



A non-profit, volunteer organisation, advocating to advance the interests of consumers in Queensland

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**SUBMISSION
TO THE
ENERGY COMPETITION COMMITTEE**

CONSULTATION PAPER NO.3

**ELECTRICITY FULL RETAIL COMPETITION –
PROPOSED POLICY POSITIONS**

6 APRIL 2006

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Executive Summary and Recommendations

This submission examines most of the issues raised in the Consultation Paper and also several not dealt with or not dealt with extensively within the Consultation Paper that QCA considers are of sufficient significance to the development of effective Full Retail Competition (FRC) policies to justify their consideration now.

The submission contains 40 recommendations.

The main issues dealt with are summarised below and are followed by a complete list of recommendations.

SUMMARY

Contextual issues

Electricity possesses number of characteristics that distinguish it from other goods and services and that warrant an industry specific approach to regulation and a higher degree of consumer protection. Of particular relevance are the economic characteristics of **essentialness, non-substitutability, low price elasticity of demand and information asymmetry.**

In addition to the economic characteristics outlined, electricity is unlike general goods and services in the degree of importance consumers attach to **broader environmental and social equity considerations** relating to its supply. This must also be taken into account in policy design.

The generally stated objectives of introducing competition are to lower prices, improve service and expand consumer choice. FRC has now been introduced to a number of jurisdictions both in Australia and internationally with varying degrees of success – ranging from disastrous to effective for some classes of consumers. Participation rates by domestic (and other small consumer groupings) are relatively modest and savings where available, have not been distributed evenly across the consumer population, with some groups of consumers missing out altogether.

These matters underline the importance of **effective consumer protection and safety net arrangements** and the need to be cautious in estimating the benefits FRC will deliver to consumers.

QCA considers that many of the fundamental issues affecting consumers have been canvassed in the Consultation Paper and appropriate principles to address them identified, striking a balance between the need to protect consumers and encouraging the development of a competitive market. This is strongly welcomed.

Policy Framework

The policy framework must effectively **respond to the needs and interest of consumers**, both in the lead up to the introduction of FRC and subsequent to its introduction.

The limited effectiveness of FRC to date suggests that the interests of consumers should be central to the principles and policy positions adopted, as it cannot be assumed that competition will deliver for all groups of consumers or that benefits will be equitably distributed, at least in the short term. Consumer interests should be acknowledged as encompassing social and environmental outcomes as well economic ones.

A feature of all Australian markets that have introduced FRC is designating an **independent statutory authority** to take on the role of regulator. Such a step brings with it a number of critical elements, including:

- Accountability
- The development of technical expertise
- Independence

The legislative framework will also need to set out the broad objectives that overlay the functions of the independent regulator.

The proposed establishment of **ECPO as an independent corporation** is a welcome and long overdue similar reform.

Uniform Tariff and Obligation to Supply

QCA notes the Government commitment that no consumer will be worse off as a result of the introduction of FRC. An **effective uniform tariff and obligation to offer framework** is a critical element in delivering on this commitment. QCA notes its strong support for the commitment to a UT that provides parity of pricing for electricity consumers in the same class regardless of their geographic location.

Additional elements should be included in the UT and obligation to supply framework.

Affordability of Supply

Clearly, the affordability of electricity is clearly a critical element in maintaining consumer access to supply. Key elements in delivering affordability are an **effective concessions framework, effective consumer protection (especially in relation to disconnections and hardship policies)**.

Consultation

In order to deliver a consumer protection framework that gives effect to the many positive principles outlined in the Consultation Paper, it is critical that mechanisms are

put in place to **support sustained and ongoing consumer input into regulatory processes.**

Consultation should be viewed as an integral and ongoing element of the FCR regulatory task and not confined to ad hoc consultation in the lead up to FRC. Ongoing consultation is a key element in ensuring that the regulatory framework is relevant to the needs and experiences of energy consumers.

Addressing new consumer problems – transfer and marketing complaints

New consumer protection issues have arisen as the result of the introduction of FRC, including **marketing conduct and transfer problems.** The ability to **revert back to standard terms and conditions** will be a key element in addressing these issues.

The ability for retailers to enter contracts with consumer prior to the introduction of FRC will make marketing and transfer complaints more likely.

Assisting consumers to participate in the market

A critical element of delivering effective competition is creating conditions that optimise consumers' capacity to participate in the market where they wish to do so. **Reducing information asymmetry, transaction costs and inertia** will be critical to **promoting FRC and demand side participation.**

RECOMMENDATIONS

PRINCIPLE AND POLICY POSITIONS

Recommendation 1 – *That the following additional principles be adopted in the Policy Review:*

- *Specific acknowledgement of consumer interest, social, environmental and economic;*
- *To maintain affordable access to electricity for all consumers.*

Recommendation 2 - *That the retail arms of incumbent businesses be required to change their names.*

Recommendation 3 – *That the proposed policy positions be amended to include:*

- *Specific acknowledgment of the interests of consumers, including disadvantaged and vulnerable consumers;*
- *Commitment to an effective protection for consumers during the transition to FRC*
- *Commitment to redress for consumers where they are worse off as a result of the introduction of FRC and*
- *Commitment to consultation, ongoing monitoring and review*

UNIFORM TARIFF

Recommendation 4: - *That the UT is maintained at its current level for the introduction of FRC, and that price rises continue to be limited to increases in CPI.*

Recommendation 5: *That options for the effective delivery of the UT are explored, including:*

- *Placing the obligation to provide supply at the UT on all retailers participating in the Queensland market; or*
- *Allowing retailers to bid to provide services to non-switching consumers.*

Recommendation 6 - *That regular comprehensive reviews of the effectiveness of competition in Queensland are built into the regulatory framework with findings of effective competition for all consumers a pre-requisite to the reduction or removal of the safety net provisions or other consumer protection measures.*

Recommendation 7 - *That the implications of the types of tariff structures available in the competitive marketplace are assessed with particular reference to the Government's environmental and social policy objectives.*

REBATES AND CONCESSIONS

Recommendation 8 - *That the following concessions are introduced to the Queensland framework:*

- *One off payments of electricity arrears where they have arisen due to a significant change in circumstance in the household e.g. loss of employment, illness. Examples include Victoria's Energy Relief Grants and NSW's Energy Accounts Payment Assistance.*
- *Discounts relating to service charges.*
- *A payment to enable eligible consumers to upgrade appliances to ones that are more energy efficient, thereby reducing electricity consumption.*
- *Energy efficiency advice and retrofitting programs to reduce consumption thereby reducing cost in the long term.*

Recommendation 9 - *That the merits of applying the pensioner rebate as a percentage of the total bill rather than a fixed amount be considered.*

Recommendation 10 – *That the Energy Code require that all bills include the total amount payable if the consumer is eligible for a concession, in addition to the full payment amount.*

Recommendation 11 – *That the Energy Code specify that the provision of concessions is not open to negotiation under market contracts.*

Recommendation 12 - *That:*

- *The review of the policy not to include customers in isolated or remote systems in FRC is part of the function of the independent regulator.*

- *Consumers in isolated/remote systems have access to the consumer protection framework, including dispute resolution.*
- *The performance of isolate/remote systems is included in reporting frameworks.*

CUSTOMER REVERSION RIGHTS

Recommendation 13 – *That it be made explicit that reversion back is possible upon termination (as well as expiry) of a market contract.*

EMBEDDED NETWORKS

Recommendation 14 - *That:*

- *The jurisdiction of the independent dispute resolution scheme include complaints from consumers in embedded networks.*
- *Means by which consumers in embedded networks, where appropriate, can access the concessions framework are explored.*

PRE-SALES AND QUEUING

Recommendation 15 – *That:*

- *Pre-sales are prohibited.*
- *Alternatively, if pre-sales are allowed, the existence of cooling off rights should be promoted in consumer education materials relating to FRC and a flexible approach to termination after expiry of the 30 day cooling off period adopted.*

Recommendation 16 - *That consumers be able to exit pre-FRC contracts without penalty up until the transfer date.*

Recommendation 17 – *That exemption from termination fees is provided to consumer in hardship, where consumers misunderstood in relation to the amount of time taken to affect a transfer or were misled.*

ALLOCATION OF CONTROLLABLE LOADS

Recommendation 18 – *That the ECC explore options to retain the controllable load framework that will also enable consumers with controllable load to access the contestable market should they wish to do so.*

GUARANTEED SERVICE LEVEL REBATES

Recommendation 19 – *That the GSL framework be extended to include:*

- *Compensation to consumers where their equipment is damaged directly as a result of voltage variation.*
- *Increasing the level of payment in respect of wrongful disconnection.*

Recommendation 20 - *That retailers' reporting requirements are extended to include:*

- *Call centre response data.*
- *Payment plans offered (this information should be linked with disconnection figures).*
- *Improved reporting regarding disconnections, including noting separately disconnections involving concession card holders.*

- *Time taken to rectify transfer errors.*

Recommendation 21 – *That the GSL scheme is extended to apply to retailers.*

ENERGY CONSUMER PROTECTION OFFICE

Recommendation 22 – *That the following matters are included in the design of the independent dispute resolution scheme:*

- *Incorporation as a company limited by guarantee with electricity and gas businesses as members.*
- *A single board of directors comprising an independent chair and an equal number of industry and consumer directors.*
- *Jurisdiction, including a monetary limit, sufficiently broad to encompass the majority of complaints arising in the industry.*
- *Compliance with appropriate benchmarks in structure, operations and policies, in particular the (then) Department of Industry Science and Tourism Benchmarks for industry based customer dispute resolutions schemes, 1997.*
- *Clear processes through which the ECPO can raise systemic issues with the appropriate regulator/s and seek where possible to obtain voluntary solutions that will resolve the issue for all consumers affected i.e. not just those lodging a complaint.*
- *That decisions are made with reference to fairness, the law and good industry practice.*
- *The capacity to make decisions that are binding on member companies.*

IMPLEMENTATION COST RECOVERY

Recommendation 23 - *That to the maximum extent possible FRC implementation costs are recovered from consumers that enter or have entered the competitive market.*

CUSTOMER CONTRACTS

Recommendation 24 - *That the monitoring of contract terms should occur with particular reference to fairness of contract terms and consistency with the provisions of the Energy Code.*

PRICE DISCLOSURE

Recommendation 25 - *That calculation tools are available to consumers in addition to fact sheets and other educative material.*

PRODUCT DISCLOSURE STATEMENT

Recommendation 26 - *That in place of a product disclosure statement a summary of key terms, including price, fees and charges, and risks is placed at the front of each market contract.*

LEGISLATIVE FRAMEWORK

Recommendation 27 – *That responsibility for FRC regulation is given to an independent statutory authority (whether new or existing).*

Recommendation 28 – *That the broad objectives that overlay the functions of the independent regulator explicitly recognise social and environmental considerations as well as economic considerations.*

DISCONNECTIONS

Recommendation 29 – *That:*

- *The current payment for wrongful disconnection is raised and applied per day of disconnection.*
- *The Energy Code encompass provisions designed to minimise disconnections due to incapacity to pay in the contestable market.*

MARKETING CONDUCT

Recommendation 30 – *That retailers are required to obtain explicit informed consent from consumers prior to entering into a market contract.*

Recommendation 31 – *That the relevance of, the Federal Government’s telemarketing opt out proposal to Queensland electricity consumers' needs, and progress with implementation, be closely monitored and assessed. Consideration should also be given to providing a similar system for door to door selling.*

Recommendation 32 – *That compliance monitoring be undertaken in respect of the Energy Code, with particular attention to:*

- *Adequate training of sales staff*
- *Compliance with consumer requests to opt out of being contacted by telemarketers and/or door to door salespersons*
- *The time and manner in which consumers are contacted*
- *Record keeping of contacts made and contracts entered into*
- *Provision of accurate information regarding the terms of offers and savings to be made*
- *Explicit informed consent.*

Recommendation 33 - *That means to effectively enforce the consumer protection obligations imposed on retailers are considered as the Energy Code is developed.*

CONSULTATION

Recommendation 34 - *That the following consultation mechanisms are introduced as a matter of priority:*

- *A Consumer Consultative Committee (CCC).*
- *The development of consultation principles by the industry regulator.*
- *Working parties involving consumer and industry representatives (and other relevant stakeholders) to develop key regulatory instruments.*
- *Funding for consumer participation in the CCC and working parties and to provide written submissions.*

FUNDING FOR CONSUMER RESEARCH AND ADVOCACY

Recommendation 35 - *That resources are allocated to fund at least two full time consumer research and advocacy positions to work on FRC and other energy matters.*

MONITORING AND REVIEW OF FRC

Recommendation 36 – *That there is regular public reporting of data relating to*

- *Switching and churning rates.*
- *Prices available to consumers in general and to different classes of consumers.*
- *Retail service standards.*
- *Number and types of complaints, including emerging systemic issues.*

Recommendation 37 - *That:*

- *A review of FRC, including progress toward effective competition and consumer protection outcomes is undertaken three years from the introduction of FRC. The review should include an ex post cost/benefit analysis.*
- *That a commitment is made that safety net and consumer protection measures will be left in place until it can be established that there is effective actual competition for all consumers.*

RING FENCING

Recommendation 38 - *That a review of ring-fencing arrangements in place in other jurisdictions is undertaken.*

HARDSHIP

Recommendation 39 - *That:*

- *An overarching obligation not to disconnect consumers due to incapacity to pay and a requirement to develop a hardship policy should be included in the Energy Code.*
- *In addressing other approaches to hardship, policies in place in other jurisdictions are reviewed.*

AGGREGATION

Recommendation 40 – *That commitment is made to:*

- *Monitor the regulatory framework for obstacles to aggregation efforts;*
- *Provide start up funding;*
- *Provide technical assistance needed to establish such a group and commence negotiations with retailers.*

Introduction

The Queensland Consumers' Association (QCA) welcomes the opportunity to make a submission to the Energy Competition Committee (ECC) in relation to Consultation Paper No.3 *Electricity Full Retail Competition Proposed Policy Positions* (the Consultation Paper).

This submission is divided into three sections:

Part A makes a number of general points that contextualise the approach QCA has taken in relation to the issues raised in the Consultation Paper.

Part B responds to the specific issues raised in the Consultation Paper. For ease of reference Part B utilises the numbering and headings contained in the Consultation Paper.

Part C raises a number of issues that are not dealt with or not dealt with extensively within the Consultation Paper that QCA considers are of sufficient significance to an effective Full Retail Competition (FRC) framework to be addressed at this stage of the process.

QCA considers that many of the fundamental issues affecting consumers have been canvassed in the Consultation Paper and appropriate principles to address them identified, striking a balance between the need to protect consumers and encouraging the development of a competitive market.¹ This is strongly welcomed.

Obviously, addressing the detail of the proposed approaches will be critical in ensuring that they are effective. For this reason the submission sets out some of the key details QCA considers necessary to give effect to the positive principles outlined in the Consultation Paper. It also makes recommendations regarding ongoing approaches to consultation to ensure that consumer input is obtained at each stage of the process.

As noted, the submission also addresses a number of issues regarding which the Consultation paper is silent. Whilst it is understood that the ECC is focusing on policy issues that have systems implications, the matters outlined in Part C are considered to be of sufficient importance to justify their early consideration. Further QCA submits that processes to determine these issues should be outlined as a matter of priority (where this has not already occurred.) It is also important that none of these issues are determined 'by default' as a result of system decisions.

¹ Indeed QCA suggests that in many instances these goals are complementary.

Part A – Contextual issues

A1 *Special characteristics of electricity*

Electricity possesses a number of characteristics that distinguish it from other goods and services and that warrant an industry specific approach to regulation and a higher degree of consumer protection. Of particular relevance are the economic characteristics of essentialness, non-substitutability, low price elasticity of demand and information asymmetry.

Essentialness – Access to electricity is an essential pre-requisite to attain a basic acceptable standard of living and to participate meaningfully in society. As such, it is by definition, a non-discretionary purchase.

Non-substitutability – Whilst natural gas (whether reticulated or bottled) provides an alternative to electricity for activities such as cooking and heating, such substitution depends on access to the gas network in case of reticulated gas or affordability in the case of bottled gas, and appropriate appliances in both cases. Further, there are a number of functions for which there is no real fuel substitute, for example lighting and the running of appliances such as refrigerators and televisions.

Low price elasticity of demand – Due primarily to the essential and non-substitutable nature of electricity, demand for a basic amount of electricity does not fluctuate, even where the price of electricity increases. Further, studies have shown that ‘discretionary’ consumption above the basic level, “does not change proportionally with a change in price or a change in income of the purchaser.”²

Information asymmetry – As with many goods and services, suppliers in general have significantly greater access to information than consumers. In the case of electricity this imbalance is exacerbated by the complexity in the market structure and in determining the implications of consumption patterns, and the fact that competition has not been a feature of the market.

The implications of this suite of characteristics for governments and regulators was succinctly put by the Centre for the Study of Privatisation and Public Accountability (CPPA) in its report *Protecting Utility Consumers From Market Failure*:

² Submission by Consumer Law Centre Victoria, Consumers’ Federation of Australia, Financial and Consumer Rights Council and Victorian Council of Social Service to the Essential Services Commission *Assessing the Effectiveness of Full Retail Competition for Electricity for Low Income and Vulnerable Consumers* June 2002 (the Consumer Coalition Submission) at 34.

*In a market in which participation is all-but-mandated consumer protection is therefore, also, mandated.*³

QCA submits that an effective consumer protection framework can be viewed as pro-competitive. For example the CPPA noted that

*The construction of a consumer safety net has the potential to provide incentive to consumers to actively participate within the competitive market. Initial restrictions and/or regulations placed on the suppliers may therefore ultimately be beneficial to competition in the long term.*⁴

This point has been acknowledged more broadly both in Australia and internationally.⁵

I have always seen consumer protection on the one hand and competition on the other as principles that should be mutually supporting, and their administration equally so. If we are thinking about price, quality and service (three fundamentals for consumers), then competition may often be the best way to secure them. If we are thinking more broadly about general standards of living, then the forces that can maintain or improve industry efficiency are vital ... Competition is one such force. Consumers not only benefit from competition, they activate it (my emphasis) and one of the purposes of consumer protection law is to ensure that they are in a position to do so.

In addition to the characteristics outlined above, electricity is unlike general goods and services in the degree of importance consumers attach to broader environmental and social equity considerations relating to its supply. As such it is important that a regulatory framework that takes account of the economic characteristics outlined above, also acknowledges broader environmental and social equity considerations.

A2 FRC outcomes for small consumers

The generally stated objectives of introducing competition are to lower prices, improve service and expand consumer choice. FRC has now been introduced to a number of jurisdictions both in Australia and internationally with varying degrees of success – ranging from disastrous to effective for some classes of consumers. However, even in those jurisdictions where the experiment has been termed a success by some

³ Bowman, D., Coghill, D. & Hodge Prof. G., *Protecting Utility Consumers From Market Failure* Centre for the Study of Privatisation and Public Accountability, Monash University, February 2004 at 4.

⁴ See above n.3 at 5.

⁵ See for example Sylvan, L *Competition – how do we know it is working?* Speech to the National Consumer Congress, 15 March 2004 – <http://www.accc.gov.au/content/item.phtml?itemId=508102&nodeId=file421418da9d7e6&fn=2004%20March%2015%20National%20Consumer%20Congress%20speech.pdf>

commentators⁶, participation rates by domestic (and other small consumer groupings) are relatively modest and savings where available, have not been distributed evenly across the consumer population, with some groups of consumers missing out altogether.

Churn or switching rates⁷ often seem to be put forward as a de facto measure of market effectiveness. However, the fact of consumer switching alone cannot be the measure of the success of FRC, particularly in the early stages where information asymmetry is greatest. Outcomes in terms of price savings, non-price benefits and consumer protection must also be examined.

Even on the churning measure, however, QCA notes that participation rates have varied significantly. For example:

- UK – By October 2001, approximately two and a half years after introduction of competition in electricity and gas, the independent regulator, OFGEM reported that 37% of gas and 38% of electricity customers had changed supplier at least once.
- NZ – Approximately three years after the introduction of FRC reforms that meant consumers do not need to purchase an interval meter to change retailer, churning was estimated at 18%.
- Pennsylvania – Approximately 16 months after the introduction of FRC, churning rates were estimated at 15%.
- Victoria – As noted in the CLCV/CPPA, “estimates range from a modest 15% to as low as 2%.”⁸ NSW has comparable figures.⁹

It is important to note that it is not clear what proportion of the ‘churning’ outlined above can be accounted for by consumers moving house and taking up a contract with a new retailer or consumers transferring more than once (and indeed those transferring back following a transfer or marketing problem).

⁶ QCA is aware of no jurisdiction that has introduced FRC where there is general agreement that FRC has been successful in achieving the aims of lower prices, improved service and expanded consumer choice.

⁷ For the purpose of this submission QCA uses the term ‘switching’ to refer to the adoption by consumers of a market contract, whether with their host retailer or a new entrant. The term ‘churn’ is used to refer the situation where consumers move between retailers. It is acknowledged, however, that there is no standard definition of these terms as illustrated by their varying usage in the documents referenced in this submission.

⁸ Consumer Law Centre Victoria and Centre for the Study of Privatisation and Public Accountability *Electricity Reforms in Victoria: Outcomes for Consumers* February 2006 (CLCV/CPPA) at 9.

⁹ In contrast the ECOSA Report *Completed Small Customer Electricity and Gas Transfers to Market Contracts* February 2006 appears to suggest that “there has been around 383,000 small customer completed transfers to electricity market contracts since commencement of electricity FRC on 1 January 2003.”

Turning then to other effectiveness measures, it is clear that where consumer benefits have accrued, they have not been evenly distributed across the consumer population. For example, a key finding of the report *Electricity Reform in Victoria: Outcomes for consumers* was:

[T]he price benefits associated with reforms to the Victorian electricity industry, including the introduction of full retail competition appear not have been uniformly or equitably distributed across all consumers. Indeed, data from the PC, the ESAA and the ESC has all indicated that, where price savings have been realised, greater benefits have gone to higher volume business consumers and Melbourne metropolitan consumers in preference to low volume or regional consumers.¹⁰

In some jurisdictions, other aspects of energy reform have been more successful. For example, the CLCV and CPPA report that “on most quality of electricity supply measures, reform has results in improvements for consumers,¹¹ there have been gains in relation to accountability,¹² and fears physical access to the distribution network, including network expansion, would decline have not been realised.¹³ However, these benefits relate to energy reform more broadly, not the introduction of FRC.

Non-price benefits have also accrued. For example the ESC noted the following benefits in its *Special Investigation: Review of Effectiveness of Retail Competition and Consumer Safety Net Arrangements in Gas and Electricity*:¹⁴

- Brand alliance with non-energy products;
- Dual Fuel Billing;
- Fixed pricing;
- Green energy;
- Competitions; and
- Product and service vouchers.

Nevertheless, price, which must be considered the most critical indicator for consumers, has not shifted significantly downward or at all for many domestic consumers. Further

See above n.8 at 34.

¹¹ Though not in relation to momentary interruptions. Further consumers in rural and regional areas have not received the same degree of quality improvements as their metropolitan counterparts. See above n.8 at ii.

¹² Attributed to “the establishment of a cross-industry independent economic regulator...as well as an industry funded dispute resolution scheme.” - See above n.8 at ii.

¹³ Attributed to “a robust regulatory framework.” See above n.8 at i-ii.

¹⁴ Essential Services Commission *Special Investigation: Review of Effectiveness of Retail Competition and Consumer Safety Net Arrangements in Gas and Electricity Overview Report*, Melbourne 2004 at 17.

there is evidence to suggest that under certain market contracts low volume consumers will be worse off.¹⁵

Further, new consumer protection issues have arisen as a result of FRC, including marketing conduct and transfer problems.

These matters are raised, not to argue against the introduction of FRC but rather to underline the importance of effective consumer protection and safety net arrangements and the need to be cautious in estimating the benefits FRC will deliver to consumers.

Part B – Issues raised in the Consultation Paper

B1.2 Objectives for this Policy Review

Principle and policy positions

The matters outlined in Part A of this submission are centrally relevant in considering the principles and proposed policy positions that ought to apply in relation to the introduction of FRC. In particular the limited effectiveness of FRC to date suggests that the interests of consumers should be central to the principles and policy positions adopted, as it cannot be assumed that competition will deliver for all groups of consumers or that benefits will be equitably distributed, at least in the short term. Consumer interests should be acknowledged as encompassing social and environmental outcomes as well economic ones.

Principles that seek to ‘maximise the opportunities for competitive outcomes in Queensland’ and ‘maximize the potential for innovation’¹⁶ are supported as far as they go. However, a further core principle should be added – ‘to maintain affordable access to electricity for all consumers.’ This may require that in some instances domestic consumers receive more than ‘equal consideration in the development of the implementation arrangements.’

Recommendation 1 – *That the following additional principles be adopted in the Policy Review:*

- *Specific acknowledgement of consumer interest, social, environmental and economic;*
- *To maintain affordable access to electricity for all consumers.*

QCA supports the principle of consistency with arrangements in other states in Australia where possible, noting however, that care should be taken not to adopt lowest common denominator positions. Queensland has the opportunity to benefit significantly from the

¹⁵ See above n.14 at 13.

¹⁶ Energy Competition Committee *Consultation paper No.3 – Electricity Full Retail Contestability Proposed Policy Positions* Queensland Government, 28 February 2006 at 5-6.

FRC lessons learned in other jurisdictions both within Australia and internationally – the opportunity to leapfrog straight to best practice should be seized with vigour.

Competitive neutrality is also supported. In this context QCA notes discussions on incumbent advantage that have occurred in other jurisdictions. For examples, in the Effectiveness Review undertaken by the Victorian Essential Services Commission (ESC) in 2002, new entrant retailers suggested “the benefits of incumbency were one of the key reasons for the low participation rate of new retailers in Victoria.”¹⁷ However, incumbents and the regulator countered this assertion, noting respectively that:

*...incumbent retailers paid a higher price for retail businesses to avoid the cost of entering the market with no established customer base. Incumbents must recoup the investment made in the businesses over time, just as new entrants will recover their entry costs over time.*¹⁸

And

*There is evidence of a significant number of retailers having entered the Victorian electricity market (including the market for small customers) in spite of any incumbency advantages, suggesting that they have not been a binding constraint on the entry of new retailers at this early stage of FRC.*¹⁹

Of course, the position is somewhat different in Queensland, with the incumbent retailers currently Government owned. As such there will need to be particular vigilance regarding the presence of incumbent advantages. With this in mind, QCA submits that a significant step that could be taken to level the playing field is to require a change of name for the retail arm of the incumbent businesses.

Recommendation 2 - *That the retail arms of incumbent businesses be required to change their names.*

Turning now to the preferred policy positions outlined in the Consultation Paper, QCA notes the following matters:

- Whilst market competition may deliver benefits to consumers in general, it has been demonstrated to focus benefits on certain groups of consumers. Thus the policy positions should acknowledge the position of disadvantaged and vulnerable consumers, who experience shows, are unlikely to benefit from the competitive market, at least in the short term.

¹⁷ National Retailers’ Forum *Submission to Special Investigation: Review of the Effectiveness of Electricity Full Retail Competition*, June 2002.

¹⁸ See ESC *Special Investigation: Review of the Effectiveness of Full Retail Competition for Electricity – Final Report* September 2002 at 39.

¹⁹ See above n.18 at 40.

- Low implementation and ongoing costs are desirable but only if the framework delivers necessary protections and the ability to regulate, monitor and review effectively.
- The interests of consumers should be explicitly recognised. This reflects the fact that the purpose of introducing competition is to deliver benefits to consumers and is not competition for competition's sake.
- In addition to the policy positions outlined, commitments to effective protection for consumers during the transition to FRC, redress where consumers are worse off as a result of reforms and consultation, ongoing monitoring and review should be included.

Recommendation 3 – *That the proposed policy positions be amended to include:*

- *Specific acknowledgment of the interests of consumers, including disadvantaged and vulnerable consumers;*
- *Commitment to an effective protection for consumers during the transition to FRC*
- *Commitment to redress for consumers where they are worse off as a result of the introduction of FRC and*
- *Commitment to consultation, ongoing monitoring and review*

Barriers to entry

QCA notes the Consultation Paper's adoption of the ACCC's approach to barriers to entry. This is welcomed. In particular it's acknowledgement that "obstacles that are part of the normal process of entering the market"²⁰ including consumer protection regulation are not necessarily barriers to entry is considered imperative.

B2.1 Community Service Obligations

QCA welcomes the imposition of a statutory obligation on distributors to "connect and supply customers on fair and reasonable terms, including, where necessary extending their distribution networks to provide such connection and supply."²¹ Such an obligation is a critical element in maintaining consumer access to an essential service.

B2.2 Uniform Tariff

QCA notes that separate consultation will be undertaken regarding the means of delivering the Uniform Tariff (UT). As such, comments in this submissions are confined to key issues and appropriate principles to frame UT delivery.

²⁰ See Consultation Paper at 6.

²¹ See Consultation Paper at 8.

First and foremost, QCA notes its strong support for the commitment to a UT that “provides parity of pricing for electricity consumers in the same class regardless of their geographic location.” Such a step is a critical element in ensuring rural and regional consumers are not disadvantaged by FRC.

QCA notes, however, that it is not clear in the Consultation Paper, that the UT will be maintained at its current level for the introduction of FRC, and that price rises will continue to be limited to increases in CPI. This issue is clearly central in maintaining affordable supply for Queensland consumers.

Recommendation 4: - *That the UT is maintained at its current level for the introduction of FRC, and that price rises continue to be limited to increases in CPI.*

QCA also suggests exploration of two mechanisms for delivery of the UT, each of which has pro-competitive features. One option is to place the obligation to supply the UT upon all retailers not just incumbent retailers. The relevant regulator could have power to grant specific exemptions upon application if the applicant retailer can make a case. Means by which the exemption process could be administered are suggested in a Submission by Consumer Law Centre Victoria, Consumers’ Federation of Australia, Financial and Consumer Rights Council and Victorian Council of Social Service to the Essential Services Commission *Assessing the effectiveness of full retail competition for electricity for Low income and vulnerable consumers* June 2002 (the Consumer Coalition Submission):

In granting exemptions the [regulator] could apply an objective set of criteria which would take into account not only the capacity of the business to offer across its entire licensed area but also the availability of choice to consumers across different demographics or geographic regions...In granting exemptions the [regulator] should give particular consideration to the potential redlining effect of the exemption. Thus for example, an exemption permitting offers only to homeowners, metropolitan consumers or consumers other than health care cardholders should be prohibited.²²

Note that a universal obligation to supply applies in other jurisdictions for example the UK²³ and the EU.²⁴

A second option is to examine the merits of allowing retailers to bid to provide services to non-switching consumers. Such an approach has been adopted in Pennsylvania²⁵ and Maine²⁶ and in effect introduces competition to the provision of the universal service obligation. Note also that such an approach is being piloted in telecommunications in Australia, though the results of trials are yet to be reported.

²² See above n.2 at 38-39.

²³ See for example Waddams & Young cited in CPPA.

²⁴ See European Union *Electricity Directive* at 32.

²⁵ See for example Brown & Sedano 2003 at 37 cited in CPPA 2004 at 16.

²⁶ See above n.3 at 20.

It is also desirable to minimise the capacity for retailers to ‘game’ the CSO by reversing the cross subsidy – increasing costs to unprofitable customers or those they are unlikely to lose in order to offer more attractive packages to profitable customers. This is a particular risk if the obligation to supply the UT is confined to incumbent retailers, as has been the case in other jurisdictions.

Recommendation 5: *That options for the effective delivery of the UT are explored, including:*

- *Placing the obligation to provide supply at the UT on all retailers participating in the Queensland market; or*
- *Allowing retailers to bid to provide services to non-switching consumers.*

In framing mechanisms relating to the review of the UT, particularly in the medium to long term, it should be noted that the existence of the UT tends to answer to two separate policy objectives, which in future may come into conflict. The first of the two objectives is to provide transitional arrangements for all consumers as the competitive market establishes itself – effectively a price ceiling which would be intended to encourage consumers to enter the market to obtain a more attractive package. The second is to provide a safety net for consumers who do not or cannot (due to lack of offers) enter the competitive market.

As noted in the Consumer Coalition Submission:

The safety net objective is best fulfilled by providing and (sic) opportunity for low-income and vulnerable consumers to access electricity, an essential service, on fair terms and conditions at an affordable price.

Conversely, the transitional framework objective is best served by encouraging consumers to enter the market...In order to fulfill this objective it is desirable (at least in economic theory) that the standing offer contract price include ‘headroom’ – effectively a margin that allows retailers to offer a market contract price that is lower than the standing offer contract price.²⁷

QCA notes Government commitments that no consumer will be worse off as a result of the introduction of FRC. As such, QCA would be most concerned at any suggestion that there should be any increase in current tariffs in the transition to the UT arrangements. As noted by Consumer Law Centre Victoria in its submission to the ESC regarding the proposed approach to the 2002 Effectiveness Review,

²⁷ See above n.2 at 39-40.

Such a move will simply shift costs to vulnerable consumer groups, enabling the less vulnerable (and more profitable) consumers to reap the rewards of competition.²⁸

CLCV/CPA also concluded that

Some form of obligation to offer supply on standard prices, terms and conditions will always be necessary to protect low-income and other disadvantaged consumers from market failure.²⁹

By way of example, in the telecommunications market, generally considered to be highly competitive,³⁰ safety net provisions relating to affordable access to a fixed line service remain, and indeed have been expanded or improved, despite the introduction of competition almost 10 years ago.³¹

Thus, as noted in the CPA report:

“[If consumers] were to be left without an electricity USO at any stage, there would be a federal obligation for each customer to have access to digital data, without any matching obligation for the customer to have electricity to power a device with which to gain meaningful access to it.³²

The UK and NZ are the only markets to date that have removed the tariff safety net. It is understood that it is proposed to remove the ‘transitional franchise tariff’ in the ACT. This proposal has been strongly opposed by consumer and welfare groups on the basis that the Government justifies the removal on the basis of potential rather than actual competition.³³

QCA recommends that regular comprehensive reviews of the effectiveness of competition in Queensland be built into the regulatory framework with findings of effective competition a pre-requisite to the reduction or removal of the safety net provisions or other consumer protection measures. QCA considers that the safety net objectives of the UT equivalents in other states have received insufficient attention in the effectiveness reviews undertaken e.g. in Victoria and ACT.

²⁸ CLCV Submission to the ESC *Proposed Approach to the Review of the Effectiveness of Full Retail Competition for Electricity* dated 1 May 2002 at 2.

²⁹ See above n.8 at 50.

³⁰ Though not in all aspects. For example competition has not succeeded in delivering fair contract terms or clear information to consumers.

³¹ Whilst funding levels for the USO have declined, there have been efforts to improve access to USO products and a USO relating to digital access has been introduced through regulation – see for example the discussion in CPA 2004 at 26-27.

³² See above n.3 at 27.

³³ See for example ACTCOSS *Submission on ICRC Report no.2 of 2006 Draft Decision on Retail prices for non-contestable Electricity Customers* March 2006 at 5.

Recommendation 6 - *That regular comprehensive reviews of the effectiveness of competition in Queensland are built into the regulatory framework with findings of effective competition for all consumers a pre-requisite to the reduction or removal of the safety net provisions or other consumer protection measures.*

Finally, QCA notes the absence of any discussion in the Consultation Paper regarding the sorts of tariffs that may be available under market contracts. The structure of tariffs that are available have significant implications for the ability to give effect to broad Government policy relating to issues such as greenhouse gas abatement and other environmental issues, as well as social policy. For example will competitive off-peak offers be available, will tariffs reward high consumption or increase with increased consumption. These and other tariff offerings should be monitored and their effect on broader government objectives assessed.

Recommendation 7 - *That the implications of the types of tariff structures available in the competitive marketplace are assessed with particular reference to the Government's environmental and social policy objectives.*

B2.3 Pensioner Rebate Scheme and other Tariff Concessions

The affordability of electricity is clearly a critical element in maintaining consumer access to supply. A key element in delivering affordability is an effective concessions framework.³⁴

In this context it is noted that there are a number of concessions in existence in other jurisdictions that do not feature in the Queensland framework. These include provision for:

- One off payments of electricity arrears where they have arisen due to a significant change in circumstance in the household eg loss of employment, illness. Examples include Victoria's Energy Relief Grants and NSW's Energy Accounts Payment Assistance.
- Discounts relating to service charges.
- A payment to enable eligible consumers to upgrade appliances to ones that are more energy efficient, thereby reducing electricity consumption.
- Energy efficiency advice and retrofitting programs to reduce consumption thereby reducing cost in the long term.

Recommendation 8 - *That the following concessions are introduced to the Queensland framework:*

- *One off payments of electricity arrears where they have arisen due to a significant change in circumstance in the household e.g. loss of employment, illness.*

³⁴ Other elements including consumer protection, disconnections and hardship policies are discussed below.

Examples include Victoria's Energy Relief Grants and NSW's Energy Accounts Payment Assistance.

- *Discounts relating to service charges.*
- *A payment to enable eligible consumers to upgrade appliances to ones that are more energy efficient, thereby reducing electricity consumption.*
- *Energy efficiency advice and retrofitting programs to reduce consumption thereby reducing cost in the long term.*

In relation to the existing pensioner concessions, QCA suggests that the merits of applying the rebate as a percentage of the total bill rather than a fixed amount be considered. Such an approach could enable the concession to be of equal value to households that may have higher consumption levels and therefore higher bills e.g. due to a larger household or inefficient appliances in rental accommodation.

Recommendation 9 - *That the merits of applying the pensioner rebate as a percentage of the total bill rather than a fixed amount be considered.*

Also, the omnibus Energy Code should require that all bills include the total amount payable if the consumer is eligible for a concession, in addition to the full payment amount.

Recommendation 10 – *That the Energy Code require that all bills include the total amount payable if the consumer is eligible for a concession, in addition to the full payment amount.*

The drought relief policy outlined in the Consultation Paper is an example of an assistance program targeted to a particular instance of hardship. Its existence is philosophically consistent with the provision of assistance in cases of hardship more generally as occurs in the examples outlined above.

QCA also notes that it is unlikely in the extreme that the presence, or more importantly, absence of concessions would form part of a 'negotiation' regarding a market contract. It is for this reason that provision of concessions is a non-derogable element of the Retail Code in Victoria and in other jurisdictions. QCA submit that the provision of concessions to eligible Queensland consumers ought not be open to negotiation.

Recommendation 11 – *That the Energy Code specify that the provision of concessions is not open to negotiation under market contracts.*

B2.5 Contestability for Customers in Isolated/Remote Systems

QCA notes the proposal that "customers in isolated/remote power systems should not be eligible to choose their retail supplier under FRC."³⁵ The arguments advanced in the

³⁵ Consultation Paper at 15-16.

Consultation Paper are compelling. Subject to the following qualifications, QCA also supports the proposal that the situation be reviewed regularly and the policy revised “on a case by case basis if and when it becomes practical to introduce FRC.”³⁶

- The review should form part of the function of the independent regulator (discussed in Section B4.2 below);
- It should be open to consumers in remote networks to determine that they wish to become contestable. Whilst this may not be practical at present, it is conceivable that technology improvements, market changes or aggregation could change this.

For the present it is critical that these consumers have access to the consumer protection framework, including independent dispute resolution, despite the fact they are not contestable. In essence they should be in the same position as non-switching consumers. It should also be ensured that remote systems are included within reporting frameworks in order that these consumers’ experience does not ‘drop off the radar.’

Recommendation 12 - That:

- *The review of the policy not to include customers in isolated or remote systems in FRC is part of the function of the independent regulator.*
- *Consumers in isolated/remote systems have access to the consumer protection framework, including dispute resolution.*
- *The performance of isolate/remote systems is included in reporting frameworks.*

B2.6 Community Ambulance Contribution

QCA makes no comment in relation to this issue.

B2.7 Customer Reversion Rights

QCA strongly supports the proposed policy position that consumers (with annual consumption of less than 100MWh per annum) who enter into a market contract should be permitted to revert to the uniform tariff upon completion of a market contract.

QCA notes the following matters regarding the reversion back policy:

- First, it is important to recognise that price rises (whilst a significant motivator) are not the only reason a consumer may wish to revert back to the uniform tariff. Consumers may also wish to revert where they have been misled, experienced poor service or where they move house and wish to remain on a default arrangement (it appears from interstate data that consumers moving house account for a significant proportion of so called consumer switching).
- Secondly, reversion back should be possible upon termination of a market contract, not just its expiry.

³⁶ Ibid.

QCA notes also that the proposed policy position is consistent with approaches in other jurisdictions and can be considered an important element in encouraging consumer confidence in entering the market.

Recommendation 13 – *That it be made explicit that reversion back is possible upon termination (as well as expiry) of a market contract.*

B2.8 Retailer of last resort

QCA strongly supports the proposed policy position that the retailer of last resort be obliged to supply consumers at the uniform retail tariff. Consumers, who will ultimately bear the cost of implementation of FRC ought not pay additional costs attributable to failures beyond their control.

B2.9 Contestability for Street Lighting

QCA makes no comment in relation to this issue.

B2.10 Contestability for customers with Annual Consumption below 100MWh in Embedded Networks

The NEMMCO paper referred to in the Consultation Paper³⁷ contains useful information regarding this issue, in particular its review of the approaches taken in international jurisdictions and the summary of laws and regulations that need to be considered in designing an effective proposal relating to FRC in embedded networks. However, QCA understands that NEMMCO is not in a position to proceed to publish further work undertaken and is of the view that a one size fits all solution is not likely in the near future.

Given embedded networks include retirement villages, caravan parks and rooming houses; the position taken in relation to this issue could impact a significant proportion of the Queensland population. In addition, these consumers could generally be described as vulnerable.

QCA submits that it is unacceptable to simply delay the introduction of FRC to these consumers without addressing the question of availability of appropriate protections for them. Even if Queensland wishes to await a national outcome in relation to FRC for embedded networks, there are other interim steps that could be taken to improve the position of these consumers. QCA recommends particular attention to the approach in NSW, which took the step of providing consumers in embedded networks with access to the Energy and Water Ombudsman NSW from October 2001.

³⁷ NEMMCO *Embedded Networks and Retailer Choice* Version 1.2, February 2004 referred to in the Consultation Paper at 23.

EWON has developed specific approaches to these complaints in consultation with relevant stakeholders, including residents groups and park owners.³⁸ EWON report that “the majority of calls received...from residential park residents concern supply quality, supply availability, billing and pricing issues.”³⁹ Concerns have also been raised regarding residents’ access to concession and payment assistance frameworks.

These are significant consumer issues. QCA submits the NSW approach has much to commend it – providing complaints resolution to individual consumers whilst enabling systemic issues to be identified by energy regulators. Access to information regarding consumer protection issues arising for embedded network consumers will be a critical ingredient in any effective framework to address the application of FRC to these consumers.

Recommendation 14 - That:

- *The jurisdiction of the independent dispute resolution scheme include complaints from consumers in embedded networks.*
- *Means by which consumers in embedded networks, where appropriate, can access the concessions framework are explored.*

B2.11 Pre-sales and queuing

Transfer delays generally and misunderstandings relating to pre- sales have been a significant cause of complaint in other jurisdictions. Taking the latter first, pre-sales obviously occur before many of the consumer education efforts (indeed in Victoria they took place before the marketing code was finalised) and consumers taking them up are thus particularly vulnerable to questionable sales tactics and misrepresentation of the sorts outlined below.

As such, if pre-sales are to be allowed, particular protections should also apply. QCA recognises that the proposal to allow termination without penalty by the consumer up to 30 days after the commencement of FRC is intended to provide protection. However, it must be questioned whether the consumer’s right to terminate will be well communicated by retailers’ sales staff. Thus if pre-sales are permitted, the existence of the cooling off right should be a key message in consumer education materials. A flexible position in relation to termination after the expiry of the 30-day period should also be adopted.

QCA submits, however, that in view of the very low switching and churning rates experienced in other jurisdictions in the early days of FRC, a preferable solution would be to avoid the potential cost to consumers of misunderstanding resulting from pre-sales and to prohibit them.

Recommendation 15 – That:

- *Pre-sales are prohibited.*

³⁸ See for example *ewonews* Issue 6 – June 2002 at 3.

³⁹ *ewonews* Issue 7 – December 2002 at 4.

- *Alternatively, if pre-sales are allowed, the existence of cooling off rights should be promoted in consumer education materials relating to FRC and a flexible approach to termination after expiry of the 30 day cooling off period adopted.*

Transfer delays is another area that experience in other jurisdictions demonstrates is not well understood by consumers, whether taking up pre or post FRC offers. For example EWOV has reported that:

[its] experience of transfer delay and erroneous transfer issues indicates that further improvements should be made to the electricity transfer process. EWOV suggest that there is a need to continually improve and audit the accuracy and flow of information from distributors to retailers. EWOV has previously also suggested that retailers should be subject to timeframes for the correction of erroneous transfers.⁴⁰

The ESC has subsequently initiated a project to examine systemic transfer problems and propose solutions (the E2E project).⁴¹

This being the case, QCA has difficulty understanding the rationale behind the proposed policy position that if a 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 contract.”⁴² Indeed, QCA submits that the opposite should apply. That is, in view of likely consumer misunderstanding regarding transfer delays, consumers should be able to exit pre-FRC contracts without penalty up until the transfer date. Such an approach is also supported by the fact that where misunderstanding or misrepresentation occurs it is arguable that the consumer has not given explicit informed consent in entering into the contract.

Recommendation 16 - *That consumers be able to exit pre-FRC contracts without penalty up until the transfer date.*

It also appears that termination fees will be allowed. This is consistent with other jurisdictions but unfortunate. They will clearly inhibit consumers from taking up the option to revert back. There should at the least be exemptions for consumers in hardship or where they misunderstood in relation to the amount of time taken to affect a transfer or were misled.

Recommendation 17 – *That exemption from termination fees is provided to consumer in hardship, where consumers misunderstood in relation to the amount of time taken to affect a transfer or were misled.*

⁴⁰ See above n.8 at 69.

⁴¹ See <http://www.esc.vic.gov.au/electricity204.html#E2E>

⁴² See Consultation Paper at 25.

B2.12 Allocation of Control of Curtailable Loads

QCA does not propose to comment upon the proposed allocation of controllable loads save to say that the proposed approach sounds sensible on its face. QCA does note, however, reports from the Victorian ESC that identify that consumers who had invested in off-peak hot water systems were one of the consumer groupings who did not receive market offers due to the low rate at which the off-peak tariffs were set.⁴³ Prior to industry reform, the tariffs were set at this low level in recognition of the desirability of shifting load to the off peak period. Queensland’s controllable load framework has the same objective. As such, given the ECC specifically acknowledges the benefits of this demand management tool QCA encourage the adoption of frameworks that will protect it.

Recommendation 18 – *That the ECC explore options to retain the controllable load framework that will also enable consumers with controllable load to access the contestable market should they wish to do so.*

QCA notes also that when market offers did become available to Victorian off-peak consumers, at least one retailer significantly increased the tariffs applicable to off peak with the result that consumer taking up these offers would be worse off or have savings on the peak tariff eaten away.⁴⁴

B2.13 Guaranteed Service Level (GSL) Rebates

QCA strongly supports the proposed policy position that “the Electricity Code should be amended to extend the GSL scheme to all customers.”⁴⁵ To confine GSL payments to non-contestable customers would offend principles of competitive neutrality. Further, the payments send an important price signal in the market place in relation to consumer protection issues such as quality of service, wrongful disconnections and timely connection.

More broadly, GSLs represent policy recognition of service standards that are important to consumers and regarding which minimum standards must be delivered. As such, in addition to considering the application of current GSLs in the competitive environment, the ECC should consider whether the extension of the GSL framework is necessary. In particular QCA recommends adopting practices consistent with other jurisdictions in relation to GSL payments, including:

- Compensation to consumers where their equipment is damaged directly as a result of voltage variation.⁴⁶

⁴³ See above n.18 at 47.

⁴⁴ See above n.2 at 92.

⁴⁵ See Consultation Paper at 28.

⁴⁶ See for example *Electricity Guideline No.11: Voltage Variation Compensation*, ESC 2001.

- Increasing the level of payment in respect of wrongful disconnection. QCA note that the Victorian scheme involves a payment of \$250/day for each day supply is disconnected and has resulted in the first significant post competition drop in disconnections.⁴⁷

Recommendation 19 – *That the GSL framework be extended to include:*

- *Compensation to consumers where their equipment is damaged directly as a result of voltage variation.*
- *Increasing the level of payment in respect of wrongful disconnection.*

QCA also strongly supports the proposal to impose a license condition on retailers “to pass on the GSL payment to customers in their electricity bills.”⁴⁸ This is a critical element in ensuring that consumers do in fact receive GSL payments and that retailers (and distributors) receive the relevant price signals.

Related to the issue of GSLs is the issue of reporting of compliance with them by retailers (and distributors). Such reporting plays an important role in maintaining accountability in a contestable environment, as well as providing important information regarding outcomes – enabling the regulator to respond where service levels are not being met or improved and illustrating improvements that may have occurred as a result of reforms.

QCA notes the reporting requirements set out in the Energy Code and suggest that they be reviewed to include the following additional indicators:

- Call centre response data.
- Payment plans offered (this information should be linked with disconnection figures).
- Improved reporting regarding disconnections, including noting separately disconnections involving concession card holders.
- Time taken to rectify transfer errors.

Recommendation 20 - *That retailers’ reporting requirements are extended to include:*

- *Call centre response data.*
- *Payment plans offered (this information should be linked with disconnection figures).*
- *Improved reporting regarding disconnections, including noting separately disconnections involving concession card holders.*
- *Time taken to rectify transfer errors.*

As illustrated by the discussion above, GSL payments may arise either as the result of conduct by retailers or distributors and the GSL scheme therefore ought not be confined to distributors as suggested in the Consultation Paper. For example, a retailer may also be responsible for a wrongful disconnection.

⁴⁷ See above n.8 at 39.

⁴⁸ See Consultation Paper at 28.

Recommendation 21 – *That the GSL scheme is extended to apply to retailers.*

B2.14 Grid Connected Customer Generation

QCA notes that some consumers and environmental groups have expressed concern regarding the prices paid for energy that is added to the system by grid connected customer generation. In particular, concerns have been expressed that despite the fact that energy is often added to the system at times of peak demand (and therefore peak prices), only the uniform tariff price is paid for the energy.

It is acknowledged that consumers generating electricity also pay the uniform tariff when taking electricity from the system. However, in view of the capacity customer generation may provide to avoid or lessen reliance on peak generation it is suggested that some sort of premium ought to be factored into the price paid.

B2.15 Energy Consumer Protection Office (ECPO)

QCA strongly supports the proposed policy position that the ECPO be established as an independent corporation outside of government” and that the “level of funding support should also be reviewed to ensure the ECPO has adequate staff to cope with the large increase in inquiry volumes to be expected under FRC.”⁴⁹ QCA also submits that there are a number of matters of detail that should be agreed regarding the ECPO as a matter of priority:

- Incorporation as a company limited by guarantee with electricity and gas businesses as members.
- A single board of directors comprising an independent chair and an equal number of industry and consumer directors.
- Jurisdiction, including a monetary limit, sufficiently broad to encompass the majority of complaints arising in the industry.
- Compliance with appropriate benchmarks in structure, operations and policies, in particular the (then) Department of Industry Science and Tourism *Benchmarks for industry based customer dispute resolutions schemes*, 1997.
- Clear processes through which the ECPO can raise systemic issues⁵⁰ with the appropriate regulator/s and seek where possible to obtain voluntary solutions that will resolve the issue for all consumers affected i.e. not just those lodging a complaint.

⁴⁹ See Consultation Paper at 30.

⁵⁰ The term ‘systemic issue’ refers to an issue that affects a significant number of consumers. It may be identified through an observed increase in complaint numbers regarding a particular issue or it may be apparent from a single complaint where that complaint discloses an issue that will affect a significant number of consumers e.g. a billing system issue.

- That decisions are made with reference to fairness, the law and good industry practice.
- The capacity to make decisions that are binding on member companies.

Recommendation 22 – *That the following matters are included in the design of the independent dispute resolution scheme:*

- *Incorporation as a company limited by guarantee with electricity and gas businesses as members.*
- *A single board of directors comprising an independent chair and an equal number of industry and consumer directors.*
- *Jurisdiction, including a monetary limit, sufficiently broad to encompass the majority of complaints arising in the industry.*
- *Compliance with appropriate benchmarks in structure, operations and policies, in particular the (then) Department of Industry Science and Tourism Benchmarks for industry based customer dispute resolutions schemes, 1997.*
- *Clear processes through which the ECPO can raise systemic issues⁵¹ with the appropriate regulator/s and seek where possible to obtain voluntary solutions that will resolve the issue for all consumers affected i.e. not just those lodging a complaint.*
- *That decisions are made with reference to fairness, the law and good industry practice.*
- *The capacity to make decisions that are binding on member companies.*

QCA also encourages the new entity to make links with other schemes for example through participation in ANZEWO, a network of existing Australian and New Zealand Independent Energy Ombudsmen, and other industry based ADR scheme events.

B2.16 FRC Systems Implementation Cost Recovery

The *Full Retail Competition: Cost/Benefit Analysis* prepared by GHD seems to suggest that FRC implementation costs will not be substantial. However, in all jurisdictions QCA is aware of costs have consistently exceeded initial predictions.

As noted at in Section B2.1 above, QCA supports the principle that costs should be as minimal as possible but sufficient to ensure that an appropriate and robust regulatory framework is put in place.

⁵¹ The term ‘systemic issue’ refers to an issue that affects a significant number of consumers. It may be identified through an observed increase in complaint numbers regarding a particular issue or it may be apparent from a single complaint where that complaint discloses an issue that will affect a significant number of consumers e.g. a billing system issue.

On the question of recovery of costs, QCA suggests that to the maximum extent possible, costs should be recovered from consumers that enter or have entered the competitive market, as these consumers will be the primary beneficiaries of reform. For those consumers who chose not to enter the market or unable to do so, it must be questioned whether economy wide benefits arising from a more efficient energy sector will be sufficient to offset costs in the medium term.

Recommendation 23 - *That to the maximum extent possible FRC implementation costs are recovered from consumers that enter or have entered the competitive market.*

B2.17 Metering Data Agent/Metering Data Provider Derogation

QCA supports the proposed policy positions that “the LNSP should be designated as the responsible person for metering customers who consumer less than 160-MWh per annum at a single connection.”⁵² As noted in the Consultation Paper, such an approach is consistent with the other states that have introduced FRC. Further, there has been no indication to date that the market is ready for competition in this area.

B2.18 Gas Electricity Certificates market

QCA supports the proposed policy position that “there will be no change to the requirement for an Authorised retailer to source 13% of their annual electricity sales from gas fired generators.”⁵³ As noted in the Consultation Paper, the maintenance of similar schemes in other jurisdictions has not been viewed as acting as a barrier to entry. Importantly, the proposed policy position enables the environmental benefit arising from the scheme to continue.

B3 Proposed Consumer Protection Measures and Framework

B3.1 Specific Measures or Rely on TPA Provisions

QCA strongly supports the proposed policy position that “government should not rely solely upon the *Trade Practices Act 1974* (TPA) 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.”⁵⁴

QCA refers to the general comments made in Part A above. Both the special characteristics of electricity and the limited degree of success of FRC for small

⁵² See Consultation Paper at 32.

⁵³ See Consultation Paper at 34.

⁵⁴ See Consultation Paper at 37.

consumers to date support the position taken in the Consultation Paper that industry specific regulation is required.

Indeed, no jurisdiction either in Australia or internationally that has introduced FRC has relied on existing consumer protection law – all have adopted industry specific regulation. Even jurisdictions such as the UK and NZ which have rolled back some consumer protection measures, in particular, transitional tariff arrangements, have retained (and enhanced) strong industry specific consumer protection frameworks.

Subject to the qualifications below, QCA also supports the proposed policy position that the regulations and codes should be “developed as far as possible to be consistent with the arrangements in other jurisdictions.”⁵⁵ QCA welcomes the recognition inherent in the statement that complete consistency may not be possible.

QCA notes that consistency is not universal in relation to the approaches taken in those Australian jurisdictions that have introduced FRC. In this circumstance it is important that Queensland does not opt for a lowest common denominator solution to consumer protection. With this in mind QCA commends a report undertaken by the CLCV report on behalf of the ACCC Consumer Consultative Committee that examines electricity consumer protection measures across Australian FRC jurisdictions and suggests a best practice model.⁵⁶

Finally QCA notes that it is critical that a consultative approach is taken in developing the consumer protection framework. This is discussed further in section C1 below.

B3.2 Customer Codes and Regulations

QCA supports the proposal to create an omnibus Energy Code “which addresses consumer protection issues for both electricity and gas”⁵⁷ and “include[s] the provisions for retail marketing conduct and transfer rules.”⁵⁸ Further detail regarding some key matters that should be addressed in the Code is set below in Section B4.3.

B3.3 Minimum Standard Terms and Conditions for Customer Contracts

QCA supports the proposed policy position that a set of minimum standards be developed for market contracts for small retail consumers.⁵⁹ These minimum standards should be developed in consultation with consumer and industry representatives. More detail on appropriate consultation practices is outlined in section C1 below.

⁵⁵ See Consultation Paper at 37.

⁵⁶ <http://www.clcv.net.au/index.aspx?id=191>

⁵⁷ See Consultation Paper at 35.

⁵⁸ See Consultation Paper at 43.

⁵⁹ See Consultation Paper at 39.

Care should be taken that the set of minimum standards is not defined too narrowly. It has been generally (though not universally) acknowledged that even in markets where competition is well established, such as telecommunications, there has not been competition around contract terms outside the key terms of price and subject matter. Recent amendments to the Victorian *Fair Trading Act 1999* to prohibit the use of unfair contract terms, the Australian Communications Industry Forum *Unfair Contracts Code* and the work of the Standing Council of Officials in Consumer Affairs Unfair Contracts Working Party (of which Queensland is co-chair with Victoria) are all recognition of the need for regulation in this area.

As such QCA recommends that the following matters are included in the minimum terms and conditions (in addition to the matters identified at pages 38-39 of the Consultation Paper):

- Disclosure of any applicable fees and charges.
- Access to concessions and payment plans.
- Provision of information on bills (e.g. consumption graphs, concession amounts).

Further QCA submits that there should be monitoring of contract terms in general, with particular reference to fairness of contract terms and consistency with the provisions of the Energy Code, as these areas have been problematic in other jurisdictions.⁶⁰

Recommendation 24 - *That the monitoring of contract terms should occur with particular reference to fairness of contract terms and consistency with the provisions of the Energy Code.*

As regards deemed and standing contracts,⁶¹ however, QCA submits that the provisions of the Energy Code should form the terms and conditions. The reason a minimum set of conditions should be identified for a market contract is to provide a minimum acceptable level of consumer protection whilst allowing room for retailers to innovate in respect of market offers. There is no such possibility in relation to a deemed or standing contract and therefore the full suite of provisions in the Energy Code should apply.

B3.4 Price Disclosure Guidelines

QCA supports the provision of standardised fact sheets to consumers, in conjunction with calculation tools. The interaction of these two elements is much more likely to be effective in assisting consumers to make informed and beneficial choices in the

⁶⁰ See Part 2B of the *Fair Trading Act 1999* (Victoria) for examples of the sorts of terms that could be considered unfair.

⁶¹ The term ‘standing offer contract’ is used to refer to the contracts that will apply to consumers reverting to the uniform tariff. The term ‘deemed contract’ is used to refer to the contract that applies to consumers that have not entered the market or become contestable.

contestable market than fact sheets alone. Tools that can assist consumers to identify the relative merits of offers available to them have been introduced in a number of other jurisdictions⁶², after other options, such as fact sheets and general educative materials have failed to make significant inroads into existing information asymmetry between consumers and retailers on their own.⁶³ The UK and other EU states have also introduced such tools.⁶⁴

The energy market is generally recognised as being complex for consumers to negotiate. Even with standardised price disclosure, consumers will still be required to make complex calculations regarding energy consumption, tariffs and other matters. QCA suggest this is an instance where Queensland ought to benefit from the experience in other jurisdictions and move straight to current best practice – that is make calculation tools available to consumers in addition to fact sheets and other educative material.

Recommendation 25 - *That calculation tools are available to consumers in addition to fact sheets and other educative material.*

B3.5 Product Disclosure Statement

QCA agrees that a Product Disclosure Statement in the financial services sense is unlikely to assist consumers and may add unnecessary complexity to an already complex market. QCA does support, however, inclusion of a summary of key terms, including price, fees and charges, and risks at the front of each market contract.

Recommendation 26 - *That in place of a product disclosure statement a summary of key terms, including price, fees and charges, and risks is placed at the front of each market contract.*

B4 Legal & Legislative Framework Principles for Electricity

B4.2 Legislative Framework for FRC in Queensland Electricity

QCA notes the following matters arising from the discussion relating to the proposed legislative framework at pages 41-42 of the Consultation Paper:

- As noted in Section B2.10 above, QCA considers that embedded and isolated network customers should have access to the same consumer protection framework as other consumers.

⁶² See for example <http://www.esc.vic.gov.au/electricity878.html>;
<http://www.escosa.sa.gov.au/site/page.cfm?u=18>

⁶³ For example in Victoria, an energy calculator was introduced despite the introduction in 2005 of price disclosure guidelines requiring retailers to publish details of tariffs, terms and conditions on their website – see section 36A *Electricity Industry Act 2000*.

⁶⁴ See for example
http://www.energywatch.org.uk/help_and_advice/saving_money/index.asp

- As noted in Section B2.2 above, QCA submits that an obligation to supply consumers reverting back to the UT should apply to all retailers.

There are also a number of significant matters that should be addressed by the legislative framework that are not raised in the Consultation Paper. Noting further consultation regarding the legislative framework is forthcoming, this submission addresses only those issues that are considered most critical:

- Independent regulation – a feature of all Australian markets that have introduced FRC is designating an independent statutory authority to take on the role of regulator. Such a step brings with it a number of critical elements, including:
 - Accountability
 - The development of technical expertise
 - Independence

The regulator should have power to determine appropriate instruments relating to consumer protection, to issue licences, and to conduct market inquiries should it identify a need.

The developments in the National Electricity Market, in particular the retail and distribution regulatory role to be taken up by the Australian Energy Regulator, do not militate against such a step. Indeed these developments make beginning with independent regulation more important. If the Queensland market develops unused to this model, the transition to national regulation is likely to be even more difficult.

Recommendation 27 – *That responsibility for FRC regulation is given to an independent statutory authority (whether new or existing).*

- Broad objectives – The legislative framework will also need to set out the broad objectives that overlay the functions of the independent regulator. The interests of consumers should be recognised explicitly in these objectives – social and environmental as well as economic. Further a specific obligation to consult with consumers (and other stakeholders) should be included. QCA also notes that UK legislation requires that OFFER specifically consider the interests of disadvantaged and vulnerable consumers.

Recommendation 28 – *That the broad objectives that overlay the functions of the independent regulator explicitly recognise social and environmental considerations as well as economic considerations.*

B4.3 Energy Code

QCA supports the ECC’s recommendations to include retail supply consumer protection provisions, provisions for retail marketing conduct and transfer provisions in the

Queensland Energy Code. Whilst the Code will be a substantial document it will have the advantage of locating all key consumer protection regulation in one place. This should avoid the complexity associated with the interaction of multiple instruments and as such is welcomed.

QCA also supports the proposal that it be “a condition of a distributor and a retailer’s license that they are required to comply with the Queensland Energy Code.”⁶⁵ This provides flexibility in the event amendments are required as result of emerging market issues. The issue of enforceability of the provisions of the Code is discussed further below.

Obviously there are significant matters of detail to work out in relation to the content of the Code. In view of the desire to maximise consistency with other jurisdictions, QCA presume that significant guidance will be taken from instruments developed in other jurisdictions. Again the CLCV Best Practice Report will be relevant to this endeavour. QCA reiterates its view that development of the Energy Code should take place in consultation with relevant stakeholders.

Four matters, however, are of sufficient significance to warrant mention here – disconnection policy, marketing conduct and explicit informed consent and enforcement mechanisms for the Energy Code provisions.

Disconnections Policy

Instruments enacted in other jurisdictions set out the process retailers and distributors must follow prior to disconnecting supply in significant detail. This is appropriate in view of the essential nature of the service. Nevertheless, cases of consumer hardship continue to be a significant issue in the contestable market. For example, EWON has noted that “more than 30% of all the energy complaints [it] receives are from consumers facing disconnection and/or having difficulty paying their electricity or gas.”⁶⁶

As a result, in addition to setting out minimum standards relating to the issue of reminder notices, disconnection notices, payment assistance and times for disconnection and reconnection, some jurisdictions have developed new approaches designed to ensure that consumers are not disconnected from supply due to incapacity to pay.

Some noteworthy examples include:

- Wrongful Disconnection Payment (Victoria) – whereby retailers are required to pay to consumers \$250 per day of wrongful disconnection.⁶⁷ QCA acknowledge

⁶⁵ See Consultation Paper at 42.

⁶⁶ See for example, *ewonews* Issue 9 - December 2003 at 1.

⁶⁷ The WDP has been credited with causing the first real drop in disconnection numbers since the introduction of competition. Whilst there has been a general decline in disconnection numbers prior to the introduction of the WDP, that decline has been

that a wrongful disconnection GSL already exists in Queensland. It is suggested that in view of the success of the Victorian scheme that consideration is given to raising the current payment of \$100 and applying it per day of disconnection (and pro rate for part days).

- *The Electricity Generation Customer Choice and Competition Act 1999* (Pennsylvania) includes a prohibition on disconnection where the disconnection will primarily operate as a debt-collection tool.⁶⁸
- Maine - A prohibition on the disconnection of a customer in arrears where a reasonable proportion of their bill has been paid.⁶⁹

QCA recommend strongly that the Energy Code encompass provisions designed to minimise disconnections due to incapacity to pay in the contestable market. The approach to the issue of hardship more generally is discussed in Section C5 below.

Recommendation 29 – That:

- *The current payment for wrongful disconnection is raised and applied per day of disconnection.*
- *The Energy Code encompass provisions designed to minimise disconnections due to incapacity to pay in the contestable market.*

Marketing Conduct

QCA is concerned that many consumers may be the target of unacceptable marketing conduct by retailers competing for market share under FRC. Such conduct could inconvenience and cause major problems for many consumers and could also result in negative publicity for, and public attitudes towards, FRC. Accordingly, QCA considers that consumers should be adequately protected from such conduct.

QCA recommends that the ECC require retailers to obtain explicit informed consent from consumers prior to entering into a market contract. As noted in the Consumer Coalition Submission, consumer advocates “have formed a view regarding what constitutes explicit informed consent:

...
Explicit informed consent is not a simile for verifiable consent or vice versa. There is a vast literature on the meaning of the term ‘informed consent’ from which a definition could be drawn. Perhaps the seminal work in this area is Faden, R, and Beauchamp, T., (1986) A History and Theory of Informed Consent, OUP. The critical issue is that informed consent is not one act such as obtaining

described as simply a return to disconnections levels experienced under the SECV (the State owned provider). See for example Romeril, B. (1998) *Powerless In a Privatised State – The Impact of Privatisation on Domestic Disconnections in Victoria 1985 – 1997* Melbourne, Financial and Consumer Rights Council Inc.

⁶⁸ Cited in CPPA 2004 at 17.

⁶⁹ Cited in CPPA 2004 at 20.

a verifiable consent (by either electronic or hard copy means) but a 'transaction'. Meisel and Roth suggest this transaction consist of five components:

- *Information disclosure;*
- *Capacity of the consumer to understand the information;*
- *Genuine understanding by the consumer*
- *Complete voluntariness of the transaction; and*
- *That the decision making to enter the arrangement/contract is made by the consumer.*

For example, if a written consent (hence the consent was verifiable) was procured from a consumer that did not have a genuine understanding of the contract would be meaningless.⁷⁰

Recommendation 30 – *That retailers are required to obtain explicit informed consent from consumers prior to entering into a market contract.*

A consumer survey undertaken by Wallis Consulting for the ESC as part of its 2002 Effectiveness Review found that of the 19% of the sample of 750 residential consumers who had had contact with a retailer, 8% received an offer and 3% signed an offer. Wallis also noted however that “there appeared to be confusion amongst customers about whether they had in fact signed or otherwise accepted an offer.”

This illustrates the challenge in obtaining explicit informed consent from consumers – who should not only be aware of the fundamental fact that they have entered into a contract, but also the key terms and conditions of that contract.

A framework requiring explicit informed consent should also take into account marketing conduct that has occurred in other jurisdictions. For example CLCV/CPA note in their report that “door-to-door sales...account for around 54% of retailer sales and are generally considered the most effective marketing strategy.”⁷¹ In the UK it was reported that “10% of customers in contact with door-to-door marketers said they had made an attempt to trick them into signing a contract. In addition, one in six said they felt misled by the information provided by new suppliers and some said they thought they were signing for information only; but then found it was a contract.”⁷²

This has implications for both the regulations relating to door-to door sales (and telemarketing) and their enforcement and the distribution of market offers.

QCA considers that an effective system is needed to allow consumers to formally indicate that they do not wish to be contacted by uninvited door to door sales persons or

⁷⁰ A Meisel and L. Roth 1983 *Toward an Informed discussion of Informed Consent: A review and critique of the empirical studies* in 2 Arizona Law Review 265, cited in the Consumer Coalition Submission at 65.

⁷¹ See above n.8 at 54.

⁷² See above n.18 at 53.

telemarketers (i.e. an opt out arrangement) and notes that the Federal Government has announced that such a system will be introduced for telemarketers. Accordingly, the relevance of, the Federal Government's telemarketing opt out proposal to Queensland electricity consumers' needs, and progress with implementation should be closely monitored and assessed. Consideration should also be given to providing a similar system for door to door selling.

Recommendation 31 – *That the relevance of, the Federal Government's telemarketing opt out proposal to Queensland electricity consumers' needs, and progress with implementation, be closely monitored and assessed. Consideration should also be given to providing a similar system for door to door selling.*

There are numerous sources of information that provide examples of the sorts of marketing practices that may occur as result of FRC. Early examples can be drawn from the introduction of competition in the telephony market. As reported by the Consumer Law Centre Victoria and Consumers' Federation of Australia:

[T]hat industry's reliance on door-to door sales staff and dealers and agents led to significant concern being expressed by regulatory agencies. For example the Telecommunications Industry Ombudsman and the Australian Competition and Consumer Commission have raised concerns that telephony companies...have not provided cooling off notices required by legislation in each state.⁷³

In addition enforcement action taken against telecommunications companies for misleading and deceptive conduct and unconscionable conduct are a matter of public record,⁷⁴ as re the nature and number of complaints received by the Telecommunications Industry Ombudsman.

Whilst it is generally considered that unlawful conduct of the same magnitude has not occurred in energy markets opened to FRC in Australia to date, enforcement action has still been necessary and significant consumer complaints have arisen.

For example Consumer Affairs Victoria obtained an enforceable undertaking from Energy Australia in relation to "misleading and deceptive conduct, and making false representations in the course of [a] door to door marketing campaign."⁷⁵ Conduct included:

⁷³ CLCV and CFA *Consumer Participation and Protection in the Victorian Electricity Market following Retail Contestability in the Below 160MWh per annum Tranche*, September 1995 at 51.

⁷⁴ For example *TPC v. Optus Mobile Pty Ltd* No. NG459 of 1995 FED No. 116/96 Trade Practices regarding misleading and deceptive conduct arising from failure to disclose exclusion from the 'freestyle' plan.

⁷⁵ See

<http://www.consumer.vic.gov.au/CA256F2B00224F55/page/List+of+Enforceable+Under>

- Claims to consumers regarding terms and conditions that did not exist in the contract;
- Advice that termination fees were lower than they actually were;
- Incorrectly asserting to consumers that rebates applied to individual bills;
- Sales pitches to consumers on the basis of bill payment systems that did not exist.

Significantly, the conduct in question took place between 1 July and 10 November 2004 – well after the introduction of FRC. Thus it cannot be assumed that poor marketing conduct will be confined to the period following the market opening.

QCA submits therefore that the following matters should be the subject of focus in monitoring adherence to the provisions of the Energy Code:

- Adequate training of sales staff
- Compliance with consumer requests to opt out of being contacted by telemarketers and/or door to door salespersons
- The time and manner in which consumers are contacted
- Record keeping of contacts made and contracts entered into
- Provision of accurate information regarding the terms of offers and savings to be made
- Explicit informed consent.

Recommendation 32 – *That compliance monitoring be undertaken in respect of the Energy Code, with particular attention to:*

- *Adequate training of sales staff*
- *Compliance with consumer requests to opt out of being contacted by telemarketers and/or door to door salespersons*
- *The time and manner in which consumers are contacted*
- *Record keeping of contacts made and contracts entered into*
- *Provision of accurate information regarding the terms of offers and savings to be made*
- *Explicit informed consent.*

Enforcement Mechanisms

A lack of mechanisms to enforce consumer protection requirements placed on retailers in other jurisdictions has been noted in consumer research undertaken in respect of FRC outcomes.⁷⁶ Failure to adhere to the standards set in relation to quality and reliability of supply has financial implications for the distributor.⁷⁷ In addition, levels of compliance with the standards are the subjects of public reporting. In contrast, breach of retail

takings-2005?OpenDocument&1=950-List+of+Enforceable+Undertakings~&2=090-2005~&3=~

⁷⁶ For example see above n.8 at 72.

⁷⁷ See for example *Queensland Energy Industry Code* 1 January 2005.

frameworks does not have financial implications for retailers (with the exception of wrongful disconnection payments) and reporting of compliance with retail standards is generally ad hoc. Thus, means to effectively enforce the consumer protection obligations imposed on retailers should be considered as the Energy Code is developed. Considerations may include the extension of GSL payments to certain obligations and public reporting.

Recommendation 33 - *That means to effectively enforce the consumer protection obligations imposed on retailers are considered as the Energy Code is developed.*

Part C – Additional Issues

C1 Consultation framework

In order to deliver a consumer protection framework that gives effect to the many positive principles outlined in the Consultation Paper, it is critical that mechanisms are put in place to support sustained and ongoing consumer input into regulatory processes. Consumers have a key interest in the delivery of reliable energy supply at an affordable price, as well as the delivery of environmental and social objectives, and as such should have a voice in the processes that seek to deliver on these objectives.

Consultation should be viewed as an integral and ongoing element of the FCR regulatory task and not confined to ad hoc consultation in the lead up to FRC. Ongoing consultation is a key element in ensuring that the regulatory framework is relevant to the needs and experiences of energy consumers – thus optimising the opportunity for demand side participation whilst delivering effective protections.

There are a number of approaches that have been adopted in other jurisdictions that QCA commends to the ECC:

- Formation of a Consumer Consultative Committee, which should meet regularly to discuss a broad suite of issues relating to the market. It is desirable that there is high-level involvement on the part of the relevant regulator.
- The development of consultation principles to be followed by the regulator where written submissions are required. The principles should address such matters as allowing reasonable time for responses, giving as much notice as possible of forthcoming processes and, the use of plain simple language in consultation documents wherever possible.
- Convening working parties involving consumers and industry representatives (and other relevant stakeholders) to develop key regulatory instruments affecting consumers, in particular the Queensland Energy Code.

Consumer participation in these processes should be funded. This recognises the value of the expertise provided and that current agencies are not funded to carry out this function.

Recommendation 34 - *That the following consultation mechanisms are introduced as a matter of priority:*

- *A Consumer Consultative Committee (CCC).*
- *The development of consultation principles by the industry regulator.*
- *Working parties involving consumer and industry representatives (and other relevant stakeholders) to develop key regulatory instruments.*
- *Funding for consumer participation in the CCC and working parties and to provide written submissions.*

C2 Funding for consumer research and advocacy

In addition to the resourcing provided for participation in particular consultation processes, QCA reiterates its view that resources should be provided to fund at least two full time consumer advocacy positions to work on FRC and other energy matters. QCA is preparing a separate detailed submission on this issue for the ECC and Government.

QCA notes there is significant precedent for the funding of consumer research and advocacy in other jurisdictions for example the Utility Consumer Advocacy Project (UCAP) housed at the Public Interest Advocacy Centre in NSW, the Consumer Utilities Advocacy Centre (CUAC) in Victoria and the National Electricity Consumers Advocacy Panel. The UCAP and CUAC both employ at least two staff members to undertake utilities advocacy in their state. CUAC and the Advocacy Panel have a grants function that enables funding of responses to particular processes or particular pieces of consumer focused research to be undertaken.

Recommendation 35 - *That resources are allocated to fund at least two full time consumer research and advocacy positions to work on FRC and other energy matters.*

C3 Monitoring and review of FRC

The effective monitoring and review of FRC is critical to ensuring that it is possible to identify consumer protection and other issues emerging in the market and the way in which the market is performing for particular classes of consumers.

Industry standards serve a dual purpose. First they stimulate competition by encouraging companies to improve their performance by means of 'yardstick competition.' Second they operate to ensure that consumers receive the benefits or gains of competition.⁷⁸

CLV/CPA note that

The setting of industry standards and the monitoring of retailer compliance with those standards is a crucial part of the consumer protection framework...industry

⁷⁸ See above n.8 at 71 citing ESC *Information Specification (Service Performance) Victorian Electricity Retailers* June 2005.

*standards will only operate to protect consumers if first, those standards are meaningful to all consumers and second, those standards are effectively enforced as part of a robust consumer protection framework.*⁷⁹

As such it is necessary to ensure that relevant and reliable data on FRC outcomes is available including:

- Switching and churning rates.
- Prices available to consumers in general and to different classes of consumers.
- Retail service standards.
- Number and types of complaints, including emerging systemic issues.

This information should be regularly and publicly available. QCA notes the reports already generated regarding GSLs already address some of the issues outlined above.

QCA note that the complaints and systemic issue reporting has been undertaken by the relevant Ombudsman in other jurisdictions. Such an approach is supported. The regulator should undertake the collection and reporting of other relevant data.

Recommendation 36 – *That there is regular public reporting of data relating to*

- *Switching and churning rates.*
- *Prices available to consumers in general and to different classes of consumers.*
- *Retail service standards.*
- *Number and types of complaints, including emerging systemic issues.*

In addition to regular collection and reporting of the data outlined above, a time frame should be set to undertake a review that assesses progress toward effective competition and makes recommendations regarding additional steps that are required to either assist the development of competition or protect consumers.

QCA suggests that three years from the introduction of competition is an appropriate timeframe for the first review. QCA note the ESC (Victoria) comments that its first effectiveness review (taking place in September 2002, when FRC had only been in place for approximately 8 months) was too soon:

*The relevant time dimension for the development of effective competition is considerably longer than the period covered by this inquiry and may be as long as 3 or more years.*⁸⁰

This first FRC review should also encompass an ex post cost benefit analysis. Further there should be a commitment from the government that safety net and consumer protection measures will be left in place until it can be established that there is effective actual competition for all consumers.

⁷⁹ See above n.8 at 59-60.

⁸⁰ See above n.18 at 28.

Recommendation 37 - That:

- *A review of FRC, including progress toward effective competition and consumer protection outcomes is undertaken three years from the introduction of FRC. The review should include an ex post cost/benefit analysis.*
- *That a commitment is made that safety net and consumer protection measures will be left in place until it can be established that there is effective actual competition for all consumers.*

C4 Ring fencing arrangements

The Consultation Paper is silent on the issue of ring-fencing arrangements for incumbent retailers that also have a distribution arm. Whilst it is understood that ring-fencing arrangements are already in place, it is suggested that these arrangements should be reviewed for effectiveness in view of the introduction of the fully contestable market. Failure to ensure ring-fencing arrangements are adequate has the potential to enable cost shifting between the competitive and monopoly arms of the businesses, delivering a significant and unfair advantage over new entrants. The effectiveness of ring fencing arrangements will also be made more critical if the GHD proposal to share IT systems is taken up.

The importance of effective ring fencing arrangements has been a prominent feature in FRC reviews undertaken in other jurisdictions.⁸¹ QCA recommends that a review of arrangements put in place in other jurisdictions is undertaken.

Recommendation 38 - *That a review of ring-fencing arrangements in place in other jurisdictions is undertaken.*

C5 Addressing hardship

Effectively addressing the needs of consumers who are unable to afford to maintain access to the basic necessary level of supply has proved one of the most difficult challenges to emerge in other jurisdictions that have introduced competition.

It is clear that whilst retailers have made improvements over time in identifying and addressing the problems of consumers in hardship, the progress has been incremental and more needs to be done.

For example, EWON has reported that “some utility companies have acted to reduce the number of disconnections across NSW through initiatives such as hardship policies. These policies include pro-active measures designed to identify vulnerable customers and to offer them a range of assistance.”⁸²

⁸¹ See for example above n.73 at 39.

⁸² See *ewonenws* Issue 7 – December 2002 at 3.

Policy elements may include:

- Protecting consumers from the debt recovery and legal action normally taken;
- The provision of incentive mechanisms such as waiver of fees and charges or account credits where consumers make regular payments;
- Elimination of time limits placed on consumers to repay arrears (otherwise instalment arrangements are often calculated such that arrears are repaid within a maximum of twelve months in many cases resulting in repayment levels that are unaffordable for consumers experiencing financial hardship);
- Provision of energy efficiency advice to assist consumers to manage consumption levels.

Noting this situation, QCA recommend that elements are included in the regulatory landscape that encourage an effective approach to hardship.

The introduction of the disconnection initiatives outlined in Section B4.3 above is one step that can be taken. In addition, an overarching obligation not to disconnect consumers due to incapacity to pay and a requirement to develop a hardship policy should be included in the Energy Code. This stops short of designing the hardship policies themselves, as QCA consider it is important to allow each retailer to tailor its approach, yet makes it clear that an approach to the issue will be required.

The guidelines developed by Ofgem, the UK's energy regulator should also be noted. The guidelines set out a number of minimum standards to be observed by gas and electricity retailers in addressing hardship:

- Methods of identification of customers in financial hardship
- Minimisation of billing errors
- Links to retro-fitting/efficiency programs
- Flexible payment options
- Sustainable solutions to extreme hardship; and
- Targeted assistance to vulnerable consumers.⁸³

Recommendation 39 - That:

- *An overarching obligation not to disconnect consumers due to incapacity to pay and a requirement to develop a hardship policy should be included in the Energy Code.*
- *In addressing other approaches to hardship, policies in place in other jurisdictions are reviewed.*

C6 Aggregation

⁸³ See Ofgem *Social Action Strategy* October 2005
<http://www.ofgem.gov.uk/ofgem/work/index.jsp?section=/areasofwork/socialactionplan>

*Cooperative aggregation arrangements ...can provide small consumers with three basic benefits including: lower transaction costs; increased bargaining power; and enhanced competition. The combination of these factors enables individual consumers, both residential and business, to access the benefits of a truly competitive market.*⁸⁴

These benefits have not only been propounded by consumer advocates, they have been recognised by regulators. For example, the ESC in its 2004 Effectiveness Review noted that:

*Aggregation arrangements hold significant promise for consumers who may not individually be able to access and benefit from the competitive retail energy market...*⁸⁵

Note that it has been suggested by *CommunityPower*⁸⁶ that “the negotiations with retailers on behalf of a group of residents was made easier due to the requirement for all retailers to adhere to the minimum consumer protection standards required.”⁸⁷

However whilst *CommunityPower* has had some success in its attempt to implement an aggregation model, aggregations has a significant distance to travel before it becomes a significant feature of any current Australian FRC markets. Thus it is suggested, regulators and governments can and should do more to encourage the development of these demand side initiatives. It was a specific finding of the CLCV/CPA report that:

*The Victorian Government and the ESC should actively assist local councils and community organisations to establish electricity-buying groups within metropolitan, regional and rural areas as a priority. Such initiatives would enable many sub-markets of electricity consumers to benefit from competitive electricity pricing, including low-income and regional and disadvantaged consumers.*⁸⁸

QCA submit that this is another area where Queensland can, learning from the experience in other jurisdictions, leapfrog straight to current best practice, including:

- Monitoring the regulatory framework for obstacles to aggregation efforts;
- The provision of start up funding;
- The provision of technical assistance needed to establish such a group and commence negotiations with retailers.

⁸⁴ CLCV/CPA at 27 citing Griffith, D. *Group Buying Power: Energy Co-operatives empowering small consumers* Frankston, Co-operative Energy, 2000.

⁸⁵ See above n.14 at 5.

⁸⁶ *CommunityPower* is the only successful Australian initiative that QCA is aware of. It is initiated and funded by a coalition of Victorian metropolitan local councils through the Moreland Energy Foundation.

⁸⁷ See above n.18 at 38 citing *CommunityPower*, Verbal Submission to Special Investigation: review of Effectiveness of FRC.

⁸⁸ See above n.8 at 29.

Queensland stands not only to benefit from the learning of other regulators and governments but could also speak with organisations that have established buying groups⁸⁹ to gain practical knowledge.

Recommendation 40 – *That commitment is made to:*

- *Monitor the regulatory framework for obstacles to aggregation efforts;*
- *Provide start up funding;*
- *Provide technical assistance needed to establish such a group and commence negotiations with retailers.*

⁸⁹ In addition to *CommunityPower* in Victoria, there are many international models that can be reviewed.