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## **Proposed Framework Schedule for Transfer of Distribution and Retail Functions**

### **1. Introduction**

1.1 This submission, from the Essential Services Consumer Council of the ACT (the ESCC) is in response to the call by the MCE Standing Committee of Officials for submissions on the Proposed Framework Schedule for Transfer of Distribution and Retail Functions, as notified in the Energy Market Reform Bulletin No.50 dated 13 October 2005.

1.2 Firstly I must thank the MCE Secretariat for extending the deadline for receipt of this Submission until 15<sup>th</sup> November 2005. The ESCC was not able to turn its attention to this Proposed Framework Schedule until very late in the Consultation Period. For this reason, the ESCC's Submission discusses only selected parts of the Schedule. Our failure to comment on other parts of the Schedule should not be taken as support for, or opposition to, those proposals by the ESCC.

### **2. About the ESCC**

2.1 The ESCC is established under Part 11 of the *Utilities Act 2000* (ACT) ("the Act"). The ESCC commenced operations on 1 July 2001, taking over and expanding upon the functions of the former Essential Services Review Committee.

#### 2.2 Council Functions –

Section 170 of the Act states that the Council's functions are:

- (a) to facilitate the resolution of complaints;
- (b) to determine unresolved complaints under Part 12 of the Act;
- (c) to ensure, so far as practicable, that utility services continue to be provided to persons suffering financial hardship;
- (d) to protect the rights of customers and consumers under the Act;
- (e) to advise the Minister and the ICRC on any matter relating to the Council's functions;
- (f) to do anything incidental to any of its other functions.

## **Essential Services Consumer Council** (established under Part 11 of the *Utilities Act 2000*)

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- 2.3 From the above set of functions, Council has developed four broad activity streams:
- managing client hardship cases to ensure continuity of utility supply (function (c));
  - assisting in the resolution of issues and complaints raised by customers and consumers (function (a));
  - adjudicating complaints by customers and consumers against utilities under Part 12 of the Act (function (b));
  - addressing systemic issues and problems in the relationship between utilities and their customers/consumers, and proposing remedial courses of action to Government, the ICRC or the utilities (functions (a), (d) and (e)).

These activities are undertaken by the Council collectively, or by a member or members of the Council nominated by the Chairperson. Council staff provide administrative support for these activities.

2.4 The ESCC consists of a Chairperson, a Deputy Chair and 9 other council members and uses a range of processes to undertake its functions. These processes are described in Attachment A.

2.5 The ESCC delivers unique arrangements for the management of cases in the ACT where energy and water customers are under threat of disconnection for non-payment of outstanding accounts. These arrangements have been developed specifically to suit the confined demographic of the ACT and are unlikely to be directly scalable to jurisdictions with higher and more dispersed populations. Nevertheless, the ESCC believes that our experience in managing hardship cases in the ACT could be appropriately modified to suit the demographics of other jurisdictions.

2.6 A recurring feature of the Proposed Framework Schedule is an emphasis on the need for electricity and gas regulation to be consistent. An important feature of the ESCC arrangements in the ACT is that these arrangements have been consistently applied to the supply and distribution of both electricity and gas, and also to water and sewerage supply.

2.7 A copy of the ESCC's Annual Report for 2004/05 is at Attachment B.

### **3. Comments on the Consultants' Discussion Paper and Appendices**

3.1 The ESCC notes that the Consultants who prepared the Discussion Paper and Appendices completely failed to understand the arrangements in place in the ACT whereby the ESCC manages utility hardship. As a result, they have failed to describe the ACT scheme in the Appendices and it follows that some of the "Recommended Policy Criteria" and Recommended Approach" in the Discussion Paper are based on inadequate information.

3.2 In this section, the ESCC discusses inadequacies in Appendix A, a Summary of Regulatory Functions: Electricity. Appendix B, dealing with gas, suffers from the same inadequacy in research and description.

3.3 The principal failures in Appendix A arise in relation to section 3.5 - Consumer Protection (Distribution), ACT, Disconnection – and section 4.6 – Consumer Protection (Retail), ACT, Disconnections. In both cases, the Paper refers only to the Consumer Protection Code which, in cl 17.1, makes an oblique, facilitative reference to the ESCC. The analysis fails to take account of the significant provisions in the Utilities Act relating to disconnection, including:

- s 192 the ESCC has power to make an interim order to maintain or restore utility supply where disconnection is imminent or has occurred because of non-payment of a utility account. The utility must restore supply within 24 hours;
- s 207 after a hearing, the ESCC may direct a utility to maintain supply, including making ancillary directions in relation to the period of maintenance of supply and stated conditions applying to the consumer;
- s 208 discharge of customer debt;
- s 218 reimbursement of utilities for customer debts discharged.

3.4 These provisions in the Utility Act provide the basis for a unique, integrated management of utility debt and utility hardship in the ACT. The ESCC's Annual Report, at Attachment B, describes the operation of this system in detail.

3.5 Appendix A is also deficient in its failure to identify any ACT CSOs in section 12.6 – Government Policies, ACT, CSOs. This section should identify the important utility debt discharge powers in ss 208 and 218 of the Utilities Act.

3.6 It is interesting that the word "hardship" does not appear at all in the Discussion Paper and only once (in a reference to the ESCC) in each Appendix. Disconnection is only one aspect of utility hardship and it is difficult to see how a regulatory framework can be properly analysed without substantive consideration of energy hardship issues.

#### **4. Comments on the Proposed Framework**

4.1 The ESCC is not in a position to comment on the broad framework as outlined in the Proposed Framework Schedule for Transfer of Distribution and Retail Functions. We do, however, have a number of specific comments we would like to make on the detail of that Schedule. They follow.

##### Funding

4.2 In Part C, sections 4.1 and 4.2(d) of the Discussion Paper, it is recommended that a jurisdiction-based approach be taken to end-customer dispute resolution. The ESCC supports this approach, but notes that jurisdiction-specific funding will be required to provide this function. The ESCC's current functions are funded by a levy on utilities determined by the ICRC and based on the number of applications/complaints made in respect of each licensed utility. From an ACT perspective, this industry funding base must be protected in any move to national regulation.

4.3 All discharges of debt by Council are funded as an ACT Government CSO. To enable the ESCC to continue to discharge debt, this CSO funding arrangement must continue to have a legislative base. Otherwise, the effectiveness of the ESCC to manage hardship cases in the ACT will be severely compromised. In this context we note (Schedule, point 28) that CSOs will be a matter for States and Territories to determine on a jurisdictional basis.

### Consumer Protection

4.4 In the ACT model, once a hardship application is lodged with the ESCC, the Council has the power to direct the relevant utility to maintain supply. The ability of ESCC to so direct is an important tool to ensure customers in genuine difficulty are not disadvantaged. Any proposed regulations governing disconnections and re-connections (Schedule, point 9) would need to recognise this essential tool in the Council's armory.

### Alternative Dispute Resolution Schemes

4.5 ESCC considers and resolves non-hardship complaints against utilities operating in the ACT. This component of ESCC's work can be regarded as an independent alternative dispute resolution scheme envisioned in points 25 and 26 of the Schedule. The ESCC agrees that it is appropriate for such alternative dispute settling schemes to be jurisdictionally based.

### Advocacy

4.6 The Discussion Paper does not mention advocacy. It is the view of the ESCC that informed community advocacy is an essential element of a viable regulatory scheme; advocacy should not be relegated to a separate, unimportant consideration late in the change process.

### Further Information

4.7 If the Secretariat requires further information on the ESCC, or clarification of these hurriedly prepared comments, I can be contacted on 02 – 6206 7100.

Peter Sutherland  
Chairperson ESCC  
15 November 2005

## **ESSENTIAL SERVICES CONSUMER COUNCIL**

(established under Part 11 of the *Utilities Act 2000*)

### **Council Processes**

The Council utilises a number of processes to undertake these functions/activity streams:

1. Council Members' Meetings
2. Hardship Assistance Hearings
3. Special Hardship Assistance Hearings
4. Complaint Hearings
5. Complainant Only Hearings
6. Special Complaint Hearings
7. Conciliation Conferences
8. Assisting Resolution Processes
9. Stakeholder Meeting

1. Council Members' Meetings: The Council, as a whole, meets in Members' Meetings at intervals of approximately 10 weeks. These meetings are a forum for policy development, discussion of individual complaints and trends in complaints, strategies for raising community awareness, administrative issues and member training.

2. Hardship Hearings: All members participate in initial and review hearings of Hardship Assistance Applications (protection from disconnection). These hearings are conducted once or twice each week with approximately 26 cases considered in 3.5 hours. Each application is heard by a panel of two to three members who consider each case taking in to account the circumstances of the applicant, the size of their debt and the average fortnightly consumption in the household and previous payment history. The outcome of these hearings is usually a Direction to the utility that supply must be maintained on condition that specific payments are made. These hearings are usually chaired by the Deputy Chairperson and other Council members participate in Hardship Hearings by rotation. Council has established a number of strategies for case managing each client:

- Interim Directions: When an applicant is faced with disconnection, but cannot be given a hearing until some date in the future, the Council's Chair and De Chair and certain Council staff are empowered to issue an Interim Direction to the utility involved instructing it that the supply be maintained on the condition that the client attend a Hearing at a future date.
- Review Hearings: Council staff monitor the payments and consumption of each client to see if Council's Direction is being followed and to ensure that it is still relevant to the case. Should a client's circumstances change, the client is asked to attend another Hearing so that Council can reassess the case.
- Discharge of Debt: Under s 208 of the Act, the Council has power to discharge customer debt in relation to residential premises if it is satisfied that payment of the debt would cause substantial hardship for a customer. Where the Council discharges a debt under this section, the relevant utility is reimbursed by the Territory for the amount of the discharged debt.
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Incentive Discharge: This scheme was introduced to encourage long-term clients of the Council to free themselves from utility debt. Clients, who have an outstanding debt in excess of \$500, are invited to access the Scheme once their utility payment record has been stable for at least 6 months. Participation in the Scheme is entirely voluntary. The incentive works by the Council giving a matching dollar-for-dollar discharge (in arrears) for all amounts paid by the customer above their estimated utility consumption in a three month period. The Council sees two important benefits in the Scheme: it gives a positive encouragement to clients to reduce their utility debt and a real hope of becoming debt-free within a foreseeable period; and it encourages reduction in utility consumption to maximise the amount of debt discharge offered by the Council.

- Home visits: A home visit is offered to clients who have mobility issues – physical, psychological or age related. During 2004-05, 20 home visits were made. Typically the Deputy Chairperson and a staff member undertake these visits. After the initial home visit, reviews are often conducted by telephone.
- Payment Ceiling: The Council recognises that there should be a ceiling on the amount which a client is required to pay for their essential services of electricity, gas and water/sewerage. Council agreed that, in genuine cases, where excessive consumption may be linked to disability, family violence, etc (and not in cases where clients have no concern about, or acceptance of responsibility for, high consumption), a payment ceiling for utilities should be established. The Council will consider each case individually, however a general guide would be a ceiling of 15-20% of income. Where a ceiling payment is set, the Council will exercise the "Under Consumption" ground for discharge of the cost of consumption in excess of the ceiling.

3. Special Hardship Hearings: Special Hardship Hearings are held when a customer has been disconnected from supply and their poor payment history with the Council means that the Registrar is not prepared to make an Interim Direction for reconnection of supply without Council interviewing the customer. Special Hardship Hearings are organised at short notice and are usually conducted by the Deputy Chairperson and the Registrar.

4. Complaint Hearings: The staff of the Council, under the direction of the Chairperson, investigate complaints by consumers/customers against utilities licensed under the Act. Where a complaint cannot be resolved by preliminary discussions with the parties, elucidation of the facts of the case, and a Conciliation Conference if necessary, the complaint is listed for a Complaint Hearing. The Council may use its powers of compulsion under Part 12 of the Utilities Act in the course of the complaints process and a Complaints Hearing. The Hearing is conducted by a panel of several members, usually chaired by the Chairperson. All Council members participate in Complaint Hearings by rotation and in most cases written Reasons for Decision are issued for the information of the parties and the general public.

5. Complainant-Only Hearings: In some cases, the Chairperson of the Council is able to form a preliminary view from the papers that a particular non-hardship complaint cannot be sustained. In such cases, the Council may hold a "Complainant-only" hearing, attended by the complainant and one or several members of Council (but not by the utility party) to ensure that the complainant has had an opportunity to articulate their complaint directly to the Council. If the oral presentation by the complainant raises doubts about the preliminary view, the Council will proceed with a Complaint Hearing.

6. Special Hearings: The Chairperson may convene a Special Hearing of Council to consider systemic issues or matters of the Council's jurisdiction and processes. A Special Hearing may also be used as a public consultation process on a systemic issue.

7. Conciliation Conferences: These are conducted by a single member of Council and are intended to facilitate early resolution of a complaint.
  
8. Assisting Resolution Processes: The large majority of all non-Hardship Complaints and a small number of Hardship Applications brought to Council are resolved without the direct intervention of Council members or a hearing process. The Council Chairperson, or Deputy Chairperson, monitors all cases, however, in the course of listening to clients and researching the circumstances surrounding a complaint, the Registrar and/or the Case Manager are often able to facilitate an early resolution of the problem. This may be as fast as a single phone call, or may involve inquiries to third parties such as banks or ACT Housing. Solutions often present themselves in the course of collating the facts through communication with both parties.
  
9. Stakeholder Meetings: Once a year the Council invites stakeholders to a meeting with a view to updating them on Council's business, receiving feedback and providing a forum for discussing any issues of interest.