

9 July 2010

Mr Tom Leuner
General Manager
Markets Branch
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3000

By email: AERInquiry@aer.gov.au

Dear Mr Leuner

Re: Approach to compliance with the National Energy Retail Law, Rules and Regulations

Thank you for the opportunity to provide comment on the Australian Energy Regulator's (AER) ***Approach to compliance with the National Energy Retail Law, Rules and Regulations*** (the Issues Paper).

The following comments are based on our experience as an independent complaint handling body.

Proposed approach to compliance under the Retail Law

The Energy and Water Ombudsman (Victoria) (EWOV) supports the AER's approach to compliance which aims to 'foster a positive compliance culture' and to work cooperatively with regulated entities while still being prepared to take strong enforcement action where required. As the Essential Services Commission (Victoria) (ESC) stated in its *Compliance Policy Statement for Victorian Energy Businesses 2009*, a co-operative approach tends to be more successful in achieving long-term compliance. Enforcement action should only be necessary where voluntary compliance cannot be achieved.

Publications, targeted presentations, one-on-one discussions and public forums are all effective compliance tools and can be used depending on the specific circumstances of the breach. Where possible, publications and public forums would be preferable in view of the AER's goal of a culture of openness and transparency.

Monitoring compliance

The Issues Paper sets out various compliance risk factors the AER will consider when deciding which monitoring mechanism it will use. Impact and likelihood of a breach will determine the monitoring response. As different provisions in the national framework serve different purposes, the assessment will be made on a case-by-case basis.

EWOV agrees with the factors the AER proposes to consider in assessing the impact of a breach. The effect on the national energy retail objectives, possible remedies, the number of people affected and how these people are affected, are all valid indicators to determine the impact of a breach.

However, EWOV is concerned with the use of the term ‘unjustified administrative costs’ in relation to ombudsman schemes. If a breach causes an increase in complaints to EWOV it may cause a higher workload but not ‘unjustified administrative costs’. EWOV seeks clarification on how it would be determined if the costs are ‘unjustified’.

EWOV endorses the suggestion by Energy & Water Ombudsman NSW to include the following additional indicator:

Does the breach create a significant increase in complaints to the ombudsman?

Mechanisms for monitoring compliance

Market intelligence and information

EWOV notes that energy ombudsman schemes are seen as a primary source of information for the AER’s compliance monitoring scheme. EWOV currently meets monthly with the ESC to discuss case trends and systemic issues and this provides the ESC with valuable information for its compliance activities. EWOV and the AER already have regular quarterly meetings to exchange information about ongoing and emerging issues and EWOV expects that the format and content of these meetings will evolve to assist the AER with its compliance role after the introduction of the *National Energy Customer Framework*.

Retailer and distributor reporting

In the *Compliance Report for Victorian Retail Energy Businesses 2008-09* the ESC noted that there was a disparity between the number of wrongful disconnections reported by retailers and those identified through customers contacting EWOV. This suggests that it would be helpful for the AER to consider the data provided by businesses in conjunction with complaint data provided by energy ombudsman offices to get a more comprehensive understanding of potential compliance issues.

Compliance audits

The AER intends to determine scope, coverage and timing of an audit on a case-by-case basis to ensure audit costs are justified by the benefits. EWOV acknowledges that audits can be costly and intrusive and supports the AER's approach. There are circumstances where audits will be a useful and necessary tool to determine the extent of a breach. For example, the ESC remains concerned about marketing conduct and has therefore included marketing conduct obligations in independent audits of the retailers scheduled for 2010¹.

Principles for investigations and enforcement

Given that the results of AER investigations will be of interest to the public they should be communicated in a readily accessible manner. The results of investigations should be published on the AER's website and there should be a notification service for interested stakeholders.

EWOV supports the six objectives of enforcement outlined in the Issues Paper, in particular the AER's overall aim of achieving the best possible outcome for consumers.

EWOV acknowledges that the AER will not be able to pursue all complaints it receives and needs to establish enforcement priorities. The six enforcement priorities suggested by the AER seem appropriate and it is good to see that reference is made to conduct that affects disadvantaged or vulnerable customer groups.

Compliance reporting

When ESC compliance reports are released, EWOV uses these to compare the data to its own complaint data to see if there are discrepancies. If there are serious concerns, for example in the area of wrongful disconnections, EWOV will raise these with the ESC. Compliance reports also help stakeholders to get an understanding of market developments and the AER's compliance activities.

We trust the above comments are helpful. Should you require further information or have any queries, please contact Kerrie Milburn-Clark, Manager Public Affairs and Policy, on (03) 9649 7599 or at Kerrie.Milburn-Clark@ewov.com.au.

Yours sincerely



Fiona McLeod
Energy and Water Ombudsman (Victoria)

¹ Essential Services Commission 2010, *Report – Energy Retailers' Marketing to Vulnerable Customers*, March 2010