

6 December 2010

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Australian Energy Regulator
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Thank you for the opportunity to comment on the AER's Consultation Paper on the Retailer Authorisation Guideline.

The Energy & Water Ombudsman NSW investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers.

EWON notes that since our submission to the AER's *Issues Paper* in April 2010, the Retail Law has been introduced in the South Australian Parliament. This has incorporated a number of changes from the second exposure draft on which the first round of consultation was based.

We have provided some additional responses to some of the amendments to the original draft Guidelines.

For ease of reference we have adopted the same numbering as the *Draft Retailer Authorisation Guideline*, November 2010.

Part 2: Entry Criteria

We note the additional clarification to the requirement for an applicant to provide a compliance strategy, and for this strategy to have been subject to an external assurance process. We support this amendment which is aimed at requiring the applicant to demonstrate a thorough appreciation of their compliance obligations if their application is successful, as this is in the long term interests of energy customers.

Part 3: Revocation, transfer and surrender

3.1 Revocation

We note that where the AER revokes a retailer's authorisation, this will trigger a Retailer of Last Resort (ROLR) event, and customers will be transferred in accordance with Part 6 of the Retail Law. The provisions of s.141 (4) (b), in particular, provide some additional protections for transferred customers, where an insolvency official of the failed retailer is also subject to and bound by Part 4 in dealing with complaints between a failed retailer and a small customer.

3.2 Transfers

The new draft makes a distinction between situations where a transfer of an authorisation may be appropriate (where the transferee retailer is not yet authorised) compared with a trade sale, where the transferee retailer is already authorised. We note that trade sales are not subject to an approval process.

We support the inclusion into the draft Guideline of a requirement for the transferor retailer to maintain membership of the relevant energy ombudsman scheme for 12 months following the date of transfer. This is consistent with EWON's Constitution which requires 12 months notice for a withdrawal of membership.

The responsibility for the resolution of existing customer complaints against the transferring retailer could possibly be assumed by the transferee retailer as part of the transfer arrangements agreed between the two parties.

However if the transferee retailer only takes on responsibility for disputes from the transfer date, the suggestion at p 15 of the Consultation Paper that the AER '*could impose a condition under s.103 (5) of the Retail Law, providing for disputes between a retailer and small customer to be dealt with as if the retailer was still authorised*' would help to ensure that customers of the transferor retailer who had unresolved disputes at the time of the transfer, were not disadvantaged.

3.3 Surrender

Similarly in the case of a retailer applying to surrender an authorisation, we support the inclusions in the draft Guideline for arrangements for the resolution of customer disputes against the surrendering retailer in the same way as for transferring retailers above.

If you would like to discuss this matter further, please contact me or Prue McLennan, Investigations Policy Officer on 82185250.

Yours sincerely



Clare Petre
Energy & Water Ombudsman NSW