

INTRODUCTION

The Western Australian Council of Social Service Incorporated (WACOSS) is the peak body of the community service sector across Western Australia. Since 1956, WACOSS has been developing and strengthening the non-government community services sector's capacity to assist all Western Australians. With over 350 members, WACOSS has strong relationships with the social services sector and seeks to represent their interests, and those of the disadvantaged individuals and families they assist at a service level. Given this relationship, WACOSS is in a unique position to comment on issues in our society that socially impact upon disadvantaged members of the community.

WACOSS is respected within both government and non-government arenas as being an authoritative voice for consumers with regard to energy market reform in Western Australia. WACOSS has developed a strong network with utility policy workers across Australia, which provides us with information and expert opinion on these issues.

In March 2005, WACOSS commenced the Consumer Utilities Project, funded through the Department of Consumer and Employment Protection. This Project builds upon the utility policy work WACOSS has undertaken over the past 4 years. The Consumer Utilities Project has been established to work with consumers and representative organisations to achieve better outcomes in the provision of essential services.

WACOSS has direct access to the issues of low-income and disadvantaged consumers through our Consumer Reference Group, which includes representatives from the Emergency Relief sector, Unions, Financial Counsellors and Community Legal Centres. These agencies provide us with policy information and direction in relation to our work and look to us to represent the interests of their clients with regard to utility issues. We have taken on this role due to the level and severity of the utility issues being raised by community agencies and the absence of any other resourced body in Western Australia representing these issues.

WACOSS considers it important to respond to this public consultation on the Draft Electricity Compliance Reporting Manual.

EXECUTIVE SUMMARY

The WACOSS response to the Economic Regulation Authority (the Authority) Draft Electricity Compliance Reporting Manual (the Manual) should be considered within the broader context of our concerns for essential service provision and regulation in Western Australia.

WACOSS believes that in order to assess whether all Western Australians have access to safe, reliable, affordable electricity, regardless of their capacity to pay, it is vital that information pertaining to compliance reporting and performance indicators be readily available and that they sit together to paint an accurate picture of both performance and compliance in the electricity industry.

Access to timely, comprehensive data is fundamental to the policy and advocacy work WACOSS does to promote and safeguard the interests of consumers and we believe that access to current, accurate and comprehensive performance data is increasingly important in Western Australia's recently disaggregated market. As the energy market opens up, furthering the potential for greater competition to be introduced, we need to ensure that consumers are represented, considered and protected. To do this it is imperative that research, policy and advocacy work is underpinned by current reportable data from energy retailers.

With increased competition entering the electricity market it is also important that decision makers have access to performance monitoring data to enable them to make informed decisions. Western Australia needs to compile baseline data on the performance of utilities, which it can compare the newly disaggregated market against, and continue to monitor whether reforms are delivering improved outcomes for energy consumers in the future.

Our submission focuses both on the importance of performance monitoring and regulatory compliance and the importance of access to that information for consumers and consumer representatives.

In responding to the Authority's draft Manual we present a series of recommendations which we believe would benefit consumers and consumer representatives in an 'essential' services industry.

RECOMMENDATIONS

Recommendation 1

WACOSS recommends that the Authority publish all recordable and reportable information, Code Reporting, Compliance Reporting and National Performance Indicator Reporting, and make it available in a format that is easily accessed and understood by consumers.

Recommendation 2

WACOSS recommends that, as a matter of urgency, the Authority requests from electricity licensees the information that the Code requires them to record and make available on request.

Recommendation 3

WACOSS recommends that the Authority undertake a consultation process before making a decision to adopt National Performance Indicators and clarify what the adoption of this national framework will mean to the collection and publication of data. WACOSS also requests clarification on what the Authority's role will be.

Recommendation 4

WACOSS recommends that the Authority amends its classification of licence compliance requirements as Type 1, 2 and 3, to ensure that all breaches are reportable.

Recommendation 5

WACOSS recommends that the Authority makes transparent the applicable penalties for non-compliance.

Recommendation 6

WACOSS recommends that non-reportable breaches become reportable Type 3 breaches.

Recommendation 7

WACOSS recommends that Type 2 *Code of Conduct – Licence Conditions and Obligations* breaches are reportable every six months and that the remaining Type 2 breaches and previously non-reportable breaches are reportable every 12 months.

Recommendation 8

WACOSS recommends that the Authority request all information contained in Section 13 and in Clause 9:11 of the Code of Conduct on a regular half yearly basis and makes that data publicly available.

Recommendation 9

WACOSS recommends that the Authority, in its role as the regulatory power, provides a mechanism by which it can monitor potentially systemic breaches, such as a company's Internal Protocol being inconsistent with the Code.

OBLIGATION TO RECORD, REPORT AND MAKE AVAILABLE PERFORMANCE MONITORING AND COMPLIANCE INFORMATION

WACOSS believes that performance monitoring and compliance reporting is vital in what is undeniably an essential industry and commends the Economic Regulation Authority (Authority) on its draft Electricity Compliance Manual. However we believe that it is also vital for consumers and consumer advocates to have access to information pertaining to the monitoring of performance of utilities and call for the Authority to request and make publicly available all identified performance monitoring and compliance information.

Consumer representatives have frequently advocated the need for regulators in the electricity market to regularly assess the performance of retailers¹ and the need to make the results of any such assessment publicly available. WACOSS believes that in a newly disaggregated market access to up to date, accurate and comprehensive data is more important than ever before.

WACOSS is concerned that there appears to be a vacuum of data about household energy consumption, the proportion of household income spent on utilities, customer service and complaints, the number of consumers in financial hardship and on payment plans, statistics on connections, disconnections and reconnections, and many other energy related issues vital to research and policy work.

We believe this information is vital for policy and advocacy work and as a means of ensuring consumers are able to make informed choices in a competitive essential services market. We also believe that it is important that all reported data is available in a format that is accessible and easily understood by consumers.

Recommendation 1

WACOSS recommends that the Authority publish all recordable and reportable information, Code Reporting, Compliance Reporting and National Performance Indicator Reporting, and make it available in a format that is easily accessed and understood by consumers.

WESTERN AUSTRALIAN REPORTING FRAMEWORK

The Western Australian *Code of Conduct for the supply of electricity to small use customers (Code)*, has required since 1 January 2005, that utilities record and make available on request to the Authority a list required information. Section 13.11 of the Code, *Provision of Records to Authority*, requires that a retailer “*must give to the Authority on request information within the scope of the request that the Code requires them to keep and that they have relating to compliance with the Code*”².

¹ For example see the Consumer Utilities Advocacy Centre’s response to the Ministerial Council on Energy’s Issues Paper 2004, Section 5: Licensing *Recommendation 11*.

² *ibid* Clause 13.11

PART 13—RECORD KEEPING

Division 1—General

13.1 Records to be kept

Unless expressly provided otherwise, a **retailer**, **distributor** or **marketer** must keep a record or other information that a **retailer**, **distributor** or **marketer** is required to keep by the **Code** for at least 3 years from the last date on which the information was recorded.

Division 2—Obligations particular to retailers

13.2 Affordability and access

- (1) A **retailer** must keep a record of the total number of its **customers** who—
- (a) have been assessed as experiencing **financial hardship**;
 - (b) are subject to an installment payment plan under Part 6;
 - (c) have been granted additional time to pay their bill under Part 6;
 - (d) have been placed on a shortened **billing cycle**;
 - (e) have been disconnected in accordance with clauses 7.1 to 7.3 for failure to pay a bill;
 - (f) have been reconnected at the same **supply address** within 30 days of having been disconnected for failure to pay a bill; and
 - (g) have provided a **refundable advance**.

(2) In this clause “**refundable advance**” means a payment made to secure the connection or reconnection of supply of electricity and which is refundable.

13.3 Customer complaints

- (1) A **retailer** must keep a record of—
- (a) the total number of **complaints** received; and
 - (b) the total number of—
 - (i) *billing and account complaints*;
 - (ii) *customer transfer complaints*;
 - (iii) *marketing complaints*;
 - (iv) *connection complaints*;
 - (v) *disconnection complaints*;
 - (vi) *reconnection complaints*; and
 - (vii) *other complaints*.

[Note: clause 9.11 also provides for the recording of pre-payment meter complaints.]

- (c) the action taken by a **retailer** to address a **complaint**; and
- (d) the time taken for a **complaint** to be concluded.

(2) In this clause “**billing and account complaint**” means a **complaint** relating to the account. This includes, but is not limited to, difficulty in paying accounts, overcharging, prices, payment terms and methods, and debt recovery procedures. “**customer transfer complaint**” means a **complaint** relating to the transfer of a **customer** from one **retailer** to another **retailer**. This includes, but is not limited to, **customer** consent or delays in the transfer process. “**marketing complaint**” means a **complaint** relating to a **retailer’s** action in seeking to sign up a prospective **customer**. This includes, but is not limited to, the nature of the approach or conduct, contract details, **customer** consent and adherence to the contract **cooling-off period** requirements.

13.4 Compensation payments

A **retailer** must keep a record of the total number of payments made under

- (a) clause 14.2;
- (b) clause 14.3; and
- (c) clause 14.4.

13.5 Supporting information

- (1) A **retailer** must keep a record of the total number of—
- (a) residential accounts; and

(b) business accounts, held by its **customers**.

Division 3—Obligations particular to distributors

13.6 Connections

A **distributor** must keep a record of—

- (a) the total number of **customer** connections established; and
- (b) the total number of **customer** connections not established—
 - (i) within a period prescribed under the **Code** or an enactment under Part 3 of the **Act**, or
 - (ii) by a date agreed with the **customer**.

13.7 Timely repair of faulty street lights

(1) A **distributor** must keep a record of—

- (a) the number of street lights reported faulty each month;
- (b) the number of occasions that the **distributor** failed to repair a faulty street light within—

- (i) 5 **business days** for the **metropolitan area**; and
- (ii) 9 **business days** for the **regional area**; and
- (c) the average number of days to repair faulty street lights.

(2) For the purpose of subclause (1), the number of days taken to repair a street light is counted from the date of notification.

13.8 Customer Complaints

A **distributor** must keep a record of—

- (a) the total number of **complaints** received; and
- (b) the total number—
 - (i) reliability of supply **complaints**;
 - (ii) quality of supply **complaints**;
 - (iii) street lighting **complaints**;
 - (iv) network assets **complaints**;
 - (v) network charges and costs **complaints**;
 - (vi) administrative processes or customer service **complaints**; and
 - (vii) other **complaints**.
- (c) the action taken by a **distributor** to rectify a **complaint**, and
- (d) the time taken for a **complaint** to be rectified.

13.9 Compensation payments

A **distributor** must keep a record of the total number of payments made under—

- (a) clause 14.5; and
- (b) clause 14.6.

13.10 Supporting information

A **distributor** must keep a record of the total number of connections.

Division 4—Provision of records to Authority

13.11 Provision of records to Authority

A **retailer**, **distributor** or **marketer** must give to the **Authority** on request information within the scope of the request that the **Code** requires them to keep and that they have relating to compliance with the **Code**.

The stated object of this information is to “**establish a base of information on the conduct of the retail and distribution market**”.³ It is important information and yet, to date we are unaware of any reporting made, or request for it from the Authority.

³ *ibid* Part 13

The collection of the above information from retailers, by a regulator, is essential for monitoring and enforcing compliance with the regulatory framework of the market. WACOSS considers information collection a critical role for the Authority. It would not only assist the Authority to monitor compliance, but also to communicate confidence to the community that reports of this nature are an important means by which to inform the public about the quality of customer service provided by their retailer, particularly as competition is introduced to the market⁴

WACOSS is concerned that in Western Australia there has been a vacuity of reporting made available by electricity licensees since 1 January 2005. We believe that this illustrates a necessity to ensure, through the request of Code reporting and compliance reporting data by the Authority, effective data management of electricity licensees particularly in light of Western Power's restructuring and the subsequent emergence of Synergy and Horizon Power.

Recommendation 2

WACOSS recommends that, as a matter of urgency, the Authority requests from electricity licensees the information that the Code requires them to record and make available on request.

ALTERNATIVE REPORTING FRAMEWORK

WACOSS understands that the Authority intends to adopt the Steering Committee on National Regulatory Reporting Requirements (SCONRRR) National Energy Retail Performance Indicators Reporting guidelines as a means of performance indicator reporting in Western Australia.

Whilst WACOSS supports national regulatory reporting we are concerned that the process of national reporting and the relationship of national reporting to the reporting responsibilities of the Authority is unclear. In addition we are concerned that the Authority has not undertaken appropriate consultation on its intention to adopt the national framework. It is our understanding that *"each jurisdictional regulator is required to go through a formal consultation process before changing jurisdictional information requirement guidelines"*⁵ and while the National Energy Retail Performance Indicators Discussion Paper was posted on the ERA website in March it was done so as a stand alone document. The fact that there were no comments or submissions on the Discussion Paper from Western Australia, and the deadline has now passed, illustrates that the consultation was insufficient.

WACOSS seeks further clarification as to whether there will be a consultation process before the decision to adopt National Performance Indicators is taken and what the adoption of this national framework will mean to the collection and publication of data and the Authority's role.

⁴ WACOSS Submission to the Economic Regulation Authority Draft Electricity Retail Licence & Draft Electricity Generation Licence. May 2005.

⁵ National regulatory reporting for electricity distribution and retailing businesses. Utility Regulators Forum Discussion paper. March 2002. P.27

As WACOSS understands it, it is the role of the regulator to collect data on a proposed set of harmonized indicators.

*Rather than create a single national database with all of the regulatory information from every jurisdiction, **the Steering Committee has decided that each jurisdiction should publish its own information in a nationally consistent format.** Accordingly, a standard template has been prepared which will be adopted by each jurisdiction and presented on their website. Interested parties will be able to download information from all jurisdictional websites for comparison and analysis⁶*

Given that SCONRRR have identified that it is the role and responsibility of the Regulator to make a decision on the interpretation and publication of the National Performance Indicator data⁷ WACOSS requests that the Authority identifies the nature of that report, the intended reporting timelines and where consumers and consumer representatives might be able to access the published data and report by the regulator. Regulators such as the ESC and the ESCOSA have made this information publicly available on their websites and WACOSS hopes that the Authority, in line with current best practice, will do so also.

Recommendation 3

WACOSS recommends that the Authority undertake a consultation process before making a decision to adopt National Performance Indicators and clarify what the adoption of this national framework will mean to the collection and publication of data. WACOSS also ask for clarification on what the Authority's role will be.

APPROPRIATNESS OF THE REPORTING ARRANGEMENTS

WACOSS appreciates that exception-based reporting methods may be the most practical method of reporting non-compliance in the electricity industry and supports the Authority's efforts to distinguish between types of breaches and severity of breaches.

WACOSS considers that the consumer interest would be best protected by ensuring that all breaches are reportable, regardless of whether they are perceived to have a "*non-material impact on regulatory policy objectives and/or there are other mechanisms whereby the Authority will become aware of the breach*"⁸ and recommend that amendments be made whereby all breaches become reportable and be categorised as Type 1, 2 and 3 breaches.

Recommendation 4

WACOSS recommends that the Authority amends its classification of licence compliance requirements as Type 1, 2 and 3, to ensure that all breaches are reportable.

⁶ National regulatory reporting for electricity distribution and retailing businesses. Utility Regulators Forum Discussion paper. March 2002

⁷ National regulatory reporting for electricity distribution and retailing businesses. Utility Regulators Forum Discussion paper. March 2002

⁸ Draft Electricity Compliance Reporting Manual

Another concern WACOSS has, in relation to the appropriateness of the reporting arrangements, is the lack of transparent penalties for breaches. WACOSS believes that applicable penalties are a deterrent to non-compliance.

WACOSS considers that transparent and corresponding penalties for breaches are in the interest of consumers, retailers and the public good.

Recommendation 5

WACOSS recommends that the Authority makes transparent the applicable penalties for non-compliance.

TIMEFRAME TO REPORT EACH LICENCE OBLIGATION

WACOSS supports the arrangement of the Draft Electricity Compliance Reporting Manual and the way the Authority has distinguished between Type 1 and Type 2 Breaches. However, we believe that all breaches should be reportable and that licensees should be held accountable for non-compliance.

Recommendation 6

WACOSS recommends that non-reportable breaches become reportable Type 3 breaches.

WACOSS considers it appropriate for the statistical data maintained in such records to be reported to the Authority on a regular basis and believes that annual reporting of *Type 2 Code of Conduct – Licence Conditions and Obligations* breaches cannot accurately inform consumers and consumer representatives.

Recommendation 7

WACOSS recommends that *Type 2 Code of Conduct – Licence Conditions and Obligations* breaches are reportable every six months and that the remaining Type 2 breaches and previously non-reportable breaches are reportable every 12 months.

Section 13.11 *Provision of Records to Authority*, requires that a retailer “*must give to the Authority on request information within the scope of the request that the Code requires them to keep and that they have relating to compliance with the Code*”.⁹ WACOSS believes that the Authority should, in accordance with the powers bestowed upon them, request all information identified in Section 13 and in Clause 9:11 of the Code on a regular half yearly basis. WACOSS believes that this is important, at least in the early stages, as we establish a base of information on the energy market and are confident that recording and reporting are occurring and being made accessible to decision makers.

⁹ *ibid* Clause 13.11

Recommendation 8

WACOSS recommends that the Authority request all information identified in Section 13 and in Clause 9:11 of the Code of Conduct on a regular half yearly basis and makes that data publicly available.

COMPLETENESS OF THE LICENCE CONDITIONS AND OBLIGATIONS AS IDENTIFIED

WACOSS understands that the Authority has placed priority on developing a compliance culture with the framework of the Draft Electricity Compliance Reporting Manual but it is our concern that, for a number of reasons, breaches may not be self-reported by licensees. WACOSS seek clarification from the Authority as to the means by which they would become aware of breaches that may not be self reported.

Through the Consumer Utilities Project Hotline¹⁰ WACOSS are aware of possible breaches occurring that we are concerned would not be self reported due to inconsistencies and differences in interpretation of the code, and the internal protocols of an electricity provider.

Numerous case studies reported through the hotline, such as the one below, indicate the need for mechanisms by which the Authority can monitor potentially systemic breaches.

Case Study

Three young people were house sharing. One of the residents left and settled the account and the other two continued to use electricity, accrued a \$300 debt and were disconnected. Realising their mistake in not making contact as soon as the account holder had left, one of the residents attempted to establish an account and reconnect in his name. The retailer refused to provide a connection unless all tenants became account holders, believing another resident had an historical debt. These residents were without power for a considerable amount of time due to an internal policy which states that all residents must be on the bill, despite the code stating that A *“retailer must not recover or attempt to recover a debt relating to a **supply address** from a person other than the **customer** with whom the **retailer** has or had entered into a contract for the supply of electricity to that **customer’s supply address**”¹¹.*

This case study is consistent with numerous others reported through the hotline. WACOSS is concerned that the electricity retailer was in effect trying to recover one customer’s debt from a person they had had no prior contract with. WACOSS believes that the Internal Protocol of the energy provider breaches the code. However, we feel it is a breach that would not be self-reported as the company, by virtue of interpretation and their Internal Protocol, does not regard it as a breach.

¹⁰ The project operates a telephone hotline to provide advice and assistance to consumers and consumer representatives on Utility issues.

¹¹ ibid Clause 5.8 Debt collection (3)

Recommendation 9

WACOSS recommends that the Authority, in its role as the regulatory power, provides a mechanism by which it can monitor potentially systemic breaches, such as a company's Internal Protocol being inconsistent with the Code.

CONCLUSION

WACOSS aims to represent and advocate the interests of consumers in the reformed electricity market, in particular through its Consumer Utilities Project. It is in this capacity that WACOSS is interested in commenting on the Draft Electricity Compliance Reporting Manual.

WACOSS believes the draft manual should be improved as a framework for compliance in the industry. The consumer interest would be better served if the manual more clearly identified the relationship between the Compliance Reporting, Code obligations to record and report and SCONRRR's National Performance Indicators.

The Compliance Reporting Manual provides an opportunity for the ERA to monitor compliance and ensure that the market is operating in accordance with regulations. However, WACOSS also believes that it is vital that reported non-compliance information sits with performance indicator monitoring data, including the current Code obligations to record and report and the potential future obligations of National Performance Indicator reporting, so that a comprehensive picture is painted of both performance and compliance in the electricity industry.

WACOSS believes that it is important that all reported information is collected in a timely manner and made available to consumers and consumer representatives in an accessible and easily understood format.

We are hopeful that the ERA gives due consideration to the recommendations made in this submission and that they assist in the development of the Electricity Compliance Reporting Manual.

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Mr Paul Kelly
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1 September 2006

Dear Mr Kelly,

WACOSS Submission to Draft Electricity Compliance Reporting Manual

The Western Australian Council of Social Service (WACOSS) is happy to be able to provide a submission to the Economic Regulation Authority (ERA) Draft Electricity Compliance Reporting Manual.

WACOSS is pleased that the ERA is undergoing consultation on the development of the manual and would welcome an opportunity to discuss our recommendations, should you wish to do so.

For further information please contact our Senior Policy Officer, Ms Rebekah Garwood on (08) 9420 7222.

Yours sincerely,

Lisa Baker
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