

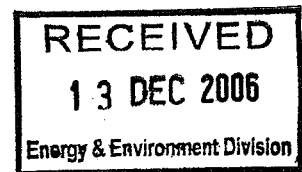


everything in our power

Ref.: GM/SO

8 December 2006

Manager
MCE Secretariat
Department of Industry, Tourism and Resources
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CANBERRA ACT 2601



Email: MCEMarketReform@industry.gov.au

Dear Sir/Madam

NATIONAL FRAMEWORK FOR DISTRIBUTION AND RETAIL REGULATION – WORKING PAPER 1

Powerdirect Australia Pty Ltd (Powerdirect) and its wholly owned subsidiary Powerdirect Pty Ltd appreciate the opportunity provided by the MCE's Retail Policy Working Group (RPWG) to comment on the "*National Framework for Distribution and Retail Regulation - Working Paper 1*" (Working Paper).

Powerdirect is an active retailer in the National Electricity Market (NEM) and experiences the costs and complexities of operating across jurisdictional borders and jurisdictional regulatory frameworks, on a daily basis. Powerdirect fully supports the RPWG's development of recommendations for a national regulatory framework for retail and distribution that balances minimisation of the regulatory burden with the introduction of explicit consumer protections only where required.

Comment on the individual sections of the Working Paper is provided below.

Implementation Architecture

Although a detailed assessment of the allocation of regulatory obligations between 'Law' and 'Rules' will need to be undertaken once the suite of regulatory obligations has been agreed, Powerdirect support the high-level principles for allocation proposed in the Working Paper.

Powerdirect does however express reservations regarding the proposed development by the MCE of agreed 'principles' and 'guidelines' to assist jurisdictional ministers in determining matters such as the consumption threshold for defining 'small' customer obligations and the activation or de-activation of the obligation to supply. Unless articulated with a high degree of specificity, principles and guidelines will be prone to differing interpretations, undermining the goal of increased national consistency and inhibiting progress towards a more light-handed regulatory regime (e.g. a reduction in the applicable annual consumption threshold over time).

Powerdirect supports a framework whereby the AER is responsible for the required designation, with such designation subject to a transparent and public consultation process.

On the issue of enforcement mechanisms, Powerdirect suggests that any national framework for enforcement should be supported by a process of escalation to permit the timely rectification by industry of non-compliances. For example, this process of escalation may include the issuing of warning and contravention notices prior to the imposition of financial penalties.

Retailer Obligation to Supply

Powerdirect notes the Working Paper's recommendation that:

"The Law should provide that designated local retailers must, in accordance with the Rules, offer to supply energy to small customers for use in premises located in the retailer's designated supply area at standing offer tariffs and on standing offer terms and conditions" (p72).

While Powerdirect supports this recommendation (as a transitional mechanism to the removal of regulation), the first-tier nature of the scheme's design creates unique considerations in Queensland.

In Queensland under FRC, the obligation to supply, including in the default scenarios of 'move-in' and 'uncontracted supplies' (i.e. on contract expiry or termination) will rest with the financially responsible market participant (FRMP), not the local retailer. That is, the concept of the deemed arrangement applying between a second-tier retailer and a customer for a limited period with subsequent reversion to the local retailer as provided for in the Working Paper, will not apply under FRC in Queensland - the second-tier retailer will be required to offer supply. For the default scenarios, supply will be on the standard offer contract at the regulated price, indefinitely.

In the interests of national consistency, **Powerdirect supports the future alignment of the arrangements in Queensland to the Working Paper's recommendation for management of the obligation to supply.**

While it is acknowledged that the Working Paper is not intended to address transitional issues, **it should be explicitly recognised that implementation of the recommendation will represent a shift in the underlying policy framework in Queensland.** This will ensure that policy makers fully consider transitional impacts at an early stage.

On the issue of the contract that should apply to the customer for the three months of the deemed supply arrangement, Powerdirect does not support the proposal that the deemed contract terms, conditions and tariff for second-tier retailers should be those applying to the premises immediately prior to the deemed contract arising. In particular, Powerdirect believes that this proposal:

- fails to provide an appropriate link between contractual terms and the customer's consumption and pattern of usage at the premises – Powerdirect considers the Working Paper's proposal to be more arbitrary and onerous for both the retailer and the customer than the other options presented; and

- will cause customer confusion and significantly increase the number of customer enquiries and complaints (through no fault of the retailer) – Powerdirect does not believe that the proposal will create the simplicity and certainty that the Working Paper suggests.

Powerdirect believes that the Rules should provide for second-tier retailers to offer the standing offer terms, conditions and tariffs for the period of the deemed supply arrangement. That is, the contractual arrangements for the period of default supply should not differ between first and second-tier retailers.

Retailer exposure to the terms and conditions of sale under the default arrangement would be mitigated by:

- limiting the deemed supply arrangement to a three month period; and
- the removal of implicit and explicit community service obligations, which are more appropriately delivered directly by Government.

Small Customer Market Contracts

As a general comment, Powerdirect supports the introduction of a consistent national framework that limits energy specific regulation to those areas where there is either an absence of necessary protections, or where inconsistencies across national and state-based consumer protection laws are likely to have a significant impact on the efficiency or cost of market participation.

In particular:

- inconsistency across national and state-based laws should not in itself drive duplication in energy specific regulation; and
- energy specific regulation should not be seen as a means of redressing perceived failings in national or state-based laws with general application.

Consistent with these principles, **Powerdirect views the scope of the ‘model terms’ contained in the Gilbert & Tobin Consultation Paper as broadly appropriate**, subject to further consultation on the degree of prescription required within the individual areas proposed for regulation.

Small Customer Marketing

Consistent with the comments above, energy specific regulation should only be imposed in circumstances where there is a demonstrated need to address a ‘gap’ in the consumer protection framework. This principle should apply equally to small customer marketing.

While there is justification in reducing the regulatory burden through increased alignment across general consumer protection laws with respect to marketing conduct, this should not in itself drive the creation of a separate national Marketing Code for energy. On those issues where variance between national or state-based legislation is found to be significantly contributing to business costs (e.g. customer contact times), national alignment and displacement of the corresponding general legislation can occur without the creation of additional regulatory instruments.

Please contact Gareth Morrah on 07 3023 2403 should you wish to discuss any aspect of this submission.

Yours sincerely

A handwritten signature in black ink that reads "Sam O'Sullivan". The signature is written in a cursive, slightly slanted style.

Sam O'Sullivan
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