KEVIN McMAHON
Unit 20 - 5 Milford Street Ipswich 4305
(07) 3812 9918 kmcmahon6@bigpond.com

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MCE Market Reform Team

mcemarketreform@ret.gov.au
cc: ryan.thew@ret.gov.au - Acting Chairperson - Network Policy Working Group, MCE SCO.

SUBMISSION

NECF2 FIRST EXPOSURE DRAFT AND NETWORK POLICY WORKING GROUP

Dear Chair

Further to my e-mail of 14 January 2010. Due to a very pressing matter in regards to a death of a friend, and also the rather short time frame, I have not had time to fully voice my views and concerns in relation to bulk hot water arrangements. May I request that my submission be included in the review.

I now submit further information about this part of the reticulated gas market and would like this material to be considered by the Working Group, in regards to the NECF2 Second Exposure Draft.

SHARED BULK HOT WATER, AND RETICULATED NATURAL GAS

This is a system where energy (natural gas) is supplied to a large hot water boiler on a multi-tenanted/occupied site. It has a master gas meter which powers the landlord's, or owner's, hot water system. Hot water is distributed to each tenant or owner, with hot water flow meters to measure hot water usage, by the litre.

The master gas meter used to heat the boiler, is owned and controlled by the energy distributor, and has been arranged to be installed by the property landlord or owners. The energy retailer sells the gas used to heat the BHW.

The hot water flow meters may be owned by:

1 the energy distributor (usually), or leased to the energy retailer (for tenancies)

2 the energy retailer (for tenancies), or

3 a strata-titled/body corporate, as owner occupants.

Both the master gas meter and the hot water flow meters are not in the same realm of the standard gas and electricity meters that are common in selling and trading those things. The latter have a MIRN/DPI meter numbering system used to sell and trade electricity or gas, and are an “attached” meter to the consumers’ abode. A data-base listing of these meters is maintained via the Gas Market Retail Operator (VenCorp in Queensland). The meter numbers are classed as a “attached supply point” for sales, and for trading accounts, (Freedom of Retail Contestability).

The latter mentioned master gas meters and hot water flow meters are not “attached” to the consumer’s abode in any way, as they are on the common property of the property owner or landlord. It is the landlord or owners that have charge and custody over these aberrant meters, on common property.

There is no meter numbering system for BHW water flow meters. The master gas meters do not form part of a contestable market. The hot water plumbing/pipeline is not a recognized energy distribution system. Consumers are charged for how much hot water they use, by the litre.

In example No.3 - joint property owners can make their own arrangements.

In example No’s.1 & 2 - this applies to properties that are rented out to tenants. There is no market for this arrangement. It is a site monopoly in regards to a multi-tenanted properties owned by a landlord. There is no meter numbering system for hot water meters anywhere in Australia. They are not “attached supply points” for the tenant/consumers involved. Bulk Hot Water accounts are not “contestable” anywhere in Australia.

It is a non-government site monopoly arrangement, that uses gas and water infrastructure, that was set up by the landlord, the energy retailer and the energy distributor.

Tenants form no part of this verbal or written contract.

SHARED BULK HOT WATER, AND RETICULATED ELECTRICITY

In some jurisdictions, an electric bulk hot water system is involved, with the same parameters as mentioned above.

TOPIC OF THIS SUBMISSION

The basis or my submission, is in regard to tenants who account for most of the BHW consumers and installations around Australia. It appears that most of the BHW sites in Australia are installed by State and Territory Governments in Public and Community Housing, with consumers being tenants of the Crown.

There are also many others who are tenants of private rental properties.

PAST ASSET SALES BY THE QUEENSLAND GOVERNMENT

On 11th October 2006, the then Treasurer and now Premier of Queensland, read a second reading speech in regards to “Energy Asset (Restructuring and Disposal) Act 2006”, re; “No.42 - 2006”. This speech also mentions un-contestable assets of an energy entity being up for sale.

This bill details the sale of energy retailing and gas distributing assets of Energex, Ergon and Allgas. The sale of retail assets had been re-badged under Sun Retail (electricity) and Sun Gas Retail (natural gas). Details of both contestable gas and electricity are apportioned to these new companies and were sold to the host retailers, AGL and Origin.

In this speech, “Selected Contestable and Non-Contestable” retail and distribution assets were sold. This

privatization of assets over-ran any challenge by third parties in regards to confidential consumer details, distribution networks assets, master gas meter ownership and hot water flow meter ownership, that were sold to energy entities.

It also mentioned details of commercial rights that may be affected, most note-worthy was “the disclosure of confidential information without third parties’ consent”. Therein she threw away the consumer rights, warranties and equities of BHW consumers, and the affected landlords/agents/entities who had past dealings and arrangements with, the Government Owned Corporations involved.

It mentions that this was done in Victoria and South Australia, among others, but fails to mention that in those jurisdictions, there were provisions regarding BHW.

I am truly disturbed by the actions of the Queensland Government regarding its transfer of BHW consumers to Origin Retail Ltd (see attached). This would appear to a breach of the Queensland Government’s own competition policy which is supposed to mimic the National Competition Policy. I have approached the past Energy Minister (The Hon. Geoff Wilson, MP) and the current Energy Minister (The Hon. Stephen Robertson, MP) regarding the lack of regulation of this part of the energy sector. They refuse to reply!

These asset sales happened in early 2007, just before the FRC date in Queensland (1 Jan 2007).

Now Origin appears to have all the natural gas powered BHW consumers in Queensland. This sale was a complete breach of trust to the 2,500 consumers transferred to Origin. Supply charges and FRC trading fees (about $200pa) were being charged by AGL and Origin on two separate bills, one for gas and the other for BHW.

Origin were charging Gas Supply Charges for consumers who only bought BHW and not gas, and also imposed minimum supply charges and tariffs for BHW. Origin were charging FRC trading fees for BHW only accounts, that were never tradable.

Tenants were financially forced to move their small gas account (usually for the stove) from AGL to Origin, so as to consolidate it with their untradeable BHW service account. The Queensland Government freely admit that hot water, in general, constitutes about half of household energy cost.

I have written to the energy minister that there is no “market” for BHW, and that there is no method of trading BHW amongst energy entities anywhere in Australia. I have reminded him that both electricity and natural gas are sold, and traded, via a MIRN/DPI meter numbering system, and that no such system exists for BHW meters, and therefore, can never be traded.

It is a natural and historical (and now consolidated) site monopoly, as described by the Queensland Competition Authority’s “criteria” for non-government monopolies that use infrastructure, namely water and natural gas.

BHW is not a contestable market, and has never been contestable throughout Australia.

I have approached both the Premier (The Hon. Anna Bligh, MP) and the Treasurer (The Hon. Andrew Fraser, MP) about declaring this site monopoly a Non-Government Monopoly that uses infrastructure in Queensland (water and gas). It is a perfect fit for the criteria proffered by the QCA. Only the Premier and Treasurer have the ability to do this, yet they have not addressed this matter, which I raised it with them in December 2008, and repeatedly since. I have never received a reply regarding my complaint about BHW prices and meter reading fees, or the wrongful application of FRC fees to BHW consumers.

Minter Ellison Lawyers web site says that “warranties” were given to these two companies. Their content is a “commercial in confidence” secret, along with the sale contracts also. The Queensland Government is currently trying to sell other assets, and probably may see this past lack of rigor to their own competition policy, as a bad press!

Queensland has no essential service wing, and different Ministers who have different roles, with each blaming the other about this essential service. None of them can say what the fair price of hot water is.

I have many documents from Ministers, amassed over the past 3 years, directing me to another Minister.

UNJUSTIFIED PRICE GOUGING IN UNREGULATED BHW

Since the FRC date in Queensland (1st July 2007) the price of natural gas has only increased by about 10%, but the price that Origin charge for BHW has increased to a level of 39% above the Victorian Conversion Factor, and the hot water meter reading fees have increased by 50%, over the last 3 financial years Origin has refused to converse with me, or give any reason why such price gouging is justified.

In Origin's case, even when the gas went down in price (the FRC date) - the price of BHW went up!

I am very aware of the pass through costs (DuOSS et. al.) that have seen supply charges added to gas retailers pricing in Reticulated Natural Gas accounts. I have received an e-mail from Mr. Des Petherick, Manager of Corporate Services and Company Secretary of Envestra Ltd, and he has given me the true price of reading the BHW meters, (2008 financial year = $24.12 and, 2009 financial year = $25.16). Origin currently price gouge this by 44%.

This is price gouging of supply charges and hot water charges for BHW consumers in Queensland.

Bulk hot water meter reading fees on Origin invoices, show a fee to read and service that meter. On the 1st of July, prices increase and is applied to invoices as of that date. It is back-dated for 91 days (1 Qtr). It is not pro-rated for up to 91 days Other fees and charges on the bill (Gas, Hot Water, Supply Charges), are shown with both Pre and Post fees that center around the !st of July.

Origin retrospectively apply this hot water meter reading fee.

LANDLORDS AND PROPERTY OWNERS

BHW is not mentioned in government tenancy agreements in Queensland, for landlords know that they cannot force a tenant to buy a service from someone else (Line Forcing TPA). My landlord (The Hon. Karen Struthers, MP) refuses to correspond with me also.

Housing Queensland does not allow a body corporate system for its tenants, for this usually relates to shared strata-titled property owners. Housing Queensland is exempt from most of the Residential Tenancies Act (Qld).

Over the last few years, the current state of affairs regarding Housing Queensland and QBuild, is to design properties for public housing and community housing where tenants have their own hot water systems, along with potable water, gas, electricity meters etc; with each individually metered. The Queensland Government is concerned about saving water in this time of climate change, and to help reduce carbon foot-prints. Energy and water saving restrictors are installed in tenants abodes.

Most of the BHW systems in Queensland are in older public housing flats and apartments, with the rest made up of nursing homes, caravan parks, converted old hotels and motels, boarding houses, and generally affect citizens on low incomes. Most tenants affected have a poor understanding of the energy sector at large. Some tenancies may have gas BHW only, with an electric stove. Some may have BHW and a gas stove appliance also.

Tenants do not have the ability to turn down the hot water (say in hot weather) nor abate the cost of use, for they are charged by the litre, whether the water is tepid, luke warm or hot. These large shared boilers are running flat out, 24 hours a day, every day of the year and are a massive waste of energy. Stored hot water systems have poor insulation and have a lower energy rating, compared to "peizo spark - on demand" hot water units.

Stored hot water boilers have very basic insulation, and waste a lot of energy. Even the pilot light that is continually lit, is a waste of energy.

There are also health risks (known Legionnaire's Contamination) regarding low heat settings for Hot Water Systems.

OWNER OCCUPIERS

Close to my home is a private high rise of apartments that have a large shared boiler. I have met one of the co-owner/residents and they would never tolerate such a system as described by me. Their body-corporate/ strata-title receive a single gas bill and a single supply charge. The property developer had bought, and installed their own hot water meters, and they attribute the Mj's and single supply fee from the gas bill, to each owner in a pro-rated way. Their hot water pipes are beautifully insulated, as is the shared boiler.

The body corporate read their own hot water meters, and pay for Mj's on the bill in a apportioned, percentage way. They do this 4 times a year, just after the single gas bill is received. Property owners have the ability to install, retrofit or upgrade their own systems.

FAIR TRADING IN QUEENSLAND AND THE ACCC

At least my complaints to the Fair Trading Minister was answered, but sadly this price gouging and site monopoly status, is not a breach of the Fair Trading Act, (Qld). National Generic Laws and state law are lacking.

The ACCC can be of no help, for Origin do not sell hot water by the litre in any other jurisdiction, nor is it a cross boarder issue, for they do not sell hot water across state boundaries. It is an intra-state matter for each State or Territory Government.

The ACCC have reminded me that jurisdictions had agreed (at a COAG meeting) to deal with this through Competition Policy, and other reforms, regarding the use of infrastructure and monopolies that use it. Origin and other retailers are private corporations that use gas and water infrastructure to sell BHW.

This to me does not sound at all right. If any agreement was made through COAG agreements to allow exploitation of infrastructure in this way, then the basics of competition policy have failed.

Competition Policy Reform has not been addressed in the Fair Trading Act in Queensland, regarding BHW although the national generic consumer laws should be in place, soon.

Just before the new gas laws came into effect, the Queensland State Government amended the Sale of Goods Act. This new law had electricity and gas extracted out, as well as accertainment and conversion factors for hot water. This appears to be a deliberate ploy so as to give the energy retailer the upper hand. It deliberately removed the Commissioner of Fair Trading and that Ministry from dealing with BHW.

STATE OMBUDSMAN QLD

In Queensland, the state ombudsman has no power to do anything regarding BHW, for they can only address things regarding government policy. There is no policy for BHW, so this advocate can never be any use to tenant/consumers in Queensland, so far.

ENERGY OMBUDSMAN QLD

The Energy Ombudsman of Queensland is strictly forbidden to deal with the BHW issue, and the MOU he has with the Department of Mines and Energy, clearly states that it is the province of that Minister to deal with BHW issues. The Energy Minister in Queensland refuses to do anything.

The most troubling matter in this case is the matter of Economic Reform in the Energy Market in Queensland. Origin's gas pricing and supply charges are lower that AGL, and this allows Origin to use the many thousands

of tenant consumers of BHW as a “cash cow” so as to defeat their 1st and 2nd tier competitors, in an unfair market. They also give a very slight discount for the gas usage (gas stove), when tenants are also buying BHW.

It is clear that cross-subsidisation is occurring in Queensland.

LACK OF COMPETITION POLICY AND PASS THROUGH COST

There is:

No Safety Net
No Public Benefit Test
No Competition Policy Test
No Regulatory Impact Statement
No Community Service Obligation

in Queensland regarding BHW. The Government here has left tenants in the clutches of a grasping monopolist, Origin, without any form of regulation or oversight. Queensland is the only state in the Commonwealth that allows BHW to be supplied “BY THE LITRE”. No ascertainment or conversion factor, or any other regard is used in Queensland, and Origin can charge what they like! They have done so.

The dominance of the original host retailers, who also have BHW consumers, is an unjustifiable barrier to entry for 2nd Tier retailers who wish to enter the market. The failure of Jackgreen, who collapsed in December 2009, did not have the benefit of BHW consumers. It is appalling that Origin are now seeking to penalise the ex-Jackgreen customers for now being the “Retailer of Last Resort”. Jackgreen did not have the ability to survive the harsh hedging environment or the oppressive market power dominance of the host retailers.

The host retailers have entrenched consumers who can never trade their BHW account, and consumer payments to the host retailers distort the energy market.

This amounts to having a cash cow monopoly that discriminates against the new retailer. Host retailers have the ability to cross subsidise their other gas retail consumers, with cheaper gas and supply charges. This is a complete barrier to entry for other new retailers.

Retailers who have BHW consumers should be made to exclude these consumers from the gas market, and have them under a separate title or entity, so that cross subsidization does not occur.

After all, they are selling energy, and BHW is not an energy product, for it is a composite commodity that does not bear a known amount of energy, to the hot water tap of the consumer. Long pipelines from the boiler to the tap, sees consumers being made to pay for inefficient insulation and lagging of on-site pipelines.

Retailers, appear to be using hot water flow meters as an energy meter, even though no gas is supplied through this “site” network of pipeline/plumbing, and exists without any regard to the captive, entrenched tenants. Tenants are held hostage to this monopoly from which they can never escape.

Both Origin, and other host retailers, plus landlords, know that it would cost many millions of dollars to retrofit these blocks of flats, so that each tenants has their own hot water system. Tenants could abate the usage, temperature, calorific consumption of hot water, or when on extended trips away, the ability to turn it off completely.

Origin in Queensland have a minimum charge for BHW arrangements. This is added to a bill that has minimum charges for gas supply. This is inequitable and is not transparent to the consumer of BHW, for the cost of having and reading the master meter and hot water flow meters and their maintenance is generally unknown.

Other matters that restrict competition are the pass through costs. The example of BHW meter reading fees see the ability of retailers to profiteer, or cross subsidise their costs, that are placed on all retailers. If retailers have BHW consumers, they can undercut any new competitor in the gas market.

Pass through costs should be transparent to all, so that new competitors have a level playing field.

The GMRO or the AER should be made to announce the actual pass through costs of natural gas billing per consumer. That way new entrants to the market would be able to compete on a level playing field. Naturally, the cost of gas may go up, and supply charges go down, but it would be a true indicator of the price of the energy sold. If the host retailers, who have BHW consumers, were made to declare the profit margin of this commodity, then the distortion of the market would be transparent.

End users are buying a composite product with no regard to, energy use, or temperature of, BHW.

FRC FEES WRONGLY APPLIED

Another grave problem is FRC trading system, with the Queensland Government placing the FRC trading system burden on gas consumers.

In Queensland the FRC fee is supposed to be used to build a database system, to be used by gas retailers and distributors, so as to facilitate the ability to trade accounts (MIRN and Addresses). VenCorp is the market referee for this data system. This data-base building costs is attached to all gas consumers bills for the first 5 years after the FRC date, and will be phased out in mid 2011. It will raise about $20million over that 5 year period.

I have several neighbours that have a disability, including cerebral palsy, downs syndrome, learning difficulties, blindness, or are aged or infirm.

They do not have open flamed stoves.

They have electric stoves. They have a “BHW ONLY” account with Origin.

These disabled tenants can never trade their account, but this FRC trading cost is unfairly added to their invoices by energy retailers in Queensland. This is an absolutely shocking state of affairs. I have written to the above-named MP’s complaining of this matter. This is probably why they never wish to return my correspondence, among other things.

This is a case of having a supply point that is not being used. The consumer is made to bear the cost, even though it is not used, because it just exists. The master gas meter must have its own network charges, but how they are applied us unknown.

THE QUEENSLAND COMPETITION AUTHORITY AND THE REGULATOR

I have included the criteria of the QCA in my submission so as to highlight the folly of hot water arrangements in Queensland. I have sought relief of the price gouging from both the Premier and Treasure. The full report is available on the QCA web site, and is a perfect match when it comes to reform of trading law and essential services such as BHW.

Criteria for deciding whether to declare a non-government business activity to be a monopoly business activity.

A non-government business activity should be declared a monopoly business activity wherever competitive pressures do not effectively constrain its provider’s commercial behavior.

*(a) **[business activity]** The activity involves a trading in goods or services.*

*(b) **[non-government business activity]** The business activity involves services provided by means of a facility and is carried on by a person other than a government agency. A facility includes: rail transport infrastructure; port infrastructure; electricity, petroleum, or gas transmission and distribution infrastructure; and water and sewerage infrastructure, including treatment and distribution infrastructure; or infrastructure of a similar nature to the examples given; and*

*(c) **[commercial behavior not constrained by competitive pressures]***

There is an absence of vigorous rivalry in the market in which the activity occurs and barriers to entry into that market exist.

OR

If the evidence regarding rivalry and barriers to entry in inconclusive, there is evidence that the provider of the activity is exercising substantial market power. This may include it is earning an excessive return, would be earning an excessive return were it not operating inefficiently, or is cross subsidizing.

It may seem an admirable trait to have such criteria, but without any rigor in enforcing it, puts it in the realm of wasted effort. The Queensland government has not applied its own ideals to BHW, and with the future sale of other assets (rail, ports, forests, power stations, transmission lines, etc:) bidders should be very careful of buying things from the government.

This FRC fee is under the supervision of the QCA. I made enquiries to that body, about the FRC fee applying to Origin consumers who do not buy gas, and that there are disabled consumers who only have BHW. Their reply was, that they did not know that BHW sales existed - at all.

Even the regulator (Director General of Mines and Energy) and his staff are mystified by BHW and retail trading of energy. He wears two hats, and it is hard for consumers to see who he really serves. His loyalties may be to senior public servants who are engaged in energy sector, or perhaps to the energy minister and his staff, or the energy retailers who bought BHW assets, or perhaps to the public at large.

The regulator has declared that no regulation will be counted in Queensland. He has not been given the power to declare what is, or is not, a monopoly, and he has usurped the powers of the Queensland Parliament, and the powers vested in the Treasurer and Premier. It is not in the Director General's power to declare what is, or is not, a Non-Government Monopoly.

Gas is now an unregulated market in Queensland, but the advisers, policy makers and regulators, all seem to know nothing about the clashes of different bodies and systems, that have been created therein. The retailers and distributors do not divulge anything about BHW that is sold in Queensland. The amount of gas sales in this state are divulged to the QCA, and a recent inquiry into gas sales showed a lower uptake of this compared to other jurisdictions.

The reason why this statistic seems so low in comparison, is that the use of gas to heat BHW is never mentioned to anyone.

The QCA have a price comparator on its web site and acknowledge that it is derived form the South Australian model. This is a bit of a joke, for SA has a system regarding BHW. There is no avenue to enter litres of BHW into this price comparator, for the energy used in BHW boilers is an unknown factor.

THE QCA AND HOT WATER

In November 2008 the QCA produced a final report namely:

"REVIEW OF SMALL Consumer GAS PRICING AND COMPETITION IN QUEENSLAND".

The Minister (Hon. Geoff Wilson) gave a direction to the QCA (02/May/2008) to invite submissions from stakeholders and to report by 01/Dec/2008.

I as a citizen did so, on the basis that the "Terms of Reference" handed to the QCA clearly stated that the "Matters to be Considered" were,

> *"Part 3. Current small consumer gas market activity, including:*
>
> *Dot Point 1 - The exercise of market choice and switching behavior by consumers and any technical or other barriers to this:.*
>
> *Dot Point 2 - Any impediments of small consumers being able to exercise informed choices regarding their retailer of choice;.*
>
> *Part 4. The QCA should consider how each of these issues affects different categories of small gas consumer, for example, small commercial consumers, domestic consumers with a gas cooker only, and domestic consumers with a gas cooker and GAS HOT WATER SYSTEM.*
>
> *Any other issues not explicitly mentioned here which arise during the course of the Review, and which impact of the Review's objectives or matters being considered, should, where relevant, be included in the report to the Minister"*

In my submission, I let the QCA know that BHW was not a contestable thing and that many consumers did not have a choice, that we did not have the ability to trade hot water, and that other retailers do not want us as a consumer, because of a tiny gas stove account, and also that competitors could not capture the hot water component, due to it being a site monopoly and an uncontestable commodity.

My submission was censored by the QCA, and did not appear on their web site! They did not do a review on how hot water was sold in Queensland, compared to other Australian States. Both myself and the St Vincent de Paul Social Justice Committee highlighted hot water provision, and costs as an area of concern.

No investigation of how hot water was sold, or barriers to entry was undertaken by the QCA.

Mr. Brian Parmenter who chairs the QCA will now, belatedly, use semantics to reword the Ministers' brief. I have written to him. He has never addressed these issues.

TRADING SYSTEM IN QUEENSLAND

When I 'phoned AGL (currently, the only other natural gas retailer in Queensland) to enquire about trading my "gas only" account to get away from Origin, the consultant said she would look on the data base. I gave her my address and MIRN number, that was applicable to my gas stove. She remarked "you seem to have a bulk hot water system", I said yes. The consultant asked whether I had other gas appliances, and I said yes, a gas stove.

The consultant then said, that "because they could not capture the hot water component, that they were unwilling to take me on as a consumer". This points to the fact that my gas account (for a stove) is not really tradable either, for it is not economically or commercially viable for gas competitors, because they can never capture the hot water component, which it is not contestable, and is a site monopoly, and constitutes a major part of my energy use.

Origin's and Envestra's BHW site monopoly, creates an unfair advantage that their competitors do not have.

Both Origin and Envestra have a different numbering system that is assigned to my home, and the BHW master gas meter involved is not "attached" to the trading system, and is not "attached" to my home.

Feedback from examples in Victoria tell of the same folly, and self evidently would be applicable throughout Australia.

LAZY LANDLORDS AND CHEAP CONSTRUCTION METHODS IN THE PAST

This BHW billing arrangement is proffered, because landlords are lazy, and are not willing to do the appropriation of hot water to their tenants themselves. It is a cheap (and nasty) build cost compared to giving each tenant their own hot water system.

Housing Queensland do subsidise the rent for their tenants, but it is not possible for tenants to know if BHW is factored in this arrangement. They also say that, when the hot water boiler needs to be replaced, they will do just that, and nothing else. My personal experience, and what I have learned from others, is, that public housing authorities do not bother to maintain, or upgrade, the common property infrastructure.

It would cost them millions of dollars to retrofit these many thousands of tenancies, to give each tenant their own how water system. Energy companies know this also.

Private sector landlords have tenants, where community service obligations are, sadly, missing.

THREE PARTY CARTEL - CABAL

It would appear that the Housing Queensland, and applicable landlords, may be engaged in a form of “cartel” or “cabal” with energy retailers and distributors, and I see it as a form of “Regulatory Corruption by Omission” in its most broadest sense, to the exclusive benefit of Origin and Envestra (in Queensland). For every day the Queensland Government delays with the regulating of this BHW service, they unjustly enrich a private corporation using the pockets of the disadvantaged, and the less well off.

The new NECF should make it quite clear how the protections for these groups of people can be offered. There is no equity in this proposed law, regarding this BHW arrangement. My landlord has written to me to explain that, at the time of construction, this shared BHW system was best practice. She has told me that Housing Queensland has no written contract with anyone. It was just an arrangement.

NO COMPETITION AND CASH COWS

Australian Power and Gas have suspended its retail activities in Queensland. Only Origin and AGL, the original host/patch retailers, are active in the reticulated natural gas market. This BHW energy monopoly does not serve the 2nd tier competitors in an open and free market.

The Victorian and South Australian markets see that tenants receive a bill with Mj’s or KWh’s. An unknown amount of calorific usage is implied, but what is true meaning of “hot”. Hotter than what? They are being duped into thinking that a water pipe is actually imparting energy, where no known energy usage exists, and where the system in use can never legally substantiate any energy use at all.

VICTORIAN CONVERSION FACTOR

I have to admit that the conversion factor as used in Victoria is a rather arbitrary piece of algebra. My situation is that I am at the end of the site network of hot water plumbing/pipeline at my address. I have to waste dozens of litres of “hot” water before it gets hot, and am charged for every drop of it. Many of these shared systems are in older buildings, built without proper insulated lagging, and a goodly part of my energy costs are wasted, on it way to my taps.

In a case study from Victoria, there are examples of consumers having to draw a couple of hundred liters before the water was actually hot (whatever hot means!), with the consumer having to pay for every drop of that water, as if it were heat that was generated within the bounds of their household. This inequity is foisted

onto a pedestal, as being a preferred national model, yet even the Victorian Government cannot explain how this is a desirable method.

On Origin's web site, they, in party with the local distributor, (Envestra in my area), still offer this type of cheap plumbing-build service to property developers/owners. Many a tenant may wish this type of plumbing was banned under the Australian and State building codes. Perhaps policy makers are want to please developers at the cost of their tenants.

The conversion factors are based on the quantity of gas supplied multiplied by some algebra that has no real providence in the real world. In the case of BHW there is no measurement of the temperature of the water, or energy used, in the provision of hot water delivered to consumers.

In the long term, I doubt that the conversion factor methods should remain, and if it does, all charges should rightfully be against the landlord, with some controls in place to stop landlords being a profiteer (on-selling), or wrongfully attributing cost to the tenant. In Queensland, small scale on-selling is covered in electricity law (say in caravans parks etc;) and there is rigor in it, so as not to allow profiteering by landlords.

THE VICTORIAN MODEL AND ALSO SMART METERS

The smart meter regimen was soundly berated by a recent report form the Victorian Auditor General. The report implies that an entity can de-energise a consumer by remote control. This rather robotic system fails to account for an entity employee, who may visit a consumers abode, to see "at first hand", the consumer's state of affairs, before an essential service is disconnected.

This system may be used when there is a breakdown in communications with the consumer, who has not paid for usage, through no fault of their own, or when disputes arrive. Cutting off consumers because of faulty billing, matters to do with financially poor or disabled consumers, or the many other scenarios that may come about with regard to paying a bill, may see hardship ignored.

No one will ever say "You don't need to but it".

The benefits regarding not having to physically read an electricity meter, have not been bourne out in Victoria, and reading meters constitutes the vast majority of pass through costs and supply charges on energy accounts.

Hot water meters can never be read remotely. There will always be a need to visit the abode of a consumers of BHW to read the meter. Any other method would require all meters to be replaced, with telemetry cables and networks installed. This will never happen. Even if a sensor were attached at the boundary of a consumer's abode, it would not be able to deliver a quantifiable, calorific measurement of energy used.

THE SOUTH AUSTRALIAN MODEL

The South Australian model does deliver a pro-rata across the hot water meters, with each tenant having to pay a fair percentage of the master gas meter, at the local price of gas or electricity. The tenant would receive a bill with Mj's or Kwh's. The only problem with this model is that tenants would have to trust the energy retailer and distributor, to apportion the correct amount to each tenant. Supply charges and water meter reading fees would be in multiples, and it appears that each will pay for the singular master meter reading cost.

To be fair and transparent, it would require that a body of tenants would have to divulge and compare their usage to their neighbours, which would breach the privacy of everyone involved. It would require an independent audit by a separate body to be sure, and that consumers were paying for their percentage part of the 100% master meter reading usage.

UNFAIR APPORTIONING OF BHW IN SOME JURSRIDICTIONS

In some cases, the single gas bill from the master gas meter is unfairly divided up. For examples, if there are 10 tenants in a unit complex, sometimes each tenant will receive a bill from the landlord, or an energy entity or agent, for 10% of the gas bill used to heat BHW boiler.

Even if one tenant is frugal, or a single occupancy, they will be unfairly charged, compared to neighbours with 3 persons in occupancy, or neighbours who are not frugal and use it in a profligate way. Sometimes the energy entity or agent does not have access to the BHW water flow meters, and do a guesstimate of use in billing.

This type of billing arrangement unfairly cross-subsidizes the other neighbours who use more hot water, knowing that they will only ever receive a bill for only 10% gas usage, in this example.

ASCERTAINMENT OF ENERGY USE

New constructions of multi-tenanted housing are installing the same BHW systems which use a single master gas meter, and a manifold of BHW meters which can never show, or account for, the amount of gas or heat being supplied to the end users taps.

This type of billing may suggest to tenants, who are unsophisticated in the sale of energy, that this type of meterage is somehow measuring energy consumption. It is up to the distributor to provide a suitable supply to the tenant, and any contract by them should be energy sales, not hot water. Any governance in this 3 way arrangement should be clearly defined, and transparent to all, especially the tenant.

It is not clear who should be responsible for the quality of heated water, since the distributor apparently does not take responsibility for gas supplied beyond the master gas meter.

The phrase “hot water meter” may suggest to many people that heat or the amount of gas used can be measured, using the hot water flow water meters. Even when they are told of the existence of water meters, the phrasing of contracts suggests, somehow, that gas can be measured via these water meters. Ownership of the meters by distributors or retailers cannot create a contract for supply of energy.

A gas distributor is always responsible for distribution of gas. For safety reasons and quality of supply third parties cannot do this. The bulk hot water arrangements are not only inconsistent between States, but they indicate problems in consumer protection that need to be addressed urgently.

CONTRACT LAW AND THE TRADE PRACTICES ACT

I note that the Minister of Competition Policy and Consumer Affairs (The Hon. Dr. Craig Emerson MP) requested that the Commonwealth Consumer Affairs Advisory Council (CCAAC) undertake a review of statutory implied conditions and warranties as part of the broader Australian Consumer Law reforms.

I note that the generic laws Consumer/Fair Trading provisions in national laws, which may be in place by 1 January 2011, do not seem to be accounted for in this energy reform. This is a very dangerous situation for the MCE, for on perusal of the current proposed framework, statutory and implied warranties must be taken into account. The CCAAC reforms to contract law will override any contract template proposed by the MCE. The generic consumer laws will also apply to BHW, and also energy contracts in general. Unfair contracts will be a highlight in the coming months, for state Fair Trading laws will have to mimic the national generic consumer law.

Although the reform paper mentioned above does mention laws regarding “Utilities”, there seems to be a clash in regards to which body may attend to national energy and its “customer services” (ACCC and NER) and jurisdictional coverage regarding Fair Trading in the States and Territories (FTA).

The tenant/consumer is not a contractual party, when it comes to BHW. It is the landlord that has an arrangement for the service to the tenant’s abode. The energy distributor is the party that has the custody change-over to the retailer, and following on from that, there is a custody change-over to the property owner/landlord.

In this arrange the tenant/consumer is never mentioned anywhere - but it is the tenant who receives a BHW invoice from the retailer. At no stage is there a contractual link to the person who pays the bill. The end user is never the party to a contract for energy, for the BHW meters are water meters which has no providence to sell any energy at all.

The bundled charges for this shared BHW arrangement should always be against the landlord and not the tenant, for it is the landlord who arranged this, in times past, and that a new tenant must bear the cost. They would never be aware of this arrangement that was entered into, long before they became a tenant. No one told me about BHW when I moved in, and have been kept in the dark since.

It is the property controller that should be the contractual party - not the tenant.

BILLING AND FUTURE CARBON TRADING

In Queensland, most of Origin's BHW consumers get a bill that shows a bar graph of gas usage and also approximate carbon dioxide (carbon) emissions involved. After a time, the bar graph covers the last 4 quarters. This helps gas consumers monitor gas usage, compared to this time last year.

In my case, the bar graph is for the gas used via my gas stove, which is a tiny part of my bill. There is no "attached" meter (the master gas meter used for the BHW boiler) attributed to my account. Indeed, the gas, and the carbon foot-print of this boiler in not attributed to the bar graph on any or the tenant's bills..

The bar graph on each tenant's bill does not show how much carbon is emitted by the BHW system. It is LOST (the gas industry's lexicon/verbiage) - and any future or potential carbon trading systems is perverted.

Whether a tax, levy, carbon credits or renewable energy certificates are in place soon, the above mentioned lack of carbon usage displayed on bills for BHW, will be troublesome.

ADVOCACY

I have some sensitive comments here about advocacy organizations and their perceptions particularly with regard to the legalities and technicalities regarding BHW sales in Victoria and South Australia.

Consumer advocates, and the Regulator (D.G. of DME) in Queensland seem to misunderstand the problem that is BHW.

Consumer organizations appear to have neglected to raise the specific issues raised by me as a concerned consumer, and seem satisfied with their participation with consumer protection. Appropriate standards of protection seem to be falling far short of appropriate standards. There has been no transparency in these arrangements and no assessment of impacts on the end consumer.

The proper approach regarding consumer protection, and the possible introduction of a conversion factor in Queensland, may not be a proper regulatory system at all. It is the landlord that is responsible for this essential service to his/her tenants, with the retailer and distributor playing a role also.

LEGAL METROLOGY

I am aware from amended National Measurement Act Regulations that the current calculation methods in BHW provisions will become invalid and illegal when utility exemptions are lifted.

The price gouging by a retailer does not contribute to resource exploration, pipeline building or advancing the future of the gas infrastructure, or the gas market in general.

Both distributors and retailers see a lucrative business in heated water supplies and the wording of their contracts seem deliberately confusing, as to whether they are supplying a water product, or heat, or energy.

Origin's contracts in Queensland deliberately never mention BHW, and the language used pertains to other "consumer retail services" and the "sale of energy". This is a form of semantics that trouble tenants, and it does not bode well if tenants lack an understand or their implied rights and warranties, in relation to a contract over the BHW commodity.

These market contracts wrongfully attribute the liability for the use of BHW, and tenants do not have a direct, contractual say in the provision and pricing of this commodity, from a retailer never of their choosing, at a price that bears no direct link to the energy that is consumed to heat hot water.

These contracts should be with the property owner/landlord and not with the tenant.

SITE AUDIT OF ENERGY USE

The conversion factor appears to be a very poor method of accertainment of energy used by the consumer of BHW. The distance from boiler to tap, in some examples in Victoria, may be a hundred meters or more. If the future energy law does not include a legally defined method of energy use, then it will fail to assist the consumer who is entrapped into this site monopoly.

In Queensland, if a vendor sells housing, it must have an energy audit added to the sale notices. This is to show prospective buyers what energy abatements and adjustments have been. This usually includes energy efficient tap and shower fixtures, light fittings, insulation, conversion to gas from electricity, off peak electricity meter, solar power, photo voltaic etc:.

This system of audit breaks down when it comes to BHW, for there is no legally accertained amount or energy that can be derived from a hot water meter.

If the conversion factor is brought into law, then a calorific audit at the housing boundary needs to be undertaken so that the consumer has some sort of equity afforded them.

PASS-THROUGH COSTS FROM DISTRIBUTORS TO RETAILERS TO CONSUMERS

In all matters regarding pass-through costs, these should be standardised so that the Supply Charges involved in energy sales are uniform, and set yearly, with a small and fair administration cost added. After all, the costs are nothing more than attributable data, and the retailer's only cost is attributing a bit of data to invoices.

Nothing new need be invented for the 3 jurisdictions, and the retailers therein, already have systems for these types of billing procedures. There may be zonal costs regarding areas and post codes, but this system already exist also. There is a system in Victoria and South Australia where the local price of gas and supply charges may be attribute to the consumer. These supply charges should be declared by the distributors, and the GMRO or AER, and placed on public display.

New entrants to the market would have the surety that a level playing field exists. Retailers should be made to follow a supply rule, and to not profiteer on supply charges.

The competition in the market should be the "sale of gas or electricity" to make a fair profit. If the business involved wish to compete on a level playing field, then it should economise, bring in practices and models that are more efficient. In this way they can offer a better price than their competitors, while still satisfying their owners and share holders.

The more efficient the retailer the better the market.

After all, they are energy retailers. Profiteering on supply charges is a barrier to entry of 2nd Tier Retailers who must compete against Host Retailers which have an unfair advantage of scale to start with.

Location of consumers in perceived uneconomic areas are usually covered by community service obligations under Competition Policies. Only host retailers seem be able to seek this type of funding. Area disadvantage

is a form of monopoly also, for it is the area/patch that is funded, and not the consumers address. This is another form of dominance in the energy market, with the jurisdictions playing favorites, with retailers and distributors, and is another section of the market that 2nd tier retailers can never capture.

Pass through costs should be publicized and fixed, until the next round of pricing is assessed.

EXCLUSION AND SEPARATION OF BHW FROM ENERGY RETAILERS

Bulk Hot Water and its meter reading fees, should be compulsorily removed or separated out of energy trading. This commodity is not contestable and its presence in the energy market distorts the fair trading landscape. New entrants into the retail market can never capture these consumers, and it gives the host retailers a entrenched customer base.

This is an unfair advantage, even if the Victorian Model or the South Australian arrangement are made generic across the jurisdictions. It does not offer up a fair and accountable amount of energy to the BHW consumer, for there is no legally accertainable amount of energy delivered to the consumers' hot water tap. Because of past building practices and poor thermal insulation, the consumer at the end of the BHW plumbing network has to waste large amounts of water before it gets hot, yet have to pay for every drop.

The ability of energy retailers to use BHW as an cash cow is to the detriment of new retailers and the retail market generally. To have no protection at all for consumers of BHW in energy law, gives the impression that policy makers fear to tackle the distributors who own or lease the hot water meters. New policy, law, codes, regulation and contracts should brought into place, with BHW seen as a separate entity and oversight by fair trading law.

NATIONAL AND STATE REGULATION

There seem to be no statutory rights or warranties to BHW consumers. They are unjustly imposed upon, are the wrong party in a contract that does not exist, and for a service that uses a water meter for selling energy.

Powers outside of Parliaments within Australia, tend to only cover the ACCC (usually mass market issues) the Courts, and also Wage claims. It seems that no power is ever given to a regulator or ombudsman to initiate proceeding against wrongful abuse of a consumer in the energy market, or indeed, many other rightful claims against profiteers.

All of the instruments in use (law, regulation and ombudsman, MOU's etc:) appear to have no legal weight at all. In Queensland, the Energy Ombudsman is funded by the retailers, with staff seconded from DME, all of whom have certain loyalties to political masters.

TENANTS FEAR TO COMPLAIN

Even with controls in place, landlords can give a months notice (in Queensland) to quit for unspecified reasons, so tenants are reluctant to complain. Vacancies are very few in Queensland, due to a housing shortage for tenants.

If end-users are directly receiving bills for energy suppliers, it is for alleged use of gas, and is a result of heating by single gas meter that is, in this in the care, custody and control of the landlord.

The absence of appropriate residential tenancy safeguards in Queensland have compounded the situation, because the state government is exempt from most tenancy law, when it comes to service charges, and tenants do not have the ability to complain to the Residential Tenancies Authority. This problem is compounded because of the gaps in Fair Trading Law in Queensland.

The BHW arrangements are different for public housing tenants in Queensland. Tenancy law would have to be based on the Victorian model, where the landlord would be accountable to the tenant for the supply of hot

water to tenants. Nobody knows quite what the arrangements are, and different jurisdictions use different interpretations of how the rules should apply. Tenants who receive BHW bills from energy retailers, only have an invoice for water consumption and not energy consumed.

The energy cannot be measured at the boundary for their abode. Only the single master gas meter is capable of showing energy use. Hot water meters can never be a proper method of energy consumption.

TENANCY LAW IN QUEENSLAND

The Queensland Government has not introduced any reform in the Residential Tenancy Act regarding the ability of a tenant of the Crown being able to complain about Service Fees, and have exempted themselves from most of this law. There are no national or universal protections in tenancy laws throughout Australia.

The national goals were for consistency while preserving consumer protection. This reform has not happened in Queensland. The provisions in Queensland avoid best practice and have anomalies regarding consumer protections which are nonexistent. BHW consumers do not enjoy any form of Community Service Obligation.

NATIONAL COMPETITION COUNCIL

When the Queensland government sold it's BHW tenant/consumers to Origin, it did not follow its own Competition Policy which mirrored the national policy. The government, the energy regulator (the Director General of Mines and Energy) and the advocates are unaware of, or find confusing, the proper competition framework when it comes to BHW. BHW by its very nature is a site monopoly and the landlord does not generally wish to choose another retailer.

The distributor will always have the power in this matter for they own the hot water meters, or lease them to the retailer, and both would rule the site. If somehow another distributor or retailer became involved, then the replacement or swapping over of BHW meters to another entity would be prohibitively expensive in every case.

I have received a letter from the Hon. Martin Ferguson, MP, regarding BHW, and he has decreed that the MCE will not be entertaining anything to do with this commodity. He has indicated that it is a jurisdictional matter and has washed his hands of it. He has usurped the Council before it has made up its mind on this matter.

AUSTRALIAN ENERGY REGULATOR

The AER is currently engaged in the "Wholesale" Distributor side of the Energy in Australia, and is structured under the ACCC. This will change soon, so that there is a national framework and consumer protections, when it comes to the end-user/consumer.

Despite the move to nationalization of energy laws, the same flaws are at risk of being incorporated into new energy consumer protection laws, that are on the brink of being formalized through jurisdictional legislation.

POOR CONDUCT

The lack of regulation of BHW in Queensland is poor conduct in every way.

Both the Gas and Electricity Acts, Regulations and Industry Codes do not mention water, hot water, hot water meter or hot water meter reading fees.

Consumers who had Energex as their supplier of gas and electricity are "deemed" to now be the consumers of Origin or AGL, and now have contracts under law, by the deeming of the Queensland Parliament. Private singular households supplied with gas, electricity or both have the "power to choose" the retailer of their choice, in an alleged free market. This is not the case for tenants who pay for BHW. Gas and electricity are

sold and traded via a meter numbering system. BHW meters have no trading system.

No such contracts or deeming exists for BHW service and supply. The Queensland Government sold a mailing list to Origin, and breached their privacy, smashed the rights of 2,500 Queenslanders most of whom were government tenants, fed them to the lions in an unregulated way, and then ignored every plea for proper consumer protection. The consumer/tenants that Origin already had, are added to this awful affair.

This has been going on since early 2007.

The price of BHW in Queensland bears no connection to the price of gas. The decision making process of legislators, policy makers and biased industry groups seem to be fanning unacceptable market conduct, poor commitment to accountability, and improper single market objectives.

This trading list may also breach privacy provisions, both state and federal. No permission was sought from the involved tenants, to have their names and addresses turned over from Energex to Origin Retail Ltd. It was a fundamental breach of trust. Unfortunately the Energy Assets (Restructuring and Disposal) Act 2006 allowed such disclosure.

LICENCES IN GENERAL

There is a reason that licence regimes exist. Whether it be for essential services or commodities such as gas, electricity, banking, insurance, TV, radio and telecommunications, plumbers and electricians and a host of other services or commodities.

That is to say, that regulation is a necessary evil. The future of infrastructure and essential services to citizens of this nation, need to be addressed. While business may forever complain about regulation, one only need to witness what happened in the recent world-wide financial crash, that some regulation is needed at least to some basic level, so that the quality of risk and prudential regulation can mitigate such boon and bust cycles, and to create a fair and transparent market.

The quality of life in Australia should not be open slather in the commerce of these things. Competition is the basis of commerce, when one has several choices in a market. One can choose to by a Bug or a Bentley. There is no market or choice for BHW consumers, even though it may constitute up to 50% of energy use of tenants involved.

GOVERNANCE AND NATIONALIZATION

I have tried to bring forth the pitfalls of governance in regards to the nationalization proposals that are supposed to be in place by now and several matters proposed to come into effect within the next couple or years, namely:

NATIONAL

COAG agreements
Energy Laws - Based on the South Australian Model
Pass Through Costs - from Distributor to Retailer to Consumers
Bulk Hot Water - Based on Victorian Conversion Factor
Retail Consumers - ACCC and Australian Energy Regulator
Carbon Credits - amount of true usage not on invoices
Trade Measurement - exemption of BHW Meters
Unfair Contracts - Trade Practices Act

STATES AND TERRITORIES

Tenancy Laws - regarding Services and Crown tenants not being covered
Competition Laws - not followed in Queensland
Consumer Protection - in Fair Trading Law
Consumer Protection in Tenancy Law - On selling by Landlord
Energy Law - in jurisdictions

INTER-DEPARTMENTAL LIAISON

In the Federal sphere of government, each department has a liaison officer, usually a legal officer to check with other departments regarding the policies and legal ramifications of things undertaken by government. As you can see from the above-mentioned Governance and Nationalization section of my submission there can be many different permutations and conflicts.

It is sometimes hard for one sector to give much notice of others, for each has historically kept to its own patch. This segregation may need to have a quick and informal “interchange” of ideas, so that clashes are abated. The Queensland Government has consolidated Ministries to a dozen of so departments. Perhaps the Coordinator General could facilitate such liaison. To forever rely on costly, external legal advise from outside firms, may create decisions that are based on a “one eyed” approach and risk later complications as shown in my submission.

The case of selling assets, competition, trade measurement, regulation, FRC fee folly and the other matters mentioned would have benefitted with a cursory inter-departmental liaison.

DICTIONARY AND THESAURUS

I wish to point out that in the new framework, “consumer retail services” are to be included in the national generic energy law, with only gas and electricity being proffered as energy. This seriously disregards any other energy or its generation, with wind, wave, solar, voltaic, geothermal and others being dismissed as not being energy at all.

The language and titles of certain words and phrases is not consistent across the jurisdictions, nor were they consistent for national reform. In deed, customer/consumer, supply point/energizing point, disconnection/de-energizing, reconnection/re-energizing are just a few examples for the language used in energy supply.

Transforming words into others, makes for bad policy and confuses the consumer who may take the view that words have one meaning under contract law, and another under energy law. This will give energy entities the power to use words that are not universally adopted by the jurisdictions.

If a consumer wishes to use consumer law to address an energy contract, they have every right to. There will be a clash in the courts as to which word means what, for consumer protection law has some of the same words, but will have different meanings under energy law. The MCE should be mindful of the use of their dictionary in energy law, for a completely different meaning may be evidenced in consumer and trading law.

CONSUMER RETAIL SERVICES

My greatest fear is, that the law and policy makers in the jurisdictions do not wish to place BHW arrangements in the national law, and completely disavow any consumer protection in relation to BHW consumers.

The energy law and the AER governance, completely ignore the rights of BHW consumers, and will somehow leave this energy commodity to the States and Territories. This will see BHW provisions in the jurisdictions being a hodge-podge of differing laws, regulations, rules and codes, without any transparency. Bulk hot water constitutes about 50% of consumers energy costs, yet it does not appear in the generic national law, regulation, rules or codes. Each jurisdiction and retailer will have its own dictionary regarding the sale of BHW, with the effect of avoiding any fair trading or pricing oversight.

To include “consumer retail services” and then to ignore its impact, is a gross abrogation of the law makers duties to consumers, for they appear to be a subservient to the distribution and retail companies and their agents who control this market.

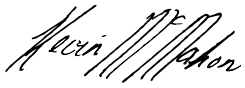
IN CLOSING

There has been lively debate among my neighbours regarding the BHW that we share. They too are also disturbed by the actions of legislators not giving them protection from energy entities. An internet forum is contemplated, so as to give access to all the issues covered in this submission. There are potentially an audience of a few of hundred thousand BHW consumers who may wish to trade stories, documents and experiences. The lack of rigor by politicians will brought into focus.

Thank you for giving me the chance to contribute to the reform process, and may I request that you attend to my submission, so that the many thousands of tenants who are forced to buy uncontestable BHW, see some light at the end of the tunnel.

I hope that the MCE Market Reform Team will take into account all the issues I have raised and amend the proposed NECF2 package to include better protections. The Network Policy Group also needs to look at the economic implications.

Yours sincerely



Kevin McMahon