



Energy Retailers Association
of Australia Limited

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Re: Draft Electricity and Gas Supply Legislation Amendment (Retail Price Disclosures and Comparisons) Bill 2010

Dear Catherine

The Energy Retailers Association of Australia (ERAA) welcomes the opportunity to comment on the Draft Electricity and Gas Supply Legislation Amendment (Retail Price Disclosures and Comparisons) Bill 2010.

The ERAA is the peak body representing Australia's energy retail organisations. Membership is comprised of businesses operating throughout the NEM as well as Western Australia and the Northern Territory. These businesses collectively provide electricity to the great majority of retail energy consumers in NSW and are the first point of contact for end use customers for both electricity and gas.

As discussed in the telephone conference earlier this week between you, Karen Smith and representatives of most of our members operating in NSW, these members have quite a number of significant concerns with the proposed bill and regulations. These concerns cover both the content of the proposals and the process of consultation.

Concerns regarding the content of the draft bill

Firstly, in relation to content, our members are of the view that the draft bill is far too wide in its scope. The requirement that energy retailers disclose 'all' pricing information is simply unreasonable and impractical. As our members explained to you, many pricing offers are simply not available to all consumers, and so forcing them to be placed on a public web site would inevitably cause confusion and complaints, both to retailers and to government agencies and ministers.

Full disclosure is likely to be impractical within the context of a standardised web site format because the variety of ways in which offers are structured is such that it is very likely to be impractical for you to build and keep up to date a web site that can encompass a full description of all offers, and compare them in a valid and meaningful way. Energy retailers are well aware of the view that consumers find it difficult to compare energy offers, but contend that this notion is based on a false premise that energy offers ought to be able to be compared on price alone.

Simple price based comparisons overlook too many other offering features for this to be practical. For example, it is hard to imagine a simple price based comparison methodology that can meaningfully compare a product that includes a significant loyalty discount after 12 months, with

one that does not include that feature. The Solar bonus would provide further challenges to such a notion.

A further concern is that an unintended consequence of an overzealous disclosure regime is that it could lead to a 'dumbing down' of energy products on offer by forcing retailers to withdraw offers that cannot be accommodated within the requirements or leading them to withdraw offers whose benefits are not recognised by the comparison methodology. This would be to the detriment of the consumers, as well as the retailers in such an outcome.

Energy retailers are also not reassured that the draft bill is said to be merely an enabling instrument and that the regulations will not go to this extreme. Retailers note that the regulator has tended to adhere to the literal wording of bills, and so we call on you to significantly narrow the scope at this stage, rather than relying on the regulator to infer that your intent was narrower than the wording clearly suggests.

ERAA members also express concerns regarding the required link to a specified part of a tribunal website, noting that such links can be difficult to keep up to date if the target web site structure is modified. A requirement instead for a link to a home page with an invariant address would be seen as less likely to land the retailer inadvertently in breach, and therefore as more reasonable.

ERAA members also question the value of such disclosure requirements and websites to consumers. There also appears to be no research on how many consumers use such sites and what benefit they obtain. Anecdotal evidence suggests that usage is minimal. Submitting data in accordance with these requirements is time consuming and expensive for retailers and the costs incurred are inevitably passed on to consumers. Retailers note that there appears to have been no cost-benefit analysis of such regulations and that therefore that they are not in compliance with the principals of best practice regulation.

Lastly, in relation to content, ERAA members consider it very important that all legislation of this type include a requirement for independent review after a period of operation, such as three years.

Concerns regarding the consultation process for the draft bill & guidelines

ERAA members note that the policy intent of the proposed legislation and regulations appear to essentially duplicate the intent of the Australian Energy Regulator (AER) 'Retail Pricing Information Guidelines' task under the NECF, a national stakeholder consultation forum for which was held on Friday 14 May 2010. ERAA members find that such duplication of policy development at two levels of government is highly inefficient and typically leads to inconsistent regulations across jurisdictions, adding to compliance costs at the very time when energy costs are already rising. Apart from the obvious inefficiencies of duplicating a national process, it is notable that the AER has set out a timetable for their process which allows, unlike the NSW proposal, for proper consultation and policy development.

Finally, it seems extremely inappropriate that the draft disclosure guidelines have been developed prior to the completion of consultation on the draft legislation, and therefore without any consideration of the comment on the draft legislation.



The ERAA would welcome further discussion on this submission if required. Should you have any queries, please feel free to contact me on (02) 9241 6556.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Cameron O'Reilly'. The signature is fluid and cursive, with a large loop at the end.

Cameron O'Reilly
Executive Director
Energy Retailers Association of Australia

