



Submission to:

**ENERGY COMPETITION  
COMMITTEE**

**Electricity Full Retail Competition  
Proposed Policy Positions**

**Centre for Credit and  
Consumer Law, Griffith University  
with funding from the National Consumers Electricity  
Advocacy Panel**

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## **About the Centre for Credit and Consumer Law**

The Centre for Credit and Consumer Law is an academic centre, hosted by Griffith University Law School.

The Centre for Credit and Consumer Law was established in March 2004 to be a source of expertise, and a centre of excellence, on credit and consumer law issues, and it has the overall objective of promoting the attainment of a fairer, safer, and more efficient marketplace, particularly for low income and vulnerable small end-users.

The Centre for Credit and Consumer Law is funded by the Queensland Government's Consumer Credit Fund (administered by the Office of Fair Trading) and Griffith University. However, this submission is possible because of funding received by the Centre for Credit and Consumer Law from the National Consumers Electricity Advocacy Panel.

## **About this Submission**

The Centre for Credit and Consumer Law (CCCL) welcomes the opportunity to provide a submission to the Energy Competition Committee (ECC) in relation to Consultation Paper No.3 'Electricity Full Retail Competition Proposed Policy Positions' (herein referred to as the Policy Paper).

As part of our submission we are submitting a series of issues papers produced by CCCL and authored by consumer advocates from interstate on FRC entitled 'Electricity Issues: Interstate perspectives on full retail competition for residential consumers'. The release of these papers has been timed to coincide with our submission to the ECC because these Issues Papers specifically discuss subjects mentioned in the Policy Paper, particularly in respect of appropriate consumer protections and safety net provisions. These Issues Papers include discussions on the following subjects:

- Overseas and interstate evidence on consumer responses to FRC including price protection
- Consumer protection issues in respect of retail codes and contracts
- External Dispute resolution models
- Temporary and chronic financial hardship models
- Discussion on the balance between corporate social responsibility of energy retailers and government social responsibilities.

This submission begins with a general introduction outlining key points of consideration. We then outline specific responses to the recommendations.

## 1. Introduction

Overall our response to the positions put forward in the Policy Paper is positive. We welcome the way the Policy Paper draws and builds on other jurisdictional experiences. Before we examine the particular recommendations contained within the Policy Paper, we wish to make the following observations which we believe are critical to future policy and legislative developments. Our observations relate to:

- The specific details of proposals outlined in the Policy Paper. We stress the importance of having sufficient time to respond to the details of these policy proposals including the proposed legislative framework;
- The need to deal with matters not outlined in the current Policy Paper - in particular, the need for the establishment of an independent regulator in Queensland. The development of a national retail and distribution energy regulator should not inhibit this process.
- The need for appropriate overarching consultation mechanisms with small end-users. The Policy Paper states: 'All stakeholders should be given equal consideration in the development of the implementation arrangements'. Currently the consultation process is largely via submissions. This is not sufficient where there is both information and funding symmetry between large end-users and small end-users.

### **An Essential Service**

The central premise of this submission is that because electricity is an essential service there needs to be a strong, robust consumer orientation in the FRC implementation process. This is required notwithstanding that competition will potentially offer benefits to consumers, particularly in southeast Queensland. The Policy Paper proposals achieve this balance. We note that because electricity is an essential service there will always be a tension between consumer rights of small end-users and the operations of a National Energy Market (NEM).<sup>1</sup>

The introduction of FRC may bring the benefits of competition but it also places responsibilities on government to ensure the market is operating ethically. There is a tension between market driven competition policy and the attribute of electricity as an essential service; the latter necessitates a standard level of protection for consumers in the market place unnecessary for non-essential services (Introduction, Issues Papers)

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<sup>1</sup> 'Competition policy and consumer protection policy are both meant to serve consumers, but there are tensions between the two'. Helen Jenkins (2005) 'Agenda Advancing economics in business' *Oxera Agenda*, p 1; NERA Economic Consulting and Gilbert + Tobin (2005), 'Public consultation on a national framework for energy distribution and retail regulation', p 7. Energywatch, the independent watchdog for gas and electricity consumers in the United Kingdom asserts seven rights for consumers in line which inherently incorporates the principles of 'essentialism'; Foundation for effective markets and Governance (2005) 'Regulation and consumer benefit: compliance in the National Energy Market, A discussion paper for the Public Interest Advocacy Centre', p 40, p 56. See also Consumer Law Centre Victoria and Consumer's Federation of Australia (nd), 'Consumer Participation and Protection in the Victorian Electricity Market following Retail Contestability in the Below 160 MWh per annum Tranche', p 25; Gavin Dufty (2005), 'Committee of Inquiry into Financial Hardship of Energy Consumers', St Vincent de Paul Society, Victoria.

### *Determining vulnerability*

Because of the essential nature of electricity services consumer vulnerability needs to be carefully and explicitly defined in any policy proposals. As a recent CLCV submission has identified: ‘Consumers must never be denied access to energy on the basis of their financial hardship or vulnerability characteristics’<sup>2</sup> and as Denis Nelthorpe has summed up in Issues Paper 2:

There can be no doubt that vulnerable customers will be at risk of loss of access to essential energy services unless the Queensland Government accepts the need to ensure there is an effective safety net for these customers.

Vulnerability is not a simple concept to define. As Jim Wellmore points out:

Much discussion and government policy in the design of full retail competition (FRC) focuses on issues of ‘vulnerable’ customers. This can be a misleading term since it often is taken to imply that it is an easy task to identify those consumers or households who merit ‘special’ assistance (Issues Paper 1).

On this latter point Elissa Freeman and May Johnston note the need to distinguish between temporary and chronic hardship among consumers (see Issues Papers 5 and 6).

### **Social policy objectives**

While the FRC Policy Paper clearly maps out the road to implementing FRC in Queensland - the Issues Papers highlight the fact that the benefits of FRC for residential consumers ‘...are not easily quantified’ (Issues Paper 3). For instance, Denis Nelthorpe discusses in Issues Paper 2, that ‘the lack of clear benefits is an important reason why many consumers do not take up the option to switch energy retailers’. This reinforces the issues that can arise for consumers when an essential service is marketed.

In respect of FRC, there is a need for a balance between the principles and benefits of competition and the principles and benefits of ‘social equity objectives’. The Policy Paper states: ‘There is a need for ensuring efficiently priced and reliable energy in Queensland while still taking into account its social equity objectives’. There is also a need to understand ‘...the evidence on how residential consumers actually use these essential services.’<sup>3</sup>

### *Issues Paper references*

Issues Paper 1,2,3,5 & 6

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<sup>2</sup> CLCV (2006) ‘Submission to Ministerial Council of Energy, Public consultation on a national framework for energy distribution and retail regulation’, p.6.

<sup>3</sup> Jim Wellmore (2006) Paying for what?: the impact of utility tariff structures, Occasional Policy Paper No 8, PIAC, p.21.

## 2. Responses to proposed FRC Policy Positions

We note that Queensland has a unique geographic distribution not only of population but also of the network that services it. Consequently, as the Policy Paper also points out, a large element in costs and in differential prices between the city and rural and regional Queensland is in relation to dispersed network costs. For instance as the Somerville Report described: ‘...Ergon Energy operates a geographically dispersed network covering an area of 1,698,100 square kilometers – approximately six times the areas of Victoria’.<sup>4</sup> There is however, an equally significant human dimension to this network reflected in the vast and scattered spread of the population in rural and regional Queensland.

On the plus side, as Andrew Nance has observed in Issues Paper 3:

The Queensland market is well over twice the size of the South Australian one and should generate some economies of scale that did not appear in South Australia. FRC is a very information intensive activity and each retailer requires extensive information systems to participate. Queensland should be able to benefit from systems developed in other jurisdictions.

The Queensland network covers customers that are not profitable (rural, regional customers) from an FRC perspective in contrast to the so-called ‘profitable’ customers in southeast Queensland. In the transition to FRC there is increased economic risk that potentially undermines the safety net for rural, regional and vulnerable customers whether it is the uniform tariff price, the continuation of community service obligations (CSOs) or cross-subsidies. In this latter respect Andrew Nance has pointed out (Issues Paper 3) that in South Australia ‘..the ‘market’ will find [cross-subsidies] and remove them – this is how markets operate’. In other words the transition to FRC poses new financial challenges for the Queensland Government, for instance in sourcing funds for CSOs and ensuring that rural and regional Queenslanders are not financially disadvantaged because of the introduction of FRC in south-east Queensland. Flow-on-effects will also be felt depending on the outcome of the Government Owned Corporation Review.

### 2.1 Community Service Obligations

We recognize the fundamental place CSO’s occupy in the provision of electricity to rural and regional, rural and vulnerable customers in particular. With the move to FRC it is vital that CSO’s remain robust. Jim Wellsmore has summed up the importance of CSO’s in Issues Paper 1:

Affordability of electricity is ... an issue of major concern for the community. Many governments have responded with programs designed to assist families in hardship

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<sup>4</sup> Department of Natural Resources (2004), Mines and Energy, Queensland, Detailed Report of the Independent Panel, Electricity Distribution and Service Delivery for the 21<sup>st</sup> Century, Queensland, p 5. The report went on to add that Queensland also has ‘...some of the hottest and wettest areas in Australia and some of the country’s highest incidences of lightning strikes.’ See also CCCL (2006) ‘Submission to Ministerial Council of Energy, Public consultation on a national framework for energy distribution and retail regulation’, p.9.

pay their electricity bills or community service obligations (CSO's) that subsidise the providers for the assistance they give these households.'

*Issues Paper references*

Issues Paper 1 & 3

## **2.2 Uniform Tariff CSO Delivery Mechanism**

*A separate consultation paper will be issued. The paper will also seek input from stakeholders on alternative delivery mechanisms that could be established to encourage effective retail competition.*

We support the Queensland Government's commitment to a Uniform Tariff Policy and welcome a separate consultation paper on the delivery mechanism aspects of this critical issue for Queensland residential consumers and small business. It is vital that this issue is properly addressed and that no residential consumer or small business is worse off under FRC. Hence, the delivery mechanism for the Uniform Tariff CSO and the issue of competitive neutrality needs to be carefully considered. It remains to be seen that the calculations contained in the GHD Cost Benefit Analysis, for instance, in respect of Long Term Procurement arrangements will result in the cost benefits outlined in the Policy Paper.

*Issues Paper references*

Introduction, Issues Papers 1, 5 & 6

## **2.3 Pensioner Rebate Scheme**

*Pensioner rebates should be administered by all licensed retailers as a licence condition.*

Ideally, a pensioner rebate scheme should be administered by the Queensland Government as per the Electricity Life Support Concession Payment scheme.

However, in the event that all licensed retailers administer pensioner rebates the proviso should be that proper administration of this rebate occurs. For instance in Victoria retailers have an obligation to ensure that concession numbers are current and correct. Also retailers need to be conscious of asking customers at 'point of sale' and not leave it to chance. It should not be a customer's responsibility to indicate that they are eligible for a pensioner rebate because customers will undoubtedly assume the retailer knows as is currently the case with the way customers are billed in Queensland via Energex and Ergon. As Elissa Freeman discusses in Issues Paper 5 in her section on the social responsibility of energy retailers, regulatory mechanisms have been employed in other jurisdictions to formalise social equity concerns because '...corporate social responsibility requirements cannot be relied on to address the needs of vulnerable customers'.

We commend the Victorian Government's approach regarding concessions and relief grants (see Issues Paper 6) and while acknowledging the importance of the existing concession and rebate schemes in Queensland also consider that a more comprehensive, holistic approach to concessions and relief grants would be beneficial. It would also be beneficial to retain administration of these schemes by the Queensland Government rather than retailers from

the point of view of reliability and consistency (see 2.3 below). We believe that a centralised system for rebates and concessions will mean that eligible consumers are less likely ‘fall through the cracks’ than if a third party is involved.

*Issues Paper references*

Issues Paper 6 for discussion of Victorian rebate scheme and Issues Paper 5 for elements of New South Wales rebate scheme.

### **2.3 Electricity Life Support Concession Payments**

*Electricity life support concessions payments should continue to be administered and paid directly by the Concessions Unit of the Department of Communities.*

We support the continuation of the administration and payment of the Electricity life support concession payments by the Concessions Unit of the Department of Communities and recommend that all rebates, relief and concession payments be undertaken through the appropriate human services department within the Queensland Government.

*Issues Paper references*

Issues Paper 6 for discussion of Victorian rebate scheme and Issues Paper 5 for elements of New South Wales rebate scheme.

### **2.3 Drought Relief from Electricity Charges**

*Drought relief from electricity charges for franchise customers on uniform tariffs should continue to be administered by the host retailers. Drought relief for customers on market contracts are a matter for the customer and the retailer to discuss and agree as part of the market contract.*

There should be consistency of drought relief administration for all customers whether they are franchise or market contract customers. In this vein we noted the example of Country Energy and the supply of CSO’s as outlined in the Policy Paper. Also, it would be worthwhile considering relief concessions for other customers including those in cyclone damaged areas for consistency in the administration of relief policies wherever there has been a natural disaster, such as the cyclone and flooding that has caused hardship in North Queensland recently.

*Issues Paper references*

Issues Paper 6 for discussion of Victorian rebate scheme and Issues Paper 5 for elements of New South Wales rebate scheme

### **2.4 Network extensions**

*Under FRC, there is no need to introduce additional incentives for network extensions. Adequate incentives for network extensions are addressed by the QCA in setting tariffs for network services and the approved methodology for capital contributions by customers. Distribution companies already have a statutory obligation to connect and supply new customers and the local retailer should continue to have an obligation to sell electricity to non-contestable customers at the uniform tariff.*



We support the status quo in respect of the retention of the existing policy. However, we note that consultations with consumer advocates in North Queensland and information being provided to us by the consumer committee for this project there is an ongoing supply issue in terms of the load bearing capacity of the network in rural and regional Queensland particularly where there are Single Wire Earth Return (SWER) lines.<sup>5</sup>

## **2.5 Contestability for Customers in Isolated/Remote Power Systems**

*Customers in isolated/remote power systems should not be eligible to choose their retail supplier under FRC. The ECC can see no real competitive benefit to consumers in extending FRC to customers in isolated/remote power systems as the costs outweigh any benefit. It is recommended that the Government review the situation annually and revise the policy on a case by case if and when it becomes practical to introduce FRC to a particular isolated power system.*

We agree that there are no real competitive (cost) benefits in extending FRC to customers in isolated/remote areas but that the Government should review this situation annually. However, this policy also reflects the limited application (and benefit) of FRC for Queensland consumers in rural and regional areas.

## **2.6 Community Ambulance Contribution**

*The Community Ambulance Contribution should continue to be collected by all licensed retailers as a licence condition.*

We agree that if this contribution is to continue, licensed retailers for the sake of consistency should collect it. The key issue from our point of view is whether or not the current manner of collection of the ambulance contribution through the electricity account is appropriate. Our research suggests that there is a wide divergence of opinion about the reasonableness of collecting the ambulance levy in this way. Our consultations with small business member organizations indicate that this method is a continuing source of disaffection particularly for those businesses, which have more than one premise. However, low-income earners benefit greatly from the provision of a service they otherwise might not have had access to. As this is a government levy it will also place more burden on the retailer to collect it when it is arguably not the provenance of the retailer to do so.

## **2.7 Customer Reversion Rights**

*A customer, with annual consumption below 100 MWh, who enters into a market contract, should be permitted to revert to uniform tariffs upon completion of the market contract.*

*The host retailer should be required to provide a deemed contestable contract at the uniform tariff.*

*The ECC recommends that the current system for defining a site rather than a customer as contestable be changed for customers below 100 MWh. It is not equitable for a retirement couple on a uniform tariff to sell their home and then be*

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<sup>5</sup> CCCL (2006) 'Submission to Ministerial Council of Energy, Public consultation on a national framework for energy distribution and retail regulation'.

*forced to go on a market contract simply because the previous owner of their new home or unit was on a market contract.*

We strongly support this new policy and support all three points regarding customer reversion rights. We note that New South Wales currently has customer reversion rights in place. It is important that the details of these rights are clearly specified.

#### *Issues Paper references*

For a discussion of the New South Wales situation see Issues Paper 1 and 5

### **2.8 Retailer of Last Resort**

*The host retailers should be the retailer of last resort for all customers (domestic or business) who consume less than 100 MWh per annum at a single connection point. The host retailer should be obligated to supply the customer at the uniform retail tariff.*

We agree with this new policy although we suggest that there is a need to clarify whether the obligation to supply these customers under the standard tariff includes the ability to impose other charges such as administrative costs. We also note that there needs to be a safety net for Retailer of Last Resort provisions in the event that a host retailer also fails.

### **2.9 Contestability for Street Lighting**

*Energy sales for street lighting to organisations (e.g. Councils) should be contestable. Consistent with the practice in other jurisdictions, once a Council elects to enter into a market contract, they should not be permitted to revert back to the uniform tariff rates. Queensland councils are well managed organisations and a reversion safety net is not required.*

We agree with this new policy in light of the practice in other jurisdictions and note that some Queensland councils have begun participating in these market contracts.

### **2.10 Contestability for Customers with Annual Consumption below 100 MWh in Embedded Networks**

*NEMMCO should continue to develop a national harmonised solution on the allocation of responsible person to child customers. Queensland will adopt this national solution once the appropriate changes to the National Electricity Rules have been gazetted.*

*If the national harmonised solution is not available at the commencement of FRC, Queensland will delay the introduction of FRC to child customers within an embedded network.*

*An embedded customer may have choice of retailer only when they negotiate and establish a direct connection with the Local Network Service Provider.*

The case of embedded networks is an important one for Queensland given the significant number of owners/tenants living in caravan parks, retirement villages and small businesses,

which are part of an embedded network. While we welcome a national harmonized solution it is not clear when that solution will appear. For instance, we understand that there is currently no action on the National Electricity Market Management Company (NEMMCO) paper on Embedded Networks and Retailer of Choice as cited in the Policy Paper. It may be important to clarify with NEMMCO when this proposed harmonized solution will actually become available and what steps Queensland can take in the meantime to prepare for this change.

The main issue we identify is that residential users and some small businesses are left without specific protections in relation to electricity. In other words different people end up with different rights around electricity depending on their landlord. New South Wales and Victoria provisions in relation to this matter could provide models as a transitional arrangement. As per our previous submission to the Ministerial Council of Energy, MCE we would like same standards of consumer protection for embedded customers as non-embedded customers.<sup>6</sup> This includes, for example

- Independent and free dispute resolution;
- Price protection; and
- Access to services including hardship policies and alternative dispute resolution services to address billing and supply issues.

## 2.11 Pre-Sales and Queuing

*There should be an obligation on host retailers to include the customer's NMI on the customer's bill 6 months prior to the commencement of FRC.*

*Pre-sales should not commence before 1 March 2007. From that date, the facility for NMI discovery will be available in Queensland.*

*Retailers may notify NEMMCO of a customer transfer but a transfer will not take place until the "next scheduled actual read". Transfer will also subject to market system limitations for the numbers of customers that could transfer in any period.*

We support the above recommendations as a necessary part of the transition process to FRC. However, we note that evidence from other jurisdictions suggests caution should be exercised in this area. For instance, complaints from consumers about pre-sales and customer transfers have been an issue elsewhere.

*Pre-sales should be permitted with a similar grace period protection for consumers. Pre-sales can take place but a customer may terminate their market contract without penalty up to 30 calendar days after the commencement of FRC (i.e. 31 July, 2007).*

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<sup>6</sup> CCCL (2006) 'Submission to Ministerial Council of Energy, Public consultation on a national framework for energy distribution and retail regulation', p.7. This discussion also relates to exempt networks.

We also support this recommendation but point out that the opportunity to terminate should be very clear for customers. We do not envisage that retailers will be promoting this grace period.

*If the transfer has not taken place prior to the expiry of the pre-sales cooling off period, then a termination fee will be payable by the customer if they wish to terminate the market contract.*

We seek clarification from the ECC on how this process actually works before supporting it.

## **2.12 Allocation of Control of Controllable Loads**

*The control of curtailable loads should reside with the distribution network businesses, but the regulations should provide sufficient flexibility for a retailer to establish separate control arrangements where technically feasible. The allocation of control over curtailable loads should be formalised through the legislative and regulatory process, in order to provide consistency and clarity in the development of load curtailment arrangements between customers, retailers and distributors.*

We have no specific comment at this stage on this policy. However we welcome any moves towards strengthening of demand-side management strategies for consumers including the delivery of curtailable loads.

## **2.13 GSL Rebates**

*The Electricity Code should be amended to apply the GSL scheme to all customers which is the practice in NSW. Distribution companies should have an obligation to account for the GSL payments and to include the penalty payment on the network bill. Licensed retailers should have a licence obligation to pass on the GSL payment to customers in their electricity bills.*

We support this new policy and welcome the move to apply the guaranteed service level (GSL) scheme to all customers to ensure minimum standards are delivered.

## **2.14 Grid Connected Customer Generation**

*Consistent with the practice in other jurisdictions, a customer who wishes to connect a generator to the grid (e.g. solar power) will be required to establish a connection with the Local Network Service Provider (LNSP). The customer will be required to install a Type 5 meter in order to sell power back to the grid. The LNSP will work with the customer's retailer to set up the arrangement. The retailer will purchase or otherwise credit a customer's account for electricity generated from an IES at applicable tariffs for that customer.*

We believe this policy recommendation at this stage is too vague and that the wording should be made clearer. The policy seems to indicate that all customers who want to connect a generator to the grid (e.g. solar power) will be required to install a Type 5 meter. If a customer is only generating enough power for their own use and does not expect to, nor

want to, 'sell' any excess power to the network then they should not have to cover the cost of an extra meter. However if a customer does want to, or expects to, sell power back to the grid, the installation of such a meter is a good mechanism for recording generation capacity and time, allowing the customer to negotiate an appropriate selling price with a retailer.

## 2.15 Energy Consumer Protection Office

*Consistent with the other jurisdictions, the ECC recommends the ECPO be established as an independent corporation outside of Government. The level of funding support should also be reviewed to ensure the ECPO has adequate staff to cope with the large increase in enquiry volumes to be expected under FRC.*

We wholeheartedly welcome this new policy as it finally brings the Energy Consumer Protection Office ECPO into line with other jurisdictions and removes the ongoing issue of a lack of arms-length adjudication of consumer matters. We also recommend to the ECC the comprehensive analysis of dispute resolutions schemes in comparable jurisdictions as discussed in Issues Paper 4 by Simon Cleary and Fiona Guthrie. This paper outlines the benefits of these schemes in more detail. As the Issues Paper indicates the best model is the industry-based External Dispute Resolution Schemes as they are likely to be 'better funded, better resourced and more consumer-focussed in the long run than any of the other structures in place'.<sup>7</sup> The Issues Paper also outlines in detail the current schemes in each State and territory and notes that new categories of dispute arise with the introduction of FRC, particularly in relation to billing issues. The authors have also pointed out that whatever form the dispute resolution body takes in Queensland it needs to be '...adequately resourced and prepared for dealing with the new challenges that FRC will impose'.

*Issues Paper references*  
Issues Paper 4

## 2.16 FRC Cost Recovery

*The FRC implementation costs of distributors may be recovered through an adjustment to distribution network charges.*

It is not clear that this is the best method of recovering FRC implementation costs particularly as increased costs to distributors are likely to flow on to consumers. In the event that this strategy is pursued we note that any additional costs need to be transparent, for instance specifying which category of network charges may be adjusted and also to limit how retailers may recover their increased costs. As the costing is being specifically used to recover costs on behalf of a specific group of residential consumers and small business a flat rate charge may be more appropriate in the circumstances. A retailer's additional costs should not be recovered by any increase in franchise tariffs, as those customers are not receiving any benefit of FRC including those customers outside the FRC area in central,

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<sup>7</sup> See Issues Paper 4. For specific reference to National Benchmarks for Industry-Based Customer Dispute Resolution Schemes <http://www.consumersonline.gov.au/downloads/selfreg/benchmarks/BMARK1.rtf> Hon Chris Ellison, Minister for Customs and Consumer Affairs, Benchmarks for Industry-based customer dispute resolution schemes, Canberra, 1997.

northern and inland Queensland. We note that in New South Wales the costs to distributors were picked up through a State budget allocation.

### **2.17 Metering Data Agent/Metering Data Provider Derogation**

*The Local Network Service Provider should be designated as the responsible person for metering for customers who consume less than 160 MWh per annum at a single connection. If the Australian Energy Market Commission does not make this rule change six months prior to the commencement of FRC, then a derogation should be requested by the Queensland State Government.*

We support this new policy. However, we note that there are additional costs to the Local Network Service Provider (LNSP) for initially installing a contestable meter, as the original switchboard is likely to require modification to conform to regulations. This may result in a cost flow-on effect to consumers. While there are practical benefits for LNSP having monopoly rights to metering at these sites, transparency regarding performance and standards of service are necessary before the cost structure is implemented. The subject of separate costing should be a matter for the Queensland Competition Authority. For instance, it should be possible to compare the existing cost structure with a submission from a third party that could offer to take over elements of the business.

### **2.18 Gas Electricity Certificate Market**

*There will be no change to the requirement for an Authorised retailer to source 13% of their annual electricity sales from gas fired generators.*

We have no specific comment on this policy at this stage although we commend the use of sustainable sources of electricity generation and would welcome the inclusion of a 5% renewables as part of a retailers licence.

## **3. Proposed Consumer Protection Measures and Framework**

We welcome the proposed consumer protection recommendations but note that effective compliance and enforcement mechanisms are also necessary. The Issues Papers outline a number of consumer protections measures and frameworks, which includes statutory obligations and license provisions for retailers along with chronic hardship measures and concessions. We note the recent submissions by the Consumer Law Centre of Victoria (CLCV), the Public Interest Advocacy Centre (PIAC), the Consumer Utilities Advocacy Centre and CCCL to the Ministerial Council of Energy on appropriate consumer protection measure/frameworks along with the specific proposals outlined in the QCA submission to the ECC.<sup>8</sup>

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<sup>8</sup> Public Interest Advocacy Centre (PIAC) (2006) 'Submission on Public Consultation on Energy Regulation', submission to MCE Public Consultation on Energy Regulation; Consumer Law Centre Victoria (2006) Consumer Law Centre Victoria, 'Public Consultation On A National Framework For Energy Distribution And Retail Regulation - Response by the Consumer Law Centre Victoria', submission to Ministerial Council on Energy on Proposed National Framework for Energy Regulation, Melbourne; Consumer Utilities Advocacy Centre (2006) 'Submission by Consumer Utilities Advocacy Centre to the Ministerial Council on Energy Standing Committee of Officials, Public consultation on a National Framework for Energy Distribution and Retail Regulation.

As previously discussed new categories of dispute resolution arrive for consumers with the introduction of FRC including customer transfers, retailer marketing practices and provision of information. As Simon Cleary and Fiona Guthrie have surmised, ‘Queensland can expect an increase in the number, type and complexity of disputes’ (see Issues Paper 4). Elissa Freeman notes ‘energy retailers [will] play a critical role in managing the utility debts of customers in hardship’ (Issues Paper 5). However, ‘the experience in New South Wales has been that unregulated and unenforceable retailer hardship plans or corporate social responsibility requirements cannot be relied on to address the needs of vulnerable customers’. Both Elissa Freeman and May Johnston discuss the need for an appropriate balance between government regulation and corporate social responsibility. As May Johnston states (Issues Paper 6):

In a contestable market for essential services, both the government and competing companies play an important role in ensuring that customers in financial hardship can access and afford services such as gas and electricity.

*Issues papers*  
All papers

### **3.1 Customer Protection Framework – Specific Measures or Rely on TPA Provisions**

*The Government should not rely solely upon the Trade Practices Act, 1974 to provide adequate protection for small customers. Specific regulations and/or codes should be developed and issued to provide protection for small customers under FRC. These regulations and codes should be developed as far as possible to be consistent with the arrangements in other jurisdictions.*

The CCCL strongly supports this new policy. The *Trade Practices Act* has proved insufficient in other jurisdictions with FRC from a consumer protection perspective. In Issues Paper 2 Denis Nelthorpe outlines the case against reliance on the *Trade Practices Act*.

The alternative to an energy retail code would be to rely upon existing general consumer protection legislation such as the *Fair Trading Acts* in place in each jurisdiction and the Commonwealth *Trade Practices Act*. Such a position was advocated in a recent paper ‘Public Consultation on a National Framework for Energy Distribution and Retail Regulation’ (the ‘Gilbert and Tobin/NERA Paper’).<sup>9</sup>

This proposition was rejected strongly by the community sector in their responses. For example, CLCV stated:

Our strong view is that the Australian energy market is far too immature to rely solely on general consumer protection legislation. As a result, we do not support the exclusion of any of the consumer protection categories in the existing Victorian regulatory consumer protection codes or guidelines, simply on the basis that they may be duplicated in general consumer protection legislation. Reliance on *Fair Trading Acts* and the *Trade Practices Act 1974* (Cth) is not sufficient for an essential service. Energy-specific regulations must be in place to address

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<sup>9</sup> NERA Economic Consulting and Gilbert + Tobin (2005). This paper was prepared at the instigation of the Ministerial Council on Energy Standing Committee of Officials.

energy-specific matters, including connections, disconnection, reconnection, billing and payment, and marketing practices.<sup>10</sup>

*Issues Paper references*  
Issues Paper 2

### **3.2 Customer Protection Framework – Customer Codes and Regulations**

*A single and comprehensive Energy Code will be developed which addresses consumer protection issues for both electricity and gas. Existing electricity codes and regulations will be incorporated into the new Energy Code.*

As per 3.1 we strongly support this recommendation. We concur that the best existing models for this are the Victorian Codes: Energy Retail Code, Code of Conduct for Marketing Retail Energy in Victoria and Distribution Codes (electricity and gas).<sup>11</sup> In Issues Paper 2 Denis Nelthorpe describes why retail codes are essential in a post-FRC environment and illustrates this with reference to the relevant Victorian codes. He also points out that ‘...watering down consumer protections before consumers gain the confidence to move onto a market contract is not acceptable’. Moreover, new issues arise with the introduction of market contracts.

Recent papers in Victoria and the national market consultation processes have recommended the approach of regulation of market contracts being on the basis of model terms with ‘limited’ consumer protection provisions. Proponents of this argument fail to understand that market contracts are often targeted at less sophisticated consumers through door-to-door sales or telemarketing — arguably the consumers most in need of strong protections (Issues Paper 2).

*Issues Paper references*  
Issues Paper 2

### **3.3 Customer Protection Framework – Minimum Standard Terms and Conditions for Customer Contracts**

*Consistent with the practices in other jurisdictions, a set of minimum standard terms and conditions should be developed for a market contract for small retail customers. A new deemed contract for small customers not on a market contract should be developed with these minimum standard terms and conditions.*

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<sup>10</sup> Consumer Law Centre Victoria (2006) ‘Public Consultation On A National Framework For Energy Distribution And Retail Regulation - Response by the Consumer Law Centre Victoria’, submission to Ministerial Council on Energy on Proposed National Framework for Energy Regulation, p 35.

<sup>11</sup> For fuller discussion of these codes see Consumer Law Centre Victoria (2006) Consumer Law Centre Victoria, ‘Public Consultation On A National Framework For Energy Distribution And Retail Regulation - Response by the Consumer Law Centre Victoria’, submission to Ministerial Council on Energy on Proposed National Framework for Energy Regulation, Melbourne



We strongly support the first part of this policy. In Issues Paper 2 Denis Nelthorpe describes the importance of minimum standard terms and conditions for customer contracts insofar as ‘...retail codes in a number of other jurisdictions also include provisions relating to the content and formation of contracts between consumers and electricity retailers’.

We note that more detail is required for us to comment fully on whether or not deemed contracts are the best contract. For instance we note the debate about triangular contract arrangements as outlined in the Gilbert +Tobin paper and the need for close scrutiny of termination fees.<sup>12</sup>

*Issues Paper references*  
Issues Paper 2

### **3.4 Customer Protection Framework – Price Disclosure Guidelines**

*Consistent with the practices in other jurisdictions, price disclosure guidelines should be developed for small retail customers under FRC in order to ensure effective competition between competing retailers. The price disclosure guidelines would be included in the new Energy Code.*

We strongly support this new policy. There is no doubt that customers will have difficulty comparing offers. In Victoria and South Australia the Essential Services Commission has created an independent free price comparison tool that customers can use.<sup>13</sup>

### **3.5 Customer Protection Framework – Product Disclosure Statement**

*A product disclosure statement should not apply to small retail customers because they have been found to be ineffective and stifle competition.*

We do not agree with this policy. While some product disclosure statements can potentially be ineffective the principle behind them is an important one. One of the objectives of the Victorian retail code is to ‘promote honesty, fairness and disclosure of information to consumers’ (see Issues Paper 2). Product disclosure should be undertaken in a manner that is accessible and understandable for consumers.

*Issues Paper references*  
Issues Paper 2

## **4. Legal and Legislative Framework Principles for Electricity**

Firstly, we welcome the creation of a single Energy Code, and agree with the three specified inclusions outlined in the consultation paper, (i.e. consumer protection provisions and a retailer of last resort scheme; conduct provisions; and customer transfer provisions).

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<sup>12</sup> NERA Economic Consulting and Gilbert + Tobin (2005) ‘Public consultation on a national framework for energy distribution and retail regulation’.

<sup>13</sup> See for instance Victoria’s link to ESC’s Energy Comparator <http://www.esc.vic.gov.au/electricity878.html>

We note that the ECC has chosen not to attempt a consolidation of various legislative instruments into one Energy Act. We note the practical difficulties, which this course of action presents, but we encourage the ECC to continue exploring this option. We feel that there would be benefits in terms of accessibility for consumers and consumer advocates if one piece of comprehensive legislation was in place.

We agree that significant consultation should take place on legislative details as part of a separate consultation at a later time, and acknowledge that as a result this submission only deals with proposed framework for legislation. However, we encourage the ECC to allow sufficient time for providing feedback on the legislative details.

### **4.3 Queensland Energy Code – Retail Supply Consumer Protection Provisions**

*The ECC recommends that retail supply consumer protection provisions be included in a Queensland Energy Code. The existing Queensland Electricity Industry Code could be used as a base document for the Queensland Energy Code and should be amended to address the new consumer protection measures for electricity.*

While we generally support this recommendation there is much more work to be done to ensure that the Queensland Energy Code is robust and comparable with the comparable codes in other jurisdictions. We refer the reader to Issues Paper 2 and the discussion on the Victoria Energy Code, which we believe, provides a good model.

*Issues Paper references*  
Issues Paper 2

### **4.4 Energy Code – Retail Market Conduct Provisions**

*The ECC recommends that the Queensland Energy Code include the provisions for retail marketing conduct.*

We strongly support this recommendation. It makes sense to incorporate the provisions for retail marketing conduct into the Queensland Energy Code.

*Issues Paper references*  
Issues Paper 2

### **4.5 Energy Code – Electricity Customer Transfer Provisions**

*The ECC recommends that the Electricity Customer Transfer provisions be adopted as part of the Queensland Energy Code. It is recommended that these provisions operate in conjunction with the National Electricity Rules. Electricity distributors and retailers will still be required to comply with the Market Settlement and Transfer Solution (MSATS) procedures as developed and operated by NEMMCO pursuant to the National Electricity Rules.*

We support this recommendation.

#### **4.6 Transitional Arrangements**

*The ECC requests comments on the approach that should be adopted for Queensland to regulate the transitional arrangements for retail contracts of electricity. For consistency with the position previously taken by a majority of the jurisdictions, the ECC is considering adopting the NSW, Victorian and ACT position of allowing contracts to remain in effect to the extent that they do not contravene provisions in the legislation and codes.*

We would support the ECC adopting other jurisdictional positions on this matter.

**Contact for further information**

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