

**Ministerial Council on Energy Standing Committee of
Officials**

**National Framework for Electricity and Gas
Distribution and Retail regulation**

Forward and Issues Paper

**Kildonan Child and Family Services
Submission**

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Background

Kildonan Child and Family Services welcomes the opportunity to respond to the Ministerial Council on Energy Standing Committee of Officials, National Framework for Electricity and Gas Distribution and Retail regulation, Forward and Issues Paper (this paper). This paper is very broad in its application and covers all aspects of Utilities Regulation, and is of vital importance to industry and consumers. We welcome consultation about the regulatory process; however the community sector has been little time for debate and a considered response. The one community consultation that was held did not have a representation of a wide sector of community groups, who are often time stressed and poorly resourced, often requiring work out of hours. Before a new paper is drawn up by the Ministerial Council On Energy (MCE) for consultation in 2005, based on this round of submissions, there needs to be additional time to respond, some additional resources and more direct dialogue with the sector is required before we can say “we have been adequately consulted”.

This paper’s main focus is on economic regulation and the possible establishment of The Australian Energy Regulator (AER) from 2006 after an agreed national framework has been developed. Kildonan believe the focus of this paper has a very strong economic regulatory focus with little emphasis on consumer protections. Electricity and gas are essential services that impact on people’s daily lives, and whose lack of can result in significant health, community safety and child protection issues. There has been little emphasis on consumer protections. In this paper’s policy framework and relevant objectives, the interests of consumers are only considered in so far as price quality and reliability is concerned without a mention of access and affordability issues.¹

This trend is further highlighted in this paper under Distribution Pricing Electricity where there is a list of benefits to business for the new “cost effective regulation” while only “An acceptable balancing of the interests of distributors, customers and the public interest”². Therefore the existing framework has a very strong emphasis on economic regulation and a very inadequate emphasis on consumer protections.

Recently during a review of the retail code in Victoria, the Essential Services Commission (ESC) made a decision on introducing late payment fees based on the argument of supporting national consistency, which potentially would have resulted in seriously eroding consumer protections, and burdening the welfare sector with the cost of consumer utility issues. This decision handed a potential increase in profits to retailers while cost shifting to the community sector, providing additional free services. In Victoria economic regulation does not make the community sector have confidence with existing consumer protections, and that they will not be further eroded under the proposed AER model.

Forward to the Issues Paper August 2004, Policy framework¹ Page ii

² 3. DISTRIBUTION PRICING ELECTRICITY National Electricity Market Jurisdictions , Introduction Page 20

The ESC is an economic regulator with a social objective that states: "...that users and consumers (including low-income or vulnerable customers) benefit from the gains from competition and efficiency." Given their decision on late payment fees, an economic regulator with a social objective is clearly not sufficient in protecting consumer interests. The community sector was required to lobby the Minister and secure the assurance that he will legislate in order to protect consumers. Consumer protections need to be taken seriously and it is questionable whether an economic regulator model can and give sufficient weight to consumer protections, though part of their objectives. The consumer protections are usually the add-ons advocated by a poorly resourced and time stressed community sector. Economic regulation and consumer protections are equally important given the essential nature of this industry. Adverse events associated with this industry are easily understood by the community through their everyday use of gas, electricity and water, these are often through major media headlines. It is in government, utilities and consumers interest to have easily understood requirements and expectations that are fair, measurable and accountable.

States who have not experienced privatisation of their utilities may rationally look at the AER model favourably. The premise was delivering alluring concepts of greater efficiency and lower prices. Post privatisation in Victoria, we still await the materialisation of the promises. In one of our personal experience , there has been no electricity bills for 18 months received, unfortunately varying delays are a common scenario across retailers in Victoria. Regularly billing errors are also common. A scenario almost unheard of under the previously state owned monopoly. Efficiency has dropped due to the complexity in the system and primarily due to problems associated with business to business software. We use this demonstration to emphasise the regulator and the companies have not produced the consumer benefits promised. Increased competition does not seem to deliver, due to branding as well as B2B systems that are inadequate, and pricing is across the board close to the price cap. Is this because of the absence of a rigorous process in place to hold the companies accountable? As we experienced in the introduction of late payment fees the retailers had claiming "national consistency", and the regulator allowed in late payment fees that was cream on top of their maximum price caps. There was no rational balancing of consumer interests or the need to deliver lower prices in this decision.

Recommendations:

1. That current Victorian consumer protections are not eroded and are held as the benchmark for other states.
2. That a consumer body is formed with clear and precise consumer protection objectives, to monitor measure and enforce breaches in consumer protections by retailer practices. This body will address systemic issues related to consumer protections including systemic complaints that come through the Ombudsman

office. Finally this body will need the appropriate powers to hold retailers accountable regarding breaches of consumer protections in particular pricing, licenses, industry codes and rules and service standards. This body will in turn report and be accountable to government and will consult extensively with Utilities as well as organisations that have direct contact with consumers. This body could include a Concessions Unit based on the Victorian model, with all their existing consumer programs and services as well as an energy efficiency scheme for low income consumers, a funding/grants scheme as well as fearlessly acting in the interests of consumers to ensure the industry delivers.

3. That if the AER economic regulator model does go ahead it's focus is clearly on economic regulation only.

Pricing

Issues 1-3 Strong regulation regarding electricity and gas distribution pricing should be shown to be in the consumers benefit not just a more efficient competitive market. How do consumers benefit from price in an efficient market? Which model of an efficient market can we point to that works? What is the incentive to industry to provide more competitive pricing?

Government would still need to rubber stamp any final pricing determination. Not just make decisions made by markets and business needs but also consider the consumer environment and in particular ABS stats on household income and expenditure.

How will efficiencies in an incentive based regulatory regime be measured and if breached what penalties imposed by whom?

Issue 4

Due to the fact that both gas and electricity are essential services and if left to the market the pricing outcomes may be uncertain or adverse to consumers, Governments should be able to "impose requirements" on "regulation of electricity distribution pricing" "by the Government of that jurisdiction" "under a tariff or pricing order". This creates certainty in the market and consumer protections are ensured.

At EUAA's annual conference 2003 held in Sydney an international speaker Ken Laughlin from the USA, talked about his company PJM (Pennsylvania, New Jersey-Maryland) wholesale energy market. What was impressive about PJM was it was a company that started relatively small and grew relatively slowly but was able to deliver a wholesale price drop to \$35.33 MWH in 2002 from \$43.63 MWH in 2001 even though 2002 was 25% hotter in Summer. This is an example of a private competitive market that may work. The question is will it work in Australia given our very small market?

Recommendation 4:

MCE should investigate this model further and if applicable to Australia implement the efficiencies that will drop the price of electricity in the National market.

4 DISTRIBUTION PRICING-Gas

Gas access arrangements.

Issue 7. Do not replace the 5 objectives of the third party access arrangements established under the National Gas Access Code with the Productivity Commission's overarching objective because it is too broad and does not provide specific measurable consumer protections.

Issue 8 *consistency with electricity price regulation*

Consistency with electricity price regulation would be preferable as both are essential services and would provide greater clarity but only if the status of gas as an essential service is not eroded.

5 Licensing

Kinds of licences and activities required to be licensed

Issue 10 *what activities should be licensed?*

All current activities currently licensed in Victoria and no less.

The inclusion of no prepayment meters (PPM) for the sale of electricity or gas for domestic customers under any circumstances. PPMs should be prohibited as they significantly erode consumer protections create residual markets, and increase health and safety risks to the community.

"P50...the AER is an economic regulator" and should not have the primary responsibility for the regulation of safety, occupational health or environmental matters.. similarly they should not have the primary responsibility for consumer protections because I believe in the Victorian experience consumer protections are poorly understood by the economic regulator even one with a social objective. Therefore a specialist jurisdiction with a focus on consumer protections should be established and if their standard is breached this should constitute a breach of the licence. See recommendation 2.

Issue 12 Mandatory Licence Conditions

What should be mandatory?

Safety, reliability of supply as well as environmental breaches.

Consumer protections including, ethical behaviour hardship programs, no prepayment meters, no gaming of the market, no monopoly trading and practices. Existing consumer protections as per the current (not 2005) Victorian Retail Code, should be mandatory and a drop in prices. Energy efficiency should be implemented across the board to address environmental as well as Summer peak load issues.

Issue 13 Variation of Licences

If AER is formed, they and the proposed consumer protection body, can issue and vary licences after industry and community consultations and with the approval of the Government of the relevant jurisdiction.

Issue 15 – Triangular or Linear Approach

Given the huge power imbalance between a retailer and a domestic consumer over an essential service the relationship needs to be mandated under the regulatory regime. Our casework demonstrates consumers currently experience ongoing barriers to accessing protections that are constantly breached under the existing retail code on a daily basis. These barriers to accessing utilities will only increase if consumers try to navigate a relationship that may be more fluid and very complex.

Regulatory differences should not just focus on “barriers to entry” and distortion of investment decisions but also include consumer protections.

Issue 16 Suggested Licence Administration and Enforcement Arrangements

Not just the desirability of nationally uniform licence conditions on their own as it may be easier to agree with the lowest common denominator but if seeking uniform licence conditions the licence conditions should also take into account uniform benchmarked consumer protections that do not erode existing consumer protections within States. Like the late payment fees issue stated above. National Consistency should benefit consumers as well as the industry. Mandatory consumer protections, benchmarked to a high standard with clear expectations for an essential service are vital and create certainty both for industry as well as consumers. The rule of law is preferable to not knowing what the rules are. The alternative is very messy and creates uncertainty.

Role of government should be to administer monitor and enforce licensing regime as the final level of consumer protection and economic regulation.

Issue 17 Suggested national Exemption Regime.

Exemptions granted by AER after community consultation and with the approval of the minister only.

Issue 19 Alternatives to licensing-

licensing is required to keep a market in essential services regulated and accountable and should not be traded down. There is no room for self regulation of an essential service. As a community we saw the results of light regulation on Enron and more locally with the Banking sector especially the episode with the National Australia Bank. Playing catch up is too little too late and is unfair on consumers who are left with the bill. The Government needs to be more proactive with regulation and not naïve by sitting on their hands hoping that adversity will not happen.

6. INDUSTRY CODES AND RULES

Contents of industry codes and rules

Issue 20 Single consumer protection code.

A single code is a good idea only if current consumer protections enjoyed by the states are not eroded. Table 9 is not sufficient. Differences will arise between Vic & other states as Vic has highest standards of consumer protections and should be retained.

There should be no dilution of existing consumer protections in any jurisdiction. Sadly this did not happen in Victoria with the review of the retail code even though that is precisely what consumer groups had requested. Who determines what is best practice consumer protection code if the regulator has an economic focus and makes decision based on loose economic arguments without a consumer protection focus? Even with the best of intentions the economic arguments have priority over consumer protections as happened in Victoria with the retail code. Therefore the need for a separate consumer protection body.

Recommendation 7

Consumer protections should extend to all domestic consumers large or small. No provision should be made to contract out of any protections by consumers as this will by it's nature delude their protections.

Table 9 does not discuss consumer affordability, capacity to pay, and hardship programs, and therefore is seriously short of offering anything like adequate consumer protections. Payment difficulties are not enough. Security deposits and payment of interest (unless it is interest paid by industry) is not acceptable as they can act as barriers to consumers connecting to an essential service.

Issue 21 Responsibility for making industry Code and Rules

Not the regulators because of their myopic economic focus, rather a consumer protection body that consults with consumer groups as well as industry. The final approval of the code to be by the minister to avoid another late payment fee fiasco.

Issue 22 Variation of and Exemption of Industry Codes.

No bartering in order to dilute existing protections. AER and the proposed consumer protection body could vary or add to code not just through public consultation but that the end result should demonstrate that consultation actually took place and was actually considered in the final decision. Greater transparency in decision making. Variation only after extensive consultation, demonstrated inclusion of the consultation views and final approval by the minister.

Recommendation 6

Consumer protections enshrined in legislation include but not limited to the following:

Worlds best practice hardship programs. To include, waiver of debt, no disconnection for inability to pay, and consumption and affordable instalments to be compatible with householders capacity to pay.

Energy efficiency service providing free advice, education and retrofitting to health card holders

A National Concession unit based on the Victorian model with added consumer protection and greater flexibility and increased amounts regarding URG and capital Grants.

An affordable safety net tariff.

No prepayment meters.

Rural utility tariffs and prices to be comparable with urban tariffs and prices..

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

Any form of nationally uniform regulation that applies to the minimum terms and conditions for small consumers should not discriminate between the different classes of consumers. For example door knocking of consumers to switch in Victoria happens primarily in low socio-economic suburbs due to access issues.

Issue 24 –Uniformity or consistency in associated Electricity and gas schemes.

It may be beneficial to have a single uniform national approach to dispute resolution, retailer of last resort, customer transfer B2B information exchange schemes only if the highest standard regarding customer protections is employed. We do not want the lowest common denominator and only if dispute resolution schemes have sufficient autonomy and regional flexibility.

Issue 25 –Community Service Obligations

Need to keep and expand them as per Victorian model. Nothing less.

8 SERVICES STANDARDS

Uniformly Defined Service Measures

There is a need for a set of uniformly defined service measures to measure the standards of reliability and customer service as long as the highest possible standard is adopted.

Issue 27 – Determination of service Measures and Targets
Service measures and targets determined by government.

Issue 28- Use of Service Measures
Should be published and be measurable and accountable.

9 OTHER FUNCTIONS OF JURISDICTIONAL REGULATORS

Issue 30- Provision of Advice to Governments
State Governments to keep an active interest to gain advice from the regulator(s) as well as the new proposed consumer organisation which can represent the consumer view.

Issue 32- Other issues
Consumer protections to be under a consumer organisation that is multi functional as per recommendation 2.