

Manager, MCE Secretariat  
 Department of Industry, Tourism and Resources  
 GPO Box 9839  
 Canberra ACT 2601

8 December 2006

Dear Sir/ Madam,

**Retail Policy Working Group: National Framework for Distribution and Retail Regulation  
 Working Paper 1**

The EA-IPR Retail Partnership (**EA-IPR**), trading in Victoria and South Australia as EnergyAustralia submits in response to the Retail Policy Working Group (**RPWG**) National Framework for Distribution and Retail Regulation Working Paper 1 of November 2006 (**Working Paper 1**), the comments below.

Definitions in this submission are the same as those in Working Paper 1 except where indicated otherwise.

1. General comments

EA-IPR appreciates the opportunity to submit its comments on each of the working papers to be prepared by Allens Arthur Robinson prior to the preparation and release of the MCE 2007 legislative package scheduled for April 2007. Establishment of a forum within which governments and industry can co-operate actively on the development of policy and implementation measures is a facilitative factor in not only achieving full efficiency in Australian retail markets but also identifying necessary change and securing commitment to any such changes.

It is in this light that EA-IPR strongly supports the MCE taking a partnership approach with industry on the matters proposed in the MCE 2007 legislative package. There is evidence to suggest that setting up consultative institutions and making the regulatory regime less discretionary has a positive effect on encouraging investment.<sup>1</sup> Given the essential service nature of the energy industry, improvement of the climate for investment is crucial to the long term interests of customers.

We note that throughout Working Paper 1, reference is made to the degree of regulation in various jurisdictions. As an energy retailer in South Australia and Victoria, it is EA-IPR's experience that the degree of regulation (and in particular consumer protection) in Victoria is greater than in South Australia. However, this does not translate to increased customer satisfaction as the table below shows.

	Population <sup>2</sup>	No. of complaints <sup>3</sup>	Complaints per head of population	One in every x people makes a complaint
Vic	5091700	17763	0.003489	286.646400
SA	15547000	3846	0.000247	4042.381695

<sup>1</sup> Terence Daintith *Discretion in the Administration of Offshore Oil and Gas: A Comparative Study* (2006) 182

<sup>2</sup> Australian Bureau of Statistics population figures as at end of June quarter 2006.

<sup>3</sup> Energy and Water Ombudsman of Victoria Annual Report 2005-2006 and Energy Industry Ombudsman of South Australia Annual Report 2005-2006.

## 2. Retailer obligation to supply small customers

### 2.1. Application procedures and connection services (page 15)

EA-IPR agrees with the proposed obligations on both customers and retailers in relation to provision of information. However, EA-IPR notes that if a customer does not fulfil the duty to provide acceptable identification and contact details, it is suggested that a retailer should not be subject to the obligation to arrange connection services on behalf of the customer.

In practical terms, for cases of customers moving in, a retailer will often need to arrange for connection services before a customer provides identification and contact details. It is reasonable to allow both parties a certain time frame in which to provide the information requested. EA-IPR's experience is that there may be difficulties in enforcing a customer's obligation to pay for supply when the customer has not provided information as to identity and contact details. EA-IPR would therefore recommend that should a customer not produce information as to identity and contact details after a reasonable period, that the retailer be exempted from the obligation to continue supply.

### 2.2. Application to other uncontracted supplies (move-in mechanisms)

In relation to the situation where a customer's regulatory status changes because the customer either becomes a small customer or ceases to be a small customer, EA-IPR is of the opinion that the customer should not be regulated as a small customer and specific regulation is not warranted as sufficient safeguards already exist for such customers under general law.

### 2.3. Terms and conditions

EA-IPR is in favour of Option 3 in terms of the method by which to achieve a form of supply contract capable of acceptance by customers. It is submitted that Option 3 will achieve certainty and transparency for consumers and ease of regulatory administration for retailers, as further regulatory approval is not required.

### 2.4. Enforcement mechanisms

EA-IPR notes the range of enforcement mechanisms available, and agrees that licence revocation is not an effective enforcement mechanism for ensuring compliance with regulatory requirements. A more flexible and proportionate approach is required.

## 3. Retailer- small customer market contracts

### 3.1. Approach

On page 33 of Working Paper 1, three alternative approaches to the regulation of small customer market contracts are set out. EA-IPR is in favour of Option 3 but with some variation.

EA-IPR is of the opinion that Option 3 reduces the regulatory burden and therefore promotes investment in the industry, while at the same time protecting the long term interests of consumers. EA-IPR notes that the arguments against this approach are:

- Regulatory duplication and burden; and
- Potential inconsistency.

In relation to these arguments, EA-IPR submits that:

- It will be imperative to clearly set out in the drafting of documents the areas and degree of duplication with existing obligations and where separate compliance obligations arise;
- In areas where there is duplication, the energy specific regulation should clearly displace generic regulation;
- To the extent that there is any potential inconsistency, there must be a mechanism to allow for resolution of these inconsistencies and give retailers certainty in compliance obligations.

EA-IPR believes that it would be useful for the national framework to include a document similar to the Energy Retail Codes in Victoria and South Australia, which should displace the jurisdictional equivalents.

### 3.2. Who has the benefit of the obligation?

EA-IPR agrees that it is appropriate to define the class of small customers who have the benefit of market contract regulation to the same small customers to which certain retailers may have an obligation to supply, but to carve out certain customers where that definition may be over inclusive (Option 3, page 35).

## 4. Retailer- small customer marketing

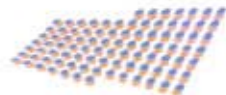
### 4.1. Marketing obligations

In terms of approach, again, EA-IPR would be in favour of Option 3 (page 40) insofar as it is made clear that energy specific regulation displaces generic regulation and that there is a mechanism to allow for resolution of inconsistencies.

However, EA-IPR also submits that care should be taken to avoid over regulation in this area. Currently, energy retailers in Victoria in particular are heavily regulated in relation to marketing activity. While we accept that some regulation is required, the current regulation goes beyond what the special characteristics of energy as an essential service and the level of consumer experience require. Working Paper 1 rightly sets out as examples the regulation of contact hours and no contact lists. If these are matters of concern, surely they would concern consumers of direct marketing generally, rather than be perceived as symptomatic of energy marketing. EA-IPR therefore submits that regulation that is not specific to energy marketing should not be imposed on retailers.

### 4.2. Who do the obligations apply to?

EA-IPR agrees that obligations relating to marketing should apply to both retailers and marketing intermediaries. Whether retailers should still be responsible for the activities of marketing intermediaries that they deploy will be contingent on how these obligations will be imposed: through licence obligations or through the application of the Law and the Rules. To the extent that such a decision has yet to be made, EA-IPR reserves its position on this matter.



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EA-IPR would be pleased to elaborate on any aspect of this submission. If any further information is required, please do not hesitate to contact me on (03) 8807 1140.

Yours faithfully,

**Melissa Kirby**

Legal & Regulatory Manager