



Listen Assist Resolve

8 August 2011

Attn: Mr Raif Sarcich
Principal Policy Officer
Energy Sector Development Division
Department of Primary Industries
GPO Box 4440
Melbourne VIC 3001

By email: raif.sarcich@dpi.vic.gov.au

Dear Mr Sarcich

RE: Discussion Paper Victoria Specific Regulatory Requirements Under the National Energy Customer Framework

Thank you for the opportunity to comment on the Department of Primary Industries (DPI)'s Discussion Paper on Victoria-Specific Regulatory Requirements Under the National Energy Customer Framework.

The Energy and Water Ombudsman (Victoria) (EWOV) believes the proposed national framework (National Energy Customer Framework (NECF)) provides a comprehensive national approach for consumer protection and supports an approach that provides customers with:

- minimal interruptions
- minimal confusion
- the same level of protection as currently received.

Victorian Energy Regulatory Rules (VERR)

EWOV welcomes DPI's proposal to maintain certain protections under the VERR so that Victorian consumers continue to receive the same protections under the national framework that they currently receive. Specifically, EWOV welcomes the following inclusions:

- Wrongful Disconnection Payment (WDP)
- retaining bi-monthly gas bills until December 2013 to prevent price shock
- keeping a hold on supply capacity control products until 1 January 2014
- retaining the same allowable timeframes for disconnection and connection of supply.

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However, EWOV believes that there are some inconsistencies between the protections currently provided in the Victorian regulation and those outlined in the NECF. EWOV is an industry-based external dispute resolution scheme providing alternative dispute resolution services to Victorian energy and water consumers by receiving, investigating and facilitating the resolution of complaints. In making this submission, we provide comments based on our experience of Victorian customer issues.

Complaint Handling and Ombudsman

EWOV received 42,503 cases in the 2009-10 financial year and 54,257 cases in the 2010-11 financial year from customers who were dissatisfied with their energy retailer. Of those cases 1,293 related to customers who were dissatisfied that their retailer had not escalated their concerns¹.

Advice on Consumer Rights

Retailers are currently required to advise customers that they have a right to escalate their complaint 'to a higher level within the retailer's management structure'². EWOV believes that this information helps customers know their rights when attempting to resolve a complaint in-house, and can prevent unnecessary external escalations.

Ombudsman Approval

EWOV has previously provided comments to DPI regarding the dispute resolution provisions under the NECF. As previously advised, EWOV believes that unlike current regulations the NECF does not outline several issues in relation to the jurisdictional regulator's role with respect to EWOV, including:

- the separation of regulatory roles in relation to energy, water and LPG
- the approval by the regulator of the EWOV scheme³.

EWOV believes that the NECF should be strengthened by incorporating the above information into the VERR.

Payment Difficulties and Hardship

During the 2010-11 financial year EWOV encountered a 9% growth in cases relating to customers experiencing payment difficulties or hardship compared to the previous financial year. The growth in these cases received by EWOV indicates that payment difficulties are affecting more Victorian consumers.

¹ 443 cases in 2009-10 and 850 cases in 2010-11

² Clause 28.2 (a) of the Energy Retail Code, Clause 10.1.2 (a) of the Electricity Distribution Code, and Clause 10 (c) (i) of the Gas Distribution System Code.

³ Section 28 (1) Electricity Industry Act and Section 36 (1) Gas Industry Act

Hardship Definition

The NECF definition of a hardship customer presents a potential issue. Currently a customer experiencing payment difficulties (in hardship) is defined as a customer with the willingness but not the capacity to pay⁴. However under the NECF, it appears that a customer can only be identified as experiencing hardship when they are enrolled in the retailer's hardship program⁵.

Currently when a retailer identifies that a customer is experiencing payment difficulties and may need hardship assistance, it has other assistance options⁶ outside of its hardship program available to it. This change in definition removes a retailer's responsibility to help customers who are in need of hardship assistance and may be outside the boundaries of its hardship program.

Shortened Collection Cycle

In the NECF, a shortened collection cycle can be applied to an energy account if two consecutive reminder or disconnection warning notices have been issued⁷. However, under the current provisions, a shortened collection cycle is only applicable if three consecutive reminder notices have been issued⁸. This means that customers can be placed onto a shortened collection cycle more easily, which reduces the notification required and payment period prior to disconnection.

Assessment and Assistance

In current provisions, customers experiencing payment difficulties must be assessed for hardship and provided with assistance⁹. However, the NECF does not outline this requirement. It does require that a payment plan for a hardship customer must take into account their capacity to pay¹⁰ and that the retailer is obligated to have its own process for identifying customers experiencing payment difficulties¹¹ under its hardship program. It is also noted that in the NECF¹² the following information and assistance is only provided as a part of the retailer's hardship program:

- details of government concession programs and financial counselling services
- programs to assist customers improve their energy efficiency.

Currently customers who are experiencing payment difficulties but are not under the retailer's hardship program are still entitled to an assessment of capacity to pay (for a payment plan) and the following assistance:

⁴ ESC Guideline 21 Energy Retailers' Financial Hardship Policies 2007 page 2

⁵ Part 1 Division 1 (2) of National Energy Retail Law (South Australia) Act 2011 (National Energy Retail Law)

⁶ extended payment terms, short-term payment plans

⁷ Rule 24 (1) of the National Energy Retail Rules

⁸ Clause 9.4 (b) of the Energy Retail Code

⁹ Clauses 11. (1) and 11.4 of the Energy Retail Code

¹⁰ Rule 72 (1) (a) (i) National Energy Retail Rules

¹¹ Section 44 (a) National Energy Retail Law

¹² Section 44 (d) (e) (g) National Energy Retail Law

- advice on the availability of an independent financial counsellor
- concession, grants information
- energy efficiency advice.

Payment Plan

Currently retailers are required to offer an instalment plan even if their customer has in the previous 12 months failed two payment plans, as long as that customer provides reasonable assurance to pay¹³. The customer's assurance to pay is no longer considered a factor in offering a payment plan, under the NECF, if they have failed two payments in the previous 12 months¹⁴. EWOV is concerned that this will result in customers who are experiencing payment difficulties being provided with unreasonable payment terms and consequently disconnection from supply if they cannot meet the retailer's request for payment¹⁵.

The NECF also omits the review process for instalment plans which are present in current provisions¹⁶. Without this requirement, customers may be required to make ongoing payments that are not reflective of their capacity to pay or the consumption at the property.

As such, EWOV believes that the provisions in the NECF will result in a loss of protection to Victorian consumers requiring payment assistance or who are in hardship. Therefore the above points should be incorporated into the VERR.

Disconnection

An increasing number of Victorian consumers are contacting EWOV dissatisfied that they have been disconnected. Between the 2009-10 and 2010-11 financial years EWOV experienced a 53% increase in disconnection cases. Many of these cases may also include issues relating to the reconnection of supply and to the payment difficulties a customer is experiencing.

Notification

The NECF provisions regarding disconnection appear similar to those already in place, under Victorian Regulation¹⁷ - retailers are required to issue notifications and use best endeavours to contact the customer prior to disconnection. The NECF does not however require different notification timeframes and information to be provided to dual fuel customers. Whereas presently dual fuel disconnections do not occur on the same day, and the disconnection warning notices must advise customers that:

¹³ Clause 11.3 of the Energy Retail Code

¹⁴ Rule 33(2) (a) National Energy Retail Rules

¹⁵ Of the complaints EWOV receives about payment difficulties and disconnection many customers report that they were advised to pay a significant portion of the arrears (more than 50%) in order to prevent disconnection.

¹⁶ Clause 12.2 (b) and (c) of the Energy Retail Code

¹⁷ Clause 13 of the Energy Retail Code

- the gas can be disconnected within seven business days, and the electricity within 22 business days
- the disconnection may vary the tariffs and terms and conditions.

Also under current provisions, a retailer can disconnect a customer if they refuse to provide acceptable identification or a refundable advance. In order to complete a disconnection on this basis, a warning notice is required that provides 10 business days. Under the NECF, the notification requirements increase and require the retailer to provide both an 'intention to disconnect' notice and a disconnection warning notice¹⁸. However, once the disconnection warning notice is issued the disconnection can occur after six business days.

Disconnection Threshold

The current disconnection threshold is \$120 exclusive of GST. EWOV is unclear whether the NECF's disconnection threshold includes or excludes GST as this information is not specifically referenced. Accordingly, if this threshold has been lowered, protections have been reduced as disconnection can proceed with less arrears outstanding.

Best Endeavours

Currently, if a retailer initiates disconnection proceedings against a customer who is experiencing payment difficulties, it must:

- comply with requirements to assess and assist a customer (clause 11.2 of the Energy Retail Code)
- use its best endeavours to contact the customer, in person or by phone
- offer a customer a payment plan (which should be accepted within five business days)¹⁹.

This contact must currently occur in the month prior to disconnection and the number of attempts to contact the customer, and methods to be used are also outlined²⁰. While the NECF still requires retailers to use their best endeavours to contact a customer, it does not:

- provide details about when this contact must occur in relation to the disconnection (other than that it must happen after the disconnection warning notice is issued)
- require the retailer to assess and assist the customer when offering a payment plan
- outline the type and amount of contact required (e.g. registered letter, number of calls).

Disconnection for Health and Safety Notification

Currently if an Electricity Distribution Company is going to disconnect a customer's supply, (to reduce the risk of fire) it must provide the customer with a notice that allows the customer with five business days, from the date of receipt of its notice, to eliminate the cause of potential danger²¹. The NECF provides no such notice requirement.

¹⁸ Rule 115 of the National Energy Retail Rules

¹⁹ Clause 13.2 (a) (i-iii) the Energy Retail Code

²⁰ Section 4.2.2 (i) of the Essential Services Commission's Compliance Policy Statement

²¹ Clause 12.2.2 (b) Electricity Distribution Code

As such, EWOV believes that the NECF results in a loss of protection to Victorian energy consumers regarding the above disconnection provisions. Any differences should be incorporated into the VERR.

Reconnection

Presently the customer has a right to be reconnected if the retailer has disconnected for non-payment and:

- the customer pays the bill or agrees to a payment arrangement or
- is eligible for an Utility Relief Grant (URG) or applies for such a grant²².

The NECF advises that the retailer is obliged to reconnect if:

- the customer has rectified the matter that led to disconnection, or made arrangements that are satisfactory to the retailer and
- made a request for reconnection and
- paid any charge for reconnection²³.

This change to wording means customers with pending or approved grants, who are receiving assistance or who have offered a payment plan (in line with their capacity to pay) may stay disconnected because it is not satisfactory to the retailer. This may result in full payment becoming the only option that a retailer would consider satisfactory.

EWOV believes that the NECF provisions result in a loss of protection to Victorian consumers seeking reconnection. Therefore details about how a customer can organise reconnection, once disconnected for non-payment, should be incorporated into the VERR.

Energy Efficiency

A retailer must currently provide a customer with energy efficiency advice upon request²⁴. The NECF requires the AER to instead publish consumption benchmarks, and for retailers to have programs to assist customers improve their energy efficiency under their hardship program²⁵. This means that only customers on a retailer's hardship program will be provided with this type of information. This removes valuable advice being provided to customers who are trying to reduce their consumption, either because they want to become more energy conscious or because they want to increase their affordability (who are not on the retailer's hardship program).

²² Clause 15.1 of the Energy Retail Code

²³ Rule 121 of the National Energy Retail Rules

²⁴ Clause 26.6 of the Energy Retail Code

²⁵ Section 44 (g) of the National Energy Retail Law

EWOV believes energy efficiency advice should still be provided to all customers, who request this information, and should be maintained in the VERR.

Marketing

A high and consistent number of marketing related cases were received by EWOV during the 2009-10 and 2010-11 financial years. 2,695 marketing cases were received in 2009-10 and 2,624 during 2010-11.

Training

EWOV is concerned that the NECF has abandoned setting training standards for marketers, as outlined under current provisions²⁶. The current provisions outline retailer obligations to provide initial and ongoing training and testing of marketing representatives, to ensure that they comply with requirements for marketing activity and behaviour²⁷. EWOV believes that this is a backward step, and likely to lead to more complaints about marketing being made to retailers and our office.

Identification

Presently, when a marketer is in personal contact with a customer, they must identify themselves by providing their name, relevant identification number, name of retailer they are representing, contact details and the purpose of their visit²⁸. They must also wear an identification badge. While the marketer is required under the Australian Consumer Law (ACL) to disclose their purpose or identity²⁹, it does not require an identification badge to be worn and does not specifically require that the same information be provided to the customer.

No contact list

Currently consumers can request not to be contacted for marketing purposes by any marketing medium - phone, email, in person or by post. However, in the NECF, a customer can only request no contact in person or by mail, and requires that the no-contact list is only maintained for two years.

Records

Visit and phone record keeping currently require specific details be recorded including the date and time the marketing occurred, and the details of the specific marketer. The NECF does not require this level of detail to be recorded. This will impact the investigation into customer concerns about marketer conduct and make it more difficult to confirm which marketer was involved in a complaint because the specifics of the visit has not been recorded.

²⁶ Clause 1 of the Code of Conduct for Marketing Retail Energy in Victoria

²⁷ Clause 1 of the Code of Conduct for Marketing Retail Energy in Victoria

²⁸ Clause 2.1 and 2.2 of the Code of Conduct for Marketing Retail Energy in Victoria

²⁹ Section 74 of the Australian Consumer Law

Pre-Contractual Information

Prior to a market contract or a standing offer being established, the retailer is currently obligated to confirm the following contractual information³⁰:

- type and frequency of bills the customer will receive
- prices, charges, tariffs, service levels, and that the price is inclusive of GST
- the full name, address and phone number of the retailer
- that the customer could be part of an audit procedure
- that the marketer may receive a fee/commission from the retailer if the customer enters into a contract.

Under NECF this information does not need to be provided as a part of a standing offer or if a customer is entering into a market contract³¹.

Contract Information

Customers are provided with a copy of their contract, within two business days, under current provisions³². Whereas under the NECF, the retailer must provide the customer with the required information and the contract offer before the contract is entered into or as soon as practicable after the contract has been agreed on³³. This may result in a delay in this information being provided to consumers, contrary to current practice.

Sales to Minors

Retailers are currently required to take reasonable steps to conduct contract negotiations with the authorised representative for the property. If marketing has been conducted to a minor the onus is on the retailer to ensure that the minor was the appropriate authorised consumer to enter into a contract³⁴. There is no similar provision under the NECF.

Commencement of Retail Service

Retailers must currently advise a customer if there will be a change, if it is longer than a week, to the date when that retailer will become responsible for their account³⁵. While the NECF only requires the retailer to advise the customer of a commencement date, it does not require the retailer to re-advise a customer if there are to be any changes to this date³⁶.

EWOV believes the above points constitute a loss of customer protections. Marketing protections should be maintained in the VERR so that customers are provided with adequate information prior to and once entering into a contract with a new retailer.

³⁰ Clause 3.3 of the Code of Conduct for Marketing Retail Energy in Victoria

³¹ Rule 64 of the National Energy Retail Rules

³² Clause 3.5 of the Code of Conduct for Marketing Retail Energy in Victoria

³³ Rule 62(b) and 64 of the National Energy Retail Rules

³⁴ Clause 4.3 of the Code of Conduct for Marketing Retail Energy in Victoria

³⁵ Clause 5 of the Code of Conduct for Marketing Retail Energy in Victoria

³⁶ Rule 64 (1) (b) of the National Energy Retail Rules

Transfer

Transfer related EWOV cases outnumber those relating to marketing. Between the 2009-10 and 2010-11 financial years, EWOV experienced a 20% growth in complaints with transfer-related issues. This increase in cases indicates that transfer issues continue to be a growing concern for Victorian consumers.

Transfer Process

Current provisions require that a transfer commences after the cooling-off period has passed³⁷. EWOV also notes that the provisions of Section 86 of the Australian Consumer Law³⁸ place a prohibition of a supply commencing within 10 business days of entering into an 'unsolicited consumer agreement'. However, the NECF allows a retailer to start transfer proceedings during the cooling-off period, so long as it can be reversed³⁹ and does not require the transfer to be within a certain timeframe. Accordingly, if a retailer was to commence a transfer process which was completed within the 10 business day period, then a breach of the Australian Consumer Law would take place. This therefore appears inconsistent with the intention of the Australian Consumer Law and to permit a retailer to commence a transfer process which if completed would be in breach of the Act.

EWOV also notes that currently a retailer has up to 20 business days to complete a transfer, whereas the NECF does not outline this timeframe and only requires a retailer to provide notification and advise of when the transfer will occur⁴⁰. This may result in increased timeframes to complete transfers and could cause consumer confusion and dissatisfaction.

Timeframes

Currently timeframes are outlined in relation to:

- the notification of a valid objection to a transfer within 5 business days⁴¹
- the retailer's use of best endeavours to resolve an objection to a transfer within 20 business days⁴²
- providing NMI information from the distributor to the retailer within two business days⁴³.

However, the NECF does not provide timeframes regarding the above notifications.

³⁷ Clause 4.1 of the Electricity Customer Transfer Code

³⁸ Applicable by virtue of Section 131 of The Competition and Consumer Act and Section 9 of the Fair Trading Act

³⁹ Rule 57 (2) of the National Energy Retail Rules

⁴⁰ Rule 58 of the National Energy Retail Rules

⁴¹ Clause 5.4 of the Electricity Customer Transfer Code

⁴² Clause 5.5 of the Electricity Customer Transfer Code

⁴³ Clause 3.2 of the Electricity Customer Transfer Code

Actual Meter Reads

Currently retailers are not able to start the transfer process on the basis of an estimated read⁴⁴. However the NECF is silent on this issue. Without obtaining an actual read prior to the transfer of a customer's account, long-term issues with billing accuracy can arise. This will make the resolution of any customer concerns about this issue very difficult to resolve.

Smart Meters

Currently a definition exists for actual reads and scheduled reads for customers with smart meters. This means that when a transfer is organised it can occur from any actual read⁴⁵, one of the benefits that exists for a customer with a smart meter. However the NECF provisions do not outline this benefit.

EWOV believes the above points constitute a loss of customer protections which should be maintained in the VERR, so that consumers do not experience delays in transferring between retailers and do not experience problems with these transfers.

Bill Smoothing

The NECF does not require a retailer to offer bill smoothing to a customer on a market contract, although this arrangement can be made voluntarily⁴⁶. This means that the provision of bill smoothing and the details of such an agreement, for market contract customers are at the retailer's discretion. This may impact the way retailers calculate the initial payments and/or set the review process. This could result in customer dissatisfaction.

EWOV believes the same level of direction should be provided for bill smoothing plans for market contracts in the VERR.

Refundable Advances

Under the Energy Retail Code⁴⁷ customers can be charged a refundable advance (security deposit) under certain circumstances, one of which is a debt to their former retailer of more than \$120.00. However, EWOV notes that under the NECF⁴⁸ a security deposit can be required if the customer 'owes money' to that retailer. As this rule does not distinguish between the amount that must be owed, retailers can require customers to pay a security deposit for seemingly small arrears.

⁴⁴ Clause 4.3 (d) of the Electricity Customer Transfer Code

⁴⁵ Clause 4.1A of the Electricity Customer Transfer Code

⁴⁶ Rule 23 (4) of the National Energy Retail Rules

⁴⁷ Clause 8.1 (a) of the Energy Retail Code

⁴⁸ Rule 40 (2) (a) of the National Energy Retail Rules

The amount that a retailer can charge as a security deposit is also different under the NECF⁴⁹ in comparison to the current provisions⁵⁰. Under the current provisions, dual fuel customers who have an unsatisfactory credit rating will only be charged a security deposit which is 25% of the estimated billing over a 12 month period. This amount increases for dual fuel customers to 37.5% of the estimated billing over a 12 month period under the NECF.

EWOV believes the above points constitute a loss of customer protections which should be maintained in the VERR.

Metering

Installation Cost

The NECF remains silent on the requirements of who pays for the installation of smart meters, which is provided for under current regulation⁵¹.

Testing

The NECF remains silent on the following requirements involving the testing of a meter, which are currently provided to consumers:

- the retailer, distributor or responsible person must provide a customer with five days written notice to advise when and where the metering testing will be carried out⁵²
- testing must also be complete within 15 business days of a request being received⁵³
- the customer has the right to attend testing⁵⁴
- records of testing must be maintained for five to seven years⁵⁵
- copies of testing must be provided to a customer on request and must be provided to any incoming retailers or distributors⁵⁶.

Access

Current and NECF requirements state that a customer must provide safe and unhindered access to the meter⁵⁷. However, the NECF is silent on retailer or their representative's current obligation to carry identification and provide it to the customer on request.

⁴⁹ Rule 42 (1) of the National Energy Retail Rules

⁵⁰ Clause 8.1 (c) (B) (i) of the Energy Retail Code

⁵¹ Clause 6.1 of the Electricity Customer Metering Code

⁵² Clause 5.4 (a) of the Electricity Customer Metering Code

⁵³ Clause 5.1 of the Electricity Customer Metering Code

⁵⁴ Clause 5.4 (b) of the Electricity Customer Metering Code

⁵⁵ Clause 5.4 (c) of the Electricity Customer Metering Code

⁵⁶ Clause 5.4 (d-e) of the Electricity Customer Metering Code

⁵⁷ Clause 25 of the Energy Retail Code and R18(3) (c) of the National Energy Retail Rules

Embedded Networks

Although embedded networks are not currently within EWOV's jurisdiction, EWOV believes that customers of embedded networks should not receive lesser protection than other consumers. Currently the company which provides or operates an embedded network must comply with Metrology Procedures and other requirements regarding metering in order to connect customers⁵⁸. Distributors and retailers must also not engage with an embedded network provider unless they comply with these requirements. However, the NECF does not outline this responsibility.

Check Metering

Currently a customer can purchase, at their own cost, a check meter. However, the NECF is silent on this issue. EWOV receives billing complaints from customers concerned with the accuracy of their meter and therefore their bills. Consumers can currently request a check meter to be installed to investigate whether the meter is correctly recording their consumption. By not outlining this right in the NECF, customers may experience push-back from their retailer or distributor if they request a check meter be installed.

EWOV believes the above points constitute a loss of customer protections. These are shared responsibilities between the customer and retailer which should be clearly outlined in the VERR so that each party is aware of their rights and responsibilities.

Ring-Fencing

There is no integration between retail and distribution businesses currently in Victoria. However, without the inclusion of a requirement under the NECF that prevents this integration, this may change. Therefore, EWOV supports the development of a ring-fencing guideline by the AER that maintains this obligation.

Voltage Variation

Currently no minimum dollar claim amount is set in order for a customer to be reimbursed, for damaged caused by a voltage variation event⁵⁹. Under the NECF this amount is set.

EWOV believes this is a loss of customer protections which should be maintained in the VERR.

Tariff Publication

Publication of tariffs and the terms and conditions of sale of electricity must currently be published:

- on the retailer websites

⁵⁸ Clause 1.4 of the Electricity Customer Metering Code

⁵⁹ Electricity Industry Guideline 11 - Voltage Variation Compensation

- in the Government Gazette
- in a newspaper (the same day or as soon as practicable)⁶⁰.

The NECF does require publication of tariffs on a website⁶¹, however EWOV believes that this important information should still be produced in a gazette so that customers and EWOV can review the available tariffs. This is especially important for EWOV because when a customer lodges a complaint with EWOV about their tariffs and terms and conditions, EWOV needs to be able to review tariff and contract options to ensure that they have correctly been applied. EWOV also notes that this information can be difficult to find on a website, given in some cases only calculators are available.

EWOV therefore believes that the same level of notification should be provided under the VERR.

Contracts - Deemed/Former Franchise

EWOV previously provided comment to DPI regarding contract issues, specifically in relation to deemed contracts of former franchise customers. As such, EWOV has not re-stated its position in this submission.

EWOV appreciates that further inclusions of customer protections into the VERR that are not incorporated into the national framework, may detract from the aim for national consistency. However, EWOV believes that the above regulations need to be maintained so that Victorian consumers continue to receive the same protections under the national framework as they currently receive.

We trust the above comments are helpful. Should you require further information or have any queries, please contact Belinda Crivelli, Senior Research and Communications Officer, on (03) 9672 4460 or at Belinda.Crivelli@ewov.com.au.

Yours sincerely



Fiona McLeod
Energy and Water Ombudsman (Victoria)

⁶⁰ Clause 9.4 of the Electricity Retail Licence, Clause 8.4 of the Gas Retail Licence, Section 36A of the Electricity Industry Act 2004 and Section 43A of the Gas Industry Act 2001

⁶¹ Section 23 (1) and 36(2) of the National Energy Retail Law