

**The Consumer Consultative Committee of the Australian Competition and Consumer Commission  
C/- Consumer Law Centre Victoria (CLCV)**

**Report to the Advocacy Panel of the National Electricity Code Administrator (NECA)  
Pursuant to Funding Agreement dated 25 September 2003**

**HARMONISATION OF RETAIL CODES  
IN THE NATIONAL ELECTRICITY MARKET  
REPORT**

**Stage One and Two - 1 January 2004 to 30 April 2004**

**1. Project Overview**

The Harmonisation of Retail Codes Project (the **Project**) will develop the principles to be used to establish a single harmonised retail code to operate in the National Electricity Market (**NEM**).

The Project will be delivered in four stages:

- Research – identification of all existing retail or other codes, regulatory instruments and legislation (**Materials**) in operation in Victoria, New South Wales, the Australian Capital Territory, South Australia, Queensland and Tasmania (the **NEM Jurisdictions**) (**Stage One**).
- Analysis – thorough comparative analysis of all Materials and development of a document containing a summary of the Materials and a comparative analysis clearly identifying the contrasting provisions particularly with respect to the consumer protections operating in each of the NEM Jurisdictions (**Stage Two**).
- Evaluation – evaluation of all Materials to assess whether any provisions impede competition, efficiencies, certainty and innovation in the NEM, and an evaluation of those provisions representing best practice with respect to consumer protection (**Stage Three**).
- Advocacy – through a submission to the Ministerial Council on Energy's (**MCE**) Standing Committee of Officials (**SCO**) advocate for a single retail code representing national best practice and the principles to be used to develop the code (**Stage Four**).

Consultation with relevant stakeholders will take place at each stage of the Project.

**2. Project Tasks Completed**

**2.1 Appointment of Co-ordinator**

Natasha Leigh is the Coordinator of the Project. Natasha was previously employed as a commercial lawyer, for a period of five years, with Minter Ellison, a leading national law firm. She also co-ordinated Minter Ellison's Homeless Person Legal Clinics and was a secondee to the Public Interest Law Clearing House for six months.

**2.2 Appointment of Steering Committee**

The Project Steering Committee was appointed on 20 January 2004.

The Steering Committee is constituted by the following representatives:

- Anna Stewart (CLCV);
- Gavin Dufty (St Vincent de Paul Society);
- Charles Britton (Australian Consumers Association);
- Denis Nelthorpe (NECA Advocacy Panel);
- Fiona Guthrie (Consumers' Federation of Australia); and
- Kerry Connors (Consumer Utilities Advocacy Centre).

## **2.3 Identification of Materials**

### **2.3.1 Included Materials**

The relevant Materials are those instruments that determine the requirement for, and terms of, supply of electricity to domestic consumers of electricity by retailers.

The Materials that will be reviewed for each of the NEM Jurisdictions are as follows:

#### **Victoria**

- Retail Code (as at 30 October 2001) and/or the Energy Retail Code (either in Draft as at June 2003 or the final version\*);
- Electricity Industry Act 2000;
- Code of Conduct for Marketing Retail Electricity;
- Credit Assessment (Guideline No 4) (April 2002);
- Confidentiality and Informed Consent, Electricity and Gas (Guideline No 10) (May 2002); and
- Greenhouse Gas Disclosure on Electricity Consumers' Bills (Guideline No 13) (October 2002).

*\*We anticipate that the Energy Retail Code will be adopted in Victoria shortly and therefore we will include an assessment of the document in draft or final form (as applicable).*

#### **South Australia**

- Retail Code (January 2003);
- Electricity Act 1996;
- Marketing Code (November 2002);
- Consumer Transfer and Consent Code (November 2002);
- Use of Information and Confidentiality (Guideline No 6) (October 2000);
- Consumer Information and Protection – Green Power (Guideline No 7) (November 2000); and
- Retailer of Last Resort – Pricing and Charging Framework (Guideline No 8) (September 2001).

#### **New South Wales**

- Electricity Supply (General) Regulation 2001;
- Electricity Supply Act 1995;
- Marketing Code of Conduct (June 2002);
- Market Operations (NSW Transfer Rules for Retail Electricity Supply) Rule No 4 of 2001; and
- Market Operations Rule (Retailer of Last Resort) No 5 of 2001.

## **Australian Capital Territory**

- Consumer Protection Code (June 2003); and
- Utilities Act 2000.

## **Tasmania**

- Electricity Supply Industry (Tariff Customer) Regulation 1998.
- Tasmanian Electricity Code (February 1999); and
- Electricity Supply Industry Act 1995.

## **Queensland**

- Electricity Act 1994; and
- Electricity Regulation 1994.

In addition, the main provisions of retail licences (or retail authorities in Queensland) will be reviewed, as will the existence of an ombudsman scheme.

### **2.3.2 Excluded Materials**

A number of regulatory instruments or particular provisions within regulatory instruments have been identified as impacting on the protection of consumers in the NEM, but are peripheral to the consumer-retailer relationship, and therefore are not appropriate to be considered by the Project. These include instruments regulating quality of supply of electricity, metering of electricity, connection and transfer of electricity supply by distributors, and re-sale of electricity in caravan parks and other embedded network situations.

In addition, retailer's customer charters and hardship policies, although ultimately impacting on the consumer protection framework in energy, are not in themselves regulated instruments and will not be reviewed in this Project. The Project will assess whether any welfare or other agency has carried out a comparative analysis of the retailer's hardship policies operating across the NEM, and will consider the merit of such an analysis to be considered in the move towards national consistency of retailing.

Finally, although the existence of an energy ombudsman scheme in each NEM Jurisdiction will be considered the enabling legislation setting those schemes in place will not be directly examined.

## **2.4 Comparative Analysis**

The Co-ordinator has commenced the comparative analysis stage of the Project and has thoroughly reviewed the *Victorian Electricity Retail Code* (30 October 2001), the *South Australian Electricity Retail Code* (January 2003) and the *New South Wales Electricity Supply (General) Regulation 2001*. A number of contrasts have been identified, particularly in relation to:

- Cooling-off periods;
- Estimating bills;
- Inclusion of consumption graphs;
- Circumstances where a retailer must repay overcharged amounts rather than credit a bill;
- Minimum duration of, and provisions for, re-calculating instalment plans; and
- Amount of a security deposit.

The analysis of the primary materials for each of Tasmania (*Electricity Supply Industry (Tariff Customer) Regulation 1998*), the Australian Capital Territory (*Consumer Protection Code (June*

2003)), and Queensland (*Electricity Regulation 1994*) will be reviewed, followed by the other instruments for each State as listed above.

We note that a number of other organisations have already conducted reviews, as set out below, of the instruments that determine the requirement for, and terms of, supply of electricity to domestic consumers of electricity, by retailers. However, none of these reviews have resulted in a single comparative document including the Materials that will be reviewed in the Project. Further, these reviews have not recommended the principles to be used to develop a single retail code representing best practice consumer protection to operate in the NEM.

## **2.5 Consultation**

### **2.5.1 Ombudsman Schemes**

In February 2004 the CLCV held discussions with Fiona McLeod, Energy and Water Ombudsman (Victoria) (**EVOW**), in relation to the retail codes comparative analysis that EWOV carried out on behalf of the Australian and New Zealand Energy and Water Ombudsman Network (**ANZEWON**). ANZEWON terminated the analysis in May 2003 when it learnt that the Utility Regulators' Forum was undertaking a similar review. EVOW, which is supportive of the Project, will be further consulted in Stage Three of the Project.

### **2.5.2 Regulators**

In February 2004 the Co-ordinator met with Wendy Heath, Regulatory Program Manager, and Katherine Koesasi, Regulatory Analyst, of the Essential Services Commission (Victoria) (**ESCV**), to discuss the preliminary inquiries into the various State consumer protection frameworks for retailing of electricity that the ESC had carried out on behalf of Utility Regulators' Forum. The ESC, which is supportive of the Project, will be further consulted in Stage Three of the Project.

### **2.5.3 Australian Retailers' Association of Australia**

In January 2004 the Co-ordinator met with Randall Brown and David McAloon of the Energy Retailers Association of Australia (**ERAA**) in relation to work carried out on national consistency of retail codes and licences. The ERAA indicated that it supported the need for a clear understanding of the inconsistencies in the consumer protection frameworks, and suggested that the costs of harmonisation, in particular, the costs of altering computer systems, should be factored into the Project's recommendations. The ERAA, which is supportive of the Project, will be further consulted in Stage Three of the Project.

### **2.5.4 Other consultation**

In accordance with clause 1A of the Funding Agreement dated 25 September 2003 (**Funding Agreement**), we advise that the end-user advocates that will be consulted in relation to the Project include consumer, welfare and environment community organisations. The CLCV has already established significant relationships with a number of these groups nationally through the CLCV Capacity Building Project, and intends to consult many of them in Stage Three of the Project.

## **2.6 Advocacy**

On 6 April 2003 the Co-ordinator participated in the MCE workshop on its User Participation Discussion Paper. The workshop included a presentation on the MCE's direction to its SCO on a utilities regulation reform agenda, including developing a national framework for distribution and retailing of electricity (and gas). Public consultation on the national framework will commence in June 2004, with the release of the SCO Issues Paper on the national framework for distribution and

retailing. The MCE SCO has indicated that the following work program will apply to the development of the national framework:

2004

April:	verification of stocktake and identification of issues
May:	preparation of issues paper
June:	consultation on issues paper
July – August:	development of options for national framework
September:	consultation on options
October – December:	finalisation of options.

MCE SCO will present an options paper to the MCE in 2005 for consideration.

The analysis undertaken in the course of the Project will be drawn upon to participate in the MCE SCO consultation, informing our advocacy for a best practice regulatory framework for consumer protection in retailing of electricity in the NEM. The Project timetable will be accelerated to meet the MCE SCO work program. In particular, Stage One of the Project will be completed in June 2004, Stage Two and Three in August 2004, and Stage Four in September 2004.

**3. Project Tasks To Be Completed**

On completion of the comparative analysis of all Materials, the Coordinator will consult with key stakeholders in each of the NEM jurisdictions to guide the format for the evaluation phase of the Project. The Coordinator will use the feedback from the consultation to evaluate the Materials and to assess whether there are provisions which impede competition, efficiency, certainty and innovation in the NEM, and which parts of the Materials represent best practice from a consumer protection perspective. The CLCV will then develop the principles to be used to achieve best practice national consistency in relation to retailing of electricity and will further consult in relation to these principles in August 2004. A submission will be prepared in September 2004, which will be provided to the MCE SCO in response to its consultation on options for a national regulatory framework for retailing of electricity.

**4. Reporting**

Given the MCE SCO work program for the development of a national framework for retailing, we propose to provide the next Project progress report to the Advocacy Panel in August 2004 and the final progress report in September 2004.

We attach an invoice for the first instalment of funding pursuant to clause 1 of the Funding Agreement and paragraph 4 of our email to Adam Bisits on 9 March 2004.