

Energy Regulation in Tasmania Post National Reforms

Discussion Paper

Acknowledgements

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1 Purpose

The Australian Energy Market Agreement 2004 as amended in 2006 has been signed by all members of the Council of Australian Governments. It commits participating jurisdictions to centralise specified electricity and gas governance and regulatory functions in national policy, rule-making and regulatory bodies. This is to be accomplished within given timeframes with the object of increasing national regulatory efficiency and consistency.

The purpose of this Discussion Paper is to identify the regulatory activities that will continue to be undertaken by the Tasmanian jurisdiction following the implementation of national energy market reforms. The Paper provides a description of remaining Tasmanian legislative functions, the manner in which they are currently conducted and the officers or agencies responsible for undertaking that function.

The Discussion Paper has been circulated to energy entities and major stakeholders in order to assist in the identification of potential regulatory gaps or inefficiencies that may result from the transfer of regulatory functions specified by the Australian Energy Market Agreement to the national regulatory framework.

2 Background

The current national energy market reforms are the latest in a series of energy market reforms to be implemented in Tasmania, commencing in 1995 with the passing of the *Electricity Supply Industry Act 1995*.

2.1 The Australian Energy Market Agreement

The Council of Australian Governments (COAG) established the Ministerial Council on Energy (MCE) in June 2001 to provide national oversight and co-ordination of energy policy development. In 2003 MCE provided COAG with a report entitled *Reform to Energy Markets*, which led to an intergovernmental agreement on reforms to Australian energy markets, the Australian Energy Market Agreement 2004 (AEMA).

The AEMA originally committed Commonwealth, State and Territory Governments to establish and maintain a new national energy market regulatory framework. The AEMA, as signed in 2004, provided for the establishment of the Australian Energy Regulator (AER) and the Australian Energy Market Commission (AEMC) and replaced the National Electricity Market Minister's Forum with the Ministerial Council on Energy as the national policy body with oversight of the Australian energy market.

The AEMA specified a timetable for the transfer of regulatory functions to the AER and AEMC, which in 2004 included:

- rule-making for, and regulation of, electricity wholesale and transmission in the National Electricity Market jurisdictions;
- rule-making for gas pipeline access;
- regulation of gas transmission for all other than Western Australia; and
- an understanding that the AER would assume responsibility for national regulation of distribution and retailing (other than retail pricing) by 2006, following development of an agreed national framework.

The MCE subsequently agreed on a national framework for the transfer of distribution and retailing regulation (other than retail pricing), which was incorporated into the amended AEMA in 2006. The framework has been interpreted as applying to both contestable and non-contestable energy customers.

The national distribution and retail regulatory framework for electricity and gas is still being finalised by the MCE. However the amended AEMA sets the activities to be regulated through the AEMC and AER as well as specific activities that will remain the responsibility of States and Territories to regulate or administer. This allocation of regulatory activities as set out in Annexure 2 of the amended AEMA is appended as Attachment 1.

The transfer of distribution and retailing regulation to the AER and AEMC is being implemented through two legislative packages, which are both now scheduled to be passed by parliaments in respective jurisdictions in 2007.

The '2006 Legislative Package' will complete the transfer of economic regulation of transmission and distribution for electricity and gas to the new national arrangements. Key components of this Package are the introduction of the new National Gas Law and National Gas Rules, and amendments to the National Electricity Law and National Electricity Rules.

The Tasmanian Regulator has commenced an investigation to determine the maximum prices for Aurora Energy's distribution services under Tasmania's existing arrangements for the economic regulation of electricity distribution.

The determination will be administered by the AER under the existing Tasmanian arrangements. However, the exact timing of the transfer of the administration of the determination to the AER has not been established. The MCE Energy Market Reform Bulletin No.69 states that special arrangements will be needed to transfer the Tasmanian distribution determination to the AER after it is made by the jurisdictional regulator on 1 January 2008.

The '2007 Legislative Package' is currently being finalised by the MCE, but will include implementation of the remainder of agreed reforms involving the transfer of retail and distribution regulation (other than retail pricing). The 2007 Legislative Package generally relates to 'non-economic' regulatory functions such as minimum contract terms and conditions and metering. The amended AEMA commits participating jurisdictions to complete the 2007 Legislative Package by 1 January 2008.

The funding model for the national framework is also established by the AEMA. The Commonwealth is responsible for funding the AER, and State and Territory jurisdictions jointly fund the operations of the AEMC through a formal funding agreement. The Commonwealth Government funds the MCE Secretariat, however activities and work programs conducted by the MCE are jointly funded by all participating jurisdictions.

2.2 The Tasmanian Regulatory Framework for Electricity

The Tasmanian electricity regulatory framework dates from 1995 following the implementation of COAG's national competition policy reform agenda. The framework was established principally to provide for entry of new participants in the Tasmanian market and to replace self-regulation by the former Hydro-Electric Commission with an independent regulator. Customer protection in the form of price oversight was also introduced and the principle of uniform tariffs for customers in all regions of mainland Tasmania was retained. At the time of implementation it was made clear that there would be a continuing, managed transition over the following years to a more competitive electricity environment.

The current Tasmanian framework covers both economic and non-economic regulation of the electricity industry in Tasmania, including price controls, revenue determinations, tariff approval, electrical safety and security of the electricity network. The basis for enforcement and compliance with regulation being a licensing system for participants in all aspects of the electricity supply industry. The Regulator is responsible for issuing the Tasmanian Electricity Code and Guidelines, which are enforced through the licensing system.

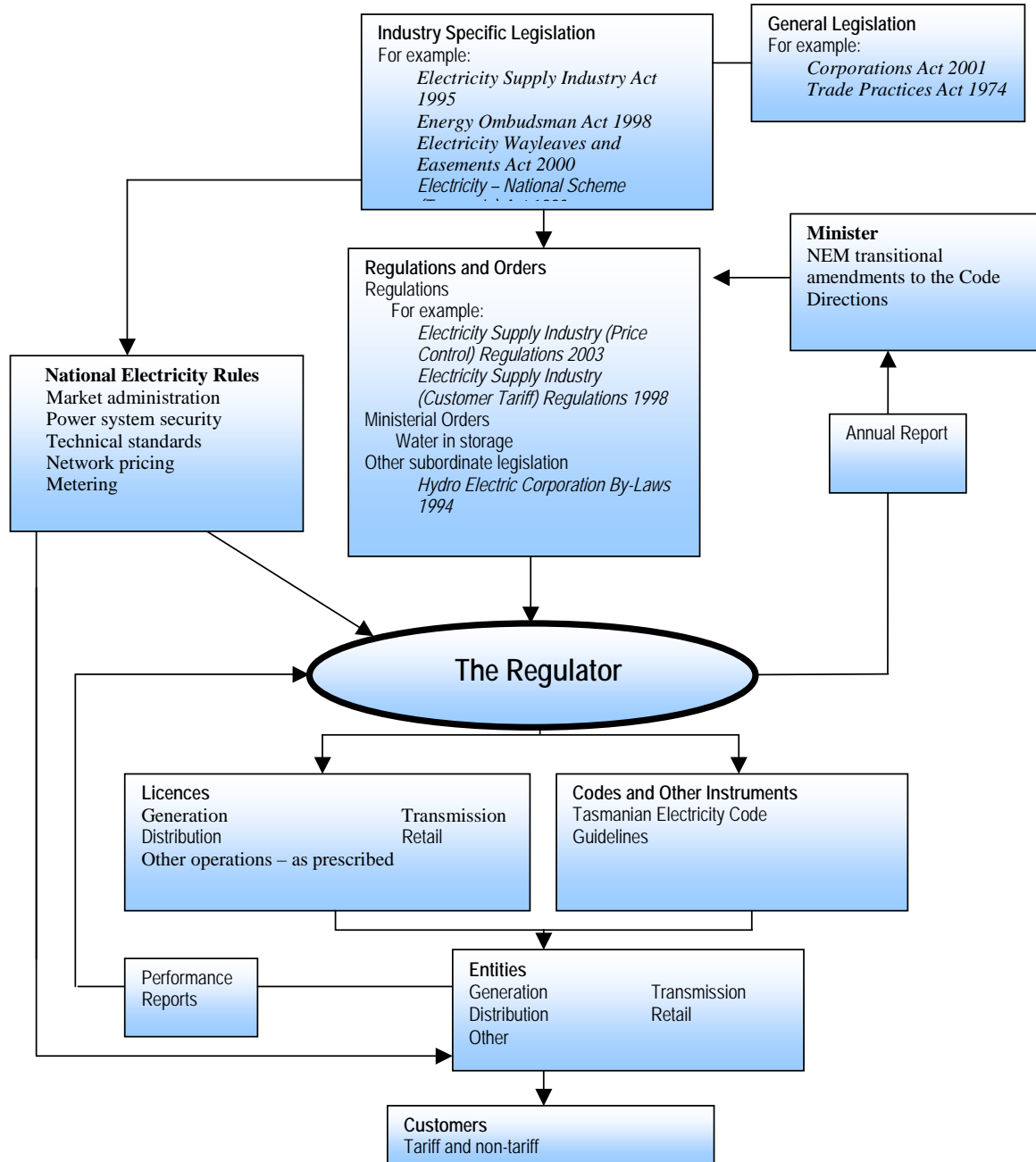
The Tasmanian regulatory framework has been progressively reformed to take account of disaggregation of the Hydro-Electric Corporation, Tasmania's entry into the National Electricity Market, and the introduction of a retail contestability timetable.

The primary Tasmanian legislation framework governing the electricity sector is as follows:

<i>Electricity Supply Industry Act 1995</i>	Regulates Tasmania's electricity supply industry, including licensing, pricing, and supply emergencies
<i>Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995</i>	Provides for repeals and provisions of a savings and transitional nature resulting from the restructure of Tasmania's electricity supply industry in 1995
<i>Electricity Companies Act 1997</i>	Establishes separate companies responsible for the transmission, distribution and retailing of electricity in Tasmania, implementing disaggregation of the Hydro-Electric Corporation
<i>Electricity Industry Safety and Administration Act 1997</i>	Regulates licensing of electrical workers, standards of work and safety standards for electrical articles, and investigation of accidents
<i>Electricity Industry Safety and Administration (Consequential and Transitional Provisions) Act 1997</i>	Makes amendments and enacts provisions of a savings and transitional nature consequential to the enactment of the Electricity Industry Safety and Administration Act 1997
<i>Electricity – National Scheme (Tasmania) Act 1999</i>	Applies the National Electricity Law and National Electricity Rules, as amended from time to time as the law of Tasmania, providing for the operation of the National Electricity Market and establishing the National Electricity Code
<i>Electricity Wayleaves and Easements Act 2000</i>	Provides for wayleaves held and obtainable by electricity entities, and rights of access to land for maintaining electricity infrastructure
<i>Hydro-Electric Corporation Act 1995</i>	Provides for the Hydro-Electric Corporation to continue as a Government Business Enterprise responsible for electricity generation

The Tasmanian Electricity Code is established under the *Electricity Supply Industry Act 1995*. The Code provides the detail of the technical and economic regulation of the Tasmanian electricity supply industry and is issued by the Regulator.

Figure 1: The Tasmanian Electricity Regulatory Framework (courtesy of the Office of the Tasmanian Energy Regulator)



2.3 The Tasmanian Regulatory Framework for Gas

The facilitation of the natural gas industry in Tasmania has required the development of a legislative and regulatory framework that:

- provides sufficient incentives and certainty to developers;
- promotes the development of competitive market outcomes;
- provides appropriate consumer protection; and
- ensures the development, maintenance and operation of safe gas infrastructure and services.

To meet these objectives, the jurisdiction has imposed a ‘light handed’ form of regulation with respect to the distribution and retailing of gas. The framework has been developed specifically for the Tasmanian gas sector and has been certified as an effective access regime under the *Trade Practices Act 1974*.

The primary legislative framework governing the Tasmanian gas sector is as follows:

- *Gas Pipelines Access (Tasmania) Act 1999*, which regulates third party access to natural gas pipelines in line with National Competition Policy requirements (however, as Tasmanian pipelines are “uncovered” an access application would not be managed under this legislation);
- *Gas Pipelines Act 2000*, and associated regulations, which regulate gas transmission pipelines in Tasmania including licensing provisions and the development of safety and operating plans; and
- *Gas Act 2000*, and associated regulations, which regulate the distribution, retailing and safety of natural gas in Tasmania, including installation of gas appliances and equipment. The offices of Director of Gas and Director of Gas Safety are established by the *Gas Act 2000* and licensing of gas distributors and retailers is undertaken in accordance with that Act.

The Government Prices Oversight Commission (GPOC) has been appointed as the regulator for the purposes of regulating third party access to natural gas pipelines under the provisions of the *Gas Pipelines Access (Tasmania) Act 1999*. The Commissioner of GPOC has been appointed to the position of Director of Gas under the *Gas Act 2000*

The *Gas Act 2000* is the primary piece of legislation relating to gas distribution and retailing, although the *Gas Pipelines Access (Tasmania) Act 1999* has the potential to apply to gas distribution. The current regulatory arrangements for distribution are part of access regime authorised under the *Trade Practices Act 1974*.

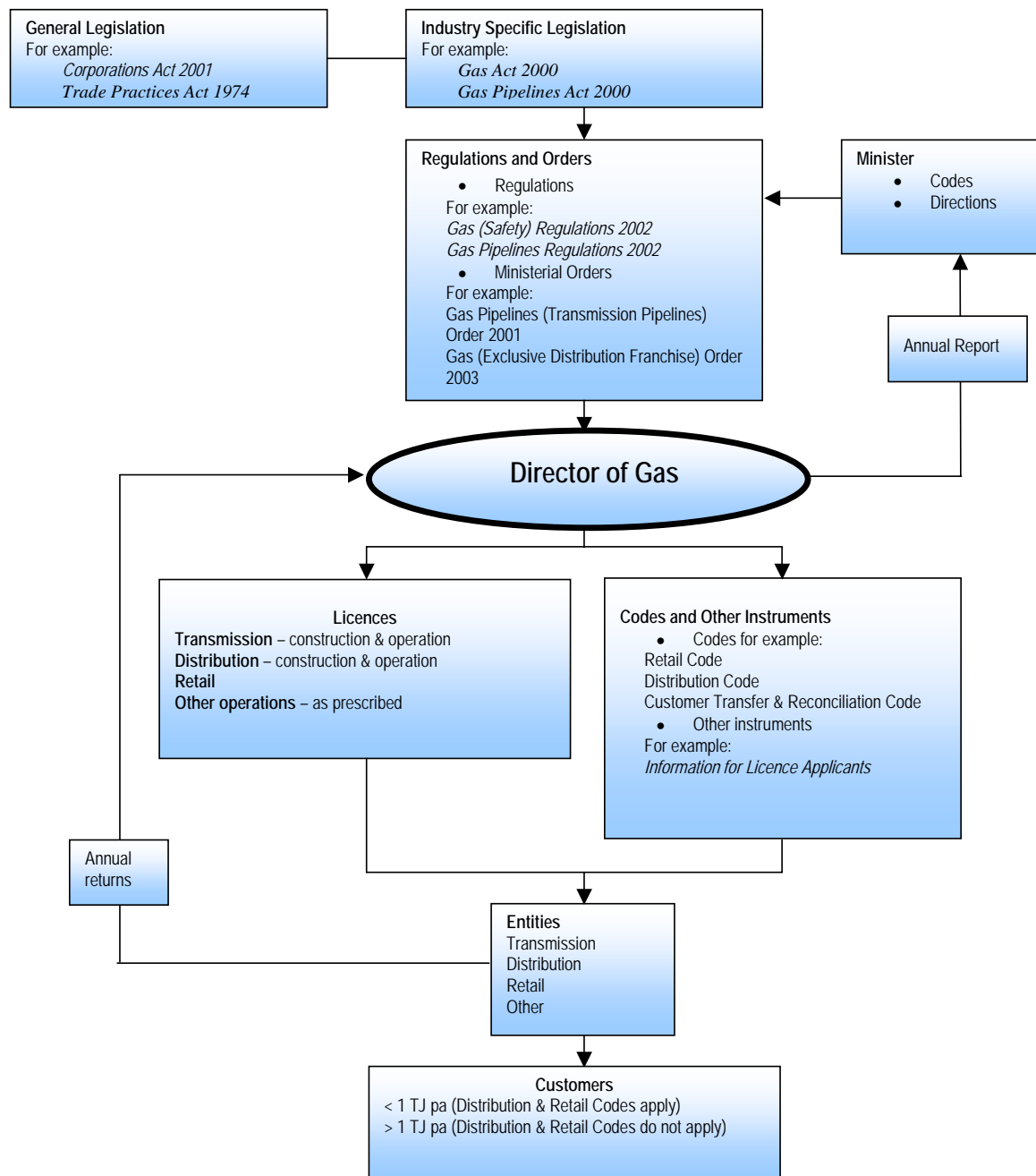
As with the electricity supply industry, the principle means of monitoring and enforcing compliance with the State’s regulatory framework is a licensing system administered by the Director of Gas. In practice the Director of Gas is the currently same office-holder as the Regulator appointed under the *Electrical Supply Industry Act 1995* supported by the Office of the Tasmanian Energy Regulator.

The Gas Distribution Code established under the *Gas Act 2000* outlines the detailed regulatory framework for gas distribution.

A Gas Retail Code has been developed for small customers using less than ten terajoules per annum, however parties retain the ability to contract out of the Code consistent with the jurisdiction's policies of full retail contestability and a light handed regulatory approach.

The Director of Gas has also established a Code regulating customer transfers and reconciliations between retailers.

Figure 2: The Tasmanian Natural Gas Regulatory Framework (courtesy of the Office of the Tasmanian Energy Regulator)



2.4 Other Tasmanian Energy Regulation

At the time the State's energy regulatory functions were transferred from the former Hydro-Electric Commission to the Tasmanian Regulator, the energy policy functions of the Tasmanian Government were conferred on the Director of Energy Planning, an office established by the *Energy Co-ordination and Planning Act 1995*. The Act specifies certain functions to be performed by the Director of Energy Planning and provides powers to the Director and the Minister to facilitate the making of energy policy.

The Tasmanian Parliament passed the *Electricity Ombudsman Act 1998* at the time of disaggregation of the Hydro-Electric Corporation. This Act expanded the role of the State Ombudsman in response to electricity customer complaints that were unable to be satisfactorily resolved under the regulatory arrangements for electricity implemented in 1995. The legislation was amended in 2004 to enable consideration of complaints by gas customers and is now referred to as the *Energy Ombudsman Act 1998*.

3 Electricity Regulatory Functions Specified by the AEMA

Current regulation of the electricity industry by the jurisdiction is considered in this section in accordance with the specific regulatory functions to be retained by States and Territories as listed by the amended Australian Energy Market Agreement (AEMA) (Attachment 1). The section titles and explanatory italics used in this section are those used by the AEMA.

3.1 *Distributor Technical/Safety Business Authorisation*

(Licensing and authorisation schemes that require demonstration of technical capability)

The Tasmanian licensing scheme covering safety and technical capacity in the electricity industry is administered by the Regulator, in accordance with the *Electrical Supply Industry Act 1995* (ESI Act), the *Electricity Industry Safety and Administration Act 1997*, the *Electricity Industry Safety and Administration Regulations 1999* and the *Electricity Industry Safety and Administration (Consequential and Transitional Provisions) Act 1997*.

The Regulator has the specific functions of establishing and maintaining a safe and efficient system of electricity generation, transmission, distribution and supply, and establishing and enforcing proper standards of safety, security, reliability and quality in the electricity supply industry.

However, in practice the Regulator has delegated functions and powers related to electrical safety to the Manager of Policy and Planning, Workplace Standards Tasmania. The delegations include the appointment of *authorised officers* and all of the Regulators functions under the *Electricity Industry Safety and Administration Act 1997*.

Electricity officers are appointed under the ESI Act by electricity entities.

Chapter 8 of the Code (Distribution System Operation) includes some safety-related provisions associated with the operation of a distribution network. The management of vegetation around distribution powerlines to promote public safety and establish a standard of care is advised by Chapter 8A of the Code (Distribution Powerline Vegetation Management). Chapter 8 of the Code also obliges a distributor to prepare a Customer Charter that includes a contact number to enable the distributor to be contacted in an emergency.

Licensees are required under their licences to comply with the Tasmanian Electricity Code. It is the Code that provides that detail of technical regulation of the Tasmanian electricity supply industry not covered by National Electricity Rules. The Code includes distribution reliability standards, technical standards for customer installations, the framework for the management of vegetation around distribution power lines, the review and reporting of significant incidents (excluding incidents affecting power system security which are investigated by NEMMCO), assessment of entities' identification and management of risks of failure, performance reporting and assessment, and planning of the distribution network to meet forecast load and improve reliability for customers. There are other non-economic regulatory requirements placed on specific licence holders, such as the requirement on Transend Networks to plan and procure augmentations to meet jurisdictional planning criteria and to prepare a Tasmanian annual planning statement.

3.2 Small Customer Dispute Resolution

(Obligation for distributors and retailers to have internal dispute resolution schemes and participate in independent dispute resolution (Ombudsman) schemes)

Complaints relating to any service provided by Tasmanian energy entities can be referred to the Ombudsman pursuant to the *Energy Ombudsman Act 1998*. It should be noted that the Energy Ombudsman has jurisdiction to make awards only up to \$20,000 or, with the agreement of the entity, up to \$50,000.

A holder of a retail licence is obliged to comply with Chapter 9 of the Tasmanian Electricity Code (Retailing). The Code includes an obligation on the retailer to handle a complaint from a tariff customer in accordance with the relevant Australian Standard and to include details of its complaint handling procedure in a Customer Charter. The Code also provides further details relating to the ability of the customer to refer the matter to a higher level and an obligation on the retailer to advise the customer in writing of their right to refer a complaint to the Ombudsman.

Chapter 8 of the Code (Distribution System Operation) contains similar provisions for distributors.

The Code also provides that any disconnection warning includes notification of the customer's right to refer any complaint to the Ombudsman.

The Code requires both distributors and retailers to include in their Customer Charter details of how to make an inquiry or complaint to the Ombudsman.

The Regulator has the power to mediate disputes between electricity entities or between an electricity entity and another person about the exercise of a power under the ESI Act.

The Director of Energy Planning, appointed under the *Energy Co-ordination and Planning Act 1995*, is able to provide support in the resolution of disputes about energy-related matters.

3.3 Load Shedding and Curtailment

(Customer supply reduction sequence to maintain system security and reliability)

The primary arrangements for load shedding for the purposes of maintaining electricity system security are provided for in the National Electricity Rules. Jurisdictions are required to nominate a Jurisdictional System Security Coordinator with the role of advising on jurisdictional load shedding arrangements.

The Minister for Energy is able to make an emergency restriction order under the ESI Act.

Transmission, distribution and retail licences issued by the Regulator oblige network service providers to develop, maintain and implement an emergency management plan in accordance with guidelines issued by the Jurisdictional System Security Co-ordinator (JSSC).

3.4 Service Reliability Standards

(Standards to ensure network security and reliability)

Under the ESI Act, the Regulator has the function of monitoring and regulating technical standards in the electricity supply industry, including establishing a safe and efficient system

of electricity generation, transmission, distribution and supply. The Regulator is specifically responsible for establishing and enforcing proper standards of safety, security, reliability and quality in the electricity supply industry.

Chapter 8 of the Tasmanian Electricity Code (Distribution System Operation) requires the distributor to submit an annual planning report to the Regulator. The planning report, prepared in accordance with the Code, details how the distributor plans over the following five years:

- (1) to meet predicted demand for electricity supplied through its sub transmission lines, zone substations and high voltage lines; and
- (2) to improve reliability to its customers.

Chapter 8 of the Code also includes standards relating to customers' electrical installations including power factor, voltage, harmonics, inductive interference, negative sequence voltage, load balance, voltage fluctuations and electromagnetic interference. These standards reflect good electricity industry practice and include requirements to comply with the relevant Australian Standards.

Chapter 12 of the Code (Administrative Functions) establishes the Reliability Network Planning Panel (RNPP). The RNPP has the following roles:

- (a) monitor, review and report on the performance of electricity supply industry in Tasmania in terms of the reliability of the power system (annual Reliability Review);
- (b) monitor, review and report on the Tasmanian Determination on Power System Frequency Operating Standards (until the second anniversary of the application of the National Electricity Law);
- (c) following the second anniversary of the application of the National Electricity Law, if requested by the Jurisdictional Co-ordinator, review and advise on the standards for the frequency of a network or networks located in Tasmania when the Tasmanian region or any part of it is isolated from the other regions in the National Electricity Market;
- (d) develop jurisdictional transmission planning criteria and, if requested by the Jurisdictional Co-ordinator, review those criteria;
- (e) during the period that the Regulator is responsible for administering local distribution network determinations, if requested by the Regulator, review the economic cost effectiveness analysis of proposed network augmentation and other capital expenditure projects submitted by the distributor;
- (f) if requested by the Regulator, review and report on matters concerning the power system or the Code and make recommendations to the Regulator on changes to the Code and any other matters which the RNPP consider necessary; and
- (g) if requested by the Jurisdictional Co-ordinator and in accordance with terms of reference agreed by the Regulator, review and report on matters referred to it in respect of the National Electricity Code or National Electricity Market in so far as they apply or relate to Tasmania.

Distribution Network Reliability Standards are specified in Chapter 8 of the Code. These identify the network reliability standards that apply in given areas of the State. The Standards have recently been reviewed and the proposed new standards are being used as the basis for

the 2008-2012 determination of maximum prices. No decision has yet been made as to whether these standards will be specified in the Code or by regulation.

Technical standards relating to the connection of embedded generating units to the distribution system are also included in Chapter 8 of the Code.

The management of vegetation around distribution powerlines to reduce vegetation-related interruptions to supply is advised by Chapter 8A of the Code (Distribution Powerline Vegetation Management).

Minimum performance requirements for Transmission (also known as jurisdictional transmission planning criteria) are set by the jurisdiction and will be applied through a regulation made under the ESI Act.

3.5 Metering

(Policies on the type of meters required for specific customer classes, accredited service provider arrangements, and load profile arrangements)

Minimum standards for new metering equipment are specified in Chapter 9 of the Tasmanian Electricity Code (Retailing).

3.6 Distribution and Retail Service Areas

(Specification of geographical areas in which responsibilities/obligations apply)

Geographical areas are specified in mainland licences where various distributors and/or retailers have responsibilities in respect of specified areas of a state. In Tasmania, the geographical area for which Aurora Energy as distributor has responsibility is mainland Tasmania.

The electricity system on the Bass Strait Islands is owned by Hydro Tasmania, who operates the system in accordance with a Ministerial Charter that obliges Hydro Tasmania to continue to provide electricity generation, distribution and retail services on the Islands despite the disaggregation of its business in the rest of Tasmania. Hydro Tasmania's operations on the Bass Strait Islands are deemed to be licensed under the *Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995*. The electricity supply networks on the Bass Strait Islands do not form part of the National Electricity Market.

Electricity supply on the Islands is subject to the ESI Act, the *Electricity Supply Industry (Price Control) Regulations 1998* and the *Electricity Supply Industry (Tariff Customer) Regulations 1998* noting that the Regulator has not 'declared' electricity supply on the Bass Strait islands and thus there is no price determination in place.

Only Chapter 9 of the Code (Retailing) is applied on the Bass Strait Islands. However, Hydro Tasmania is required to report to the Regulator on distribution and retail performance in a manner consistent with the reporting of performance of rural Tasmanian feeders.

A draft Code chapter dealing specifically with the Bass Strait Islands was developed by the Regulator in 2002, however this draft chapter has not been incorporated in the Code.

The Regulator has issued a direction to Hydro Tasmania under the ESI Act to "maintain good electricity industry practice" on the Islands.

4 Other Specified Electricity Regulatory Functions

Section 14.7 of the amended Australian Energy Market Agreement (AEMA) specifies a number of other more general regulatory functions that will remain the responsibility of each State and Territory. The following section headings and italicised explanations are those provided by the AEMA.

4.1 Community Service Obligations

(Such as those imposed on retailers and distributors, which are to be clearly specified and publicly funded)

Chapter 9 of the Tasmanian Electricity Code (Retailing) provides that electricity accounts must set out any concession to which a tariff customer is entitled (providing a descriptor of the concession).

Aurora Energy has a Community Service Obligation Agreement with the State Government to provide an electricity price concession to pensioners on mainland Tasmania, and to Health Care Card Holders.

The State Government also administers a Bass Strait islands Community Service Obligation which provides for the subsidised supply by Hydro Tasmania of electricity to Bass Strait islands customers and the provision of concessions to pensioner customers on the Bass Strait islands.

4.2 Distribution Tariff Equalisation Schemes

(Measures to maintain the schemes that do not impede competition such that retailers are unable to remove the effect of those measures)

The *Electricity Supply Industry Act 1995* (ESI Act) specifies that the tariff price for electricity for customers of a certain class must be uniform throughout the supply area. This is reinforced by the *Electricity Supply Industry (Price Control) Regulations 2003*, which applies the principle that the distribution tariff for small customers belonging to a particular class is to be uniform, regardless of where in mainland Tasmania the customer is supplied with electricity.

4.3 Land Use, Planning and Environmental Approvals or Policies

The Tasmanian Resource Management Planning System (RMPS) is the general Tasmanian planning and land use framework. Several pieces of legislation embody the aims of the RMPS with the *Land Use Planning and Approvals Act 1993* as the principal planning Act.

Land use and planning functions applying specifically to electricity entities, including distributors, are contained in the *Electricity Wayleaves and Easements Act 2000*, Part 4 of the ESI Act and the *Electricity Supply Industry Regulations 1996*.

5 Other Electricity Regulatory Functions and Arrangements

The State and Territory regulatory functions listed in Clause 14.7 and Annexure 2 of the amended Australian Energy Market Agreement (AEMA) do not take into account the regulatory structure and general functions underpinning Tasmania's current electricity regulatory framework.

This section attempts to summarise aspects of the remaining State regulatory regime that are not directly impacted by the national energy market reforms agreed to in the amended AEMA and considers the transitional arrangements that may be required for the efficient and effective transfer of regulatory responsibilities from the jurisdiction to the Australian Energy Regulator (AER).

5.1 The Regulator

The office of the Regulator and the administration of the licensing system by the Regulator are central to the existing Tasmanian regulatory framework for electricity. Part 2 of the *Electricity Supply Industry Act 1995* (ESI Act) provides the Regulator with extensive powers and functions to ensure the Regulator is able to perform this role effectively. Although there may be a need to limit the current functions of the Regulator consistent with the agreed national framework, there is no immediate impact on the Regulator's statutory powers.

The Regulator issues licences to generators, transmission network service providers, distributors and retailers and provide a means of establishing and enforcing proper standards of safety, security, reliability and quality in the electricity supply industry. Licences require compliance with the Act, Code, regulations and guidelines issued by the Regulator. Licence conditions include requirements for the development of management plans (including emergency management plans), the notification of breaches, network planning, review and reporting.

Retail licences issued by the jurisdiction have also provided an exclusive right to sell electricity to non-contestable customers and possibly to maintain the existing customer-retailer-distributor contract structure (although this may be a transitional arrangement subject to a retail contestability cost-benefit analysis for small customers).

During the period of customer contestability roll-out in Tasmania, the Regulator has the role of assessing a customer's eligibility for contestability in certain circumstances, as outlined in the *Electricity Supply Industry (Contestable Customer) Regulations 2005*.

The Regulator is responsible for the fixing, amending and publication of tariffs. In a contestable customer environment this may relate only to the setting of tariff prices.

The Regulator has the ability take control of the operations of an electricity entity if the ESI Act is contravened, or an electricity entity's licence is cancelled or expires without renewal.

The Regulator also reports to the Minister on subjects on which the Minister requires a report. By way of example, this has included the provision of a report on the costs and benefits of a roll out of interval meters in Tasmania and a report on the methodology and process that will lead to the setting of an energy price by Government.

5.2 The Tasmanian Electricity Code

The Regulator is responsible for issuing and administering the Tasmanian Electricity Code, as well as monitoring the performance of the electricity supply industry in accordance with the Code. Matters of general application to licensees are provided for in the Code. This includes collection of information and statistics, publishing reports and disseminating information relating to the performance of the industry and publishing annual performance indicators to monitor the Regulator's performance in respect of the Code's objectives.

The Code also addresses technical aspects of the Tasmanian electricity supply industry that are not covered by national arrangements. In protecting the interests of consumers, the Regulator ensures that the identification and management of the risks of 'failure' of the industry are identified and managed by licensees. This is accomplished through independent and expert reviews of the processes, policies and procedures contained in licensees' management and compliance plans, and review of performance outcomes.

The Code itself states it has the purpose, to the greatest extent possible, of consolidating relevant regulatory instruments in a single governance regime, providing for ease of reference and transparency of process.

The Code is supported by guidelines issued by the Regulator. These include a performance reporting guideline, accounting and functional ring-fencing guidelines, an incident reporting guideline, and a guideline for the preparation of the Tasmanian Annual Planning Statement.

5.2.1 The Code Change Panel

The Code Change Panel is established under the Code to enable a clearly identifiable and accountable code change process. The current code change process includes a comprehensive consultation process.

5.2.2 The Reliability and Network Planning Panel

The primary functions of the Reliability and Network Planning Panel (RNPP) relate to network standards and reliability and hence have been discussed in the relevant section above. The RNPP is established by the Code to assist the Regulator in functions associated with the technical performance of the electricity supply industry. It is also a condition of distribution and transmission licences that licensees provide information or other assistance requested by the RNPP.

The Code not only specifies the functions of the RNPP as provided above, but also provides details relating to the reliability review process that is to be undertaken annually by the RNPP. The annual reliability review is an important document that provides an overview of the health and prospects of the electricity supply industry. It identifies the critical factors that affect the Tasmanian power system and a prognosis for the future reliability of the power system in the medium term.

5.2.3 Customer Charter

Chapters 8 and 9 of the Code (Distribution System Operation and Retailing) require distributors and retailers to prepare a Customer Charter. The Code specifies that the Customer Charter must be approved by the Regulator and provided to customers. The Customer Charter notifies customers of services and service level obligations they should expect to receive. In the context of the ongoing regulatory responsibilities of the jurisdiction this includes emergency contact details, reliability performance, electrical safety, repairs to street lamps and details of dispute resolution procedures.

5.3 Funding

The Tasmanian electricity regulatory framework overseen by the Regulator is currently funded through the licensing system, primarily through the charging of licence fees as specified in Chapter 2 of the Code (Licensees and Fees). Individual licence fees are reflective of the extent to which budgeted revenue requirements for the Regulator involve that licensee.

5.4 The Director of Energy Planning

The *Energy Co-ordination and Planning Act 1995* establishes the office of Director of Energy Planning to assist the Energy Minister in planning and co-ordinating provision of energy in Tasmania and advising the Minister on all aspects of energy policy. The Director may require the provision of certain information relating to energy matters.

5.5 Transitional Issues

5.5.1 Tasmanian Distribution Determination

The amended Australian Energy Market Agreement (AEMA) provides a timetable for the transfer of specified regulatory functions to the national framework. At the time of signing, the parties committed to pass enabling legislation to implement the agreed national framework for distribution and retail no later than 1 January 2007. The AEMA provided that all electricity distribution revenue determinations commencing following that date were to be determined by the Australian Energy Regulator according to the national rules.

Clause 14.3 of the AEMA, as confirmed by the Chair of the Ministerial Council on Energy (MCE), is interpreted as meaning the current Tasmanian distribution revenue determination will be conducted by the jurisdiction. Clause 14.3 indicates that the administration of the determination will be in accordance with the existing regulatory arrangements.

The general intent of Clause 14.3 is to transfer all economic regulation of distribution networks to the AER after 1 January 2007. Presumably this includes administration of determinations made previously by jurisdictional regulators.

The MCE subsequently agreed to extend the timeline to implement the agreed national framework for the non-economic regulation of distribution and retail to 1 January 2008.

There are currently no arrangements in place for the transfer of responsibilities for the administration of the Tasmanian distribution revenue determination once it comes into effect on 1 January 2008. However, MCE Energy Market Reform Bulletin No.69 notes that special arrangements will be needed to transfer to the AER the Tasmanian distribution determination after it is made by the jurisdictional regulator on 1 January 2008.

Transfer arrangements for the administration of the Tasmanian distribution determination will need to be finalised by agreement between the Tasmanian Government, the AER and the Commonwealth.

5.5.2 Retail Contestability Framework

The AEMA recognises that defined and time-limited transitional arrangements may be necessary and specifically refers to those to enable Queensland and Tasmania to implement full retail contestability through jurisdictionally determined rules.

For example, this includes the need to specify through regulation the exclusive retail licence for non-contestable customers and transitional arrangements to ensure a smooth transition to the new national arrangements in conjunction with the program for the roll out of full retail contestability.

6 Gas Regulatory Functions

It is well recognised that the Tasmanian gas industry and the regulatory environment in which it operates is unique in an Australian context. Although the *Gas Pipelines Access Law* (GPAL) applies in Tasmania (as will its replacement, the National Gas Law), the transmission and distribution networks are uncovered, meaning there is no regulatory oversight of the networks required under the current national arrangements.

The regulatory framework developed specifically for the Tasmanian industry is well suited to the current immature gas market and has been certified as an effective access regime under the *Trade Practices Act 1974*.

Although there has been a commitment to implement the national framework for the economic and non-economic regulation of natural gas, the level of regulation required for established, monopoly gas pipelines in traditional gas markets in other States and Territories is not commensurate with the regulatory requirements of the Tasmanian gas market at this time. The Tasmanian gas market enjoys the lightest regulation of any gas network in Australia and the intent of the Australian Energy Market Agreement is clearly not to introduce more burdensome regulation than is required for the effective operation of the market.

Unlike the situation in other jurisdictions, natural gas is a fuel or energy source of choice in a competitive market and is not currently an ‘essential service.’ It is considered that the pressures of intermodal competition will ensure competitive outcomes in gas distribution and retailing for the foreseeable future. Only when there has been significant market penetration is this scenario likely to need review.

The Tasmanian Government will therefore seek to ensure existing regulatory arrangements are preserved as far as possible, while endeavouring to make jurisdictional regulation as consistent as possible with the national framework.

6.1 Economic Regulation

Despite the uncovered status of Tasmania’s distribution network, there is some regulatory oversight of the Tasmanian gas industry.

The Director of Gas has proposed a self-regulatory scheme of functional and information ring-fencing. This has been accepted and given effect by the industry. However, the Director of Gas does have code-making powers that cover the institution of ring-fencing for retail and distribution under the *Gas Act 2000*.

The Director of Gas has insisted upon legal separation of functional retail and distribution entities. This is not mandated by the *Gas Act 2000*, but is consistent with GPAL and is aligned with the development of an effective gas market. It also reduces the likelihood of a coverage application under the *National Third Party Access Code for Natural Gas Pipeline Systems*.

The functional separation has had to be modified to some degree by assigning the local distributor the responsibilities as Metering Data Provider and Allocation Agent. While these are not distribution operations, the incumbent distributor is best placed to discharge these responsibilities until industry scale develops to the point where it can support separate entities for these functions.

The Director of Gas has also taken an interest in the Use of System Agreements for both large and small customers, as these are critical contracts to access and contestability. Nevertheless, it remains a self-regulatory scheme in this regard.

General monitoring of retail and distribution entities is enabled by the *Gas Act 2000* and the Gas Retail and Distribution Code requirements for licensees to produce Annual Returns to be lodged with the Director of Gas.

6.2 Non-Economic Regulation

Non-economic regulation of gas distribution and retailing is consistent with a light handed regulatory approach, with all customers retaining the ability to contract out of minimum terms and conditions established by the Gas Retail and Distribution Codes.

A binding Gas Customer Transfer and Reconciliation Code applying to gas retailers and distributors has been developed to facilitate full retail contestability. The Code sets out rules and procedures for metering and the allocation and reconciliation of gas quantities between retailers at receipt points, as well as for the transfer of customers between retailers.

6.3 The Director of Gas

The Director of Gas has responsibilities under both the *Gas Act 2000* and the *Gas Pipelines Act 2000*. This includes the administration of the licensing system for gas entities and the establishment, monitoring and publication of standards and codes in respect of the services provided by gas entities.

The Director of Gas is also responsible for the Metering Data Provider scheme and certification of an Allocation Agent.

The Director of Gas must have regard to the wide ranging objectives of the Tasmanian regulatory framework, which includes facilitating development of a gas supply industry in Tasmania as well as the protection of consumer interests and the promotion of efficiency and competition.

The Director of Gas has broad code-making and information gathering powers, as well as the power to take over the operations of a gas entity. The Director of Gas has a discretionary dispute mediation role in relation to the activities of a gas entity.

Gas licensees are required under their licences to comply with Laws and Codes. They are also required to notify the Director of Gas of breaches, provide annual returns (which include performance information) and furnish the Regulator with their compliance plans which are subject to expert review.

The functions of the Director of Gas are funded through licence fees as provided by the *Gas Act 2000* and the *Gas Pipelines Act 2000*.

Attachment 1

NATIONAL FUNCTIONS as listed in Annexure 2 of the amended Australian Energy Market Agreement

1. **Distribution economic regulation** – services to be regulated, the form of regulation and tariff setting.
2. **Service performance incentive scheme** – for network service performance standards (as set by the jurisdiction where elected), and customer service performance standards, linked to economic regulation.
3. **Information disclosure** – information requirements for the AER to undertake its regulatory functions.
4. **Connection and capital contribution requirements** – new connection charges and capital works contributions.
5. **Distribution network expansion** – determining when extensions are part of a regulated service and how charges are levied.
6. **Distributor connection service obligations** – provision of connection and related services to users and the contractual relationship with retailer and customer.
7. **Distributor small customer disconnection/reconnection** – allowable disconnections or reconnections of small customers including those arranged by retailers.
8. **Distributor interface with other market participants** – determining the nature of distributor- retailer and distributor-embedded generator relationships including use of system.
9. **Metering** – obligations to install, maintain and read meters.
10. **Retailer obligation to supply small customers** – obligation on retailers to supply customers at a default tariff with minimum terms and conditions.
11. **Retailer failure arrangements** – arrangements to ensure customer supply continuity and wholesale market financial integrity.
12. **Retailer-small customer market contracts** – minimum contract terms and conditions.
13. **Retailer-small customer marketing** – market conduct obligations.
14. **Balancing regime, settlements, customer transfer** – balancing, settlement and contestable customer churn arrangements to ensure accurate financial reconciliation will be retained by independent market administrators.
15. **Distributor and retailer general business authorisations** – where necessary for matters other than technical capability and safety.

STATE AND TERRITORY FUNCTIONS (current responsibility retained) as listed in Annexure 2 of the amended Australian Energy Market Agreement

16. **Distributor technical/safety business authorisation** – licensing and authorisation schemes that require demonstration of technical capability.
 17. **Small customer dispute resolution** – obligation for distributors and retailers to have internal dispute resolution schemes and participate in independent dispute resolution (Ombudsman) schemes.
 18. **Load shedding and curtailment** – customer supply reduction sequence to maintain system security and reliability.
 19. **Service reliability standards** – standards to ensure network security and reliability.
 20. **Metering** – policies on the type of meters required for specific customer classes, accredited service provider arrangements, and load profile arrangements.
- Distribution and retail service areas** – specification of geographical areas in which responsibilities/obligations apply.

Attachment 2

Anticipated amendments to Tasmanian electricity legislation arising from the implementation of national energy reforms

<i>Electricity Supply Industry Act 1995</i>	
Functions to Remain with Jurisdiction	Functions to Transfer to National Framework
Part 2 – Administration	
Office of Regulator, s5-10 Executive and advisory committees, s11-12 Delegation, s13 Regulator’s power of direction, s14 Power to obtain information, s15 Confidential information,s16 Conferral of Regulator’s powers and functions on AER, s16A-D	
Part 3 – Electricity Supply Industry	
Licensing of Electricity Entities by Regulator, including: Issue of licences, s17-19 Terms and conditions of licence, s20-23 Licence decisions, appeals, transfers etc, s27-31	<p>Except:</p> <p>s17(2)(d) & s18(1)(c)(iv) In relation to a general business authorisation for retailing (not including technical, safety, emergency management and perhaps contestability roll-out depending on mechanism)</p> <p>s19(2)(fa) & s19(2A) Prevention of generator with substantial market power in Tasmanian market from holding retail licence (policy will require alternative implementation architecture due to transfer of business authorisation for retailing to AER)</p> <p>s22(2)(b-c), s25 & s38(1) Licence may confer exclusive right to sell electricity to non-contestable customers (policy may require alternative implementation architecture due to transfer of business authorisation for retailing to AER)</p> <p>s22(2)(d-e) Licence used to establish relationships between retailers and distributors (retention of arrangements for non-contestable customers)</p>

Functions to Remain with Jurisdiction	Functions to Transfer to National Framework
	s26 Obligation to supply (jurisdiction to determine host retailer or other arrangement – may differ for non-contestable customers)
Special provisions relating to Basslink s36-37A Relates to specific Ministerial powers, compliance plan to be audited by person approved by Regulator	
Retailing of electricity Fixing, amending and publication of tariffs, s38-39 Relationship with Tasmanian Electricity Code	Except: s39A-40 Application of tariffs (method of application of jurisdiction tariffs to be determined) s42-44 Disconnection for non-payment, reconnection and liability of occupier of premises
Dispute mediation by Regulator, s45	
Non-compliance (cancellation of licence by Regulator), s47	
Regulator’s powers to take control of operations, s48	
	Retailer of Last Resort s49AA
The Tasmanian Electricity Code s49A, including: Dispute resolution System operation and system security Distribution and transmission network connection (technical specifications) Supply and sale of electricity to non-contestable customers (tariffs only) Safety and environmental codes of practice Code may adopt National Electricity Law or National Electricity Rules	Except: s49A(3)(a) Application of code to regulation of electricity markets s49A(3)(h) Transmission, distribution and retail pricing principles s49A(3)(i) Access to electricity infrastructure s49A(m) Principles for the separation of accounts and functions within entities s49A9(n) enforcement of tariffs (jurisdictions to retain tariff equalisation schemes)
Application of the <i>Trade Practices Act 1974</i> and the Competition Code, s49F	

Functions to Remain with Jurisdiction	Functions to Transfer to National Framework
Ownership of electricity infrastructure, s49G	
Indemnity for Code Change Panel and Reliability Network Planning Panel, s49H	
Part 4 – Land Acquisition and Use for Electricity Infrastructure	
Part 5 – Electricity Officers	
Part 6 – Emergency Restriction of Electricity Use	
Part 8 - Enforcement	
Part 9 – Administrative Review and Appeal	
Part 10 – Miscellaneous, including: Power of exemption Warrants Offences Evidentiary provisions and provisions relating to proceedings in a court Damage caused by officers in exercising statutory powers Power to make regulations	Except: s122(2BB) Retailer of last resort

<i>Electricity Supply Industry Regulations 1996</i>	
Functions to Remain with Jurisdiction	Functions to Transfer to National Framework
Exemption of certain generation, transmission and distribution from need for licence, s4(1-2)	
	s4(3) - Exemptions from electricity retail licences (local exemptions may require excluded customer class)
Requirement for certain NEMMCO-registered entities to publish storage data on a website, s4A	
Definition of work of a minor impact for certain electricity infrastructure works, s5	
Dimensions and requirements of acquired land defined for planning purposes, s6	
Exemption for electricity used solely for mining operations, s7	
Appointment of System Controller, s8	

<i>Electricity Supply Industry (Price Control) Regulations 2003</i>	
Functions to Remain with Jurisdiction	Functions to Transfer to National Framework
Part 2 – Transmission Revenue Cap Determinations (will automatically expire)	
Part 3 – Declared Electrical Service Price Determinations and Investigations (until current determinations are complete, then only tariff determination and investigation powers required)	
Part 3A – 2007 Retail Price Determination (required until next determination expires – will automatically expire)	
Part 4 – Miscellaneous, including: Offences Determination by AER not reviewable under Act Minister can appoint Associate Regulator Service of documents Transitional and savings provisions	

<i>Electricity Supply Industry (Tariff Customers) Regulations 1998</i>	
Functions to Remain with Jurisdiction	Functions to Transfer to National Framework
	Part 2 – Tariffs
s5, Tariffs to be approved by the Regulator	s6 Matters to be contained in a tariff
	Part 3 – Security for Payment
	Part 4 – Accounts and Payment
Part 5 – Disconnection of Supply	Except parts not relating safety, emergency or works purposes
	Part 6 – Rights and Obligations of Customers
	Part 7 – Miscellaneous
	Including: S30, Life support machines s31, Time for providing electrical connections

<i>Electricity Supply Industry (Contestable Customer) Regulations 2005</i>	
Functions to Remain with Jurisdiction	Functions to Transfer to National Framework
Part – 2 Contestable Customers	
Including: Definition Role of Regulator in assessing contestability	
	Part – 3 Fallback Arrangements
	Including: Approval of pro-forma contract by Regulator, s5-6 & 8 (local fallback arrangements not required)
	Part 4 – Retailer of Last Resort (Unsure whether this will go to AER given context of contestability rollout)

Tasmanian Electricity Code	
Functions to Remain with Jurisdiction	Functions to Transfer to National Framework
Chapter 1 – Introduction and Code Supervision	
Functions of the Regulator Schedule for interpretation, notices, records Note: s1.1.3 Scope of the Code (to be updated)	
Chapter 2 – Licensees and Fees	
Application of licenses Regulator’s account License fees	
Chapter 6 – Network Pricing for Distribution Systems and Schedules (until current determination expires)	
Chapter 8 – Distribution System Operation	
Asset register – physical description and location Public lighting – repair or replace Distribution System Planning Report Customers Electrical Installations (insofar as standards relate to safety, reliability or technical performance) Embedded generators – technical and safety standards Load information	Except: s8.1.2(b)(2) review customer-retailer-distributor arrangement s8.2.2(b) Asset register – value of each item of electrical infrastructure and other assets s8.3.1 Customer charter (not required) s8.4 Complaint handling s8.5 Supply restoration and low reliability payments s8.7.1 Embedded generators - agreement to connect and commercial arrangements s8.6.11(c) Life support provisions
Chapter 8A – Distribution Powerline Vegetation Management	
Chapter 9- Retailing	
Part B – Retail Metering Minimum standards for new metering equipment	Except: Part A – Customer Retailing Internal credit management policy Accounts for electricity consumed Methods of payment Payment difficulties Customer charter Information to be provided on request Schedule of prices to be payable under tariff Customer information Complaint handling Part B –Retail Metering Installation and ownership of metering equipment Installation testing of new metering

	equipment Metering security Collection of metering data Field testing Maintenance testing Defective metering equipment Obligations in respect of metering data
Chapter 12 – Administrative Functions	
Role of Regulator in disputes between licensees Code change procedure Code Change Panel Confidentiality Incident reporting Reliability and Network Planning Panel Code consultation procedures Management and compliance plans for licensees Performance reports by licensees	



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CONTACT DETAILS

Office of Energy Planning & Conservation
Department of Infrastructure, Energy &
Resources
Level 9, 10 Murray St
HOBART TAS 7000