

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.”*

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

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