

Office of the Tasmanian Energy Regulator

BACKGROUND PAPER

**DRAFT TASMANIAN GAS CUSTOMER
TRANSFER AND RECONCILIATION CODE**

December 2003

Background Paper on Draft Gas Customer Transfer and Reconciliation Code

The Tasmanian energy sector has in recent years seen the introduction of natural gas by high pressure transmission connection with Victoria. The further development of the natural gas industry requires the development of the distribution network and competitive retailing.

The Government has entered into development agreements (with Powerco) for the roll-out of the distribution network. The retailing sector will contract for the supply of gas to customers and acquire distribution network services from Powerco. The regulatory arrangements to support retailing and customer connection must be completed to give all industry participants, including customers a complete set of rules in which to contract and make necessary investments. The sector will develop on the basis of competitive retailing where customers seek out the offers best suited to their needs. Multiple retailing is a significant change for utility regulation in Tasmania, and requires more sophisticated inter-company arrangements than the exclusive franchise model which currently applies to the electricity sector.

The Tasmanian Energy Regulator (Regulator) has developed a draft *Customer Transfer and Reconciliation Code* for the Tasmanian natural gas industry. The draft code sets out arrangements for:

- the identification of metering installations;
- the transfer of customers between retailers;
- the provision and testing of meters;
- meter reading and the application of metering data; and
- the allocation and reconciliation of gas quantities between retailers, including audit and dispute resolution.

The Regulator invites public and gas entity submissions on this draft code. Submissions will be placed on the Regulator's website to ensure that as much information as possible is provided to interested parties.

This paper is intended to assist persons making submissions.

The draft code is available through the Regulator's website at:

<http://www.energyregulator.tas.gov.au>

It is preferred that submissions be lodged as electronic documents by e-mail to:

office@energyregulator.tas.gov.au.

Alternatively, submissions in hard copy may be sent to:

The Licensing Officer
Office of the Tasmanian Energy Regulator
GPO Box 770
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Submissions must be received no later than 5.00 pm on Friday 24 January 2004.

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Introduction

Background to the Tasmanian energy sector and the Natural Gas Project

Tasmania has for almost a century developed its endowment of hydro electric resources. This has driven internationally competitive industrial development, as well as a high standard of living.

While hydro electric resources are a sustainable energy resource, they are finite in terms of the inherent capacity which may be exploited. By the mid 1980's the limit of that capacity had been reached, with perhaps some incremental gains to be made through improved efficiency and some 'mini hydro' projects. This puts a cap on development potential, at least in terms of investment requiring significant electricity inputs. It also means that some industrial development which relies upon natural gas either as a factor input or for energy production, has been denied access to Tasmania. Continued load growth also exposes the State to potential energy shortfalls, especially in the face of possible climate change.

The State has sought both opportunity and security of supply through two major energy infrastructure projects, the Basslink interconnection with the National Electricity Market, and the Tasmanian Natural Gas Project.

In 1997, the State determined to appoint a preferred developer to investigate the feasibility of introducing natural gas to Tasmania on a commercial basis and called for expressions of interest from national and international participants in the natural gas industry. As a result of this process Duke Energy International (Duke Energy) was selected in 1998 as the preferred proponent to commence the Tasmanian Natural Gas Project (TNGP), being the construction of a high pressure transmission pipeline from Victoria to Tasmania.

Duke Energy completed its feasibility study in February 1999 and found the TNGP to be technically and economically feasible. In particular Duke Energy's market analysis indicated that there was sufficient potential demand for natural gas in Tasmania to develop a viable natural gas industry.

In April 2001, following more detailed analysis into the TNGP, Duke Energy entered into a Development Agreement with the State to bring natural gas to Tasmania.

In December 2002, Duke Energy completed construction of the Tasmanian Gas Pipeline (TGP) which runs from Longford in Victoria across Bass Strait to Rosevale (near Launceston). From Rosevale, it runs south to Bridgewater (near Hobart) and west to Port Latta on the north-west coast.

Background to the Selection of a Distributor in Tasmania

In order to deliver gas widely to customers, a lower pressure distribution system is required.

The business of a gas distributor (analogous to an electricity distributor) is to provide services related to the transport of gas and its delivery to customers. A distributor does not sell gas by retail to customers.

The Government determined that a tender process conducted in accordance with the *National Third Party Access Code for Natural Gas Pipelines Systems* (Access Code) should be used to select a distributor.

The tender process failed to attract tenders that met the mandatory requirements of the tender and the Government's stated aims in relation to coverage, speed of rollout and risk allocation.

Following direct negotiations with a number of interested parties, the Government entered a memorandum of understanding with Powerco Limited, a New Zealand gas and electricity distributor. Subsequently, the parties entered a development agreement for the construction and operation of stage 1 of the distribution network. This provided for the roll-out of a backbone network to at least 17, and up to 23, industrial customers in at least 5, and up to 9, cities and towns.

Licences have been issued to Powerco Tasmania Pty Ltd (Powerco Tasmania) for the construction and operation of stage 1.

Construction of stage 1 of the network commenced in October 2003 and is expected to be completed by December 2004.

Powerco Tasmania and the Government have entered another Development Agreement, for stage 2A of the distribution system. This stage covers the initial roll-out of the network to residential and small commercial customers. Construction of this stage is expected to commence in February 2005 and be completed in April 2007. When this stage is completed, gas will be available to approximately 38 500 customers in Burnie, Devonport, Hobart and Launceston.

Background to the Licensing of Retailers in Tasmania

The business of a gas retailer (analogous to an electricity retailer) is to sell gas by retail to end-use customers. Retailers do not own regulated assets, rather they manage supply and demand by establishing upstream and downstream relationships in the market.

The area covered by the retailer is determined directly by the area covered by the distribution system.

Following the termination of the tender process, the Government decided to allow full competition in the retail of gas from the commencement of the gas market. The retailing of gas in Tasmania is, therefore, a fully contestable industry in which it is envisaged there will be a number of participants.

Tasmanian Natural Gas Market - Structure and Conduct

The regulatory model proposed for Tasmania is intended to be the minimum necessary for the effective and efficient operation of the industry. There are certain minimum requirements to guide market conduct and to co-ordinate intra-industry business transactions. Market conduct is inextricably linked to market structure, with the making of codes binding upon the industry one of the primary means of ensuring that market conduct remains in line with the public interest.

The three sectors in the Tasmanian natural gas industry; transmission, distribution and retailing, are discussed below.

The Natural Gas Transmission Market

The only holder of a gas transmission licence in Tasmania is DEI Tasmania Holdings Pty Ltd (DEITH). It is not envisaged that other transmission companies will enter the Tasmanian industry in the foreseeable future as there is significant under-utilised capacity in the transmission network.

DEITH supplies four foundation customers which are taking gas directly from the TGP. These include the Bell Bay power station, which has been converted to run on natural gas, rather than fuel oil.

It is noted that the Australian assets of Duke Energy are for sale with expressions of interest having been called for. While ownership of the pipeline may change, the assets are being sold as a going concern and there should be no change to the existing industry arrangements.

The Natural Gas Distribution Market

At this time, Powerco Tasmania is the only holder of licences for the distribution of gas in Tasmania.

Powerco Tasmania has an exclusive franchise in relation to the distribution of gas to the sites of seventeen major industrial and commercial customers. This franchise expires on 29 April 2010. Powerco Tasmania also has the opportunity to extend the franchise to include the supply of a further six large customers. In order to secure this extension, supply to those customers must be established by 30 October 2004.

The franchise relates only to the distribution of gas to a maximum of these twenty three identified customers. Accordingly, the franchise is no barrier to independent retailers selling gas to those customers or to other distributors entering the market to supply other customers. There is no regulatory constraint on Powerco Tasmania developing network extensions to customers or sites other than those included in the franchise.

The Natural Gas Retail Market

At present, only Powerco Australian Holdings Pty Ltd has a licence to sell gas by retail in Tasmania. Aurora Energy Pty Ltd, the sole Tasmanian electricity retailer, has announced its intention to apply for a licence. There have been informal enquiries made to the Director of Gas by other potential retailers. A matter of interest to prospective retailers is the regulatory arrangements relating to customer transfer, metering and gas reconciliation.

Distribution and Retail Codes

On 10 July 2003, the Minister for Economic Development, Energy and Resources issued, under section 38A of the *Gas Act 2000*, a Gas Distribution Code and a Gas Retail Code. These codes will be administered by the Director of Gas.

The purpose of the Distribution Code is to set out:

- the minimum standards for the operation and maintenance of a distribution system; and
- the minimum obligations with which a distributor must comply in providing distribution services.

The Retail Code establishes the minimum terms and conditions under which a retailer must sell gas to small retail customers.

Why have a Customer Transfer and Reconciliation Code?

As a consequence of the industry arrangements detailed above, it is possible that, within a short time after the commencement of the market, there could be multiple retailers of gas dealing with a number of distribution networks.

The *Gas Act 2000* requires an industry regulatory regime which promotes a competitive and efficient industry. It must also acknowledge the scale and stage of development of the market. The promotion of these objectives suggests the regulatory arrangements should align as far as possible with other jurisdictions in order to facilitate market entry.

An industry structure with competitive retailers requires procedures for:

- (1) customer transfer between competing retailers;
- (2) allocations of gas and use of system services; and
- (3) appropriate metering installations, standards and reading.

The entire industry supply and distribution chain has an interest in the integrity of these procedures as they affect the customer's final bill, payments for transmission and distribution services, and settlement for, and reconciliation of, the physical supply of gas.

It should be noted that any customer transfer and reconciliation code will not apply to customers supplied directly from the Duke Energy gas transmission pipeline. This reflects the fact that these customers have direct connections to the transmission system. These direct connections do not present the same complexity for reconciliation as do multiple retailers providing supply from the one network. The connection and metering arrangements for such transmission customers would be agreed as a matter of contract.

While attempting to ensure that it is appropriate for the current stage of development of the industry, the Transfer Code has been developed to accommodate expected industry growth. This approach may result in the Transfer Code prescribing arrangements which are a necessary foundation for industry development, but which may not require full implementation in the initial stages. Given that the costs of implementing such arrangements may outweigh the benefits of so doing, the Regulator should have the power to waive compliance with the Transfer Code or parts of it. Such a waiver could be granted on the application of a licensed entity, on the basis of an analysis of the costs and benefits of compliance.

Scope of the Proposed Code

The prospect of access to distribution networks by a number of competing retailers dictates a code which:

- enables gas customers to transfer from one competing retailer to another; and
- provides a clear process for determining which persons possess, control and/or own gas at the points gas enters the distribution system and how the quantities of gas attributable to each such person are to be apportioned.

The Customer Transfer and Reconciliation Code (Transfer Code) aims to promote the development of a competitive gas market in Tasmania by providing for uniform:

- (a) processes for customer transfers between retailers;
- (b) standards for meters and metering installations; and
- (c) processes for allocation and reconciliation of gas quantities between users at the points in a distribution network at which possession, control or ownership of gas passes from one person to another.

The following principles form the basis of the Transfer Code, as they are seen as essential to ensuring efficient information exchange, customer transfer, allocation and reconciliation processes:

- (a) There are non-discriminatory rules for allocation, settlement and reconciliation at distribution system transfer points.
- (b) Transaction costs are to be kept to a minimum.
- (c) Low cost and efficiency will be promoted by consistency in customer transfer and information exchange processes.
- (d) All persons involved in customer transfers, provision of data, and provision of allocation and reconciliation services must comply with the code rules and act with all due diligence and in good faith in all matters to ensure that information is processed in a complete, accurate and timely manner.
- (e) Commercially sensitive information is to be kept confidential.
- (f) Before trading any gas on the downstream distribution network, a person must first become a party to a contract with the relevant *allocation agent*¹.
- (g) All persons bound by the code and who are required to provide data to any other person must do so in a full and complete manner and by the specified deadlines.
- (h) Where information is not available in time, the best available information must be used to complete the process on time.

¹ The term “*allocation agent*” is defined in chapter 10 of the Transfer Code.

The Draft Transfer Code

The draft Transfer Code is divided up into ten chapters. A brief outline of each of these follows.

Chapter 1 deals with the “machinery” of the code eg the principles underpinning it, who is bound by it, the process for amending the code etc.

Chapter 2 concerns the numbering of meters. Each metering installation must have a unique number which must be obtained by the distributor from the Director of Gas. Each distributor must maintain a database of these numbers and must provide certain information upon request.

Chapter 3 governs the transfer of customers between retailers. A transfer can only be initiated with the consent of the customer. A transfer notice must be given by the new retailer to all other relevant entities. There is provision for these entities to object to the transfer but the grounds for objection are very limited. If no objection is made, the other entities must provide a response to the transfer notice. A meter reading must be carried out on the date the transfer takes place. Schedule 1 specifies the format of the names for the electronic files associated with transfers.

Chapter 4 deals with the provision of meters. Either the retailer or the distributor will be responsible for the provision, installation and maintenance of meters. A meter must be installed at each gas delivery point and the responsible entity must maintain a database of details of all its meters. This chapter also imposes obligations with respect to access to metering data and accuracy and security of meters.

Chapter 5 imposes obligations with respect to the testing and, where necessary, adjustment or replacement, of meters. There are requirements to test meters prior to installation and on request, as well as to carry out periodic sample testing of classes of meters. This chapter also deals with the use of correctors and correction factors.

Chapter 6 deals with the reading of meters and the collection, storage and handling of metering data. There is also provision for estimation of consumption in certain circumstances. The estimation methodologies to be applied are set out in schedules 2 and 3. Access by customers to metering data and the transfer of data to the *allocation agent* are also covered. This chapter also deals with the profiling of gas consumption by various classes of customers for the purpose of allocating to the various retailers quantities of gas consumed, where the exact usage patterns cannot be determined.

Chapter 7 deals with allocation. “Allocation” is defined as “the process of attributing quantities of energy to persons with an interest in any gas at a shared receipt point”, ie dividing between retailers responsibility for gas at the point the gas enters the distribution system. Allocation is carried out by an *allocation agent* which is supplied metering information by the various *metering data providers*. The *allocation agent* is obliged to carry out day-end and month-end allocations. The chapter contains the algorithms by which the allocations are calculated. It also provides for the adjustment of allocations to correct for estimated quantities and the carrying out of audits.

Chapter 8 concerns reconciliation. An obligation is imposed on the *allocation agent* to carry out an annual reconciliation. Reconciliation is the comparison of actual metered quantities with estimated quantities for the purpose of establishing whether or not the estimation methodology is accurate and, if not, altering it.

Chapter 9 may cover dispute resolution. Identification of the appropriate dispute resolution model is one of the aims of consultation on the Transfer Code. See the section “Dispute Resolution” later in this paper.

Chapter 10 deals with definitions and interpretation of the provisions of the Transfer Code.

Specific Issues About Which Input Is Sought

References to clauses are to clauses in the draft Transfer Code.

Application of the Transfer Code (Clause 1.4)

The Transfer Code is to be made under the Gas Act and pipeline operators are licensed under the *Gas Pipelines Act 2000*. It is not clear that the existing pipeline operator’s licence binds the pipeline operator to this proposed Transfer Code. Accordingly, if pipeline operators are to be bound, an additional licence obligation will be required. This will necessitate the inclusion, by licence amendment, of an additional condition in existing licences. This condition would be included in any future licences granted to pipeline operators.

The view of the Director of Gas is that transmission pipeline operators should be bound to the Transfer Code, on the basis that pipeline operators have a direct interest in the quantities of gas allocated to retailers. This interest arises because allocated quantities are used to calculate the transmission charges payable by each retailer. Any disputes with respect to allocation between retailers will necessarily have implications for the relevant pipeline operator.

Who needs to be bound by the Transfer Code?

Are all the persons required to be bound by the Transfer Code listed in this clause?

Meter Identification (Clause 2.1)

Each metering installation needs to be uniquely identified. It is proposed that identifier numbers will be allocated by the Regulator. NEMMCO runs a national scheme for the identification of electricity and gas metering installations (the National Metering Identifier or NMI scheme).

The Director of Gas has secured a block of NMIs and proposes to allocate numbers from that block to Tasmanian gas metering installations. This is consistent with Tasmania being part of an interconnected national gas market.

Is the adoption of NMI format for meter identification appropriate?

Availability of Customer Consumption Information to New Retailer (Clause 3.2.4 and 3.3.1(b)(xx))

The Transfer Code provides that this information be furnished in response to a transfer request. Such a request can only be initiated with the consent of the customer. The customer must specifically consent to the release of consumption information.

This information is important to both the customer and the potential retailer as it provides the basis upon which an offer can be developed based on the “load profile” of that customer. It really amounts to a direction by the customer to the holder of metering data to provide that information to another person.

Should a customer’s consumption history be made available to a potential new retailer?

Transfer of Customer with Outstanding Debt

Allowing a debtor to transfer to a new retailer will reduce the leverage the existing retailer has to recover its debt. The Director of Gas is of the view that the threat or use of disconnection as a credit management mechanism should not be encouraged.

Retailers should be encouraged to develop methods, other than depriving the customer of access to gas, to resolve disputes, whether about payment or other matters.

In an environment where gas may be retailed in conjunction with other services, eg connection, appliances, credit or other energy supply, it is important to ensure that disputes in relation to other services are not susceptible to resolution by disconnection or the threat of disconnection. It is critical to ensure that, in the case of dual fuel retailers, disconnection of electricity supply is not available as a means of applying pressure in relation to disputes involving gas supply.

The decision as to whether or not a retailer takes on a customer with an outstanding debt to another retailer is a commercial decision for the new retailer and the ordinary credit reference arrangements should be appropriate and adequate.

Should a customer with an outstanding debt to a retailer be prevented from transferring to a different retailer?

Oral Consent to Transfer (Clause 3.2.3)

The experience in other jurisdictions and service industries has been that the requirement for consent in writing results in a significantly lower rate of customer transfers. This would suggest that the requirement for written consent imposes a barrier to switching between retailers and hence the development of a competitive market.

It is suggested that customer consent requirements for switching retailer should be consistent with the requirements for contracting to take a supply of gas. At present, there are no specific requirements with respect to signing up to take supply.

Accordingly, a retailer may rely on oral consent but will need to manage the risk with respect to its ability to prove a contract exists.

Customer protection in terms of marketing will be the responsibility of the Office of Consumer Affairs and Fair Trading, which will be able to give guidance for the benefit of customers and industry participants.

The Transfer Code has been drafted on the basis that the explicit informed consent necessary to initiate the transfer process can be given orally, as well as in writing or by electronic communication. This would not preclude a gas entity deciding that it would only initiate transfers based on written consent.

Should the Transfer Code require that a customer's consent to transfer be in writing or by electronic notice?

Allocation (Clause 7)

In a contestable retail market, the gas that is injected into the distribution system will be supplied to customers that may have contracts with a range of retailers. The role of the *allocation agent* is to estimate, on a daily and a monthly basis, the gas supplied to the customers of each of the retailers, in the absence of actual known daily and monthly metered quantities of gas for all customers. That is, the *allocation agent* allocates a quantity of gas to each retailer on a daily and monthly basis. When the customers' gas meters are read, which may be some months after the estimation has been done, the *allocation agent* adjusts the amounts previously estimated, where required.

This allocation and the final reconciliation will determine the liability of each retailer for distribution and transmission charges.

Allocation Agent

The role of *allocation agent* is an independent function founded in the Transfer Code.

It is proposed that provision should be made such that the *allocation agent* may be an independent person, but initially it is likely to be more cost effective to allow the distributor to hold that role as a separate ring-fenced function. It is not apparent that the distributor has such a conflict of interest that it should be barred from undertaking this role, either in its own right or by contract with another service provider.

The options would seem to be:

- licensing the *allocation agent*, on an exclusive but fixed term basis, and binding it to the Transfer Code. The Transfer Code would have to specify the characteristics which would qualify a person to act as *allocation agent* and set out the *allocation agent's* responsibilities.

This approach would require the making of a regulation in accordance with section 21(d) of the *Gas Act 2000* as there is currently no recognition in the Act for the licensing of such an activity. The Act does provide for the making of

regulations prescribing the licensing of operations in addition to those already specified;

- purely contractual arrangements between the *allocation agent* and other entities; or
- a combination of contractual arrangements and licensing. This would involve an arrangement whereby a gas entity (eg the foundation distributor) may have a licence condition to engage by contract a person to discharge the responsibility of allocation in accordance with the Transfer Code provisions.

This would have the benefit of contract administration being in the hands of an experienced party. It would also make the service provision contestable at the time of contract renewal. This should promote the provision of both a cost effective and efficient service. Thus, the role would be a monopoly during the life of each contract, but would be contestable on renewal of the contract.

The Director of Gas is of the view that the most appropriate manner in which to deal with this issue is by imposing an obligation upon the foundation distributor to ensure that some person performs the function of *allocation agent*. That person may be the distributor itself or a third party.

Which of the three options set out above is the most appropriate method of imposing the role and responsibilities of the *allocation agent*?

Should the Director of Gas retain a right to approve the proposed contractual party, including taking objections from interested persons?

Metering data provider²

The *metering data provider* is responsible for collecting and processing metering data and providing this information to the *allocation agent*. The same issues with respect to independence and licensing arise with respect to the *metering data provider* as do with respect to the *allocation agent*.

Allocation would seem to be a logical extension of this process and there would not seem to be any compelling reason preventing the two roles being carried out by the same entity. Requiring separate bodies would seem, in a very small market, to impose a more elaborate, and more costly process, than is necessary, for no discernible benefit.

It is envisaged that, in the short term and in the absence of other mandated arrangements, the distributor is likely to fill both *metering data provider* and *allocation agent* roles. This will likely result from the distributor owning and reading the meters and being best placed, in terms of efficiency and cost effectiveness, to carry out the very limited calculations which allocation in the near future will require.

² The term “*metering data provider*” is defined in chapter 10 of the Transfer Code.

It is noted that the Transfer Code and the Act are silent on metering provision and ownership. It is recognised that the distributor will generally be the natural provider of metering installations. The distributor needs to protect its own interests in terms of securing data necessary to support its use-of-system and other service charges. The distributor is also generally best placed to gain the benefits of both scale and scope in metering installation during the course of network roll-out. Nevertheless, it should be open to a retailer to negotiate metering arrangements other than the standard offering of the distributor, eg pre-payment metering.

Is it feasible to have the roles of allocation agent and metering data provider performed by the same entity, at least in the early stages of market development?

Is this appropriate?

Remuneration of allocation agent and metering data provider

The roles of distributor, *allocation agent* and *metering data provider* are three separate functions.

Nevertheless, it is recognised that, in the early stages of development of the gas industry, it may not be efficient to insist that each function be carried out by a separate entity. In those circumstances, the most likely outcome is that the distributor will take on the roles of both *allocation agent* and *metering data provider*. It is envisaged that separation of the roles would only occur if the development of the market suggests this is an appropriate and efficient outcome.

Should the distributor undertake the duties of *allocation agent* or *metering data provider* or both, it will be entitled to be remunerated for the work associated with the duties it takes on.

In view of the possible future separation of the three roles, it is not considered appropriate that the distributor's costs of acting as *allocation agent* or *metering data provider* should be bundled in its distribution charges (although end use customers need not see these separate charges).

It would be appropriate for the *allocation agent* and *metering data provider* to be remunerated on a fee for service basis and that if either of these roles is, or both of them are, filled by a distributor, they should be ring-fenced from the distributor's other activities. Separate accounting for the cost of these services will facilitate future separation of the roles and in the meantime provide transparency of the cost of these services.

Comment is sought in respect of the separate identification of the activity of *metering data provider* and *allocation agent*.

If these are separate activities, are their reasons why they should be undertaken by the distributor?

What degree of ringfencing (if any) may be appropriate if the activities are undertaken by the distributor?

Audits

There is potential for disagreement between parties with respect to the provision of metering data and the carrying out of allocation services. These activities are fundamental to the revenue and costs of the gas industry participants. In addition to the potential for disagreement relating to the application of complicated formulae, there will be circumstances where data is not available and estimates or other procedures will need to be applied.

An integral aspect of the prevention and resolution of disputes will be the ability for an affected party to rely upon established audit procedures or outcomes, or require a “special” audit in respect of allocations, data or procedures.

These provisions will need to bind the *allocation agent*. The *allocation agent* will need to be bound to the Transfer Code including the audit arrangements. This could be covered in the *allocation agent*’s “terms of engagement”, whether that be effected by contract or terms and conditions of licensing.

The allocation process is only one aspect of the regulatory scheme which will require audit. It is suggested that principles relating to audit and reporting could be incorporated into the proposed Gas Administration Code. These common principles could be drawn in wherever an activity under any code is required to be audited.

Dispute Resolution

The draft Transfer Code has been put forward to assist the industry in considering those matters necessary for its efficient development and recognises that there are certain issues which affect various parties and are not easily addressed by contract. This suggests that they may best be addressed by regulatory means in the form of a gas code.

Disputes as between particular parties may be resolved by contract, including allocation dispute resolution processes. Disputes involving retail customers should be dealt with by the parties, but retail customers will also have the benefit of recourse to the proposed Energy Ombudsman.

Dispute resolution procedures can be established by:

1. prescription – should the industry determine that a dispute resolution process is best prescribed by the Director of Gas, it is probable that a scheme similar to that detailed in schedule 1 of this paper would be proposed.
2. leaving the matter to contractual negotiations between parties; or
3. allowing participants to develop a scheme which may be adopted by reference in the Transfer Code, subject to approval by the Director of Gas.

The Director of Gas suggests that disputes as between industry participants ought be resolved between the parties. Nevertheless, in the event that there is a preference for regulatory intervention, a model dispute resolution clause has been included as schedule 1 to this paper. This draft has been modelled on the process provided for in the Tasmanian Electricity Code.

Allocation and Line-pack

The Transfer Code has been drafted on the assumption that *line-pack*³ will be insignificant and the allocation algorithms have been designed on that basis.

If *line-pack* is to be significant, it cannot be assumed that the volume of gas injected into the system during a month equates to the volume of gas removed from the system during that month. This means that the formulae associated with allocation services will need to be re-worked.

Retailers, in discussion with the distributor, are best placed to form a view about demand and pipeline capacity. This underlying assumption is brought to attention for their better information in assessing the draft Transfer Code, including the relevant algorithms.

Queuing

Queuing refers to the method of determining the order in which competing demands for gas which cannot all be met simultaneously are served. Queuing arrangements need to reflect the rights which use-of-system customers (retailers) have with respect to the transport of gas, and are contractual matters.

Queuing arrangements become an issue when the maximum supply capacity of the system is approached or exceeded. This may occur where load growth results in demand exceeding the design capacity of the system or where the supply capacity is constrained by some kind of malfunction, accident or planned outage. The distributor should have a policy to address these circumstances.

Given that the design capacity of the Tasmanian system is not likely to be approached for some time, it is proposed that the Transfer Code not deal with queuing arrangements and that this be left to contractual arrangements.

This is to be differentiated from curtailment in the face of an emergency, eg major infrastructure or plant failure. The Minister has certain powers and responsibilities in addressing such a circumstance (see section 45 of the *Gas Act 2000*).

Estimates and Adjustments

In circumstances where exact information is not available, eg. where a meter is unable to be read, it may be appropriate for estimates to be used.

Should the Transfer Code:

- *specify in what situations estimates will be acceptable;*
- *provide guidance as to an estimations methodology; and*

³ Line-pack is the amount of gas that is stored in the gas distribution and transmission system. The amount of line-pack will increase when the amount of gas injected into the system is more than the amount of gas used by customers. The amount of line-pack will decrease when the amount of gas used by customers is more than the amount of gas injected into the system.

- *set out a process for the making of adjustments, should more accurate information become available?*

Proposed estimates methodologies are set out in schedules 2 and 3 of the draft Transfer Code.

Are these methodologies appropriate?

Power of the Director of Gas to Waive Compliance

The Transfer Code is being prepared on the basis that it will be adaptable to the needs of a developing industry. It may be that some provisions will turn out to be more elaborate than required for the early stages of the Tasmanian industry.

It may be appropriate for the Director of Gas to determine, on the basis of a cost-benefit assessment, that the Transfer Code or particular parts of it ought not apply to particular entities in certain circumstances. This waiver process could be initiated by a licensed gas entity. The Director of Gas would be bound by the consultation procedures to be incorporated in code administration rules (yet to be developed but modelled on those in the Tasmanian Electricity Code), as well as a duty of administrative fairness as provided for in section 8(2) of the *Gas Act 2000*.

Should the Director of Gas have the power to waive compliance with the Transfer Code or parts of it? If so, on what basis?

SCHEDULE 1 – Possible dispute resolution provision

9 Dispute Resolution

9.1 Application and guiding principles

9.1.1 The dispute resolution regime provided for in this clause 9 applies to any dispute which may arise under this *Code* between parties to this *Code*.

9.1.2 It is intended that the dispute resolution regime set out in this clause 9 should to the extent possible:

- (a) be simple, quick and inexpensive;
- (b) preserve or enhance the relationship between the parties to the dispute;
- (c) take account of the skills and knowledge that are required for the relevant procedure;
- (d) observe the rules of natural justice;
- (e) place emphasis on conflict avoidance; and
- (f) encourage resolution of disputes without formal legal representation or reliance on legal procedures.

9.1.3 Subject to clause 9.1.4, where any dispute arises the parties concerned must comply with the procedures set out in clauses 9.3 to 9.5 before taking any other action in relation to the dispute.

9.1.4 Clause 9.1.3 does not prevent a party seeking an interlocutory injunction from a court of competent jurisdiction.

9.2 Dispute resolution adviser

9.1.5 The *Director of Gas* must appoint a person from time to time to be the Dispute Resolution Adviser (*adviser*).

9.1.6 The *adviser* must:

- (a) have a detailed understanding and experience of dispute resolution practice and procedures which do not involve litigation (alternative dispute resolution);

- (b) have the capacity to determine the most appropriate alternative dispute resolution procedures in particular circumstances;
- (c) have an understanding of the *gas* industry or the capacity to quickly acquire such an understanding; and
- (d) not be a party to this *Code* or be an *associate* of a party to this *Code*.

9.3 First stage dispute resolution process

Where any dispute arises under this *Code*, the parties concerned must observe the following procedures before taking other action in relation to the dispute:

- (a) In the first instance, one of the parties concerned must raise the dispute by giving written notice to the other party or parties.
- (b) Once a party has given notice as described in clause 9.3(a) the parties concerned must use *best endeavours* to resolve the dispute.

9.4 Second stage dispute resolution process

9.4.1 If the dispute is not resolved through the first stage dispute resolution processes set out in clause 9.3 within:

- (a) in the case of disputes about metering, 2 *business days* after a notice under clause 9.3(a) (or such other period agreed in writing by each party to the dispute); or
- (b) in all other cases, 10 *business days* after a notice under clause 9.3(a) (or such other period agreed in writing by each party to the dispute),

a party (the complainant) may, provided it has, in good faith followed the first stage dispute resolution process processes set out in clause 9.3, refer the matter to the *adviser* who must follow the procedure set out in this clause 9.4. In referring the matter to the *adviser*, the complainant must set out in writing a brief history of the dispute including:

- (c) the names of the parties to the dispute;
- (d) the grounds of the dispute; and

- (e) the results of any previous dispute resolution processes undertaken pursuant to this *Code* in respect of the dispute.

9.4.2 Any other party to the dispute may provide the *adviser* with its own short written history of the dispute or may comment thereon.

9.4.3 Where a dispute has been referred to the *adviser* under clause 9.4.1, the *adviser*, before taking any action to resolve the dispute, must be satisfied that the dispute has arisen under this *Code*.

9.4.4 If the *adviser* is satisfied that the dispute has arisen under this *Code*, the *adviser* must:

- (a) in the case of disputes about metering, immediately (or such other period agreed in writing by each party to the dispute); or
- (b) in all other cases, within 2 *business days* after a notice under clause 9.4(1)(a) or clause 9.4.1(b) or such other period agreed in writing by each party to the dispute,

either

- (c) refer the dispute for resolution by a *Dispute Resolution Panel (DRP)*; or
- (d) decide that the dispute should be resolved by other some other form of dispute resolution process laid down by the *adviser*.

9.4.5 If the dispute resolution process laid down by the *adviser* does not result in a determination or a resolution of the dispute within:

- (a) in the case of disputes about metering, 2 *business days* (or such other period agreed in writing by each party to the dispute); or
- (b) in all other cases, 10 *business days* (or such other period agreed in writing by each party to the dispute),

the *adviser* may then refer the dispute for resolution by a *DRP*.

9.5 Dispute Resolution Panel

9.5.1 Where the *Adviser* refers a dispute for resolution by a *DRP*, the *adviser* must establish a panel comprising three persons that:

- (a) do not have any interests which would conflict with an impartial resolution of the dispute; and

(b) are either:

- (i) experts in the field to which the dispute relates; or
- (ii) professionally trained in dispute resolution techniques.

9.5.2 The **DRP** must select the form of dispute resolution process which it considers appropriate in the circumstances.

9.5.3 In the case of disputes about metering, the **DRP** must ensure that the dispute resolution process selected is completed within 10 **business days** of referral of the dispute to the **DRP** (or such longer period as the **Director of Gas** may permit following a request by the **DRP** for an extension of time). Within 5 **business days** (or such other period determined by the **DRP** and notified to the parties in writing) after reaching a mediated solution or of notification by the **DRP** of the completion of the dispute resolution process (as the case requires), the parties must report back to the **DRP** on actions taken pursuant to the mediated solution or any **DRP** determination.

9.6 Cost of dispute resolution

9.6.1 Except as provided in clause 9.6.2, the costs of any dispute resolution processes (other than legal costs of one or more parties) including the costs charged by the **adviser** and any third party for facilitating the dispute resolution procedures, are to be borne equally by the parties to the dispute resolution process unless otherwise agreed between the parties as part of the dispute resolution process.

9.6.2 Costs of the dispute resolution process (including legal costs of one or more parties) may be allocated by the **DRP** for payment by one or more parties as part of any determination.

9.7 Effect of resolution

A resolution of the dispute agreed between the parties to the dispute and, a determination of the **DRP** or a determination as a result of any other form of dispute resolution pursued following a decision by the **adviser** shall be binding on the parties to the dispute, including, without limitation, any provision of the resolution or determination relating to the payment of any moneys by any of the parties and any provision as to the performance of specific actions by any of the parties.