



Submission by
Consumer Utilities Advocacy Centre Ltd
to the
Ministerial Council on Energy
Standing Committee of Officials

Public Consultation on a National Framework for Energy
Distribution and Retail Regulation

13 January 2006

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Introduction

The Consumer Utilities Advocacy Centre Ltd (CUAC) welcomes the opportunity to comment on the paper *Public Consultation on a National Framework for electricity and gas distribution and retail regulation* (the Paper), prepared by Gilbert + Tobin and NERA Consulting for the Ministerial Council on Energy (MCE) Standing Committee of Officials (SCO).

CUAC is an independent consumer advocacy organisation, established to ensure the interests of Victorian electricity, gas and water consumers, particularly low-income, disadvantaged and rural consumers, are effectively represented in the policy and regulatory debate.

CUAC would like to express some general concerns about the Paper and the consultation process. Firstly, it is confusing that this consultation process appears to have been pre-empted by other SCO consultations, including the consultation on the high-level transfer of functions and the creation of the expert panel to review revenue and network pricing. It is also not clear how this particular process moves forward given the decision by Ministers on 4 November 2005 that distribution pricing would move to national regulation on 1 January 2007. Some clarification on how this consultation sits with other related processes would therefore be of value to stakeholders.

CUAC was also disappointed by the refusal of the Energy Market Reform Working Group to grant an extension of only two additional weeks (to 30th January) to the 24 community and consumer groups that represent the main consumer organisations working on NEM issues on behalf of residential and low-income consumers – a key group of stakeholders. That refusal raises real questions about the value that the SCO accords to consumer input, as well as displaying a poor understanding of the resources available to consumer organisations.

Finally, and perhaps most importantly, is the lack of any evidence for the substantial changes put forward in the Paper. These changes would result in a regulatory framework significantly weaker than the existing Victorian regime, but the Paper provides no

research or data to justify such a result. This has effectively resulted in a paper that assumes the existence of a mature marketplace unless proven otherwise. There is no evidence whatsoever from any NEM jurisdiction to support such an assumption. It is also unclear where the burden of proof lies in disproving this assumption which permeates the paper.

It is stated in the Paper's preamble that its approach "represents a significant rationalisation of the current arrangements. As such it is intended to improve the transparency of the regulatory arrangements, lessen duplication and reduce compliance costs".¹ CUAC is somewhat puzzled about the Paper's failure to acknowledge broader consumer interests. The Paper should have stated that the intention behind a regulatory structure is to ensure that consumers benefit from competition and that their interests are protected in the long run.

CUAC strongly believes that energy is, as the Victorian Government has rightly recognised, an essential service. It underpins every form of economic and social activity in the country. Energy provides vital economic infrastructure, and lays the foundation for a healthy and prosperous population.

Our response to the Paper focuses on the framework outlined in the Paper. CUAC's response has been structured around the individual sections in the same order as presented in the Paper. We have not addressed all the issues raised but focused on those of most importance to CUAC's constituency.

¹ Gilbert + Tobin and NERA Economic Consulting, *Public Consultation on a National Framework for Energy Distribution and Retail Regulation*, May 2005, p 9

Part B: Price Regulation of Distribution

Overview (B.1)

The MCE has decided that the regulation of distribution pricing will move to the national regulatory regime on 1 January 2007. How this consultation process sits with that decision is not clear.

In relation to the recommended policy criteria (section B.1.2.) CUAC would recommend that the principle of accountability to all parties be strengthened and explained in further detail. These are monopoly businesses delivering an essential service and their capacity to consult with and reflect the needs of all their customers should be an integral element of their operations. Experience in the Victorian marketplace is that regulatory and governmental intervention is required to achieve this, particularly for small end customers and rural communities.

CUAC agrees that jurisdictional differences exist, and that these should be reflected within the national regulatory regime.

Scope of distribution regulation (B.2)

CUAC's comments on the scope of distribution regulation relates to the definition of what constitutes a regulated service and the criteria identified.

While we agree that it is useful to define and identify core regulated services we are concerned about the authors' view that only industry should be consulted about this definition (Section B.2.1.(a)). In regards to the criteria for determining whether a service should be regulated or excluded, CUAC believes a much broader approach is necessary. Whether a service is regulated or contestable will have great impact upon governments' ability to implement future policies to meet both social and environmental policy objectives. The decision to roll-out interval meters in Victoria for example, would have been much more complicated if a competitive metering market was in place. CUAC thus

strongly recommends that decisions to regulate or exclude services are not based on economic tests alone.

Price Cap Regulation for Distribution Services (B.3)

CUAC generally endorses the Paper’s approach to distribution price regulation and, in particular, enabling the form of price regulation to be adapted – with appropriate consultation.

However we are concerned that the narrowness of the proposed objectives for distribution price regulation could lead to outcomes that are emphatically not in the public interest. Identifying “efficiency” as the sole objective of regulation, without defining it, ignores the interests of consumers by limiting the capacity of the national regulatory body to investigate the impact.

It needs to be clearly understood that efficiency here should not be defined in a narrow economic sense as there will be desirable economic, social or environmental outcomes that would not necessarily be called economically “efficient”. That is not to say that distribution businesses are expected to achieve those results, but there are broader issues that are in the public interest that can be achieved by including appropriate incentives in the regulatory framework.

Examples of such outcomes relate to effective demand management programs, the use of cross-subsidies to ensure energy remains affordable for all consumers, and ensuring the interests of rural and regional consumers and communities are adequately addressed.

Regulatory Requirements in relation to Tariff Setting (B.4)

Price controls are a key issue for CUAC’s core constituency of low income consumers who are particularly vulnerable to price increases, and for rural and regional consumers who on average pay higher prices than consumers in metropolitan areas. The design of regulatory instruments such as side constraints and tariff rebalancing has an immense impact on customer prices. CUAC is conscious of the need for the MCE to be able to

provide the national regulatory bodies with overarching policy objectives to develop such instruments with the goal of protecting consumers.

To give one example, constraining the extent to which tariffs can be changed over a year provides consumers not only with a level of certainty (as the Paper recognises) but also ensures that price fluctuations are minimised. We are therefore concerned that the recommended approach promotes only economic efficiency criteria for the regulatory framework, and doubt whether this will ensure that the monopoly distribution businesses deliver outcomes that benefit consumers.

Government must provide some guidance as to how costs are allocated between classes of customers (business/residential, rural/metropolitan) – cost-reflective pricing may be ‘efficient’ but means that rural consumers in some parts of the NEM would be effectively priced out of the market. CUAC believes that more prescriptive pricing principles are necessary and the AER should therefore be assigned the appropriate mandate to develop fair and reasonable principles for tariff settings.

Service Performance Targets (B.5)

Reliability and quality of supply are important to both domestic and business consumers. With increasing dependence on more sensitive electrical appliances/equipment, distribution networks will continue to be expected to deliver reliable energy supply at an acceptable level of quality. CUAC is deeply concerned (and somewhat puzzled) that the Paper deems service quality (e.g. voltage fluctuations and gas composition) as a safety and technical issue which therefore does not need to be incorporated into the economic regulatory framework.

Voltage fluctuation can be the source of considerable detriment to business and residential consumers through damage to appliances and industrial equipment. The Victorian Distribution Code offers recompense to residential consumers whose appliances have been damaged by power surges, and CUAC would be most concerned if that form of redress was not available within the NEM.

CUAC generally supports the Paper's recommended approach in setting service performance targets. However, we would prefer an additional principle included in regards to specification of performance targets. The Paper recommends that distribution businesses have targets for average service level and minimum service levels for individual customers (section B.5.1.a(ii)). In Victoria service levels in some non-metropolitan areas are far worse than the state average and we would therefore recommend that performance targets are specified for the worst served within a distribution area (for example, the 15% worst served).

The Paper argues that service performance targets should be determined by each jurisdiction (section B.5.1.a (v)). We agree that the task of specifying targets for the distributors are best left to each jurisdiction to determine, but we are still uncertain about which jurisdictional agency is supposed to undertake this task. As the regulatory expertise on energy will be transferred to national bodies it remains unclear who would have the knowledge, access to data and political independence required in each jurisdiction to undertake this important task.

Information disclosure (B.7)

There are two facets to information disclosure within the regulatory framework, neither of which are dealt with adequately in the Paper.

The first is the AER's capacity to compel distributors to provide the data necessary to make reasonable decisions about revenue requirements and pricing, and to monitor service performance. As was demonstrated in the recent Victorian Electricity Distribution Price Review, some distribution businesses did not provide sufficient information about their tariff structures until unreasonably late in the process, and some also failed to provide information sought by the regulator.

The Paper proposes that the Rules contain and set out the obligations of distribution businesses to provide information to the AER. However the AER must also be given the capacity to compel businesses to provide that information in a standardised format, and the authority to penalise businesses that do not provide information as required. CUAC

supports CLCV's argument that the 'Rules' is an appropriate mechanism for specifying minimum information requirements.²

The second facet, to ensure transparency, is not mentioned by the Paper at all. The AER should publicly and regularly report on the performance of distribution businesses. A key tenet of effective regulation of monopoly businesses is the notion that competition by comparison acts as a further incentive to improve performance. To enable competition by comparison of performance standards, network constraints and the economic, social and environmental outcomes that enable governments to make informed decisions about the networks in their jurisdiction, the AER must report publicly and in a standardised format. Transparency and public reporting also contributes to informed consumer advocacy, which again would lead to informed and improved decision-making by the regulators. However, to ensure effective consultation and quality input from all stakeholders we agree with CLCV that consumer representatives must be assisted to understand the complex issues being proposed and their views on the impact on customers, including specific groups of customers, must be sought by the regulatory bodies.³

Connection and capital contribution requirements (B.8)

CUAC is disappointed that the Paper takes a very narrow approach to the issue of connection and capital contribution requirements. It has become increasingly evident that a key issue for regional townships and small remote communities has been their difficulty in securing improvements to their energy supply. These communities tend to share the following characteristics: small populations, with few and/or small industrial users; poor distribution network; and a lack of resources to address the complexity of negotiating network augmentation with a distributor.

Poor energy supply in these communities places real and immediate constraints on their capacity to expand local business or attract new investment. In Victoria, the increasing

² Consumer Law Centre Victoria (CLCV) Submission to Gilbert + Tobin and NERA Economic Consulting, *Public Consultation on a National Framework for Energy Distribution and Retail Regulation*, January 2006, Section B.8.4

³ As above, Section B.8.1.3

price of LPG has also meant that residential consumers in communities without reticulated gas (and unlikely to have the load to make such connection feasible) are increasingly dependent on electricity and thus more vulnerable to price, reliability and quality of supply problems.

In Victoria consumers face a number of problems in securing network augmentation including: information asymmetries, lack of bargaining power, lack of access to effective dispute resolution, and the configuration of consumer protections and rights on the basis of an individual consumer, rather than being able to present the interests of the community as a whole. These problems have resulted in instances where business consumers are effectively subsidising a community's supply, either in upgrading significant portions of the network or in being forced to install expensive solutions to ameliorate their usage on a poor line (in effect, subsidising a poor supply).

These communities also face considerable regulatory impediments in accessing alternative sources of supply. Renewable embedded generation provides a viable means of securing better reliability and quality for a small community, as well as offering the community the opportunity to own the asset and so reduce its export of capital, and of course to reduce greenhouse gas emissions (see discussion under section D.4: Distributor interface with embedded generation below). The approach of the Paper does not acknowledge the existence of such problems and will serve only to entrench market failure at a national level.

Part C: Consumer Protection

CUAC is deeply concerned at the approach taken in the Paper on consumer protection, and in particular by three issues that are repeated consistently throughout this section of the Paper.

First is the mantra repeated throughout this section of the Paper that “In some cases the scope and degree of prescriptive regulation is so wide and deep that the costs of regulation

may exceed the benefits.” This statement is invariably unaccompanied by any evidence to support that assertion and in fact ignores the substantial body of evidence provided by researchers, consumer advocacy groups and state regulators to the contrary. This does not inspire confidence that consumers’ needs or regulation in the public interest have been considered in any detail.

Secondly, similarly unsubstantiated is the assertion that generic legislation must be demonstrated to be insufficient before sector-specific regulation is required. This ignores the fact that most jurisdictions currently have in place sector-specific regulation because they have decided after careful deliberation that it is required. By, in effect, reinventing the wheel, the authors again demonstrate a lack of consideration for consumer interests and ignore decisions that have been taken by jurisdictions such as Victoria following a broad public consultation process (see discussion under D.2: Business authorisation below).

Thirdly, CUAC is concerned by the consistent reliance on a cost-benefit analysis as the sole regulatory test to be used by the AEMC and AER. While we acknowledge that there needs to be some form of test of the need for regulation, a cost-benefit analysis is too narrow an analytical tool to enable the regulator to consider the broad range of issues it should in making such a determination, without some overarching guidance from governments as to the weight the regulator should accord the different interests of classes of consumers.

The regulators must be able to balance competing interests of consumer classes to achieve outcomes that are in the public interest, and to choose from a suite of tools that will enable sound and well-informed regulatory decisions to be made. Low-income and vulnerable consumers need protections to maintain access to supply. Residential consumers value price disclosure to enable them to participate more effectively in the competitive marketplace. Residential end users require more and different forms of consumer protection than business customers.

Distributor obligation to provide connection services (C.2)

CUAC strongly supports the proposal that the obligation to supply that is imposed on distributors and retailers be captured in a legislative instrument, similar to that in place in Victoria. That obligation should be permanent for residential consumers – this is an essential service, and access to affordable and reliable energy determines the capacity of Australians to live to an acceptable standard.

CUAC also agrees that smaller end-users do not have the power to negotiate directly with distributors and that distribution businesses should therefore offer those consumers fair standard terms and conditions, defined and approved by the AEMC.

It must be remembered that the retailer has the primary relationship with the consumer in relation to connection, billing, payment, account and consumption information. For the great majority of consumers, their relationship with the distributor will be restricted to problems of reliability, quality or interruptions to supply. Connection is, and should continue to be, arranged through a consumer's contractual arrangement with a retailer and not a distributor.

The Paper seems to propose a much more complex relationship with consumers, and so is unclear on what the new arrangement would therefore be for classes of consumers. CUAC would recommend that the SCO provide more certainty on the impact for classes of customers.

The Paper suggests that the threshold of 'vulnerability' should be less than 10TJ or 160MWh consumption per annum. Extensive research and literature on consumer vulnerability have demonstrated that vulnerability has numerous causes and characteristics. To define vulnerability by consumption level only and apply consumer protections accordingly would have detrimental consequences for vulnerable consumers

in the marketplace. We therefore strongly recommend that the SCO familiarise itself with this complex issue.⁴

Distributor disconnection and reconnections of small end-customers (C.3)

CUAC is uncertain about how to interpret the views presented under this heading as we are familiar with an arrangement where a retailer may request a distributor to disconnect a customer for various reasons - that would have to comply with the Energy Retail Code. The retailer pays the distributor for this service but it is the retailer's responsibility to make sure that the disconnection does not happen wrongfully. The Paper seems to be of the view that it is the distributor who is subject to this regulation.

Confusion about the role of retailer vs distributor aside, CUAC is also very concerned about the recommended policy criteria. The Paper states that the circumstance for when vulnerable consumers can be disconnected and must be reconnected should be regulated. Does this imply that no regulation for disconnection/reconnection of other consumers is necessary? CUAC would certainly oppose any regulatory framework that does not provide universal protections around disconnection and reconnection for all small end consumers. Again, confusion about the approach could have been limited if the Paper had proposed a clear understanding of different groups of customers and consistently referred to the recommended approach's implications and outcomes for various customer classes.

Distributor: Small end-customer dispute resolution (C.4)

CUAC strongly believes that small end-customers should have access to fair and efficient dispute resolution arrangements. However, we do not agree that such schemes are first and foremost for the most vulnerable of customers, and we are concerned that such a statement has been made in the Paper. Fair and effective dispute resolution schemes are

⁴ See for example: ESC, *Review of Effectiveness of Retail Competition in Gas and Electricity*, Public draft report (March 2004), Overall, R. *What do we mean by 'vulnerable' and 'disadvantaged' consumers in Essays in Australian Consumer Affairs* by Consumer Affairs Victoria (March 2005)

integral to ensuring consumer confidence in the marketplace, and particularly so in the case of a monopoly supplier.

An effective ADR scheme does not ‘just’ assist consumers with disputes but also has the capacity to identify systemic issues, report on their cases and enable competition by comparison. CUAC believes the Victorian scheme, EWOV, is an appropriate model and benchmark for dispute resolution schemes. We would be extremely concerned should the public reporting now undertaken by EWOV diminish.

We agree that distributors should be obliged to belong to independent alternative dispute resolution schemes. CUAC also recommends that internal dispute resolution schemes should be approved by the AEMC, and required to meet the Australian Standard on Complaint Handling – AS 4260.

Retailer obligation to supply small end-customers (C.5)

The Paper refers to a concept where a ‘move-in customer’ will need a default arrangement to ensure that nobody is denied access to supply. We are uncertain about the benefits of discussing ‘obligation to supply’ arrangements in terms of consumers moving household. The Paper proposes that retailers supplying a customer that has moved out of a property are obliged to offer a standard supply contract to the ‘move-in customer’. We do not regard the ‘move-in customer’ approach as appropriate when it comes to capturing the essence of obligation to supply. What would happen when customers move into new dwellings that have not previously been connected to energy? Or who is obliged to supply a customer who moves into a dwelling that has been unoccupied for a substantial period? What if the retailer does not operate anymore? Rather, the focus must be on ensuring that no customer can be denied connection to supply and this is most clearly done through designated geographic areas that must always remain under regulatory control.

It is CUAC’s view that all customers should have access to energy contracts with standard terms and conditions at a fair and reasonable cost.

Retail : small end-customer market contracts (C.6)

The Paper argues that the ‘Model Terms’ for Market Contracts should be limited to the broadly defined provisions listed in the Paper (section C.6.2.d).⁵ CUAC recommends that the Victorian Energy Retail Code is used as a minimum standard for what is required and as thus the provisions listed would include detailed requirements for billing, termination and customers with payment difficulties etc.

Also, we strongly recommend the AEMC should have regard to the protection of vulnerable consumers and to ensure that all consumers (including low-income and vulnerable) benefit from competition. In addition to these guiding objectives we would recommend the AEMC to have regard to customer groups that do not benefit from competition. As demonstrated by the Essential Services Commission’s review of the effectiveness of Full Retail Competition, not all customer groups have benefited or benefited to the same extent.⁶ In CUAC’s view, it is likely that some consumers will never benefit from a competitive market. It should thus be the role of the regulator to openly assess whether classes of customers are benefiting and, if not, ensure that protections are in place to minimise disadvantage. The provisions listed in the Paper (section C.6.2.e) are much too narrow and focused on simple regulation rather than the positive impact regulation can have on consumers.

The SCO must recognise the issue of customer inertia to participate in the market place and subsequently facilitate accessible information and promote consumer confidence through clear and transparent conditions for market offers. Research has demonstrated that the reluctance by consumers to search for and switch suppliers can lead to sub-competitive outcomes.⁷ In our view, it is clearly the responsibility of policy-makers and

⁵ The provisions include: calculation of charges; termination; charges for early termination; billing; payment difficulties; meter reading; warranties; dispute resolution; and disconnection and reconnection of customers on life support systems.

⁶ ESC, Final Report to Minister – *Special Investigation: Review of Effectiveness of Retail Competition and Consumer Safety Net in Gas and Electricity* (Overview Report, June 2004)

⁷ Waterson, M “The role of consumers in competition and competition policy”, *International Journal of Industrial Organization*, 21 (2003), pp 129-150

regulators to acknowledge consumers' need for assistance and to provide guidance for marketplace participation. We are thus disappointed that the Paper did not mention the need for price disclosure. CUAC believes the 'Model Terms' must include a provision for mandatory price disclosure as consumers' ability to obtain offers and compare them in an accessible manner is crucial for consumer confidence and market participation. Victoria has recently implemented a price disclosure mechanism and CUAC recommends that the ESC's obligations for all retailers operating in Victoria be viewed as a minimum standard.

CUAC supports the Paper's recommendation that AER has the powers to enforce civil penalties for non-compliance with the Rules (Model Terms) and would welcome more information on how those penalties would be configured

Although regulated market terms and conditions, and price disclosure is primarily an issue for small end customers, CUAC wishes to alert the SCO to recent research undertaken by the City of Greater Bendigo, which raised some troubling concerns about the ways in which even large users are operating in a competitive marketplace. Of 27 companies surveyed in the region, 23% of sites were on the wrong network tariff.⁸ This demonstrates that the need for accessible information about energy tariffs is not only an issue for domestic consumers, and that a complex energy market seems to only serve the interests of the supply side (and energy consultants/middle men).

Retail: small end customer marketing (C.7)

CUAC does not support the Paper's recommendations in regards to marketing to small end customers. We do not agree with the notion that energy specific regulation can be replaced by generic fair trading legislation. Energy, as an essential service and paid for post consumption, needs specific regulation to ensure that vulnerable consumers are protected from exploitation and that unnecessary product complexity resulting from marketing gimmicks is limited. CUAC believes the Victorian Code of Conduct for Marketing Retail Energy is an appropriate benchmark for the national Marketing Rules.

⁸ City of Greater Bendigo, *Central Victorian Demand Tariff Energy Project*, September 2005

The Code reflects the importance of consumer protections to build confidence in the market. The introductory text states that the Code reinforces and supplement generic legislation and outlines the purpose of the Code, including statements such as:

“The *Code* reflects the responsibility of *retailers* to all *consumers* that is crucial to maintaining and enhancing confidence in the retail energy industry. It aims to ensure that all *retailers* are bound by the same standards”.⁹

“The *Code* has been designed to protect *consumers*, promote the effective transition to full retail competition and ensure uniform minimum *marketing* standards”.¹⁰

The Paper recommends that the Marketing Rules deal with pre-contract disclosure notice to customers, cooling off periods and customer information about ADR schemes (section C.7.3.c). In our view, Marketing Rules must deal with the conduct of marketers, including how and when they contact potential customers. Furthermore, we strongly believe the pre-contract disclosure must entail a clear and accessible price disclosure that would make it easy for customers to compare offers. We also believe that the retailers should be obliged to have proper internal processes for dealing with marketing complaints and that the retailers are required to notify customers about their right to make complaints and seek external dispute resolution schemes if dissatisfied with the outcome.

We refer to the CLCV submission which gives the telecommunications market as an example of a competitive market that is characterised by lack of comparative information on product and prices, and poor standards in sales and marketing.¹¹ Experience in the telecommunications sector illustrates that it is not just about achieving competition, product innovation and consumer choice, but that regulation with regard to consumer protection is necessary to ensure that consumers benefit.

⁹ ESC, Victorian Code of Conduct for Marketing Retail Energy in Victoria, October 2004, p1

¹⁰ As above.

¹¹ Consumer Law Centre Victoria (CLCV) Submission to Gilbert + Tobin and NERA Economic Consulting, *Public Consultation on a National Framework for Energy Distribution and Retail Regulation*, January 2006, Section 9.2

We would agree that the AEMC should have regard to the desirability of consistency between regulation of gas and electricity, and preferably between the jurisdictions. Again, we strongly believe that the AEMC must also have regard to protect vulnerable consumers and ensure that all consumers (including low-income and vulnerable) benefit from competition.

Retailer: small-end customer dispute resolution (C.8)

CUAC agrees that small end-customers should have access to fair and efficient dispute resolution arrangements. However, we do not agree that such schemes are most important for the most vulnerable of customers, and are concerned that such a statement has been made in the Paper. Fair and effective dispute resolution schemes are integral to ensuring consumer confidence in the marketplace.

An effective ADR scheme does not ‘just’ assist consumers with disputes but also has the capacity to identify systemic issues, report on their cases and enable competition by comparison. CUAC believes the Victorian scheme, EWOV, is an appropriate model and benchmark for dispute resolution schemes. We would be extremely concerned should the public reporting now undertaken by EWOV diminish.

CUAC recommends that retailers’ internal dispute resolution schemes should be approved by the AEMC, required to meet the Australian Standard on Complaint Handling and always be provided at no cost to consumers.

Part D: Other Distribution and Non-Price Regulation

Business Authorisations (D.2)

Firstly, the Paper does not provide or refer to enough information to be able to support the recommended approach for business authorisation. Secondly, the Paper does not provide any evidence for why it is preferable to not establish a licensing regime for energy retailers. We strongly agree with the analysis and arguments presented in the FEMAG paper, that a licensing regime is desirable because:

- It allows for before-the-fact assessment of market participants
- Licenses are assets and financing institutions will have an interest in their status
- It is more responsive to change than legislation
- Non-statutory ombudsman schemes are license conditions
- It has a positive impact on regulatory compliance as the licensing agency will play a role in achieving consumer protection together with the complaint handling body and the fair trading agency.¹²

In terms of licensing being a barrier to entry, CUAC is unaware of any evidence that demonstrates such, and we note that the Paper is also apparently unable to verify this claim. We do agree that it will create some regulatory cost but we believe that the benefit of ensuring that the retailers have the minimum financial wherewithal and the ability to comply with specified laws and codes prior to entering the market must outweigh this regulatory cost.

Distributor Interface with Embedded Generators (D.4)

CUAC supports the recommendation to develop transparent and nationally consistent terms and conditions for the connection of embedded generators to the network (section D.4.2). The MCE SCO should be aware of the findings presented in a research report by the Alternative Technology Association on impediments to grid connections.¹³ The report pointed out that there are numerous impediments to negotiate connections to the electricity grid for owners of small embedded generation systems in Victoria. This includes barriers caused by technical regulation, lack of information available to system owners, low return on investment for system owners and a regulatory framework which fails to provide incentives to distributors and retailers to encourage small renewable embedded generation.

¹² FEMAG (2005) *Regulation and Consumer Benefits: Compliance in the National Energy Market*, report prepared by the Foundation for Effective Markets and Governance for the Public Interest Advocacy Centre (PIAC) Ltd Sydney, p 68-69

¹³ See Alternative Technology Association (ATA), *Impediments to Grid Connection of Solar Photovoltaic: The Consumer Experience*, May 2005

Embedded generation is of particular interest to smaller rural and regional communities as it can be a cost-effective alternative to securing better and more reliable supply. We therefore strongly recommend that the SCO consider current barriers to system owners and develop a framework that can provide ease of access, transparent and accessible information, return on investments, and a regulatory framework for distribution businesses that incorporates appropriate incentives for encouraging embedded generation.

Metering (D.6)

Metering arrangements are particularly important as they impact on the feasibility to provide basic consumer protection and the ability for government to introduce new policies. The UK has metering competition and upon its introduction Ofgem explained that domestic consumers would not be negatively affected and that competition should increase service standards.¹⁴

However the consumer watchdog, Energywatch, found that “meter competition means it is less cost effective for companies to read meters than the days when they had all the customers in the street”.¹⁵ The UK has experienced severe problems in regards to billing and billing accuracy, a problem often relating to metering arrangements. 36% of energy bills are based on estimates and 9% of all customers in touch with Energywatch have explained that inaccurately estimated bills have thrown them into debt.¹⁶ This example from the UK illustrates the importance of metering arrangements for basic consumer rights. Metering arrangements are also extremely important in terms of implementing future government policies, for example to achieve environmental objectives through introducing meters offering improved demand side technology.

CUAC is concerned about the impact a competitive metering arrangement could have on domestic consumers, and rural consumers in particular, and thus recommends that metering services are provided on a regulated basis (eg by a distributor).

¹⁴ Ofgem, Introducing Competition in Metering, Ofgem factsheet 26, 31 Mars 2003

¹⁵ Scorer, A. Should we cut off bad payers? Presentation at the 7th Annual Metering, Billing & CRM/CIS Europe Conference, September 2005

¹⁶ As above

Jurisdictional Directions (D.9)

CUAC agrees that jurisdictions must retain the capacity to achieve social and environmental policy objectives. Indeed, the limited objectives of the national regulatory regime as presented in the Paper make that imperative. We are concerned that fragmentation of responsibilities for social and environmental outcomes, and the effective exclusion of those issues from consideration by the national regulatory bodies, will result in poor outcomes for consumers and the national market itself. In our view the greatest risk with this arrangement is that the division of responsibility between State and Commonwealth creates gaming and distortion. The CSOs are particularly vulnerable to this arrangement as concessions and assistance schemes do not operate in a vacuum but interplay and complement other consumer protections and pricing structures to be effective.

It is also unclear from the Paper how well suited the national framework will be to incorporate and address environmental policy objectives – how will national regulation incorporate, for example, the proposed development of a national emissions trading scheme by State Governments?

Furthermore, inequities and inconsistencies between the States have always been used by the demand side as a key argument for the removal of regulatory components. An example from Victoria is the requirement to include a graph depicting individual greenhouse gas emissions on a customer's bill. This may seem like an insignificant requirement in the overall scheme of things, but it has proven to be a useful tool for households to understand the environmental cost of their energy use and to monitor changes in their consumption over time. We are concerned that smaller regulatory components, such as the greenhouse gas graph, could be lost in the pursuit of national consistency.

Although the Paper has not presented a clear picture of the extent of jurisdictional differences and their impact on the national framework, we would assume that they are significant and thus somewhat defeat the purpose of a national market. Given the breadth

of activities that would fall within this exclusion, we hope each of the jurisdictions will identify and announce what policies and programs they regard as comprising a Jurisdictional Direction.

Any questions about this submission should be addressed to Kerry Connors, Executive Officer, Consumer Utilities Advocacy Centre Ltd, by phone 03 9639 7600 or email to kerry.connors@cuac.org.au