



25 January 2007

By email: [MCEMarketReform@industry.gov.au](mailto:MCEMarketReform@industry.gov.au)

Manager, MCE Secretariat,  
Department of Industry, Tourism and Resources,  
GPO Box 9839  
Canberra ACT 2601

Dear MCE Secretariat

**Retail Policy Working Group – Working Paper 2  
National Framework for Distribution and Retail Regulation**

We welcome the opportunity to comment on the MCE Retail Policy Working Group's (RPWG) Working Paper 2 on the National Framework for Distribution on Retail Regulation (the **Paper**).

Consumer Action Law Centre (**Consumer Action**) broadly supports the proposals put forward in the Paper in relation to the distributor obligation to provide connection services, the distributor interface with customers and retailers, and the distributor interface with embedded generators. However, we would like to make the following comments in relation to some of the options proposed.

**Distributor obligation to provide connection services**

We support the proposal for the National Electricity Law (the **Law**) to have a requirement that distribution businesses connect all customers taking a supply of energy from a retailer to the distribution system. We also welcome the clear proposed definition of distribution services.

We are concerned, however, that the Law or Rules will not require any obligations around a timeframe for the connection to occur. The Victorian Electricity Distribution Code (the **VEDC**) provides that distribution businesses must connect customers on a date agreed with the customer, or if there is no agreement, within 10 business days after the request.<sup>1</sup> The Paper proposes that timeframes for connection to be covered as part of the service standards imposed on the distributors. In accordance with the Australian Energy Market Agreement (**AEMA**), service standards remain the responsibility of the jurisdictions rather than being transferred to the national framework. We understand this to be in recognition of the fact that different jurisdictions and distribution systems may in fact require different service standards, depending upon the nature of the distribution system and the preferences of consumers particular to the area.

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<sup>1</sup> VEDC. clause 2.2.

We see no need for jurisdictional specific or distribution system specific requirements around a timeframe to connect. As such, we see no reason for the regulatory framework not to mandate a timeframe for connection as is provided for by the VEDC. A timeframe provides certainty for consumers, and contributes to an efficient delivery of the service.

The RPWG has specifically asked for stakeholder comments in relation to parties which may initiate a connection – the retailer, or the customer directly. In practice, the retailer will request connection after a consumer has signed a retail contract. In our view, this should be an obligation on the retailer. We see no reason for the regulatory system to allow a small customer to initiate a connection to (or disconnection from) the distribution system, even where the customer does present with a valid retail contract. Indeed, we are concerned that this option will be confusing for consumers, and may impinge upon other consumer rights with respect to their retailer, such as cooling-off rights. We recognize that it may be appropriate for large customers to directly connect with the distributor, especially where they purchase energy directly from the wholesale market.

### **Distributor interface with customer and retailer**

From a consumer's perspective, the main purpose of the contractual model between the distributor, retailer and consumer is the seamless provision of the service (ie, so that consumers deal with one entity only) and adequate protections in respect of the quality of the service.

We are pleased with the modified linear model that is proposed, which enables consumers to pay for distribution services directly through the retailer, but for consumers and distributors to have direct contractual rights in relation to operational matters. The Paper appears to define operational matters as matters relating to the connection to and use of the distribution system. In our view, matters relating to quality of supply are central to this. Consumers should have contractual rights against the distributor should the distributor be at fault and cause electrical surges damaging consumers' appliances.

We also strongly recommend that the national regulatory framework include rules similar to those contained in the Victorian Electricity Industry Guideline No 11 – Voltage Variation Compensation (the **Voltage Variation Guideline**). The Voltage Variation Guideline applies to consumers who use less than 160 megawatts per year who suffer property damage due to unauthorised voltage variation. It provides a procedure for aggrieved consumers to claim compensation for such damage on a no-fault basis. We note that the Voltage Variation Guideline was regulated on the basis that it achieves an efficient allocation of risk, with the payment of compensation also giving effect to good customer service principles.<sup>2</sup>

The positive effect of the Voltage Variation Guideline has been noted by the Energy and Water Ombudsman (Victoria) (**EWOV**):

Since the Voltage Variation Compensation Guideline was introduced in Victoria in 2001, the number of customer complaints received by EWOV regarding compensation for damage caused by voltage variation has reduced markedly. For electricity distributors, this has reduced the compliance costs associated with external dispute resolution. In summary, it is more efficient and a sound principle to pay residential and small business customers for

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<sup>2</sup> VEDC, clause 1.1.3.

damage caused by voltage variation, with the costs of this obligation built into distributors' pricing submissions.<sup>3</sup>

In our view, this quote demonstrates that the Voltage Variation Guideline contributes to the NEM objective, which considers economic efficiency for the long term interests on consumers.

#### *Terms of distribution-customer contract*

Attachment 2 of the Paper provides an overview of possible content of the terms of the standard deemed distribution contract. While we support the items listed in the Attachment, it is difficult for us to comment without more details about the contents of the terms and conditions.

For example, the Attachment states that there should be notice periods for planned interruptions and recorded information lines to be available for unplanned interruptions. We would support the notification requirements set out in the VEDC, which include:

- a 24 hour telephone information service to be available within 30 minutes of being advised of an unplanned interruption;<sup>4</sup>
- at least 4 days written notice of planned interruptions;<sup>5</sup>
- additional Rules relating to customers with special needs (ie, a customer who requires a life support machine).<sup>6</sup>

Another example is in relation to dispute resolution. The VEDC requires complaints to be handled in accordance with the Australian Standard on complaints handling or the Benchmarks for Industry Based Customer Dispute Resolution Schemes.<sup>7</sup> We recommend that this requirement be included in the deemed distribution contract between the distributor and the customer.

Given the limited detail provided in the Paper, we ask that further meaningful consultation be undertaken on the actual draft legislation covering terms of the standard deemed distribution contract.

#### *Direct regulatory obligations*

The Paper proposes that the rules relating to disconnection by a distributor (including rules relating to when the distributor cannot connect and an obligation to reconnect if the reason for disconnection has been removed) be direct regulatory obligations in addition to being part of the contract between the distributor and the retailer. We support this, as it will allow the regulator to more actively monitor and enforce distributor obligations in relation to disconnection.

#### *Information provision*

The Paper suggests that the provision of information is an issue relating to the interface between the distributor and the retailer. While this is true, the provision of information is also important for consumers. It is our view that the distributor-consumer deemed contract should include requirements relating to information provision, including the

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<sup>3</sup> EWOV (November 2004), Response to the MCE's August 2004 *Issues Paper: National Framework for Electricity and Gas Distribution and Retail Regulation*, p.3.

<sup>4</sup> VEDC, clause 5.4.

<sup>5</sup> VEDC, clause 5.5.

<sup>6</sup> VEDC, clause 5.6.

<sup>7</sup> VEDC, clause 10.1.

provision of a customer charter which outlines rights and obligations (including a distributor's guaranteed service levels and service standards) and consumer rights to access to consumption and network data.

### *Consumer protection in relation to metering*

We note that pursuant to the VEDC, a distributor and a customer must comply with the *Electricity Customer Metering Code (Metering Code)*.<sup>8</sup> The Metering Code regulates metering to the extent not regulated by the National Electricity Rules and the Metrology Procedure. The Metering Code provides some important protections for consumers, including a consumer right to request metering accuracy tests and metering data. Such rights do not appear to have been considered by the Paper, but they should be included in the contractual relationship between the consumer and distributor.

### **Distributor interface with embedded generators**

The Paper notes that additional work in relation to the distributor-embedded generator interface has been undertaken by a parallel MCE work stream, and has included consultation on a draft Code of Practice for Embedded Generation. The Paper recommends that the outcome of this work be incorporated into the regulatory framework proposed by the RPWG.

We support this proposal, and recommend that once adopted, jurisdictions should remove or modify conflicting legislation. We also support the proposal that the Code be reformulated as Rules and be incorporated as part of the 2007 legislative package, rather than proceeding with an AEMC rule-change process. We also support the recommendations made by the Climate Action Network Australia in their submission to the consultation on the draft Code.<sup>9</sup>

### **Embedded networks**

We are concerned that the Paper only scantily considered the issue of embedded networks and small-scale distribution and retailing. In Victoria, there are many such networks which fall outside the scope of regulation, including retirement villages, apartment buildings and caravan parks. The Victorian Essential Services Commission is currently undertaking an inquiry into the regulation of such networks.<sup>10</sup> We recommend that the RPWG consider the recommendations of that inquiry, and ensure that there is clarity about the regulatory requirements relating to embedded networks. As a minimum, it is our view that consumers should not be in any way disadvantaged or have reduced protections because they purchase or receive energy through an embedded network.

### **Overcharging of network tariffs**

The proposed regulatory framework ensures that all financial responsibilities in relation to network services fall within the scope of the relationship between the distributor and retailer. We support this proposal. However, we are concerned about the process when a distributor overcharges a retailer in relation to network costs. If such a charge is made, this will be passed onto customers. If a retailer becomes aware of overcharging and is successful in obtaining a refund from the distributor, how is this refund passed onto

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<sup>8</sup> VEDC, clause 14.

<sup>9</sup> Climate Action Network Association, *Submission on the Draft Code of Practice for Embedded Generation*, 30 March 2006.

<sup>10</sup> Essential Services Commission, *Small Scale Licensing Framework – Draft Recommendations*, December 2006.

consumers? In our view, the regulatory framework should ensure a retailer does not make a windfall gain, but that any benefits, as with the costs, get passed onto consumers. However, the regulatory framework should also ensure that there is incentive/requirement for retailers to seek refunds in the event of distributor overcharging.

Should you have any questions about this submission, please contact me on 03 9670 5088.

Yours sincerely

**CONSUMER ACTION LAW CENTRE**

A handwritten signature in black ink that reads "Gerard Brody". The signature is written in a cursive, flowing style.

Gerard Brody  
Senior Policy Officer