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Modernising Victoria's Energy Licence Framework and General Exemptions Order

The Consumer Action Law Centre (**Consumer Action**) and Victorian Council of Social Service (**VCOSS**) welcome the opportunity to provide input to the Essential Services Commission (**ESC**) and the Department of Economic Development, Jobs, Transport and Resources (**DEDJTR**) on modernising Victoria's energy licence framework, and the deemed exemptions to it. Given that the two issues are inextricably linked, we have provided a single response to the issues papers.

Effective competition is fundamental to good outcomes for consumers in a deregulated market. There is some evidence that competition is already not working for consumers in the current market, with high numbers of complaints to the Energy and Water Ombudsman of Victoria (**EWOV**) and high retail margins in Victoria. Increasing rates of participation in retailer hardship programs and disconnections indicate that the market is not working well for low income and disadvantaged households. As the market gets more complex—with greater numbers of market participants making use of smart meters and cost-reflective network tariffs to provide innovative products and services—it is vital that both incumbents and new entrants provide consistent and reliable access to the essential service of energy, and to basic consumer protections.

The fundamental purpose of licensing is to ensure consistent standards are met in the provision of energy, and that market participants (both old and new) participate in the market on equal footing. The licensing framework's ability to deliver these standards is increasingly important as the market continues to evolve towards decentralisation, innovative products and services, and unprecedented levels of consumer choice.

The new market relies on confident and informed consumer participation to deliver the benefits of competition. In delivering the 'long-term interest of consumers' it is critical that governance bodies and market frameworks enable good consumer outcomes and build

consumer trust in the transforming market. Consistency and transparency will be at the heart of this.

We define good consumer outcomes as:

- Easy and equitable access to products and services
- Safe and fair products and services
- Efficiency benefitting consumers
- Clear dispute resolution processes
- Useable information which is simple, clear and consistent.

It is unlikely that licensing will have a strong impact on the last of these. However the first four principles can all be underpinned by a coordinated and flexible licensing and exemptions framework that has consistency and consumer benefit at its core.

Enabling good consumer outcomes through the licensing framework includes ensuring that;

1. All energy providers have consistent obligations to supply and protect consumers;
2. All energy consumers can choose their preferred suppliers in a competitive market;
3. All energy providers are members of a single Ombudsman scheme;
4. All licences and exemptions are granted by a single agency; and
5. Compliance is effectively monitored and enforced.

More detailed comments are provided below.

1. Consistent obligations to supply and protect

The current licensing framework does not provide consistent obligations to supply and protect consumers for existing energy sellers and distributors. For traditional incumbents, this is a legacy of an inadequate approach to reviewing and updating licences as the market evolved. For new entrants, lack of consistency in the obligation to supply and protect consumers is due to the practice of granting some energy supply activities exemptions from the licensing framework.

As a result, the basic right to a connection, an energy supply contract and ongoing supply in the face of financial hardship is compromised, as is access to free and simple external dispute resolution in an increasingly complex market.

This situation is untenable within the current market, and even more so as the market transforms. Energy underpins people's health and wellbeing, and increasingly their communication and transportation. It is essential that consistent obligations to supply and protect consumers are provided across all suppliers and distributors of energy, *regardless of their source of energy supply*. Only if these obligations are consistent across the market can consumers be certain of their rights.

The ESC's proposal for a single flexible licence has the capability to provide this consistency. Consumer Action and VCOS therefore strongly support this proposal, provided that it applies to all sellers and distributors of energy in the Victorian market. Anything less than this will repeat past mistakes, and expose consumers to unnecessary risk.

As an essential service, the new licence framework should apply to *all* companies supplying energy to households, whether in whole or in part. While earlier licence types may not have readily accommodated small-scale distributed generation or embedded networks and exemptions may have been appropriate, the rise of these business models and technologies

over recent years—and predicted increase in prevalence in future—demands a new approach.

For example, currently at a national level companies providing rooftop solar technology via leasing products are exempted from holding a licence to sell energy, while companies providing solar power purchase agreements (**PPAs**) are not, despite both products providing a high proportion of consumers' supply, and indeed being indistinguishable products to most consumers.

We therefore support the proposal for a small-scale licence category, which provides consumer protections proportional to the scale of the activity. This must include appropriate access to supply and consumer protection obligations for small-scale activities which are providing the entirety of a consumer's supply in either a rural or urban setting.

We note, however, that no definition of 'small-scale activity' has been given in the discussion paper. For clarity and consistency, a definition must be provided which encompasses provision of all rooftop generation systems, whether bundled in a retail contract, leased or financed via a PPA.

A further licence category must also be created for embedded networks, which are increasing in prevalence in Victoria as more apartment blocks are constructed to support a growing population. The current exemption for embedded networks under the General Exemption Order means that while they are required to adhere to the relevant parts of the Retail Code, it is not clear which parts are relevant and which are not, nor to whom consumers can turn to seek redress. Including a new licence category for embedded networks will ensure transparency in protections and that consumers within these networks are provided the same protections as those connected to the traditional network or going off-grid. If a new licence category is not created, the General Exemptions Order should be specific about which parts of the Code apply.

Consistency in obligations to supply and basic consumer protections can only be achieved if exemptions to holding a licence are minimised, and only provided as a last resort. Where exemptions are granted, they must be subject to review at pre-determined temporal or scale-of-operations trigger points, to ensure that the ESC is able to include exempted activities in the licensing framework as appropriate as the market evolves, capturing the full benefit of a flexible licensing approach.

Any exemptions that are still necessary outside of the licensing framework should then be subject to conditions, including the need to register with the agency granting the exemption, so that they can be monitored and easily identified if it is deemed in the future that a new licence category is required.

Recommendations

- Introduce the single flexible licence with universal coverage.
- Introduce a small-scale licence category, including a clear definition of 'small-scale' which includes any provision of rooftop generation systems, whether bundled in a retail contract, leased or financed via a PPA.
- Introduce a new licence category for embedded networks.
- Include a clear temporal or scale-of-operations review point for all exemptions granted under the General Exemptions Order.
- Introduce a registration system for exemptions.

2. Ensuring effective choice

Retail contestability for electricity and gas has allowed households to choose from a number of competing retailers and tariff options. Choosing an energy retailer and tariff option that suits the household's level and pattern of energy consumption can result in significant savings in annual bills. Ensuring consistency in licensing with limited exemptions will provide a level playing field for competition amongst energy companies.

However despite full retail contestability in Victoria, some consumers are unable to exercise choice. For example, it is increasingly common for households to be supplied their electricity via an embedded network of an electricity re-seller. These households are unable to choose their retailer or face insurmountable barriers to do so.

Furthermore, in some instances consumers are unable to exercise choice because an energy licence condition limits their capacity to do so. For example, not all retailers are required to have standing offers. Standing offers are an integral part of the obligation to supply, and when some retailers are free of that obligation the consequences are anti-competitive and may include:

- some retailers may refuse customers with low incomes, in hardship programs, or low consumption giving them a market advantage over others that are obliged to accept any customer;
- profitable customers may have access to many more offers, thus having much greater choice than customers with low consumption or low incomes; and
- retailers required to make standing offers may have higher compliance costs than other retailers. This additional cost will be spread across the customer base placing that retailer at a competitive disadvantage.

The new licensing framework must therefore include a condition for all energy retailers (both old and new) to provide a standing offer and an obligation to supply. The standing offer should include the following at a minimum:

- A variety of payment methods including in person, mail or direct debit payments;
- Information on the bill regarding a summary of payment methods and payment arrangement options; and
- Acceptance of payment from the customer in advance.

Recommendations:

- Include a condition for all energy sellers to provide a standing offer and obligation to supply in the new licensing framework.

3. A single Ombudsman scheme

Unprecedented levels of choice in products and services for residential electricity supply and demand will create great opportunity for consumers to find products and services that better meet their needs and manage their bills. However, greater choice will also increase the potential for detriment as the market—and the products and services themselves—becomes more complex. Potential detriments include hidden costs, misselling of products and services ill-suited to a consumer's needs, responsibility shifting between multiple parties in the event

of faults, and gaps in consumer protections where products and services fall under different regulatory frameworks.¹

The current approach to licensing and exemptions has led to the situation where some consumers are able to access EWOV, while others are required to go through the more expensive, confusing and time-consuming Victorian Civil and Administrative Tribunal (**VCAT**) process. Notable examples include:

- consumers in embedded networks must rely on VCAT to resolve disputes, while grid-connected consumers resolve the same disputes through EWOV; and
- consumers entering into a solar PPA have access to EWOV, while consumers entering a solar lease must rely on VCAT.

Requiring all market participants providing energy to consumers in any way to be members of a single Ombudsman scheme ensures that access to dispute resolution remains simple, free, equitable and consistent across the market.

We therefore recommend inclusion of a requirement to be a member of an approved customer dispute resolution scheme (EWOV) as an activity-specific condition for all energy selling, distributing, small-scale and embedded network licences under the new licensing regime.

Furthermore, in line with the national approach to exemptions, through which the AER places conditions on entities exempt from holding full retail licences, we recommend that all exemptions from holding a licence in Victoria are subject to conditions, including the requirement to be a member of an approved dispute resolution scheme.

Recommendations:

- Include membership of an approved customer dispute resolution scheme as a condition in all energy selling, distribution, small-scale and embedded network licence categories.
- Place a condition on all exemptions for energy selling, distribution, small-scale or embedded network activities that they must be members of an approved customer dispute resolution scheme.

4. A single agency for licences and exemptions

Consistency in the application of licence conditions across categories of energy generation, sales and distribution—including granting exemptions to holding a licence for the small number of activities that fall outside of a refreshed licensing framework—would be more coordinated and efficient if administered by a single agency.

This approach would mirror the national system, where both licences and exemptions are granted by the AER, providing for more efficient review of exempted categories and swift inclusion in the licensing framework as appropriate in a rapidly evolving market. It would also allow a coordinated approach to changing conditions within licences and exemptions as the market changes, to continue to provide consistent protections for consumers as the market evolves.

¹ For a full list of potential consumer detriments see Westmore and Berry (2014), *Emerging Energy Services - Issues for consumers: awareness, engagement and protection*. Available at <https://scer.govspace.gov.au/files/2015/04/Engineroom-Infrastructure-Consulting.pdf>

We therefore strongly recommend that the concurrent ESC and DEDJTR reviews are used to shift responsibility for granting exemptions to the licensing framework to the ESC.

Recommendations:

- Shift responsibility for granting exemptions to the licensing framework to the ESC.

5. Monitoring and enforcement

Consumer Action and VCOSS are broadly supportive of the proposal to create a single flexible licence that has universal coverage, and support the proposal for incentivising compliance through cost-reflective licence fees that allow higher fees for poor-performing licensees. In combination with the proposed enhancements to the ESC's powers, that will require greater public reporting and disclosure of compliance, there is some potential for industry self-regulation and good performance.

However, for the 'carrot' approach to regulation to be effective, it must be supported by a conviction amongst licensed entities that the 'stick' of a strong culture of monitoring and enforcement will be used by the regulator.

We are concerned that at present, the proposal relies too heavily on self-reporting of breaches of licence conditions for enforcement. This is especially the case in the face of the proliferation of companies supplying, selling or distributing electricity which is expected in response to deregulation, the roll out of smart meters and the move to cost-reflective network pricing. We are particularly concerned that no definition of a 'significant breach' (that could lead to licence revocation) has been given in the ESC's issues paper.

The new energy market promises to be much more complex for all participants than the traditional market, and this must be underpinned by strong monitoring and enforcement activity by the regulator. We therefore recommend that the final determination includes:

- Greater information on the monitoring and enforcement activities that the ESC will take to ensure that breaches are detected and appropriately addressed;
- A definition of what constitutes a 'significant breach' of licence conditions; and
- An interpretation of the new monitoring and reporting powers soon to be granted to the ESC, and how they will be applied within the new licensing framework.

Recommendations:

- Commit to strong and clear monitoring and enforcement activities in the final determination of the modernised licensing framework that ensure that breaches are detected and appropriately addressed, including definition of what constitutes a 'significant breach', and the intended application of the ESC's new monitoring and reporting powers.

We would welcome the opportunity to discuss the issues raised in this submission further with either the ESC or DEDJTR. Please contact Claire Maries, Senior Energy Policy Officer at Consumer Action, on 8554 6907 or at claire@consumeraction.org.au, or Llewellyn

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Yours sincerely,

CONSUMER ACTION LAW CENTRE

VICTORIAN COUNCIL OF SOCIAL SERVICE

Handwritten signature of Gerard Brody in cursive script.

Gerard Brody
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Emma King
Chief Executive Officer