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Mr Tom Leuner
General Manager Markets Branch
Australia Energy Regulator
GPO Box 520
Melbourne VIC 3001

By email: AERInquiry@aer.gov.au

Dear Mr Leuner,

AER's Approach to compliance with the National Energy Retail Law, Rules and Regulations Draft Decision; AER Compliance Procedures and Guidelines; Statement of approach (December 2010)

The Consumer Utilities Advocacy Centre Ltd (CUAC) is an independent consumer advocacy organisation. It was established to ensure the representation of Victorian consumers in policy and regulatory debates on electricity, gas and water. In informing these debates, CUAC monitors grass roots consumer utilities issues with particular regard to low income, disadvantaged and rural consumers.

We welcome the opportunity to comment on the AER's Approach to compliance with the National Energy Retail Law ("NERL"), Rules and Regulations Draft Decision ("Draft Decision); the Compliance Procedures and Guidelines ("Guidelines"); and the Statement of approach: compliance with the NERL, Rules and Regulations ("Statement of Approach") (all issued on December 2010). CUAC submitted to the AER's Issues Paper Approach to compliance with the NERL, Rules and Regulations (31 May 2010) ("Issues Paper") and participated in the AER forum on compliance.

We are generally supportive of the compliance framework outlined in the Draft Decision, Guidelines and Statement of approach. However, we are particularly concerned that the way in which certain regulatory breaches have been classified, and the omission of classifying certain regulatory obligations, will result in a lowering of customer protections in Victoria. We have not commented on all the regulatory obligations, but specifically on provisions which have a greater impact on low income and vulnerable customers.

Encouraging compliance with the Customer Framework – Statement of approach

The Statement of approach acknowledges the importance of empowering consumers about the customer protections available under the National Energy Customer Framework (NECF). We strongly agree with this and are pleased that the AER will work with customers and consumer groups to educate and inform them about the customer protections available.[1] CUAC is keen to work with the AER in educating energy customers about their rights under the national framework.

Enforcement – Statement of approach, Draft Decision

As raised in our submission to the Issues Paper, a significant limitation of the NECF enforcement regime is the fact that various orders including civil penalties are available only where the person is in breach of a provision of this Law.[2] That is, the person must be currently breaching the provision at the time the action is brought by the AER. We believe that such orders must be available for all relevant breaches, whether one-off or ongoing, and whether subsequently rectified or not. The legislative regime that we have at present is a barrier to effective enforcement and impacts the ability of consumers to seek redress.

We have in our response to the AER Retail Authorisation Guideline (November 2010), Consultation Paper and Response to Submissions (November 2010) recommended that "material failure" in the context of revocation of retailer authorisation,[3] be defined.

The AER should consult stakeholders if they intend to develop formal guidance on the acceptance of enforceable undertakings for inclusion in the Guidelines.[4] CUAC is keen to participate in further consultations on this.

Cooperation with Australian Competition and Consumer Commission ("ACCC") – Statement of approach

We support the cooperative compliance initiatives and complementary enforcement actions which both the ACCC and AER will employ in addressing consumer detriment.[5]

[1] AER, Statement of approach: compliance with the National Energy Retail Law, Rules and Regulations (December 2010), at 3.

[2] National Energy Retail Law (South Australia) Bill 2010, section 291; AER Statement of approach: compliance with the National Energy Retail Law, Rules and Regulations (December 2010), at 16.

[3] AER Statement of approach: compliance with the National Energy Retail Law, Rules and Regulations (December 2010), at 17.

[4] AER, Approach to compliance with the National Energy Retail Law, Rules and Regulations, Draft Decision (December 2010), at 32.

Where there is an option of pursuing enforcement action under the NECF and the Australian Consumer Law, we recommend that the approach which provides the best outcome to consumers be adopted.

Market intelligence and information – Draft Decision

We strongly support the collection and monitoring of complaints data from energy ombudsman schemes, consumer and community organisations, as well as complaints made directly to the AER. While complaints are not an indication that a breach of a regulation has occurred, a high number of complaints against a retailer in relation to a particular issue could point to an issue which requires further investigation by the AER.

Compliance audits – Draft Decision

If a compliance audit is to be used as an "effective monitoring mechanism" and an "educative process through which customers and regulated entities can be informed about industry best practice in compliance with the Customer Framework", it needs to be conducted on a regular basis. According to the Draft Decision, the AER expects that "no individual retailer or distributor would be audited more than once in a 12 month period."[6] The wording suggests that a retailer or distributor may not be audited in any 12 month period rather than providing for the auditing of a retailer or distributor at least once in 12 months. We recommend an annual compliance audit with the scope, coverage, and timing determined on a case-by-case basis[7] dependent on the regulated entity's previous level of compliance and in response to issues identified through other compliance monitoring activities. In addition to regulated entities,[8] other stakeholders including consumer groups and energy ombudsman schemes should also be consulted on the appropriate scope of a compliance audit. The AER also needs to follow-up on regulatory breaches that have been identified to ensure that regulated entities rectify them within the required timeframe.

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[5] AER Statement of approach: compliance with the National Energy Retail Law, Rules and Regulations (December 2010), at 19.

[6] AER, Approach to compliance with the National Energy Retail Law, Rules and Regulations, Draft Decision (December 2010), at 21.

[7] AER Statement of approach: compliance with the National Energy Retail Law, Rules and Regulations (December 2010), at 11.

[8] AER, Approach to compliance with the National Energy Retail Law, Rules and Regulations, Draft Decision (December 2010), at 22.

In certain cases, we agree that more frequent audits would be required. We highlight the following as an example. In Victoria, a 2009 audit on AGL found AGL to be in significant non-compliance of 37 performance indicators and 12 other regulatory obligations. The Essential Services Commission of Victoria (ESCV) required AGL to provide administrative undertakings to correct the breaches and to submit a follow up audit of their non-compliant obligations. AGL was re-audited in 2010 and was found to have achieved an adequate or a good level of compliance in relation to 32 of the 37 performance indicators, and to the 12 other regulatory obligations. The re-audit, however, found significant non-compliance in AGL's reporting of refundable advances and the number of energy field audits provided to hardship program participants. It was open for the ESCV to seek enforceable undertakings from AGL. ESCV, however, required further administrative undertakings from AGL including another regulatory audit before April 2011 on matters which they were found in non-compliance of.[9]

We are of the view that a further administrative undertaking in relation to the non-compliant matters is inappropriate given the fact that AGL already had an opportunity to rectify all matters they were found to be non-compliant with after the 2009 audit. Such an approach does not deter further breaches from regulated entities nor encourage a culture of compliance. We note that the AER's enforcement response will be informed by the regulated entity's own actions in relation to a breach including "any previous unsuccessful attempts to resolve past breaches through administrative enforcement options."[10] The AER is responsible for "monitoring, investigating and enforcing compliance to ensure that consumers receive the full benefit of the protections provided by the Customer Framework."[11] To undertake this role effectively, the AER needs to be prepared in appropriate instances, to take statutory enforcement action against energy businesses to deter poor behaviour and minimise or prevent negative consumer impacts.

For the reasons mentioned in the Draft Decision, we strongly support the AER's approach in combining audits of retailer compliance and performance of retailer hardship programs.[12]

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[9] ESCV, Summary audit report, Regulatory report of AGL Energy Limited (December 2010), 7-10; Letter from ESCV to AGL dated 30 November 2010; Letter from AGL to ESCV dated 2 December 2010. See website: http://www.esc.vic.gov.au/public/Energy/Regulation+and+Compliance/Audit+Reports/Summary+audit+report+-+AGL+Energy+Limited/Summary+audit+report+-+AGL+Energy+Limited.htm

[10] AER Statement of approach: compliance with the National Energy Retail Law, Rules and Regulations (December 2010), at 14.

[11] AER Statement of approach: compliance with the National Energy Retail Law, Rules and Regulations (December 2010), at 3.

[12] AER, Approach to compliance with the National Energy Retail Law, Rules and Regulations, Draft Decision (December 2010), at 23.

We understand that there are confidentiality concerns regarding audit reports. However, at the very least, the findings, recommendations and outcomes of these reports should be summarised and made available to the public in the AER's annual, mid-year or quarterly reports, and bulletins.[13]

AER compliance reports – Draft Decision

We support the publication of annual reports, quarterly updates and a mid-year report supplemented as appropriate with compliance bulletins and media releases so that the market is given timely information about compliance.[14] Frequent and regular updates and reports assist consumer groups in their advocacy work by allowing them to respond more promptly to issues of concern.

Retailer and distributor reporting – Draft Decision

We support the obligation of regulated entities to submit information and data to the AER outlined in section 3 of the Guidelines. However, we are concerned with the classification of regulatory obligations set out in Appendix B of the Guidelines.

Type 1

In addition to the items which are listed as Type 1 regulatory obligations, we believe that the following items should also be classified or re-classified as Type 1.

1. ***Disconnection and reconnection provisions -***

The whole of Part 6 of the National Energy Retail Rules ("NERR") (De-energisation or disconnection of premises – small customers) should be classified as Type 1. Currently, only Part 6 Divisions 2 (Retailer-initiated de-energisation of premises) and 3 (Distributor de-energisation of premises) are classified as Type 1 regulatory obligations.

According to a recent ESCV report, the disconnection rate increased in 2009-10, with 0.59 per cent of all electricity customers and 0.85 per cent of all gas customers disconnected. In total, 13,486 electricity customers (up by 3,918 from 2008-09) and 15,473 gas customers (up from 5,386) were disconnected in 2009-10. This was an increase of 40 per cent for electricity and 54 per cent for gas.[15] CUAC is concerned that

[13] AER Statement of approach: compliance with the National Energy Retail Law, Rules and Regulations (December 2010), at 11.

[14] AER, Approach to compliance with the National Energy Retail Law, Rules and Regulations, Draft Decision (December 2010), at 36.

[15] ESCV, Energy retailers comparative performance report – Customer service 2009-10, at Viii.

the disconnection rates will increase without adequate and frequent monitoring and reporting of regulatory obligations.

We note that whether "a breach of the obligation hinder[s] or prevent[s] customers' access to essential [services]" is one of the questions the AER is likely to have regard to in considering the potential impact of a breach.[16] Part 6 Division 1 (Preliminary) contains provisions on reminder and disconnection notices. Division 1 should be categorised as Type 1 because a breach of the reminder and disconnection notices provisions potentially will result in a wrongful disconnection, with the adverse consequence of denying an essential service to a customer.

Similarly, Part 6 Division 4 (Re-energisation of premises) should also be classified Type 1 as a breach of the provisions would mean that customers will be off-supply for a prolonged period of time. In Victoria, the whole process which must be followed prior to disconnecting a customer, the circumstances in which disconnection is prohibited, and the reconnection provisions are classified as Type 1 by the ESCV.[17]

2. Explicit informed consent and energy marketing -

Explicit informed consent is required for various transactions under the NECF. It is fundamental to consumer protection, especially in the context of a consumer entering into a contract for an essential service with an energy business. We discuss both explicit informed consent and energy marketing together, as the lack of explicit informed consent often arises in complaints about marketing.

Despite the range of legislative instruments and codes regulating direct marketing, marketing misconduct is still a major concern. In Victoria, research commissioned by the ESCV confirms that a significant proportion of Victorians are unhappy with retailers' door-to-door marketing and telemarketing activities. This has led to an increase in the number of complaints to the Energy and Water Ombudsman Victoria ("EWOV"). The ESCV's *Respecting Customers - Marketing Conduct Regulatory Program 2009-10* was introduced in recognition that marketing behaviour continued to reflect badly on the retail energy market in Victoria. This outlines the ESCV's regulatory program for monitoring marketing conduct behaviour in Victoria. It also sets out how the ESCV will take compliance and enforcement action when necessary. The ESCV recently reported that only 46 per cent of customers who obtained energy quotes by phone received

[16] AER Statement of approach: compliance with the National Energy Retail Law, Rules and Regulations (December 2010), at 5.

[17] ESCV, Compliance reporting manual (energy retail businesses) (March 2009), at 11.

written offer summaries, notwithstanding the regulatory requirement for its provision to customers on request.[18]

CUAC and other consumer organisations have, over a number of years, expressed strong concerns about improper marketing conduct to regulatory bodies and to government. Unconscionable and misleading marketing is difficult to prove because it generally occurs where there are no witnesses present to the interaction between the door-to-door marketer and customer. We note that in considering the potential impact of a breach, two factors which the AER is likely to have regards to are:

> How are people likely to be affected by a breach of the obligation, including questions such as are there special considerations relevant to the obligation that would magnify the impact of a breach? (For example, does the obligation relate to customers on life support, or disadvantaged or vulnerable customers?)
>
> What is the likely impact of a breach on the operation or competitiveness of the retail market?[19]

A breach of marketing provisions which impacts a large number of customers potentially will result in one regulated entity gaining an artificial competitive advantage over other retailers. Low income and disadvantaged customers in particular may be misled by inappropriate marketing behaviour and enter energy contracts without sufficient or reliable information.[20] Newly arrived immigrants and those with English language difficulties are often vulnerable to direct marketing. In Victoria, a report by the Footscray Community Legal Centre highlighted specific concerns about retailers' marketing activities to newly arrived refugees, particularly members of the African community in the western suburbs.[21] Further, a project funded by a CUAC grant found that:

> An overall trend in survey information suggests low income earners including vulnerable clients such as newly arrived migrants, people with language or literacy difficulties, those experiencing mental health issues, and the disabled, were

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[18] ESCV, Energy retailers comparative performance report, Pricing (2009-2010), at 64.

[19] AER Statement of approach: compliance with the National Energy Retail Law, Rules and Regulations (December 2010), at 5-6.

[20] ESCV, Respecting customers: Regulating marketing conduct 2009-10 Victorian retail energy businesses (June 2009), at 5.

[21] The African Consumer Experience of the Contestable Energy Market in the West of Melbourne: A report prepared by the Footscray Community Legal Centre and the Financial Counselling Service Inc (March 2009). See http://www.esc.vic.gov.au/NR/rdonlyres/EF10AA77-A792-4907-B5B3-8A4512CB1AA9/0/TheAfricanConsumerExperienceoftheContestableEnergyMarket20090716.pdf

> experiencing difficulties with electricity, and gas retailers as a result of retail representative conduct (door to door sales). This also included a failure to gain explicit informed consent and not providing a contract copy on a customer's request when signing up. Clients often did not receive pre-contractual information; including rights to cancel a contract and whether a retail marketing representative was due to receive a commission....Clients who presented to financial counsellors were often confused about which retailer was servicing their energy supply, particularly if they had signed multiple times within a period of 1-3 months. Case studies that presented with multiple transfers between energy retail providers and multiple authorisations were also seen impacting on customer payment plans. EWOV complaint data shows 4,839 cases involving marketing issues including misleading conduct and sales pressure... Furthermore, 1,766 complaints were received from retail customers about their energy account transferring between retail providers without their consent, and without their cooling off rights and contract terms being explained to them, were also reported...for the financial year ending June 2009...[22]

In Victoria, marketing issues typically relate to one of the following themes:

> Lack of Explicit Informed Consent – retailers' sales representatives who do not obtain explicit informed consent from all customers, because those with limited understanding of English or who have lower levels of literacy (in English or their own language) do not fully understand the terms of the contract or what they are agreeing to.
>
> Misleading representations regarding retailer affiliation – retailers' sales representatives who claim to be representing the government, the Commission, the local distribution company or retailers other than the energy retailer by whom they are employed or engaged.
>
> Misleading, inaccurate or incomplete information – retailers' sales representatives who do not provide sufficient information in relation to energy tariffs, contractual terms and conditions, written offer summaries, copies of the contractual document or information related to their cooling off rights at the point of sale.
>
> General behaviour of sales representatives – sales representatives fail to leave a premise when requested, stay longer than is permitted by the regulations, make contact outside of regulated hours or exert excessive pressure on consumers.
>
> Making contact illegally – retailers fail to maintain and update their Do Not Contact lists.[23]

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[22] Financial and Consumer Rights Council, Still an unfair deal? Reassessing the impacts of energy reform and deregulation on low income and vulnerable consumers (2009), at 24-25. See http://www.cuac.org.au/database-files/view-file/3874/

From July to December 2009, the Energy and Water Ombudsman (Victoria) ("EWOV") had 1,561 cases (that is; enquiries and complaints) which raised a total of 1,698 marketing issues:

> Misleading marketing remained the most common source of complaint. Some sales representatives continued to imply, or lead customers to believe, they were 'from the government'. Some told customers that the retailer they were representing was 'taking over' in the customer's area — that nothing would change if the customer signed the paperwork, except the colour of their bills and/or the name of their company.[24]

Data reported by the ESCV reveals that marketing and transfer complaints received by EWOV have risen in recent years. In Victoria, marketing and transfer complaints in 2008-09, increased significantly, from 1.38 per 1,000 customers in 2007-08 to 2.66 per 1,000 customers in 2008-09 (109 per cent increase).[25] Marketing complaints for electricity during the period 2009-2010 increased by 2 per cent from 2008-2009, while gas complaints remained steady for the same period.[26]

Table D.9 Transfer and Marketing Complaints received by EWOV (2004-05 to 2008-09)[27]

	Electricity Cases	Gas Cases	Dual Fuel Cases	Total Cases
2004-05	2,127	711	176	3,014
2005-06	2,239	727	117	3,083
2006-07	2,872	928	289	4,089
2007-08	3,880	1,431	212	5,523
2008-09	8,038	3,340	150	11,528

The concerns around marketing misconduct have also been acknowledged by industry. Energy Assured Limited ("EAL") has recently developed a voluntary code of practice with the aim of improving the standard of energy door-to-door marketing in Australia. This code is subject to Australian Competition and Consumer Commission ("ACCC")

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[23] ESCV, Respecting customers: Regulating marketing conduct 2009-10 Victorian retail energy businesses (June 2009), at 5. See http://www.esc.vic.gov.au/NR/rdonlyres/25F99E16-5048-4CF4-A6DB-4A0216B548C7/0/POLRespectingCustomersRegulatingMarketConduct20091020090702.pdf

[24] EWOV, Resolution Issues No 28 (May 2010, reporting on July 2009 to December 2009), at 13.

[25] ESCV, Energy retailers comparative performance report – Customer service 2008-09 (December 2009), at 47; ESCV, Energy retailers: Comparative performance report – Pricing and the competitive market 2008-09, at 44.

[26] ESCV, Energy retailers comparative performance report – Customer service 2009-10, at 47-49;

[27] ESCV, Energy retailers comparative performance report – Customer service 2008-09 (December 2009), at 102. See also ESCV, Energy retailers: Comparative performance report – Pricing and the competitive market 2008-09, at 44 (Figure 6.2).

approval (EAL applications for authorisation A91258 & A91259). CUAC raised a number of concerns about the code of practice, in particular the lack of consultation with consumer organisations in the drafting of the code of practice.[28] We are not persuaded that self regulation through a voluntary code of practice would raise the standard of direct marketing and enhance consumer experience given the level of non-compliance with the current regulatory framework around marketing.

Energy is not a discretionary good; the universal service nature of energy distinguishes it from other types of retail regulation. CUAC believes that there is a need for stronger monitoring and enforcement of existing marketing obligations by the appropriate authority to ensure industry remains compliant and consumers protected. It is essential that regulators remain vigilant in monitoring compliance and enforcement of the legislation and codes governing marketing which fall under their respective purview. This would be the Australian Consumer Law, NECF and the various codes and guidelines which may be developed under the legislation.

In light of the concerns around explicit informed consent and marketing, CUAC recommends that NERL Part 2, Divisions 5 and 8 (Explicit informed consent, Energy Marketing Rules), NERR Part 2, Division 10, Sub-Division 3 (Energy marketing activities) be re-classified as Type 1 regulatory obligations. Further, we also recommend that NERR Part 2, Division 10, Sub-Division 2 (Providing information to small customers) be included as Type 1 regulatory obligations. Sub-Division 2 obliges retailers to provide specific information to small customers in connection with market retail contracts - the requirement for and timing of disclosure to small customers, the form of disclosure to small customers and what the required information that has to be disclosed is. The required information includes all applicable prices, charges, early termination payments and penalties, security deposits, service levels, concessions or rebates, billing and payment arrangements, withdrawal rights, the customer's right to complain to the retailer in respect of any energy marketing activity and if the complaint is unsatisfactorily resolved by the retailer, the consumer's right to complain to the energy ombudsman.

3. Hardship and payment plans –

CUAC believes that no Victorian consumer should be disconnected from their energy services due solely to an inability to pay. All households should be able to access affordable, reliable and sustainable energy services and to participate fully in the competitive retail energy market. Affordable payment plans and hardship assistance help to keep customers on supply. This is especially important in the context of rising energy prices as more and more consumers find themselves with payment difficulties.

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[28] http://www.cuac.org.au/database-files/view-file/5026/ (23 November 2010)
http://www.cuac.org.au/database-files/view-file/5074/ (10 January 2011)

A breach of these regulatory obligations would "hinder or prevent customers' access to essential electricity or gas services."[29] Low income households will face a higher risk of disconnection as they are dependent on affordable payment plans and hardship assistance to help remain on supply.

According to EWOV's latest annual report, capacity to pay (or credit) complaints have risen in this reporting period and we believe this provides a clear indicator of growing customer financial hardship. 40 per cent of credit issues were related to payment difficulties; 33 per cent of credit issues were related to disconnection or restriction of supply for payment arrears; in 42 per cent of the energy disconnection complaints EWOV investigated, energy retailers agreed to make a wrongful disconnection payment (WDP)[30]:

> Credit is now our second highest issues category after Billing. In 2009-10, our cases about credit-related disconnection of electricity supply (actual and imminent) were up 26% from the year before (and up 183% from five years ago) and our cases about credit-related disconnection of gas supply (actual and imminent) were up 49% from the year before (and up 263% from five years ago). People who may have been coping previously have found themselves needing our help, or the help of a welfare agency or financial counsellor, to sort out affordable payment arrangements.[31]

Due to the critical nature of the regulatory obligations on payment plans and hardship assistance, and the adverse impact which disconnection will bring upon customers, CUAC submits that both NERL Part 2, Divisions 6 and 7 (Customer hardship, Payment plans) be re-classified as Type 1 regulatory obligations.

4. ***Customer retail contracts - billing –***

We note that the number of people who are "likely to be affected by the breach" (including the "likely financial impact of a breach on customers") is one of the factors the AER is likely to have regard to when considering the potential impact of a breach. Another factor is whether a breach is likely to create a "significantly increased workload" for energy ombudsman.[32]

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[29] AER Statement of approach: compliance with the National Energy Retail Law, Rules and Regulations (December 2010), at 5-6.

[30] EWOV, 2010 Annual report, at 31, also at 33. See http://www.ewov.com.au/site/DefaultSite/filesystem/documents/PDF/Annual%20Reports/2010/EWOV_AR2010_web.pdf

[31] EWOV, 2010 Annual report, at 6. See http://www.ewov.com.au/site/DefaultSite/filesystem/documents/PDF/Annual%20Reports/2010/EWOV_AR2010_web.pdf

Billing complaints account for the largest percentage of complaints handled by a retailer's internal dispute resolution process and at the energy ombudsman.[33] The types of billing complaints handled by EWOV include billing errors/delays, high bills, backbills, tariffs, meter, estimations, fees/charges, concessions/rebates, billing format, refunds.[34] Billing issues, especially when it is systemic, can impact a large number of customers. The financial impact arising from billing problems can be huge. This could have an adverse impact on consumers, particularly on low income and vulnerable customers who may receive a large "catch-up" bill after several periods of non-billing. It could put customers who were previously managing their payments into financial hardship.

In terms of the number of customers who may be impacted by billing issues, we highlight this as an example. During the period 2008-2009, AGL had 22,404 electricity complaints and 11,840 gas complaints. AGL reduced the number of electricity billing complaints by 9,512 and gas billing complaints by 7,456 in 2009-2010. This was attributed to AGL rectifying their billing system instability.[35]

In view of this, we submit that NERR Part 2, Division 4 (Customer retail contracts – billing) should be re-classified as Type 1 regulatory obligations.

5. Tariff changes –

CUAC believes that regulatory breaches relating to tariffs should in principle be classified as Type 1 because of the financial impact it could have on customers, particularly low income or vulnerable customers. We note that the "financial impact of a breach on customers" is one of the factors the AER is likely to have regard to in considering the potential impact of a breach.[36]

NERR Part 2, Division 5 (Tariff changes) imposes obligations on retailers to transfer the customer to another tariff at the customer's request. Customers are also obliged to

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[32] AER Statement of approach: compliance with the National Energy Retail Law, Rules and Regulations (December 2010), at 5-6.

[33] ESCV, Energy retailers comparative performance report – Customer service 2009-10, at 48-52; Energy and Water Ombudsman Victoria (EWOV), 2010 Annual report, at 30. See http://www.ewov.com.au/site/DefaultSite/filesystem/documents/PDF/Annual%20Reports/2010/EWOV_AR2010_web.pdf

[34] EWOV, 2010 Annual report, at 30. See http://www.ewov.com.au/site/DefaultSite/filesystem/documents/PDF/Annual%20Reports/2010/EWOV_AR2010_web.pdf

[35] ESCV, Energy retailers comparative performance report – Customer service 2009-10, at 47-49.

[36] AER Statement of approach: compliance with the National Energy Retail Law, Rules and Regulations (December 2010), at 5.

inform retailers of any change in use of their premises. We suggest that these regulatory obligations be re-classified as Type 1. If customers remain on a "wrong tariff" which is less favourable for their circumstance, the financial impact may be great.

In addition, we also recommend including NERR Part 2, Division 7, Rule 46 (Tariff and charges) as a Type 1 regulatory obligation. This rule requires retailers to set out all tariffs and charges payable by a customer in a market retail contract, and inform customers of any variation to the tariffs and charges "as soon as practicable, and in any event no later than the customer's next bill." Customers need to be informed in advance of tariff variations so that they are able to budget or look for alternative energy offers which may be more favourable for their circumstances. A breach of the regulatory obligation may result in one regulated entity gaining "an artificial competitive advantage over others." It will also impact customers financially as if they were appropriately notified they might have been able to obtain a better energy offer from another retailer more promptly. We note that these are factors which the AER will look at when addressing the potential impact of a breach.[37]

6. Other regulatory obligations –

We believe that the obligation of a designated retailer to make a standing offer to provide customer retail services to small customers (NERL, Part 2, Division 3, section 22) should be classified as a Type 1 regulatory obligation. A breach of this regulatory obligation affects access to an essential service for customers.

Type 2

NERL Part3, Divisions 2 and 6 (Obligation to provide customer connection services; negotiated connection contracts); NERR Part 2, Division 3 (Customer retail contracts – pre-contractual procedures) can remain as Type 2 regulatory obligations.

Type 3

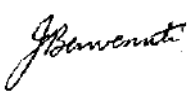
NERR, Part 2, Division 9 (Other retailer obligations) have been classified as Type 3 regulatory obligations. However, there is no corresponding classification of distributor obligations. We recommend that NERR, Part 4, Division 5 (Distributor obligations to customers) be classified as Type 3 regulatory obligations. This covers distributor service standards and GSL schemes, fault reporting and correction, provision of information and referral to interpreter services.

[37] AER Statement of approach: compliance with the National Energy Retail Law, Rules and Regulations (December 2010), at 5-6.

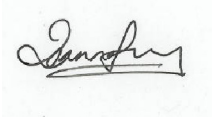
AER codes and guidelines

CUAC notes that the AER is currently in the process of developing a range of codes and guidelines as provided for under the NECF. Some of these include exempt networks guidelines, retail pricing guidelines, hardship policies approval guidelines etc. The AER should include these codes and guidelines in the compliance reporting framework.

Thank you for the opportunity to participate in this consultation. If you have any queries, please contact the undersigned on 03 96397600.



Jo Benvenuti
Executive Officer



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Senior Policy Officer