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## **Protecting the Energy Consumer: The Electricity Legislation Amendment and Repeal Bill 2001 (Qld)**

*The Electricity Legislation Amendment and Repeal Bill 2001 was introduced into the Queensland Legislative Assembly on 8 November 2001. A central issue of the Bill is the establishment of the Energy Consumer Protection Office under the Ministerial responsibility of the Treasurer. The establishment of the Office will be facilitated by the repeal of the Electricity Amendment (No 3) Act 1997. Part 1B of the 1997 Amendment Act established the Electricity Industry Ombudsman but its commencement was postponed until 1 January 2002 by the Statute Law (Miscellaneous Provisions) Act 2000. Research Brief 34/01 discusses the need for consumer protection in the electricity industry, outlines key provisions of the Electricity Legislation Amendment and Repeal Bill 2001 (Qld), and describes dispute resolution schemes for the electricity industry in force in New South Wales, Victoria, South Australia and Tasmania.*

**Wayne Jarred**

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**Research Publications and Resources Section**

Ms Mary Seefried, Director	(07) 3406 7116
Ms Karen Sampford, Research Publications Officer	(07) 3406 7310
Mr Wayne Jarred, Senior Parliamentary Research Officer	(07) 3406 7422
Ms Nicolee Dixon, Parliamentary Research Officer	(07) 3406 7409
Ms Cathy Green (part time), Parliamentary Research Officer	(07) 3406 7641

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Inquiries should be addressed to:

Director, Research Publications & Resources

Queensland Parliamentary Library

Parliament House

George Street, Brisbane QLD 4000

Director: Ms Mary Seefried. (Tel: 07 3406 7116)

Email: [Mary.Seefried@parliament.qld.gov.au](mailto:Mary.Seefried@parliament.qld.gov.au)

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## 1 INTRODUCTION

The Electricity Legislation Amendment and Repeal Bill 2001 was introduced into the Queensland Legislative Assembly on 8 November 2001. A central issue of the Bill is the establishment of the Energy Consumer Protection Office under the Ministerial responsibility of the Treasurer. The establishment of the Office will be facilitated by the repeal of the *Electricity Amendment (No 3) Act 1997*.<sup>1</sup> Part 1B of the 1997 Amendment Act established the Electricity Industry Ombudsman but its commencement was postponed until 1 January 2002 by the *Statute Law (Miscellaneous Provisions) Act 2000*.

The Queensland electricity generating sector experienced a 12% increase in demand (the largest in Australia) in 1997/1998, largely due to an expansion in aluminium smelting capacity.<sup>2</sup> Between 1973 and 1999, Queensland recorded the highest increase in electricity demand of any Australian State with an annual growth rate of 6.8% with demand from the manufacturing and commercial sectors leading the way.<sup>3</sup>

For the period 1999-2000 the cost of electricity in Queensland fell. Wholesale electricity prices decreased in Queensland whilst in New South Wales, Victoria and South Australia they increased. In Queensland a 20% wholesale price reduction occurred, falling from approximately \$63 per Megawatt Hour to approximately \$50 per Megawatt Hour. This flowed on to the retail consumer who enjoyed a 5% reduction in price.<sup>4</sup>

Nationally, the industry sector consumes 47% of generated electricity, with the residential sector consuming 28%, the commercial sector 22% whilst the agricultural and transport sectors consume 3% of the total generated output.<sup>5</sup> With the residential and commercial sectors (many of whom are small businesses) accounting for approximately 50% of the generated output, it is important that an authoritative procedure that allows consumer

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<sup>1</sup> **Clause 21** of the Electricity Legislation Amendment and Repeal Bill 2001 (Qld) repeals the *Electricity Amendment Act (No 3) 1997*.

<sup>2</sup> 'Electricity Australia 1999', *Australian Energy News*, September 1999, pp 8-11, p 10.

<sup>3</sup> 'Electricity: Engine Room of the Economy', *Australian Energy News*, September 2000, pp 16-19, p 18.

<sup>4</sup> 'Electricity Australia 2001', *Australian Energy News*, September 2001, pp 12-14, p 13.

<sup>5</sup> *Australian Energy News*, September 2001, pp 12-14, p 13.

complaints to be addressed be put in place. To the consumer, government accountability is about the seeking of information and redress<sup>6</sup> and this is occurring in a world where the distinction between public enterprise and private enterprise service provision has narrowed with a rising perception that citizens are also consumers and clients.<sup>7</sup>

The delivery of services to the public within this environment must be translated into an operational context where the service provider is seen to be accountable to the consumer but this may be impeded by an absence of incentives to satisfy consumer expectation. Within the managerial environment there have been a number of measures introduced to ensure that service providers become more client or customer focused in service delivery. In this regard, measures such as contracting out public service provision to private service providers, corporatisation and privatisation have all been introduced to some degree across various public services.

The right of the public to expect explanations and seek remedies is central to the notion of accountability. It is this expectation of accountability on the part of the general public in the face of an increasing variety of public services being provided by agencies that are no longer under the direct control of government that brings with it new demands on government for consumer protection. These new demands are being met by such entities as ombudsmen who are being given more purchase over statutory authorities and private sector agencies.<sup>8</sup>

An important object of the *National Electricity Code* is the provision of a cost-effective framework for dispute resolution and this is being duplicated in the codes of the various States.

This is an important issue that has been addressed in other States and is now being implemented in Queensland through the *Electricity Legislation Amendment and Repeal Bill 2001*.

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<sup>6</sup> Richard Mulgan and John Uhr, 'Accountability and governance', in *Are You Being Served?: State, Citizens and Governance*, Glyn Davis and Patrick Weller (eds), Allen and Unwin, 2001, pp 152-174, p 153.

<sup>7</sup> Glyn Davis, 'State, citizens and governance', in *Are You Being Served?: State, Citizens and Governance*, Glyn Davis and Patrick Weller (eds) Allen and Unwin, 2001, pp 1-6, p 6.

<sup>8</sup> Mulgan and Uhr, p 170.

## 2 THE NATIONAL ELECTRICITY MARKET

The Special Premiers' Conference held in Brisbane during October 1990 established a working group to report on the feasibility of establishing a national electricity market.<sup>9</sup> The following year the Industry Commission released a report on the introduction of a nationally competitive electricity market.<sup>10</sup> This was followed two years later by the Hilmer Report on National Competition Policy,<sup>11</sup> the recommendations of which resulted in the signing of the agreement to implement the national competition policy and related reforms.<sup>12</sup>

In May 1996 three inter-governmental agreements were signed by Queensland, New South Wales, Australian Capital Territory, Victoria and South Australia in preparing for the establishment of a national electricity market. The three agreements were:

- NEM Legislation Agreement whereby the signatories agreed to enact cooperative legislation to establish the force and effect of the National Electricity Code with South Australia as the lead legislator; and
- National Electricity Code Administrator (NECA) Members Agreement, allowing for the creation of NECA as a company limited by guarantee with the signatory jurisdictions comprising the membership of NECA with equal voting rights; and
- National Electricity Market Management Company Ltd (NEMMCO) Members Agreement, allowing for the creation of NEMMCO as a company limited by guarantee with the signatory jurisdictions comprising the membership of NEMMCO with equal voting rights.<sup>13</sup>

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<sup>9</sup> Australia. Special Premiers' Conference, *Communique Towards a Closer Partnership*, Brisbane 30/31 October 1990, Special Premiers' Conferences Secretariat, Policy Co-ordination Division, Department of the Premier, Economic and Trade Development.

<sup>10</sup> Australia. Industry Commission, *Energy Generation and Distribution*, AGPS, 1991.

<sup>11</sup> Australia. Independent Committee of Inquiry into National Competition Policy, Inquiry Chairman Frederick G Hilmer, Canberra 1993.

<sup>12</sup> Agreed to by the Council of Australian Governments on 11 April 1995.

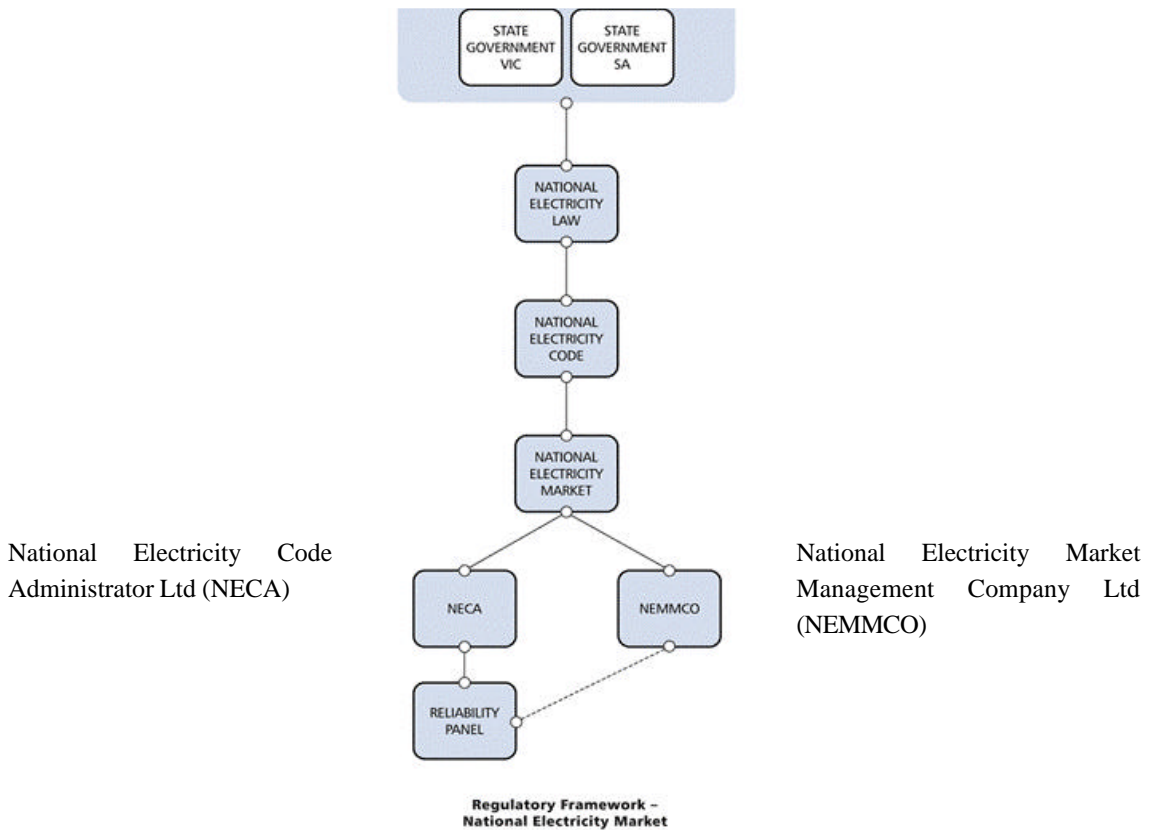
<sup>13</sup> South Australia. National Electricity Market Task Force, *Final Report*, 29 June 2001, p 2-2. <<http://images.google.com/imgres?imgurl=www.treasury.sa.gov.au/nem/images/premier.jpg&imgrefurl=http://www.treasury.sa.gov.au/nem/&h=103&w=99&prev=/images%3Fq%3Delectricity%2Bsouth%2Baustrialia%26start%3D20%26num%3D20%26hl%3Den%26sa%3DN>> Downloaded 20 November 2001.

The NEM Legislation Agreement committed the jurisdictions to enact legislation that would give effect to the National Electricity Code.<sup>14</sup> As consequence of this agreement, Queensland enacted the *Electricity – National Scheme (Queensland) Act 1997*. The National Electricity Code covers entry into the national electricity market and its operation and forms an access regime under the *Trade Practices Act 1974*. The National Electricity Code was tabled in the Legislative Assembly on 30 April 1997 by the then Minister for Mines and Energy, Hon TJG Gilmore MP.

In 1997 the State based markets of New South Wales and Victoria were combined to form the first stage of NEM. In December 1998 the full NEM began with New South Wales, Victoria and South Australia being interconnected, with Queensland remaining a distinctly separate market. Queensland officially interconnected into the NEM in 2000. It is planned that Tasmania will connect to the grid in September 2003.<sup>15</sup> **Diagram 1** contains a representation of the institutional stakeholders in the national electricity market.

**DIAGRAM 1: ‘REGULATORY ARRANGEMENTS’ IN AN INTRODUCTION TO AUSTRALIA’S NATIONAL ELECTRICITY MARKET, NEMMCO, NOVEMBER 2001:**

<http://www.nemmco.com.au/publications/whitebook/regulatory.htm>



<sup>14</sup> Mark Skulley, ‘National power grid plan moves one step closer’, *Australian Financial Review*, 10 May 1996, p 8.

<sup>15</sup> South Australia. National Electricity Market Task Force, *Final Report*, p 2-2.



The Reliability Panel was established by NECA under the National Electricity Code. It determines power systems security and reliability standards.

The major State regulatory bodies in Queensland are:

- Office of Energy, Queensland Treasury
- Queensland Competition Authority.

### **3 STRUCTURE OF THE QUEENSLAND ELECTRICITY INDUSTRY**

The introduction of competition meant the restructuring of the industry whereby the historical vertical integration of State-owned and run entities would be corporatised and new private sector entities would be allowed into the market. The industry in Queensland has seen such structural changes in recent times.

The electricity industry in Queensland consists of different entities responsible for generation, transmission, distribution and retail supply. Major changes to the structure of the industry occurred in 1995 when the Queensland Electricity Commission was divided into two government-owned corporations known as the Queensland Generation Corporation (the entity responsible for electricity generation) and the Queensland Government Transmission and Supply Corporation (the entity responsible for transmission, distribution and retail supply). This restructuring in 1995 also left the Queensland Electricity Transmission Corporation responsible for seven other entities that supplied low voltage distribution and retailing across the State.

Further restructuring in 1997 resulted in the Queensland Generation Corporation being devolved into three separate generating entities owned by the State government.<sup>16</sup> These were CS Energy, Stanwell Corporation and Tarong Energy Corporation. At that time, these three entities accounted for the generation of approximately 75 % of the total State electricity output.<sup>17</sup>

In July 1997 the Queensland Electricity Transmission Corporation was corporatised along with the seven distribution entities, making all of them independent government businesses. This change also coincided with the separation of the hitherto twin functions of distribution and retailing. The retail function is now subject to franchises that are

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<sup>16</sup> *Electricity Amendment Act 1997 (Qld)*.

<sup>17</sup> A Dickson and S Warr, 'Profile of the Australian Electricity Industry', Australian Bureau of Agricultural and Resource Economics, *Research Paper* 2000.7, p 54.

operated by Omega Energy (as the northern retailer), Ergon Energy (as the central retailer) and Energex (as the southern retailer).

This situation altered further in February 1998 when Ergon and Omega were merged into the one entity known as Ergon Energy.

#### **4 THE NEED FOR CONSUMER PROTECTION IN THE ELECTRICITY INDUSTRY**

At a general level, complaints from consumers about electricity services are an excellent source of information about the standard of the service being provided. Information gained provides a solid foundation for the establishment and improvement of industry standards. More specifically, a specialist dispute resolution mechanism that is appropriately resourced is essential for the advancement of the interests of consumers.

The rationale for the establishment of a low cost independent dispute mechanism revolves around the unequal relationship that exists between service providers and consumers. Electricity consumers are at an informational disadvantage compared to the companies providing the electricity service. Because electricity is an essential commodity, consumers are not able to refuse service. Consequently, this leaves them with a very limited bargaining power. There is also the cost of recourse to existing formal legal avenues which acts as a deterrent for consumers.

There are a number of principles upon which any dispute resolution process should be based:

- Independence
- Accessibility
- Effectiveness
- Cost-effectiveness; and
- Jurisdictional clarity.<sup>18</sup>

The Office of the Energy and Water Ombudsman of New South Wales reported that, at the beginning of its operations, the possible magnitude of the level of customer complaints could not be predicted and that in fact it took approximately 12 months before the extent

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<sup>18</sup> New South Wales. Treasury, 'Full Retail Contestability: Dispute Resolution for Small Business and Domestic Customers', *Discussion Paper*, June 2000, pp 5-6.

of the need for independent dispute resolution for the electricity industry became apparent.<sup>19</sup>

In its first three years of operation to June 2001, the New South Wales Energy and Water Ombudsman's Office received (on average) 290 complaints per month.<sup>20</sup> That office can investigate complaints concerning disputed accounts, disconnections and supply restrictions, service provider actions affecting the property of consumers and delays in connection and quality of supply.

## 5 THE ENERGY CONSUMER PROTECTION OFFICE

**Clause 5** of the Electricity Legislation Amendment and Repeal Bill 2001 (Qld) repeals the current **s 64AA** of the *Electricity Act 1994* and inserts **proposed new s 64A** which provides for the striking of an annual levy to provide for the funding of the Energy Consumer Protection Office in settling disputes between electricity entities and between electricity entities and others, and compliance monitoring of such things as conditions of authorities, approvals and licences. The annual levy that is to be struck will be composed of a membership fee, a contribution fee and a user-pays fee, all as separate components of the total.

**Clause 6** of the Bill inserts **proposed new s 64G** into the *Electricity Act 1994* which provides for the appointment of energy mediators by the industry regulator. Any such appointed energy mediator may conduct mediation meetings between parties to disputes that arise between electricity entities and customers concerning the performance of a function or exercise of a power that does not otherwise fall within the authority of the Energy Consumer Protection Office.

This provision is similar to a provision contained in the *Electricity Amendment Act 2000* whereby the Minister (**under s 64S**) was authorised to appoint suitably qualified and experienced persons to be energy arbitrators. **Clause 7** of this current Bill further amends **s 64S** by substituting the industry regulator for the Minister.

Generally, the industry regulator may only appoint persons to be mediators who are holders of qualifications issued by the Institute of Arbitrators and Mediators, Australia:

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<sup>19</sup> New South Wales. Energy Industry Ombudsman, *EIO News*, June 1999, Issue 1, p 2. <[www.eionsw.com.au](http://www.eionsw.com.au)> Down loaded 13 November 2001.

<sup>20</sup> New South Wales. Energy and Water Ombudsman, *EWO News*, June 2001, Issue 4, p 4. <[www.eionsw.com.au](http://www.eionsw.com.au)> Down loaded 13 November 2001.

**proposed new s 64G(2)(a).**<sup>21</sup> However, persons without such qualifications may still obtain an appointment as a mediator if the industry regulator considers that they have other qualifications and experience that would enable them to appropriately perform the functions of a mediator: **proposed new s 64G(2)(b).**

**Clause 11** amends s 119 to provide for disputes to be referred to the industry regulator who may in turn refer the dispute to an energy mediator if the customer or occupier to the dispute requests such a referral. Customers or occupiers in a dispute with an electricity entity may request the industry regulator to refer their disputes to an energy arbitrator whether or not the matter has previously been referred to an energy mediator. This is a request that the industry regulator must comply with. Alternatively, without any such request having been received from a customer or occupier of land, the industry regulator is to refer the dispute to an energy arbitrator if the whole of the dispute has not been successfully resolved through mediation.

**Clause 11** will not prevent parties to a dispute from exercising an existing right to take the matter before a court or tribunal. This is in line with the legislation in other States.

**Clause 12** inserts **proposed new Chapter 5, Part 1B (ss 120ZD to 120ZO)** which prescribes the manner in which the energy mediator is required to bring the parties together for mediation of the dispute. These provisions provide for procedures that are standard in attempts at mediation of disputes generally. Issues covered by these sections are:

- Parties to the dispute be given written notice of the industry regulator's referral of the dispute to mediation: **proposed new s 120ZE**
- Mediator to disclose any conflict of interest that may preclude he/she from involvement in the mediation of the dispute: **proposed new s 120ZF**
- Parties to conduct their own case at the mediation proceedings unless the mediator agrees to the appearance of an agent on behalf of a party or parties: **proposed new 120ZG**
- Parties to bear their own cost of conducting their case: **proposed new 120ZH**
- The mediator is not to make a decision or judgment but must assist the parties to reach an agreement that will resolve the dispute: **proposed new 120ZI**

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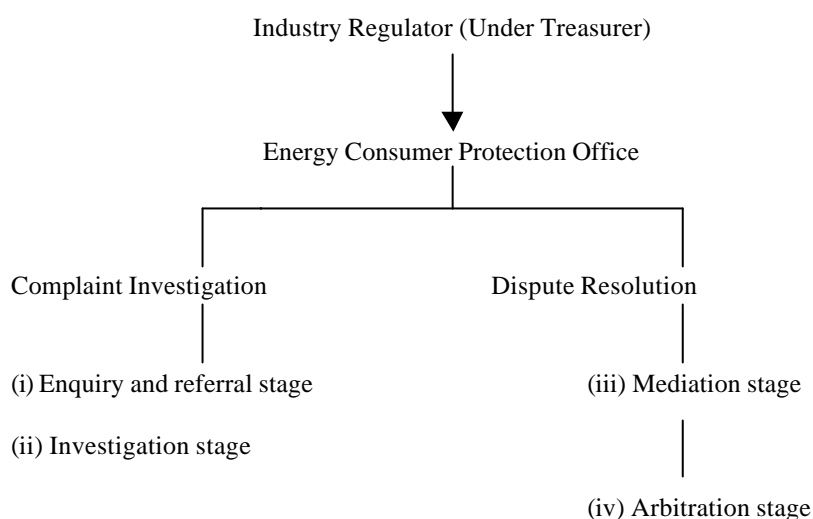
<sup>21</sup> The Institute of Arbitrators and Mediators Australia was established in 1975 as a not-for-profit organisation. Its membership encompasses professionals from such areas as accounting, law, engineering, architects and building consultants. The Institute's aim is to promote the settlement of disputes by methods including arbitration, mediation and conciliation. It offers accreditation courses with an ongoing program of professional training, see: <<http://www.instarb.com.au>>.

- The mediator is to maintain secrecy about the dispute unless authorised by the *Electricity Act* or another Act or unless there is agreement of all parties to the dispute: **proposed new 120ZJ**
- Any admissions made by a party to a mediator appointed to a dispute are admissible at any subsequent arbitration provided all the parties agree to that admissibility: **proposed new 120ZL**
- Any agreement reached must be reduced to writing to be signed by all the parties: **proposed new 120ZM**
- The Energy Mediator must notify the industry regulator as to the outcome of the mediation and supply that office holder with a copy of any agreement reached: **proposed new 120ZO**.

**Clause 14** omits the current s 120ZZB of the *Electricity Act 1994* which provides for the referral of disputes to energy arbitrators by the industry regulator. This omission is necessary as **clause 11** inserts **proposed new s 119(6)** which will provide for the circumstances under which the industry regulator must refer a dispute to arbitration.

**Clause 17** amends s 120ZZH, thereby allowing energy arbitrators to issue orders against electricity entities carrying a monetary value of up to \$20,000 which is double the current value of \$10,000.

**DIAGRAM 2: FLOWCHART OF INSTITUTIONAL ARRANGEMENTS FOR THE PROTECTION OF ELECTRICITY CONSUMERS**



## **6 QUEENSLAND COMPETITION AUTHORITY AND SERVICE QUALITY IN THE ELECTRICITY INDUSTRY**

The Queensland Competition Authority, established under the *Queensland Competition Authority Act 1997*, provides the Authority with the power to monitor service quality

standards of electricity entities. This is also the case under provisions of the *Electricity Act 1994*.

The Competition Authority monitors the quality of customer service provided by the distribution network service providers on such measurable issues as responsiveness and dependability, the level of complaints concerning new connections, street lighting and the level of complaints made to fault line call centres. The Competition Authority, in its 2001 final determination of the regulation of electricity distribution, has announced that it will require distribution network service providers to provide information concerning customer service within their accounting reports that will be used as a set of performance measures.<sup>22</sup>

In its determination, the Competition Authority indicated that it would adopt particular measures of customer service and would require service providers to keep data and report on those measures for the purposes of evaluation. The list of measures is reproduced in the **Appendix** to this Research Brief.

These measures could, individually, form the basis of further complaint by consumers against the service provider.

## 7 APPROACHES IN OTHER AUSTRALIAN STATES

### 7.1 NEW SOUTH WALES

**Section 96B(2)** of the *Electricity Act 1995* was inserted by the *Electricity Supply Amendment Act 2000*. It required all electrical retailers in New South Wales to join the approved Ombudsman's scheme for the resolution of consumer complaints. This requirement was made a condition of the licence to trade in electricity in New South Wales.

Under **s 96B(1)** of the *Electricity Supply Act 1995*, the electricity industry ombudsman may hear consumer complaints concerning customer connection and supply contracts between electricity marketers and small retail customers.

The scheme operates without cost to the consumer.

The functions of the Office do not include the setting of tariffs (which are matters for the Independent Pricing and Regulatory Tribunal); the content of government policies or

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<sup>22</sup> Queensland Competition Authority, *Regulation of Electricity Distribution: Final Determination*, May 2001, p 167.

legislation; customer contributions to the cost of capital works where those works are subject to a tender process, and any disputes between member entities of the scheme.

Sydney Water joined the dispute resolution scheme in 1999, resulting in a change of name from the Energy Industry Ombudsman to the Energy & Water Ombudsman NSW (EWON).<sup>23</sup> The Office is overseen by a Council that is made up of an independent chairperson, three industry representatives and three consumer representatives. There is also a Board, which includes the nominees of the six electricity distributors, and which approves the annual budget for the Office and staffing levels.

The Office employs seven full time Investigation Officers and eight casual Investigation Officers who are subject to the authority of the Investigations Manager and the Ombudsman. The Office also employs a Business Manager, a Senior Policy Officer, a Service Development Manager and an Administrative Officer.

In 1999/2000 the budget for the Office was \$1.440 million whilst in 2000/2001 the budget contained a total expenditure level of \$1.513 million.<sup>24</sup>

A break-up of the categories of the complaints received shows that concerns with billing in some form or another accounted for 67% of consumer contacts, 15% were concerned with customer service, 8% with supply, 4% with land and 3% with provision. Billing issues are arrears/disconnections, difficulties experienced in payment, disputes over the billing amount, errors in billing, and refusals to allow extensions of time to pay accounts.<sup>25</sup>

Generally, over 50% of all complaints are finalised within 2 days of receipt with approximately 70% being satisfied within 14 days and 80% within one month and over 90% within 3 months.<sup>26</sup>

When a consumer contacts the Office, they are asked if they have taken the matter up with the service provider and, if not, they are advised to do so in the first instance unless there are language or disability factors involved. The consumer is advised that if they are not satisfied with the service provider's response or have not been able to resolve the matter directly, they can call the Office again for assistance.

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<sup>23</sup> EWON News, May 2000, Issue 2, p 1. <[www.eionsw.com.au](http://www.eionsw.com.au)> Downloaded 22 November 2001.

<sup>24</sup> New South Wales. Energy and Water Ombudsman, *2000/2001 Annual Report*, p 36. <[http://www.ewon.com.au/publications/annual\\_reports/ann\\_rpt\\_2001.pdf](http://www.ewon.com.au/publications/annual_reports/ann_rpt_2001.pdf)> Downloaded 14 November 2001.

<sup>25</sup> New South Wales. Energy and Water Ombudsman, p 7.

<sup>26</sup> New South Wales. Energy and Water Ombudsman, p 7.

The Office of the Energy and Water Ombudsman accepts complaints from energy consumers either in writing or orally. The Office has reported that most (86% in 2000/2001) of the complaints are received by phone, encouraged by the freecall number service that is provided for consumers.<sup>27</sup>

Consumer complaints are categorised by the level of complexity involved. The four categories are:

- Enquiry stage: where the consumer is supplied with information and/or referred to another entity.
- Consultation stage: where the Ombudsman's Office contacts the electricity service provider.
- Complaints stage: where the matter cannot be resolved by consultation; and
- Dispute stage: where the Ombudsman makes a determination that is binding on the electricity service provider but not the consumer.

## 7.2 VICTORIA

The Victorian scheme initially only concerned the resolution of electricity complaints from consumers. In March 1999, the scheme was expanded to allow the receipt of consumer complaints concerning the supply of gas services.<sup>28</sup> This expansion also resulted in a name change from Electricity Industry Ombudsman (Victoria) Ltd to Energy Industry Ombudsman. There was a further expansion of the scheme in 2001 and a further name change to Energy and Water Ombudsman (Victoria) Ltd, with consumers of water services being able to lodge complaints with the office.<sup>29</sup>

In response to a recommendation of a review conducted into the scheme in 1996/1997, the separate Council and Board were amalgamated into one single Board. The single Board now comprises three consumer representatives, three industry representatives and

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<sup>27</sup> New South Wales. Energy and Water Ombudsman, p 7.

<sup>28</sup> Victoria. Electricity Industry Ombudsman, *Annual Report 1998-1999*, p 1. [http://www.eiov.com.au/pdfs/omb\\_ch.pdf](http://www.eiov.com.au/pdfs/omb_ch.pdf) Downloaded 15 November 2001.

<sup>29</sup> Victoria. Energy and Water Ombudsman, *Annual Report 2000*, <[http://www.eiov.com.au/pdfs/omb\\_ch.pdf](http://www.eiov.com.au/pdfs/omb_ch.pdf)> Down loaded 15 November 2001, p 2.



an independent chairperson. The rationale behind the merger was a more efficient streamlining of the scheme's governance.<sup>30</sup>

The Energy Industry Ombudsman, like his/her New South Wales counterpart, can make decisions in relation to consumer complaints that are binding on the member companies concerned. Decisions are not binding on the consumer, as to do so would transgress rights of redress through other avenues such as the courts. However, the number of binding decisions that are made are very small. For instance, in 1999/2000, there were only three such decisions made, two of which concerned electricity matters. However, binding decisions in certain circumstances are appealable in the Supreme Court. For instance, one electricity service provider appealed a binding decision of the Ombudsman on the grounds that the Ombudsman did not have jurisdiction over the issue concerned and that the power surge event that occurred could not have been reasonably controlled by the service provider.

The Victorian scheme allows for the naming of service providers who are the subject of complaints.<sup>31</sup> For instance, in the 1999/2000 Annual Report, the Energy Industry Ombudsman named one electricity provider as accounting for nearly 40% of all electricity complaints received.<sup>32</sup>

The scheme is funded by industry participants through three types of levies which are a start up levy, an annual levy and a special levy, with the latter being imposed when funding is required for a specific project such as market research. The annual levy is divided into a fixed fee to fund membership costs and a variable fee to fund the cost of handling consumer inquiries/complaints.

The office categorises consumer contact into inquiries, consultations, complaints and disputes. There were just over 4,500 consumer contacts in relation to electricity matters during 1999/2000. Inquiries are requests for information that do not involve investigation but may require referral and they are usually remedied within two days of receipt.

Consumer concerns with billing or account matters are generally categorised as consultations with a fourteen day timeframe for resolution. Consumer contacts that are categorised as complaints are relatively complex and require detailed investigation. Contacts over the supply of electricity are typical of complaints. Disputes, which evolve out of unresolved complaints, require the highest level of investigation and

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<sup>30</sup> Victoria. Energy and Water Ombudsman, *Annual Report 1998/1999*, p 5. <[http://www.eiov.com.au/pdfs/omb\\_ch.pdf](http://www.eiov.com.au/pdfs/omb_ch.pdf)> Down loaded 15 November 2001.

<sup>31</sup> Victoria. Energy Industry Ombudsman, *Annual Report 2000*, p 4.

<sup>32</sup> Victoria. Energy Industry Ombudsman, *Annual Report 2000*, p 1.

negotiation/conciliation. The timeframe for the resolution of disputes is ninety days from receipt.

During the 1999/2000 financial year consumer contacts concerning electricity billing accounted for 63% of all cases and electricity supply for 16%.<sup>33</sup> As is the case in other jurisdictions, consumer contact can be made with the office via the free call number. During 1999/2000, 97% of all contacts were initiated in this way.<sup>34</sup>

For the last two consecutive financial years (1998/1999 and 1999/2000) the cost of operating the scheme was \$1.7 million.<sup>35</sup> The office employs eight full-time Investigations Officers, which is similar to the number employed by its New South Wales counterpart, but the part-time investigation officers employed in New South Wales means that overall there is a higher level of human resource allocation in that State.

The Victorian Office expects that the nature of enquires from the general public will change after a fully contestable electricity market is introduced in 2002 with consumers wanting to clarify the options that are available to them.<sup>36</sup>

### 7.3 TASMANIA

The Electricity Ombudsman was established with the passing of the *Electricity Ombudsman Act 1998* which provides the Ombudsman with the power to receive, investigate, and resolve complaints: s 5. There is an obligation under the Act for the Ombudsman to act in the public interest in an independent and impartial manner: s 5(3).

Unlike New South Wales and Victoria, consumers must generally forward a signed written complaint to the Electricity Ombudsman before the grievance will be acted upon; however, under the Act unwritten complaints may be received and acted upon.

The Ombudsman may make awards of up to a monetary value of \$20,000 without the agreement of the electricity entity concerned but must have that entity's agreement for awards between \$20,000 and \$50,000: s 23.

Any award accepted by a complainant thereby becomes binding on the electricity entity concerned except for an appeal right to a court on a matter of law such as the

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<sup>33</sup> Victoria. Energy Industry Ombudsman, *Annual Report 2000*, p 24.

<sup>34</sup> Victoria. Energy Industry Ombudsman, *Annual Report 2000*, p 32.

<sup>35</sup> Victoria. Energy Industry Ombudsman, *Annual Report 2000*, p 48.

<sup>36</sup> Victoria. Energy Industry Ombudsman, *Annual Report 2000*, p 7.

Ombudsman exceeding his/her jurisdiction in either hearing the complaint or making the particular award. Once a complainant accepts an award, he/she is not entitled to commence proceedings in any court and the court is obliged to dismiss any action in relation to the matter that was the subject of the complaint to the Ombudsman.

The cost of administering the scheme is borne by all the electricity entities in a proportion prescribed by the Regulator who administers the licensing system for entities under the *Electricity Supply Industry Act 1995*. The portion of the costs that is payable by each electricity entity is determined by the number of complaints of each category in respect of each electricity entity dealt with during the preceding year.

The industry structure in Tasmania since 1998 has consisted of the Hydro-Electric Corporation which controls and manages the generation assets, Transend Networks Pty Ltd which owns the transmission network throughout the State, and Aurora Energy Pty Ltd which is the retailer and owner of the distribution network in the State.<sup>37</sup>

Aurora Energy Pty Ltd, as the retailer, is required to receive the approval of the Energy Regulator for the content of its Standard Tariff Agreement and its Customer Charter. The Tariff Agreement contains the two components of price and

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<sup>37</sup> Tasmania. Office of The Energy Regulator, *The Regulator, the Office and Customer Rights*, <http://www.energyregulator.tas.gov.au/Electricity/office.html> Down loaded 19 November 2001, p 4.

conditions of supply. The Electricity Ombudsman may assist consumers in relation to issues grouped under the conditions of supply which are:

- Connections and re-connections;
- Interest payments on overdue accounts;
- Service that the consumer is entitled to receive;
- Procedures for the handling of enquiries and complaints; and
- Matters of voltage fluctuations and power factors.

The Standard Tariff Agreement is viewed as the minimum standard that a consumer may expect from the service provider. Those consumers who are in a position to do so may contract outside the standard tariffs on both price and terms and condition of supply with Aurora in order to obtain an agreement on better terms and conditions for themselves.

The *Electricity Supply Industry Act 1995* requires electricity retailers to prepare standard customer contracts relating to the supply of electricity. These contracts identify the level of service and the standard of supply that the consumer can expect to receive. Such contracts are enforceable once they have been approved by the Industry Regulator. There are also customer charters that are approved by the Industry Regulator that provide guarantees of performance.

Electricity entities must have their own procedure for the handling of consumer complaints. Any consumer dissatisfied with the response that they received from the service provider concerning the matter they raised may lodge a complaint with the Electricity Ombudsman.

The Electricity Ombudsman is required under s 39 of the *Electricity Ombudsman Act 1998* to report quarterly to the Energy Regulator as to the operations of the Ombudsman's Office and to supply copies of those reports to the electricity entities. The content of those reports relate to matters concerning the performance of the electricity entities (in particular, the number of complaints in each category of complaints received by the Ombudsman in relation to each electricity entity) and the cost of operating the scheme.

#### **7.4 SOUTH AUSTRALIA**

In South Australia, the *Ombudsman Act 1972* was amended by the *Ombudsman (Private or Corporatised Community Service Providers) Amendment Act 1998* to extend the authority of the ombudsman to receive complaints from electricity consumers where a private sector entity provided the service.

The Electricity Industry Ombudsman (SA) Ltd was established in October 1999 after the passing of the *Electricity Corporations (Restructuring and Disposal) Act 1999*. It is a company limited by guarantee under Commonwealth corporations law. As in the case of New South Wales and Victoria, holders of licences for the transmission, distribution and retailing of electricity are required to participate in the industry ombudsman scheme.

The Industry Ombudsman is responsible to a Board that has the responsibility of ensuring that the scheme adequately meets the needs of consumers and maintains the independence of the office; however, the Board does not review the decisions of the industry ombudsman.<sup>38</sup>

The office of the Electricity Industry Ombudsman is industry funded but its constitution and charter prescribes the independence of the office. The independent chairperson must be approved by the Independent Industry Regulator as must the three Board Directors who represent consumer interests.

The Ombudsman has authority to make determinations on issues concerning a value of up to \$20,000. For values in excess of \$20,000 but not in excess of \$50,000, the agreement of all parties is required for a determination to be made.

The Independent Industry Regulator has the authority to create new codes that are binding on industry participants through licence conditions. This power can be exercised to ensure that consumers are afforded a level of protection. With 1 January 2003 the planned date for the commencement of a full retail contestable market, the National Electricity Market Task Force recommended that the South Australian government examine the consumer protection provisions that were provided for in New South Wales and Victoria before those two States designated their household consumers as 'contestable'.<sup>39</sup>

## **8 THE NATIONAL ENERGY OMBUDSMAN NETWORK**

The National Energy Ombudsman Network (NEON) was initially formed with the combined participation of the industry ombudsmen from New South Wales, Victoria and Tasmania. The South Australian Electricity Ombudsman is now also a member.<sup>40</sup> The network is designed to provide a forum to facilitate discussion between the States on

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<sup>38</sup> South Australia. Electricity Industry Ombudsman, *Annual Report 1999-2000*, p11.

<sup>39</sup> South Australia. National Electricity Market Task Force, *Final Report*, 29 June 2001, p 10-4.

<sup>40</sup> Victoria. Energy Industry Ombudsman, *Annual Report 2000*, pp 7-8.

matter of common relevance to the scheme. Mutual benefit accrues to the participating States as a consequence of knowledge sharing.

## **9 CONCLUSION**

As Queensland's inclusion in the fully contestable national electricity market draws closer, the Electricity Legislation Amendment Bill 2001 introduces consumer protection measures for electricity customers. Consumers will be able to seek assistance from the Energy Consumer Protection Office. Experience in New South Wales and Victoria shows that account matters will make up the vast majority of matters raised by consumers. Consumers whose concerns are more complicated and where compensation may be an issue may still be assisted by the mediation and arbitration avenues that this Bill provides. Although the Bill is designed to create a quick and efficient independent avenue that is accessible to consumers for the settling of disputes, the consumer's right to take his or her case to the courts is not infringed.

## APPENDIX

**QUEENSLAND COMPETITION AUTHORITY PERFORMANCE  
MEASURES FOR CUSTOMER SERVICE**

**Source: Queensland Competition Authority, pp 234-235.**

Calls to network call centre	All calls to the centre to be reported, including those answered by an automated response service and terminated without being answered by an operator	Service provider to report quarterly
Calls to network call centre forwarded to an operator	Includes abandoned calls not answered within 30 seconds	Service provider to report quarterly
Calls to network call centre answered within 30 seconds	The time to answer begins when the call is diverted to an operator and includes any time spent in a queue	Service provider to report quarterly
Customer arranged appointments	Appointments requested by the customer for a meeting with staff of the service provider	Service provider to report quarterly
Appointment not met within 15 minutes of agreed time	The number of appointments that fall within this category	Service provider to report quarterly
Number of connections made	The number of supply connections to customers' premises	Service provider to report quarterly
Connections not made on agreed date	The number of connections made after the agreed date	Service provider to report quarterly
Connections 4 day delay	The number of connections that are made within 1-4 business days after the date agreed with the customer	Service provider to report quarterly
Connections with a delay of 5 days or more	The number of connections that are made 5 or more business days after the date agreed with the customer	Service provider to report quarterly
Connection and augmentation complaints	The quality and timeliness of new connections; the cost, timeliness and quality of augmentation works	Service provider to report quarterly
Street lighting	The number of street lights in the distribution area	Service provider to report quarterly
Street lights out during period	The number of street lights reported by customers as	Service provider to report quarterly

	not working	
Street lights not repaired by agreed date	The number of street lights not fixed by the date agreed with the customer	Service provider to report quarterly
Street lights not repaired within 2 working days	The number of street lights that fall within this category	Service provider to report quarterly
Number of guaranteed service level payments made	The number of situations which required such a payment	Service provider to report quarterly
Amount paid as part of guaranteed service level payments	The total amount paid	Service provider to report quarterly
Planned interruptions to supply for which a 4 day notice was not given	The number of interruptions that fall within this category	Service provider to report quarterly
General complaints concerning distribution	Complaints about the quality and timeliness of service provision not covered elsewhere in relation to such things as fault repair, vegetation control, and request for information on the quality and reliability of supply	Service provider to report quarterly



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