

ESSENTIAL SERVICES CONSUMER COUNCIL

(established under Part 11 of the *Utilities Act 2000*)

RESPONSE TO THE PRODUCTIVITY COMMISSION DRAFT REPORT

Review of Australia's Consumer Policy Framework

Essential Services Consumer Council

The Essential Services Consumer Council (the Council) is established under Part 11 of the *Utilities Act 2000* (ACT) (the Act). The Council commenced operations on 1 July 2001, taking over and expanding upon the functions of the former Essential Services Review Committee (the ESRC).

The Council has a number of functions, determined in s 170 of the Act, including:

- to resolve complaints against energy and water utilities;
- to ensure, so far as practicable, that energy and water services continue to be provided to persons suffering financial hardship; and
- to protect the rights of customers and consumers under the Act.

While the Council is constituted as a statutory tribunal, its role and manner of functioning is closely aligned to the energy and water ombudsman schemes in the States, with an additional, unique role of case managing utility customers in severe financial hardship. This hardship case management role of the Council commences when a utility's own hardship policies and programs cease to be effective and the utility makes a decision to disconnect a customer from supply for failure to pay their utility debt.

From its experience in resolving complaints against utilities, and its case management of customers in hardship, the Council is informed about systemic issues and problems in the relationship between utilities and their customers/consumers, and is active in proposing remedial courses of action to Government, the energy and water regulators (the Independent Competition and Regulatory Commission – ICRC - and the Australian Energy Regulator - AER) and the utilities.

The Council makes a substantial contribution to systemic advocacy on energy and water issues affecting the Territory, basing its advocacy on protection of the interests of low income customers and consumers in the ACT and national energy and water markets.

Endorsement of Joint Submission from Participants in the National Consumers' Roundtable on Energy

The Council has had the opportunity to consider the Joint Submission to the Commission from Participants in the National Consumers' Roundtable on Energy.

The Council wishes to express its support for the points of view expressed and recommendations made in the Joint Submission.

Additional Issues Addressed by the Council

The Council wishes to make some additional comments to those expressed in the Joint Submission. These comments address Territory issues in particular, and are drawn from the Council's 15 years of experience in managing utility hardship and its 6 years of experience in facilitating the resolution of complaints against energy and water utilities.

The Need for Energy-Specific Consumer Protection Mechanisms

The Council strongly supports the view that specific consumer protection mechanisms are needed in relation to energy and water supply. This arises particularly from:

- the nature of energy and water as an essential service where disconnection from supply can be life-threatening and at the very least leads to high levels of hardship for vulnerable people, including children and disabled adults;
- the provision of energy through transmission and distribution networks is inherently a monopoly, and the generation and retail supply of energy has an inherent tendency towards domination of the market by large companies which integrate generation and retail activities;
- energy consumer protection mechanisms vary widely between States and Territories and in some cases are very immature. Consumer protection developments in some States have the potential for forming a best practice basis for a nationally consistent energy consumer protection framework which will commence in 2010, but is likely to take a number of years after that to reach maturity.

Energy Hardship – Unique Regional Issues

In the ACT, the Council (and its predecessor) have played a major role in prevention of utility hardship for 15 years. Over that time, the Council has developed and implemented a utility hardship program unique in Australia in that it exercises a statutory power to prevent disconnection of utility supply to a customer in hardship and includes a capacity for a statutory body to discharge utility debt (as a CSO paid for by the ACT Government).

During the first 7 years of the Council's operations, the issue of hardship was hardly considered as a policy issue by the monopoly government-owned utilities in each State, or by the privately owned utilities created in the wake of privatisation in Victoria. The excesses of the privatised utilities in Victoria, however, contributed to a regulatory response which has seen Victoria lead the way to a best practice utility hardship model, one which closely involves the utilities in hardship programs, but includes a sanction (the wrongful disconnection fee) for failure of responsibility by a utility in the disconnection process.

The Council notes that history and regional issues have led to different regional approaches to utility hardship and wishes to stress the importance of a best practice approach to utility hardship in every jurisdiction in Australia, not a lowest common denominator determined by selfish industry groups.

Price Regulation in an FRC Electricity Market

In its report, the Commission talks of "price caps" in the energy markets in the various States and Territories. In the ACT (and several of the States), there is no "price cap" on the cost of energy, rather there is a competitive market for customers who wish to enter a market contract, and (in the ACT) a regulated "franchise" price which the retail arm of the incumbent distributor is required to offer to customers who do not enter a market contract. The franchise price is set annually by the ICRC on a basis which ensures the financial viability of the retailer offering that price (including pass-through arrangements, etc).

In the ACT, the franchise price acts as a reference point for competition, ie. a "price to beat". Market offers are generally made by reference to the franchise price, for example by:

- offering a 5% or 10% discount on the energy bill, with the actual tariff structure set by the retailer being very similar to the franchise price structure; or
- offering a discount on the total bill for some services if the customer adopts a "bundle" of services provided by the retailer (in the case of ActewAGL, the bundle includes communication services such as telephone, mobile phone and internet).

There has been some competition which is not based on the franchise price, for example:

- the offer of a free DVD player by TRUEnergy for customers who churned in a door knock campaign;
- offering of "green" energy products at a higher price than the franchise price; and
- a marketing campaign by ActewAGL Retail pointing to its record of contributions to the ACT community.

All in all, in the Council's opinion, the existence of the franchise tariff has underpinned the gradual opening of retail competition in the electricity market in the ACT.

In the opinion of the Council, there is little evidence to suggest that removal of the franchise tariff will result in customer benefit (eg. a substantial reduction in the average price paid by consumers). More likely, the removal of the reference tariff could lead to retailers constructing their tariff offers in a way that obscures direct comparison with their competitors and then competing through phoney, non-price differentiation.

The introduction of FRC in the ACT energy market has raised other concerns for the Council:

- complaints to the ESCC about utilities doubled between 2005-06 and 2006-07 (from a relatively small base). This increase was almost entirely attributable to problems introduced by retail competition such as improper marketing techniques, churning problems, complexities in transferring between suppliers, lack of informed consent, bundles and contract terms, etc;
- the number of complaints continue to rise in 2007-08. There are fewer complaints about improper marketing techniques (marketing activities have shifted to Queensland), however complaints about problems with bundle contracts and transfers between retailers are increasing.

National Energy Ombudsman Scheme

The Council does not support the creation of a National Energy Ombudsman Scheme in the short or medium term. The Council acknowledges that the consolidation of the National Electricity Market may eventually lead to this outcome, however there are many barriers to early implementation of such a scheme:

- at present there are striking differences in the energy markets in each State and Territory arising from many factors including participation or non-participation in the NEM, regional climatic factors, regional differences in generation and supply, maturity or immaturity of consumer protection regimes and regulatory frameworks;
- an energy ombudsman scheme must be well informed about local issues and differences and accessible to the local community. Problems in local knowledge and local access would be substantial in a National Ombudsman, presumably based in Sydney or Melbourne;
- in the ACT, water and energy currently are covered the a single regulatory framework (the Utilities Act) and are combined in the one ombudsman scheme (the ESCC). It is unlikely that water could be included in a National Ombudsman Scheme in the next few years as water regulation is currently State/Territory-based and a single National regulatory framework could be a long time coming. A National Energy Ombudsman would raise viability issues for stand-alone water ombudsman schemes in each State and Territory.

The Council does, however, consider it important that the existing State/Territory energy ombudsman schemes build and maintain strong liaison mechanisms to ensure:

- national consistency in the nature of complaint statistics collected. At present, data sets are not consistent making national policy development difficult;
- a consistent approach to the interpretation and application of national regulatory instruments (eg. NEM Rules). It would be unfortunate if regional differences emerged in the way schemes applied consumer protection obligations embodied in national Rules and other instruments.

The Value of Financial Counselling Services

The Council finds referral to financial counselling services to be of considerable value in its hardship case management process. In many cases, the customer's financial circumstances (income, expenditure and commitments) are reasonably straight-forward and their capacity to pay for energy and water can be assessed with a substantial degree of accuracy by the Council.

In some cases, however, our clients present with a complex mix of debts, an obvious inadequacy of income to meet their commitments, and a psychological state which renders them unable or little able to perceive a strategy for restructuring their commitments. In such cases, the Council relies on the professionalism of financial counsellors to address the clients' overall debt problems, including a recommendation to Council as to the manner in which utility debt can be addressed (including for example debt restructuring, sale of the home, bankruptcy, compounding with creditors, etc). In some cases, the Council's statutory power to discharge utility debt (as a CSO paid for by the ACT Government) can assist in resolution of the clients' problems.

Peter Sutherland
Chairperson
20 February 2008