

## About QCOSS Inc

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Queensland Council of Social Service (QCOSS) is the peak body for over 600 welfare and community sector organisations in Queensland. For over 50 years QCOSS has worked to promote social justice and exists to provide a voice for Queenslanders affected by poverty and inequality. We act as a State-wide Council that leads on issues of significance to the social, community and health sectors. We work for a Fair Queensland and develop and advocate socially, economically and environmentally responsible public policy and action by community, government and business.

Queensland Mines and Energy and the Queensland Department of Justice and Attorney-General have funded QCOSS for an energy consumer advocacy project in Queensland. The objective of the QCOSS Energy Consumer Advocacy Project is to examine and provide input into Queensland Government energy policies and where relevant the relationship to national energy policy, with a particular focus on the needs of low income and vulnerable households.

QCOSS welcomes the opportunity to provide input to the Australian Energy Regulator (AER) Issues Paper – Approach to compliance with the National Energy Retail Law, Rules and Regulations.

## Submission

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The AER is likely to have the power to monitor, investigate and enforce compliance by regulated entities with the obligations in the proposed National Energy Customer Framework. The AER will also be required to report to stakeholders on this compliance (or any lack thereof).

The obligations in the National Framework are designed to protect the long term interests of consumers of energy. Many of the obligations are currently employed in various jurisdictions. These customer protections are there because society has made a choice to regulate businesses in the retail energy market and to place obligations on them. The choice has been made because energy is an essential service and customers should be protected from energy businesses that have a strong incentive to act in their own best interests and not the best interests of customers.

However, the obligations in the National Framework will only have meaning if they are actually followed by the regulated entities. We need to place a high value on compliance, and not tolerate or accept non-compliance, if we actually want to protect the long term interests of energy consumers.

The main question then is what approach should the AER pursue so that the best ongoing choice for a regulated entity is to comply with all obligations? One answer would be for the regulated entities to be convinced of two things:

1. any non-compliance will be identified, and
2. the costs of non-compliance will outweigh the benefits.

If the regulated entities believe that these things are likely to happen then the best strategy for the entities will be to take all reasonable steps to ensure compliance with all obligations.

#### Any non-compliance will be identified

To establish a belief that any non-compliance will be identified, the AER will need to look for non-compliance. This will involve regularly conducting audits, investigations and reviews so that a pattern of identification can be established.

#### The costs of non-compliance will far outweigh the benefits

Perhaps the most damaging cost to an entity in the retail energy market is to reputation. To ensure that the costs are high the AER will need to make sure that any non-compliance is reflected in the reputation of the entity. This can only be accomplished by public reporting (in an accessible way) of any non-compliance that is identified. At the same time, an improved reputation is one of the potential benefits of compliance. The AER can increase the opportunity costs of non-compliance by ensuring that good compliance behaviour is rewarded by highlighting this (in an accessible way) through the public reporting.

#### Regulatory cost of identifying non-compliance

The costs of establishing a pattern where non-compliance is identified and reported publicly may be higher than the approach proposed by the AER in the Issues Paper. The trade off however is between the higher costs of monitoring and regular checking of compliance and the long term benefits to all consumers of the outcome of such a strategy. Namely, that the best ongoing choice for a regulated entity in response to the strategy is to take all reasonable steps to comply with all obligations. If the obligations are there for a reason then the AER should pursue a strategy that can result in such an outcome.

#### **Responses to specific questions from the Issues Paper**

- 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?
- We support the concept of targeting particular provisions or obligations and examining compliance with that obligation. However, each year the AER should also randomly select both an obligation and a set of retailers and examine compliance with that obligation. A random element would support the belief that non-compliance with any of the obligations will be identified, not just the highest profile ones.
- 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?
- Audits may be a costly tool but they do confirm whether or not an obligation is actually being met by a retailer. They need to be employed often enough, and in unpredictable ways, to provide a belief to retailers that any non-compliance will be identified. Rather than wait for circumstances to dictate an audit, the AER should also include a random element in the target, scope, coverage and timing of audits. The AER should also be clear that audits will occur on an ongoing basis, and that all retailers should expect to be audited.
- Q.18 Is it appropriate to combine compliance and performance audits in relation to retailers' hardship policies?
- Yes.

- Q.19 Where the scope of a single audit covers both compliance and performance issues, how should the costs of the audit be allocated?
- The costs should be recovered in the same way as a compliance audit. The AER should lend support to a change to the proposed legislation to make this clear.
- Q.30 How do you use compliance reports published by energy regulators? What should the objectives of the AER's compliance reports be?
- Compliance reports from the energy regulators are used in the same way as other public reporting on energy businesses and the energy retail market – primarily to identify if there are any concerns that warrant some form of action. The reports are also used to confirm that the regulator is actively monitoring compliance, to assess the level and quality of compliance, and to identify which energy businesses are striving to meet all of their obligations and which are not. The main objective of the AER's compliance reports should be to use the power of public reporting to move the industry to compliance with all obligations.
  - However, it is not just the provision of information that is important, but also the behaviours that are generated by the requirements for public reporting of compliance. The desirable behaviour would be for energy businesses to strive for 100% compliance, and not merely a 'pass' or 'satisfactory'. The public reporting should include both information and the regulator's assessment of the compliance and behaviour of each energy business.
  - It would be very helpful if the regulator designed the compliance (and performance) reports so that the most relevant information was presented in a reader friendly format, including information on good compliance. A fair criticism from the energy businesses towards both the regulator and consumer organisations is that we tend to focus on the negatives. A report design that also highlights good compliance (and performance) is warranted.
- Q.31 Are quarterly compliance reports likely to be useful, or would a different frequency (e.g. six-monthly, annually) be more appropriate?
- Agree that quarterly public reporting for both compliance and performance is appropriate. Timely information provision is necessary if any prompt action is called for.
- Q.33 Are combined retail compliance and performance reports preferable to separate reports on compliance and performance?
- Yes, a combined report is a good idea. Each report would provide context for the other.

We look forward to continuing to represent the interests of Queensland consumers in all energy related matters for which the AER has some responsibility. For further information or to clarify any aspect of this submission, please contact Roger Church, Energy Project Officer on (07) 3004 6900.