



**Submission to ENERGY COMPETITION COMMITTEE
Electricity Full Retail Competition: Electricity Industry Code Draft Four**

Centre for Credit and Consumer Law, Griffith University with funding from the National Consumers Electricity Advocacy
Panel
February 15th, 2007

About the Centre for Credit and Consumer Law

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

The Centre for Credit and Consumer Law is funded by the Queensland Government's Consumer Credit Fund (administered by the Office of Fair Trading) and Griffith University. However, this submission is possible because of funding received by the Centre for Credit and Consumer Law from the National Consumers Electricity Advocacy Panel. Without this funding and without the availability of expert consultants the Centre would not have had the capacity to respond substantively to these proposals. This document was prepared by Dr Tenzin Bathgate and Natasha Leigh.

Major Code Amendments

Clause 8.5 – Review of developments in full retail contestability

We welcome the ECC's improvements on monitoring of developments in FRC in Queensland compared with other jurisdictions. In this vein we encourage the ECC to propose that the Code include a requirement that actual rather than indicative numbers of NMIs on negotiated retail contracts be provided by retailers. There is much room for improvement in Australia in evaluating the effectiveness of FRC by the appropriate monitoring bodies through the delivery of meaningful and accurate statistics. The lack of consistency between jurisdictions in the data they collect from NEMMCO and elsewhere to evaluate FRC does not constitute a 'best practice' benchmark and should not necessarily be used as a guide to determine the QCA's review parameters.

One area of concern in the general collection of churn statistics is that the customer transfer data does not distinguish between customers actively seeking and switching to a different type of contract and those who do so because they are moving home. The Consumer Utilities Advocacy Centre in Victoria has described these as 'passive transfers' and have advocated that '...the counting of customer transfers that are not clearly prompted by market activity must be minimised.'¹

¹ Consumer Utilities Advocacy Centre, September 2006, 'Submission to the Ministerial Council on Energy Standing Committee of Officials', p.4.

We note however that the effectiveness of competition cannot be measured clearly against a single set of indicators.² We draw the ECC's attention to the MCE's Competition Criteria Consultation Paper and outcomes in relation to the six indicators set out in the Australian Energy Market Agreement including customer experiences, customer switching, price and non-price offers, entry and exit of suppliers, market share and barriers to entry.³

² Essential Services Commission, September 2002, 'Special Investigation: Review of the Effectiveness of Full Retail Competition for Electricity – Final Report', p.27

³ Ministerial Council on Energy Standing Committee of Officials, July 2006, 'Phase Out of Retail Regulation for Electricity and Natural Gas – Draft Effective Competition Criteria. Consultation Paper', pp.5-6.

Electricity Industry Code Draft 4 (6 February 2007 Draft) Comments

Clause	Page	Topic	Comment-Query
Chapter 1 – This Code			
1.1.1	1	Code Objective	The Code objective has been reinserted and is still inappropriate as an objective for Chapter 4. Chapter 4 is not about efficient use of electricity services for long term interest of all consumers but sets minimum requirements for retail contracts to protect a subsection of customers.
Chapter 2 – Management of Distribution Businesses			
2.5.5(c)(ii)	12	Distribution charges for reconnection	The relevant fee now does not have to be approved by the QCA but just needs to be published in the distribution entity's price list. How is the price list determined?
2.5.12	15	How a GSL payment is paid	'Use best endeavours' has been added. When an unlimited list of methods that includes 'any other means agreed with the small customer' why is there a need for best endeavours?
Chapter 3 – Customer Connection Services			
3.6.1(a)(iii)	21	Disconnection for failure to maintain	Why has '(including meters, substation and connection of service lines)' been removed? This was a useful interpretation tool for non-legal customer advocates that may be assisting a small customer. Hence it is important that some ease of comprehension for the lay reader is maintained in this document.
3.6.1(a)(x)	22	Disconnection for failure to pay a bill when billing small customer directly (right)	Please provide examples of when a distribution entity is likely to be billing a small customer directly. Should this clause be subject to clause 3.8?
3.6.1(d)	23	Disconnection for failure to pay a bill when billing small customer directly (timing of notices)	Why is there a requirement for a reminder notice to allow 5 days to respond where as there is no time period requirement for reminder notices in the retailer sections (4.18.4(b))?

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3.8(b)(iv)	24	Circumstances where distribution entity may bill small customer directly (business customer site aggregation)	Could you explain why this does not mirror clause 4.1.1(b).
3.9(d)	25	Nothing in the Code prevents the distribution entity from supplying on different terms to different small customers	Does this defeat the point of the Code and conflict with clause 3.4?
Chapter 4 – Customer Retail Services			
4.1.1(b)(iv)(B)	27	Inclusion of gas consumption for purpose of determining aggregation for business customer sites	Given that this code regulates supply of electricity should gas consumption be included? Alternatively should the ‘or’ be changes to ‘and 1TJ of gas per annum’?
4.2.4(b)	28	FTA approved form notice (section deleted)	A pro forma notice included in a negotiated contract that may be used by the small customer to rescind the contract was helpful to alert the small customer to their right of recision (cooling-off). If the Fair Trading Act (FTA) approved form of notice is not to be included could the contract instead include an example notice that the small customer can use to rescind (exercise their cooling-off rights)?
4.2.10(a)	30	Identifying who is obliged to offer a standard retail contract	<p>Previous heading was more helpful. ‘Area retail entity’ and ‘financial responsible retail entity’ are defined terms that will make use of this clause difficult for non-legal small customer advocates. (see similar point made under 3.6.1</p> <p>A retail entity must be obligated to explain the availability of a</p>

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			standard contract (even if by referral to distributor or QCA) irrespective of whether it is offering a negotiated contract.
4.2.10(a)(ii)(A)	30	Explanation of which retail entity is FRMP or Area Retailer	This must be accompanied by an explanation of what that means – i.e. the FRMP or Area Retailer have an obligation to offer supply on a standard contract. Small customers must have this explained at the outset and should not need to wait for the distributor to provide the explanation (although we accept referral to the distributor for the purpose of advising the customer of who is the FRMP of Area Retailer).
4.2.10(b)(i)(D)	31	Information about who is FRMP or Area Retailer	This should be provided always and not just if the customer requests it. The information should also include an explanation of what that means – that the entity has a special obligation to offer the customer a government-regulated contract.
4.4.5	35	Permissible days	Defined by cross-reference to electricity legislation. Where are the permissible days set out in the electricity legislation?
4.10.1(c)	44	Grammatical error	Delete ‘consumption of’ – duplication of words.
4.10.5	46	Bill smoothing	Retailers in Victoria already have systems that can accommodate a request from a low-income customers’ to smooth bills so as to make it easier to accommodate higher bill quarters. Scope for bill smoothing should be reconsidered.
4.18.5(b)	60	Arrangements for disconnection of gas supply	Could you explain why the Electricity Industry Code includes these provisions?
Chapter 7 – Retail Marketing Conduct			
7.4(b)	85	Application of exemption under section 71A of FTA	Clause 7.4(b) is ill conceived. The FTA s71A exemption applies in relation to an application for exemption of certain FTA requirements for a particular contract with a customer or type of

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			contract with customers. How would this apply to the contact time restrictions for retailers of electricity? The Code contact time restrictions must stand-alone.
Chapter 8			
8.5.1(b)	93	Publication of NMI's on negotiated contracts	The clause itself is not clear as to the meaning of 'indicative'. The meaning is only apparent from the ECC paper on Major Code Amendments. At a minimum the explanatory provision at clause 8.5.2(b) is in the wrong place. Why are these indicative and not absolute numbers? See comments below.
8.5.2(b)	93	Remove from data NMI's that have gone to market but elected to revert back	The exception to the requirement to provide data is not clear. What is meant by 'remove from data'? At a minimum, a retailer must advise total number of NMI's allocated to it that are either standard contracts or negotiated – the number of NMI's on standard contracts must include those that have reverted back. Retailers should also be able to advise of actual numbers of NMI's that were negotiated and have reverted back.
8.5.2(b)	93	Remove from data NMI's that are temporary move-ins who have not yet gone on a negotiated contract	Could you explain the meaning of this part of the clause and its objective.
END			