

7 April 2004

Memorandum of Understanding
C/- MCE Market Reform
Department of Industry, Tourism and Resources
GPO box 9839
Canberra ACT 2601

By e-mail to MCCEMarketReform@industry.gov.au

RE: PROPOSED MEMORANDUM OF UNDERSTANDING

Dear Sir or Madam,

The Energy Retailers Association (ERAA) represents the core of Australia's energy retail organisations and is the peak body representing energy retailers in Australia. We welcome the opportunity to make a submission on the proposed Memorandum of Understanding (MOU) that is to be agreed between the AEMC, the AER and the ACCC.

The ERAA supports the use of a MOU to define the boundaries between organisations. We are, however, concerned that the MCE is putting the cart before the horse, by setting out the MOU before the organisations' respective functions are fully defined. We also believe that the full MOU must be made available for consultation.

The ERAA is concerned with the review process that is being undertaken for the MOU, industry levy and Code change process. Release of papers on the eve of the forum and then allowing merely a fortnight for participants and interested parties to respond to a variety of papers is not the full consultation that was promised to participants last December. As a minimum, papers should be given 20 business days for consultation and forums should be around the middle of the consultation period. We

understand the need to meet the timeframes imposed by the MCE but rushing a series of meetings into the last week of the first quarter of 2004 is lip service not consultation.

The use of a MOU to define the roles of the AEMC, AER and ACCC is supported by the ERAA since the lack of clarity between the ACCC, NECA and NEMMCO was an area of concern with the old market development and Code change processes. We remain concerned, however, that the document does not appear to bind the ACCC to act in accordance with the new Code change process. The MOU appears focused on the AEMC and AER. The ERAA recommends that the ACCC be required to adhere to the timeframes in the new Code change process in the MOU.

The document supplied to participants is also only the framework of the MOU rather than the MOU itself. As has been stated many times recently: “the devil is in the detail”, and the ERAA considers that the full document needs to be made available for consultation as soon as possible.

For example, the ERAA is concerned that significant issues associated with the proposed sharing of staff, resources and information between the ACCC, AER and the AEMC have not been considered. While the ERAA is supportive of arrangements that remove duplication and streamline the operation of the market institutions, this should not occur at the expense of fundamental governance and natural justice principles. A more appropriate model would see the AER existing in its own right (ie not as part of the ACCC). However, as a minimum, the ERAA believes that the AER function (including staff and information) should be fully “ring fenced” from the ACCC’s other functions. In this way, the separation of economic regulation and competition law enforcement can be maintained.

The normal development process for organisations is to first define the role and objectives then to consider the relationships with related organisations. In setting out and consulting on the MOU before the legislative frameworks and objects of the new organisations are set out, the ERAA considers the MCE has put the cart before the horse. The ERAA therefore recommends that the MCE define the framework and objects of the new organisations, set out the changes to be made to the ACCC’s legislation and then consults on the full MOU to be established between the organisations.

If you have any questions or wish to discuss any aspects of this letter please contact the Executive Officer of the ERAA, Mr Deane Russell on 0419 444 112 or by email to drussel@eraa.com.au.

Yours sincerely,

Unsigned electronic copy

Original, signed copy in post

Deane Russell
Executive Officer
Energy Retailers Association of Australia