

27 November 2009

SCOCA Australian Consumer Law Consultation
Competition and Consumer Policy Division
Treasury
Langton Crescent
PARKES ACT 2600
Email: australianconsumerlaw@treasury.gov.au

Dear Sir/Madam

RE: Australian Consumer Law: Consultation on draft Regulation Impact Statements

The Energy Retailers Association of Australia (ERAA) welcomes the opportunity to comment on the Australian Consumer Law: Consultation on draft Regulation Impact Statements.

The ERAA is an independent association representing twenty retailers of electricity and gas throughout the National Electricity Market (NEM) and the jurisdictional gas markets. ERAA members collectively provide electricity to 11 million customers in the NEM and are the first point of contact for end-use customers for both gas and electricity.

Consultation Timeframe

Firstly, the ERAA believes the time provided of ten working days to read, consider and respond to such a paper is grossly inadequate. The Council of Australian Governments' publication 'Best Practice Regulation – A Guide for Ministerial Councils and National Standard Bodies', states that, "throughout the consultation process stakeholders should be given sufficient time to provide considered responses". The current timeframe is not sufficient to respond to the issues in the Statements and fundamentally undermines the ability of all stakeholders to submit feedback on the proposed regulations under consideration by government.

National Energy Customer Framework (NECF)

The ERAA was disappointed that the paper failed to acknowledge the significant reforms underway with regard to consumer protection through the National Energy Customer Framework. The culmination of this legislation will result in the harmonisation of the existing State retail electricity and gas codes which will be overseen by the Australian Energy Regulator and administered by the Australian Energy Markets Commission. The NECF has been under development since

2006 and has been subject of extensive consultation involving a number of working papers and public workshops. The industry is waiting for the next version of the Draft of the Laws and Rules to be released on 27 November 2009.

The NECF will help to reduce the overlap between specific and generic regulation, and address perceived 'gaps' in generic consumer law. As previously stated it is likely that the ACL and NECF will be implemented at different times which could result in a number of problems.

The ERAA supports the work which is currently be undertaken to establish the National Energy Customer Framework and would again direct the Committee to our previous submission which identified the full scope of amendments under the NECF.

Door to Door Marketing and Telemarketing

The discussion paper makes reference to complaints in the energy industry about door to door marketing. Of all the options proposed in the paper on door to door marketing and telemarketing the ERAA supports Option C and the creation of a harmonised framework for direct and telephone sales reflecting best practice in state and territory legislation, to be included in the Australian Consumer Legislation.

In considering the issue of door to door marketing disputes in the energy industry it is important to recognise that such disputes represent a small proportion of both the total number of complaints and the total number of customers who have changed retailer. Unfortunately the references in the Statements failed to mention this critical point.¹ As such the following table highlights that marketing complaints are a very small proportion of overall complaints and the total number of customer transfers highlighting that there are no systemic issues around the marketing of energy in these markets.

Statistics on Marketing Complaints and Customer Transfers ²

State	Ombudsman Marketing Complaints	Marketing Complaints as a percentage of total complaints	Total Number of Small customer Transfers in 2008	Marketing complaints as a percentage of total number of small customer transfers
Victoria (2009)	2610	4.25%	589,186	0.44%
New South Wales (2009)	768	7.4%	323,446	0.23%
South Australia (2009)	309	3.6%	124,096	0.24%
Queensland (2009)	198	1.47%	394,298	0.05%

¹ SCOCA (2009)'The Australian Consumer Law – Consultation on draft Regulation Impact Statements' (Canberra),p.17

² Statistics sourced from Energy and Water Ombudsman (Victoria) 2009Annual Report, Energy and Water Ombudsman of NSW 2009 Annual Report, Energy Industry Ombudsman South Australia 2009 Annual Report, Energy Ombudsman Queensland and Australian Energy Market Operator Retail Transfer Statistical Data - http://www.aemo.com.au/data/retail_transfers.html

Door to door marketing and telemarketing represent the most efficient and effective approaches to selling energy in fully contestable markets. These sale techniques have helped to establish some of the most competitive retail energy markets in the world. In 2008, the Victorian retail energy market was ranked the most competitive market in the world while South Australia was ranked second; New South Wales was ranked fifth and Queensland seventh.³ Equally this degree of competition and rivalry is leading to significant customer discounts. As such the banning of door to door marketing and telemarketing would fundamentally undermine the competitive environment which has been created in these markets.

The Australian Energy Market Commission (AEMC) in its *Review of the Effectiveness of Competition in Electricity and Gas Markets in Victoria-First Draft Report* makes a number of salient points about the marketing of electricity and gas.

Firstly, the AEMC's report recognises that electricity and gas, retailers are reliant on door to door marketing and telemarketing in order to encourage customers to transfer retailers. As such retailers consider door to door marketing and telesales to be the most effective form of marketing given the homogenous nature of gas and electricity and the low level of customer interest. This finding about customers' low level of interest in energy was also endorsed in the AEMC's more recent report, *Review of Effectiveness of Competition in Electricity and Gas in South Australia- First Final Report*.

The report identifies that despite a high level of awareness across Victorian households about the ability to change retailer, only ten per cent of electricity customers and six per cent of gas customers approached a retailer directly.⁴ This demonstrates that if customers were not directly approached through direct marketing channels, most customers would not change retailer.

As a result of its investigation in Victoria the AEMC found that although there were a small number of marketing complaints there was no systemic problem that would warrant a prohibition of direct marketing.⁵ Moreover, it was shown that over 70% of the customers interviewed as part of the report gave a rating of seven out of ten for the experience of switching to a market contract.⁶ This again demonstrates that there is no justification for the banning of door to door or telesales in the energy industry as the majority of people who switch retailers have had a positive experience when engaged by marketers of electricity and gas.

In each of the states where there is full retail contestability there are a number of important regulations which protect customers which includes:

- mandated pre-contractual disclosures in relation to:
 - price, charges, penalties, billing and payment arrangements;
 - contract duration;
 - cooling off period;

³ VaasaETT, 2008 World Retail Energy Market Rankings – 4th Edition

⁴ Australian Energy Market Commission, (2007) 'Review of the Effectiveness of Competition in Electricity and Gas Markets in Victoria-First Draft Report', p.66

⁵ Australian Energy Market Commission, (2007), p.69

⁶ Australian Energy Market Commission, (2007), p.66

- electronic transactions;
- standard retail contracts
- mandated timing and form (ie disclosure statements) for the required pre-contract disclosures;
- mandated conduct standards for marketers, record keeping, compliance audit etc;
- obligations to provide customers with documentation setting out their right to rescind the market retail contract;
- a mandated 10 business day cooling-off period.

As well as this customers are able to refer any complaints about poor marketing experiences to the energy ombudsman in their state. The ERAA believes that such measures provide sufficient protection for customers and any additional regulations are likely to reduce the level of competition in those contestable markets and while at the same time increasing the cost of energy.

Should you wish to discuss this matter further please feel free to contact me on (02) 9437-6180.

Yours sincerely



Cameron O'Reilly
Executive Director
Energy Retailers Association of Australia