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Department of Resources, Energy and Tourism
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12 June 2009

Dear Sir/Madam

Re: First Exposure Draft - National Energy Retail Law

VCOSS welcomes the opportunity to provide comments on the first exposure draft of the National Energy Retail Laws (NERL).

As the NERL will cover a number of jurisdictional energy markets, all in differing stages of development and deregulation, VCOSS believes that the law should ensure that all Australian energy consumers are provided with a level of service and consumer protection that represents best practice.

As such, the following discussion highlights specific areas where VCOSS believes that the NERL has not met best practice. However it must be said that we have substantial concerns with the overall framework. Further detailed comment on the Law, Rules, Regulations and Model Contract is provided in the attached table compiled by members of the National Consumer Roundtable on Energy.

VCOSS believes that having a single separate National Energy Retail Law is the most appropriate framework for these consumer protections, rather than amending existing laws for electricity and gas to include consumer protections. The requirements for consumer protections are substantially different than those for more technical specifications outlined in either the National Gas Law (NGL) or National Electricity Law (NEL). We also believe that a more streamlined approach to amending and implementing legislation would be supported by a single law.

Objective

The objective of the National Energy Retail Law should be to ensure that all customers are treated fairly in their purchase of essential energy services.

Directly applying the objective of other national energy laws does not adequately reflect the interests of consumers, particularly in relation to retail matters, nor does the objective as currently stated, reflect the content of the law. While promoting efficient investment in generation, transmission and distribution is in the long term interest of consumers, retail terms and conditions necessarily relate to the short term.

While ensuring consistency with both the NGL and NEL, we believe that the objective must include subsidiary clauses to provide guidance to both the Australian Energy Regulator and the Australian Energy Market Commission, when making decisions in relation to the NERL.

We suggest that subsidiary objectives should have regard to the following:

- that the Law should provide a suite of consumer protections that ensure consumers can be confident about the price, affordability, safety and reliability of essential energy services;
- that the needs of those who, are most vulnerable, or at greatest disadvantage, be protected, and that energy not be denied to any customer on the basis of financial hardship or other circumstances of vulnerability;
- that energy services should be provided to all consumers equitably;
- that all consumers be treated fairly in their purchase of energy services;
- that energy should be affordable for all consumers;
- that accessible and timely redress should be provided where consumer detriment has occurred; and
- that consumer interest is served by the supply of clean and sustainable energy.

If the NERL is implemented as an amendment to the NEL and NGL it is important that the objectives of these Laws be amended to reflect the inclusion of consumer protections as detailed above.

Hardship

The approach taken to hardship in the NERL conflates what should be general consumer protections, with the additional assistance required to support vulnerable consumers and those experiencing financial hardship. The current definition of 'hardship customer' demonstrates this misunderstanding.

Specifically the definition of "hardship customer" suggests that there is a certain type of consumer who can be classified as a "hardship customer". In reality consumers can move in and out of financial hardship, and can experience temporary or chronic financial hardship. This is an important distinction as hardship programs need to be responsive to the different financial difficulties facing consumers.

The Committee for Melbourne Utility Debt Spiral Project investigated the issue of utilities hardship and identified a best practice approach to responding to consumers experiencing financial hardship. These include: transparency and accessibility in information provision, respect and engagement in operating protocols, extensive and ongoing staff training and a focus on energy and water efficiency. VCOSS suggests that the findings of the Committee for Melbourne Utility Debt Spiral Project be used to inform the Laws and Rules relating to financial hardship.

Payment plans and flexible payment arrangements

VCOSS strongly believes that payment plans, Centrepay and flexible payment arrangements must be offered to all consumers. The current requirement that these may be offered on request and must be offered to customers in hardship, unnecessarily confines what should be general consumer protections to those in hardship. The use of flexible payment arrangements can assist consumers with a limited income to manage their payments and ensure timely payment of bills. Allowing a wide range of payment options provides consumers with more opportunity to meet their payment obligations.

Fees and Charges

Late payment fees disproportionately penalise households experiencing payment difficulties. This is not an appropriate measure when dealing with an essential service, where the penalty for non payment is disconnection. We believe that late payment fees only exacerbate hardship and should be banned.

Wrongful disconnection

As with the ban on late payment fees, we believe that the \$250 wrongful disconnection payment in Victoria represents best practice. The disconnection rate in Victoria is substantially lower than many other jurisdictions, and similar versions of the payment are operating in Queensland, however with a

substantially lesser penalty. The Wrongful Disconnection Payment, as constituted in Victoria is a powerful tool to encourage compliance with disconnection procedures, and in helping to avoid wrongful disconnection.

Model Contract

The purpose of a contract is to ensure that both parties are informed of the details of the agreement that they are entering into. The model contract provided in the NERL package does not meet this criteria. References to obligations set out in rules and laws do not assist a consumer in assessing their rights and responsibilities when entering into the contract.

While we understand the desire to provide guidance to retailers, to ensure that the model contract is clear and accessible, we do not believe that the model contract provided has achieved this.

We have provided an alternative approach in the attached response table which we believe will ensure that the consumer received the full range of information required in a way that is easy to understand.

Overview of the Law

VCOSS is concerned that the NERL has not been constituted as a comprehensive consumer protection framework, but rather a selection of consumer protection mechanisms from the different jurisdictions.

It is extremely important that the suite of consumer protections work in concert to prevent consumer hardship, be that financial or physical (i.e. disconnection). We would strongly suggest that the NERL be reviewed in this light.

Should you have any queries, or would like to discuss VCOSS' submission further, please contact Ms Sarah Toohey on (03) 9654 5050 or sarah.toohey@vcoss.org.au.

Yours sincerely



Cath Smith
Chief Executive Officer