

SUBMISSION TO THE PRODUCTIVITY COMMISSION

ON

REVIEW OF AUSTRALIA'S CONSUMER POLICY FRAMEWORK - DRAFT REPORT

5 FEBRUARY 2008



INTRODUCTION

Synergy is Western Australia's largest energy retailer with approximately 890,000 industrial, commercial and residential customers, generating total revenue of more than \$1.5 billion annually and is responsible for purchasing and retailing electricity and gas to customers in the South West Interconnected System.

Synergy is a leading supporter of the continued development of the Western Australian electricity industry and is a committed participant in the review and development of our State's consumer policy framework.

This paper presents Synergy's views in response to the Productivity Commission's "Review of Australia's Consumer Policy Framework: Draft Report" (**Draft Report**).

Synergy welcomes the opportunity to comment on the Productivity Commission's Draft Report.

Our comments detailed below, focus on the Commission's recommendations as they relate to the energy industry.

RECOMMENDATIONS AND COMMENTS

Productivity Commission Draft Recommendation 5.1 – Review of Industry Specific Regulation

"CoAG should instigate and oversee a review and reform program for industry specific consumer regulation that would:

- identify and repeal unnecessary regulation, with a particular focus on requirements that only apply in one or two jurisdictions;
- drawing on previous reviews and consultations with consumers and businesses, identify other areas of specific consumer regulation that apply in all or most jurisdictions, but where unnecessary divergences in requirements or lack of policy responsiveness impose significant costs on consumers and/or businesses; and
- determine how these costs would be best reduced, with explicit consideration of the case for transferring policy and regulatory enforcement responsibilities to the Australian Government and how this transfer might be best pursued."

Western Australia, as with most jurisdictions in Australia, is characterised with a large amount of energy specific regulation including:

- Utility licences.
 - Regulated contracts.
 - Regulated tariffs, fees and charges.
 - Obligations to supply.
 - Participation in industry specific Ombudsman schemes.
 - Industry codes of practice dealing with such matters as customer service standards, metering and customer transfer.
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- Mandated service standard payments.
- Marketing standards.

If regulation is not imposed effectively or efficiently, it can result in significant costs to market participants and customers, as well as being a barrier to new market entry, goods or services.

It is essential that policy makers, regulators and market participants engage and communicate effectively to ensure that the ramifications of proposed regulatory actions are clearly understood and can be complied with prior to establishment.

It is essential that regulatory frameworks be periodically reviewed to ensure relevance and appropriateness as utility markets mature over time.

Industry specific regulation should occur where demonstrable evidence exists that generic or overarching legislation is inadequate.

Synergy supports the Productivity Commission's recommendation that CoAG should instigate and oversee a review and reform program for industry specific consumer regulation but seeks to await the results of that review before forming a view on the transfer of responsibilities from the State to Federal Government.

<p><i>Productivity Commission's Draft Recommendation 5.3 – Establishment of National Customer Framework</i></p>
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"A single consumer protection regime for energy services should be developed and implemented under the auspices of the Ministerial Council of Energy. It should apply to all jurisdictions participating in the national energy market and be enforced by the Australian Energy Regulator."

Synergy operates in a highly regulated market, which has undergone significant regulatory change in a short amount of time.

In addition to energy specific regulation, Synergy must also comply with State and Federal laws relating to trade practices and fair trading.

Synergy supports the Productivity Commission's recommendation for the establishment of a single consumer protection regime in the form of a national customer framework applicable to the supply of energy.

Our observations, from a Western Australian perspective, in this regard are:

- There is a tendency to regulate extensively as new markets open. However, regulation should be imposed to address demonstrable or evidenced market failure, not perceived concerns or because it is deemed desirable.
- It should not be the role of regulation to be overly prescriptive in terms of specifying service standards. Regulation should prescribe the base level service standards e.g. minimum payment options and not each and every payment option, as this is the role of the market. For competition to be effective, industry must have the ability to differentiate product delivery, especially for homogenous goods such as electricity, in order to compete for customers.

- Regulation should not result in forum shopping where the highest service standard imposed by a particular State is imposed by other States simply because it is a higher standard. The relevant market characteristics need to be recognised and understood.
- Existing law should not be made the subject of another law. For example, in Western Australia it is common for electricity licence conditions to mandate compliance with an existing Act or regulation.
- Regulators must be accountable for their decisions. Industry must have a reasonable ability to seek a review of regulatory decisions on the basis of procedural fairness.
- Before specific industry regulation is enacted there should be proper analysis undertaken as to why generic law is not working. If specific law is to be enacted it should be on the basis of addressing demonstrable gaps in generic law and to protect those most at risk.
- Specific law should only be imposed following public consultation and cost assessment, specifically regulatory implementation and compliance costs, as these are ultimately borne by customers. Regulatory impact statements are a useful tool in this regard.
- Rather than extensive regulation, effective mechanisms should exist that can quickly address issues as and when they arise such as Energy Ombudsman schemes with determination powers.
- Regulation should be outcome based opposed to prescriptive. Good examples of effective outcome based regulation in Western Australia are the Energy Ombudsman scheme and retailer hardship policies.

<p><i>Productivity Commission Draft Recommendation 5.4 – Disadvantaged Customers</i></p>

“Ensuring that disadvantaged consumers continue to have sufficient access to utility services at affordable prices should be pursued through transparent community service obligations, supplier provided hardship programs or other targeted mechanisms that are monitored regularly for effectiveness.”

Synergy's supports recommendation 5.4. and considers Governments should have primary responsibility for customer hardship and concession funding programs. It is the role of retailers however, to support and promote such programs, through the use of mechanisms such as hardship policies.

Retailers should not be obliged to offer concessional arrangements as this is counter to industry cost reflectivity and removal of cross subsidies. Rather concessional arrangements should be funded by Government and be available to eligible customers irrespective of retailer.

All customers should receive cost-based price signals to promote rational behaviour but economically disadvantaged customers should also be eligible for Government financial assistance to ensure they can pay for what is deemed to be an acceptable quality of life.

Synergy also supports the Productivity Commission's recommendation that customer protections should be regularly monitored.

Policy makers and Regulators should be prepared to reduce industry specific regulation as competition develops or where regulation becomes redundant, spent or inappropriate.

<p><i>Productivity Commission Draft Recommendation 9.2 – Establishment of National Energy Ombudsman</i></p>
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"Australian Governments should improve the effectiveness of alternative dispute resolution (ADR) arrangements for consumers by ... establishing a national energy and water ombudsman that incorporates relevant existing State and Territory ADR bodies"

Synergy considers the Western Australian Energy Ombudsman scheme to be effective from both a customer and retailer perspective. Synergy would only support a National Energy Ombudsman Scheme if it was satisfied the Western Australian operational efficiencies and customer protection would be enhanced and not reduced.