

IMPACT STATEMENT

PREPARED BY THE ENERGY CONSULTATIVE REFERENCE COMMITTEE

INTRODUCTION

The NSW Government established the Energy Consultative Reference Committee to provide a further opportunity for representatives of relevant community and consumer groups and unions to test the Government's announced reforms to the State's electricity industry against the 12 criteria in the ALP's policy platform.

The Committee has been requested by the Government to examine the following criteria in the formulation of its impact statement:

1. The direct and indirect social usefulness of a public asset, service or utility;
2. The original purpose of the enterprise and whether that purpose remains valid, is being appropriately addressed through existing arrangements or could be satisfied by alternative arrangements;
3. Where the original purpose (as discussed above) has become redundant, the other social, redistributive or regulatory roles that have evolved must be taken into account;
4. The retention value of the enterprise measured against its sale value. Any calculation of retention value should incorporate both commercial and non-commercial functions;
5. The current structure of the market place (i.e. monopoly, oligopoly or competitive) and the public sector's role as a competitor and/or regulator in that market;
6. The impact on specific groups or regional areas especially those groups or areas that are already disadvantaged. The assessment should include all factors including the real costs of compensation and/or support that will be needed if the role of the public sector were to change;

7. The impact on employment, skills, training and conditions and the protection of the existing workforce and/or the reform of industrial relations practices in any new enterprise or project;
8. The existing competing demands on the NSW public sector and existing budgetary constraints and/or the alternative sources of funds for public sector investment;
9. The current environmental impact and the need to continue to enhance environmental protection;
10. The administrative economies of scale and coordination that is facilitated by public ownership and control;
11. Appropriate weighting of long-term as well as short to medium term considerations; and
12. Where the money is going (i.e. ensuring that the proceeds of the disposal of assets are responsibly directed to priority public capital needs).

REVIEW PROCESS

The Owen Inquiry was open to public submissions and, following the release of the Owen Report, the Government continued to meet with stakeholders to discuss the Report and its findings.

The Consultative Reference Committee has carefully considered the Owen Inquiry Report and discussed key issues with Professor Anthony Owen. The Committee has also carried out its own investigations.

Public submissions were called in the *Sydney Morning Herald*, the *Daily Telegraph* and *The Land*.

In total, 77 submissions were received. All of the submissions are publicly available at www.nsw.gov.au.

The NSW Government has also provided a written response to the Committee's terms of reference. A copy of the response is attached (see Appendix 1).

Amongst other things, the response states that:

- The NSW Government's decisions in response to the Owen Inquiry provide a comprehensive strategy to secure the State's future electricity supply, while ensuring that the existing State-owned generation assets and the transmission and distribution networks remain in public hands.
- The people of NSW expect and are entitled to safe, reliable and affordable electricity. The Government's strategy will continue to deliver this outcome.
- In making decisions in response to the Owen Inquiry, the Government considered and measured all options against the goal of protecting the public interest.
- The Government is giving the taxpayers of NSW confidence that their capital is being invested responsibly in core public services such as hospitals, schools, police and transport.
- The Government is introducing a number of safeguards to protect jobs and create an environment that encourages new investment and therefore the creation of new jobs in the electricity industry. Other safeguards entail keeping electricity prices as low as possible, protecting our environment and ensuring investment in necessary infrastructure.

The Consultative Reference Committee has met with the following individuals:

- a) Professor Anthony Owen;
- b) Michael Rizzo, ASU, Victoria Branch;
- c) Clare Petre, Energy & Water Ombudsman NSW;
- d) Ron Hardwick, Visy Industries Pty Ltd;
- e) Associate Professor Hugh Outhred, Centre for Energy and Environmental Markets, UNSW;
- f) Mark Gill, United Services Union and employee of a State-owned Generator; and
- g) Nick Gruen, Lateral Economics.

In addition, the Chair of the Committee has met with representatives from the NSW Independent Pricing and Regulatory Tribunal, Morgan Stanley and Connell Wagner. Morgan Stanley and Connell Wagner were advisors to the Owen Inquiry.

OVERALL ASSESSMENT

All of the Committee members, except the union representatives, agree that it is reasonable to conclude that the NSW Government's strategy to secure the State's future electricity supply meets the 12 criteria *overall*, subject to the Government addressing and implementing the recommendations contained in this Impact Statement. The strategy should proceed in the best interests of the citizens of New South Wales.

The union representatives on the Committee have submitted, through Unions NSW, that the Government's strategy does not meet the 12 criteria overall. A copy of the union representatives' submission to the Committee, which outlines their reasoning, is attached (see Appendix 2).

The recommendations are set out below.

RECOMMENDATIONS

Transaction Strategy:

The Government announced on 10 December 2007 that it will: lease the existing State-owned generators (Macquarie Generation, Delta Electricity and Eraring Energy) to private operators, while keeping the assets in public ownership; and sell the State-owned electricity retail activities and functions of EnergyAustralia, Integral Energy and Country Energy to the private sector.

When making the announcements referred to above, the NSW Treasurer indicated that the exact structure of the lease of the generators and sale of the retail activities and functions was still to be determined.

This circumstance enables the Consultative Reference Committee to make some suggestions as to how the transactions might proceed based on the material presented to it.

It is recommended that the NSW Government:

1. Consider the creation of an entity from within its electricity assets which has sufficient critical mass to achieve community and financial market support, in presentation for sale of shares in the entity through an Initial Public Offer (IPO).

In the formation of the entity, the Board and Management should comprise persons thoroughly experienced in the Electricity Generation and Trading Industry who are committed to protect the interests of employees, consumers, the environment and shareholders alike.

The establishment of such an entity would provide effective competition to the established participants within the National Energy Market. It would also enable the entity to invest in horizontal energy assets in the future.

2. Obtain professional advice as to whether the remaining assets should comprise a subsequent public offer or be subject to other means of disposition (i.e. models of private sector involvement).
3. Provide share allocations, in any public offer, to transferred employees, reserved for sale to industry employees, retail investors and industry superannuation funds, with minimum guaranteed allocations.
4. Consider an instalment share sale similar to Telstra 2 and 3, to ensure the offer is attractive to a diverse range of investors.

The NSW Government has previously disposed of assets through an IPO - the sale of TAB Limited was both popular and financially successful.

Similarly, Federal Labor Governments have sold public sector assets by IPO. The Commonwealth Bank, Qantas and the Commonwealth Serum Laboratories being examples of successful share market floats.

Each company has gone on to commercial success provided by diverse share ownership and stock market listing.

5. Retain Country Energy's distribution business as a stand-alone Government business serving country NSW.

Employment:

The Government has announced a package of employment guarantees, pay and conditions protections and transfer benefits for employees affected by the changes to the electricity industry.

The Committee has had extensive discussions on the package offered. Concerns have been raised in respect to the mechanisms available to enshrine and enforce the employment guarantees, regional employment and the interaction of State and Federal industrial law. These concerns need to be addressed.

It is recommended that the NSW Government:

6. Make it clear to all prospective owners/operators in the *Information Memorandum* that a prime criteria in assessing tenders will be the level of protection and certainty offered to employees and the mechanisms proposed to enshrine in industrial instruments and employment contracts both NSW Government and prospective owner/operator undertakings. Ease of enforceability will also be an important consideration.
7. Make it clear, in the Government's undertaking for all staff to "maintain their superannuation entitlements and arrangements, and will continue to be able to contribute under the same defined benefit or accumulation arrangements...", that the undertaking extends to existing entitlements in Awards/Agreements requiring contributions to accumulation funds above the 9% statutory entitlement. This undertaking should continue irrespective of future ownership changes.
8. Make it clear to prospective owners/operators that the commitment to maintain local and regional employment will be an essential condition in the tender assessment process.
9. Make it clear to prospective owners/operators that a commitment to long term local employment strategies will be a requirement in the tender assessment process.
10. Remove any barriers to redeployment across the entire NSW Public Sector for retail workers who decline or are not offered employment by the new operators, or who cannot be usefully employed by the distributors.

11. Retail staff that do not accept or are not offered employment with the new owners should be provided with extensive retraining, skills acquisition and development opportunities. At the end of the Transitional Service Agreement period, consideration should be given to a voluntary redundancy offer for any remaining displaced retail staff.
12. Strengthen its commitment to employing apprentices. The Government has already guaranteed to continue employing apprentices at a minimum of 2008 levels.
13. Commit to maintaining existing employment in the remaining distribution businesses especially regional employment opportunities.

The Committee recognises the union representatives' position that it is critical for all employees affected by the restructuring proposal to receive a five year employment guarantee.

A list of questions on employee issues provided by the union representatives for consideration by the Committee is attached (see Appendix 3). A record of one of the meetings held between the union representatives and Government officials to discuss these questions is also attached (see Appendix 4).

The Committee recognises that certain employee-related issues need to be resolved in the light of transaction details and therefore there is a need for ongoing negotiations with the unions on these matters.

Consumer Protection:

The NSW Government has made a commitment to continue its strong regulatory role to ensure that small customers are properly protected.

In keeping with the spirit of this commitment, the Committee believes that the Government should adopt examples of best practice demonstrated in other jurisdictions. It should also clarify the process of transferring State-based regulatory functions to national bodies as part of the national energy reform process.

It is recommended that the NSW Government:

14. Legislate to ensure that retail price regulation by IPART continues for the default prices that retail suppliers charge small customers who have not entered into contracts for the supply of their electricity. This regulatory role should continue regardless of the terms of the *Australian Energy Market Agreement* and assessment by the Australian

Energy Market Commission of the amount of competition in the market place.

The NSW Government has already stated that IPART will continue to set regulated prices for households and small business until at least 2013. The Government should request IPART to conduct a public inquiry into retail price regulation prior to 2013. There should also be regular, ongoing review of pricing.

15. Introduce a “no disconnections policy” for small domestic customers in NSW. Retailers should be required to maintain hardship policies as at present, including their support of the No Interest Loan Schemes. However, in cases where a customer is to be disconnected, there should be an obligation to supply on “standard retailers” and the management of the customer’s account involving appropriate agencies to assist the customer and retailer with the obligation to supply.

These agencies could include community welfare organisations, the Energy and Water Ombudsman, the Department of Water and Energy and/or the distributors. This would ensure that the customer is managed via a safety net system and in a “holistic” manner. Such consumers should be provided with financial counselling, access to a strengthened Energy Accounts Payment Assistance Scheme, energy audits (along the lines provided by the Kildonan organisation in Victoria) and financial assistance to retrofit properties for energy efficiency and to provide efficient electrical appliances.

The Committee notes that the Department of Water and Energy is currently preparing advice on how a “no disconnections policy” can be put in place to ensure that it protects customers that are genuinely vulnerable, rather than removing the incentive to pay an energy account for the broader population.

16. Establish a fund (Electricity Consumers Fund) from the net proceeds of the Government’s Energy Strategy which will provide the necessary funding to implement Recommendation 15 above. The Department of Water and Energy, in consultation with NSW Treasury, should provide the Government with advice on the scope of the Fund and associated costings (i.e. what costs the Fund will cover and how it will be used).

17. Increase the level of funding under the current Energy Accounts Payment Assistance Scheme, as put forward in the submission by the Utility Consumers Advocacy Program, part of the Public Interest Advocacy Centre. In addition, the distribution criteria should be reviewed and, if necessary, amended to improve the effectiveness of the Scheme, including the use of the Scheme as part of the proposed no disconnections policy and the safety net system.

It is important for the Government to consider Recommendation 16 and Recommendation 17 together to ensure that funding is appropriately targeted and that best value for money is obtained.

18. Tighten the requirement on all retailers for a hardship policy, to strengthen the arrangements as they relate to offering payment plans and the requirement to publish the Hardship Charter.
19. Increase the current pensioner rebates from \$112 to \$130 per annum as argued in the submission from the Combined Pensioners Association. The rebate should be indexed according to CPI thereafter. The Department of Water and Energy, in consultation with NSW Treasury, should provide the Government with advice on the cost and funding options.
20. Consider the merits of extending concessions to holders of Health Care Cards as is currently the case in Victoria and South Australia. The Department of Water and Energy, in consultation with NSW Treasury, should provide the Government with advice on the cost and funding options and any equity considerations of this proposal.
21. Remove the current charges to consumers to be transferred to the Retailer of Last Resort (i.e. the "Safety Net Provider"). Such charges are not appropriate under the proposed new safety net framework. Even in the recent case of Energy One, customers were transferred without charge.

The Committee notes that the Government is currently developing a Safety Net Provider policy and that a decision regarding changes should be taken in the context of the broader policy.

22. Vigorously pursue best practice consumer protection arrangements when negotiating with the Commonwealth and the other States and Territories on the transfer of other State-based regulatory functions to national bodies. There should be statutory protection to ensure that there is no erosion in the integrity of NSW's existing consumer

protection arrangements, including those proposals that are recommended in this Impact Statement.

23. In the context of Recommendation 22 above, seek to strengthen the rules, codes and regulations relating to marketing to ensure that electricity retailers comply with ethical rules in regard to the door-to-door marketing of their products. Penalties should be applied where this is not the case.

The NSW Energy and Water Ombudsman should be able to recommend compensation payments to consumers where unfair practices have occurred and to “name and shame” persistently poor performing retailers in this regard.

The Committee notes that the Government is already committed to a review of the Marketing Code of Conduct, and that the Department of Water and Energy is in the process of preparing a work plan for this review.

A report on consumer protection was provided by the Rev. Harry Herbert, Executive Director, Uniting Care NSW/ACT (see Appendix 5), for consideration by the Consultative Reference Committee.

Environment Protection:

NSW has a strong environmental regulation framework in place which applies to all players in the State’s electricity sector, irrespective of ownership. This State has also led the way in developing climate change policies and dealing with greenhouse gas emissions in the energy sector.

However, further action is necessary to ensure that NSW’s long term interests are protected in the context of the Government’s announced electricity reforms.

It is recommended that the NSW Government:

24. Continue to be responsible for “land use, planning and environmental approvals or policies, as currently provided for in the *Australian Energy Market Agreement*.
25. Reaffirm that it will not provide indemnities to cover the carbon liabilities of NSW Government-owned generators, irrespective of tenure. The sale of retailers should also be covered by a no indemnity provision. The full extent of this commitment needs to be clarified both as to specifics and a binding instrument in regards to:

- (a) Relief from existing NSW greenhouse gas abatement scheme obligations (for which existing utilities are currently obliged and will run to at least 2012 in order to mesh with national emissions trading);
 - (b) Financial assistance to meet national carbon permit costs;
 - (c) Government assurances about not seeking to reduce electricity demand through state action or not supporting national policies that have the same effect;
 - (d) Support for “safety valves” (for example coverage, time of entry of a sector, future relief mechanisms) in a national scheme;
 - (e) “Last resort” concessions or guarantees where it can be demonstrated that security of supply will be compromised because the market fails to invest in new generation capacity due to uncertainty regarding emissions trading (this is an invitation to “gaming” by owners and ignores government supply undertakings); and
 - (f) A general clause about any other types of policy or financial assistance.
26. Not advocate a position on generator permit allocation or compensation proposals relating to the National Emissions Trading Scheme, noting that this is a matter for decision by the Federal Government.
27. Given the relative age of Munmorah, the Government’s assessment criteria should favour bidders who are committed to ceasing its operation as a coal-fired power station in an orderly manner with other supply, and have demonstrated plans and capability to retain Colongra as a peaking plant, or to fundamentally redevelop the Munmorah/Colongra OCGT site to baseload gas.
28. Urgently adopt in the first half of 2008, a comprehensive energy efficiency plan with ambitious targets. Improvements to energy efficiency will reduce overall energy consumption. The plan should be structured over 10 to 25 years and have a pervasive impact, rather than the ad hoc, boutique approaches of the past. It is acknowledged that the Government has commenced the development of an energy efficiency strategy with its announcements of 10 December 2007.

29. Support reform of the National Electricity Market to increase the role of energy efficiency, including the recent rule change proposals by the Total Environment Centre to the Australian Energy Market Commission.

The Committee notes that environmental objectives are State Government matters outside of the National Electricity Market, but that the NEM will need to show increasing compatibility with State and national environmental objectives.

30. Pursue vigorous action to support smart meters with user-friendly technology and time-of-use pricing at the national and State levels (this action is needed to shift the timing and level of peak demand for electricity). Appropriate information and education material should also be provided to consumers. The national roll out of smart meters is moving too slowly, and the Government should press for faster action in the context of the national framework.
31. Provide dedicated and substantial funding for new energy efficiency measures (e.g. energy efficiency audits and low income programs). Following an assessment by Government of feasible and cost-effective measures, funding should be locked-in and guaranteed by legislation. Similarly, the mandating of energy savings by the top 200 will require regulation changes as soon as possible.
32. Fast-track five specific initiatives, as follows:

- (a) *Energy Efficiency Trading*. The move to a national emissions trading scheme does not allow for the inclusion of energy efficiency. While the NSW Government has already agreed to support development of a national energy efficiency trading scheme, it can go further. Regardless of national action, the NSW Government should announce (prior to the sale of retail) the key parameters that will be brought into operation at the State level at the beginning of 2009, so that it is a known part of State energy policy. The new and essential element will be energy efficiency targets for retailers.

The Government should also consider ambitious targets, such as 2% per annum in 2009, rising to 2.5% by year 5 and 5% by year 10, to be confirmed as a priority by appropriate independent, transparent modelling. Each retailer would have to buy energy efficiency certificates each year equivalent to the required percentage of the last year's consumption by its customers.

- (b) *Accelerate development of zero and low emission / efficient hot water technologies, including solar and heat pumps.* Greater stimulus is needed to ramp-up production and reduce costs of these technologies, so that earlier replacement is an attractive option and the most cost-effective choice. This can only be achieved by enlarging the customer base, supported by a major marketing and funding program. For example, similar in design to that being undertaken by Sydney Water to improve, street by street, home water efficiency.

The NSW Government should urgently investigate and facilitate the adoption of all low emission / efficient hot water technologies and allocate start up funds for roll out to occur over the next 10-15 years.

- (c) *Solar feed-in law.* While solar PV is still an expensive option compared to many other energy options, its viability can be progressed more quickly using the current rebates, the national emissions trading system and, importantly, a feed-in law that guarantees a price and simple contractual arrangements for solar electricity fed into the grid. Both South Australia and the ACT are embarking on feed-in laws.

The Federal Government has said it does not have plans for a national law, but will be encouraging States to act on this matter. The NSW Government should consider the introduction of such legislation.

- (d) *Building Sustainability Index (BASIX) upgrade.* The reliability of some BASIX provisions (such as installation of energy efficient appliances) is questionable as their retention over the life of the building cannot be assured. As part of the BASIX review in 2008, the Government should consider the withdrawal of these provisions and the mandating of more effective energy infrastructure requirements.

- (e) *Point of sale energy efficiency rating statement.* Another way to improve the energy efficiency of existing residential and commercial building stock is to require an “energy efficiency rating statement” at point of sale so that prospective purchasers can be informed of the greenhouse and energy cost of a building. This should also apply to rental properties so that tenants can assess their likely energy costs.

The Government should carry out a proper assessment of the benefits and costs of this proposal in 2008 prior to implementation and study the outcomes of this measure in the ACT and the United Kingdom.

A report on environmental protection was provided by Jeff Angel, Executive Director, Total Environment Centre (see Appendix 6), for consideration by the Consultative Reference Committee.

Savings to Government:

The Government's announced decision is expected to save NSW taxpayers up to \$15 billion in new investment costs over the next 10 to 15 years.

The Government considers that its fiscal capacity for new investment is better directed towards the provision of core public services such as hospitals, schools, police and transport, while ensuring a reliable, safe, secure and competitively priced supply of electricity.

In relation to the use of net proceeds from the Energy Strategy, it is recommended that the NSW Government:

33. Ensure that the proceeds are allocated equitably across metropolitan and rural and regional areas of NSW. The Government has stated that the Intergenerational Fund will be used for Government's priorities, including a new vision for improving regional and rural water outcomes and rural and regional transport improvements. Consideration should be given to other funding priorities in rural and regional areas.

The Hon. Barrie Unsworth
Chairman
For and on behalf of the
Consultative Reference Committee

7 March 2008