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Paul Kelly
ECCC Chairman
Level 6, Governor Stirling Tower
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Dear Mr Kelly

**Submission from Consumer Credit Legal Service (WA) Inc
Review of the Code of Conduct (For the Supply of Electricity to Small Use Customers)**

CCLS(WA) is a non-profit community legal service that provides legal advice, assistance, and representation to Western Australian consumers in the areas of credit, debt, banking and finance and utilities. The Service is also active in community legal education and policy and law reform.

We have an interest in and ongoing contact with utility issues, predominantly as a result of providing services to low income and vulnerable consumers. In addition, we actively engage with other consumer advocates and agencies that have an interest in utility issues. This contact has assisted us in forming a position on the issues raised in this review.

Our response to the Draft Review Report is based on the premise that all Western Australians, regardless of whether they live in regional Western Australia or elsewhere should be able to rely on a safe and fair electricity market. Connection to electricity supply supports basic human needs and is critical to our wellbeing, family and education.

We have restricted our comments to the issues that we believe will have the most significant impact on WA consumers, particularly vulnerable and disadvantaged consumers.

We set out our responses to the questions raised in the Draft Review Report as follows:

Divergence from the Code (Discussion Point 1.1)

Should the scope of clause 1.10 be left as is, extended or reduced?

CCLS(WA) recognises some benefits associated with the ability to contract out of certain provisions of the Code in certain circumstances. However, we also recognise the limitations of the competitive market in protecting vulnerable and disadvantaged consumer's interests.

It is our view that scope 1.10 should not be expanded to include further provisions of the Code to protect customers from questionable industry practice and the inefficiencies of the competitive market. Consumer protection would be substantially weakened by the expansion of clause 1.10.

We further note that in the event the ECCC Committee makes a recommendation to expand clause 1.10, it is unclear on what basis the remaining clauses would be assessed as appropriate to include in clause 1.10.

Duplication of Marketing Provisions

Generalist consumer protections are important in promoting efficient markets and fair trading practices. However, in the essential energy market, further sector specific consumer protection is desirable.

In our opinion, energy specific regulation adds value to essential service regulation for the following reasons;

- It clarifies the operation of a service provider's responsibilities;
- Sector-specific regulation may apply where generalist legislation is insufficient to deal with particular market failures relevant to particular industries;
- It facilitates strong protections for customers in a relatively immature market;
- It provides adequate dispute resolution processes for small use customers;
- The protections enable consumers to participate in the market which contributes to the efficient operation of a competitive energy market;

In our view, energy specific consumer protections complements generalist consumer protections under the *Trade Practices Act 1974 (Cth)* and the *Fair Trading Act 1987 (WA)*. From a practical viewpoint, it also adds to the protection of vulnerable and disadvantaged

clients who may not have the ability to seek assistance to make a complaint under the TPA or the FTA.

CCLS(WA) supports the committee's recommendations in relation to Part 2 (Marketing) of the Draft Review Report.

Shortened Billing Cycles (Discussion Point 4.1)

Should clause 4.1 be amended to provide a customer with the opportunity to take on a shortened billing cycle? If so, on what basis?

CCLS(WA) understands that a shortened billing cycle can currently be decided by mutual consent, however there is no obligation for a retailer to accept a request by a customer to be placed on a shortened billing cycle.

We see merit in giving customers the option to request shortened billing cycles on the basis that it may have a significant impact on some customer's ability to budget. However, we also recognise that some customers may not choose to take this option due to anxiety at having such a frequent billing cycle.

Bill Smoothing (Discussion Point 4.2)

Should Part 4, Division 1 be amended to include a provision for bill smoothing?

CCLS(WA) sees merit in giving customers the ability to 'bill smooth'. Providing customers with certainty over an extended period of time allows them to improve budgeting and better manage their accounts.

Separate Bills (Discussion Point 4.3)

Should clause 4.4(3) be amended to require a retailer to issue separate bills for current amounts due and historical debt and if so, should individual reference numbers be assigned to each bill?

It is our experience that many customers who have a historical debt added to their current account are unaware that this has occurred and question the amount owing on the account.

We strongly believe that current consumption charges and historical debt need to be identified on an account. This would provide them with the ability to negotiate to pay off the historical debt in the event that the large account was causing them financial hardship.

We also note that some customers have a valid basis to dispute liability for their electricity account or part thereof. It is important that a customer be provided with clear information (such as the amount and account number) that will enable them to identify the account and dispute liability if such circumstances prevail. We note that the law of debt collection is

underpinned by the premise that clear evidence of the debt must be provided to the debtor in order to enforce that debt. We further support the position that a customer's power supply should not be disconnected as a result of a historical debt.

Alternative Tariffs (Discussion Point 4.4)

Should the Code prescribe the procedures a retailer must follow if there is a change to the tariff?

CCLS(WA) considers it important for the Code to identify the procedure a retailer must follow if there is a change to the tariff. This will clarify the procedure for the customer and reduce the incidence of complaint.

Payment Plans for Business Customers (Discussion Point 6.1)

Should clause 6.11 be retained or deleted?

In our view, clause 6.11 should be retained. CCLS(WA) receives many requests for assistance from sole traders and small business people suffering from financial hardship. In our experience, small businesses and sole traders 'fall through the cracks' and often find it difficult to access assistance and support. Small businesses and sole traders are often equally as in need of assistance as other consumers. Many community organisations are unable to assist small business customers due to their client guideline restrictions. Clause 6.11 provides an important avenue of relief for those small businesses that are suffering financial hardship and we strongly believe that it should be retained.

Priority Reconnection Register (Discussion Point 7.1)

Should the Western Power Networks register for priority reconnection be contained within the Code?

CCLS(WA) believes that the Western Power register for priority reconnection should be contained within the Code. Customers requiring life support are particularly vulnerable and should not be subject to industry self regulation. In our opinion, the onerous nature of the requirement on industry is outweighed by the importance of protecting this vulnerable group of customers.

Pre-payment Meters

Discussion Point (9.1)

Should clause 9.2(2) be amended to allow operation of PPMs outside of ARCPSP and TRRP communities? If so, should there be universal application or only in additional specified areas? If so, what changes should be made to Part 9? What evidence can be provided to substantiate this position?

All Western Australians, regardless of whether they live in regional Western Australia or elsewhere should be able to rely on a safe, fair and effective electricity service.

CCLS(WA) does not support the expansion of the use of PPMs outside the TRRP and ARCPSP communities. In addition, we are concerned about the current operation and possible future expansion of PPMs, particularly under the current regulatory landscape. In our view, the use of PPMs removes electricity supplier's obligation to provide an essential service to customers who are suffering from hardship.

In particular, we are concerned that there is currently no standard for pre-payment meter market contracts and no provision for dealing with payment difficulties and hardship. In addition, there is only limited provision to address health and safety issues that arise from disconnection.

We are also concerned at the potential for increasing vulnerable customer's financial burden. PPM customers already pay higher costs to access electricity and will face incidental costs when the power is disconnected, such as the loss of perishable foods. The consequences of not having a power supply can be far reaching.

PPMs are essentially paid in advance. This means that vulnerable and disadvantaged customers will need to make choices about keeping the power on or cutting back on other essentials. PPMs do not address the problem of financial hardship and provide a mechanism for electricity suppliers to avoid a relationship with their customers. In addition, options open to standard meter customers to protect them from disconnection are not available to PPM customers.

It is the view of CCLS(WA) that PPMs do not deliver a safe, fair or affordable electricity supply to vulnerable consumers and CCLS(WA) does not support the current operation or expansion of the use of PPMs without comprehensively addressing the above issues.

Discussion (9.2)

If clause 9.2(2) is amended to allow operation of PPMs outside the TRRP and ARCPSP should costs to users for installation, connection, disconnection, reconnection and/or return to standard meters be prohibited?

CCLS(WA) agrees that the above costs should be prohibited. In our opinion, if any amendment is made to clause 9.2(2), customers should not be charged under any circumstances for the installation, connection, disconnection, reconnection and/or return to standard meters. Many of the above costs relate to a customer's financial hardship. For example, a customer may be disconnected as a result of being unable to afford a recharge

card. To charge them for disconnection and reconnection would exacerbate their financial hardship. PPM customers are already paying higher costs than standard meter customers and should not face further additional costs

Discussion Point (9.3)

Should the ECCC request that the Authority commission independent research regarding PPMs:

- *to determine whether the Code should allow for the use of prepayment meters in WA outside of ARCPSP and TRRP communities and the standards of conduct that should apply in that event; or*
- *if the Authority decides to expand the scope of Part 9 as part of the current review, to evaluate any concerns and/or benefits with the use of PPMs in WA (in this event, the research should be conducted some time after experience has been gained with PPMs in the wider community. For example, prior to a third review of the Code)).*

CCLS(WA) believes that the Authority should commission independent research to determine whether PPMs can be safely and efficiently used in WA and under what circumstances. It is our understanding that no such research has been undertaken in WA. Without such research, it is difficult to assess the social policy implications of PPM usage. We further note that there is currently a lack of information available on how any benefits could be delivered to customers via PPMs given comparatively high consumption costs.

In our opinion, the Authority needs to better inform itself about the use of PPMs through targeted, independent research prior to any expansion of PPMs throughout other areas of WA.

Discussion Point (9.4)

If clause 9.2(2) is amended to allow operation of PPMs outside of ARCPSP and TRRP communities, should provisions similar to those contained in ACT and SA code be added to Part 9? If so, should an exemption apply for ARCPSP and TRRP communities and, if so, on what basis?

The current consumer protections under Part 9 of the Code do not ensure reliable access to electricity or appropriate protection to PPM customers. PPM customers are especially vulnerable to questionable industry practices and insufficient consumer protection.

The consumer protection provisions in the SA and ACT Codes are substantially more comprehensive than Part 9 of the WA Code and form best industry practice. WA should

strive for equality to (or surpassing of) best industry practice in Australia. It follows that there is little justification, commercial or otherwise, to deny WA consumers the same level of consumer protection afforded to customers in other States and Territories.

Any technical limitations of metering technology currently used in WA should not be used to deny PPM customers the right to a safe and fair supply of an essential service. Should the use of PPMs be expanded at some point in the future, it is essential that metering technology be updated to deliver the same consumer protections afforded to customers in other jurisdictions. If this presents a challenge for industry, in our view this is where the challenge should lie.

If clause 9.2(2) is amended to allow operation of PPMs outside the TRRP and ARCPSP, it is imperative that provisions similar to those contained in ACT and SA Code be added to Part 9 of the Code. Alternatively, a preferable approach would be to create a separate Code dedicated to this issue.

In our opinion, exemptions should not apply for ARCPSP and TRRP communities. We believe that it is unjust to have an inferior level of consumer protection for certain communities in WA compared to the remainder of the State.

Discussion Point (9.5)

If clause 9.2(2) is amended to allow operation of PPMs outside the TRRP and ARCPSP, should clause 9.4(2) be amended to ensure consistency with the SA and ACT codes?

CCLS(WA) supports best industry practice in relation to PPMs and supports providing as much information as possible to PPM customers. Customer contracts and the provision of information are essential in informing customers of their rights and obligations and providing consumer protections. Provision must be made for the comprehensive disclosure of information to pre-payment meter customers.

We note that there are substantial differences between what information the SA, ACT and WA Codes require to be given to PPM customers. In our opinion, the provisions in clause 9.4(2) should be retained, however where the SA or ACT Codes are more prescriptive or require additional information to the WA Code, the WA Code should be amended to form best industry practice. For example, the WA Code does not require information to be provided about connection and installation costs or dispute resolution options. We believe that the additional requirements in other jurisdictions should be added to clause 9.4(2). This will ensure PPM customers have access to comprehensive information about the use of PPMs.

Discussion Point (9.6)

If clause 9.2(2) is amended to allow operation of PPMs outside the TRRP and ARCPSP, should clause 9.4(3) be amended to ensure consistency with the SA and ACT codes?

CCLS(WA) believes that it is important to provide easily accessible information to PPM customers as is required in clause 9.4(3). This clause should be retained, however CCLS(WA) supports amending the clause to include current consumption information as required in the SA and ACT Codes.

Discussion Point 9.7

Should clause 9.9(1) be amended to require credit retrieval only for amounts over \$100?

CCLS(WA) does not support the proposed amendment to clause 9.9(1). Although independent research has not been undertaken, in our view it is unlikely that PPM customers would consistently have more than \$100.00 in their PPM meter. \$100.00 is a significant amount of money to vulnerable and disadvantaged consumer's and makes up a significant percentage of many Centrelink incomes. In our opinion, it would be unjust for the electricity supplier to keep money paid for the essential service without providing the service.

CCLS(WA) does not support the amendment to this clause.

Discussion Point 9.8

Should the record keeping requirements contained within clause 9.11 be amended? If so, in which manner?

CCLS(WA) believes that the record keeping requirements contained within clause 9.11 be amended to provide consistency with the SA and ACT Codes. In particular, records should be kept about the incidence of disconnection (including self disconnection due to financial hardship).

Complaints Handling Processes (Discussion Point 12.1)

Should clause 12.1 be amended, in particular should some of the requirements in relation to the matters to be addressed under internal complaints handling processes be removed to increase consistency with other jurisdictions (e.g. Vic.)? If so, in what manner?

CCLS(WA) opposes any amendment to remove requirements in clause 12.1 to increase consistency with other jurisdictions. The WA Code currently forms best industry practice and should be retained in its current form. In particular, it is extremely important that a complaints handling process comply with Australian Standard 4269:1995.

The right to have a complaint considered by a senior employee is central to the Australian Standard 4269:1995. We note that this right is also stated in the Code and therefore there is some duplication in the Code and the Australian Standard.

It is also important that the customer knows the practices and procedures of the utilities complaints handling and that it advise the customer of the outcome of the review into the complaint. In addition, we would not support removing the requirement that a client must be informed that they have the right to refer the complaint to the Ombudsman. In our view, clause 12.1 should not be amended as it forms best industry practice.

Complaints Handling Processes (Discussion Point 12.2)

Should clause 12.1 be amended to remove the obligation on a marketer to establish complaints handling processes and, instead, require a retailer to ensure that it has in place complaints handling processes to deal with complaints arising from marketing activities carried out on its behalf? If so, should the reference to marketer also be removed from clause 12.3?

CCLS(WA) supports an amendment to clause 12.1 to remove the obligation on a marketer to establish complaints handling processes. In our view, the retailer should be responsible for complaints arising from marketing activities carried out on its behalf.

Additional Time to Pay a Bill (Discussion Point 13.1)

Should clause 13.2(1)(c) be retained or deleted?

CCLS(WA) considers that information regarding the amount of requests for additional time to pay a bill as relevant and important information that can be used for a number of purposes. We believe clause 13.2(1)(c) should be retained.

Shortened Billing Cycles (Discussion Point 13.2)

Should clause 13.2(1)(d) be retained or deleted?

CCLS(WA) considers that information regarding the number of customers placed on shortened billing cycles to be relevant and useful for a number of purposes and support clause 13.2(1)(d) being retained.

Service Standard Payments (Discussion Point 13.3)

Should clause 13.4(a) and (b) be amended by including an obligation upon retailers to keep data on the average amount of any payments made under clauses 14.2 and 14.3 of the Code?

CCLS(WA) sees merit in including an obligation upon retailers to keep data on the average amount of payments under clauses 14.2 and 14.3. This information is a good indicator of industry deficiencies and the level of compliance with the Code by retailers.

Discussion Point 14.1

Should clause 14.1 be amended to make service standard payments available to all small use customers?

CCLS(WA) believes that clause 14.1 should be amended to make service standard payments available to all small use customers.

Discussion Point 14.2

Should clause 14.1 be amended to make service standard payments available to all non-contestable customers regardless of their supplier?

CCLS(WA) believes that clause 14.1 should be amended to make service standard payments available to all non-contestable customers regardless of their supplier.

Discussion Point 14.3

Should the cap on the amount payable be amended? If so in what manner?

CCLS(WA) does not believe that there should be a cap on service standard payments. The capped service standard payments may not sufficiently cover loss that a customer has experienced. In addition, removing the cap provides an incentive to resolve all problems efficiently.

Discussion Point 14.4

Should clause 14.3 be amended? In particular, should the amount payable and/or the cap be amended? If so, in what manner?

CCLS(WA) supports increasing the current amount of \$50.00 a day to a higher amount in line with other jurisdictions. This will better compensate customers and encourage retailer compliance with their obligations.

Discussion Point 14.5

Should clause 14.7(1)(a) be amended to remove the requirement for the customer to apply for the payment?

WA should follow the practices of SA, Vic & NSW and remove the requirement for customer's to apply for payment of breach of service standards. Many customers are unaware of these rights and would not know they were entitled to the payment. This detracts from any incentive for the supplier to have a good compliance regime.

Discussion Point 14.6

Should the time limit for making a service standard payment be extended or, alternatively, reduced?

CCLS(WA) believes the time limit for making a service standard payment be extended to 3 months in line with best industry practice. This is especially important for customers who are not initially aware of their rights if clause 14.7(1)(a) is not amended.

Discussion Point 14.7

Should non-contestable customers be allowed to contract out of Part 14?

In our opinion, non-contestable customers should not be allowed to contract out of Part 14 of the Code.

Notes held Within the Code

CCLS(WA) understands that the notes contained in the Code have no legal bearing on the application or interpretation of the Code. In our opinion, the purpose of the notes in the Code may be confusing and the notes should be removed. The most appropriate place for explanatory notes is the Guide to the Code.

Concluding Comments

Finally, CCLS(WA) would like to make comment on the consultation process. Given the importance of the decisions to be made by the Economic Regulation Authority, we welcome the opportunity to comment on the Draft Review Report of the Review of the Code of Conduct (For the Supply of Electricity to Small Use Customers). However, we note that the consultation timelines for this process is very short and we are concerned that some community organisations that would otherwise have commented may be unable to do so due to the limited time available.

If you or your committee would like further information or clarification on any comments made, please do not hesitate to contact me on (08) 9221 7066. We look forward to receiving your final report.

Yours sincerely

Alison Pidgeon
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