



Energy Retailers Association
of Australia Limited

The Secretary
Senate Standing Committee on Economics
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Email: economics.sen@aph.gov.au

Dear Sir/Madam

The ERAA welcomes the opportunity to provide comments to the Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010 (The ACL).

The Energy Retailers Association of Australia (ERAA) is the peak body representing the core of Australia's energy retail organisations. Membership is comprised of businesses operating predominantly in the electricity and gas markets in South Australia, Victoria, New South Wales, ACT, Queensland, Western Australia and Tasmania. These businesses collectively provide electricity to over 98% of customers in the NEM and are the first point of contact for end use customers of both electricity and gas.

The National Consumer Law and duplication of existing State based regulations

The ERAA supports the objective of the ACL to create a single national consumer law through an augmentation of the Trade Practices Act (TPA). As most retailers operate in more than one retail market, the ERAA sees the use of generic consumer laws as being preferable to the implementation of state based regulations that differ across jurisdictions.

The ERAA therefore believes that if this 'augmented' version of the TPA is implemented there must be a commensurate rescinding of state based regulation which overlaps with the ACL. Otherwise the ERAA believes that it is possible that rather than the implementation of the ACL resulting in the economic benefits outlined by the Productivity Commission, it may add additional red tape.

National Energy Customer Framework (NECF)

The development of industry specific regulation in preference to tighter enforcement of generic consumer laws such as the TPA, Fair Trading Acts and Privacy Act has increased the regulatory burden on retailers and added to the end cost of supplying energy to customers. The ERAA has long held the view that harmonisation of regulation is not worthwhile if it results in the application of the highest level of regulation across all states. In this regard, the ERAA is concerned that the

unfair contract terms duplicates what is in existing energy codes in terms of model terms and minimum terms.

The culmination of the NECF will result in the transfer and harmonisation of the existing State and Territory retail electricity and gas codes to the National Electricity Law, National Gas Law and other regulatory arrangements. This will be overseen by the Australian Energy Regulator (AER) and administered by the Australian Energy Markets Commission (AEMC). The NECF has been under development since 2006 and has been the subject of extensive consultation between Government and industry stakeholders.

The objective of the NECF is to streamline the regulation of energy distribution and retail regulation functions into a national framework in order to develop an efficient national retail energy market. This includes appropriate consumer protections. The ACL therefore needs to align with the NECF, since both address consumer protection in the energy market.

As noted in previous submissions relating to the ACL, the ERAA remains concerned that there appears to have been little consultation with the officers working on the NECF in the framing of the ACL. While the Explanatory Memorandum makes reference to the NECF process, there appears to be little evidence as to how the ACL will align with the NECF.

As such, the ERAA is concerned that while the Explanatory Memorandum discusses the potential for the review of consumer law in specific sectors, it is most likely that these reviews will not be done straight away, resulting in additional regulatory burden and higher costs for end-use customers. Furthermore, the ERAA is concerned that the introduction of the NECF could be delayed because of the ACL.

Door Knocking

The ERAA notes the proposal outlined by the Committee and is pleased that door to door marketing will still be allowed following the implementing of the ACL. Energy retailers have worked hard to improve the conduct of door knockers selling energy, and also customer awareness of their rights when being door knocked.

The ERAA believes that competition offers the best form of protection to consumers. In each of the States and Territories, consumers can refer any complaints about poor marketing experiences to their respective energy ombudsman. Furthermore, door knocking is already a highly regulated practice.

Following the introduction of the NECF, door knocking will remain highly regulated. This will include the disclosure of:

- Prices, fees, penalties, billing and payment arrangements

- Contract duration
- Cooling-off periods
- The customer's right to contact the energy ombudsman if they are displeased with the way the sale is conducted
- Electronic transactions
- Standard retail contracts

As well as this, there are specific regulations for door to door marketers of energy. This includes:

- The provision of a disclosure statement
- The conduct standards for marketers, record keeping, compliance audits, etc
- The door to door marketer's obligations to provide customers with documentation outlining how they can rescind their retail market contract
- A mandated 10 business day cooling-off period

It is important to note that the actual door to door marketing complaints represent a small proportion of both the total number of complaints and the total number of customers who have changed retailers.

The following table highlights that marketing complaints are a very small proportion of overall complaints. Furthermore, the total number of customers that complain as a percentage of customer transfers is very small. It is likely that the proportionate number of *legitimate complaints* (i.e, complaints not simply about being approached) is even smaller.

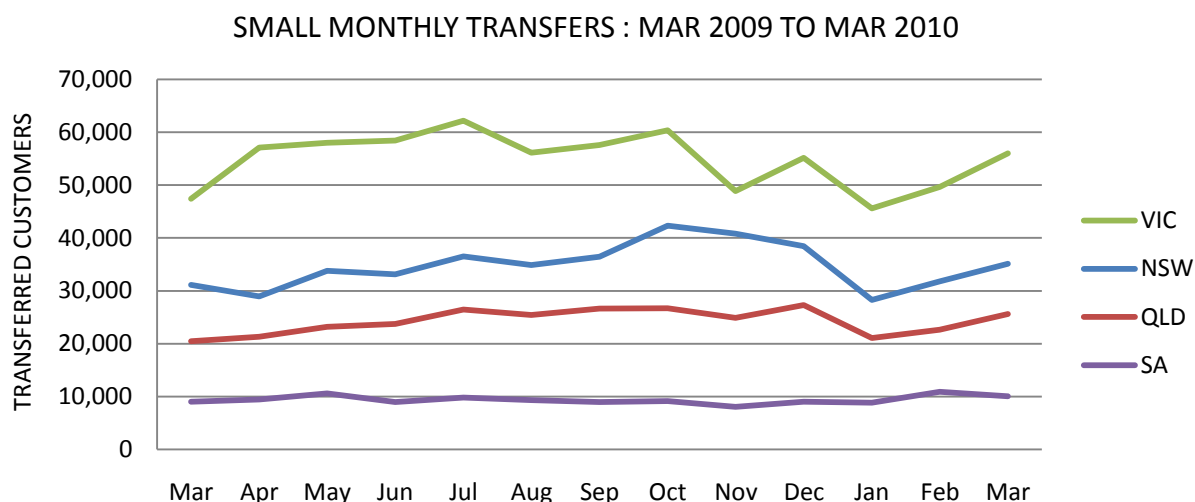
State	Ombudsman Marketing Complaints	Marketing Complaints as a percentage of total complaints	Total Number of Small customer Transfers in 2008	Marketing complaints as a percentage of total number of small customer transfers
Victoria	2610	4.25%	589,186	0.44%
New South Wales	768	7.4%	323,446	0.23%
South Australia	309	3.6%	124,096	0.24%
Queensland	198	1.47%	394,298	0.05%

Source: Statistics sourced from Energy and Water Ombudsman (Victoria) 2009 Annual Report, Energy and Water Ombudsman of NSW 2009 Annual Report, Energy Industry Ombudsman South Australia 2009 Annual Report, Energy Ombudsman Queensland and Australian Energy Market Operator Retail Transfer Statistical Data - http://www.aemo.com.au/data/retail_transfers.html

Door knocking is essential for promoting competition in the retail energy market. Door to door marketing and telemarketing are the most efficient and effective approaches to obtaining customers in a fully contestable energy market. Door to door marketing has been central to Victoria, South Australia and New South Wales being ranked as the first, second and fifth most competitive energy retail markets in the world, respectively.¹

¹ VaasaETT, 2008 World Retail Energy Market Rankings – 4th Edition.

The following graph shows the number of small customer transfers over the past 12 months is the greatest in Victoria, compared to NSW (including ACT), SA and QLD. In Victoria, almost 27% of small customers changed retailers over the past 12 months; in comparison, the next highest was QLD with only 15.02%.²



Despite Victoria being the most competitive energy retail market in the world and there being a high level of awareness across Victorian households about their ability to change retailer, only 10% of electricity customers and 6% of gas customers actively approached a retailer directly.³ Door knocking is clearly therefore an important aspect in promoting competition. In their report, the AEMC concluded that there was no systemic problem that would warrant a prohibition of direct marketing. Furthermore, it was found that over 70% of households that had been approached via door to door marketing had a positive experience overall.

Conclusion

The ERAA hopes that in the process of framing the ACL, there is sufficient consultation with the officers developing the NECF. There is likely to be significant overlap between the ACL and NECF; close consultation with the NECF processes will therefore help to mitigate the risk of additional red-tape and duplication of regulations.

The ERAA is pleased that door to door marketing will be allowed following the implementation of the ACL. Door to door marketing is absolutely vital for competition in the retail energy industry. It is already a heavily regulated practice and energy retailers have been at the forefront of improving

² AEMO small monthly transfers data Feb 2009 to Feb 2010.

³ Australian Energy Market Commission, (2007) 'Review of the Effectiveness of Competition in Electricity and Gas Markets in Victoria-First Draft Report', p.66

the conduct of door to door marketers and standards. In any case, there is strong evidence to suggest that the overall problems associated with door to door marketing are unsubstantial when placed in context to the greater overall benefits that they deliver.

Should you wish to discuss the details of this submission further, please contact me on (02) 9241 6556.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Cameron O'Reilly', with a large, stylized loop at the end.

Cameron O'Reilly
Executive Director
Energy Retailers Association of Australia