

Our Ref: M2004/305  
Your Ref:  
Contact Officer: Michelle Groves  
Contact Phone: 03 9290 1423

8 December 2006

Manager, MCE Secretariat,  
Department of Industry, Tourism and Resources,  
GPO Box 9839  
Canberra ACT 2601  
MCEMarketReform@industry.gov.au

Dear Mr Livingston, *R 11/8*

The Australian Energy Regulator (AER) welcomes the opportunity to comment on the release of Allens Arthur Robinson's first Working Paper for the Retail Policy Working Group (RPWG). Regulation of energy distribution and retail markets is a significant new role for the AER, and preparation for the transfer of non-price distribution and retail regulatory functions on 1 January 2008 is a corporate priority. A number of significant policy decisions in relation to the scope and nature of the regulation of distribution and retail markets have yet to be made. This paper, while noting the challenges ahead, is a significant step forward, and the RPWG's forward work program provides a considered and structured approach.

The framework proposed by the Working Paper is consistent with existing institutional and governance arrangements established by the Ministerial Council on Energy (MCE) for the national energy market. In identifying the objectives and evaluation criteria against which regulatory options are to be assessed, the Working Paper has drawn on the policy positions established by the MCE in its oversight of the national energy reform program and the objectives in the National Electricity Law (NEL) and the exposure draft of the National Gas Law (NGL), and on the detailed considerations set out in the Australian Energy Market Agreement (AEMA) specifically for this purpose.

The scope and implementation of jurisdiction-specific requirements, including the regulatory arrangements for accommodating those requirements, are being considered separately, and that consultation on these issues will take place in due course. The development and implementation of the national framework should be such that the need for derogations from the agreed national approach is minimised, and the greatest possible level of consistency across jurisdictions is achieved, subject to derogations

and transitional arrangements necessary to deal with specific network or market characteristics. In considering these issues separately, it is important that the RPWG conducts the same robust assessment of the appropriate scope and nature of jurisdiction specific measures and the regulatory arrangements for accommodating those measures as it has identified for the development of the national framework itself.

The implementation architecture proposed in the Working Paper, by minimising the number of regulatory instruments comprising the framework, provides the desired simplicity in structure. The proposed framework provides certainty for stakeholders by consolidating high level policy and framework matters, core regulatory obligations and regulatory and rule-making functions and powers in the NEL and NGL. At the same time, by providing the underlying detail that will support and define those obligations, functions and powers in the National Electricity Rules (NER) and National Gas Rules (NGR), it achieves the appropriate balance between regulatory certainty and regulatory responsiveness and flexibility, by allowing the detailed frameworks in the NER and NGR to evolve with the markets they govern. This approach is consistent with the governance and institutional arrangements adopted by the MCE in the development of the economic regulatory frameworks for gas and electricity distribution and transmission. The staged approach to consultation on, and development of, the new national framework is consistent with that adopted in the development of the economic regulatory frameworks for energy transmission and distribution businesses. This approach allows for both focussed debate on the issues and for coordination in the development of the associated new governance arrangements.

The AER's relationships with other agencies, and in particular with the designated small-customer dispute resolution schemes in each jurisdiction, will be a key factor in the effective implementation and operation of the new national regulatory regime. While accepting that the AEMA provides for small end customer dispute resolution schemes to be regulated at a jurisdictional level, it is important that such integral components of the regulatory environment be incorporated into the consideration and development of the new national framework at a sufficiently early stage to ensure that the transfer of functions from the existing State and Territory Regulators to the AER is as smooth as possible, and causes minimum disruption to the market. The development of these relationships is dependent on proactive engagement with jurisdictional schemes, and the AER is already working to build relationships with existing agencies. A national energy framework that provides clarity and certainty in the nature of the obligation on retailers and distributors to participate in a designated scheme, and in the core elements of the AER's relationship with the approved schemes, including any role in enforcing participation, will facilitate the management of these relationships to the benefit of both consumers and industry.

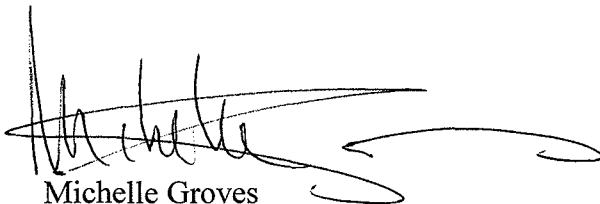
This interface between the AER and other agencies which interact with the energy market is again evident in the Working Paper's discussion of the appropriate scope of regulation of retailer-small customer marketing. The current need for energy-specific consumer protections is recognised. The characteristics of energy as an essential service set it apart from other products and services in a number of respects, such that the general consumer protections available across markets are not always adequate to ensure access to, and continuity of, energy supply to small customers on fair and

reasonable terms. Development of this aspect of the new national framework requires a careful balancing of the protections that are currently in place, both in energy-specific regulatory instruments and through general consumer protection regimes, and the broader objectives of streamlining and simplifying the regulatory framework. It involves, as the Working Paper clearly contemplates, the development of an energy-specific regime that complements general consumer protection frameworks to ensure that energy consumers are protected. An understanding of generic consumer protection legislation is a critical part of the development of an effective energy-specific regime.

The role that the Working Paper contemplates for the AER in the national regulatory framework for distribution and retail is primarily one of regulatory oversight: the AER will monitor and enforce compliance with the Law and the Rules. It is essential both to the ability of industry to comply and that of the AER to enforce compliance that regulatory obligations be clearly defined and identifiable. Just as important is the suite of compliance and monitoring and enforcement tools available to the AER. The current provisions for enforcement of compliance in the electricity wholesale market, set out in the NEL and incorporated into the recently released exposure draft of the NGL, form a solid platform for regulatory enforcement. It is important that, as the detailed regulatory obligations take form, consideration is given to whether the existing provisions provide a comprehensive framework for enforcing compliance in distribution and retail markets.

Thank you for the opportunity to comment on the first Working Paper. We look forward to ongoing involvement in this consultation.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Michelle Groves', with a long, sweeping flourish extending to the right.

Michelle Groves  
Chief Executive Officer