

10 July 2007

Review of the ESC Act  
Minister for Finance  
Level 5, 1 Macarthur Street  
MELBOURNE VIC 3002

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### **Response to the Final Report of the Review of the Essential Services Commission Act 2001**

As the peak organisation of the social and community services sector, the Victorian Council of Social Service (VCOSS) raises awareness of the existence, causes and effects of poverty and inequality and advocates for the development of a sustainable, fair and equitable society.

VCOSS appreciates the opportunity to participate in the review of the *Essential Services Commission Act 2001*. Our overwhelming concern is the implications for disadvantaged and vulnerable households, so our comments are largely confined to those elements of the Act that bear most heavily on this. Lack of comment on other matters does not indicate support for them.

#### **The objectives of the ESC**

VCOSS supports the current objectives of the Commission (expressed in Section 8 of the Act as a primary objective and seven facilitating objectives) and does not support the changes suggested by Mr Beale in the Final Report. We believe that the multi-faceted nature of the Commission's objective, far from being problematic, is a key factor in Victoria's status as the national leader in the regulation of essential services. In particular, we wish to make the following points:

#### ***Harmonisation with the National Electricity and Gas Rules***

There is no need for the Commission's objective to mimic those of the National Electricity and Gas Rules. The Australian Energy Regulator operates in a context fundamentally different from that of the ESC. In particular, the retail regulation of energy at the national level will dovetail with a number of jurisdictional regulations, including those pertaining to environmental issues and social safeguards.

### **Primary emphasis on consumers**

We do not agree with the suggestion that the primary emphasis on consumer interests *in itself* increases the risk of overemphasising short term consumer benefits at the expense of long-term security.<sup>1</sup> Clearly consumer interests are served by an appropriate balance of both considerations. The Commission's current objectives promote the pursuit and achievement of this balance by asserting as its primary objective the *long term* interests of consumers, and addressing in its facilitating objectives both a range of key elements of this objective (efficiency, incentives for investment, financial viability and so on), and some key imperatives to guide consideration of allocative efficiencies where appropriate (giving regard to relevant health, safety, environmental and social legislation, ensuring consumers benefit from competition, and so on).

On the other hand, the proposed new objective, with its primary emphasis on "efficient investment in, and efficient operation and use of, resources,"<sup>2</sup> has a number of key shortcomings: it confuses the means with the end; it emphasises some elements of addressing the long term interests of consumers and omits others; and it considers but does not *protect* those interests. It also explicitly excludes matters of allocative efficiency that sometimes must be considered. Managing this delicate balance is complex but necessary, and VCOSS believes that the Commission's good performance reflects, among other things, the efficacy of its multifaceted objective in facilitating this task.

### **Conflicting or complementary objectives?**

We do not agree with the characterisation of the facilitating objectives and price determination considerations as "conflicting."<sup>3</sup> Rather they are complementary and appropriately recognise that the regulation of essential services is complex and requires addressing a number of imperatives that all impact each other. As noted above, the Commission's good performance is, in our view, largely attributable to its successfully balancing the demands of these complementary objectives, thus securing the long-term viability of regulated industries without neglecting consumers' needs for equitable affordable access to essential services.

### **Duplication**

We also do not agree with Mr Beale's concern regarding duplication of some of the facilitating objectives in other sections of the Act, such as section 33(3), which deals with pricing determinations. Rather, since the objectives give the overall framework within which the Commission operates, they serve to mandate and contextualise other elements of the Act.

### **Low-income and vulnerable consumers**

In particular we note that the explicit reference to the interests of low-income and vulnerable consumers has given the Commission the ability to integrate appropriate safeguards at a fundamental, rather than superficial level in the Victorian energy industry, enabling the co-existence of a comprehensive consumer protection

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<sup>1</sup> *Review of the Essential Services Commission Act 2001, Final Report, 2006, p. 7*

<sup>2</sup> *Review of the Essential Services Commission Act 2001, Final Report, 2006, p. 8*

<sup>3</sup> *Review of the Essential Services Commission Act 2001, Final Report, 2006, p. 58*

framework with what is widely regarded as the most competitive energy market in the world.<sup>4</sup>

### ***A new facilitating objective***

We suggest that consideration of the need for ecologically sustainable development be added to the Commission's facilitating objectives. The urgency of accounting for mitigation of and adaptation to climate change in all policy and infrastructure decisions requires the Commission to account for it in all aspects of the regulatory process, not just in relation to using price as a lever to encourage behavioural change among consumers of regulated industries.

To consider the Commission's role with regard to meeting environmental goals as being largely limited to passing price signals on to consumers is remarkably shortsighted. The demand elasticities for essential water and energy are particularly small. For example, the Victorian price elasticity of demand for electricity is such that to elicit a 4 per cent drop in demand, a price rise of between 30 and 40 per cent would be required.<sup>5</sup> Putting a premium on energy and water to reduce demand would be an incredibly blunt instrument, causing serious detriment to low-income consumers and having little if any impact on higher income households who routinely (and easily) pay a premium for lifestyle outcomes.

Rather, the ESC is in a position to incentivise ecologically sustainable business and planning practices through a number of its regulatory functions, most notably price determinations. Having a specific mandate to consider environmental objectives will ensure that that this can be done with certainty, and enable the Commission consider government policies on climate change, emissions, and the like as the need arises.

### **Information-gathering and enforcement**

We support recommendations 15 and 16 regarding expanding the Commission's information-gathering powers and putting the onus on businesses to demonstrate why information should be kept confidential. Gaining an accurate understanding of the nature and costs of service is fundamental to the Commission's work, and we have been gravely concerned about the efforts of some regulated businesses to obscure relevant information. This has led to significant unnecessary cost (such as the protracted legal action with regard to Alinta) and added uncertainty to the price determination process.

We also support recommendations 25 and 26 regarding bringing consistency to the Commission's enforcement powers, and enabling the Commission to attach proportionate penalties to breaches of licence conditions, codes, and determinations. We have long been of the opinion that the primary weakness in the energy consumer protection framework has been the impact of non-compliance, and while the Commission has been quite successful in working with businesses to encourage compliance, it has limited means to address and discourage breaches through the application of appropriate penalties. Revocation of a licence is a serious matter with grave consequences, and the Commission should have at its disposal a range of penalties that are more appropriate for the types of breaches that generally occur.

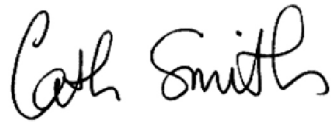
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<sup>4</sup> P Grey & P Lewis, *World Energy Retail Market Rankings: second edition June 2006*, First Data Utilities & VaasaEMG Utility Customer Switching Research Project, 2006

<sup>5</sup> Langmore M & Dufty G, *Domestic electricity demand elasticities: issues for the Victorian energy market*, 2004

If you have any questions about this submission, please address them to Dean Lombard, Utilities Policy Analyst, at [dean.lombard@vcoss.org.au](mailto:dean.lombard@vcoss.org.au) or on 9654 5050.

Yours sincerely

A handwritten signature in black ink that reads "Cath Smith". The signature is written in a cursive, flowing style.

Cath Smith  
Chief Executive Officer