



Listen Assist Resolve

11 February 2011

Mr Tom Leuner
General Manager
Markets Branch
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3000

By email: AERInquiry@aer.gov.au

Dear Mr Leuner

Re: Approach to compliance with the National Energy Retail Law, Rules and Regulations

Thank you for the opportunity to provide further comment on the Australian Energy Regulator's (AER) *Approach to compliance with the National Energy Retail Law, Rules and Regulations* (Draft Decision).

As stated in our previous comments, EWOV supports the AER's approach to compliance which aims to 'foster a positive compliance culture', and to work cooperatively with regulated entities while still being prepared to take strong enforcement action where required. Based on our case handling experience, EWOV provides the following additional comments in response to the Draft Decision.

Monitoring compliance

EWOV supports the proposed indicators to determine when a breach has occurred and its impact. However, as previously stated, EWOV is concerned with the use of the term 'unjustified administrative costs' in relation to ombudsman schemes. A fundamental part of EWOV's role is to monitor compliance with state and national regulations. EWOV only investigates customer complaints that have been unsuccessfully resolved directly with the energy retailer, as such it had already been within the power of the company to prevent the complaint. It follows that, if a breach causes an increase in complaints to EWOV, it naturally will cause a higher workload and justified costs. As outlined in our previous submission, a change of terminology from '*unjustified administrative costs*', to include a more specific term such as '*significantly increased workload*' would resolve this issue.

Market intelligence and information

EWOV supports the AER's proposed use of ombudsman information for the AER's compliance monitoring scheme. As previously advised, EWOV currently meets with the AER and the ESC on a regular basis to discuss case trends and emerging issues. These meetings provide valuable information. EWOV expects the evolution of these discussions will continue in order to assist the AER with its compliance role following the introduction of the *National Energy Customer Framework*.

Targeted compliance reviews

EWOV supports the AER's proposal to include targeted compliance reviews as a part of its compliance monitoring scheme. EWOV especially endorses the AER's proposal to receive and incorporate information from ombudsman schemes.

Retailer and distributor reporting

As stated earlier, EWOV agrees with the AER's proposal to collect ombudsman data in addition to that provided by businesses. EWOV notes that the AER has previously received submissions that raised concerns regarding the accuracy of ombudsman data. EWOV rejects any suggestion that Ombudsman data is inaccurate. All members of the Australian and New Zealand Energy Ombudsman Network (ANZWEON) are committed to registering issues consistently.

Complaints registered with an ombudsman scheme mostly relate to a breach of the Customer Framework, and EWOV believes that the AER will easily be able to interpret when a breach has occurred from the data provided by ombudsman schemes. If the AER is concerned with any discrepancies, EWOV will be happy to work with the regulator and provide clarification and assistance where required.

EWOV also notes that some stakeholders advised that the frequency of reporting is too onerous. EWOV supports the AER's decision to provide staged reporting, depending on the type of obligation (type one, two or three). This will provide timely information to all stakeholders in accordance with the importance of the breach, and follow-up actions required depending on the type of breach.

Compliance audits

EWOV agrees with the AER's suggested approach to conduct audits on a case-by-case basis. EWOV acknowledges that there are circumstances where audits would be the most appropriate way to determine the extent of a breach and its effect on consumers.

Additionally, EWOV agrees with the AER's proposal to combine performance and compliance auditing in relation to hardship policies. EWOV believes that this approach will provide greater insight into the area of hardship.

Enquires and investigations

EWOV supports the AER's suggested reporting on compliance breaches in order to maintain a culture of openness and transparency with all interested stakeholders. EWOV also agrees with the AER's proposal to provide quarterly updates and a mid-year report in addition to its annual compliance report. Given stakeholder interest, EWOV also endorses the distribution of regular compliance bulletins and media releases. EWOV believes that the results of investigations should be published on the AER's website and notification be made available through a service for interested stakeholders.

We trust the above comments are helpful. Should you require further information or have any queries, please contact Belinda Crivelli, Senior Research and Communications Officer, on (03) 9672 4460 or at Belinda.Crivelli@ewov.com.au.

Yours sincerely

A handwritten signature in cursive script that reads "Fiona McLeod".

Fiona McLeod
Energy and Water Ombudsman (Victoria)