



ACN 081 34227
ABN 36 081 348 227

Registered Office
55 Johnston Street
Fitzroy VIC Australia
Mail P O Box 234
Fitzroy VIC 3065
Phone (03) 9411 1444
Fax (03) 9416 051

Mr Greg Wilson
Small Scale Licensing Framework
Essential Services Commission
35 Spring Street
Melbourne VIC 3000

By e-mail: smallscalelicensing@esc.vic.gov.au

Friday, 29th September 2006

Dear Mr Wilson,

**RE: FURTHER COMMENTS ON THE SMALL SCALE LICENSING
FRAMEWORK ISSUES PAPER**

Thank you for the opportunity to make further comments on the Small Scale Licensing Framework Issues Paper in light of the matters raised at the Essential Services' Commission's (ESC) Forum of 15th September 2006.

This response represents the views of a number of consumer and community advocates including:

- Consumer Utilities Advocacy Centre (CUAC)
- Consumer Law Centre Victoria (CLCV)
- Kildonan Family Services
- Alternative Technology Association
- Tenants Union of Victoria (TUV)

This response was enabled by a grant provided by CUAC for the small scale licensing review.

In summary our concerns and comments are as follows:

1. Registration

We agree that an extension of the current licensing model to embedded networks is impractical, given the diversity of these arrangements. However, because of that diversity we are reluctant to endorse fully the ESC's proposed registration model at this point in time, as we believe there is a dearth of information about the precise number of embedded networks currently operating, and the number and types of consumers affected by these networks.

A detailed list and description of current embedded networks should be collected, maintained and made accessible to the general public.

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Given the breadth of housing types and tenures that are affected by embedded networks, we question whether the ESC model is appropriate for the variety of potential networks. We generally endorse the proposed obligation to provide information about pricing arrangements, concession entitlements, and dispute resolution avenues. Those requirements should however be viewed as the minimum possible standard. When talking about domestic consumers in large developments (for example, in new housing estates or large high-density developments such as in Docklands) network managers should be required to comply with consumer protections in the Energy Retail Code. The ESC should therefore consider some form of threshold that would specify the level of obligation on network owners.

The registration model must be appropriately tailored to the needs of the types of consumers within an embedded network and, where appropriate in larger networks, consumers should be afforded the same protections available to all other residential customers.

It is also unclear from the ESC's proposed model how the anomalies for bulk hot water will be covered. As was clear from the case studies outlined in the TUV's previous submission, there are cases where domestic consumers have been overcharged.

We are also concerned that the consequences of non-compliance with registration requirements have not been properly explored. For example, would supplying without registration be an offence. Also, what would be the status of consumers in a non- or de-registered network? Does the ROLR take effect in these circumstances? If so, what if the network is not compliant in distribution terms?

Further work is therefore required to articulate the compliance and enforcement regimes effecting registration and consequential changes that might be required for network inheritance.

2. Retail choice

We agree that in some circumstances -- it is appropriate to place some limits on consumers' free retail choice. For example, to facilitate community development of embedded generation initiatives or to allow a consumer to sign a long-term contract). However, it is essential that consumers be able to exit the network should participation in the network prove materially disadvantageous.

Opting out of the network will necessitate the purchase of a separate meter. However, this may prevent low-income consumers and tenants from exiting a network. Requiring distribution businesses or retailers to amortise the cost of the meter could assist consumers who own their own properties, but would be unlikely to be of any benefit to tenants.

All consumers, regardless of their financial circumstances and/or housing tenure, deserve the same level of protection, and further work must be undertaken to ensure that low-income consumers and tenants enjoy the freedom to opt out of the network should continued participation be materially disadvantageous.

Furthermore, it is anomalous that networks are required to inform business consumers of their right of choice, but there is no such mandate in regard to residential consumers.

This anomaly should be rectified as soon as possible.

3. Incidental Supply

The ESC is seeking input on how to regulate networks that serve a mixture of transient and permanent consumers. We agree that there is no value in remitting bills for consumption for users of hotel and similar accommodation, university colleges and dormitories, and patients in hospitals.

However we strongly oppose any registration model that would exclude permanent residents, and contend that the registration scheme should apply where an embedded network is providing energy or water to a residential consumer's principal place of residence. The ESC has proposed that the definition of permanent resident rest on a criterion of 6 months residency. As an alternative we propose that 'principal place of residence' is a more effective criterion.

Furthermore, we also agree with the ESC's view (as stated in the public forum) that the definition should not revolve around the provision of separate bills, as this may act as a perverse incentive for network owners where there are permanent residents (such as caravan parks, rooming houses and apartment complexes) to cease remitting separate bills. Separate bills provide consumers with an accessible means of monitoring their own consumption, assisting them to make more informed choices about the amount of energy they consume. Consequently, separate bills have potentially beneficial impacts for both individual consumers and the environment.

The registration scheme should apply where an embedded network supplies utilities to a residential consumer's principal place of residence. The onus of proof that customers are transient and not permanent should rest with the network.

4. Price

Currently, the Order-in-Council (OIC) states that consumers in exempt networks cannot be charged more than the standing offer, but that protection is neither uniform nor effective. For consumers of bulk hot water, for example, there is no effective protection around price of either gas or water.

The OIC also does not effectively define the components of 'price'. Any new definition should include all ancillary charges (e.g. meter reading, late payment fees etc), as we are aware of cases where consumers are being charged for such services at a price that does not reflect the cost of services.

Given the diversity of embedded networks, we would also strongly recommend that the ESC implement an effective monitoring and compliance regime to oversee pricing arrangements.

Price caps should be instituted for embedded networks that ensure access and affordability for all Victorian consumers. The price caps should be rigorously monitored by the ESC.

The standing offer also sunsets at the end of 2007, raising the issue of how to benchmark a standard price after that date. Given the monopoly enjoyed by providers in embedded networks, independent price regulation and monitoring are essential to protect consumers from profiteering and other poor practices. We suggest that a benchmark maximum based on an average price would be the most appropriate method.

The ESC should develop a longer-term strategy to develop a system of price regulation that ensures that energy remains affordable for consumers within embedded networks.

5. Dispute resolution

We agree that capacity to access an independent dispute resolution process is essential, but contend that there are a number of shortcomings with the Victorian Civil and Administrative Tribunal (VCAT) process. Fees apply (though these can be waived if the applicant demonstrates financial hardship) and the process is not especially expeditious. Furthermore, in the absence of enabling legislation, we are concerned that VCAT may not have effective jurisdiction to hear and determine these matters.

The Issues Paper accepts that VCAT is empowered to adjudicate dispute between consumers and small-scale operators and/or on-sellers. Disputes in which the TUV has represented applicants were heard in VCAT's Residential Tenancies List or Civil Claims List, as the Tribunal has express jurisdiction over matters pertaining to the *Residential Tenancies Act 1997* or the *Fair Trading Act 1999*. However, VCAT's jurisdiction to adjudicate disputes between small-scale operators and/or on-sellers and consumers in embedded networks has not been made explicit in legislation or the OIC, and we contend that express provision should be made empowering VCAT to hear these matters to effect an accessible and straightforward dispute resolution.

It is also important to note the reticence of low-income households in marginal tenures (such as caravan and residential parks) to access dispute resolution procedures, because they perceive that making complaints will result in their eviction. Customers whose housing choices are constrained by poverty are much more likely to be living in substandard conditions, and their fear of potential homelessness makes them more likely to tolerate exploitative conduct on the part of service providers. Consequently, they are less likely to be aware of and to exercise their legal rights. The availability of the VCAT process alone in these circumstances does little to protect vulnerable households from unfair and exploitative conduct on the part of small-scale distributors and/or on-sellers.

All consumers should enjoy the same level of government and legal protection, regardless of whether they reside in an embedded network. The Electricity and Water Ombudsman's (EWOV) dispute resolution processes have the advantages of being free and non-adversarial.

We believe all consumers should have access to EWOV, to ensure customer parity and fairness.

We note permitting customers in small-scale arrangements access to EWOV would likely involve amending EWOV's Constitution and Charter to include a specific membership category for small-scale distributors and on-sellers. We would also wish to ensure that the addition of embedded networks does not threaten the viability of EWOV's existing scheme, which offers real protection for Victorian consumers.

We recommend that further work be undertaken to determine the optimal means of effecting access to EWOV for customers in small-scale arrangements.

6. Retailer of Last Resort (ROLR)

We are concerned about how consumers would be protected in the following scenarios:

- Failure of an embedded network owner;
- Failure of a network manager;
- Failure of the retailer.

How consumers would be protected in the instance of any these failure scenarios is not clear.

Further work clarifying how services are to be maintained for consumers in the event of any of these failure scenarios must be undertaken.

7. Alignment with other legislative obligations

Finally, we are conscious that there are a range of obligations through other legislative instruments that affect the owners and managers of caravan parks, retirement villages and tenancies. As such, Consumer Affairs Victoria (CAV), which administers the Fair Trading Act, Residential Tenancies Act, and Retirement Villages Act, should be actively engaged in the development of a regulatory model, including to ensure that the networks are appropriately defined.

In that process, the ESC and CAV should maintain vigilance on the range of utilities provided by some of these networks (gas and water, for example), to see whether the registration model should be expanded to capture other essential services.

The registration model and accompanying obligations on network owners and operators must be effectively and appropriately aligned with other legislative and regulatory instruments.

If you require any further information about any of the matters raised in this submission, please do not hesitate to connect Rebecca Harrison, Research & Policy Worker at TUV on (03) 9411 1410.

Yours sincerely,

Rebecca Harrison
Research & Policy Worker
Tenants Union of Victoria