

9 July 2010

General Manager
Markets Branch
Australian Energy regulator
GPO Box 520
Melbourne, VIC 3000

By email: AERInquiry@acr.gov.au

Dear Mr Leuner,

Issues Paper Approach to compliance with the National Energy Retail Law, Rules and Regulations (31 May 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 Issues Paper Approach to compliance with the National Energy Retail Law, Rules and Regulations (31 May 2010) (Issues Paper). A compliance strategy or approach allows regulated businesses to understand the objectives and purposes of achieving compliance, comprehend the approach and processes, and raises awareness of the consequences of non-compliance.

Key elements of good compliance practice

CUAC supports the Organisation for Economic Co-operation and Development's (OECD)'s framework to compliance and enforcement that outlines three conditions for effective compliance: To comply with regulation, a regulated business must know and understand its obligations, be able to comply, and be willing to comply.¹ CUAC supports a compliance and enforcement approach which encourages regulated businesses to adopt a culture of compliance. In this regard, CUAC supports the voluntary adoption of regulated businesses of the Australian Standard on Compliance Programs (AS 3806), which is discussed further in this submission. CUAC believes that a co-operative and persuasive enforcement approach would be more effective in promoting long term compliance than an approach which is solely punitive. However, an effective compliance and

¹ Organisation for Economic Cooperation and Development (OECD), Reducing the risk of policy failure: Challenges for regulatory compliance (2000), at 14-23. See http://cccpanu.edu.au/Published_OECD_Report2.pdf

enforcement approach which includes sanctions are still required for regulated businesses which do not comply voluntarily.

In Victoria, the Essential Services Commission (ESC) has identified eight key elements of good compliance practice required to support the OECD's three conditions for compliance. They are:

1. Good regulatory design: Regulation needs to be simple, clear, meet its stated objectives, have benefits that outweigh costs and minimise compliance costs.
2. Integration of compliance and other regulatory activities: Compliance issues should inform the regulation design stage and the compliance strategy should adjust as the nature of regulation changes.
3. High quality engagement with regulated businesses: Regulated businesses need to be consulted both during the development of regulation and once it is in place; communication needs to be straightforward, occur regularly, and be 'culturally' appropriate.
4. Provision of information: Regulated businesses need to understand the purpose and objectives of the regulation, know what their obligations are and be informed of the consequences of non-compliance.
5. Practical obligations: Requirements must be suitable for the particular regulated businesses and be able to be complied with in the time available and to the required standard.
6. Monitoring of compliance: Compliance is unlikely unless the regulator monitors whether it occurs.
7. Procedural fairness: Processes and decisions need to be consistent, impartial and ethical to build trust with the regulated businesses and encourage voluntary compliance.
8. Escalating levels of interference and sanctions in response to non-compliance: Responses to non-compliance generally begin with co-operative approaches to maximise voluntary compliance, with action escalating as far as is needed to achieve compliance; sanctions must be credible threats.²

CUAC recommends that the AER take into account these key elements in the development of its approach to compliance and enforcement, and the subsequent development of its Compliance Procedures and Guidelines.

² Essential Services Commission (ESC), Compliance Reporting Manual (Energy Retail Businesses) (March 2009), at 2. See <http://www.esc.vic.gov.au/NR/rdonlyres/9534A3DE-78C6-4871-A72C-FD9559F344C1/0/ComplianceReportingManual09.pdf>

Proposed approach to compliance under the Retail Law

Fostering cooperation and voluntary compliance

Openness and transparency

Q.1 What strategies for communication with retailers, distributors and consumers on compliance practice, and the AER's approach to compliance, are likely to be most effective? (e.g. publications, targeted presentations, one-on-one discussions, public forums).

Please provide reasons for your response.

Communication needs to be regular, straight forward, and appropriate to the needs of the stakeholders involved. The AER should engage with stakeholders both during and after the development of its compliance and enforcement procedures, including its compliance reporting processes. Stakeholders should also be engaged once these procedures and process are in place so that feedback can be obtained. CUAC supports a diverse range of communication mechanisms (for example: publications, targeted presentations, one-on-one discussions, public forums, working groups, direct emails to stakeholders etc). More assistance should be given to new entrants into the energy market. This includes orientation training and regular industry forums on compliance. New entrants should be provided with information on their regulatory obligations, how to encourage a culture of compliance, and how to avoid regulatory intervention.

On 3 August 2009, participants of the National Consumers Roundtable on Energy (Roundtable) wrote to the AER regarding the composition of the AER's Customer Consultative Group (CCG). The letter included an attachment entitled "Effectively consulting with consumers: An issues paper for the Australian Energy Regulator." The strategies for consultation mentioned in the paper are relevant to answering Q1. The paper recommended a two-tier approach to consultation – the establishment of a standing customer consultative committee (this would be the AER's Customer Consultative Group) and the establishment of stakeholder working groups (SWG) for regulatory review and consultations for specific issues. SWGs ensure that the right networks are available to inform the process of consumers' experience or views. To facilitate active participation of consumers in consultation, there needs to be allocation of an appropriate level of resources. For example, reimbursing travel costs, or organising meetings by videoconference facilities. Consultation periods of six weeks for major reviews requiring written submissions, would enable CCG members to consult with their own networks and gather the input of end-users not directly represented on the CCG or a SWG.

In Victoria, the ESC has developed a Charter of Consultation and Regulatory Practice. This sets out the ESC's consultation principles, who its stakeholders are, how it consults on regulatory matters, and how to get involved in its consultation process.³ CUAC suggests that the AER consider developing a similar charter to guide its approach to the conduct of public consultations within the requirements of the National Energy Retail Law (NERL), National Energy Retail Rules (NERR) and Regulations. The charter would apply to consultation in general and not merely to consultation on

³ Essential Services Commission (ESC), Charter of regulatory practice and consultation.

See <http://www.esc.vic.gov.au/NR/rdonlyres/C658EAB1-71F0-4843-9E78-26B615BE8439/0/CharterBookletFinal2003.pdf>

compliance matters. The charter should incorporate best practice procedures so that the AER can maximise the value of consultation and participation of interested parties in its decision making.

Monitoring compliance

Targeting monitoring activities

Factors to be considered in assessing impact of a breach

Q.2 Are these appropriate indicators of the impact of a breach of provisions?

Q.3 What other factors might be relevant?

Please provide reasons for your response.

CUAC agrees that the factors listed in the Issues Paper (pages 13-15) are appropriate matters to consider in assessing the impact of a breach – How does the breach affect achievement of the national energy retail objective; how many people are likely to be affected by a breach of the obligation; how are people likely to be affected by a breach of the obligation.

In relation to how the breach affects achievement of the national energy retail objective, as there is no consumer focused objective in the NERL, CUAC is concerned that this could impact the AER's role as regulator to provide for the interests of consumers. The National Energy Customer Framework (NECF) is a consumer law; it is therefore important that the objective include, improvement of the wellbeing of consumers, as it is with the Australian Consumer Law. CUAC notes that the MCE has stated that:

Accordingly, the NERL will provide further guidance to the AER and AEMC when performing their regulatory and rule-making functions. For instance, the AER and AEMC will be required, when carrying out their functions in accordance with the overarching energy market objective, to act in a way that is compatible with the provision of consumer protections for small customers, including customers experiencing hardship.⁴

While this is a positive step, CUAC is of the view that the NERL objective must include a consumer focused objective as the objective is the basis which will guide the decision making of the AER. While CUAC understands that this issue is outside the scope of the Issues Paper, CUAC believes that the NECF objective is an important point to raise to the AER, in considering its approach to compliance and enforcement.

CUAC agrees that the AER should consider the list of matters in the Issues Paper (page 14) in assessing the potential impact of a breach on customers or on other regulated businesses. Both financial and non-financial impacts of non-compliance are relevant in assessing the impact of non-compliance. Non-financial impacts include the social and environmental impacts of non-compliance. Other potential impacts of non-compliance include safety and risks to the public, whether there has been a substantial loss, reduction or denial of an essential service, whether there has been a breach of an obligation to supply. There are some obligations that might disproportionately impact low income and vulnerable customers financially and non-financially. For example, hardship provisions,

⁴ Ministerial Council on Energy (MCE), Communique, Melbourne, 11 June 2010, at 6.

customers who are on life support. The obligations which impact upon the operation and competitiveness of the market include unconscionable marketing behaviour.

Factors to be considered in assessing likelihood of a breach

Q.4 Are these factors appropriate indicators of the likelihood of a breach of provisions?

Q.5 What other factors might be relevant?

Please provide reasons for your response.

CUAC agrees that the factors listed in the Issues Paper (pages 15-17) are appropriate indicators in assessing the likelihood of a breach – What are the incentives driving compliance behaviour; barometer of regulatory threat, risk of detection; awareness of retail framework; demands of compliance; past compliance performance.

Mechanisms for monitoring compliance

Market intelligence and information

Q.6 What are the strengths and weaknesses of these information sources as an input to the AER's compliance monitoring?

Q.7 What other sources of information and market intelligence should the AER consider?

Please provide reasons for your response.

CUAC supports the range of mechanisms to detect non-compliance by regulated businesses. This includes the range of information sources mentioned in the Issues paper (pages 17-19): Market intelligence and information, energy ombudsman schemes, the AER's Customer Consultative Group, ACCC, AER Infocentre, AEMO, information and documents submitted to the AER, and public information. In addition, CUAC believes that direct consumer complaints to the AER, performance reports and media reports could also indicate potential areas of concern.

CUAC submits that the outcome of the AER's monitoring activities should be included in the AER's annual reports on compliance, and compliance updates which should be issued on a quarterly basis. Public reporting of compliance monitoring and enforcement ensures that energy markets develop in a way that protects the interests of consumers.

Targeted compliance reviews

Q.8 Is the AER's approach to targeted provision reviews appropriate for energy retail markets? If not, what changes to this approach could be made?

Please provide reasons for your response.

CUAC supports the AER's approach to targeted provision reviews as set out in the Issues Paper (page 20). Due to the critical nature of hardship and the disproportionate impact hardship provisions have on low income and vulnerable customers, CUAC submits that the AER conduct targeted provision reviews of energy retailer's hardship programs especially when there are observed patterns in compliance or customer complaints.

Retailer and distributor reporting

Q.9 What policies, systems and procedures should regulated entities put in place to ensure the reliability, accuracy and timeliness of reports on compliance to the AER?

Q.10 Is the three-tiered structure of reporting proposed appropriate? If not, what alternative structure should the AER adopt?

Q.11 What frequency of reporting (e.g. immediate, quarterly, six monthly, annual) is appropriate? If not, what frequency should be required?

Q.12 What factors should the AER consider in deciding whether or not to impose a reporting obligation in relation to a particular obligation?

Please provide reasons for your response.

CUAC supports a three-tiered approach to compliance reporting whereby reporting frequency is based on the nature of the breach. In Victoria, for example, the ESC has a tiered approach to compliance reporting where breaches are classified into type 1, type 2 and type 3 breaches.⁵ Serious compliance matters must be reported immediately while breaches of a less serious nature on a periodic basis. In the development of its Compliance Procedures and Guidelines, the AER should classify which tier a breach of a particular provision in the NERL, NERR and Regulations falls into.

CUAC submits that regulated businesses must report the breach immediately where non-compliance has a critical impact on the NERL objective, a significant impact on a large number of customers,

⁵ Essential Services Commission (ESC), Compliance Reporting Manual (Energy Retail Businesses) (March 2009), at 7-20. See <http://www.esc.vic.gov.au/NR/rdonlyres/9534A3DE-78C6-4871-A72C-FD9559F344C1/0/ComplianceReportingManual09.pdf>

threatens public health/safety or where the impact of non-compliance increases over time (first tier breaches).

CUAC agrees that where the breach of an obligation is likely to indicate systemic issues, regulated businesses must report to the AER on a quarterly basis. CUAC supports quarterly reporting of non-compliance which has a serious impact on the NERL objective, on customers or where the impact of non-compliance increases over time. CUAC also supports quarterly reporting of new regulatory obligations or where the AER needs to promote awareness of an existing obligation (second tier breaches).

Other breaches need only to be reported on an annual basis. That is, where compliance is expected to be high and mechanisms are available under the NECF to address isolated issues as they arise (third tier breaches).

Non-compliance notifications to the AER should report on the extent and nature of the non-compliance (for example: the number of customers impacted); reasons for non-compliance; actions taken by the regulated business to address non-compliance and to prevent its recurrence; and the actual and expected date of full compliance. Any non-compliance reported immediately or on a quarterly/6 monthly basis should be summarised in the annual compliance report, including an update on the rectification measures taken by the regulated business to the original breach.

For regulated businesses with good compliance practice, the AER could reduce the frequency of reporting of some obligations from a quarterly basis to a half yearly or annual basis. Conversely, regulated businesses with poor compliance procedures, poor compliance audit outcomes or compliance history should be required to report on a more regular basis.

Compliance audits

Q.13 What factors should the AER consider in determining when an audit should take place?

Q.14 What factors should the AER consider in determining the scope of a compliance audit?

Q.15 What factors should be considered in determining whether an audit is to be conducted by or on behalf of the AER, or by a regulated entity?

Please provide reasons for your response.

Compliance audits should be performed on a planned annual basis, or as determined by the AER in response to emerging areas of concern. The various mechanisms for monitoring compliance (pages 17-19, Issues Paper - Energy Ombudsman Schemes, AER's Customer Consultative Group, ACCC/AER Infocentre, AEMO, Information and documents submitted to the AER, public information) including direct feedback from consumer groups and individuals, could indicate areas of concern to the AER. CUAC submits that a compliance audit, be undertaken on regulated businesses that fail to meet their regulatory obligations, especially in relation to first and second tier

breaches (see page 6 of submission). It may be appropriate to undertake compliance audits of new entrants to the market to ensure that their internal systems and processes are adequate.

Due to the critical nature of hardship, CUAC submits that the AER conduct regular compliance audits of energy retailer's hardship programs.

CUAC submits that the scope, coverage and timing of a compliance audit may be varied depending on the compliance history of a regulated business. That is, whether the compliance report by a regulated business indicated that it has consistently complied with its regulatory obligations and that it has robust processes and systems to identify breaches promptly and address potential and actual breaches. The adequacy of a regulated business' processes and systems, however, needs to be measured against external benchmarks, such as complaints to Energy Ombudsman Schemes.

Cost of compliance audits

Q.16 Is it preferable to set out standard payment arrangements and default periods within which regulated entities must pay the costs of an audit to the AER in the AER Compliance Procedures and Guidelines, or to determine these matters on a case-by-case basis?

Q.17 Where the scope of a single audit covers more than one retailer or distributor, how should the costs of that audit be allocated between the entities concerned?

Please provide reasons for your response.

Standard payment arrangements and default periods within which regulated entities must pay the costs of an audit to the AER should be documented in the AER Compliance Procedures and Guidelines so that regulated businesses understand their payment obligations. Finer details on payment arrangements, however, could be stipulated as an annex to the AER Compliance Procedures and Guidelines. The standard payment arrangements and default periods should, however, allow some flexibility in determining the cost of an audit, especially when the scope of an audit covers more than one retailer or distributor. The AER should look for a fair method of cost sharing taking into account the circumstances giving rise to the audit. For example, in a situation where the retailer and distributor were equally responsible for the non-compliance, it may be fair to apportion the cost of the audit equally between both parties.

Interaction of compliance and performance audits on hardship policies

Q.18 Is it appropriate to combine compliance and performance audits in relation to retailers' hardship policies?

Q.19 Where the scope of a single audit covers both compliance and performance issues, how should the costs of the audit be allocated?

Please provide reasons for your response.

CUAC agrees with the AER that it would be more holistic and effective if compliance and performance audits of retailers' hardship policies are combined (page 26, Issues Paper). CUAC believes that a combined approach might also result in lower costs to energy retailers and therefore lower cost pass through to consumers.

Principles for investigations and Enforcement

We draw the AER's attention to CUAC's submission on the second exposure draft of the NECF, in particular our comments on Part 13, 'Enforcement.'⁶ CUAC's submission expressed concern about the adequacy of the enforcement regime under the NECF. CUAC reiterates that the NECF enforcement provisions will "leave a legislative regime that will be very difficult for the AER to enforce and, literally, impossible for consumer to seek remedies from."⁷ CUAC understands that this is outside the scope of the Issues Paper. However, in the development of its Compliance Procedures and Guidelines, the AER should be mindful of the difficulties facing consumers in seeking remedies.

Investigations

Q.20 How should the results of AER investigations be communicated to the market?

Please provide reasons for your response.

CUAC supports an open and transparent process. Full details of the AER's investigations, outcomes, recommendation etc should be published unless there is a clearly demonstrated reason (for example, genuine confidentiality claim) why certain information cannot be released. Public reporting is essential; it raises awareness of the regulated businesses to their obligations, and drives improvements to compliance practice. Further, it can be used to identify gaps in the energy regulatory and policy framework. Public reporting enhances public confidence in the regulatory regime.

In CUAC's view, the results of the AER investigations should be published in the AER's annual compliance reports and regular compliance bulletins. CUAC supports quarterly compliance updates or bulletins. This allows early identification of and response to emerging issues especially those arising from seasonal or unexpected events. Also, the public gains access to details of AER investigations on a more regular basis.

⁶ <http://www.cuac.org.au/database-files/view-file/4146/> at 63-72.

⁷ <http://www.cuac.org.au/database-files/view-file/4146/> at 63.

Objectives of enforcement

- Q.21 Are these appropriate objectives for enforcement under the Retail Law?
- Q.22 Are there other objectives that should guide the AER in enforcement of the Retail Law, Rules and Regulations?
- Please provide reasons for your response.

CUAC supports the objectives listed in the Issues Paper (page 29). However, CUAC suggests an amendment to point three of the objectives as the objective should be to “undo where possible or minimise, any damage to customers, other regulated entities and the market.”

Enforcement priorities

- Q.23 Are these appropriate enforcement priorities for the retail framework?
- Q.24 Are there other matters that the AER should consider in determining its Retail Law enforcement priorities?
- Please provide reasons for your response.

CUAC supports the list of enforcement priorities in the Issues Paper (page 30). The Issues Paper (page 29) stated that the AER will “exercise discretion in directing our resources to those matters that will provide the greatest overall benefit in achieving the national energy retail objective.” As previously mentioned, with the lack of a consumer focused objective in the NERL, CUAC is concerned that this could impact the AER’s role as regulator to provide for the interests of consumers.

Assessment criteria for enforcement action

- Q.25 Are these appropriate criteria for enforcement decisions under the Retail Law?
- Q.26 Are there other criteria that should guide the AER in making enforcement decisions under the Retail Law?
- Please provide reasons for your response.

CUAC supports the criteria for enforcement decisions listed in the Issues Paper (page 31). Related to the last dot point on page 31 would be whether the regulated business voluntarily reported the non-compliance or attempted to conceal it. Another criterion would be whether the regulated business derived a benefit (financial or otherwise) from the non-compliance. CUAC also suggests

that the AER consider whether enforcement action is likely to create an incentive to improve compliance and deter future non-compliance.

Enforcement options

As previously mentioned, CUAC supports a compliance strategy which encourages voluntary compliance. However, sanctions are still required to address instances of non-compliance and the AER must be prepared to use them to deter poor behaviour and prevent/minimise negative customer impacts. The AER's approach should reflect factors such as the seriousness of the breach, the regulated business' compliance history. Thus, appropriate penalties for non-compliance with various regulatory obligations should match the impact of non-compliance.

Administrative resolution

Q.27 In what circumstances will it be appropriate for the AER to use administrative enforcement action? In what circumstances will it be inappropriate?

Please provide reasons for your response.

CUAC acknowledges that administrative enforcement action will generally be appropriate where initial AER investigations reveal that the potential risk arising from the breach is low. This would allow the AER to respond quickly and appropriately to non-compliance. It may also be a less costly form of redress than other options.

The AER should seek agreement from the regulated business that sets out: how and when compliance is expected to be achieved; the remedies to be provided to customers; the reporting requirements until compliance is achieved. If the regulated business refuses to enter into such an agreement or fails to comply, the AER would proceed with other enforcement action.

CUAC believes that administrative enforcement action would be inappropriate in certain situations, for example, where non-compliance immediately threatens public health and safety. It would also be inappropriate for conduct that recurs following a previous administrative enforcement action.

Enforceable Undertakings

Q.28 In what circumstances will it be appropriate for the AER to accept an enforceable undertaking? In what circumstances will it be inappropriate?

Please provide reasons for your response.

Enforceable undertakings are an important tool in a flexible and modern enforcement regime. CUAC notes that the Australian Securities and Investments Commission (ASIC) and Australian Competition and Consumer Commission (ACCC) have developed guidelines on the use of

enforceable undertakings.⁸ These documents, in particular the ACCC guideline, would provide the AER with useful guidance on the circumstances under which enforceable undertakings may be appropriate.

Some examples where enforceable undertakings may be appropriate include undertakings on: corrective advertising, refunds to consumers; industry-wide education programs funded by the regulated business providing the undertaking.

Statutory enforcement action

Q.29 In what circumstances will it be appropriate for the AER to use statutory enforcement action? In what circumstances will it be inappropriate?

Please provide reasons for your response.

CUAC believes that civil proceedings are appropriate where conduct has been egregious having regard to the enforcement priority list in the Issues Paper (page 30), where there are serious concerns regarding future conduct, including where the regulated business concerned refuses to provide a satisfactory resolution. The ultimate sanction which is withdrawal of retailer authorisation should be reserved for particularly egregious conduct.

CUAC notes that the Issues Paper (page 35) stated that declarations are available when “a person is in breach of a particular provision.” CUAC is concerned with this limitation as it appears that a person must be currently in breach of a provision before a declaration is available. CUAC had, in its submission to the second exposure draft of the NECF, submitted that section 1304 of the NERL be amended to reflect the drafting of regulator enforcement powers relevant to consumer laws under the *Trade Practices Act 1974*, *Australian Securities and Investments Commission Act 2001*, and the *Trade Practices Amendment (Australian Consumer Law) Bill 2009*. In particular, CUAC submitted that, relevant orders should be made available if a person is *in breach* or *has breached* a relevant provision:

There is no reason to limit the ability of the AER to apply for civil penalties and other orders to cases in which a breach is ongoing. Such orders must be available for all relevant breaches, whether once-off or ongoing, and whether subsequently rectified or not.⁹

⁸ Australian Securities and Investments Commission, Regulatory Guide 100, Enforceable undertakings (March 2007); Australian Competition and Consumer Commission, Section 87B of the Trade Practices Act, Guidelines on the use of enforceable undertakings by the Australian Competition and Consumer Commission (September 2009). See [http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/EU_guide.pdf/\\$file/EU_guide.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/EU_guide.pdf/$file/EU_guide.pdf) <http://www.accc.gov.au/content/item.phtml?itemId=263958&nodeId=92f8fbf65ed2a9bd80cf1a53eab3a16b&fn=Section%2087B%20of%20the%20TPA.pdf>

⁹ <http://www.cuac.org.au/database-files/view-file/4146/> at 68.

Compliance Reporting

- Q.30 How do you use compliance reports published by energy regulators? What should the objectives of the AER's compliance reports be?
- Q.31 Are quarterly compliance reports likely to be useful, or would a different frequency (e.g. six-monthly, annually) be more appropriate?
- Q.32 Are there other matters that the AER might usefully include in its compliance reports?
- Q.33 Are combined retail compliance and performance reports preferable to separate reports on compliance and performance?
- Please provide reasons for your response.

More frequent reporting is helpful as it provides more timely information to the public about how the regulated businesses have fared in relation to their regulatory obligations and how the AER has responded to non-compliance. CUAC supports quarterly compliance reports and an annual compliance report. Compliance reports provide useful information for energy policy and regulatory advocacy. They also provide information to regulated businesses of compliance standards and the consequences of failing to meet these standards. This drives industry to improve their compliance practice.

A more complete picture of the retail market would be provided if there is a combined performance and compliance report. A combined report would provide useful information to consumers in exercising choice of retailers (where possible).

Compliance policies, systems and procedures for regulated businesses

- Q.34 Is AS 3806 an appropriate model for compliance policies, systems and procedures for regulated entities?
- Q.35 If not, what are its limitations, and how might they be addressed?
- Q.36 What other models should the AER consider?
- Please provide reasons for your response.

CUAC agrees that the Australian Standard on Compliance Programs (AS 3806) is an appropriate model for compliance policies, systems and procedures for regulated businesses. Regulated businesses can demonstrate that they encourage a culture of compliance through adopting AS 3806. Regulated businesses can inform the AER as to whether they have adopted the standard in their annual compliance reports.

Cooperation with the ACCC and other agencies

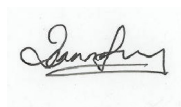
As jurisdictional regulators are likely to have continued responsibilities in the energy market, it is essential that the jurisdictional regulatory obligations (such as the wrongful disconnection payment scheme in Victoria) be included in the AER's compliance reports. Its inclusion would provide a more accurate picture of how retailers are performing. In Victoria, for example, wrongful disconnection payments are included in the Essential Services Commission's (ESC)'s 2008-09 Compliance Report for Energy Retail Businesses (February 2010). CUAC submits that all data relevant to a retailers' compliance under the NECF and jurisdictional obligations, should be contained in one report. This makes it accessible to the public and allows the reader to assess a retailer's compliance accurately from reading just one report.

CUAC notes that in some instances, both the ACCC and AER would be able to take action against regulated businesses, for example, marketing misconduct which could be a breach of both the NECF and Australian Consumer Law. CUAC submits that where there is an option of pursuing enforcement action under both regulatory frameworks, the outcome which would result in the best outcome for consumers be utilised.

Please do not hesitate to contact us if you have any queries on our submission.



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