

**RESPONSE TO THE MINISTERIAL COUNCIL ON ENERGY'S
NATIONAL FRAMEWORK FOR ELECTRICITY AND GAS
DISTRIBUTION AND RETAIL REGULATION ISSUES PAPER**

3 NOVEMBER 2004

This response to the Ministerial Council on Energy (MCE)'s *National framework for electricity and gas distribution and retail regulation issues paper (August 2004)*, is made by Victoria's Energy and Water Ombudsman, Ms Fiona McLeod, in her capacity as Ombudsman.

It is grounded in the Energy and Water Ombudsman (Victoria) (EWOV) scheme's nine years experience in the handling of customer complaints in electricity and gas distribution and retailing, and is available for publication.

A response from the Board of Directors of Energy and Water Ombudsman (Victoria) Limited will be made separately.

The Ombudsman's response is on behalf of the scheme and the Board of Directors' response is on behalf of the company, EWOV Limited.

EXECUTIVE SUMMARY

It is acknowledged that an effective national energy market has the potential to reduce costs for industry participants, with consequent savings able to be passed on to customers. However, in EWOV's view, for this potential to be realised for *all* stakeholders (customers, industry, regulators and governments), the development, operation and regulation of that market must take place in the context of *best practice*. Without an overarching and explicit commitment to *best practice*, any initiatives towards the development of a national framework for the regulation of electricity and gas distribution and retailing risk falling short of those standards which already exist in some jurisdictions.

It is of concern, therefore, that the only mention of *best practice* in the Issues Paper, and its Appendices, is on page 64, in reference to the development of a national Consumer Protection Code. *Best practice* must be a primary objective of all aspects of the proposed reforms.

Underpinning the reforms must be a *best practice* regulatory framework, delivered through regulatory *best practice*. States such as Victoria, which have a robust and sound independent regulatory framework, should not countenance a diminution in the quality of that framework simply for the achievement of a national framework. States that do not enjoy a robust, sound and independent regulatory framework should embrace the opportunity to provide a *best practice* regulatory framework for all Australians.

To this end, it is suggested that the following nine principles of *best practice* regulation (processes, principles and organisations) identified by the Utility

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Regulators Forum¹ can, and should, be applied across all elements of the development of the proposed national energy regulatory framework envisaged by the Issues Paper:

- communication (information to stakeholders on a timely and accessible basis)
- consultation (participation of stakeholders in meetings)
- consistency (across market participants and over time)
- predictability (a reputation that facilitates planning by suppliers and customers)
- flexibility (by using appropriate instruments in response to changing conditions)
- independence (autonomy, freedom from undue political influence)
- effectiveness and efficiency (cost-effectiveness emphasised in data collection and policies)
- accountability (clearly defined processes and rationales for decisions, with appeals)
- transparency (openness of the process).

Subject to an overall context of *best practice*, EWOV supports the following:

- the consolidation of regulation and rule making for Australia's electricity and gas distribution and retail businesses
- the development of a national framework for the regulation of energy distribution and retailing
- the development of a largely uniform set of electricity and gas retail and distribution licences, capable of being successfully applied in each jurisdiction
- the development of a single Consumer Protection Code, applicable to electricity and gas retail and distribution
- the proposal that the national regulatory framework not deal with the regulation of environmental, occupational health or safety matters at this stage
- national dispute resolution for customers, subject to the Ministerial Council on Energy (MCE) undertaking a comprehensive consultation process on the issue of appropriate national dispute resolution options.

EWOV is particularly aware that an inadequate national regulatory framework will increase the number of customer complaints to energy ombudsman schemes, thereby increasing costs to industry members and, ultimately, customers.

If that framework has numerous derogations back to the States and Territories to allow the continuation of less than *best practice*, the aims of the Council of Australian Governments (COAG) and the MCE will have not been achieved. Neither will the aims be achieved if lowest common denominator energy regulation is the outcome, in order to gain consensus. This will result in worse outcomes for customers, more complaints to dispute resolution mechanisms and dissatisfaction with the reforms.

For EWOV, there are two key issues arising out of the Issues Paper:

- the structure and content of the retail and distribution regulatory framework
- national dispute resolution.

As pricing is outside the jurisdiction of EWOV and the other energy customer dispute resolution mechanisms, it is not addressed in this response, unless relevant to a critical

¹ *Best practice utility regulation*, Utility Regulators Forum, July 1999 - <http://www.accc.gov.au/content/index.phtml/itemId/332190>

customer issue that has arisen through our investigation and resolution of Complaints to the scheme.

**NATIONAL ENERGY RETAIL AND DISTRIBUTION REGULATION
– LIST OF ISSUES FOR CONSIDERATION**

EWOV supports the establishment of the Australian Energy Regulator (AER) to independently regulate the energy market and, in particular, its responsibility to regulate distribution and retailing, other than retail pricing.

Issue 1 – Regulatory Objectives and Principles: Electricity Distribution Pricing

No comment.

Issue 2 – Consistency with Gas Distribution Price Regulation

No comment.

Issue 3 – Principles for Electricity Distribution Pricing Methodologies

EWOV believes that any national electricity distribution pricing framework should incorporate the costs of ‘no fault’ compensation for residential and small business customers for damage caused by voltage variation. The Victorian Essential Services Commission’s (ESC’s) Electricity Industry Guideline No. 11: Voltage Variation Compensation (the Voltage Variation Compensation Guideline) provides a model of *best practice* that should be adopted nationally. The adoption of this model nationally would overcome current disparities between jurisdictions and legislative frameworks, including the Trade Practices Act 1974 (Cth).

Since the Voltage Variation Compensation Guideline was introduced in Victoria in 2001, the number of customer complaints received by EWOV regarding compensation for damage caused by voltage variation has reduced markedly. For electricity distributors, this has reduced the compliance costs associated with external dispute resolution.

In summary, it is more efficient and a sound principle to pay residential and small business customers for damage caused by voltage variation, with the costs of this obligation built into distributors’ pricing submissions.

Issue 4 – Role of Governments in Electricity Distribution Pricing

No comment.

Issue 5 – Impact of Existing Electricity Distribution Price Determinations

EWOV suggests that the AER should only have to take into account existing electricity distribution price determinations in its decision-making. If it is bound by the Victorian ESC’s forthcoming determination covering 2006 – 2010, then national regulation of this area will not take effect until, at least, 2011.

Issue 6 – Interaction of Australian Energy Regulator with Other Bodies

The form of consultation used by both South Australia and Victoria via Memoranda of Understanding should be put in place between the AER and other regulators and government departments and agencies that may impact the AER’s price regulation function.

The AER will also need to establish *best practice* consultation processes with customers, customer groups and industry representatives. To this end, EWOV suggests the AER should:

- establish a Customer Consultative Committee
- publish a Charter of Consultation and Regulatory Practice
- appoint a Director of Customer Liaison.

Issue 7 – Pricing Objectives and Principles: Gas Distribution

No comment.

Issue 8 – Consistency with Electricity Distribution Price Regulation

No comment.

Issue 9 – Impact of Existing Gas Distribution Pricing Arrangements

No comment.

Issue 10 – Activities to be Licensed

It is noted that the Issues Paper focuses on the introduction of uniformity between jurisdictions in the licensing of electricity and gas retail and distribution. The licensing system for transmission and generation works well in Victoria and it is noted from Table 4 that other States and Territories also license/authorise generation and transmission. It seems sensible that transmission and generation also be subject to a licensing regime. It is noted that these matters, however, are to be dealt with in a separate consultative process.

EWOV agrees that the objective of uniform regulatory requirements would be severely undermined if retail and distribution licensing were to be transferred to the AER without also ensuring a uniform licensing regime with uniform regulatory instruments.

Issue 11 – Suggested Licence Conditions

The method of allocation of current licence/authorisation obligations appears sound, deriving as it does from “the degree of certainty and flexibility required in relation to the matter [that is] the subject of the relevant provision — namely legislation, regulations, licences, codes, rules and guidelines”.

In relation to the key principles underlying the suggested reallocation of provisions as described in Appendix 1, EWOV supports the principles that:

- Licences should only contain fundamental obligations.
- Consumer protection provisions should be included in a Consumer Protection Code, but EWOV also supports legislation specifying some consumer protection provisions as mandatory licence conditions (as set out at Issue 12 below).
- Safety, occupational health and environmental provisions should be included in jurisdiction-specific instruments.
- Jurisdiction-specific differences should be accommodated, but EWOV's support here is contingent upon there being a very limited number of these. The examples provided in the document seem sensible, for example, requirements for licensees to provide information to jurisdiction-specific bodies or customer transition to full retail competition. However, as noted previously, the value of uniform regulation will be seriously eroded if the volume of jurisdiction-specific differences outweighs the uniform framework.
- There is a need for different classes of licences.
- Licences should be simple and short.

EWOV notes the proposal to simplify licences by including a general obligation requiring compliance with all applicable laws, rules, codes, guidelines, binding standards and directions and determinations (Appendix 2, proposed condition 6). Under this model, it will be very important that the applicable laws and codes are easily accessible to industry, customers and other stakeholders. This could be achieved by incorporating the Consumer Protection Code as a schedule to the licences (this approach has worked well in relation to Victorian metropolitan water and sewerage licences).

In addition, EWOV suggests that an up-to-date list of applicable laws and codes should be maintained on the AER's website, with this listing referenced in the licences. This level of transparency will, for example, assist new retailers to understand exactly what they are required to comply with.

EWOV supports the proposal to require licensees to notify the AER of any material breaches of licence conditions (Appendix 2, proposed condition 7). EWOV suggests that licensees' compliance plans should specify timeframes within which the licensee must notify the AER upon becoming aware of non-compliance with laws and codes. The timeframes for notification to the AER should reflect the seriousness of the non-compliance so that, for example, the failure to send a disconnection warning notice prior to disconnecting a customer's supply is reported more quickly than the failure to enclose a Customer Charter with a customer's first bill. The reporting manuals of the Independent Pricing and Regulatory Tribunal of New South Wales currently reflect this type of triaged approach to the reporting of non-compliance.

Issue 12 – Mandatory Licence Conditions

Legislation should, at least, specify the following as mandatory licence conditions:

- in both the retail and distribution licences for electricity and gas — the requirement for an approved independent dispute resolution mechanism; the licences should specify the *best practice* features of the dispute resolution mechanism, as is currently the case in Victoria
- an obligation on local electricity and gas retailers to connect and offer standing contracts at standing tariff rates to residential and small business customers

- in the retail licences for electricity and gas — compliance with Community Service Obligations
- in the retail licences for electricity and gas — the requirement to implement *best practice* hardship policies; in Victoria, the ESC has recently announced the establishment of this licence requirement.

Issue 13 – Form and Variation of Licence Conditions

EWOV believes it would be desirable for the AER to be required to issue licences in an agreed form containing specific conditions.

In relation to questions 2 and 3 under Issue 13, the AER should be able to vary, or include any licence conditions additional to, the agreed form of licence where it believes this is necessary for the effective functioning of the markets.

Best practice regulation will require the AER's processes to be transparent and consultative. Accordingly, the AER must allow industry, customer and other relevant stakeholders to comment on any proposals to issue licences, or to vary or add to licence conditions. Any licence variations, and the AER's decisions allowing for such variations, should be readily accessible on the AER's website.

Issue 14 – Ability of Governments to Vary Licence Conditions

Governments should not regularly require that issued licences be varied to include additional specified conditions. *Best practice* regulation requires a sound level of predictability for suppliers and customers. Governments should only be able to set government and social policy, with the AER making its own independent decisions as to how to effect such policy change in the market.

Issue 15 – Triangular or Linear Approach

EWOV supports a triangular approach to the relationship between retailers, distributors and end-use customers. This approach will require:

- effective use of system agreements between each retailer and distributor
- a clear delineation of retailer and distributor responsibilities in a national Consumer Protection Code.

Issue 16 – Suggested Licence Administration and Enforcement Arrangements

EWOV supports the national licensing regime being controlled by the AER. This system works very well in Victoria and has the important element of independence which is not provided through a government-controlled model. It is not appropriate to suggest that the Australian Energy Market Commission (AEMC) should take up the role of determination and variation of licence conditions. Again, the value of the streamlining of the system is that as many appropriate tasks and responsibilities as possible go to the AER or the AEMC. In relation to the licensing regime, it is quite clear it should be the responsibility of the AER.

The Issues Paper suggests that the AER should have discretion to undertake a public consultation process before varying a licence. EWOV believes that, per *best practice* principles, the AER should be *required* to undertake public consultation.

The government should not play any role in the administration or enforcement of the licensing regime, nor should the AEMC in its rule making and market development capacity, have any role in licensing arrangements.

EWOV supports the AER being the body that both issues licences and codes and monitors and enforces compliance with these regulatory instruments. As the author of the licences and codes, the AER would be very familiar with them and, as such, should be well placed to monitor and enforce compliance.

There are various examples of entities that are both ‘rule makers’ and ‘rule enforcers’. This includes the ESC in Victoria and South Australia — in relation to licences and codes. It also includes Consumer Affairs Victoria and the Australian Competition and Consumer Commission — in relation to their respective guidelines on debt collection.

Issue 17 – Suggested National Exemption Regime

EWOV supports the adoption of a national system of exemptions for licensing requirements as articulated in the Issues Paper. In particular, EWOV supports the proposal that the AER have the power to grant exemptions from licensing requirements, although as stated in Table 7, a number of States and Territories have the exemption power managed by government. Under a national regulatory framework it is appropriate that this power be given to the AER.

Best practice regulation will require the AER’s processes and decisions in relation to licence exemptions to be transparent and consultative.

The issue of whether electricity on-sellers should be exempt from all licensing requirements or, instead, subject to some basic licence conditions, requires further consideration and consultation with stakeholders.

Issue 18 – Process for Introducing New Licences and Exemptions

The process for replacing existing licences and exemptions with the new agreed forms of licences and exemptions (if any) must be robust enough to ensure a quick transition to the new framework.

Issue 19 – Alternatives to Licensing

EWOV does not support any alternative to licensing.

Issue 20 – Single Consumer Protection Code

EWOV believes it is critical to adopt a single Consumer Protection Code that reflects *best practice* and is applicable across the States and Territories to electricity and gas retail and distribution.

It is noted that a view is expressed that complete uniformity may not be necessary or desirable and, again, there is reference made to “justifiable jurisdictional differences”. Subject to the volume of these justifiable jurisdictional differences not outweighing the benefits of uniform codes and rules, there may be an argument for some variation across jurisdictions.

EWOV’s comments apply to the issue of cost as well. If it is the view of the jurisdictions that the cost imposts are too onerous to arrive at uniform codes and rules, and the outcome of that would be to develop an array of industry codes and rules derogated back to the States, then the value of this work is lost. This is a particularly important issue for energy ombudsman schemes. If there is insufficient uniformity in relation to industry codes and rules, there is no value in even looking at the issue of national dispute resolution. If the State jurisdictions are going to be so different from each other in this important area of customer complaint investigation and resolution, it will be necessary to continue State-based ombudsman schemes with their associated costs.

EWOV notes that Table 8 of the Issues Paper does not provide a complete list of the customer protection regulatory instruments that apply in Victoria. The following Victorian ESC regulatory instruments should also be noted:

- in relation to electricity retailers — Electricity Industry Guideline No. 4: Credit Assessment, Electricity Industry Guideline No. 13: Greenhouse Gas Disclosure on Electricity Customers’ Bills and the forthcoming Price Disclosure Guideline
- in relation to electricity distributors — the Public Lighting Code
- in relation to gas retailers — Gas Industry Guideline No. 1: Credit Management, Gas Industry Guideline No. 10: Confidentiality and Informed Consent and the forthcoming Price Disclosure Guideline.

EWOV is aware of a view that general regulation (such as the Privacy Act 1998 (Cth)) may provide an adequate consumer protection framework and that industry-specific regulation (such as the Victorian electricity and gas Credit Assessment Guidelines) will no longer be required. EWOV does not agree with this view. Energy retail markets in Victoria, New South Wales and South Australia are not yet mature and other jurisdictions have yet to introduce full energy retail competition. As such, there remains a clear need for a strong and robust, industry-specific consumer protection framework, tailored to fit the electricity and gas industries. A considerable amount of work has been put into developing such a framework in Victoria. This work has continued throughout 2004 and should not be lost.

Table 9 of the Issues Paper only provides a very high level outline of the possible contents of a national energy Consumer Protection Code. EWOV considers that the content of such a code must be considered at a much more detailed level. For example, in relation to grounds for the disconnection of supply, the code will also need to cover reminder and warning notices, hardship programmes, the need to take into account a customer’s capacity to pay, the inclusion of the Ombudsman’s phone number on disconnection warnings and the suspension of disconnection action whilst matters are subject to internal or external dispute resolution processes. This level of detail is very important to customers, retailers and distributors. It will require extensive consideration and discussion, so as to ensure *best practice*. EWOV further

notes that a single Consumer Protection Code will need to clearly delineate retailer and distributor responsibilities.

There are a number of other matters that are not listed in Table 9 that should be included in a Consumer Protection Code. These include:

- standing (non-market) tariffs and contracts
- the termination of contracts
- a customer's right to reconnection
- in relation to the marketing of electricity and gas — consent audits, door-to-door sales procedures, electronic commerce procedures and marketing to non-account holders and persons less than 18 years of age
- in relation to the provision of information to customers — energy efficiency advice and information about the availability of concessions and other forms of assistance
- in relation to the use of customer information — reports to credit reporting agencies.

In relation to electricity supply, EWOV strongly believes a national energy Consumer Protection Code should adopt the content of the Victorian Voltage Variation Compensation Guideline, as this constitutes *best practice*.

EWOV notes the comments in the Issues Paper that the intent of a single Consumer Protection Code is to develop a *best practice* Consumer Protection Code which is applied on a national basis. As mentioned previously, *best practice* is critical to customers and to the effective operation of ombudsman schemes, which rely on robust consumer protection frameworks to be able to speedily and efficiently investigate and resolve customer complaints.

EWOV supports a comprehensive consumer protection safety net for residential and small business customers. In principle, EWOV agrees that a looser set of protections may be appropriate for larger retail customers. However, very careful consideration must be given to the setting of appropriate usage thresholds and to exactly what would be 'lost' for customers with usage above these threshold levels. For example, as any customer can be affected by a computer system billing error, the provisions of the Consumer Protection Code relating to the recovery of undercharges should have wide application. These matters clearly require further consultation and discussion.

The Issues Paper suggests that consumer protection provisions relating to distribution businesses should apply to all customers (irrespective of their size). Whilst EWOV generally agrees with this principle, it should be noted that, currently in Victoria, parts of the consumer protection framework do not apply to all distribution customers. For example, under the Victorian Gas Distribution System Code, gas distribution Guaranteed Service Level payments (non-compliance payments) only apply to residential customers. Further, Victoria's Voltage Variation Compensation Guideline only applies to customers using less than 160 megawatt hours per year.

The capacity of customers to contract out of provisions of the Consumer Protection Code is also an important and major issue that will require extensive consultation and discussion with industry, customers and other stakeholders. Key issues include

deciding which provisions, if any, should be able to be contracted out of and how to ensure that customers make fully informed decisions about these matters.

It is agreed that it may be preferable to include some of the provisions in separate codes or guidelines dealing with specific topics. However many codes or guidelines are developed, they should be located in a discrete set of regulatory instruments.

EWOV suggests that 'justifiable jurisdictional differences' are likely to arise in relation to supply reliability standards, as these standards may need to vary to reflect the technical and geographical characteristics of distribution networks. The Consumer Protection Code may also need to accommodate differences in the detailed content of various Fair Trading Acts, for example, in relation to allowable visiting hours for door-to-door sales.

Issue 21 – Responsibility for Making Industry Codes and Rules

Industry codes and rules, such as a Consumer Protection Code, should be developed along the lines of the ESC model that operates in South Australia and Victoria. It is appropriate for the AER to develop industry codes and rules, but with a requirement to consult with a relevant industry Minister and representative bodies (including those representing customers) and industry participants. Responsibility for making these industry codes and rules should not rest with the AEMC.

Issue 22 – Variation of, and Exemptions from, Industry Codes

The AER, having responsibility for industry codes, should not be able to vary or add to the terms of those codes unless robust public consultation has been undertaken.

There are a number of consumer protection measures that should be included in the Consumer Protection Code *and* enshrined in legislation. These include access to an approved independent dispute resolution mechanism, connection obligations for local retailers, Community Service Obligations and *best practice* hardship policies. As stated at Issue 12, legislation should also specify these measures as mandatory licence conditions.

Best practice regulation will require the AER's processes in relation to code exemption applications to be transparent and consultative, as we have indicated at Issue 17 its processes for assessing licence exemption applications should be. Where practicable, the AER should invite public comment on significant code exemption applications. The AER should also publish details of any code exemptions (including the reasons for and duration of exemptions) on its website.

Issue 23 – Minimum Terms and Conditions for Distribution and Retail of Electricity and Gas

EWOV supports a form of nationally uniform regulation applying to minimum terms and conditions that must apply in relation to the distribution and retail of electricity and gas to small customers.

EWOV suggests that minimum terms and conditions should still be prescribed for residential and small business customers who are contestable. EWOV contends that minimum terms and conditions remain fundamentally important to these customers, even where they enjoy the benefits of a competitive retail energy market. As stated at Issue 20, EWOV agrees a looser set of protections may be appropriate for larger retail customers.

Issue 24 – Uniformity or Consistency in Associated Electricity and Gas Schemes

1. Dispute resolution schemes

A national approach to customer dispute resolution will only make sense subject to the finalisation of a *best practice* regulatory framework.

The Energy and Water Ombudsman (Victoria), the Energy and Water Ombudsman NSW, the Energy Industry Ombudsman SA, the Tasmanian Electricity Ombudsman, the Gas Industry Ombudsman WA and the Electricity Complaints Commission New Zealand comprise the Australia and New Zealand Energy and Water Ombudsman Network (ANZEWO). In the absence of a national ombudsman scheme, and despite the reference in the Issues Paper to different customer dispute mechanisms across Australia, ombudsman schemes in Victoria, New South Wales, South Australia and Tasmania and, more recently, Western Australia, have worked hard through ANZEWO to ensure consistency, at *best practice* levels, in their dispute resolution mechanisms.

These schemes have co-operated closely to achieve this goal. The vehicle for doing so has been a major ANZEWO project, mounted a number of years ago, to identify variations in practice across the schemes, to ascertain the significance of those variations, and to work to bring about consistency at *best practice* level.

Much has been achieved in the last couple of years. However, there is little value in seriously contemplating a uniform national approach to dispute resolution in the absence of a finalised *best practice* regulatory framework.

When it commenced operation in early 1996, EWOV was Australia's first (we believe the world's first) industry-based ombudsman scheme in the energy sector; two years later, Tasmania and then New South Wales, sought advice from EWOV as to the establishment of similar schemes in these States. During discussions with relevant State Ministers and Departmental staff, it was agreed that the most sensible option was for EWOV to extend its services to customers in other States, thereby slowly building a national dispute resolution mechanism. While this was clearly regarded as the best option, it was also apparent from those discussions, that political sensitivities meant Ministers and their staff felt obliged to establish further State mechanisms. This was in the knowledge of greater costs to industry and, ultimately, customers.

In the event of a national regulatory framework, the move to national dispute resolution arrangements is an idea whose time must come.

There appear to be three main options for national dispute resolution:

- maintenance of the status quo of different schemes for different States and Territories

- a national scheme, operated from one centralised location
- a national scheme, delivered from representative offices in each State and Territory.

On the basis of both cost and consistency of practice, the outcome most likely to meet these objectives would, at first analysis, be a national industry-based energy ombudsman in one location, perhaps with a transition period of two or so years to enable the existing mechanisms to be rolled into it. This proposition would, however, need to be fully tested through a comprehensive feasibility study with the participation of all key stakeholders across the NEM.

From an operational and financial standpoint, when compared to existing arrangements, the formation of a national energy ombudsman scheme appears to have the potential to:

- broaden the coverage of dispute resolution services, such that all natural gas and electricity customers throughout the NEM participants in Australia can gain access to an independent Ombudsman scheme
- streamline and improve the efficiency and consistency of governance arrangements
- provide consistent pricing arrangements across Australia
- reduce the regulatory impost on scheme members
- improve the cost efficiency of service delivery.

This conclusion is couched in the context of the following key assumptions about the governance and funding arrangements for such a scheme:

- It would be fully funded by its members, as a not-for-profit organisation.
- Funding would be on a ‘user pays’ basis, with built-in incentives for members to resolve complaints at an early stage.
- There would be an obligation on industry participants to become scheme members, by way of legislation or regulation.
- It would comply with the National Benchmarks for Industry-Based Customer Dispute Resolution Schemes.
- The scheme and the company would be governed by a board of directors, made up of equal numbers of representatives from members and customers, with an independent chairperson.
- An individual (the Ombudsman) would be responsible for the day-to-day operation of the scheme, appointed by the directors and not drawn from the energy industry.

The Issues Paper seeks input about possible impediments to achieving a national approach, or consistency, in respect of dispute resolution schemes. In EWOV’s view, the major potential impediment will be the absence of a *best practice* national energy regulatory framework. Without a national retail and distribution regulatory framework, there would be no driver for change to existing dispute resolution arrangements. The other impediment may be a lack of political will among States and Territories to bring about the necessary enhancements, to provide Australian energy customers with a suitable national mechanism.

As a member of ANZEWON, EWOV supports ANZEWON's position seeking MCE oversight of a comprehensive consultation process around the issue of appropriate national dispute resolution options.

2. Retailer of last resort schemes

No comment.

3. Customer transfer schemes

In Victoria, the regulation of the interaction and responsibilities of electricity and gas retailers and distributors in relation to the transfer of customers between retailers has been handled well by ensuring the development of rules which support retail competition. EWOV supports a single uniform national approach to customer transfer schemes.

4. Business to business information exchange schemes

Business to business information exchange schemes will need to achieve a level of consistency that will facilitate, for example, a retailer being able to operate efficiently across most, if not all, jurisdictions.

Issue 25 – Community Service Obligations

While accepting that the Issues Paper is focussed on electricity and gas retail and distribution regulation, one of the major gaps in the thinking around the benefits or disadvantages of national regulation is the Paper's lack of exploration of the major non-regulatory customer protections and assistances provided by governments and the community/welfare sector.

Issue 25 attends to the issue of community service obligations which are imposed under licence conditions or legislation. EWOV's position is that these obligations, under a national regime, should be required through a mandatory licence condition, not through Ministerial direction.

EWOV believes that much more work needs to be done in this whole area of community service obligations generally, to flesh out the differences between the States and Territories. This is one area where there are enormous variations between the States. For instance, Victoria has probably the most robust and comprehensive customer assistance programme through what is known as the "Safety Net", a range of assistances including pensioner discounts, Utility Relief Grants, Capital Relief Grants, rebates and the like. These forms of assistance do not appear to be matched anywhere else in Australia and EWOV feels that this area needs much more work before we have a full picture about how a national energy regulatory framework would sit with these other forms of assistance to customers.

Issue 26 – Uniformly Defined Service Measures

EWOV believes that there are clear advantages in employing a set of uniformly defined service measures to measure the standards of reliability and customer service provided by electricity and gas retailers and distributors in each of the jurisdictions.

Service standards are an integral component of incentive-based pricing regulation. As such, it is critical that the current disparities between the jurisdictions, in the service standards which are measured, the definition of the measures of those service standards, the purpose for which those service standards are measured and who is responsible for the setting of those service standards, be resolved.

Whilst electricity and gas retailers and distributors may be dissatisfied with the costs that may be involved in moving to uniformly defined service measures and in improving standards, these costs may be offset through other reforms that national energy regulation may bring.

In addition to the service standards noted at Appendix 5 of the Issues Paper, the following indicators should also be included in relation to electricity and gas retailers:

- the number of customers who have been disconnected who were previously on a budget instalment plan
- the number of disconnections in the same name and address within the past 24 months ('repeat disconnections')
- the number of concession card holders disconnected and reconnected in the same name.

These additional indicators were recently approved by the Victorian ESC and will apply from January 2005. They will provide further insight into the issue of the disconnection of customers experiencing financial hardship.

Issue 27 – Determination of Service Measures and Targets

The service measures should be determined by the AER.

Issue 28 – Use of Service Measures

It is imperative that the Australian public have access to full and transparent information about the performance of electricity and gas retailers and distributors. This has been the basis for the public reporting regime in Victoria for a number of years. Retail performance reports have become an important part of customers' capacity to make informed decisions when choosing their electricity or gas retailer. Distribution performance reports enable customers to compare supply reliability levels at their property with other areas and with distributors' targets.

EWOV also believes that it is appropriate for retailers' and distributors' performance to constitute the basis for an incentive and/or penalty scheme.

Issue 29 – Transfer of Ancillary Functions to Australian Energy Regulator

All of the ancillary functions in relation to disputes between customers and their retailers and distributors should rest with the AER.

The Issues Paper notes that, in some of the jurisdictions that have an ombudsman scheme, the jurisdictional regulator is responsible for various matters relating to that scheme. In Victoria, although there are mentions of the regulator in EWOV's Constitution and Charter, the primary location for criteria for effective dispute resolution is the licences. The Victorian licences now articulate the fundamental principles upon which effective dispute resolution mechanisms should be built. Many of the links to the regulator are historical and arguably redundant, particularly in light of Corporations Law reforms. In the establishment of national dispute resolution arrangements, there would be a need to review all current regulatory links across the schemes and decide which, if any, should stay. It may be that a transitional set of links is determined to sunset after a period.

Issue 30 – Provision of Advice to Governments

No comment.

Issue 31 – Impact of National Framework on Jurisdictional Regulators

No comment.

Issue 32 – Other Issues

As stated previously (at Issue 6), the AER will need to develop *best practice* consultation processes, not just with other regulators and government departments, but also with customers, customer groups and industry representatives. To this end, EWOV wishes to restate its suggestions that the AER should:

- establish a Customer Consultative Committee
- publish a Charter of Consultation and Regulatory Practice
- appoint a Director of Customer Liaison.

As also stated previously (at Issue 25), the establishment of a national framework for electricity and gas distribution and retail regulation provides an opportunity to review the community service obligations currently in place in different States and Territories. There is an opportunity to implement *best practice* community service obligations across *all* States and Territories.

Yours sincerely

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