

Energy and Water Ombudsman (Victoria) Limited

ABN 57 070 516 175

6 August 2004

Ms Wendy Heath
Regulatory Program Manager
Essential Services Commission
Level 2, 35 Spring Street
MELBOURNE 3000

Dear Ms Heath

Re: Draft Code of Conduct for Marketing Retail Energy in Victoria

Thank you for the opportunity to provide comment on the Essential Services Commission's (ESC's) July 2004 Draft Code of Conduct for Marketing Retail Energy in Victoria (the 'Draft Energy Marketing Code').

EWOV welcomes the Draft Energy Marketing Code as an improvement on the ESC's current Electricity and Gas Marketing Codes. EWOV supports the ESC's proposal to adopt most of the recommendations that were put forward in December 2003 by the Marketing Code Advisory Committee. These recommendations – including the recommendation to require disclosure during contract negotiations of commissions or fees – were made after extensive discussion and consideration by a broad range of stakeholders.

EWOV welcomes the fact that the Draft Energy Marketing Code more clearly cross-references relevant sections of the *Fair Trading Act 1999* (Vic). EWOV also supports the inclusion of footnotes that clearly explain where a code obligation is in addition to the requirements of the *Fair Trading Act 1999* (Vic).

EWOV understands from discussion with ESC that the Draft Energy Marketing Code is likely to take effect in early 2005. EWOV suggests that this timeframe is too long and that the improved code should take effect as soon as possible.

EWOV notes that the future operation of the Draft Energy Marketing Code will be affected by the Minister for Energy's response to the ESC's June 2004 Final Report regarding its Review of the Effectiveness of Retail Competition and Consumer Safety Net. EWOV notes that the ESC has recommended in its report that the Marketing Code be removed from ESC administration in favour of regulatory oversight by Consumer Affairs Victoria (CAV) and the Australian Competition and Consumer Commission through the provisions of the *Fair Trading Act 1999* (Vic) and the *Trade Practices Act 1974* (Cth). If this occurs, EWOV understands that it may be possible for CAV to prescribe a version of the Marketing Code under the *Fair Trading Act 1999* (Vic). If such a process occurs, EWOV notes it will be important to retain the provisions within the Marketing Code that are in addition to the requirements of the

Fair Trading Act 1999 (Vic). The work that has been put into reviewing and refining the Marketing Code should not be lost.

Should you require any clarification of, or expansion on, the EWOV's comments, please do not hesitate to contact Steve Morris, General Manager Corporate Affairs, or Stephen Gatford, Policy & Research Officer, on (03) 9649 7599.

Yours sincerely

Fiona McLeod
Energy and Water Ombudsman (Victoria)