

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

**Final 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**

Stages Three and Four - 1 May 2004 to 12 November 2004

1. Project Overview

The objective of the Harmonisation of Retail Codes Project (the **Project**) is to develop the principles to be used to establish a single harmonised retail code to operate in the National Electricity Market (**NEM**), on the basis that a single code will lead to efficiencies, create certainty and establish national best practice.

The Project has been delivered in four stages:

- Stage 1 - identification of relevant instruments;
- Stage 2 - development of a document that compares relevant provisions across NEM jurisdictions;
- Stage 3 - analysis of the provisions and opinion formed on best practice provisions;
- Stage 4 - submission to the Ministerial Council on Energy (**MCE**) to advocate for a best practice national retail code to operate in the NEM.

All stages of the Project have been completed.

2. Project Tasks Completed

2.1 Identification of instruments and development of comparison document

Attached is the document that captures all of the consumer protection provisions relating to retailing of electricity in the NEM, in the six NEM Jurisdictions (the **Comparison Document**).

The following organisations were consulted in relation to the Project, particularly in the early stages of development of the Comparison Document:

- Energy Retailers Association of Australia, Randall Brown and David McAloon (January 2004);
- Energy and Water Ombudsman (Victoria), Fiona McLeod (February 2004);
- Essential Services Commission (Victoria), Wendy Heath, Regulatory Program Manager, and Katherine Koesasi, Regulatory Analyst (February 2004).

At the time of meeting, each of these organisations had already carried out preliminary inquiries into the various State/Territory consumer protection frameworks and supported the need for a

clearer understanding of the inconsistencies in the regulatory frameworks for consumer protection in retail of electricity in the NEM.

After completion of the Comparison Document, the Project Coordinator consulted with one person in each of the NEM jurisdictions with the expertise to identify areas in which further information was needed. The organisations and individuals that were consulted are:

- Australian Capital Territory: Independent Competition and Regulatory Commission (ICRC) - Susan Faulbaum (Policy Officer);
- New South Wales: Energy and Water Ombudsman of New South Wales – Amanda Hamilton-Foster (Policy Officer);
- Queensland: Department of Energy – Sandra Hosking (Manager, Electricity and Markets) and Caroline Rosengren (Senior Policy Analyst);
- South Australia: Essential Services Commission of South Australia (ESCoSA) – Adam Wilson (Policy Officer);
- Tasmania: Office of the Tasmanian Energy Regulator – Peter Bingham (Assistant Director, Codes, Licences and Policy); and
- Victoria: Energy and Water Ombudsman Victoria (EWOV) – Stephen Gatford (Policy Officer).

We have also provided the Comparison Document to one key member of the NEM Network located in each NEM jurisdiction, to provide their feedback. The NEM Network members that were consulted are as follows:

- South Australian – South Australian Council of Social Services (Andrew Nance, Policy Officer);
- Tasmania – Tasmanian Council of Social Services (Kath McLean, Policy Officer);
- ACT - Australian Capital Territory Council of Social Services (Karen Nicholson, Policy Officer);
- New South Wales - Public Interest Advocacy Centre (Jim Wellsmore, Policy Officer);
- Queensland – Centre for Credit and Consumer Law (Nicola Howell, Director);
- Victoria – Consumer Utilities Advocacy Centre (Kerry Connors, Director).

The Project Steering Committee was then invited to make comments on the Comparison Document. The Project Steering Committee consists of 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).

According to the feedback received the Comparison Document is a comprehensive, unique and valuable tool for community organisations, State/Federal Governments and regulators. The Comparison Document identifies areas of commonality and best practice and also those areas where there is not currently a sufficiently acceptable standard of consumer protection in place. As such, it can be used as an ongoing tool to ensure that no diminution of protections occurs as the Ministerial Council on Energy (MCE) works towards developing a national framework.

2.2. Comparative analysis

After analysis of the Comparison Document, opinion was formed as to what was the current best practice, as reflected in the final column of the Comparison Document. In some cases this may involve adopting ideas or provisions from more than one State/Territory. In other cases, it maybe that none of the current highest standard protections are considered effective or appropriate. It is interesting to note that although Victoria and South Australia tend to have the better overall protections, it appears that in developing a best practice consumer protection code for energy, there are a number of areas where other jurisdictions offer better protection.

For example, we consider the following provisions to be core consumer protection provisions (note the variety of jurisdictions in which the current best practice occurs and also where we consider that the current best practice is insufficient, Comparison Document page references are indicated):

- Cooling-off period – (NSW, with amendments) (page 12);
- Meter read frequency – (NSW) (page 18);
- Notification of estimated bill – (SA) (page 20);
- Consumption information and graphs – (NSW, with amendments) (page 26);
- Customer notification where tariff changes – (ACT) (page 29);
- Minimum payment period – (Tasmania) (page 30);
- Late payment fees – Late payment fees are prohibited (no sufficient best practice although we note that late payment fees will be prohibited by legislation in Victoria) (page 32);
- Bill payment during review – (ACT) (page 35);
- Undercharging/overcharging – (Victoria and Tasmania, with amendments) (page 35,36);
- Meter checking – (Tasmania and SA, with amendments) (page 37);
- When to offer payment plans – (no sufficient best practice) (page 38);
- Period of instalment plan, whether maximum number - (Victoria) (page 40);
- When disconnection permitted (notices) – (ACT, with amendments) (page 46, 49); and
- Restricted disconnection times – (Tasmania) (page 51).

2.3 MCE submission

Since commencing the Project, the MCE has proposed, among other things, a move to national regulation for distribution and retailing of electricity in the NEM. The National Framework for Electricity and Gas Distribution and Retail Regulation Issues Paper was released on 30 August 2004 (**Issues Paper**). Section 6 of the Issues Paper relates to the development and, by implication, enforcement of industry codes and rules. The Issues Paper contains, as issue 20, the formation of a single consumer protection code. We have provided a submission to the MCE responding to section 6 of the Issues Paper (**Submission**) (attached). Below are the main recommendations contained in the Submission.

- *The single Code not result in dilution of consumer protections currently available in the NEM jurisdictions. This is achieved by adopting, as a minimum, the protection of the jurisdiction identified in the last column of the Comparison Document (Annexure A). Further consultation be carried out to identify gaps in existing consumer protections with a view to amending existing provisions or developing new protections (for example a prohibition against unfair contract terms and a requirement that retailers develop robust hardship policies).*
- *The AER is provided with a clear mandate to take on a robust monitoring and enforcement role.*
- *The single Code be underpinned by and include financial and other penalties for failure to comply.*
- *The development of a national regulatory framework is accompanied by an appropriate and sustainable mechanism to fund community sector participation in regulatory debates.*
- *Responsibility for making and amending the Code is allocated to the Australian Energy Market Commission with the role of the AER being monitor and enforce compliance with the Code.*
- *Retailers with an obligation to supply must offer to do so according to a standing-offer contract, the actual terms of which (except for price) are specified, uniform and contained in or attached to the Code.*

The Submission also indicates, in relation to critical consumer protections, the amendments to the current best practice that would be required.

2.4 Further consultation

The Comparison Document contains comprehensive analysis of the current highest standard consumer protections available. We have consulted with regulators, ombudsman schemes, industry stakeholders and community organisations in developing the Comparison Document. Similarly, we have consulted with a number of members of the NEM Network in developing the Submission. While the delivery of the Submission to the MCE on 5 November 2004 marks the completion of the Project, we will continue our involvement in the MCE process relating to the development of a national consumer protection code. In our Submission we indicated that considerable further detailed consultation will be required in order to appropriately develop the minimum consumer protections to be contained in the Code and the standard contract. We have indicated to the MCE that we wish to be involved in that further consultation.

3. **Reporting**

Given the MCE SCO work program for the development of a national framework for retailing was delayed and the Issues Paper only released on 30 August 2004, we condensed stages 3 and 4 of the Project into a two-month period. This report is therefore the final report for the Project. Accordingly, we attach both the second and third (final) invoices for funding instalments pursuant to clause 1 of the Funding Agreement and paragraph 4 of our email to Adam Bisits on 9 March 2004.

We take this opportunity to thank the Advocacy Panel for providing the funding to enable the CLCV to carry out this Project on behalf of the Consumer Consultative Committee of the Australian Competition and Consumer Commission. We are confident that the Comparison Document and the Submission provided to the MCE will provide a valuable tool for the MCE and others to use in continuing the consultation process. The information contained in the Comparison Document, in particular, will be used by members of the NEM Network to lobby the MCE to ensure that changes to the regulatory framework for the development and enforcement of uniform consumer protection provisions does not have a detrimental impact on low-income and vulnerable consumers.