



AUSTRALIA & NEW ZEALAND
ENERGY AND WATER
OMBUDSMAN NETWORK

15 February 2008

Review of Australia's Consumer Policy Framework
Productivity Commission
PO Box 1428
Canberra City ACT 2616

By email: consumer@pc.gov.au

Dear Commissioners

Thank you for the opportunity to comment on the Productivity Commission's *Review of Australia's Consumer Policy Framework: Draft Report* (November 2007) ('the Draft Report').

This is a joint submission by the members of the Australia & New Zealand Energy and Water Ombudsman Network (ANZEWON) listed below. It supplements the submission we made in May 2007 in response to the Productivity Commission's earlier Issues Paper.¹ As stated then, our core role is the resolution of customer complaints about the provision and supply of electricity, gas and water. Our comments in response to the Draft Report are founded on this experience.

The Draft Report recommends 'establishing a national energy and water ombudsman that incorporates relevant existing State and Territory ADR bodies' (draft recommendation 9.2). In short, ANZEWON members believe that this recommendation is a matter for discussion and review in the longer term but do not believe that it is practical or appropriate at the present time.

Please find our detailed comments below. As well as commenting on draft recommendation 9.2, we are also commenting on the other draft recommendations

¹ ANZEWON submission dated 17 May 2007 in response to the Productivity Commission's *Consumer Policy Inquiry – Issues Paper (January 2007)* – see <http://www.pc.gov.au/inquiry/consumer/submissions>

and parts of the Draft Report that clearly relate to the work and experience of ANZEWON members. For ease of reference we have adopted the same numbering and subtitling as appears in the Draft Report.

If you would like to discuss this matter further, please contact Clare Petre, Energy & Water Ombudsman NSW, on (02) 8218 5250 or Fiona McLeod, Energy and Water Ombudsman (Victoria) on (03) 9649 7599.

Yours sincerely

Handwritten signatures of Clare Petre and Fiona McLeod in cursive script.

Clare Petre, *Energy & Water Ombudsman NSW*
Fiona McLeod, *Energy and Water Ombudsman (Victoria)*
Simon Allston, *Energy Ombudsman Tasmania*
Chris Field, *Energy Ombudsman Western Australia*
Barry Adams, *Energy Ombudsman Queensland*
Judi Jones, *Electricity and Gas Complaints Commissioner New Zealand*

Response to

Productivity Commission

**Review of Australia's Consumer Policy
Framework: Draft Report (November 2007)**

Submitted by the

**Australia & New Zealand Energy and
Water Ombudsman Network
(ANZEWON)**

15 February 2008

ANZEWON is pleased to respond to the *Productivity Commission's Review of Australia's Consumer Policy Framework: Draft Report (November 2007)*.

ANZEWON regards the Draft Report as a significant contribution to the development of a more cohesive and effective consumer policy framework in Australia.

ANZEWON provides comments below addressing those draft recommendations most relevant to energy and water service provision and consumer protection.

Draft Recommendation 5.3

A single consumer protection regime for energy services should be developed and implemented under the auspices of the Ministerial Council on Energy. It should apply to all jurisdictions participating in the national energy market and be enforced by the Australian Energy Regulator.

ANZEWON agrees with this recommendation. ANZEWON supports the current consultative and staged transition from State and Territory based energy related consumer protection to a national framework. To this end, since 2004 ANZEWON and its member schemes have been active contributors to the Ministerial Council on Energy's consultation process.

Our comments about a single energy and water ombudsman are below (see draft recommendation 9.2).

Draft Recommendation 5.4

[...] following the establishment of national consumer protection arrangements for energy services, participating jurisdictions should remove any price caps still applying in contestable retail energy markets.

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 programmes, or other targeted mechanisms that are monitored regularly for effectiveness.

ANZEWON notes that each Australian jurisdiction currently has some form of price cap and/or regulation of electricity and natural gas prices. Pursuant to the Australian Energy Market Agreement, State Governments have agreed, in

principle, to phase out retail price regulation where competition is found to be effective by the Australian Energy Market Commission (AEMC). While this is not a matter for comment by ANZEWON members, we note that there will be significant differences in the timing of any price deregulation.²

ANZEWON agrees that community service obligations, supplier-provided hardship programmes or other targeted mechanisms (such as the Government-funded Energy Accounts Payment Scheme in New South Wales) offer accountable and efficient ways to identify and reduce rates of fuel poverty amongst vulnerable and disadvantaged consumers.

As outlined in ANZEWON's earlier submission to the Commission's Issues Paper, energy retailers and some water providers have made significant efforts in recent years to establish and refine hardship programmes. ANZEWON's experience is that hardship programmes can provide targeted support for disadvantaged consumers to ensure they stay connected to essential utilities with realistic and affordable payment arrangements.

Also as noted in ANZEWON's earlier submission, jurisdictional energy regulations play an important role in establishing and monitoring the success of such hardship programmes. ANZEWON is accordingly pleased to note that in late 2007 the New South Wales Government introduced a regulatory requirement for all licensed energy retailers to offer customers who are at risk of disconnection for non-payment the option of entering a payment plan that takes into account the customer's level of debt, energy consumption needs, and ability to pay, prior to disconnecting supply.³

Draft Recommendation 7.1

A new provision should be incorporated in the new national generic consumer law that voids unfair terms in standard form contracts [...]

ANZEWON is pleased to support this draft recommendation. As noted in our first submission, ANZEWON considers that some terms contained in standard form contracts applying to energy and water consumers unreasonably seek to limit or waive consumers' recourse to compensation in the event of supplier-initiated

² For example, the AEMC has published its conclusion that competition is effective in Victoria and is now consulting on how deregulation should be implemented from 2009. By contrast, the New South Wales Government recently announced that regulated electricity prices will remain in place until at least 2013, or until such time as sufficient competition exists that would warrant deregulation ('Emma Government Acts to Protect Electricity Consumers', NSW Government media release, 10 December 2007, on www.dpc.nsw.gov.au).

³ *Electricity Supply (General) Regulation 2001*, Cl 13A and *Gas Supply (Natural Gas Retail Competition) Regulation 2001*, Cl 13A.

contract termination or supply interruption that can cause material detriment to consumers and is not counter-balanced by other benefits contained in standard-form contracts. In addition, some standard-form contracts that entitle suppliers to apply early termination fees can cause material detriment to consumers and are not balanced by any consumer entitlement to be compensated by the supplier if the supplier prematurely terminates a contract.

Draft recommendation 9.2

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 bodies.

ANZEWON members believe that this recommendation is a matter for discussion and review in the longer term but do not believe that it is practical or appropriate at the present time.

The arguments for moving to a national energy ombudsman scheme may gain more credence over the next decade. The arguments for a future national energy *and water* ombudsman are less clear.

The current differences between the respective State and Territory energy and water regulatory and consumer protection frameworks make a national energy and water ombudsman scheme impractical at the present time.

Discussion of a national energy and water ombudsman scheme should therefore wait until such time as the national consumer protection framework for energy has been fully implemented and a sufficient period of time has elapsed to evaluate how well it is operating. To do otherwise would be to ‘put the cart before the horse’.

ANZEWON also raises the following points for consideration regarding the practicality of the Commission’s draft recommendation for a national energy and water ombudsman scheme:

- After the national energy regulatory framework has been implemented and evaluated, there will need to be extensive consultation and a full feasibility study of the ‘pros and cons’ of a national energy and water ombudsman as well as the best model for this. Possible models include a national scheme with one central office (like the Telecommunications Industry Ombudsman) or a national scheme with a central office and offices in each State and Territory (like the Commonwealth Ombudsman).

- ANZEWON has worked very hard in recent years to bring consistency to the complaint handling systems used by its member schemes. This process is evolving and complex – and is aligned to the goal of national consistency called for by the Commission.
- We believe that the current schemes have a high level of effectiveness and that this is supported by feedback received from customers and other stakeholders through surveys and other means.
- While a number of energy companies now operate across State and Territory borders, this is not the case with water providers. The structure of water providers also varies greatly across jurisdictions – and this affects the dispute resolution avenues available to consumers.⁴ Such complexities, and the very different situation for water consumers in each jurisdiction, make the case for a future national energy *and water* ombudsman scheme less clear.
- We note that Western Australia is not a member of the national energy market and this would need to be given consideration as part of whether the Energy Ombudsman Western Australia would be incorporated into a potential national energy ombudsman.

Draft Recommendation 9.6

Australian Governments should provide enhanced support for individual consumer advocacy through increased resourcing of [...] and financial counselling services, especially for vulnerable and disadvantaged consumers

Financial counsellors play an extremely important role in assisting vulnerable and disadvantaged consumers. Their work helps consumers to better manage their income and expenses – reducing the likelihood of spiraling utility debts and credit-related disconnection.

Financial counsellors also provide independent assessments of the ability of customers experiencing hardship to service their debt and manage ongoing energy and water account payments. Energy and water providers are generally receptive to such independent assessments and may be inclined to grant more realistic or

⁴ For example, in New South Wales, two large metropolitan retailers – Hunter Water and Sydney Water – are required by licence to participate in the Energy & Water Ombudsman NSW (EWON). Numerous local government water providers service non-metropolitan NSW customers and their complaints are handled by the NSW State Ombudsman. In Victoria, there are 20 corporatised water providers and they all participate in the Energy and Water Ombudsman (Victoria) (EWOV).

flexible payment terms where a financial counsellor has assessed a customer's ability to pay – compared to a customer who has been unable to access the services of a financial counsellor.

For these reasons ANZEWON strongly supports the Commission's recommendation that financial counselling services receive enhanced support from Australian Governments.⁵

Additional comments: Appendix F of Volume 2 - Utility Services (pages 407 – 432)

Bundled services and disconnection

ANZEWON has noted a trend in some States and Territories toward the contractual bundling of energy products with other products or services – such as water, broadband internet access, telephone and/or insurance. Some of the consumer complaints about the marketing and terms and conditions of such bundled services are likely to be complex and time-consuming in nature.

ANZEWON agrees with the concern noted on page 420 of the Draft Report that bundled services may lead to the disconnection of all services for customers who fall behind in their payments. State and Territory based energy regulations – such as the Victorian wrongful disconnection legislation and the New South Wales requirement that energy retailers offer customers facing disconnection entry onto a Ministerially-approved payment plan – go some way to reduce rates of credit-related disconnection. However, in the transition to the national energy consumer protection framework, the issue of bundled services and disconnection needs to be further considered. ANZEWON member schemes will ensure that this occurs through the ongoing consultative process administered by the Ministerial Council on Energy.

Increasing complexity of complaints

Regulatory initiatives in some jurisdictions have helped to reduce the number of credit-related electricity and gas disconnections and hence the number of vulnerable and disadvantaged customers who need to contact external dispute resolution schemes for assistance in being reconnected and establishing a payment plan with their supplier. The nature of many complaints received by ANZEWON member schemes has increased in complexity as the focus of schemes turns

⁵ The Victorian State Services Authority is currently reviewing the effectiveness of financial counselling in Victoria. As part of that review, EWOV has also expressed its support for greater resources for financial counsellors.

toward disputes that cannot be resolved directly with providers and which often involve complex issues of billing, marketing and transfer, site ownership, distribution and supply.

Despite this increase in complex complaints and investigations, the jurisdictional energy and water ombudsman schemes continue to offer efficient and timely dispute resolution.⁶ These efficiencies reflect well on ANZEWON member schemes and run counter to the trend mentioned on page 430 of the Draft Report regarding increasing complaint resolution times experienced by some external dispute resolution schemes.

Accessibility

The Draft Report states on page 429 that ‘disadvantaged consumers are often less likely to use and be aware of their options for dispute resolution’.

The ANZEWON member schemes recognise that it is a constant challenge and priority to be accessible to low income and vulnerable consumers. Recent surveys of customers using the EWOV and EWON schemes have provided good results on this point.⁷ Accessibility is a key principle for each ANZEWON member scheme and this is reflected in our community liaison work and case handling practices.

Conclusion

ANZEWON welcomes the timely work undertaken by the Productivity Commission in its review of Australia’s consumer policy framework. As noted above, ANZEWON supports the ongoing process being facilitated by the Ministerial Council on Energy to achieve greater national consistency in energy-related consumer protection.

⁶ For example, in 2006-07, EWOV and EWON each finalised about two-thirds of all their cases within two days, and the Energy Ombudsman Western Australia finalised 96% of its electricity complaints within ten business days.

⁷ EWOV’s 2007 customer satisfaction survey showed that 31% of complainants were holders of government concession cards (very close to the percentage in the general community), 20% were unemployed (a considerable over-representation of that group, although people may describe themselves as unemployed without fitting into the official description), 14% were retired and 25% had an annual income of less than \$40,000. Complaints to EWOV from public housing tenants also reflect their proportion in the wider population. EWON’s 2005 survey results similarly showed that at least 31% of customers received pension/benefits and at least 7% were public housing clients.

When the Ministerial Council on Energy's reforms have been implemented and an appropriate period of time has elapsed to allow a full and considered analysis of the success or otherwise of the national energy-related consumer protection framework, ANZEWON looks forward to contributing to a fully consultative discussion about the feasibility and merits of a national energy ombudsman (or a national energy *and water* ombudsman).

In the meantime ANZEWON's member schemes will continue to work to ensure that external dispute resolution for energy and water consumers remains effective and accessible, particularly to the most vulnerable consumers in the community.