

12 April 2007



Energy Retailers Association
of Australia Incorporated

Mr Paul Kelly
ECCC Chairman
Level 6, Governor Stirling Tower
197 St Georges Terrace
Perth WA 6000
Email eccc@era.wa.gov.au

Dear Mr Kelly

RE: Review of the Code of Conduct (For the Supply of Electricity to Small Use Customers)

The Energy Retailers Association of Australia (ERAA) welcomes the opportunity to comment on the Electricity Code Consultative Committee's (ECCC) Review of the Code of Conduct for the Supply Of Electricity to Small Use Customers (the Code).

The ERAA is an independent association representing ten retailers of electricity and gas throughout the National Electricity Market (NEM) and the jurisdictional gas markets. ERAA members collectively provide electricity to 11 million customers in the NEM and are the first point of contact for end use customers for both gas and electricity.

The ERAA supports the development of a streamlined, efficient and low cost regulatory framework for electricity and gas retail at the national level. The current complexity of consumer protection arrangements and differences in regulatory requirements across all jurisdictions imposes significant compliance cost upon retailers, which in turn diminishes the benefits that would otherwise flow from energy market reforms.

In the context of the review of the Code it is important that the review recognises the work being conducted by the Ministerial Council of Energy's Retail Policy Working Group (RPWG) to develop the 2007 legislative package to complete the transfer of the national distribution and retailing regulation function to the AEMC and AER. While Western Australia has yet to commit to participate in the national arrangements for electricity, the ERAA believes that the adoption of terms that are consistent with the national regulatory framework would facilitate the introduction of full retail contestability in WA and provide fewer barriers to entry for prospective new retailers.

Given the AER and AEMC will take over the regulation of distribution and non economic regulation of retail functions on 1 January 2008 there are likely to be major system changes for retailers. The ERAA would therefore strongly endorse delaying the implementation of any system changes on retailers as a result of this review process, as they are likely to be further changes as a result of the Retail Policy Working Group's recommendations.

In approaching the review of the Code the ERAA would advocate that the following principles be used to ensure the outcome of the review results in an efficient and effective framework for small customers.

- Competition is to be preferred over regulation, and represents the most effective form of customer protection;
- The Trade Practices Act, Privacy Act and Fair Trading legislation provide for a comprehensive National Consumer Protection regime across all jurisdictions; Duplicating provisions within energy regulation increases compliance cost and complexity with no associated increase in consumer protection;
- National consistency should not be viewed as an end in itself, but a means to improving the quality of regulation.

Competition

The ERAA believes that the entry, or threat of entry, of new retailers represents the best form of competition and that regulation should only be used where market failure can be demonstrated.

Ultimately only full retail contestability combined with the abolition of retail price regulation in those markets where competition is deemed effective, will ensure customers the best level of protection.

The benefits of full retail contestability are currently demonstrated in the retail energy market of Victoria, South Australia and New South Wales which have all been rated in the top ten most competitive retail energy markets in the world¹.

The ERAA nevertheless recognises that both electricity and gas are essential services and that customer hardship is a shared responsibility of the government, the community and retailers. The ERAA therefore believes that the deregulation of energy pricing must be accompanied with clear and direct community service obligations from government. Ongoing price regulation is an ineffective instrument to deal with energy hardship as it reduces competition and thus consumer protection. Not relevant to the Code review as it doesn't address retail price setting. Further, the WA Govt and not the ERA regulates price.

¹ First Data Utilities and VaasaEmg Utility Customer Switching Research Project. See <http://www.firstdatautilities.com/customer-switching/>

Given the homogenous nature of electricity and gas the Association would strongly caution the introduction of any regulation which led to a decline in differentiation in the market.

Generic Regulation

The ERAA believes that the Trade Practices Act (Cwth), the Fair Trading Act (WA), and the Door to Door Trading Act 1987 (WA) offer sufficient protection for all consumers of energy, except where it can be demonstrated² market failure exists. The introduction of energy specific codes requirements or legislation merely duplicates the provisions in other consumer protection legislation leading to greater inconsistency of regulations across markets and ultimately increased costs for retailers and therefore end use customers. Specific industry Codes should be implemented to fill actual gaps in customer protection frameworks but not be used to duplicate or overlap existing generic law.

National Consistency

While the ERAA certainly supports greater harmonisation of the retail regulatory framework, we do not see this as an end in itself, especially if in the process it leads to the adoption of the most onerous regulations of all markets.

Please see attached specific comments

Should you require any further information in relation to this matter please feel free to give me a call on (02) 9437 6180.

Yours sincerely,

[Transmitted electronically]

Cameron O'Reilly
Executive Director
Energy Retailers Association of Australia

² The Utility Regulators' Forum acknowledges in their Compliance Monitoring Paper ([http://www.accc.gov.au/content/item.phtml?itemid=779487&nodeId=bb51c2c162d1bdc479a2be5914d5a900&fn=Compliance%20monitoring%20\(Non-pricing%20energy%20retail%20regulation\)%20-%20Utility%20regulators%E2%80%99%20forum%20position%20paper%20-%20November%202006.pdf](http://www.accc.gov.au/content/item.phtml?itemid=779487&nodeId=bb51c2c162d1bdc479a2be5914d5a900&fn=Compliance%20monitoring%20(Non-pricing%20energy%20retail%20regulation)%20-%20Utility%20regulators%E2%80%99%20forum%20position%20paper%20-%20November%202006.pdf)) that energy specific regulation should not duplicate other regulation of general application (for example, the Trade Practices Act, Fair Trading and Door-to-Door Sales legislation) unless the generic regulation is demonstrated as being insufficient or ineffective to apply to the national energy market.

Marketing

The ERAA is of the view that consumer protection issues, including cooling-off periods and disclosure of contractual information, should be dealt with through general consumer protection law. Further regulation of these issues merely generates additional impediments to moving from a regulated market to effective competition.

The Trade Practices Act, Privacy Act and Fair Trading legislation provides a comprehensive National Consumer Protection regime across all jurisdictions.

Issues regulated through any proposed national regime should therefore be limited to energy specific issues where the AEMC has demonstrated that the National Consumer Protection Regime (Trade Practices Act, Fair Trading Acts, Privacy Act etc) is not adequate in addressing the specific consumer protection issue, i.e. retailers accept that there should be regulation in respect of disconnection of services.

Specific legislation in relation to the marketing of energy to small customers is unnecessary as it increases compliance costs and complexity, and generally offers no increase in consumer protection.

To the extent that deficiencies in the current consumer protection legislation are identified, it is recommended that these be addressed through the Ministerial Council of Consumer Affairs. This will ensure that energy is treated consistently with other comparable products and services.

We note that existing jurisdictionally based marketing codes are inconsistent where we see such simple matters as the information that is required to be provided to customers prior to entering into a contract, identification requirements and door-to-door or customer contact times vary.

The ERAA believes that these inconsistent marketing codes should be replaced with a number of principles that would work in conjunction with the Trade Practices Act, Privacy Act and Fair Trading legislation.

If energy specific regulation is deemed to be warranted it should be restricted to those aspects of the market that are unique to the marketing of energy. It is the view of the Energy Retailers Association that this principle would restrict regulation to the disclosure of information prior to contracting, and be specifically limited to the following items;

- (a) the prices, charges and tariffs that will be applicable in respect of the energy contract,
- (b) the term of the contract,
- (c) the cooling-off period, and

(d) the identity and contact details of the salesperson, and if appearing in person the carrying of photo identification

Pre-payment meters

The ERAA believes the use of prepayment meters by residential customers should be at the discretion of the consumer. Prepayment meters should be seen as another product and therefore a way for retailers to differentiate themselves in the market, similar to other product choices such as green energy, levelised payment arrangements, and time of use pricing, that already feature in the NEM.

The ERAA does not support the mandated use of prepayment meters for those customers in hardship, however it must be recognised that some customers prefer using pre-payment meters as it assists them in managing of their financial affairs, and budgeting..³

The ERAA has developed a set of key principles which we believe support the rollout of pre-payment metering, these are;

- Pre-payment solutions must not be imposed onto any customer, and must be a product of choice - it is simply another payment option,
- Pre-payment solutions should not be limited to any particular type or class of customer, or demographic groups, and
- Customers should be able to easily revert to standard metering & billing arrangements (allowing for reasonable recovery of costs).

Prepayment meter codes already exist in three other jurisdictions (being, SA, ACT, and Tas) where the codes are very similar in nature. The ERAA encourages the ECCC to adopt principles from these codes as far as practicable.

National Performance Reporting

We note that the ECCC commented extensively in the 'Draft Review Report', on the adoption of the Utility Regulators Forum's retail performance indicators. While the ERAA supports the objective of moving to a national reporting regime we believe this must be tempered with the practicality and investment required to achieve the outcome.

The ERAA members often have go to considerable expense in developing reporting tools or altering billing systems to develop reports or change existing reports, often with no benefit to the customers.

With this in mind we encourage the ECCC to only adopt those key indicators for which Synergy and Horizon can easily comply with, and undertake a cost benefit in those areas where there existing IT infrastructure may not be able to comply.

³ Essential Services Commission of South Australia, *Consumer issues with pre-payment meters: Final report*, 2004,P.31