Establishment of an Essential Services Commission

A submission prepared by the Property Council of Australia – Victorian Division

September 2000
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Appendix: The Age Monday 18 September 2000
Introduction - Property Council’s Role in the Regulation of Utilities

For the duration of the existence of the Office of the Regulator-General Victoria, Property Council has supported and participated in the current consultative processes. Property Council has specifically assisted the ORG in the following developments:

- educational programmes and forums for each tranche of contestability in the electricity industry
- initial consultation for the establishment for performance benchmarks for the metropolitan water companies
- working group for the establishment of service standards for the electricity retailers
- rewriting of the Electricity Distribution Code
- commentary on the development of the Tariff Order for electricity
- initial input to the working group for the Retail and Wholesale Metering Codes
- initially assisted in the development of the Supply and Sale Code
- monitored and reported on consumer problems
- considered and contributed to the guidelines for the establishment of the original Electricity Industry Ombudsman’s Office (now the Energy Industry Ombudsman)

Property Council envisages working with the Essential Services Commission (ESC) in a similar manner as it has in the past with the ORG.
Executive Summary

1. The Property Council of Australia is an authoritative, research-based organisation which seeks to develop policies which benefit all sectors of the community. Positive reform of utility services has long been part of our agenda.

2. Property Council supports the establishment of an Essential Services Commission to ensure high quality, reliable, equitable, environmentally sustainable, and safe delivery of essential services.

3. Property Council suggests the name of the commission could be changed to “Essential Utilities Services Commission” to avoid confusion with terminology used in the Building Act 1993.

4. We would prefer the establishment of a Commission with representatives from various industry sectors.

5. To the extent that the proposed regulatory objectives will give rise to standardised treatment of different industry sectors, Property Council believes that the objectives are appropriate for the ESC.

6. There needs to be some means of ensuring both economic and other non-economic factors are considered and a balance sought when the ESC is making decisions. There is a need for more specific objectives and regulations regarding reliability, capacity support, consumer protection, pricing, health and safety regulations, and environmental standards to see how they might impact on the ESC.

7. As the public transport system operates under an entirely different regime, Property Council believes that public transport should not be included in the jurisdiction of the ESC.

8. Property Council believes the ESC’s role in the water industry should operate similarly to other industries in private enterprise. However, there needs to be a separate authority to continue overseeing the quality of water (Department of Natural Resources and Environment / Department of Human Services). The water quality standards laid down by these authorities must be taken into account by the ESC.

9. Property Council supports the establishment of the Essential Services Ombudsman for customer to utility company complaints handling.

10. Property Council supports the Memorandum of Understanding that the Office of the Regulator-General (ORG) has with other regulatory bodies. However we believe that greater transparency of the Memorandum of Understanding process is required through publication.
11. Property Council supports a forum for interchange of processes, concerns, and outcomes between bodies, at state and national levels. The ESC could play a facilitator role in ensuring communication between regulatory bodies at both these levels.

12. National uniform standards must be implemented. Separate and inconsistent standards create confusion and cause unnecessary expense to the property industry and the community at large. Property Council expects that the establishment of the ESC would promote greater national consistency.
Recommendations

In relation to the structure and role of the ESC, Property Council recommends:

1. The appointment of a single Commissioner with the ultimate decision making power, supported by an Advisory Board and industry specific Assistant Commissioners.

2. That the ESC be independent from, but accountable to Government.

3. The establishment of a separate complaints mechanism for consumers and other interested parties to raise service, health, and environmental issues.

4. That there be a merits review process available for decisions made by the ESC and other bodies with powers in relation to essential services.

5. The retention of the Customer Consultative Committee (or a similar representative body) as consumer representation with the ESC is essential.

6. That to improve the existing public consultation process, the ESC should publish statements, rulings, determinations, and guidelines along with the reasons for any decisions.

7. That the ESC should have regard to the efficient use of resources, as well as environmental and social impacts.

8. The introduction of triple bottom line accounting to record economic, environmental and social dividends.

9. The development of benchmarking standards for Victoria that can be applied in other states, to ensure compatible standards are achieved.

10. That there be national regulatory powers to develop coherent national regulations, standards, and charters of supply.
Property Council’s Profile and Objectives

Profile

The Property Council of Australia represents the interests of the property industry, principally those who use land or invest in the built environment to generate economic returns.

1. Established in 1969, the Property Council (formerly BOMA) engages in activities designed to meet the needs of the property industry. It aims to create benefits that flow to property owners and those whose services, products, and entrepreneurial skills play a vital role in generating economic returns.

2. Property Council has in excess of 2,000 members throughout Australia, managing property assets worth more than $107 billion. Approximately 439 members are in the Victorian Division, and represent property assets of over $45 billion.

3. Property Council’s membership is drawn from:
   - institutional and private investors, developers and managers of commercial property driven by investment opportunities
   - public companies and instrumentalities who seek to maximise shareholder wealth from their property assets
   - companies and individuals associated with the provision of resources, products and services to the industry.

4. Our members are responsible for the property investment returns of over 9 million Australians who have a stake in investment property either through listed property trusts, direct investments or through superannuation.

5. The economic health and well being of the property sector is fundamental to the prosperity of Victoria and Australia and underpins many other sectors of the economy.

6. Property Council’s five core business activities include:
   - advocacy and lobbying
   - information access and primary research into commercial property markets
   - professional development and education programmes
   - networking opportunities through numerous functions and meetings
   - communication to maintain a well informed market.
7. The work of the association is undertaken by the Executive and a committee network comprising industry practitioners and professionals. The committees undertake research projects, detailed analyses, and comment upon Government policies and the various issues arising from them.

8. In developing a forward looking agenda Property Council is developing policies around:

- one set of rules Australia wide for planning, building, trading hours, lease legislation, rates and taxes
- promoting smart growth and the knowledge industries of the future
- supporting sustainable cities including energy efficient buildings and a system for trading carbon credits
- supporting the development of competitive liveable cities for the post industrial world
- the outcomes required of the utility services now embraced in the proposed activities of the Essential Services Commission (ESC) – Victoria.

**Property Council – Victorian Division’s Objectives**

9. Property Council’s – Victorian Division objectives are:

i. **Economic Fundamentals** - To make the Victorian property industry the most attractive and viable investment destination in Australia, including by sustainable delivery of utility services to consumers of property services.

ii. **Governance** - To implement a structure of Government which is supportive of investment growth.

iii. **Strategic Planning** - To promote value added development and investment in Victoria with a whole of Government approach.

iv. **Planning Regulation** - To achieve a clear and consistent planning system which is both supportive of private sector development and is designed to effectively implement the State wide strategic planning concepts.

v. **Property Related Regulatory Reform** - Property industry regulation should be consistent with other states, and where appropriate establish quality benchmarks which apply to the private and public sector promoting a competitive environment.

Property Council has committed resources and intellectual property to the utility industry reform over the past decade and identifies the on-going reform and promotion of a competitive market place as essential to economic growth with the State and the property industry.
vi. **Retail** - To ensure a co-operative approach amongst industry participants in a competitive de-regulated trading environment.

vii. **Physical Infrastructure** - To create a built environment for Victoria of a world class standard which is supportive of future, social, cultural and financial activity.

The role of the current regulatory regime incorporating the specialist safety, standards, and economic State Government structure has enabled an improvement in the returns to our industry beyond that achieved in the competing States. The need for extension and consolidation will lead to a further improvement and competitive advantage for the State of Victoria.

viii. **Tourism** - To increase the current levels of investment and benchmark tourism property, measuring it against other asset classes.

The following pages provide our response to the specific questions raised in the Essential Services Commission Consultation Paper. Due to the broad nature of some of the questions several points in this submission are repeated in different sections.
What the ESC should be Achieving in Victoria

Establishment of an Essential Services Commission

10. Property Council supports the establishment of an Essential Services Commission to ensure high quality, reliable, equitable, environmentally sustainable, and safe delivery of essential services. We see the measurable outcomes of the establishment of the Commission to be:

- improving the involvement of consumers and utility companies in the regulation of the industries
- strengthening the quality, reliability and sustainability of a national grid for electricity, gas, and where appropriate, water and environmental\(^1\) services
- enhancing the benchmark for service standards and performance of each aspect of the utility services under the proposed ESC
- providing leadership for the utility industry in the introduction of innovative technology to improve efficiency
- developing targets for the improvement of the environmental impact of utility services and monitoring the delivery of social policy as determined by Government
- ensuring the allocation of funds / subsidies to the stakeholders is fair and equitable.

11. The ESC’s focus on economic regulation needs to be balanced. While the Government is opposed to making the ESC a one-stop-shop there must be other bodies linked to the ESC that consumers can turn to for regulation and determination of service issues.

12. There also needs to be structural and administrative links between the arms of regulation. The ESC would need to ensure:

- independent scrutiny of the relevant industries occurs
- consumers are able to participate in public debate in the establishment of guidelines, key performance indicators, and complaint resolution
- checks and balances are in place to protect consumers, with the corporatisation and privatisation of certain services.

13. Property Council believes that the name of such a commission should perhaps be “Essential Utilities Services Commission” to avoid confusion with terminology used in the Building Act 1993 and associated regulation.

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\(^1\) waste, sewage, recyclable services
Proposed Role of the ESC

Primary role of the ESC as an economic regulator

14. Property Council supports the ESC’s role as a primary regulator and we support the separation of other specialist bodies to perform other functions. This would represent the simplest transition from the ORG, as the role would be similar.

15. It is unlikely that a broader role for the ESC is practical due to the widespread changes that would be required to the operations and jurisdiction of other authorities (such as the EPA).

16. Property Council believes the role of the ESC is appropriate if the ESC is established in a way that allows input from industry and consumer groups in the key areas of price, service quality, reliability, and performance.

17. The ESC should not be required to regulate all aspects of the operation of utilities. Economic, health and environmental aspects should be kept separate from each other and a mechanism for co-ordination between bodies and for conflict resolution needs to be established, for example, a formalised regulator forum.

18. Property Council supports and recommends the establishment of a separate complaints mechanism for consumers and other interested parties to raise service, health, environmental and service issues.

Proposed jurisdiction of the ESC

19. Consistent treatment of industry sectors is appropriate as the water and sewerage industries have not been privatised. However the drivers are different between a profit driven private company and a corporatised government instrumentality. The regulatory criteria need to reflect this difference.

20. The public transport system operates under an entirely different regime, therefore Property Council believes that public transport should not be included in the jurisdiction of the ESC.

21. There needs to be some means of ensuring economic and other factors are considered and balanced when the ESC is making decisions in order to ensure that, for example, service is not sacrificed for the sake of economic gains without due consideration and recognition.

22. Property Council supports the general regulatory objectives of the:

- promotion of competitive market conduct
- prevention of misuse of market power and monopolistic position
- facilitation of market entry
- facilitation of industry efficiency improvement ensuring users and consumers benefit from competition and efficiency.
23. There is a need for more specific objectives and regulations regarding reliability, capacity support, consumer protection, pricing, health and safety regulations, and environmental standards to see how they might impact on the ESC. The regulated process should adopt performance-based outcomes rather than prescriptive outcomes.
Specific Powers, Functions and Objectives of the ESC

Regulatory objectives of the ESC

24. To the extent that the proposed regulatory objectives will give rise to standardised treatment of different industry sectors, Property Council believes that the objectives are appropriate for the ESC.

25. Property Council supports one body regulating both the private and public sector industries. However the Commission needs to be independent from Government, especially from the Government departments that control water and sewerage, to ensure transparency.

26. The ESC should concentrate on economic regulation across the industry sectors so that accepted quality of service and supply is delivered.

27. Consumer representation within the ESC will be essential. Such representatives would need to include members of interested industry groups as well as individual consumers.

Regulatory powers of the ESC

28. Given the scope and pro-active and re-active roles required of the ESC, we must ensure that the ESC office will be of sufficient size to respond promptly in a well-considered manner, and to provide and publish reasons for any decisions.

29. There should be a right to access the reasons of the ESC’s determinations and rulings and those reasons should be published. These should be available in plain english in sufficient detail for the consumer to comprehend.

30. There should be a merits review process available for decisions made by the ESC and other bodies with powers in relation to essential services.

31. It may be necessary to establish another arm of the Victorian Civil and Administrative Tribunal (VCAT) with sufficient resources and expertise to hear appeals from decisions made by the ESC and other bodies with decision-making powers which relate to essential services.

32. There should be legislative requirements that procedural fairness is accorded in any hearing and to ensure that judicial review of decisions made by the ESC is accessible.

Relationship with Government

33. Due to the Government’s commitment to retain water and sewerage services in Government ownership there is a clear need to separate the ESC from direct Government influence.
34. With respect to its role as economic regulator the ESC should be independent of Government, however its decision making process will involve consideration of other factors such as environmental and social objectives which would be controlled by other existing regulators and Government policy.

**Application of the current reporting & accountability arrangements of the ESC**

35. Performance reporting needs to continue in the same way as it does for the ORG. These reporting standards would identify anticipated levels of supply in any particular locality, as well as the likelihood of failure, therefore allowing the consumer to be fully informed of potential supply risks.

36. The ESC needs to ensure that it has consistent reporting standards across utilities – perhaps adopting the Electricity Transmission Standards as the template.

37. Property Council recommends the introduction of triple bottom line accounting to record economic, environmental and social dividends.

38. Internal audit procedures for utility companies should be standardised to assist in the transparency of information supplied to the ESC.

39. The ESC needs to ensure that there are sanctions against an operator for non-performance, for example a loss of licence or the take-over of the operation by an Administrator.

40. There must be an appeals process to protect consumer interests, possibly through VCAT or a similar tribunal (refer to paragraph 31).

**Several Commissioners versus a Regulator-General**

41. Property Council would prefer the establishment of a Commission consisting of a Commissioner, Advisory Board, and Assistant Commissioners representing the various industry sectors.

```
Minister
  |
  Commissioner
   |
   Advisory Board
    |
    Asst Comm’r Gas
    |
    Asst Comm’r Electricity
    |
    Asst Comm’r Water
    & Sewerage - Metropolitan
    |
    Asst Comm’r Water
    & Sewerage - Rural
    |
    Customer Consultative Committee
```
42. Property Council recommends the appointment of a single Commissioner with the ultimate decision making power.

43. The Advisory Board would consist of stakeholders from industry, community and the utility sectors, providing strategic direction and advise to the Commissioner.

44. The Assistant Commissioners should independently oversee the activities of that particular utility and seek input and support from the Customer Consultative Committee on detailed issues.

45. The Commissioner, in handing down any decision, determination, or regulation must report on any decision issued by an Assistant Commissioner. This would increase the transparency of the decision making process.

*Property Council would appreciate the opportunity to expand on this proposal in person.*

**Consumer access to the decision making process**

46. With the proposal to extend retail contestability in the gas and electricity sectors in the short term there will be an increased consumer focus on price and service quality therefore making it all the more important for consumers to be part of the structure.

47. Property Council believes that the current Customer Consultative Committee (or a similar group) should be retained so that consumers can raise their concerns through this representative body. Property Council and other consumer groups should be represented on the Customer Consultative Committee. This would provide an opportunity for well-structured and balanced views to be expressed.

48. Property Council believes it can play an important role on the Customer Consultative Committee or its equivalent. With over $45 billion of property under management in Victoria, our membership represents a significant consumer group with respect to essential services and as such should have representation on the Customer Consultative Committee.

**Regulatory objectives of the ESC in relation to the water industry**

49. Property Council believes the objectives of the ESC, in relation to water, should be:

- economic regulation ensuring competitive supply pricing
- to facilitate efficiency improvements in delivery
- to maintain independence from Government while facilitating under several environmental and ecologically sustainable objectives
- to act as the central reporting mechanism for quality, safety, and reliability
to act as a centralised, independent complaint processor to determine the appropriate authority for resolution.

to ensure delivery of Community Service Obligations.

ESC role in the water industry

50. Property Council believes the ESC’s role in the water industry should operate similarly to other industries in private enterprise. The ESC should do this by:

- economic regulation and determination of fair price to allow return on investment to meet service standards, obligations, and maintenance of infrastructure, as well as provision for re-investment
- acting as the first step in a complaints and appeals process and arbiter (refer to paragraph 31)
- facilitating efficiency
- ensuring benefits to consumers.

ESC’s role in relation to the reliability and quality of water supply

51. The ESC needs to:

- ensure independence of water supplies from Government
- recognise the difference in criteria for the supply of rural versus metropolitan water
- establish a framework for accountability of suppliers / Government
- establish a framework for planning, investment and development of infrastructure.

52. As well as the above, there needs to be an authority to continue overseeing the quality of water (Department of Human Services / Department of Natural Resources and Environment) and this must be taken into account by the ESC.
ESC’s role in oversight of the reliability and quality of supply in the utility industries

53. As an economic regulator the ESC should:

• establish uniform reporting standards across all utilities under its jurisdiction so that reliability of supply can be accurately reported

• in conjunction with other agencies, establish penalties for failure to meet supply and quality standards.
Transparency and Co-ordination of Regulation

Improvements to existing public consultation processes, particularly when trade-offs are involved

54. To improve existing public consultation processes, the ESC should:
   
   • publish statements, rulings, determinations and guidelines, in plain english. Reasons for decisions need to be published and rights of appeal need to be allowed (refer to paragraphs 29 and 45)
   
   • ensure that the public consultation process is timely and formal in order to be effective
   
   • ensure funding of representatives (eg funding for the Customer Consultative Committee); both industry and consumers should be funded to respond on certain issues
   
   • formalise links to other related regulatory bodies. The ESC’s interests should encompass a broad scope of responsibilities with reporting procedures consistent with other regulatory bodies, to ensure complete transparency.

55. Property Council supports the establishment of the Essential Services Ombudsman for customer to utility company complaints handling.

56. The ESC must allow customer and community input to ensure public needs are satisfied (refer to paragraphs 44, and 46 to 48).

57. The ESC must conduct public reviews when price and service levels are being determined and must publish the results in a timely manner.

58. Procedures for public inquiry based on Acts such as the Environment Protection Act 1970\(^2\) should be considered and applied, if appropriate, to enhance the scope for community participation.

Availability of financial and other information on the regulated business

59. All relevant corporate and financial information should be made publicly available. The information that is currently made available is adequate under the ORG, however there will be a need to increase the information as the Commission becomes more transparent.

\(^2\) Section 31C part 6(d) provides for a community evaluation with regards to the approval of an environment improvement plan.
Improvements to accessibility of public consultation processes, especially for poorly resourced groups or individuals

60. The ESC should institute improvements to access of public consultation, especially for poorly resourced groups or individuals, through:

- use of the internet
- advertising broadly any proposed alterations
- developing mailing lists for interested parties on particular issues
- constant publication of statements, rulings, determinations, and guidelines (refer to paragraph 29).

Roles and mechanisms for constructive consumer advocacy in regulatory processes

61. To amplify issues previously discussed, the ESC needs to:

- ensure that there is adequate time allowed for response to issues
- allow for funding of representatives
- ensure that consumers are actually on the Customer Consultative Committee
- ensure that a variety of consumers are represented
- extend the external complaint handling mechanisms (such as call centres) to all utility services and ensure that all complaints are dealt with in a timely manner.

62. Property Council supports the appointment of the Essential Services Ombudsman.

Effectiveness of regulators in managing interface issues

63. Property Council supports the Memorandum of Understanding that the ORG has with other regulatory bodies. However we believe that more transparency of the Memorandum of Understanding process is required through publication. Also, if there is a dispute between the parties then VCAT (or the equivalent) should decide the dispute.

64. We believe that there should be national regulatory powers to develop coherent national regulations, standards, and charters of supply.

65. The ESC should have independence from, but liaison with, Government and supply authorities to effectively operate.

66. The ESC should also focus on the efficient use of resources, as well as environmental and social impacts.
Opportunities for improving interface issues

67. Property Council recommends that the ESC:

- establishes and monitors compliance with state-based and national benchmarks
- facilitates coherent national, state and regional regulation, standards and charters of supply.

68. Property Council supports a consistent and national approach to regulation. There must be regulation of regional, state and national economic contributions for the development of national systems and a consistent approach between each of these.

69. In relation to decisions of economic contribution, the Regulator should decide those options that are to be retained and those that need improvement, for example the conflict between economic and environmental issues. The increase in coal-fired power stations is an example – coal may be a cheaper alternative to gas, solar and wind power but it has increased CO2 gas emissions (refer to the Appendix for a recent article from The Age).

Role of the ESC in ensuring consistent national approaches to utility regulation and effective interfaces between State and National regimes

70. Property Council recommends the development of benchmarking standards for Victoria that can be applied in other states, to ensure compatible standards are achieved. This may involve the ESC establishing a compliance system for infrastructure that is similar in concept to essential services regulations that apply to property.

71. The ESC should adopt the decision-making processes from the ORG as a role model, and the ACCC should review these processes to ensure compliance with competition policy. Liasing with regulators in other states will ensure maximum consistency.

Scope for national approaches to regulation to be harmonised and streamlined

72. Due to the number of regulatory bodies at state and national level across the various utilities it will be difficult to adopt national approaches, however some utilities such as electricity are more conducive to a national approach. Property Council supports a forum for interchange of processes, concerns, and outcomes between bodies, at state and national levels. The ESC could play a facilitator role in ensuring communication between regulatory bodies at both these levels.

73. Where a national approach is achievable (ie electricity and gas) it is important that the most efficient state structure is adopted rather than “the lowest common denominator.”
Achievement of broader Government objectives of utility regulation best left to existing specialist bodies

74. The current regulatory regime involves a number of authorities and regulatory bodies having jurisdiction that overlap. The system requires a level of understanding as to who controls the issues. In establishing the ESC the opportunity must be taken to define the interface between the other jurisdictions to avoid confusion and waste of resources.

75. To some extent interests of consumers are best assured where specialists are available to comment on and consider pertinent issues but there must also be a central organisation which has control of broader issues and is able to see the broader picture, for example a formalised regulator forum.

Changes required to the role or powers of these organisations

76. As a result of the clarity that should come about by the establishment of the ESC the role and powers of other organisations should be refined accordingly.

77. While we are looking at changes being defined though the equivalent of VCAT, Property Council believes there is a need to define which body is the single or final point of reference. We have concerns that the number of parties involved could dilute the effectiveness of the decision making process.
Australia's electricity industry has admitted that deregulation of the national market for power is largely to blame for the massive surge in Australia's greenhouse emissions.

In a submission to the Productivity Commission, the Electricity Supply Association of Australia says deregulation has favored coal-fired power stations - the cheapest but most polluting energy source - over alternatives such as gas, solar and wind power.

The association, which represents the coal power sector, said that it was unlikely that market forces would lead to a fall in greenhouse emissions unless there was government regulation.

It blamed governments for environmental failures, saying they had chosen not to take into account costs such as greenhouse abatement when they deregulated the state-based power industries in the 1990s and created a national grid of competing power companies.

But the submission argues that Australia's coal-based supply of electricity is fundamental to the economy because it provides some of the world's lowest power prices.

The submission comes amid growing doubt over Australia's ability to meet its international greenhouse obligations. Emissions (excluding those attributed to land clearing) jumped 16.9 per cent from 1990 to 1998. Australia's target under the 1997 Kyoto climate change protocol is 8 per cent over 1990 levels by 2010. The surge is due largely to a 31 per cent rise in electricity emissions; 84 per cent of Australia's power is generated by coal.

The association said power prices had dropped 10.8 per cent in five years, with coal-based generators in Victoria, Queensland and NSW gaining market share. "The clear overall winner" had been Victoria's power industry, which is largely based on brown coal - the cheapest but dirtiest fuel.

Cheap coal was also prolonging the life of existing stations and deferring investment in new plant and alternatives such as gas-fired generators.
The submission said companies under pressure to maintain revenue had dropped energy conservation programs aimed at reducing demand. Research spending on efficiency had dropped from $30 million in 1995 to $2 million now.

The submission, presented at a closed Productivity Commission workshop, claimed the problems were "largely transitional".

In a separate submission, the Australia Institute said the national electricity market was inherently inefficient because it took no account of the environmental costs of economic activity. "The objective of the national competition policy has been to lower prices and increase output, regardless of the environmental consequences," it said.

Anna Reynolds, a spokeswoman for the Climate Action Network of Australia, said economic growth was not necessarily linked to rising energy demand. She said the OECD energy emissions on average grew just 9.5 per cent between 1990 and 1997.

The international body overseeing the implementation of greenhouse targets says negotiations are failing to progress, and that key countries must show political leadership to avoid an unsatisfactory conclusion to November's climate change conference in The Hague.