

Energy and Water Ombudsman (Victoria) Limited

ABN 57 070 516 175

11 December 2006

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

By email: MCETMarketReform@industry.gov.au

Dear Madam/Sir

Re: Retail Policy Working Group – National Framework for Distribution and Retail Regulation – Working Paper 1 (November 2006)

Thank you for the opportunity¹ to comment on the paper prepared by Allens Arthur Robinson entitled *Retail Policy Working Group – National Framework for Distribution and Retail Regulation – Working Paper 1 (November 2006)* ('Working Paper 1').

The following comments are grounded in the Energy and Water Ombudsman (Victoria) (EWOV) scheme's experience of responding to Victorian customer complaints in electricity and natural gas distribution and retailing. To 30 November 2006, EWOV had handled more than 98,000 electricity and natural gas cases.

SECTION 2 OF WORKING PAPER 1: RETAILER OBLIGATION TO SUPPLY SMALL CUSTOMERS

Local retailers' obligation to supply

EWOV supports the retention of an obligation on local retailers to supply customers on regulated and comprehensive terms and conditions. Electricity and natural gas are essential services and customers are not always able to enter into a favourable negotiated contract.

EWOV's casework experience supports the view of the Utility Regulators Forum that, for low income and vulnerable consumers, there may always be a case for energy-

¹ The Victorian Essential Services Commission's (VESC's) draft revised *Charter of Consultation and Regulatory Practice* states that the VESC's preference, 'is to allow up to four weeks for comment on issues papers and draft reports and decisions'. As Working Papers 1- 4 are such significant papers for industry, consumer and other stakeholders, EWOV suggests that it is appropriate to provide four weeks for comment (rather than 15 days, as was provided with Working Paper 1).

specific regulation.² EWOV suggests that, given the essential nature of electricity and natural gas and the circumstances of low income and vulnerable consumers, there will probably always be a need for the obligation on local retailers (or designated retailers) to supply on a regulated basis.

Working Paper 1 notes (at page 13) that the status of local retailers, as incumbents, will change as energy retail competition evolves. However, EWOV suggests it remains logical for the obligation to supply to rest with the local retailer – just as, in the current Victorian regulatory framework, it is the local retailer that becomes ‘the retailer of last resort’ if the customer’s existing retailer is unable to continue to provide supply.³

Exceptions to the obligation to supply

Working Paper 1 proposes (at page 15) that one of the exceptions to the obligation to supply would be if there was a, ‘failure to pay an amount due to the retailer in respect of the new supply (such as a connection charge)’. EWOV wishes to make two comments about this proposal:

1. We support the exception being limited to the failure to pay an amount due in respect of the *new* supply. It would be unfair and a source of complaint if supply was able to be denied until a customer paid a debt relating to a different address.
2. It is current practice for some fees – such as the customer transfer fee – to be included with the first bill. As such, it would be more onerous on consumers to require payment of such fees prior to connection.

Deemed supply arrangements – move-in customers

What if the Financially Responsible Market Participant/Financially Responsible Organisation is a non-local retailer?

In relation to deemed supply arrangements where a customer moves into a property that already has supply connected, it is proposed (at pages 16, 25 and 74 of Working Paper 1) that for non-local retailers, the deemed contract tariffs, terms and conditions should be those applying for supply to the premises immediately prior to the deemed contract arising.

EWOV disagrees with this proposal, as it would be unfair to both customers and non-local retailers. It would result in the new occupant unwittingly becoming subject to the same tariffs, terms and conditions of the market contract that the previous occupant entered into with the non-local retailer. Following this logic, if this market contract contained an early termination fee, would the new occupant be expected to pay it to exit the arrangement they unwittingly find themselves in? From the perspective of the new occupant, this would clearly be unfair and a cause for complaint.⁴ Further, the new occupant may have a significantly different usage pattern to the previous occupant, making the previous occupant’s market contract

² Utility Regulators’ Forum Position Paper *Regulation of Retail Service Standards in the National Market* (September 2006) page 4

³ See VESC *Energy Retailer of Last Resort: Final Decision* (February 2006)

⁴ It is worth considering how Part 2B of the Victorian *Fair Trading Act* 1999, relating to unfair terms in consumer contracts, would apply to what is proposed in Working Paper 1.

inappropriate for the new occupant or for the non-local retailer. Given the variability of market contract tariffs, this could have significant cost implications for customers and non-local retailers, particularly where business customers are involved.

As such, EWOV suggests that, where a customer moves into a property that already has supply connected, the non-local retailer should instead be required to apply the standing prices, terms and conditions of the local retailer. EWOV understands this is the current requirement in Victoria.⁵

Duration of the deemed supply arrangement

Working Paper 1 recommends (at pages 16, 25 and 74) that the duration of the deemed supply arrangement should be a maximum of three months, following which the retailer will have an entitlement to disconnect supply.

EWOV suggests that the maximum duration of the deemed supply arrangement should be equivalent to two full billing cycles, not just three months.⁶ If billing is to move to a quarterly basis for electricity and natural gas, then this would be about 180 days. EWOV's casework experience is that there can be delays in the issuing and acknowledgment of 'to the occupier' bills. It is important that clear notice is able to be provided to the new occupant of the existence of the deemed supply arrangement – this is more likely to be achieved over two full billing cycles than within 90 days. Further, it is especially important that the customer receives a warning notice, at least seven days prior to any disconnection of the deemed supply arrangement.

Standing offer tariffs

EWOV supports the proposal (at page 25 of Working Paper 1) that the Law should provide that standing offer tariffs are those published by designated local retailers from time to time, subject to compliance with any applicable jurisdictional regulation of retail tariffs.

EWOV supports the practice whereby proposed changes to standing offer tariffs are published two months prior to their taking effect, as this enables government (and regulators) to review the proposed tariffs against their policy objectives.

Standing offer contract terms and conditions

As stated above, EWOV supports a requirement for there to be regulated and comprehensive standing offer contract terms and conditions.

A comprehensive set of terms and conditions will provide a level of certainty to industry, consumers and EWOV. This certainty assists with the resolution of complaints.

⁵ See *Electricity Industry Act 2000* (Vic) section 39 and *Gas Industry Act 2001* (Vic) section 46

⁶ *Electricity Industry Act 2000* (Vic) section 39(7)(d) provides for a maximum deemed supply arrangement of 180 days (equivalent to two full quarterly electricity billing cycles) and the *Gas Industry Act 2001* (Vic) section 46(7)(d) provides for a maximum deemed supply arrangement of 120 days (equivalent to two full two-monthly natural gas billing cycles).

EWOV's comments on the details of potential standing offer contract terms, as set out in Attachment 1 of Working Paper 1, are set out in Attachment 1 to this submission.

SECTION 3 OF WORKING PAPER 1: RETAILER – SMALL CUSTOMER MARKET CONTRACTS

A comprehensive energy-specific regime of market contract regulation

Working Paper 1 (at pages 33-35) canvasses three alternative approaches (called Options 1-3) towards the regulation of small customer market contracts. EWOV's view is that either Option 2 (energy-specific regulation where the characteristics of energy call for specific treatment) or Option 3 (a comprehensive energy-specific consumer protection regime) is preferable to Option 1 (reliance on national and jurisdictional consumer protection laws). Between those two options, EWOV prefers Option 3.

As stated in our January 2006 submission⁷, EWOV maintains its view that there remains a clear need for a strong, robust and industry-specific consumer protection framework, tailored to fit the electricity and natural gas industries. Further, EWOV endorses the insight in Working Paper 1 (at page 34) that duplication does not necessarily add to the regulatory burden.

EWOV further agrees that the Law should contain authority for the Rules to provide for specification of the terms and conditions which must be included in market contracts, those which must not be included and of the requirements with which market contracts must not be inconsistent. These three elements are the building blocks of a comprehensive approach to providing a consumer protection framework in the area of market contracts.

Victoria's *Energy Retail Code* has a system of asterisks to identify the clauses which can be varied in a market, as opposed to a standing, contract. This is a good way of achieving the regulatory effect of specifying the ways in which the two kinds of contracts may differ. Further, this approach has the effect of establishing standard terms and conditions as the default. EWOV believes that there is no inherent reason why a market contract should offer a markedly lower level of consumer protection, especially since most contracts appear to be entered into as a result of active marketing (that is, in response to door-to-door sales and telemarketing), not by customer initiative.

Who should benefit from the regulation?

EWOV agrees with the position in Working Paper 1 (at page 35) that the class of customers who have the benefit of market contract regulation should be the same as the class of customers who benefit from the obligation to supply.

⁷ EWOV comments (13 January 2006) in response to the May 2005 paper prepared by NERA Economic Consulting and Gilbert + Tobin entitled *Public Consultation on a National Framework for Energy Distribution and Retail Regulation* ('the Consultation Paper'). These comments are on EWOV's website (www.ewov.com.au).

In particular, EWOV believes that small business customers should not be disadvantaged by entering into a market contract. Our casework experience is that small business owners and managers are often no better placed than residential customers in having the opportunity to enter into a contract on the basis of explicit informed consent. They may even be worse placed because of a tendency to believe that they will receive advice from marketers that is specific to their situation.

Market contract terms and conditions

EWOV's comments on the details of potential market contract terms, as set out in Attachment 1 of Working Paper 1, are set out in Attachment 1 to this submission.

SECTION 4 OF WORKING PAPER 1: RETAILER – SMALL CUSTOMER MARKETING

Implementation architecture

In relation to the marketing of energy, EWOV endorses the approach proposed in Working Paper 1 (at page 42) of enabling provisions in the Law and detailed provisions in the Rules.

Energy-specific marketing regulation

Working Paper 1 asks (on page 41), 'is there any reason why energy consumers should be treated differently from others in respect of these issues [for example, contact hours]?' EWOV agrees that, in matters like contact hours and no contact lists, general regulation covering all sectors that actively market is, in principle, preferable. However, EWOV notes that, in practical terms, achieving consistency in general regulation in relation to contact hours would require considerable work and legislative amendments.

EWOV continues to receive a steady flow of cases involving energy marketing issues.⁸ Recurrent issues raised by customers include:

- the transfer of electricity and/or natural gas accounts against their wishes (that is, without explicit informed consent), following contact by a door-to-door salesperson or phone marketer;
- salespeople stating, or giving the impression, that the company they represented was taking over the provision of the electricity and/or natural gas in their area or had bought out the local retailer; and
- salespeople incorrectly stating, or giving the impression, they were from the government, or in some other way linked to government.

These cases, especially ones that involve transfer without explicit informed consent, substantiate the need for strong, energy-specific marketing regulation. It is extremely helpful to industry, consumers and EWOV that there is, in Victoria, a detailed energy marketing code and an associated guideline on explicit informed consent to assist in the resolution of disputes relating to energy marketing.

⁸ In 2005/06, consumers raised 389 issues with EWOV relating to door-to-door sales and 387 issues relating to phone sales: EWOV's 2006 Annual Report page 34.

To whom should the energy marketing obligations apply?

Working Paper 1 (at page 41) puts forward three options in relation to this question. EWOV supports the recommendation in Working Paper 1 that retailers should remain responsible for marketing activity carried out on their behalf (Option 3). It has been our experience that retailers act promptly and decisively when potential or actual marketing breaches are brought to their attention, intervening with counselling, training or even termination. The threat of termination of employment or even of a whole marketing arrangement between a retailer and a marketing agency is arguably more effective and more immediately used than a civil penalties regime.

If marketers were to be made responsible directly (as in Option 2), there may be some adverse effects. In particular, it may have the effect of confusing the jurisdiction of Ombudsman schemes over marketing complaints where the marketer is not a direct scheme participant in the Ombudsman scheme.

EWOV believes that retailers should not be allowed to lower the level of responsibility they take for marketing efforts undertaken in their name. Therefore, our first preference is Option 1 (marketing obligations apply to retailers, who are responsible for ensuring compliance by marketers and are liable for their conduct). Our second preference is Option 3 (marketing obligations apply to retailers and directly to others engaged in marketing activities, but retailers remain responsible for compliance by marketers acting on their behalf). As explained above, we do not support Option 2 (marketing obligations apply to retailers and directly to others engaged in marketing activities).

Content of requirements relating to energy marketing

EWOV's detailed comments on the content of energy marketing requirements, as set out in Attachment 2 of Working Paper 1, are set out in Attachment 2 to this submission.

In broad terms, EWOV is pleased that Attachment 2 to Working Paper 1 is a far more comprehensive list than was contained in the Consultation Paper. It largely endorses the list. In addition, EWOV suggests the following:

- A specific provision that gives consumers the right to receive written information without entering into a contract. It is common to receive cases where consumers who believe they have merely agreed to receive information have had their supply transferred.
- A specific provision relating to the practice of marketing to non-account holders. The practice of a salesperson convincing a person other than the current account holder to enter into a market contract continues to generate complaints and consumer dissatisfaction. From January to November 2006, EWOV had noted 45 cases about this issue – involving marketing to the partner, sibling, carer, child, parent, friend or housemate of the account holder. With a view to preventing such complaints, EWOV suggests a provision requiring an energy retailer, and its marketing agents, to obtain the express authority of the account

holder before any other person, including a close relative, is able to enter into an energy contract for the property.

We trust these comments are helpful. Should you require any clarification of, or expansion on, EWOV's comments, please do not hesitate to contact Stephen Gatford, Manager Public Affairs and Policy, on (03) 9649 7599.

Yours sincerely

A handwritten signature in cursive script that reads "Fiona McLeod".

Fiona McLeod
Energy and Water Ombudsman (Victoria)

Attachment 1: Comments on Attachment 1 of Working Paper 1 – Regulation of standing offer and market contract terms

Attachment 2: Comments on Attachment 2 of Working Paper 1 – Regulation of marketing conduct

Attachment 1: Comments on Attachment 1 of Working Paper 1 – Regulation of standing offer and market contract terms

Part A: Terms proposed in Consultation Paper [pages 46-62 of Working Paper 1]

Subject	Potential Requirement	EWOV Comments
Calculation of Charges		
Tariffs and charges	<p>Charges are to be made on the basis of tariffs and charges specified in the contract or published in accordance with prescribed publication requirements (such as in the Gazette and/or a general circulation newspaper and/or on the retailer's internet site).</p> <p>Any variation to tariffs and charges must be notified to the customer in advance of the variation taking effect.</p> <p>Upon request, a retailer must provide a customer with reasonable information on network charges, retail charges and any other charges relating to the sale or supply of energy.</p>	<p>EWOV supports these requirements applying to standing offer and market contracts.</p> <p>As noted in the body of EWOV's submission, EWOV supports the current arrangement in Victoria, whereby two months prior notice (in the Victorian Government Gazette) of proposed changes to standing offer tariffs is required.</p>
Use of meter data	<p>Unless otherwise permitted, a retailer must base the calculation of charges for a small customer's bill on metering data provided by the distributor or other responsible person.</p> <p>A retailer may base the calculation of charges under a bill on an estimation of a small customer's consumption of energy in</p>	<p>EWOV supports these requirements applying to standing offer and market contracts.</p>

Subject	Potential Requirement	EWOV Comments
	<p>the following circumstances:</p> <ul style="list-style-type: none"> • where the customer consents to the use of estimates by the retailer; • where the retailer is not able to reasonably or reliably base the bill on a meter reading; or • where metering data is not provided to the retailer by the distributor or other responsible person. 	
Meter reads	A retailer must use its best endeavours to ensure that a meter reading takes place at least once in each [6/12] month period.	<p>EWOV supports these requirements applying to standing offer and market contracts.</p> <p>Given the size of back-bills that can result from underestimations, a 6 month provision is preferable to a 12 month provision. However, EWOV recognises the practical difficulties of this where the customer does not provide access to the meter.</p>
Estimations	<p>Where estimations are permitted to be used as the basis for the calculation of energy charges under a bill for a small customer, the estimations may be based on:</p> <ul style="list-style-type: none"> • the customer's reading of the relevant meter; • historical meter data for the relevant customer; or 	EWOV supports these requirements applying to standing offer and market contracts.

Subject	Potential Requirement	EWOV Comments
	<ul style="list-style-type: none"> where there is no historical meter data for the relevant customer, the average usage of energy by a comparable customer over the corresponding period. 	
Meter access	<p>A customer must allow the retailer or its agent access to the supply address for the purposes of reading the meter.</p> <p>If a failure to provide access results in a charge being based on an estimation and the customer subsequently requests an actual read, the retailer may charge the customer its reasonable costs of complying with the request.</p>	EWOV supports these requirements applying to standing offer and market contracts.
Termination		
Retailer termination	<p>A retailer may terminate a small customer supply contract where:</p> <ul style="list-style-type: none"> the retailer has a contractual right to disconnect, disconnection has occurred and there is no contractual right to reconnection; the small customer and the retailer have entered into a new customer contract; or the small customer has transferred to another retailer. 	EWOV supports these provisions applying to standing offer and market contracts.
Customer termination	A small customer may terminate a standing offer contract	EWOV supports these requirements, subject to an

Subject	Potential Requirement	EWOV Comments
	<p>upon [three] business days notice to the retailer.</p> <p>A small customer may terminate a market contract upon [28] days notice to the retailer.</p>	<p>acknowledgment that in exceptional circumstances a customer may not be able to give this notice (e.g. escaping from domestic violence).</p>
Security		
Provision of security	<p>A retailer may require a small customer to provide a security deposit where:</p> <ul style="list-style-type: none"> • the small customer still owes that retailer or another retailer in relation to the supply of electricity to another address; • the customer has unlawfully used energy within the past two years; • the customer has refused to provide acceptable identification to the retailer; or • the retailer reasonably considers that the customer does not have a satisfactory credit history and the customer has refused an instalment plan offered by the retailer. 	<p>EWOV largely supports these requirements applying to standing offer and market contracts, subject to the following amendments:</p> <ul style="list-style-type: none"> • The first dot point should state that the amount owed must be more than an amount nominated by the regulator. Otherwise, a security deposit could be required over a very small debt, which would be disproportionate. • The fourth dot point needs to provide guidance about the basis upon which the retailer can form the view that the customer does not have a satisfactory credit history. The basis should be restricted to there being a ‘relevant default’. This should be carefully defined, bearing in mind that electricity and

Subject	Potential Requirement	EWOV Comments
		natural gas are essential services, as has been done at clause 2.1 of the VESC's <i>Credit Assessment Guidelines</i> .
Information about credit history	<p>If a retailer requires a security deposit on the basis that a small customer has an unsatisfactory credit history, the retailer must inform the customer:</p> <ul style="list-style-type: none"> • that the retailer has decided the customer has an unsatisfactory credit history; • the reasons for the retailer's decision; • of the customer's rights to raise a complaint; and • that the customer has the right to obtain details in relation to the information on which the retailer's decision was based. 	EWOV supports these requirements applying to standing offer and market contracts.
Amount of security	The amount of security may not exceed [1.5] times the average quarterly bill (for customers on a quarterly billing cycle) or [2.5] times the average monthly bill (for customers on a monthly billing cycle).	EWOV supports these requirements applying to standing offer and market contracts.
Interest	The retailer must pay interest on a security deposit to the	EWOV supports this requirement applying to

Subject	Potential Requirement	EWOV Comments
	customer in accordance with a specified interest rate.	standing offer and market contracts and suggests the interest charged should be standard across jurisdictions.
Application of security	<p>The retailer may only apply a security deposit to off-set amounts owed to it under a standard form supply contract where the customer:</p> <ul style="list-style-type: none"> • has failed to pay a bill which results in disconnection by the retailer and there is no contractual right to reconnection; • vacates the property; • requests disconnection; or • transfers to another retailer. 	EWOV supports these requirements applying to standing offer and market contracts.
Repayment of security	The retailer must repay a security deposit to the customer after the customer has completed 12 months of on-time payment of energy charges or where the customer ceases to take supply at the relevant address.	EWOV supports this requirement applying to standing offer and market contracts. However, EWOV suggests amending the wording so as to read, ‘...or where the customer ceases to take supply <i>from the retailer</i> at the relevant address’. This will more clearly cover the situation where a customer switches retailer at the same address.

Subject	Potential Requirement	EWOV Comments
Billing, apportionment of payment, disputes		
Frequency of bills	Energy bills must be issued by the retailer at least every three months.	EWOV supports these requirements applying to standing offer and market contracts.
Content of bills	<p>A bill should include the following content:</p> <ul style="list-style-type: none"> • customer's name, account number and address; • meter identifier; • bill period; • relevant tariff; • whether the bill was issued as a result of a meter read or an estimation and, if issued as a result of a meter read, the date of the meter reading; • details of consumption or estimated consumption [(including a consumption graph)]; • pro rata billing information (if applicable); • any amount deducted, credited or received under a Government rebate or concession scheme or under an instalment plan; 	<p>EWOV supports these requirements applying to standing offer and market contracts. EWOV suggests further requirements should apply, namely:</p> <ul style="list-style-type: none"> • the dates and total amounts of the immediately previous and current meter readings, estimates or substitutes; • details of the availability of concessions (not just the details of any concessions that may have been applied); and • details, in relevant languages, of interpreter services.

Subject	Potential Requirement	EWOV Comments
	<ul style="list-style-type: none"> • the amount of any security deposit; • the network charge and any other miscellaneous charges; • details of the available payment methods; • telephone number for account and fault enquiries; and • contact details for complaints. <p>Amounts billed for goods and services (other than the supply of energy) must be included in a separate bill or as a separate line item on an energy bill.</p>	
Apportionment	<p>If a bill includes amounts payable for other goods and services provided by the retailer (apart from the supply of energy), any payment made in relation to such a bill must be applied firstly to the payment of the energy charge, unless otherwise directed by the customer or agreed by the customer.</p> <p>In the case of dual fuel bills, payment is to be made as agreed with or directed by the customer. If there is no such agreement or direction, payment is to be applied in proportion to the relative value of the electricity and gas charges.</p>	EWOV supports these requirements applying to standing offer and market contracts.

Subject	Potential Requirement	EWOV Comments
Disputes	<p>A retailer must review a bill upon the request of a small customer in accordance with [the retailer's standard complaints and dispute resolution procedures/the retailer's billing complaints procedure.]</p> <p>Retailers may require a customer to pay the greater of:</p> <ul style="list-style-type: none"> • the portion of the bill under review which is not in dispute; or • an amount equal to the average amount of the customer's bills over the previous year (excluding the bill in dispute), <p>and any future bills that are properly due.</p> <p>Where, after conducting a review of the bill, a retailer is satisfied that the bill is:</p> <ul style="list-style-type: none"> • correct, the customer must pay the amount outstanding; or • incorrect, the retailer must adjust the bill accordingly and refund any fee paid in carrying out any metering test. 	EWOV supports these requirements applying to standing offer and market contracts.

Subject	Potential Requirement	EWOV Comments
Undercharging and overcharging		
Undercharging	<p>A retailer may recover from a customer any amount undercharged during the previous 12 months. Interest is not payable on the amount undercharged and the customer must be given a corresponding period of time to pay any undercharged amount. Any amount undercharged must be listed and explained as a separate item on the customer's next bill or on a separate bill.</p>	<p>EWOV supports a limitation on the period of time for which energy retailers can recover undercharges applying to standing offer and market contracts.</p> <p>In Victoria, this limitation is 9 months where the undercharging results from ‘a failure of the retailer’s billing systems’. As such, a 12 month period would be a reduction in standards for Victorian consumers. EWOV is mindful of the many complaints, and financial strain on consumers, that result from the issuing of back bills. As such, EWOV does not support a diminution in the consumer protection framework in this area (that is, moving from 9 months to 12 months).</p> <p>Further, EWOV has received complaints involving a delay between advice of an undercharge and the detailed billing of it. As</p>

Subject	Potential Requirement	EWOV Comments
		such, EWOV recommends that the recoverable period be counted back from the date that the detailed bill is provided to the customer.
Overcharging	A retailer must repay any amount overcharged. If the amount overcharged is less than a threshold amount, the retailer must credit that amount to the next bill. If the amount overcharged exceeds the relevant threshold, the retailer must repay the amount as directed by the customer or, where there is no such direction, credit the customer's next bill.	EWOV supports these requirements applying to standing offer and market contracts and supports the New South Wales threshold amount of \$25.
Payment methods and difficulties		
Payment methods	<p>A retailer must accept payment by a small customer by any of the following payment methods:</p> <ul style="list-style-type: none"> • in person; • by mail; or • by direct debit or [credit card] arrangement. <p>Where a direct debit arrangement is entered into, the retailer and the small customer must agree the amount, date and frequency of the direct debits and the customer's cancellation</p>	<p>EWOV supports these requirements applying to standing offer and market contracts.</p> <p>In relation to direct debit arrangements, EWOV particularly supports customers being provided with information about their cancellation options. Further, EWOV recommends that retailers be required to specify the mechanism by which the direct debit amount may be varied and the direct</p>

Subject	Potential Requirement	EWOV Comments
	options.	debit amount that will be sought when the customer finalises their account (as this has been a cause for complaint).
Payment difficulties	<p>A retailer must offer a small customer an instalment plan where the customer informs the retailer that it is experiencing payment difficulties or it becomes apparent to the retailer that the customer is experiencing payment difficulties. Where customers are experiencing payment difficulties, retailers must provide information to those customers in relation to available concessions or Government assistance, financial counselling services and their ability to have the bill redirected to a consenting third party.</p> <p>A retailer is not required to offer an instalment plan if the customer has had two instalment plans cancelled due to non-payment in the previous 12 months.</p>	<p>Mindful of the prevalence of affordability complaints reaching our office, EWOV supports these requirements applying to standing offer and market contracts.⁹ In addition, EWOV suggests a requirement on energy retailers to provide information about energy efficiency.</p> <p>EWOV considers it would be a seriously retrograde step if the current requirement for energy retailers in Victoria to have an approved hardship policy was dismantled.</p>
Bill smoothing	Where a retailer is entitled to use estimations as the basis for the calculation of charges under an energy bill, estimated bills may be provided under a smoothing arrangement if:	EWOV supports these requirements applying to standing offer and market contracts.

⁹ EWOV notes the Utility Regulators Forum are, similarly, of the view that both deemed (standing) and market contracts should require additional assistance to be offered, and continue to be offered, to domestic customers experiencing energy affordability issues: Utility Regulators' Forum Position Paper *Regulation of Retail Service Standards in the National Market* (September 2006) page 6

Subject	Potential Requirement	EWOV Comments
	<ul style="list-style-type: none"> • the amount payable each month is initially the same; • the retailer's estimate is based on the customer's historical billing data or, if no such data exists, the average consumption of a similar customer; • the retailer re-estimates consumption after six months; and • the difference between the initial estimate and the re-estimate is greater than 10%, the retailer resets the amount payable under each of the remaining bills to reflect the difference. 	
Disconnection		
Rights to disconnect	<p>A retailer may disconnect or discontinue supply where:</p> <ul style="list-style-type: none"> • a small customer has not paid a bill; • access to a meter has been denied for three consecutive bills; • the customer has refused to provide acceptable identification or security; • a customer has used energy illegally; or • a customer has obstructed an authorised person in relation to acts to be done under the contract. 	EWOV regards these provisions as reasonable, subject to the limitations and our comments below.

Subject	Potential Requirement	EWOV Comments
<p>Limitations on right to disconnect</p>	<p>Other limitations will apply to the right to discontinue supply in circumstances where a small customer has not paid a bill on account of having insufficient income. In these circumstances, the retailer is required to comply with its obligations in respect of customer payment difficulties (eg to offer instalment plans or special payment arrangements and to make referrals to counselling services, etc) before proceeding to disconnect a customer. Retailers are not entitled to disconnect while an application for Government assistance or a payment plan is pending. In addition, premises registered as containing life support or other medical equipment may not be disconnected and retailers may only carry out disconnections before certain times of the day and on certain days.</p>	<p>EWOV supports these limitations applying to standing offer and market contracts. In addition, no disconnection should be allowed where a customer has made a complaint directly related to the non-payment of the bill, either to the energy retailer or to the relevant Ombudsman or another external dispute resolution body, and the complaint remains unresolved.</p> <p>EWOV supports a move to common limits on the hours (e.g after 2pm on a business day) and days of the year (e.g. on a Friday, public holiday, etc) when disconnection is not allowed (unless it has been requested by the customer).</p>

Subject	Potential Requirement	EWOV Comments
Notice	<p>Disconnection may not be effected until the retailer has provided the customer with:</p> <ul style="list-style-type: none"> • a reminder notice; and • [two] disconnection notices. <p>In addition, the retailer must make a reasonable attempt to contact the customer by telephone.</p>	<p>EWOV is generally supportive of these requirements applying to both standing offer and market contracts, subject to the following amendments (and further detailed discussion):</p> <ul style="list-style-type: none"> • Energy retailers should be required to use their <i>best endeavours</i> (as defined in the VESC's Operation Procedure) to contact the customer by telephone <i>or in person</i>. • It should also be a requirement for the name and phone number of the jurisdictional Ombudsman to be included on at least one reminder/disconnection notice. • It is very important that there is also clear regulation of the minimum number of days required between the issuing of the reminder notice, the issuing of the disconnection notices and the disconnection of supply, so as to provide the customer with a reasonable opportunity to pay or contact the retailer regarding payment plans and assistance.

Subject	Potential Requirement	EWOV Comments
Dual fuel contracts	If disconnection is permitted, a retailer must ensure that a small customer on a dual fuel contract is initially disconnected from gas supply and that disconnection from electricity supply occurs within a certain period after the disconnection notice.	EWOV supports this requirement applying to standing offer and market contracts.
Reconnection	<p>A retailer must notify a small customer of the arrangements which the customer will need to make in respect of reconnection, including any costs payable by the customer. Any payment arrangements for reconnection must allow for fair and reasonable payments at fair and reasonable intervals.</p> <p>A retailer must reconnect premises if the breaches described above are remedied within 10 business days. Retailers must make appropriate arrangements with the relevant distributor to ensure that reconnection occurs as soon as possible for the customer.</p>	EWOV supports these requirements applying to standing offer and market contracts.
Liability and warranties	<p>A retailer must not include any term or condition in an energy contract that limits the liability of the retailer for breach of the contract or negligence by the retailer, provided that:</p> <ul style="list-style-type: none"> • the retailer's liability may be limited as contemplated by 	EWOV supports these requirements applying to standing offer and market contracts.

Subject	Potential Requirement	EWOV Comments
	<p>section 68A of the <i>Trade Practices Act</i> or by equivalent State or Territory legislative provisions; and</p> <ul style="list-style-type: none"> • there is no variation or exclusion of relevant legislative provisions which provide that the retailer is not liable for damages for failure to supply due to circumstances beyond its control (ie section 120 of the NEL). <p>A retailer may not include in an energy contract with a small customer a term pursuant to which the customer indemnifies the retailer, so that the retailer may recover from the customer an amount greater than the retailer would otherwise have been able to recover at general law for breach of contract or negligence by the customer in respect of the contract.</p>	

Part B: Possible additional terms and requirements [pages 62-65 of Working Paper 1]

EWOV notes the assurance provided at the 30 November 2006 meeting of the Stakeholders Reference Group that whilst this Part B is entitled ‘Possible additional terms and requirements’, the potential requirements listed below are not regarded as possibilities only, but will have the same consideration and status as the items in Part A above.

Subject	Potential Requirement	EWOV Comments
<p>Dispute resolution and complaints</p>	<p>A retailer must handle a complaint made by a small customer in accordance with the relevant Australian Standard and the relevant jurisdictional dispute resolution process.</p> <p>When a customer contacts a retailer in relation to a complaint, the retailer must inform the customer that:</p> <ul style="list-style-type: none"> • the customer has the right to raise the complaint to a higher level within the retailer's management structure; and • if after raising the complaint to a higher level, the customer is still not satisfied with the retailer's response, the customer may refer the complaint to [an] external ombudsman. 	<p>EWOV supports these requirements applying to standing offer and market contracts.</p> <p>In relation to the second dot point, EWOV recommends that energy retailers are also subject to a requirement to provide the name and phone number of the jurisdictional Ombudsman to the customer.</p>
<p>Communications with customers</p>	<p>A retailer must provide access to multi-lingual services (for languages common to the relevant customer base) in order to meet the reasonable needs of its small customers.</p>	<p>EWOV supports this being a requirement.</p>
<p>Provision of energy efficiency advice</p>	<p>On request, a retailer must provide energy efficiency advice to a small customer.</p>	<p>EWOV supports this being a requirement.</p>
<p>Assessing credit risk</p>	<p>In deciding whether a small customer has an unsatisfactory credit rating, a retailer may only have regard to any relevant</p>	<p>As stated above (at pages 11-12) under 'Provision of security', EWOV supports the retention of a</p>

Subject	Potential Requirement	EWOV Comments
	utility related default by that small customer.	requirement to only have regard to ‘relevant defaults’.
Prepayment meters	A customer cannot be required to use a prepayment meter.	EWOV notes that prepayment meters are in use in Tasmania, Western Australia and South Australia – the latter subject to the South Australian Prepayment Code. Given that they are in use in a number of states, national consistency is again desirable. EWOV agrees that customers should not be required to use them – they should be a matter of choice. This area will require further detailed discussion and consultation.
Payment terms	The due date for payment of a bill may not be less than a prescribed period after the date on which the bill is sent out.	Given the current consensus around ‘not less than 12 business days’, it would be sensible to adopt this in national regulation for both standing offer and market contracts.
Rights to information	An energy contract must set out for a small customer how the small customer can receive information on his or her rights, entitlements and obligations.	EWOV supports contracts being required to contain provisions on this point and regards Customer Charters as an excellent way of providing customers with key information about their rights and obligations.

Subject	Potential Requirement	EWOV Comments
Historical billing information	A retailer must provide historical billing data for the previous 12 months without charge to a small customer. Any information provided prior to that period may be subject to a charge.	EWOV maintains that the period should be two years (as it is currently in Victoria), rather than 12 months. As to prior information, it should state ‘a <i>reasonable</i> charge’.
Cooling-off period	A retailer must ensure that each market contract entered into with a small end customer enables the customer to rescind the contract within 10 business days after the contract is entered into.	EWOV supports the retention of a 10 business day cooling off period for market contracts.
Early termination charges	The retailer may only impose an early termination charge under a small end customer market contract if: <ul style="list-style-type: none"> • the market contract includes details of the amount or manner of calculation of the early termination charge; and • the imposition of the early termination charge is not prohibited under an applicable regulatory instrument, at law or in equity. 	EWOV accepts this provision but notes that it should also be a requirement to notify customers about early termination charges as part of pre-contract disclosure.
Service standards	The retailer must comply with specified service standards.	This potential requirement seems desirable.
Customer consultative groups	The retailer must establish a customer consultative group.	Customer consultative groups can provide valuable input to energy retailers.
Discrimination	A retailer must not refuse to supply or supply on inferior	This issue has not arisen in EWOV’s casework,

Subject	Potential Requirement	EWOV Comments
	terms on the basis that the customer supplies or uses alternative forms or sources of energy or services that reduce the demand for energy.	however, in theory the provision seems logical.
Greenhouse gas emissions	Bills must include information concerning greenhouse gas emissions in accordance with guidelines.	EWOV supports this provision, which is currently part of the Victorian regulatory framework. This requirement can assist customers to understand the concept and marketing of green energy.
Fees for late payment	Not permitted	EWOV notes the Victorian energy regulatory framework currently does not permit late payment fees EWOV has previously noted that, based on interstate experiences, the introduction of late payment fees may result in increased consumer complaints, which would, in turn, increase compliance costs for energy retailers in Victoria.
CSOs	Retailers may be required to deliver government funded CSOs	EWOV notes this requirement applies in a number of jurisdictions and is likely to continue.
Shortened billing cycles	Conditions under which a customer may be placed on a shortened billing cycle.	If shortened billing cycles are to be permitted, then there should be closely defined limits on when they are allowed, as is set out in the

Subject	Potential Requirement	EWOV Comments
		Victorian <i>Energy Retail Code</i> (e.g. where the customer has received reminder notices on three consecutive bills, prior warning, etc).
Competitive pricing information	Retailers must publish information relating to the provision of pricing information to enable small customers to compare competing offers.	EWOV supports information of this nature being readily available to customers on websites (Product Information Statements) and on request and when new retail contract information is provided (Offer Summaries). These requirements, set out in the VESC's <i>Energy Product Disclosure Guideline</i> , give practical application to the requirement for explicit informed consent.
Compensation for wrongful disconnection	Retailers must pay compensation to customers who are wrongfully disconnected.	EWOV's experience has been that the wrongful disconnection legislation, which has applied to energy retailers in Victoria since 8 December 2004, has resulted in: <ul style="list-style-type: none"> • energy retailers closely reviewing and improving their compliance with pre-disconnection requirements; • a reduction in energy disconnections; and

Subject	Potential Requirement	EWOV Comments
		<ul style="list-style-type: none"> • a reduction in complaints to EWOV about energy disconnections. <p>On this basis, EWOV supports the extension of this requirement to other jurisdictions.</p>

Attachment 2: Comments on Attachment 2 of Working Paper 1 – Regulation of marketing conduct

Subject	Potential Requirement	EWOV Comments
Pre-contractual disclosures		
Timing/form	<p>A retailer must provide a small customer with certain prescribed information as follows:</p> <p>(a) prior to formation of a market contract: where the prescribed matters may be disclosed in writing, electronically or verbally; and</p> <p>(b) [within 2 business days after formation of the market contract / at least 5 days prior to the expiration of the cooling-off period]: pursuant to a single written disclosure statement (unless such disclosure statement has already been provided).</p>	<p>In relation to ‘(a)’, EWOV supports a prescribed list of matters to be disclosed before contract formation. This gives practical application to the requirement for explicit informed consent.</p> <p>EWOV does not support ‘(b)’. EWOV’s casework experience suggests that 5 calendar days is insufficient time for many customers to consider this information (before becoming subject to early termination fees). EWOV maintains that the requirements should be:</p> <ul style="list-style-type: none"> • a cooling-off period of ten business days; • for door-to-door sales, that this information be provided at the time of the door-to-door sale; and

Subject	Potential Requirement	EWOV Comments
		<ul style="list-style-type: none"> for phone sales, that this information be <i>sent</i> within two business days. <p>The practical effect of this suggestion is that customers in regional areas should have 6 business days (rather than 5 calendar days) to consider the information (before becoming subject to early termination fees).</p>
Required disclosures	<p>The information which a retailer must provide in the manner described above is information in relation to:</p> <p>(a) existence of commissions: whether the marketer is entitled to receive a commission from the retailer for arranging the market contract;</p> <p>(b) prices, charges, penalties, billing and payment arrangements: all applicable prices, charges and penalties, security deposits, service levels, concessions or rebates, billing and payment arrangements and how any of these matters may be changed;</p> <p>(c) contract duration: the duration of the contract, the availability of extensions and whether the contract can be transferred to other premises if the customer moves</p>	<p>EWOV agrees that this list contains the significant items with which the customer should have the chance to become familiar.</p> <p>Customers also need to be told, if it is the case, that they will be bound by a contract they have entered verbally.</p>

Subject	Potential Requirement	EWOV Comments
	<p>out during the term of the contract;</p> <p>(d) cooling-off period: any rights to rescind an energy contract, including how to exercise these rights;</p> <p>(e) dispute resolution and complaints: the available dispute resolution options provided by the retailer;</p> <p>(f) electronic transactions: if any marketing requirement is to be complied with by an electronic transaction, how the transaction is to operate and, as appropriate, that the customer will be bound by the electronic transaction or will be recognised as having received the information contained in the electronic transaction; and</p> <p>(g) standard supply contracts: the availability of standard form supply contracts and the relevant regulator's contact details.</p>	
Cooling-off period	<p>Unless such information has previously been supplied to the small customer, a retailer must send documentation to the small customer providing details of the customer's right to rescind the market contract, including information about how to exercise this right, at least [5] business days prior to the expiry of the cooling-off period.</p>	<p>Please refer to EWOV's comments above (at pages 31-32) – under 'Timing/form'.</p>

Subject	Potential Requirement	EWOV Comments
Dispute resolution and complaints	A retailer must advise a small customer of its right to complain to the retailer in respect of any marketing activity conducted on behalf of the retailer and, if such complaint is not satisfactorily resolved by the retailer, of the customer's right to complain to the relevant industry ombudsman.	EWOV supports this requirement and, more specifically, a requirement for the retailer to provide the customer with the name and phone number of the relevant industry ombudsman.
General conduct standards	<p>Marketers must, and retailers must ensure that marketers:</p> <ul style="list-style-type: none"> (a) comply with all applicable Commonwealth and State and Territory laws; (b) do not engage in misleading, deceptive or unconscionable conduct, whether by act or omission; (c) do not exert undue pressure on, harass or coerce a small customer; and (d) ensure that information provided to small customers is truthful and in plain language, is relevant to the small customer's circumstances and includes timely, accurate and verifiable comparisons. <p>Marketers should have, and retailers should ensure that marketers have, adequate product knowledge. Adequate product knowledge covers knowledge of matters such as</p>	<p>EWOV is supportive of these conduct provisions. They are helpful both in the resolution of complaints and in the identification of trends in marketing.</p> <p>The suggested list of conduct standards provides a firm basis for ensuring good conduct in marketing or moving to redress the situation where conduct falls short of these standards.</p>

Subject	Potential Requirement	EWOV Comments
	tariffs, billing procedures and the availability of rebates and concessions.	
Contact times	<p>Except by prior appointment with, or at the request of, a small customer, a marketer must not visit or telephone a small customer for the purposes of marketing:</p> <ul style="list-style-type: none"> (a) at any time on a Sunday or public holiday applying in the relevant jurisdiction; (b) outside of the hours of 9am and 5pm on a Saturday; (c) outside of the hours of 9am and 8pm on a week day; and (d) on Christmas Eve after 5pm. 	<p>Defined contact times are widely accepted and there is clear advantage in having times that apply nation-wide.</p> <p>This set of contact times provides a good balance between the interests of customers and marketers.</p> <p>As noted in the body of EWOV's submission, achieving consistency in general regulation in relation to contact hours would require considerable work and legislative amendments. For example, section 67C of the Victorian <i>Fair Trading Act</i> 1999 currently allows phone sales on Sundays from 9am to 5pm. As such, energy-specific regulation of times may be the best way to achieve consistency.</p>
Duties of marketers	<p>At all times in connection with any marketing activity, a marketer must identify his or herself to a small customer. Identification involves the marketer using best endeavours to provide the small customer with:</p>	<p>EWOV supports this item of regulation. We receive many cases in which the customer is either confused or mistaken as to the identity of the retailer being represented, too many for all of</p>

Subject	Potential Requirement	EWOV Comments
	<p>(a) the marketer's first name;</p> <p>(b) any relevant identification number;</p> <p>(c) the name of the retailer on whose behalf the marketing contact is being made;</p> <p>(d) sufficient contact details to enable the customer to contact the marketer; and</p> <p>(e) advice as to the purpose of the marketing contact.</p> <p>Where marketing is conducted in person, a marketer must wear an identification badge showing the marketer's photograph, first name and the name of the retailer on whose behalf the marketing contact is being made.</p>	<p>them to be due to customer inattention or assumption. It is helpful to have a clear statement regarding a marketer's obligation to identify themselves and the name of the retailer they represent.</p>
Contact records	<p>Where a customer has indicated that he or she does not wish to be contacted for the purposes of marketing, a retailer must use its best endeavours to ensure that the customer is not contacted again. A retailer may satisfy this obligation by keeping records containing details of customers who have indicated that they do not wish to be contacted.</p>	<p>EWOV supports this requirement and notes that it is likely to become general law, in relation to telemarketing, under the forthcoming Commonwealth 'do not call' register.</p>
Training	<p>Retailers must ensure that marketers are appropriately trained in relation to compliance with marketing</p>	<p>EWOV supports this requirement which is inherent in having requirements at all.</p>

Subject	Potential Requirement	EWOV Comments
	obligations.	
Record keeping	Retailers must keep records of all marketing related activities, including details of marketing visits which have been conducted, telephone marketing calls which have been placed and details of customers who have indicated that they do not wish to be contacted for one year after contact is made. Retailers must also retain records of any explicit informed consent obtained by a marketer for two years after such consent is obtained.	EWOV supports this requirement.
Compliance audits	A retailer must conduct a compliance audit in respect of the compliance by marketers with their marketing obligations at least once per year.	EWOV supports compliance audits and also recommends that consent audits be required. That is, a retailer should sample the contracts entered into and check that the consumer consented explicitly and on an informed basis. Some retailers verify consent in all cases, regarding it as an investment in good customer relations as well as avoiding subsequent disputes.