

07 November 2005

Manager, MCE Secretariat  
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Dear Sir/Madam

**NATIONAL FRAMEWORK FOR DISTRIBUTION AND RETAIL REGULATION -  
SPECIFICATION OF FUNCTIONS**

On 27 October 2004 the Board of Energy Industry Ombudsman (SA) Ltd provided a submission to the Issues Paper “National Framework for Electricity and Gas Distribution and Retail Regulation” (a copy of the submission is attached).

In regard to the October 2005 “Specification of Functions” Paper this Board submission deals with Issues 25, 26 and 32, i.e.:

**“States/Territories**

25. *Distributor – small end consumers and dispute resolution – distributors’ requirement to have internal dispute resolution schemes for the small end customers and participate in an independent alternative dispute resolution scheme.*
26. *Retailer – small end customer dispute resolution – obligations of retailers to have internal dispute resolution/record keep procedures and participate in independent alternative dispute resolution schemes.*

**Abolish**

32. *General Business authorisations (licensing) for retailers and distributors – including any matters other than technical capability and safety.”*

## Attachment 1

### Issues 25 and 26

Consistent with its 27 October 2004 submission, the Board supports these recommendations.

It is noted that recommendation 26 require retailers to have "... record keeping procedures..." yet this is not included in recommendation 25 referring to distributors. We consider that this should be a requirement of both retailers and distributors.

### Issue 32

Energy Industry Ombudsman (SA) Ltd is a company limited by guarantee. Its existence, however, is due to the licensing requirements contained in the South Australian Electricity and Gas Acts as detailed below:

#### SA Electricity Act 1996 (as amended)

Section 23(1)(k) of this Act requires the Essential Services Commission of SA (ESCOSA) when licensing the operations of a transmission or distribution network to include a condition:

*"requiring the electricity entity to participate in an ombudsman scheme –*

- (i) that applies to the electricity supply industry and to other regulated industries (within the meaning of the Essential Services Commission Act 2002) prescribed by regulation; and*
- (ii) the terms and conditions of which are approved by the Commission"*

Similarly, Section 24(2)(l) defines such a condition for licensed electricity retailers selling electricity to customers with an annual electricity consumption of less than 750 MWh per year.

#### SA Gas Act 1997 (as amended)

Sections 26 (1)(d) and 26A(2)(i) define similar requirements when ESCOSA issues a licence authorising the operation of the gas distribution system and gas retailing. With regard to gas retailers, section 8B of the gas Regulations limits the requirement to join an ombudsman scheme to those retailers selling gas to customers with consumption of less than 10 terajoules per year.

If the current licence requirements are abolished questions arise as to:

1. which entity approves the terms and conditions of the ombudsman scheme?  
and

## Attachment 1

2. what will replace the current legislative requirements for electricity transmission, distribution and retail entities (as defined) and gas distribution and retail entities (as defined) to participate in the ombudsman scheme?

In addition to the current legislative arrangements explained above, the Constitution and Charter of Energy Industry Ombudsman (SA) Ltd define important responsibilities for ESCOSA as follows:

- the appointment of the independent Chair (section 13.5)
- the nomination of three persons to represent customers of electricity and gas services or public interest groups relevant to such services (section 13.4 (a))
- the approval of amendments to the Constitution at the recommendation of the Board (section 26)
- the approval of amendments to the Charter (section 10.1 of the Charter)
- the setting of an annual budget figure should members not approve a budget at least 14 days before the commencement of a financial year (section 10.7).

It is the Boards' view that these provisions are critical to the actual as well as the perceived independence of the Scheme, which is of course funded by the energy company members.


If the role of ESCOSA in energy is to cease discussions will need to occur as to how and in what form these mechanisms are to continue. As outlined above, under the current Constitutional provisions approval of changes requires approval by the Board, the members of the scheme and ESCOSA.

Again from the fundamental aspect of independence the Board is of the view that these functions should be the responsibility of an entity independent from both the energy industry and Government.

Yours faithfully



K. H Hancock  
**Chairman**



N. Hakof  
**Ombudsman**

27 October 2004

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Dear Sir or Madam

**NATIONAL FRAMEWORK FOR ELECTRICITY AND GAS DISTRIBUTION AND  
RETAIL REGULATION ISSUES PAPER**

On 27 September 2004 the Board of Energy Industry Ombudsman (SA) Ltd (EIOSA) considered Chapter 7 of the Paper and in particular the issue of “dispute resolution”. EIOSA is the ombudsman scheme “the terms and conditions of which are approved by the Essential Services Commission of SA (ESCOSA)” pursuant to Sections 23(1)(k) and 24(2)(l) of the SA Electricity Act and Sections 26(1)(d) and 26A(2)(i) of the SA Gas Act. The Board comprises an independent Chair whose appointment is approved by ESCOSA, three industry directors (two electricity and one gas) and three independent directors nominated by ESCOSA to represent customers of electricity and gas services or public interest groups relevant to such services.

The following are the unanimous views of the Board:

1. It is difficult to comment on the pros and cons of a national ombudsman scheme or the status quo without knowing the scope and extent of the national regulatory regime of which a national consumer protection code might be a critical component.
2. There will, nevertheless, need to be compelling reasons for change, and there is a corresponding onus on proponents of a national ombudsman scheme to demonstrate its customer protection and economic benefits. The Paper deals with dispute resolution in three paragraphs and the discussion is superficial. To initiate major changes to existing dispute resolution mechanisms will require detailed analysis and reasons to be put forward in order to allow for informed debate and consultation.

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3. The national ombudsman schemes referred to in the paper arose through national legislation. The energy ombudsman schemes came from very different legislative backgrounds and in a total state-based context.
4. Accessibility by consumers is a critical issue. The clear success of state-based schemes is heavily based on accessibility, visibility and knowledge of local regulatory arrangements as well as other local issues such as geography and socio-demographic variables. It is difficult to see a national scheme replicating these conditions without providing state-based offices.
5. The current SA scheme serves well the community and energy industry in SA. Any future scheme must preserve local availability and knowledge.
6. There is a risk that standards will drop if a lowest common denominator approach in customer protection is adopted.
7. The views of consumers on this issue are paramount, as the existing schemes were established with the central objective of the good of the community. There has been insufficient consultation about this issue to date. As we do not see this as a time-critical matter in the context of national regulation, we suggest that a separate consultation process be established on this particular matter to allow for greater consumer input. This consultation should occur after the framework of the overall regulatory scheme is known.
8. The Australian and New Zealand Energy and Water Ombudsman Network, comprising the Energy and Water Ombudsman NSW, the Energy and Water Ombudsman VIC, the Electricity Ombudsman TAS, The Gas Industry Ombudsman WA, the Electricity Complaints Commissioner NZ and EIOSA, has been working and continues to work towards complaint handling consistency, whilst understanding, recognising and responding to local regulation, issues and concerns.

We believe that the Minister for Energy in South Australia shares our views about the importance of local access to dispute resolution facilities and the effectiveness of existing arrangements in this State.

Yours faithfully



Chairman



Ombudsman