought declared area or whose property is individually drought declared may:

- transfer individually metered pumping loads to a reduced rate;
- have waived the fixed charge components of electricity charges; and
- have payment of customers' electricity accounts relating to farm consumption deferred (subject to interests).

To be eligible for relief, Part 6 of the Gazette provides that the customer is a farmer who is in a drought declared area or whose property is individually drought declared. The farmer must provide

- evidence that the property is in a drought declared area or is individually drought declared;
- evidence of the water pumping restrictions available to the customer's property; and
- evidence that the customer is experiencing financial difficulties as a result of the drought.

(e) Ambulance cover

Retailers must, under a licence condition, collect an ambulance levy under the *Community Ambulance Cover Act 2003* (Qld), Part 6. Retailers are required to comply with this requirement under section 55F of the *Electricity Act 1994* (Qld).

Section 3 of the *Community Ambulance Cover Act 2003* (Qld) provides:

"The objects of this Act are—

- (a) to impose and collect a levy, to be known as the community ambulance cover levy, to fund ambulance services in Queensland; and
- (b) to use the system of supply and sale of electricity as the basis for the imposition and collection of the levy."

(f) Tariff equalisations

Section 90 of the *Electricity Act 1994* (Qld) allows the Minister to decide the prices, or the methodology for fixing the prices, that a retail entity may charge non-contestable (franchise) customers for retail services, or delegate that authority to the Queensland Competition Authority.

Section 91A requires retailers to comply with notification or direction from the Minister or QCA. Section 91A(2) requires a retail entity to charge franchise customers the notified prices for providing the services.

Although not legislated, the Minister is able to set state-wide uniform bundled tariffs for franchise tariffs. From November 2005, a flat-rate tariff applies to franchise customers, as opposed to the previous declining block structure. Very large customers can enter into deregulated pricing.

The Government pays a CSO payment to retailers who serve franchise customers to cover the difference between the revenue received and the cost of supply.

Australian Capital Territory

(a) General community service obligations

Part 13 of the *Utilities Act 2000* (ACT) obliges utilities to operate in accordance with community service obligations, and to provide recompense (via the Treasury) to the utility for the provision of services. The Minister may give a written direction under section 221 to a utility to take action that the Minister considers appropriate to ensure that the utility's services are provided in accordance with relevant Government programs, for example, community services, the environment or other social issues. A direction issued under section 221:

- may require the utility to provide particular services to particular classes of people free of charge, at stated charges or subject to stated discounts or rebates; and
- must state the Minister's estimate of the cost to be incurred by the utility in complying with the direction.

(b) Financial hardship

Part 11 *Utilities Act 2000* (ACT) gives powers to the Essential Services Consumer Council to ensure that utility services continue to be provided to people suffering financial hardship.

(c) Rebates

There are pensioner concession rebates, which are higher in winter.

Holders of the following cards are eligible for the rebate:

- Centrelink card;
- Pensioner Concession Card;
- Centrelink Health Care Card; and
- Veteran's Affairs Pensioner Concession Card.

Tasmania

(a) Rebates

Rebates are offered to customers with pensioner or health care concession cards. Contracts are established between the Government (i.e. the relevant Minister) and the business: *Government Business Enterprises Act 1995* (Tas); and *Corporations Act 2001* (Tas).

The relevant part of the *Business Enterprises Act 1995* (Tas) relating to community service obligations is Part 9. Section 59 of Part 9 defines a community service obligation as meaning:

“...a function, service or concession –

(a) declared to be a community service obligation under [section 61](#); or

(b) performed, provided or allowed as the direct result of a direction given under [section 65\(1\)](#).”

Section 60 provides for an application for declaration of a community service obligation:

“(1) On the request of the Board, the Portfolio Minister may apply to the Treasurer for a declaration that–

(a) a function performed, service provided or concession allowed by a Government Business Enterprise is a community service obligation; or

(b) a function, service or concession the Government Business Enterprise proposes to perform, provide or allow will be a community service obligation if it is performed, provided or allowed.”

- (2) The request of the Board is to be in a form, and contain the details, specified in the Treasurer's Instructions.
- (3) The Portfolio Minister must not agree to the request of the Board unless he or she is satisfied that performing, providing or allowing the function, service or concession which is the subject of the request is or will be a net cost to the Government Business Enterprise.
- (4) Where the Portfolio Minister agrees to the request of the Board, the request becomes an application for the declaration of a community service obligation.
- (5) On receipt of an application, the Treasurer may request the Portfolio Minister to provide further information and documents.

Section 65 provides for directions to be given in respect of community service obligations:

- (1) The Portfolio Minister and Treasurer, jointly, may give a direction to a Government Business Enterprise to perform, provide or allow a function, service or concession that they are satisfied would not be performed, provided or allowed if the Government Business Enterprise were a business in the private sector acting in accordance with sound commercial practice.
- (2) A Government Business Enterprise must comply with a direction given under subsection (1).
- (3) The Portfolio Minister and Treasurer, jointly, may amend or revoke a direction given under subsection (1).
- (4) The amendment or revocation must specify the date on which it takes effect.
- (5) Within 21 days after receiving a direction given under subsection (1), the Government Business Enterprise may object to the direction on any ground.
- (6) An objection –
 - (a) is to be in writing; and
 - (b) is to specify the grounds for the objection; and
 - (c) is to be provided to the Portfolio Minister and Treasurer.
- (7) If, on receiving an objection, the Portfolio Minister and Treasurer, jointly, determine that the direction is not to be withdrawn or amended, they must cause a copy of the direction and the objection to be laid before each House of Parliament within 5 sitting days after receipt of the objection.”

The Winter Electricity Rebate (available to Commonwealth Health Care card holders) administered by Aurora Energy on behalf of Dept of Health and Human Services. “Normal” pensioner electricity concession is administered by Aurora Energy on behalf of Dept of Health and Human Services. The means tested heating allowance is administered by Dept of Health and Human Services. Aurora Energy Pty Ltd provides a discount to customers who are users or approved life support system.

- (b) CSO payment (Bass Strait islands)

There is a CSO payment to Hydro Tasmania to subsidise electricity to the Bass Strait islands and to offer concessions to pensioner customers: *Government Business Enterprises Act 1995* (Tas) and *Corporations Act 2001* (Tas).

On 1 June 1999, the Government agreed to formally recognise the cost of concessions to eligible pensioners and customers living on Bass Strait islands as Community Service Obligations (CSOs), as defined under the *Government Business Enterprises Act 1995* (Tas).

During the year ended 30 June 2005, the Government paid the Hydro Tasmania \$6.0M (2004 \$4.7M) as reimbursement of cost of providing Community Service Obligations.

(c) Tariff equalisation

The following provisions are relevant to tariffs deal with tariffs:

- section 38(3) of the *Electricity Supply Industry Act 1995* (Tas) provides that the tariff price of electricity (via the retailer) for customers of a particular class must be uniform throughout the supply area;
- regulation 33(2)(d) of the *Electricity Supply Industry (Price Control) Regulations 2003* (Tas) provides that the distribution tariff for customers of a particular class must be uniform throughout the supply area.