



Electricity Code Consultative Committee (ECCC)

Review of the Code of Conduct for the Supply of Electricity to Small Use Customers 2008

DRAFT REVIEW REPORT FEBRUARY 2009

A full copy of this draft report is available from the Economic Regulation Authority web site at www.era.wa.gov.au.

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Contents

1	Introduction	4
2	Executive Summary	5
3	Background	8
4	Recommendations	15
5	Part 1 – Preliminary	24
6	Part 2 – Marketing	30
7	Part 3 – Connection	35
8	Part 4 – Billing	36
9	Part 5 – Payment	42
10	Part 6 – Payment Difficulties and Financial Hardship	48
11	Part 7 – Disconnection	56
12	Part 8 – Reconnection	68
13	Part 9 – Pre-payment meters in remote communities	72
14	Part 10 – Information and Communication	75
15	Part 11 – Customer Service Charter	78
16	Part 12 – Complaints & Dispute Resolution	80
17	Part 13 – Record Keeping	84
18	Part 14 – Service Standard Payments	89
	APPENDIX 1 – Draft Code of Conduct for the Supply of Electricity to Small Use Customers	96
	APPENDIX 2 – ECCC Terms of Reference	97

1 Introduction

This Draft Review Report presents the preliminary findings of the statutory review carried out by the Electricity Code Consultative Committee (**ECCC**) in respect of the *Code of Conduct for the Supply of Electricity to Small Use Customers 2008* (**Code**).

The Code regulates and controls the conduct of retailers, distributors and marketing agents who supply or market electricity to residential and small business customers.

The Code was initially reviewed by the ECCC in 2007, and a number of changes were made to the Code by the Economic Regulation Authority (**Authority**) in January 2008.

In commencing the 2009 review of the Code, the ECCC has made a number of preliminary recommendations to retain, amend and delete provisions of the Code.

The ECCC invites written submissions from interested parties relevant to the review of the Code. Although interested parties are particularly encouraged to provide comment on the ECCC's preliminary recommendations, the ECCC also welcomes input on any other relevant Code matter.

Submissions should be addressed to:

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Submissions may be provided in hard-copy or electronic form and must be received by the close of business on 20 March 2009.

Should you require further information, please contact Ms Lanie Chopping, Manager Customer Protection on (08) 9213 1900.

Confidentiality

In general, all submissions from interested parties will be treated as in the public domain and placed on the Authority's website. The receipt and publication of any submission lodged for the purposes of this public consultation shall not be taken as indicating that the ECCC or the Authority has formed an opinion as to whether or not any particular submission contains any information of a confidential nature.

Where an interested party wishes to make a submission in confidence, it should clearly indicate the parts of the submission for which it is claiming confidentiality, and specify in reasonable detail the basis upon which the claim is made. The treatment of information provided in submissions, including confidential information, will be handled in accordance with applicable legislation.

2 Executive Summary

The *Code of Conduct for the Supply of Electricity to Small Use Customers (Code)* regulates and controls the conduct of retailers, distributors and marketing agents who supply or market electricity to residential and small business customers.

The Code commenced operation on 31 December 2004. Under the *Electricity Industry Act 2004 (Act)*, a review of the Code was required to be undertaken as soon as practicable after twelve months of operation of the Code and then every two years after that. Pursuant to the Act, the ECCC is required to undertake this review and provide its findings to the Authority.

The first review was undertaken in 2006-07, with the ECCC Final Review Report delivered to the Authority in May 2007.

This Draft Review Report represents the preliminary findings of the second review by the ECCC.

2.1 Review process

The ECCC was established by the Authority in August 2006 and includes industry, consumer and government representatives. A series of appointments have been made since that time and the current member terms are due to expire in December 2009. Refer to paragraph 3.2.1 for a list of ECCC members and Appendix 2 for the ECCC's Terms of Reference.

The Authority provides Secretariat staff and resources to support the operation of the ECCC.

2.1.1 Draft Review Report

In undertaking its review of the Code, the ECCC held meetings and consulted electronically between December 2008 and January 2009.

The ECCC members agreed that, given the complexity and depth of the 2007 review, a less detailed review should be undertaken at this time.

Appendix 1 includes a copy of the draft Code incorporating all recommendations made by the ECCC in this Draft Review Report.

2.1.2 Public Consultation

Pursuant to the Act, the ECCC seeks comment from interested parties to guide its deliberations in relation to the Code review.

The ECCC has therefore provided for a six week consultation period to give interested parties the opportunity to make comments relevant to the review. The consultation period closes on 20 March 2009.

2.1.3 Final Review Report

Following consideration of written submissions, the ECCC will produce its Final Review Report for Authority consideration by 26 June 2009.

2.1.4 Amendment of the Code

As the Code Administrator, only the Authority may make amendments to the Code. Therefore, although the ECCC is responsible for Code reviews, only the Authority

can implement any recommendations made by the ECCC through amendment of the Code.

If the Authority accepts the recommendations of the ECCC, it is envisaged that the review will be finalised by 31 July 2009.

However, if the Authority does not accept the Recommendations of the ECCC and requires further or alternative amendments to be made, the Authority will be required, under the Act, to refer these amendments back to the ECCC for advice. Should this scenario arise, the ECCC will be required to provide an additional opportunity for interested persons to make submissions. In this event, it is envisaged that the review will be completed by 31 December 2009.

2.2 Purpose of the Review

The purpose of this Code review¹ is to “re-assess the suitability of the provisions of the code of conduct for the purposes of section 79(2)².” To further guide the ECCC’s deliberations, the ECCC approved six principles complementing the object of the review. These principles do not seek to expand, limit or modify the object of the review and must at all times be read in context of the object of the review.

The principles are as follows:

- Principle 1** Delivering comprehensive, best-practice consumer protection that meets the objectives of the Code.
- Principle 2** Efficient regulation to keep compliance costs at a minimum without compromising principle 1.
- Principle 3** The benefits of simple, clear and concise codes for both electricity consumers and electricity retailers/distributors.
- Principle 4** The extent to which the Code can be monitored by the Authority.
- Principle 5** Consideration of the possibility that a single energy code may be developed in the future to ensure that gas is consistent with electricity.
- Principle 6** Identify any redundant, spent, duplicated or omitted provisions.

Interested parties are encouraged to have regard to the object of the review and the principles, as determined by the ECCC, when making a submission.

2.3 Previous Review

In 2006-2007 the ECCC undertook a comprehensive review of the Code and provided its Final Review Report to the Authority in May 2007. The ECCC made 115 recommendations to add, amend or delete provisions. The Authority accepted all of the ECCC recommendations, with the exception of recommendations 2 (regarding implementation timeframes), 33 (regarding bill smoothing), where it proposed

¹ Refer to section 88(2) of the Act.

² Section 79(2) of the Act reads: “The code of conduct is to regulate and control the conduct of

(a) the holders of retail licences, distribution licences and integrated regional licences; and

(b) electricity marketing agents,

with the object of —

(c) defining standards of conduct in the supply and marketing of electricity to customers and providing for compensation payments to be made to customers when standards of conduct are not met; and

(d) protecting customers from undesirable marketing conduct.”

alternative amendments and recommendation 34 (regarding information that must be provided to the customer regarding historical debt), which it rejected and referred to the Government Utilities Essential Service Hardship Inter-Agency Working Group for further consideration.

Further information regarding the first review of the Code is available on the Authority's web site.

3 Background

The Authority was established as the independent economic regulator for WA on 1 January 2004 under the *Economic Regulation Authority Act 2003 (ERA Act)*. The Authority oversees regulation and licensing in the State for the gas, electricity, water and rail industries and undertakes inquiries into matters referred to it by the State Government.

In performing its functions, the Authority is independent of both industry and Government, i.e. it is not subject to State or Ministerial direction in relation to regulatory functions.

The ERA Act requires that the Authority has regard to the following matters in performing its functions:

- (a) the need to promote regulatory outcomes that are in the public interest;
- (b) the long-term interests of consumers in terms of the price, quality and reliability of goods and services provided in relevant markets;
- (c) the need to encourage investment in relevant markets;
- (d) the legitimate business interests of investors and service providers in relevant markets;
- (e) the need to promote competitive and fair market conduct;
- (f) the need to prevent abuse of monopoly or market power; and
- (g) promote transparent decision-making processes that involve public consultation.

One of the Authority's functions is to monitor, enforce, amend and replace the *Code of Conduct for the Supply of Electricity to Small Use Customers* as required.³

3.1 Code of Conduct for the Supply of Electricity to Small Use Customers

Part 6 of the Act provides for the establishment of a code of conduct to regulate and control the conduct of —

- (a) the holders of retail licences, distribution licences and integrated regional licences; and
- (b) electricity marketing agents,
with the object of —
- (c) defining standards of conduct in the supply and marketing of electricity to customers and providing for compensation payments to be made to customers when standards of conduct are not met; and
- (d) protecting customers from undesirable marketing conduct.

Under the Act, the initial Code was approved by the Minister for Energy in consultation with a consultative committee.

³ Refer to Part 6 of the Act.

3.1.1 Development of the Code

The initial consultative committee (“Electricity Reform Consumer Forum” or “**ERCF**”) was established by Government in September 2003 and included representatives from consumer advocacy groups, industry and government.

The ERCF concluded its deliberations in July 2004 after which a draft Code was made available for public comment. In November 2004, the ERCF reconvened to discuss the public comments received and agreed on the final version of the Code. The Code was approved by the Minister for Energy and gazetted on 31 December 2004.

Upon gazettal, responsibility for the Code transferred to the Authority.

3.1.2 Contents of the Code

Matters addressed within the Code include:

Part 1 – Preliminary	Part 1 contains definitions, commencement dates and stipulates which Code clauses a retailer and customer may deviate from in a non-standard contract.
Part 2 – Marketing	Part 2 sets out the rights and obligations of persons marketing electricity. Part 2 is generally consistent with the <i>Gas Marketing Code of Conduct</i> .
Part 3 – Connection	Part 3 requires a retailer to forward a customer’s application within prescribed timeframes to ensure timely connection.
Part 4 – Billing	Part 4 details the procedures to be followed by a retailer when billing a customer for the supply of electricity.
Part 5 – Payment	Part 5 sets out minimum payment periods and methods, and the circumstances under which a late payment fee may be imposed.
Part 6 – Payment difficulties & Financial hardship	Part 6 requires a retailer to provide assistance to customers who are experiencing payment difficulties or financial hardship.
Part 7 – Disconnection	Part 7 stipulates the procedures a retailer and distributor must follow before disconnecting a customer’s electricity supply.
Part 8 – Reconnection	Part 8 outlines under which circumstances and within which timeframes a retailer and distributor must arrange for reconnection of a customer’s electricity supply.
Part 9 – Prepayment Meters in Remote Communities	Part 9 includes requirements for the use of prepayment meters in remote communities, such as consent, provision of information, and credit retrieval.
Part 10 – Information & Communication	Part 10 details the information to be provided by a retailer and distributor to a customer.
Part 11 – Customer Service Charter	Part 11 requires a retailer and distributor to develop a customer service charter.

Part 12 – Complaints & Dispute Resolution	Part 12 requires a retailer and distributor to establish complaints handling processes.
Part 13 – Record keeping	Part 13 requires a retailer and distributor to keep records on prescribed matters.
Part 14 – Service Standard Payments	Part 14 requires licensees to compensate a customer for any failure to meet prescribed service standards.

3.1.3 Compliance with the Code

Section 82 of the Act stipulates that compliance with the Code is a mandatory licence condition for retail and distribution licensees and is monitored by the Authority. This condition is contained in clause 5 of the retail and distribution licences. If a retail or distribution licensee fails to comply with the Code, the Authority may cause a notice to be served on the licensee requiring the licensee to rectify the contravention within a specified period. If the licensee fails to comply with the Authority's notice, the Authority may do one or more of the following:

- serve a letter of reprimand on the licensee;
- order the licensee to pay a monetary penalty fixed by the Authority but not exceeding \$100000; and/or
- cause the contravention to be rectified to the satisfaction of the Authority.

In the event of a material breach of licence, as set out in section 35 of the Act, the Governor may cancel a licensee's licence.

Penalties for electricity market agents (who are not licensees) are set out in the Code and range from \$5000 for an individual to \$20000 for a body corporate.

3.2 Mandatory review of the Code

Section 88(1) of the Act stipulates that a review of the Code must be undertaken as soon as is practicable after:

- (a) the first anniversary of its commencement; and
- (b) the expiry of each two yearly interval after that anniversary.

The Authority is **not** responsible for any review of the Code. Responsibility for Code reviews lies with the independent consultative committee.

Upon completion of a review, the consultative committee must advise the Authority of its results.

Although the Authority is not responsible for reviews, only the Authority can implement the outcome of any review by amending or replacing the Code.

3.2.1 Electricity Code Consultative Committee

Under section 81 of the Act, the Authority is required to establish a committee to advise it on matters relating to the Code. The Act also empowers the Authority to establish the membership, constitution and procedures of the committee.

Consistent with section 81, the Authority established the Electricity Code Consultative Committee in August 2006. Members of the ECCC include:

- Mr Paul Kelly
Economic Regulation Authority
Chairman
- Mr Simon Thackray
Synergy
Industry Representative
- Mr David Tovey
Horizon Power
Industry Representative
- Mr Andrew Canion
Chamber of Commerce & Industry
Industry Representative
- Mr France Radford
Geraldton Resource Centre
Consumer Representative
- Ms Irina Cattalini
(Proxy Ms Misty Hayden)
Western Australian Council of Social
Service
Consumer Representative
- Ms Alison Pidgeon
(Proxy Mr Gerard Cleveland)
Consumer Credit Legal Service
Consumer Representative
- Mr Ron Gerritsen
(Proxy Ms Chloe Upton)
Office of Energy
Government Representative
- Mr Gerald Milford
Department of Consumer & Employment
Protection
Government Representative

Refer to Appendix 2 for a copy of the ECCC Terms of Reference.

The Authority provides Secretariat staff and resources to support the operation of the ECCC.

3.2.2 Endorsed Review Principles

Section 88(2) of the Act sets out the object for any review of the Code as:

to re-assess the suitability of the provisions of the code of conduct for the purposes of section 79(2).⁴

To provide additional guidance to the Committee in its review of the Code the ECCC has approved the following principles to supplement the objective outlined in the legislation.

Principle 1 Delivering comprehensive, best-practice consumer protection that meets the objectives of the Code.

⁴ Section 79(2) of the Act reads: “*The code of conduct is to regulate and control the conduct of*

(a) *the holders of retail licences, distribution licences and integrated regional licences; and*
 (b) *electricity marketing agents,*
 with the object of —
 (c) *defining standards of conduct in the supply and marketing of electricity to customers and providing for compensation payments to be made to customers when standards of conduct are not met; and*
 (d) *protecting customers from undesirable marketing conduct.”*

- Principle 2** Efficient regulation to keep compliance costs at a minimum without compromising principle 1.
- Principle 3** The benefits of simple, clear and concise codes for both electricity consumers and electricity retailers/distributors.
- Principle 4** The extent to which the Code can be monitored by the Authority.
- Principle 5** Consideration of the possibility that a single energy code may be developed in the future to ensure that gas is consistent with electricity.
- Principle 6** Identify any redundant, spent, duplicated or omitted provisions.

The principles must at all times be read in the context of the object of the review. The principles are complementary with the object of the review as stated in the legislation and do not seek to expand, limit or modify the terms of the review as stated in the Act.

3.2.3 Code Review Process

Given the comprehensive nature of the first review, completed in May 2007, the ECCC agreed that a more streamlined review was warranted for this, the second, review. To this end, ECCC members were contacted in late September 2008 and asked to provide input to the Secretariat regarding errors, omissions or significant problems with the Code, by response email, to allow for consideration in the drafting of the proposed ECCC Draft Review Report. ECCC Members were provided with a copy of the proposed report in November 2008 and provided feedback on the report in December 2008. The ECCC approved the Draft Review report for public consultation in late January 2009.

Section 88(3) of the Act requires that the ECCC give any interested parties the opportunity to make a comment relevant to a review. To fulfil this requirement, the ECCC will make this Draft Review Report available for public comment for a period of six weeks.

Following the ECCC's consideration of written submissions, the ECCC will produce its Final Review Report for the consideration of the Authority.

If the Authority accepts the Recommendations of the ECCC in their entirety, it is envisaged that the review will be completed by 30 June 2009.

However, if the Authority forms an alternate opinion requiring other amendments, the Authority will be required, under the Act, to refer these amendments back to the ECCC for advice. Should this scenario arise, the ECCC will be required to provide an additional opportunity for interested persons to make submissions. In this event, it is envisaged that the review will be completed by 31 December 2009.

3.3 Context for Code review

3.3.1 Other regulatory developments in WA

The ECCC understands that the Authority is keen to ensure streamlined customer protection provisions across all regulated industries. The ECCC notes that during 2008 the Authority has moved to align the provisions of the Gas Marketing Code of Conduct with the marketing provisions of the Code. Further, the ECCC notes that the Authority has progressed the development of the Gas Customer Code which will ensure gas customers receive nearly identical protections as those granted under this Code for electricity customers.

3.3.2 Other State Jurisdictions

Most Eastern States' jurisdictions have developed instruments to cover the same matters that are dealt with by the Code. These mechanisms are currently provided for across a range of different instruments either developed through the parliamentary process (legislative) or agency/regulator processes (regulatory).

Table 1: Code equivalent comparison with other jurisdictions in Australia

	Electricity Retailers	Electricity Distributors
WA	Code of Conduct for the Supply of Electricity to Small Use Customers 2008	Code of Conduct for the Supply of Electricity to Small Use Customers 2008
SA	Energy Retail Code Energy Marketing Code Prepayment Meter System Code	Electricity Distribution Code
Vic.	Electricity Industry Act 2000 Energy Retail Code Code of Conduct for Marketing Retail Energy in Victoria Guideline no. 04: electricity industry - credit assessment Guideline no. 21: Energy Retailers' Financial Hardship Policies Operating procedure: Compensation for wrongful disconnection	Electricity Distribution Code
NSW	Electricity Supply Act 1995 Electricity Supply (General) Regulations 2001 Energy Marketing Code of Conduct	Electricity Supply Act 1995 Electricity Supply (General) Regulations 2001 Energy Marketing Code of Conduct
ACT	Consumer Protection Code Prepayment Meter System Code	Consumer Protection Code
Qld	Electricity Regulation 2006 Electricity Industry Code	Electricity Regulation 2006 Electricity Industry Code
Tas.	Electricity Supply Industry Act 1995 Tasmanian Electricity Code Electricity Supply Industry (Tariff Customers) Regulations 2008	Electricity Supply Industry Act 1995 Tasmanian Electricity Code
NT	Electricity Standards of Service Code	Electricity Standards of Service Code

In addition to material divergences in the form of legal instruments, the content and scope of these instruments also vary considerably. For example, whereas some instruments only relate to a specific market participant (e.g. retailer) or topic (e.g. marketing), others address these matters within one single instrument.

Significant changes in other State jurisdictions since the last review include:

- Introduction of a new Code, the Electricity Industry Code, in Qld.
- Commencement of the Tasmanian Pre-Payment Code (as Chapter 9A of the Tasmanian Electricity Code).
- The introduction of regulation 13A of the *Electricity Supply (General) Regulation 2007* (NSW) which requires that any payment plan of retailers operating in NSW is approved by the Minister.

In addition, the ECCC understands that there are a number of amendments currently proposed to the ACT Consumer Protection Code. In particular, those relating to debts carried forward from one address to another would require that certain requirements be met before a customer's debt can be transferred from a previous account, namely:

- That the Customer details are the same.
- That the Premises are in the same jurisdiction.
- That the Customer is notified that the amount will be carried forward so that they are not surprised when the amount appears on their bill.
- In any other situation debt can only be transferred with the express consent of the Customer.
- The debt carried forward should not be used as a basis for disconnecting the utility service at the current premises.

3.3.3 Ministerial Council on Energy

Divergences not only exist between customer protection mechanisms, but also between the regulation of most other aspects of each State's electricity supply industry. In light of the establishment of the National Electricity Market and in recognition of the fact that separate jurisdictional systems may increase compliance costs for industry participants and consumers, the Council of Australian Governments' (**COAG**) Ministerial Council on Energy (**MCE**) agreed to develop a national framework for the regulation of energy distribution and retailing (other than retail pricing).

The MCE also agreed that the Australian Energy Regulator (**AER**) was to assume responsibility for regulation of distribution and retailing following development of an agreed national framework.

In August 2004, the MCE commenced development of the framework through the release of the Issues Paper "National Framework for electricity and gas distribution and retail regulation". The Issues Paper sought, among other things, comment on whether there would be benefit in adopting a single energy consumer protection code.

In June 2008, the MCE Standing Committee of Officials (**SCO**) released its Policy Response Paper entitled "A National Framework for regulating Electricity and Gas (Energy) Distribution and Retail Services" and an accompanying table of recommendations. The recommendations from these documents have been used for the jurisdictional comparison discussions within this document. The proposed framework is known as the National Energy Customer Framework (**NECF**).

The MCE resolved to create a National Energy Customer Framework through the development of a single set of laws and rules for gas and electricity. The First Exposure Draft of the National Energy Retail Law (NERL) and the National Energy Retail Rules (NERR) is anticipated by early 2009.

The First Exposure Drafts will be subject to a stakeholder consultation process. After consideration of public submissions, a Final Exposure Draft of the Law and Rules will be developed for further consultation. At this stage the MCE aims to introduce the final legislative package by September 2009.

While WA has, as yet, elected not to participate in the national arrangements (except for natural gas pipeline access), provision has been made, in the Australian Energy Markets Agreement, for WA to join the national framework for distribution and retail regulation, by agreement, at a later date.

Whilst the ECCC recognises the benefits of harmonisation with the NECF, the ECCC has not made detailed recommendations regarding this issue at this stage given the fact that the NECF is yet to be finalised. Where there are obvious discrepancies between the Code and the NECF and broad ECCC agreement some recommendations have been made. However, the ECCC will address the issue of

harmonisation more comprehensively during the next review of the Code, unless the Authority proposes further amendments to the Code before this occurs.

4 Recommendations

Recommendation 1

Amend clause 1.3 to read:

- (1) The Code came into operation on the day it was published in the Government Gazette.
- (2) The *revisions* to the Code come into operation on 1 July 2010.

Add a new definition of “revisions” in clause 1.5 to read:

“revisions” means revisions to the Code approved by the Authority pursuant to the Act and gazetted on [date].

Recommendation 2

Amend definition of “contestable customer” in clause 1.5 to read:

“**contestable customer**” means a **customer** at an exit point where the amount of electricity transferred at the exit point is at least the amount prescribed under the *Electricity Corporations (Prescribed Customers) Order 2007* (Order) made under the *Electricity Corporations Act 2005* or under another enactment dealing with the progressive introduction of customer contestability.

Recommendation 3

Amend definition of “customer” in clause 1.5 to read:

“**customer**” means a **customer** who consumes not more than 160 MWh of electricity per annum in aggregate across all of the **customer's supply addresses**.

Recommendation 4

Amend clauses 2.2(2) to include “electronic means” to reflect technological changes and move the definition of “electronic means” in clause 2.6 to the definition section.

In addition, provide a definition of “telephone”, in clause 1.5, as follows:

“**telephone**” means a device which is used to transmit and receive voice frequency signals.

Recommendation 5

Add new sub-clause to clause 2.4(3) to read:

(b) if requested by the **customer** and, if the **customer** has not previously been provided a written copy of the **contract**, a copy of the **contract** at no charge to the customer.

Recommendation 6

Add a new clause 2.4(5).

2.4(5) Despite subclauses (3) and (4), the retailer is not obliged to provide the information in subclause (2) to a customer where:

(a) the retailer has provided the information to that customer within the preceding 12 months; and

(b) when the retailer is obliged to provide the information to the customer pursuant to subclause (3) or (4), the retailer informs the customer how the customer may obtain the information in subclause (2) and, if requested, gives the information to the customer.

Recommendation 7

Amend clause 2.8 to read:

A **retailer** and a **marketer** must comply with the National Privacy Principles as set out in the *Privacy Act 1998* in relation to information collected under this Part.

Recommendation 8

The ECCC recommends that the appropriate agency undertake a review of the extent to which there are any regulatory gaps between the Metering Code (including the Model Service Level Agreement) and other instruments, including the Code, to determine whether any amendments are required.

Recommendation 9

Amend clause 4.5(1)(h) to read:

a reference that the **customer** may be eligible to receive **concessions** and how the **customer** may find out its eligibility for those **concessions**.

Recommendation 10

Amend clause 4.8 Estimations, to read:

(1) If a **retailer** is unable to reasonably base a bill on a reading of the **meter** at a **customer's supply address**, the **retailer** must give the **customer** an estimated bill.

(2) If a **retailer** bases a bill upon an estimation, the **retailer** must specify in a visible and legible manner on the **customer's** bill that: –

(a) the **retailer** has based the bill upon an estimation;

and

(b) the **retailer** will tell the **customer** on request: –

(i) the basis of the estimation; and

(ii) the reason for the estimation; and

(c) the customer may request a **meter** reading.

(3) A **retailer** must tell a **customer** on request the –

(a) basis for the estimation; and

(b) reason for the estimation.

Recommendation 11

Amend clause 4.19 as follows:

4.19 Overcharging

(1) This clause 4.19 applies whether the overcharging became apparent through a review under clause 4.16 or otherwise.

(2) If a **customer** (including a **customer** who has vacated the **supply address**) has been overcharged as a result of an act or omission of a **retailer** or **distributor** (including where a **meter** has been found to be defective), the **retailer** must use its best endeavours to inform the **customer** accordingly within 10 **business days** of the **retailer** becoming aware of the error, and, subject to subclause (6), ask the **customer** for instructions as to whether the amount should be –

- (a) credited to the **customer's** account; or
- (b) repaid to the **customer**.

(3) If a **retailer** receives instructions under subclause (2), the **retailer** must pay the amount in accordance with the **customer's** instructions within 12 **business days** of receiving the instructions.

(4) If a retailer does not receive instructions under subclause (2) within 20 **business days** of making the request, the **retailer** must use reasonable endeavours to credit the amount overcharged to the **customer's** account.

(5) No interest shall accrue to a credit or refund referred to in subclause (2).

(6) Where the amount referred to in subclause (2) is less than \$45 the **retailer** may:

- (a) ask the **customer** for instructions pursuant to subclause (2) (in which case subclauses (3) and (4) apply as if the **retailer** sought instructions under subclause (2)); or
- (b) credit the amount to the **customer's** account (in which case subclause (3) applies as if the **customer** instructed the **retailer** to credit the **customer's** account).

Recommendation 12

Amend clause 5.6(3) to cap the amount of late fees payable by a customer to no more than 2 late payment fees in relation to the same bill and 12 late payment fees in a year.

Recommendation 13

Amend clause 6.2(3) to read:

(3) If a relevant **consumer representative organisation** is unable to assess a **residential customer's** capacity to pay within the period referred to in subclause (2) and the **residential customer** or relevant **consumer representative organisation** requests additional time, a **retailer** must give reasonable consideration to the **residential customer's** or relevant **consumer representative organisation's** request.

Recommendation 14

Amend clause 7.6 as follows:

7.6 General limitations on disconnection

Except if disconnection –

- (a) was requested by the **customer**; or
- (b) occurred for emergency reasons, a **retailer** or a **distributor** must not arrange for disconnection or disconnect a **customer's supply address** –
A **retailer** or a **distributor** must not arrange for disconnection or disconnect a **customers supply address** -
- (c) where the **customer** has made a **complaint**, directly related to the reason for the proposed disconnection, to the **retailer, distributor, electricity ombudsman** or another external dispute resolution body and the **complaint** remains unresolved;
- (d) after 3.00 pm Monday to Thursday;
- (e) after 12.00 noon on a Friday; and
- (f) on a Saturday, Sunday, public holiday or on the **business day** before a public holiday, except in the case of a planned **interruption**,
unless:
 - (g) the customer is a business **customer**; and
 - (h) the business customer's normal trading hours:
 - (i) fall within the time frames set out in subclauses (d), (e) or (f); and
 - (ii) do not fall within any other time period; and
- (i) it is not practicable for the **retailer** or **distributor** to arrange for disconnection at any other time.

Recommendation 15

Amend clause 9.9(1) to place the word "customer" between the words "meter" and "vacates".

Recommendation 16

In clause 10.7(2)(a) insert the word “a” between the words “twice” and “year”.

Recommendation 17

Amend clause 10.7(3) to read:

3) A **distributor** must give a **customer** the consumption data requested under subclause (1) within 10 **business days** of–

(a) the **date of receipt** of the request; or

(b) if payment is required (and is requested by the **distributor** within 2 business days of the request) payment for the **distributor's** reasonable charge for providing the data.

Recommendation 18

A new clause be added to Part 10 of the Code to require retailers to inform customers at least annually regarding the availability of service standard payments from both retailers and distributors.

Recommendation 19

Add a new sub-clause 10.11 (2) to read:

(c) the National Interpreter Symbol with the words “Interpreter Services”,

And

Remove clause 10.11(2)(d)

And

Add a new definition to clause 1.5:

National Interpreter Symbol means the national public information symbol “Interpreter Symbol” (with text) developed by Victoria in partnership with the Commonwealth, state and territory governments in accordance with Australian Standard 2342.

Recommendation 20

Delete Part 11.

Recommendation 21

Add a new clause 2.11 which states:

Marketer complaints

(1) A marketer must —

(a) keep a record of each complaint made by a customer, or person contacted for the purposes of marketing, about the marketing carried out by or on behalf of the marketer; and

(b) on request by the electricity ombudsman in relation to a particular complaint, give to the electricity ombudsman all information that the marketer has relating to the complaint.

(2) A record or other information that a marketer is required by this Code to keep must be kept for at least 2 years after the last time the person to whom the information relates was contacted by or on behalf of the marketer.

Recommendation 22

Insert the following new clauses:

13.3(1)(e) percentage of complaints from residential customers resolved within 15 business days.

13.3(1)(f) percentage of complaints from non-residential customers resolved within 15 business days.

13.7(e) percentage of complaints from pre-payment meter customers, other than those complaints specified in clause 13.13(a) concluded within 15 business days.

13.10(1)(e) percentage of customer complaints concluded within 15 business days.

13.13(d) percentage of complaints relating to the installation and operation of a pre-payment meter at a customer's supply address concluded within 15 business days.

Recommendation 23

Amend clause 13.9(1) to read:

A distributor must keep a record of —

(a) Total number of street lights reported faulty each month in the metropolitan area

(b) Total number of street lights reported faulty each month in the regional area

(c) Total number of street lights not repaired within 5 days in the metropolitan area

(d) Total number of street lights not repaired within 9 days in the regional area

(e) Total number of street lights in the metropolitan area

(f) Total number of street lights in the regional area

(g) Average number of days to repair faulty street lights in the metropolitan area

(h) Average number of days to repair faulty street lights in the regional area

Recommendation 24

In Part 13 insert the following new clauses for retailers:

The total number of residential customers who the **retailer** requested to be reconnected, other than pursuant to clause 8.1(1)(b); and clause 8.1(1)(c), who were not reconnected **within the prescribed timeframe**;

The total number of non-residential customers who the **retailer** requested to be reconnected, other than pursuant to clause 8.1(1)(b); and clause 8.1(1)(c), who were not reconnected **within the prescribed timeframe**;

Insert the following new clause for distributors:

A **distributor** must keep a record of –

- (a) the total number of **reconnections** provided other than:
 - (i) those recorded in clause 13.8(1);
 - (ii) pursuant to clause 8.1(1)(b); and
 - (iii) pursuant to clause 8.1(1)(c),
- (b) the total number of reconnections in clause 13.8(2)(a) who were not reconnected **within the prescribed timeframe**.

Recommendation 25

Amend clause 14.1 to increase the daily amount to \$60 and the maximum to \$300.

5 Part 1 – Preliminary

Part 1 of the Code addresses various administrative matters, such as commencement, citation and definitions.

The ECCC has identified the need for a number of minor amendments to correct errors or to reflect changes since the establishment of the Code. These changes, and other amendments the ECCC believes are appropriate, are outlined in the recommendations proposed below.

5.1 Amendments as a result of the last Code review

A number of minor amendments were made to correct errors or to reflect (legislative) changes since the establishment of the Code.

5.2 Clause 1.3

Clause 1.3 prescribes the date that the Code comes into operation. The Code states that it came into effect on the date it was gazetted, which, when the ECCC finalised its recommendations, was estimated to be October 2007. The Code provided a different operation date for clause 8.3(1) of 1 January 2008. This provision relates to the requirement for distributors to develop a Priority Restoration Register and the ECCC recognised the need for distributors to have additional time to implement this provision.

To bring the amended version of the Code into alignment with the compliance reporting schedule it is proposed that the amended Code come into force on 1 July 2010.

The Authority proposes to commence subsequent reviews of this Code in July to allow greater time between the review outcome and the preferred implementation date of 1 July the following year.

Recommendation 1

Amend clause 1.3 to read:

- (1) The Code came into operation on the day it was published in the Government Gazette.
- (2) The *revisions* to the Code come into operation on 1 July 2010.

Add a new definition of “revisions” in clause 1.5 to read:

“revisions” means revisions to the Code approved by the Authority pursuant to the Act and gazetted on [date].

5.3 Clause 1.5 – Definition of Contestable Customer

The definition of "contestable customer" in the Code refers to the *Electricity Transmission and Distribution Systems (Access) Act 1994 (Access Act)* because

the Electricity Distribution Access Orders (which prescribe the criteria for determining a customer's contestability status) were developed under this Act.

The Access Order (2006) was repealed on 1 July 2007 and replaced with the *Electricity Corporations (Prescribed Customers) Order 2007* (refer to the *Electricity Distribution Access Repeal Order 2007*, GG 29 June 2007, pg. 3193). The latter Order is made under the *Electricity Corporations Act 2005*. Therefore, the Code definition (which still refers to the Access Act) is no longer correct.

The correct reference is now the *Electricity Corporations (Prescribed Customers) Order 2007 (Order)* made under the *Electricity Corporations Act 2005*.

The Order refers to a class of customers who consume "not more than" 50 MWh of electricity per annum. The previous order referred to customers who consumed "at least" 50MWh of electricity per annum. The definition of "contestable customer" has been framed around this latter formation in that it is a "customer at an exit point where the amount of electricity transferred at the exit point is at least the amount prescribed...".

5.3.1 Recommendation

Recommendation 2

Amend definition of "contestable customer" in clause 1.5 to read:

"contestable customer" means a **customer** at an exit point where the amount of electricity transferred at the exit point is at least the amount prescribed under the *Electricity Corporations (Prescribed Customers) Order 2007 (Order)* made under the *Electricity Corporations Act 2005* or under another enactment dealing with the progressive introduction of customer contestability.

5.4 Clause 1.5 – Definition of Customer

The Code defines a 'customer' as a customer that consumes not more than 160MWh of electricity per annum. This definition mirrors the definition in the Act (section 47 of the Act).

It is unclear from this definition as to whether this means that consumption of 160MWh must occur at a single distribution exit point, or whether consumption at different sites can be aggregated to determine whether a customer consumes over 160MWh per annum.

For example, the definition of a 'contestable customer', under the Order, specifically states that a contestable customer means a customer at an exit point where the amount of electricity transferred at the exit point is at least 50MWh of electricity per annum. This terminology is also used for the definition of "contestable customer" under the Code. This makes it clear that, for the purposes of determining whether a customer is contestable, consumption of electricity at different sites cannot be aggregated to satisfy the threshold for contestability.

In contrast, the definition of customer does not specify any requirement for the consumption of 160MWh to be at a single exit point (as compared to the definition of contestable customer). This could imply that consumption totalling to 160MWh per annum does not have to be at a single exit point. In support of this, the Code also provides for the concept of a customer's supply address, which is the address nominated by a customer at which electricity is to be supplied under the contract. This provides for situations where a customer's address and supply address may be different. Under clause 4.4 of the Code, a retailer must issue a

bill to the customer at the supply address, or another address nominated by the customer. There is nothing in the Code which states that a customer may only have one supply address.

The Explanatory Memorandum to *Electricity Industry Bill 2003* provides that the Code was created to protect small use customers from “undesirable marketing conduct”. As the Code was explicitly created to regulate the supply of electricity to small use customers it is unlikely that the Code was intended to regulate the supply of electricity to large use customers which, if their electricity supply was aggregated, would not be considered small use customers.

The ECCC recommends that the definition of ‘customer’ be amended in the Code to clarify this issue recognising the definition of “customer” under the Act.

Adoption of the new definition means that the ambiguity over the threshold is resolved and a small use customer will be a customer whose total consumption in a year is equal to or less than 160MWh. A consumption of 160MWh equates to an electricity bill of approximately \$28,000. If a customer is consuming more than this amount (aggregated across a number of sites) the customer would be expected to have enough bargaining power such that the small use provisions of the Code are not required. The only circumstance where this may not occur is where the customer receives supply from different retailers. However, this is a choice of the customer who retains the option to aggregate supply with one retailer and use the consequent bargaining power from that decision. Further, as a matter of practice, each retailer would be likely to treat the customer as if the Code applied as, in these circumstances, each retailer would be unlikely to be aware of the total load of the customer.

It should be noted that the proposed NECF definition of “small customers” for the purpose of retailers being obliged to offer supply all residential customers and non-residential customers that consumer less than is 100MWh. The paper also states that “Regulations will set out the mechanics of assessing non-residential customer consumption for the purpose of applying the threshold, including whether the threshold applies to individual premises or is aggregated”. The ECCC will monitor further jurisdictional developments in this area.

5.4.1 Recommendation

Recommendation 3

Amend definition of “customer” in clause 1.5 to read:

“**customer**” means a **customer** who consumes not more than 160 MWh of electricity per annum in aggregate across all of the **customer's supply addresses**.

5.5 Clause 1.10

Any retailer who wishes to supply electricity to small use customers must submit a draft Standard Form Contract with its licence application. The draft Standard Form Contract must set out the terms and conditions under which the retailer will supply electricity to its small use customers and is subject to approval by the Authority. Under the Act, the Authority is not to issue a licence unless the Standard Form Contract has been approved.

Where a retailer and a customer agree to terms and conditions other than those contained in the Standard Form Contract, supply is taken to occur under a “non-standard contract”.

Although a non-standard contract is not subject to approval by the Authority, its terms and conditions must still comply with the following legislative instruments:

- *Electricity Industry (Customer Contracts) Regulations 2005 (Parts 2 & 4)*; and
- *Code of Conduct for the Supply of Electricity to Small Use Customers*.

However, the Code does not apply in its entirety to non-standard contracts. Clause 1.10 of the Code lists a number of provisions from which a retailer and customer may agree to deviate in their non-standard contract.

No variation of this clause was recommended during the previous Code review.

5.5.1 Jurisdictional Comparisons

Only the SA, Vic. and Qld codes appear to include a “variation clause” comparable to clause 1.10 of the Code. Also, instead of stipulating those clauses which may be contracted out of, the ACT Consumer Protection Code stipulates which clauses must be included in a negotiated customer contract (i.e. non-standard contract).

The NECF proposes a range of minimum terms and conditions for retail market contracts.

The table below contains a comparative overview of matters addressed within “variation clauses” comparable to clause 1.10 of the Code.

Table 2: Jurisdictional comparison – Variation clauses

	WA Code 1.10	SA ERC 1.3.2	VIC ERC Appendix 1	NSW Refer footnote 5	ACT Refer footnote 6	QLD EIC 4.2.3	TAS Refer footnote 7	NECF Refer footnote 8
Billing cycle	4.1	6.1.1	3.2(a) 3.2(b)			4.9.1		
Shortened billing cycle	4.2							
Contents of bill – minimum payment options		6.3.4(i)	4.2(m)			4.9.6(r)		
Contents of bill - apportionment		6.3.4(u)				4.9.6(t)		
Contents of bill - graph			4.4(a)					
Due date	5.1(1)	7.1.1	7.1(b)			4.13.1		
Minimum payment methods	5.2	7.2	7.2(a)			4.13.3		
Instalment payment options		7.7.1				4.14.1		
Payment in advance	5.4	7.11	7.3			4.13.7		
Adjustments after estimation			5.4(a)					
Vacating a supply address	5.7							
Transfer to alternative tariffs		6.8.1				4.12.3		
Reconnection times	8.1							
Minimum termination notice			24.1(b)					

In addition to a “variation clause”, the *Energy Retail Code* (SA) also includes a provision which allows retailers and prescribed customers to contract out of the entire

⁵ Schedule 1, 2 & 3 of the *Electricity Supply (General) Regulation 2001* (NSW) specifies a broad range of required content for electricity supply contracts. There is no ability for customers to “contract out” of these minimum requirements, although the requirements differ for standard and negotiated contracts for a handful of matters.

⁶ The Consumer Protection Code (ACT) states the *minimum* provisions that must be included in a negotiated customer contract:

- disconnection for failure to pay;
- content and format of notices;
- cooling-off period;
- rescission;
- notice where contract ends;
- security deposits; and
- a requirement to make contract available to customers.

⁷ Clause 4(2) of the *Electricity Supply Industry (Tariff Customers) Regulations 2008* (Tas.) specifies that the regulations do not apply in respect of individually negotiated contracts.

⁸ The MCE SCO proposes that the following minimum provisions be included in a market retail contract:

- Estimations as basis for calculation of charges; Retailer termination; Information about credit history; Interest; Content of bills; Historical billing information; Billing disputes; Undercharging; Overcharging; Payment difficulties; Shortened collection period; Grounds for disconnection; Limitations on disconnection; Notice; Reconnection; Liability and warranties; Dispute resolution and complaints; Cooling-off period; Dual fuel contracts; and Early termination charges.

code (as opposed to only prescribed provisions). A similar provision is included in the *Electricity Supply Industry (Tariff Customers) Regulations 2008* (Tas.).

Although under the *Electricity Act 1996* (SA) a customer's consumption level is determined by reference to individual connection points, clause G (Preliminary) of the SA code⁹ allows business customers to aggregate their consumption levels for more than one connection point for the purposes of the code. Clause G therefore provides prescribed customers and retailers with greater contractual freedom. Similarly, prescribed Queensland business customers are able to contract out of all of the provisions of Part 4 of the Qld Code.¹⁰

Neither Vic. nor SA has made significant amendments to the “variation clauses” included in their codes independently or as part of any of their Code reviews.

Similarly, clause G of the SA code has not been subject to significant amendment.

5.5.2 Recommendation

The ECCC does not propose any amendment to clause 1.10 at this time.

⁹ Under clause G (Preliminary) of the Energy Retail Code (SA), a small use customer and retailer may agree to contract out of (part of) the code if the customer:

- is a business customer; and
- has one or more relevant connection points to a premises or a group of premises; and
- is a small customer in respect of one or more of those connection points; and
- the aggregate of the annual energy consumption level for those connection points equals or exceeds 160 MWh per annum.

The clause also includes reference to gas consumption levels. However, as they are not relevant for the purposes of this paper, references to these have been excluded.

¹⁰ Clause 4.1.1(b) of the Electricity Industry Code (Qld)

6 Part 2 – Marketing

Part 2 of the Code relates to marketing. It sets standards for the marketing of electricity to small use customers by prescribing, among other things, when and how a marketer may approach a customer, the information that must be provided to a customer, and the training that must be provided to marketing representatives.

Section 79(2) of the Act specifies the objectives of Part 2 as:

- (c) defining standards of conduct in the [...] marketing of electricity to customers [...]; and
- (d) protecting customers from undesirable marketing conduct.

6.1 Amendments as a result of the last Code review

In its last Code review the ECCC recognised the work of the Gas Marketing Code Consultative Committee (**GMCC Committee**) and made a large number of recommendations to amend Part 2 of the Code accordingly. These recommendations included:

- removal of a number of requirements on marketers and replacement with requirements for retailers to ensure compliance of marketers acting on their behalf;
- streamlining the requirements for different marketing modes; and
- removing duplication and overlap with some federal legislation.

A number of amendments were made to remove duplication between the Code and other legislation, such as the *Trade Practices Act 1974* (Cwlth), *Fair Trading Act 1987* (WA), *Spam Act 2003* (Cwlth) and the *Privacy Act 1988* (Cwlth).

Duplication was reduced by amalgamating and/or deleting a number of provisions within the Code which overlapped significantly. For example, clauses which set different standards for marketing by phone, in person and electronically were amalgamated into one single clause.

Consistency with other legislation, such as the *Door to Door Trading Act 1987* (WA) and the *Door to Door Trading Regulations 1987* (WA), was enhanced (e.g. through the amendment of the definition of 'permitted call times').

Finally, a number of provisions were amended and/or deleted where the ECCC agreed the requirement was excessive, such as former clauses 2.2 to 2.4 were deleted which set standards for the training of marketing representatives and required marketers to provide their contact details to the Authority.

6.2 Jurisdictional Comparisons

The NECF proposes arrangements for marketing which are generally consistent with the arrangements in WA, with the following exceptions:

- The Code does not require terms regarding contract duration and electronic transactions information are not required to be disclosed prior to contract

- The Code does not require the marketer to provide the customer with the contact details for complaints.
- The Code does not specify conduct standards regarding the quality, form and content of marketing information or adequate product knowledge.
- Where the contact is not face to face contact, the relevant identification number and contact details are not specified in the Code as required information to be provided.

Under the NECF, the retailer is ultimately responsible for marketing conduct of staff and persons acting as agents or contracted by the retailer.

6.3 Inquiry into Australia's Consumer Protection Framework

On 11 December 2006, the then Mr Peter Costello, as Treasurer, requested the Productivity Commission undertake an inquiry into Australia's consumer policy framework. The Commission was asked to review and make recommendations to improve the framework to assist and empower consumers, including disadvantaged and vulnerable consumers. The Report outlined and made recommendations regarding: methods to create harmonisation and coordination of policy across jurisdictions; revision or repeal of consumer regulations that are not considered to provide net benefits, avoiding and reducing regulatory duplication and inconsistencies through general consumer regulation rather than industry specific regulation; the efficiency of self-regulatory and non-regulatory approaches; and ways the framework could be improved to maximise economic integration between Australia and New Zealand. The *Review of Australia's Consumer Policy Framework Productivity Commission Inquiry Report* was finalised in April 2008. The Federal Government is yet to respond to the report.

The NECF refers to the work undertaken by the Productivity Commission. The NECF proposes that until such time as the Commonwealth Government has responded to the Productivity Commission's final report, the essential nature of energy warrants ongoing industry-specific regulation and may, subject to the outcome, continue to require such regulation.

6.4 Gas Marketing Code of Conduct

Section 11ZPM of the *Energy Coordination Act 1994 (Gas Act)* provides the heads of power, similar to section 79 of the Act, to establish a code of conduct for the marketing of gas to small use customers.

The *Gas Marketing Code of Conduct (GMCC)* commenced operation on 31 May 2004. Unlike the Code, which covers a range of matters concerning electricity small use customers, the Gas Act does not provide scope for the GMCC to cover matters beyond the regulation of marketing in the gas industry.

To ensure consistency between the marketing of electricity and gas, Part 2 of the Code was modelled upon the GMCC.

6.4.1 Review of GMCC

The GMCC Committee is required to undertake a review of the GMCC after twelve months of operation and provide a report to the Authority. The GMCC Committee commenced its first review of the GMCC in May 2005.

The GMCC Committee undertook a review of the GMCC to identify any overlap between the GMCC and existing State and Commonwealth laws. Following

consideration of the report on legal overlap and taking into account submissions received, the GMCC Committee recommended¹¹ repeal of the GMCC and replacement with a regulatory instrument which includes those elements of the GMCC not duplicated in other laws and other relevant requirements. In addition, it was recommended that compliance with the regulatory instrument should be enforced through insertion of a licence condition into gas trading licences.

In 2007, the Authority approved the Gas Marketing Standard as a licence condition and moved to repeal the GMCC.

In approving the Gas Marketing Standard, the Authority made the decision to regulate marketing conduct of both marketers and marketing agents via the gas trading licence. Therefore, retailers were ultimately responsible for the actions of the third party marketing agents that may be employed.

In 2008, the Authority proposed a Gas Customer Code be developed as a licence condition under section 11M of the Gas Act. The Gas Customer Code aims to achieve consistency between customer protection provisions across the energy sector by utilising the Code (*Code of Conduct for the Supply of Electricity to Small Use Customers*) as a template. The Authority has worked with industry and customer stakeholders to develop the draft Gas Customer Code.

Given the fact that section 11ZPM of the Gas Act already provides for a code regarding marketing (the GMCC), the Authority has proposed that whilst the Gas Customer Code be developed under section 11M, the marketing provisions be developed under section 11ZPM. To this end, the Authority proposed a draft Gas Marketing Code of Conduct to the GMCC Committee and received its advice in November 2008.

The proposed GMCC mirrors Part 2 of the Code (*the Code of Conduct for the Supply of Electricity to Small Use Customers*). However, following submission from the Energy Ombudsman WA, the Authority has proposed variations which are now proposed to this Code (see below and recommendation 9.)

These variations relate to:

- Changing the terms “internet” in clause 2.2(2) to “electronic means” to reflect technological changes that may allow for electronic contact via means other than the internet.
- Addition of a new clause to Part 2 to compel marketers to provide information to the Energy Ombudsman in relation to a customer complaint rather than require the Ombudsman to seek the information from the trader who in turn seeks it from the marketer. This amendment will address the Energy Ombudsman WA concerns that this power will be required as competition in the industry increases as has been the case in other jurisdictions.
- Amendment to clause 2.4(1) of the proposed Code to require that a retailer give a copy of the contract to the customer if the customer requests it. This would cater for customers who do not have ready access to the Internet. The Energy Ombudsman WA advises that this is a common issue for customers. It is anticipated that the number of requests would be relatively low and therefore the cost to the retailer would be very small.
- Amend clause 2.8 to require marketers to comply with National Privacy Principles to ensure that small marketers, those that are not constitutional

¹¹ GMCC Committee, *Draft Report for Review of the Gas Marketing Code of Conduct 2004*, 11 August 2006, pg. 9.

corporations, and currently not covered by the federal *Privacy Act 1988*, are required to comply.

6.4.2 Recommendation

The following recommendations are proposed to ensure consistency between the Gas Marketing Code of Conduct and this Code:

Recommendation 4

Amend clauses 2.2(2) to include “electronic means” to reflect technological changes and move the definition of “electronic means” in clause 2.6 to the definition section.

In addition, provide a definition of “telephone”, in clause 1.5, as follows:

“**telephone**” means a device which is used to transmit and receive voice frequency signals.

Recommendation 5

Add new sub-clause to clause 2.4(3) to read:

(b) if requested by the **customer** and, if the **customer** has not previously been provided a written¹² copy of the **contract**, a copy of the **contract** at no charge to the customer.

Recommendation 6

Amend clause 2.8 to read:

A **retailer** and a **marketer** must comply with the National Privacy Principles as set out in the in relation to information collected under this Part.

6.5 Clause 2.4 – Information to be given at the time of or after entering into a contract

Clause 2.4 prescribes the information that must be provided to the customer prior to entering or before the first bill.

6.5.1 Background

Retailers have identified that where a customer moves regularly, the customer may not wish to be provided with written copies of this information every time a new contract is established. The obligation on the retailer to do so leave no option for the customer to choose to rely on information previously provided or to use the internet. For this reason, the ECCC recommends that, where a customer is made aware of the information provision requirement, and chooses not to receive, the retailer or marketer is not required to provide. To ensure that this does not result in the customer only retaining out of date information, the ECCC recommends that this provision only relates to a customer that has received the information in the preceding 12 months.

¹² The word “written” has been included in this recommendation and was not included in the proposed version of the GMCC. This wording has been included her for the avoidance of doubt.

6.5.2 Recommendation

Recommendation 7

Add a new clause 2.4(5).

2.4(5) Despite subclauses (3) and (4), the retailer is not obliged to provide the information in subclause (2) to a customer where:

(a) the retailer has provided the information to that customer within the preceding 12 months; and

(b) when the retailer is obliged to provide the information to the customer pursuant to subclause (3) or (4), the retailer informs the customer how the customer may obtain the information in subclause (2) and, if requested, gives the information to the customer.

7 Part 3 – Connection

Part 3 of the Code relates to connection. It requires a retailer to forward a connection application to a distributor within prescribed timeframes.

7.1 Amendments as a result of the last Code review

No amendments were made to Part 3.

7.1.1 Jurisdictional Comparisons

The Vic., SA and Qld codes and proposed NECF include clauses similar to clause 3.1. Refer to the table below for an overview of the timeframes within which connection applications must be forwarded to the distributor.

Table 3: Jurisdictional comparison – Timeframes for forwarding connection applications

WA Code 3.1	SA ERC 4.2.1	VIC ERC 2	NSW N/A	ACT N/A	QLD EIC 4.7.4	TAS N/A ¹	NECF
The same day, if the connection application is received before 3pm on a business day; or The next business day, if the application is received after 3pm or on a Saturday, Sunday or public holiday in WA.	As soon as possible.	No later than the next business day after the application is made or the customer's energy contract commences to be effective (whichever occurs last).			As soon as possible		Within one business day

¹ Regulation 31 of the *Electricity Supply Industry (Tariff Customers) Regulations 2008* (Tas.) requires a retailer to provide a customer with an electrical connection within a prescribed timeframe. Although the obligation is imposed on the retailer, connections will in reality be performed by the distributor. Therefore, regulation 31 is effectively an amalgamation of clause 3.1 of the Code and the *Electricity Industry (Obligation to Connect) Regulations 2005* (WA). For this reason, it has not been included in the table.

7.1.2 Recommendation

Given the existing consistency between these clauses and other codes and the absence of any identified issues with these provisions, members of the ECCC have not recommended any amendment of clause 3.1.

8 Part 4 – Billing

Part 4 of the Code relates to billing. It sets out the procedures to be followed by a retailer when billing a customer for the supply of electricity. It also addresses matters such as billing cycles, the contents of a bill, the basis for a bill, meter testing, alternative tariffs, final bills and review of bills.

8.1 Amendments as a result of the last Code review

A new clause was inserted which set standards for the provision of bill smoothing services by a retailer to its customer. The decision to provide such services remained at the discretion of the retailer.

Consistent with the principles of efficient regulation, clauses 4.6 and 4.7(2) were deleted to remove any inconsistency with the *Electricity Industry Metering Code*. The basis for estimations, as prescribed by clause 4.7(2), was inconsistent with the validation, substitution and estimation procedures set out in the Metering Code. Clause 4.6 was replaced with a new clause in recognition of the fact that, under the Metering Code, a distributor must provide a retailer with an actual meter reading at least once every 12 months.

Finally, former clause 4.14(2) was amended to require a retailer to repay any amount in credit after the time of account closure, rather than after the time of notice, to take account of the fact that a customer may continue to consume electricity between these times.

8.2 Division 1 – Billing cycles

Division 1 provides for the billing cycle, bill smoothing and how bills are issued.

8.2.1 Background

Clause 4.1 requires, amongst other matters, a retailer to issue a bill no less than once every three months, unless the retailer has obtained a customer's verifiable consent to issue bills less frequently.

In order to prepare a bill in accord with the Code's timeframes, a retailer is dependent on receiving billing (metering) data in a timely manner from a distributor.

Under the *Electricity Industry Metering Code 2005* (Metering Code), a distributor owns each meter on its network and all communications links associated with the meter. Furthermore, a distributor, in relation to a metering point on its network:

- owns the energy data in the meter for the metering point; and
- owns the energy data obtained from the meter and the standing data for the metering point; and
- owns the data for the metering point held in its records whether in written or electronic form; and
- has a right to access the data for the metering point in its databases and records.

Further, under the Metering Code the only thing a retailer can do with any energy data collected or received by it from a third party is to pass it onto the distributor for the distributor to process in accordance with the Metering Code. The distributor must then provide the processed energy data to various parties, including the retailer for it

to bill its customer. Therefore, under the Metering Code, a retailer is solely dependent on a distributor to provide metering data to a retailer for the purpose of issuing a bill.

In the event that a distributor does not provide valid metering data to a retailer within a timeframe that enables a retailer to issue a bill no less than once every three months, then a retailer is in breach of its licence and the customer can receive a bill for a period in excess of 90 days.

Retailers expressed concern regarding this matter during the ECCC deliberations.

Consumer representative members of the ECCC expressed concern regarding any proposed amendment that they perceived would shift the burden of this issue from the retailer / distributor to the customer.

This was one of a number of issues discussed regarding the relationship between the retailer and the distributor.

8.2.2 Recommendation

The ECCC agreed to the following recommendation.

Recommendation 8

The ECCC recommends that the appropriate agency undertake a review of the extent to which there are any regulatory gaps between the Metering Code (including the Model Service Level Agreement) and other instruments, including the Code, to determine whether any amendments are required.

8.3 Division 2 – Contents of a bill – Particulars on each bill – clause 4.5(1)(h)-concessions

Clause 4.5(1) specifies the information that a retailer must include on its bills. A retailer and customer may agree to deviate from subclause (1).

8.3.1 Background

Clause 4.5(1)(h) currently states:

“A reference to any concessions that the customer may be eligible to receive”

During a review of retailer bill templates by the Secretariat it became apparent that some bills specify that customers who have a concession card may be entitled to a rebate on their bill but the bill does not specify the type of rebates available.

The Secretariat’s Legal Adviser has advised that whilst clause 4.5(1)(h) was satisfied, as the customer is made aware that they may be able to claim a concession and they have the information required to follow that up (i.e. phone number, website, etc.), the Secretariat’s Legal Adviser proposed that this matter be clarified.

For this reason the following amendment is proposed.

8.3.2 Recommendation

The ECCC agreed to propose the following amendment to improve clarity of this provision.

Recommendation 9

Amend clause 4.5(1)(h) to read:

a reference that the **customer** may be eligible to receive **concessions** and how the **customer** may find out its eligibility for those **concessions**.

8.4 Division 2 – Contents of a bill – Historical Debt

The Authority understands that clause 4.5(3) was included to address a situation whereby a retailer identifies an outstanding amount for a previous supply address and adds the amount to the customer's current bill without informing the customer.

In the ECCC Final Review Report (May 2007), the ECCC made the following recommendation:

Recommendation 34

Amend clause 4.4(3) (now clause 4.5(3)) by adding the following words to the end of the clause:

And in relation to a bill which includes a historical debt (or part thereof) in the amount billed, the bill must separately identify the basis of the current and historic debts, including the address or addresses at which the electricity was consumer and the date/s of consumption.

At the time the Authority was advised that the Government Utilities Essential Services Hardship Inter-Agency Working Group (GUESHIWG) would be considering strategies to address financial hardship. As a consequence, the Authority rejected this recommendation and referred the matter to the Office of Energy for consideration by the GUESHIWG. The Authority noted that if the GUESHIWG did not address this issue that it would consider the issue again at a future date.

In its Discussion Paper the GUESHIWG sought comment on whether statute barred debt should be written off by all utilities (if so, under what circumstances) and asked for perspectives on how historical debt should be handled by utilities.

The ECCC understands that the GUESHIWG is yet to finalise its position on the issue of the separation of historical debt on bills and that its position will be included in its final report to be released later this year.

The ECCC notes that there is currently a proposal to amend the ACT Consumer Protection Code in relation to debts carried forward from one address to another: The proposed amendment would ensure that certain requirements were met before a customer's debt could be transferred, namely:

- the customer details are the same,
- the premises are in the same jurisdiction,

- the customer is notified that the amount will be carried forward so that they are not surprised when the amount appears on their bill,
- in any other situation debt can only be transferred with the express consent of the customer,
- the debt carried forward should not be used as a basis for disconnecting the utility service at the current premises.

An outcome on these proposed amendments is expected within the next 2 months.

8.4.1 Recommendation

Given the final outcome of the GUESHIWG is unknown the ECCC does not recommend any further amendments to this part of the Code at this time.

8.5 Division 3 – Basis of a bill –Estimations

The Secretariat reported to the ECCC that during a review of retailer bill templates it became apparent that some bills based upon estimation do not advise the customer that the retailer will tell the customer on request the basis of the estimation, and the reason for the estimation or the fact that the customer that the customer may request a meter reading.

The Secretariat is concerned regarding the possible ambiguity with this clause and proposes an amendment.

8.5.1 Recommendation

Recommendation 10

Amend clause 4.8 Estimations, to read:

- (1) If a **retailer** is unable to reasonably base a bill on a reading of the **meter** at a **customer's supply address**, the **retailer** must give the **customer** an estimated bill.
- (2) If a **retailer** bases a bill upon an estimation, the **retailer** must specify in a visible and legible manner on the **customer's** bill that: –
 - (a) the **retailer** has based the bill upon an estimation; and
 - (b) the **retailer** will tell the **customer** on request: –
 - (i) the basis of the estimation; and
 - (ii) the reason for the estimation; and
 - (c) the customer may request a **meter** reading.
- (3) A **retailer** must tell a **customer** on request the –
 - (a) basis for the estimation; and
 - (b) reason for the estimation.

8.6 Division 7 – Review of Bill

Division 7 includes provisions related to the review of a bill, undercharging and overcharging.

Clause 4.19 provides that where a customer has been overcharged, a retailer must use its best endeavours to inform the customer within 10 business days of becoming aware of the error and ask for instructions as to how the amount is to be repaid either by crediting the account or repaying the amount to the customer. No minimum overcharged amount currently applies to this requirement.

The ECCC discussed issues regarding the relationship between the retailer and the distributor and the fact that where undercharging or overcharging has occurred as a result of an act or omission by the distributor, the retailer remains liable. One industry representative requested amendments to the Code to require the distributor to reimburse the retailer where the retailer is financially liable to the customer as a result of an act or omission by the distributor. The majority of the ECCC agreed that these issues were best dealt with via contractual negotiations and/or as part of the recommended review outlined in at the beginning of this chapter.

8.6.1 Background

One of the retailers has expressed concern that on average it costs approximately \$45 to repay a customer for an overcharged amount. This includes costs associated with labour, materials, distribution and cheque provision.

Whilst the majority of the ECCC agreed on the recommendation below customer representatives expressed concern that the threshold amount should be based on customer needs or expectations as opposed to the retailers estimated costs.

8.6.2 Recommendation

The ECCC recommends that clause 4.19, be amended to ensure that where an overcharge is less than \$45, the amount can be automatically credited to the customer's account at the retailers discretion.

Recommendation 11

Amend clause 4.19 as follows:

4.19 Overcharging

(1) This clause 4.19 applies whether the overcharging became apparent through a review under clause 4.16 or otherwise.

(2) If a **customer** (including a **customer** who has vacated the **supply address**) has been overcharged as a result of an act or omission of a **retailer** or **distributor** (including where a **meter** has been found to be defective), the **retailer** must use its best endeavours to inform the **customer** accordingly within 10 **business days** of the **retailer** becoming aware of the error, and, subject to subclause (6), ask the **customer** for instructions as to whether the amount should be –

- (a) credited to the **customer's** account; or
- (b) repaid to the **customer**.

(3) If a **retailer** receives instructions under subclause (2), the **retailer** must pay the amount in accordance with the **customer's** instructions within 12 **business days** of receiving the instructions.

(4) If a retailer does not receive instructions under subclause (2) within 20 **business days** of making the request, the **retailer** must use reasonable endeavours to credit the amount overcharged to the **customer's** account.

(5) No interest shall accrue to a credit or refund referred to in subclause (2).

(6) Where the amount referred to in subclause (2) is less than \$45 the **retailer** may:

- (a) ask the **customer** for instructions pursuant to subclause (2) (in which case subclauses (3) and (4) apply as if the **retailer** sought instructions under subclause (2)); or
- (b) credit the amount to the **customer's** account (in which case subclause (3) applies as if the **customer** instructed the **retailer** to credit the **customer's** account).

9 Part 5 – Payment

Part 5 of the Code relates to payment. It sets out minimum standards relating to payment, such as due dates, minimum payment methods and direct debit.

9.1 Amendments as a result of the last Code review

As current banking practice allows a customer to cancel a direct debit unilaterally by notifying its financial institution, the Code requirement for a customer to notify both its retailer and financial institution was deleted (former clause 5.3(c) and (d)).

The minimum amount for payment in advance (A\$20) was stipulated within clause 5.4 to prevent unreasonably low payments being made or refusal by the retailer to accept the payment amount.

Also, a new sub-clause 5.6(1)(c) was inserted which precludes a retailer from imposing a late payment fee in the event a customer has made a complaint directly related to the non-payment of the bill to the retailer or to the Energy Ombudsman and the complaint remains unresolved.

9.2 Clause 5.1 – Due dates

Clause 5.1 of the Code prescribes that the due date for a bill must be at least 12 business days from the date of the bill.

9.2.1 Jurisdictional comparison

All States have prescribed the minimum amount of days a retailer must allow for a customer to pay a bill. Refer to the table below for a jurisdictional comparison.

Table 4: Jurisdictional comparison – Due dates

WA Code 5.1	SA ERC 7.1.1	VIC ERC 7.1(b)	NSW ES(G)R 30(1)	ACT CPC 13.7(1)	QLD EIC 4.13.1	TAS ESI(TC)R 13(2)(a)	NECF
The due date on a bill must be at least 12 business days from the date of that bill. Unless a retailer specifies a later date, the date of dispatch is the date of the bill.	Payment due not less than 12 business days after the date on which the bill is sent out, unless otherwise agreed under a market contract.	Payment due not less than 12 business days from the date of dispatch. Unless a retailer specifies a later date, the date of dispatch is the date of the bill.	Payment due not less than 12 business days after the date on which bill sent out.	Payment due not less than 12 business days after the date on which the bill is sent out, unless otherwise agreed.	Unless otherwise agreed with a customer, the pay by date specified in the bill must not be less than 12 business days after the date the bill has been sent.	Payment due at least 10 business days after account is given to the customer.	The due date for payment of a bill may not be less than 12 business days from the date on which the bill was sent out (may be varied by agreement in market retail contract)

9.2.2 Recommendation

The ECCC recommends no amendments be made to clause 5.1 at this time.

9.3 Clause 5.2 – Minimum payment methods

Clause 5.2 of the Code prescribes the minimum payment methods a retailer must offer to its customers. These include: in person, by mail, by Centrepay, electronically, and by telephone.

9.3.1 Jurisdictional comparison

All States have prescribed the minimum payment methods a retailer must offer. Refer to the table below for a jurisdictional comparison.

Table 5: Jurisdictional comparison – Minimum Payment Methods

	WA	SA	VIC	NSW	ACT	QLD	TAS	NE CF
	Code 5.2	ERC 7.2	ERC 7.2	ES(G)R 30(2)	CPC 13.7(2)	EIC 4.13.3	TEC 9.4	
in person at one or more payment outlets/ network of agencies:	✓	✓	✓	✓	✓	✓	✓	✓
<ul style="list-style-type: none"> located within the Local Government District of the customer's supply address 	✓							
<ul style="list-style-type: none"> by cash, cheque or credit card 				✓				
by mail:	✓	✓	✓	✓	✓	✓	✓	✓
<ul style="list-style-type: none"> by means of cheque or credit card 				✓				
by Centrepay	✓							✓ ¹³ 14
electronically by BPay or credit card	✓							
by telephone by means of credit card	✓			✓			✓	✓
by direct debit:		✓	✓	✓		✓	✓	✓
<ul style="list-style-type: none"> from a cheque, savings or credit card account 				✓				
by any other method agreed with retailer				✓				

9.3.2 Recommendation

The ECCC recommends no amendment at this time.

¹³ A retailer must offer hardship customers the option to pay by Centrepay. Other customers experiencing financial difficulties, may request Centrepay as a payment option.

¹⁴ May be varied in a retail market contract.

9.4 Clause 5.3 – Direct debit

Clause 5.3 of the Code sets standards for payment by direct debt. Under clause 5.3, a retailer must obtain the customer’s verifiable consent and agree with the customer on:

- the amount to be debited;
- the date and frequency of the debit; and
- that the customer may at any time cancel the direct debit by notifying the retailer and the customer’s financial institution.

9.4.1 Jurisdictional Comparison

Like the Code, the SA, Vic. and Qld codes and the NECF prescribe minimum standards for direct debit arrangements. Refer to the table below for a jurisdictional comparison.

Table 6: Jurisdictional comparison – Direct debit

	WA Code 5.3	SA ERC 7.3	VIC ERC 7.2(b)	QLD EIC 4.13.4	NECF
the amounts	✓	✓	✓	✓	✓
the frequency of those payments (direct debits)	✓	✓	✓	✓	✓
the date of the debit	✓		✓		✓
Customers cancellation options					✓
that the customer may at any time unilaterally cancel the direct debit by notifying:					
• the retailer		✓	✓	✓	
that if the customer cancels the direct debit by notifying the retailer, the retailer will:					
- accept that notification and no longer rely on the direct debit authority; and		✓		✓	
- use its best endeavours to notify the financial institution of the cancellation			✓		
• the relevant financial institution		✓	✓		
that if the customer cancels the direct debit by notifying the relevant financial institution, the customer must use its best endeavours to notify the retailer		✓	✓		
• the retailer and the relevant financial institution	✓				
that if the customer cancels the direct debit by notifying the relevant financial institution and the retailer, the retailer must acknowledge that the direct debit no longer applies	✓				
an alternative payment arrangement upon cancellation of direct debit by customer.			✓		
that if a last resort event occurs in respect of the retailer, the retailer will immediately cancel the direct debit and notify the customer and the financial institution of the cancellation		✓	✓		

It is noted that the SA, Vic. and Qld codes and the NECF require a retailer to provide direct debit arrangements. No such obligation applies to WA retailers.

9.4.2 Recommendation

The ECCC does not recommend any amendment to this clause at this time.

9.5 Clause 5.6 – Late payment fee

Clause 5.6 of the Code prescribes the circumstances under which a retailer must not charge a customer a late payment fee.

9.5.1 Jurisdictional Comparison

With the exception of Vic., all States and the proposed NECF allow a retailer to impose a late payment fee if a customer fails to pay a bill by the due date.

In relation to Vic. retailers, the Energy Retail Code¹⁵ (Vic.) requires retailers to obtain the regulator’s approval prior to imposing a late payment fee on a customer. However, section 40C of the *Electricity Industry Act 2000* (Vic.) prohibits the charging of a late payment fee to small retail customers. Therefore, it is only customers not deemed to be small retail customers who may be liable to pay a late payment fee.

Restrictions on the imposition of late payment fees are prescribed in WA, New South Wales (**NSW**) and Vic and under the new proposed NECF. Refer to the table below.

Table 7: Jurisdictional comparison – Late payment fees

	WA Code 5.6	VIC ERC 7.4	NSW Det 1- 07 ¹ cl 21	NECF
No late payment fee applies:				
<ul style="list-style-type: none"> If customer receives a concession, provided the customer: <ul style="list-style-type: none"> - is a residential customer; and - has not received two or more reminder notices within the previous 12 months. 	✓			
<ul style="list-style-type: none"> If customer has agreed to payment extension and pays by new due date 	✓	✓	✓	
<ul style="list-style-type: none"> If customer has agreed to instalment plan and makes payments in accordance with plan 	✓	✓	✓	
<ul style="list-style-type: none"> If customer has made a complaint directly related to the non-payment of the retailer’s bill to the retailer or to the Ombudsman and the complaint remains unresolved 		✓	✓	
<ul style="list-style-type: none"> Where a customer is a hardship customer 				✓
A retailer must only impose a late payment fee if it has been published with the standing offer contract.				✓
A retailer must not impose a late payment fee within 5 business days of the due date of the bill that is subject to late payment (provided the customer has received notice to this effect)			✓	
A retailer must not charge a late payment fee if it has already charged a fee in relation to the same bill less than 5 business days earlier	✓			
A retailer must not charge more than 1 late payment fee in relation to same bill			✓	
A retailer must not charge more than 2 late payment fees in	✓			

¹⁵ Refer to clause 7.4(a) of the Energy Retail Code (Vic).

relation to same bill				
A retailer may only impose late payment fee by means of disconnection warning (provided the disconnection warning tells customer that no fee will apply if customer contacts retailer within 5 b/d to enter into instalment plan or other payment arrangement)		✓		
A retailer must not charge a late payment fee if so specified in guidelines approved by the regulator		✓		

¹ IPART, *Determination No 1, 2007: NSW Electricity Regulated Retail Tariffs and Charges 2007 to 2010*, June 2007

Further, NSW¹⁶ and Vic.¹⁷ also require that already levied fees be waived in the event:

- the customer has contacted a welfare agency or support service for assistance; or
- where [part of] the payment is made by a Government relief voucher; or
- a customer contacts the retailer within 5 business days of receiving disconnection warning to enter into instalment plan or other payment arrangement;¹⁸ or
- on a case by case basis as considered appropriate by the retailer or ombudsman.

9.5.2 Recommendation

The ECCC understands that there is concern amongst customer stakeholders that customers on shortened billing cycles could be subject to significantly more late payment fees than those on the regular billing cycle. For this reason, the ECCC recommends a capping on the amount of late payment fees that can be charged in one year.

Recommendation 12

Amend clause 5.6(3) to cap the amount of late fees payable by a residential customer to no more than 2 late payment fees in relation to the same bill and 12 late payment fees in a year.

9.6 Clause 5.8 – Debt collection

Clause 5.8 of the Code sets standards in relation to the collection of debts.

Subclause (1) requires a retailer to comply with the Conduct Principles on debt collection issued by the Australian Competition and Consumer Commission (**ACCC**).

Under subclause (2), a retailer must not commence debt recovery proceedings if a residential customer informs the retailer the customer is experiencing payment difficulties or financial hardship unless the retailer has complied with its obligations under Part 6 of the Code.

Subclause (3) was included to preclude a retailer from recovering monies from persons other than the customer with whom the retailer has entered into a contract.

¹⁶ IPART, *Determination No 1, 2007: NSW Electricity Regulated Retail Tariffs and Charges 2007 to 2010*, June 2007, clause 21.3

¹⁷ Refer to clause 7.4(d) of the Energy Retail Code (Vic.)

¹⁸ Only applicable to Victorian retailers.

9.6.1 Research

Only the Vic. Energy Retail Code contains provisions in relation to debt collection.¹⁹ These provisions are consistent with subclauses (1) and (2) of clause 5.8.

9.6.2 Recommendation

The ECCC does not recommend amendment of the clause.

¹⁹ Refer to clause 11.4 of the Energy Retail Code (Vic).

10 Part 6 – Payment Difficulties and Financial Hardship

Part 6 of the Code relates to payment difficulties & financial hardship. It requires a retailer to offer prescribed assistance to customers who are experiencing payment difficulties or financial hardship.

Part 6 distinguishes between customers experiencing payment difficulties and customers experiencing financial hardship. Payment difficulties refers to a situation where a customer temporarily cannot afford to pay. Financial hardship, on the other hand, refers to a situation where a customer is unable to pay the retailer's bill without affecting the customer's ability to meet basic living needs, and is generally of a more ongoing nature.

In both instances, the retailer is obliged to offer the customer prescribed assistance (additional time to pay or an instalment plan). However, additional assistance is prescribed for customers experiencing financial hardship.

10.1 Amendments as a result of the last Code review

Minor amendments were made to two clauses to incorporate the contents of the accompanying explanatory notes.

In addition, a recommendation was made which required the Authority to establish voluntary Financial Hardship Policy Guidelines. The guidelines aim to provide retailers additional guidance in meeting their requirements in developing a financial hardship policy in accordance with the Code. The guidelines were approved by the Authority in August 2008.

10.2 Division 1 – Assessment of financial situation

10.2.1 Background

Division 1 of the Code requires a retailer to assess a customer's capacity to pay a bill. An assessment only needs to be carried out if a customer has informed the retailer that the customer is experiencing payment problems.

A retailer must temporarily suspend any debt recovery or disconnection procedures if a customer demonstrates to the retailer that the customer has made an appointment with a relevant consumer representative organisation.

Clause 6.2(3) currently states that if the relevant consumer representative organisation (e.g. Financial Counsellor) is unable to assess the customer's capacity to pay within the prescribed period and the organisation requests additional time, the retailer must give reasonable consideration to the organisation's request.

If a retailer concludes that a customer is experiencing payment difficulties or financial hardship the retailer must offer the customer additional time to pay the bill, or an instalment plan.

For those customers who are deemed to be in financial hardship, the retailer must also consider a reduction of fees and amendment of an existing payment arrangement (if applicable) and provide prescribed information.

10.2.2 Jurisdictional Comparison

Under the SA, Vic. and Qld codes, the obligation on a retailer to offer assistance to customers who have payment difficulties does not only arise upon notification by the customer, but also if:

the retailer's credit management processes indicate or ought to indicate to the retailer that a residential customer is experiencing payment difficulties;²⁰ or

the retailer [...] believes the customer is experiencing repeated difficulties in paying the customer's bill or requires payment assistance.²¹

Similarly, under the proposed NECF a customer may be offered a payment plan if a) the customer informs the retailer that it is experiencing payment difficulties; or b) it becomes apparent to the retailer that the customer is experiencing payment difficulties.

10.2.3 Recommendation

ECCC members discussed issues associated with clause 6.2(3) and a majority agreed that, given the workload of customer representative organisations, and in order to empower customers, a recommendation should be made to allow for the contact and request to be made by the customer or the customer representative organisation.

Recommendation 13

Amend clause 6.2(3) to read:

(3) If a relevant **consumer representative organisation** is unable to assess a **residential customer's** capacity to pay within the period referred to in subclause (2) and the **residential customer** or relevant **consumer representative organisation** requests additional time, a **retailer** must give reasonable consideration to the **residential customer's** or relevant **consumer representative organisation's** request.

10.3 Division 2 – Alternative payment arrangements

10.3.1 Background

Division 2 specifies the alternative payment arrangements a retailer must offer to a customer if the retailer's assessment indicates that the customer is experiencing payment difficulties or financial hardship.

Under Division 2, a retailer must offer a customer additional time to pay the bill (payment extension) or an instalment plan. Clause 6.4(2) sets out requirements for any instalment plan offered by the retailer. A retailer must offer a customer both arrangements, after which the customer must indicate which arrangement the customer prefers.

A retailer is not required to offer a customer an instalment plan, if the customer has in the previous twelve months had two instalment plans cancelled due to non-payment.

²⁰ Refer to clause 7.6 of the Energy Retail Code (SA) and clause 4.12.9 of the Electricity Industry Code (Qld).

²¹ Refer to clause 11.2(b) of the Energy Retail Code (Vic).

10.3.2 Jurisdictional Comparison

Most jurisdictions require a retailer to offer alternative payment arrangements to a customer who is experiencing payment difficulties.

All States require a retailer to offer a customer the option of entering into an instalment plan. In addition, section 43(2)(a) of the *Electricity Industry Act 2000* (Vic.) requires retailers to provide for flexible payment options under their hardship policies. (These policies must be approved by the Essential Services Commission (Vic.) (**ESC**) and/or the Minister). Regulation 13A of the *Electricity Supply (General) Regulation 2007* (NSW) requires that any payment plan of retailers operating in NSW is approved by the Minister.

The instalment arrangements specified under the NECF only relate to customers covered by the financial hardship policy.

The table below illustrates the requirements for instalment plans in each State and the proposed NECF.

Table 8: Jurisdictional comparison – Instalment plans

	WA	SA	VIC	ACT	NSW	QLD	TAS	NECF
	Code 6.4(2)	ERC 7.7.4	ERC 12.2	N/A	ES(G)R 13A	EIC 4.14	ESI (TC)R 19	
An instalment plan must:								
• have regard to the arrears								✓
• take into account information about the customer's usage needs and capacity to pay when determining the period of the plan and calculating the amount of the instalments	✓	✓	✓		✓	✓	✓	✓
• specify the period of the plan	✓	✓	✓		✓	✓		✓
• specify the number of instalments	✓	✓	✓		✓	✓		✓
– not less than 4 (unless the customer agrees otherwise)		✓				✓		
• specify the amount of the instalments which will pay the customer's arrears (if any) and estimated consumption during the period of the plan	✓	✓	✓		✓	✓		
• if the customer is in arrears, the number of instalments to pay the arrears								✓
• specify how the amount of the instalments is calculated	✓	✓	✓			✓		
• specify that due to seasonal fluctuations in the customer's usage, paying in instalments may result in the customer being in credit or debit during the period of the plan	✓	✓				✓		
• monitor the customer's compliance with the plan		✓	✓			✓		
• have in place fair and reasonable procedures to address payment difficulties a customer may face while on the plan	✓	✓	✓		✓	✓		✓
• make provision for re-calculation of the amount of the instalments where the difference between the customer's estimated consumption and actual	✓		✓					

consumption may result in the customer being significantly in credit or debit at the end of the period of the plan								
• offer energy efficiency advice			✓					
• offer advice on the availability of independent financial counsellors			✓					
• provides for monitoring of customer's electricity consumption (if instalment plan exceeds 3 months)							✓	
• provide for adjustment of instalments by agreement (if instalment plan exceeds 3 months)							✓	
• if the customer is to pay in advance, the basis on which instalments are calculated,					✓			✓

All States and the proposed NECF (with the exception of NSW) provide that a retailer is not required to offer an instalment plan if the customer has, within the previous 12 months, had two instalment plans cancelled due to non-payment.

10.3.3 Recommendation

In light of the general consistency between the Code and other jurisdictions the ECCC proposes that no amendments be made to clause 6.4 of the Code.

10.4 Division 3, Subdivision 1 – Assistance for customers in financial hardship

10.4.1 Background

Division 3, subdivision 1 stipulates the assistance a retailer must make available to customers who are experiencing “financial hardship” as distinct from “payment difficulties”. This assistance is over and above the alternative payment arrangements specified in clause 6.4 of the Code.

Under clause 6.6, a retailer must give reasonable consideration to a request by a customer, or a relevant consumer representative organisation, for a reduction of the customer's fees, charges or debt.

Clause 6.7 requires a retailer to give reasonable consideration to amend an alternative payment arrangement if a customer is unable to meet its obligations under the current arrangement.

Clause 6.8 of the Code requires a retailer to provide prescribed information to customers experiencing financial hardship.

Finally, clause 6.9 requires a retailer to set a minimum advance payment amount in consultation with relevant consumer representative organisations.

10.4.2 Jurisdictional Comparison

Clause 6.6 – Reduction of fees, charges and debt

None of the Eastern States' codes imposes a similar obligation upon a retailer.

Clause 6.7 – Amendment of alternative payment arrangements

The *Electricity Supply Industry (Tariff Customers) Regulations 2008* (Tas.) contains a similar provision.²² However, the trigger for amendment of an instalment plan under the Tas. regulations is not changes in the customer's ability to make payments under the plan, but agreement between the retailer and customer to take account of accruing liabilities for electricity consumption.

The NECF proposes that the Rules will contain a general obligation for retailers to provide fair and reasonable procedures for dealing with payment difficulties that a hardship customer may experience under the plan.

Clause 6.8 – Provision of information

Codes in other jurisdictions are generally consistent with the Code with regard to the provision of information to customer's experiencing financial hardship.

Clause 6.9 – Advance payments

Whilst all other jurisdictions require that payment in advance be offered none of the Eastern States' codes imposes the same specific obligations upon a retailer.

10.4.3 Recommendation

The ECCC does not recommend any amendment of these clauses.

10.5 Division 3, Subdivision 2 – Hardship policy

Division 3, subdivision 2 requires a retailer to develop a hardship policy to assist customers experiencing financial hardship in meeting their financial obligations and responsibilities to the retailer.

Clause 6.10(2) of the Code specifies the minimum contents of the hardship policy. A hardship policy must be developed in consultation with relevant consumer representative organisations. Details of the contents of the hardship policy must be provided to a customer, financial counsellor or relevant consumer representative organisation upon request.

10.5.1 Jurisdictional Comparison

Whilst none of the Eastern States' codes imposes a similar obligation upon a retailer, the Vic. government has made provisions in its *Electricity Industry Act 2000* relating to financial hardship. These provisions deem as a licence condition the requirement for a retailer to develop a financial hardship policy and submit this to the ESC and, under some circumstances, the Minister for approval.

The ESC have developed Guideline no. 21: Energy Industry - Energy Retailers' Financial Hardship Policies Guideline, which provides guidance to energy retailers when developing and implementing financial hardship policies.

²² Refer to regulation 19(4)(b) of the *Electricity Supply Industry (Tariff Customers) Regulations 1998* (Tas.).

Since the last Code review the Authority has published non-mandatory Financial Hardship Policy Guidelines.

The proposed NECF requires a retailer develop, implement and publish a hardship policy which must include:

- flexible payment options;
- processes for the early response by both retailers and residential customers to energy payment difficulties; and
- processes for identifying appropriate government concession programs and financial counselling services to assist in hardship mitigation and notifying customers in hardship of their existence.

The Rules developed by the NECF will require retailers to offer hardship customers, alternative payment arrangements prior to disconnection, which must include the option of payment by instalments. The NECF will require that instalment plans must:

- be established having regard to a customer's:
 - capacity to pay;
 - arrears; and
 - expected consumption needs over the following twelve month period.
- include an offer for the customer to pay its energy consumption in advance or arrears by instalment payments;
- inform the customer of:
 - the period or periods of the plan;
 - the amount of each instalment and the frequency of instalments;
 - if the customer is in arrears, the number of instalments to pay the arrears; and
 - if the customer is to pay in advance, the basis on which instalments are calculated.

The Law developed by the NECF will state a general principle that disconnection of a hardship customer due to inability to pay should be the last resort.

The Law will provide that hardship customers should be disconnected only where that customer has not paid a bill and has not:

- agreed to an instalment payment plan or other payment option to pay a bill offered by the retailer;
- adhered to the customer's obligations to make payments in accordance with an agreed instalment payment plan or other payment option relating to the payment of bills.

The Rules will provide that the AER must:

- undertake performance reporting on specific hardship indicators as established by the AER;
- have regard to hardship indicators established in jurisdictional frameworks and the effectiveness of those indicators when developing national hardship indicators.

10.5.2 Recommendation

The ECCC does not recommend any amendment of these clauses at this point.

10.6 Division 4 – Business customers

Division 4 requires a retailer to consider any reasonable request for alternative payment arrangements from a business customer who is experiencing payment difficulties.

10.6.1 Research

The Energy Retail Code²³ (Vic.) contains a provision similar to clause 6.11 of the Code. Under the Vic. code, if the retailer agrees to the customer's request, the retailer may impose an additional retail charge on the customer.

The NECF requires that a customer be offered a payment plan and does not differentiate between business and residential customers for this purpose.

10.6.2 Recommendation

The ECCC is of the opinion that, whilst it is unlikely that a retailer will refuse to negotiate an alternative payment arrangement with a business customer who is experiencing payment difficulties, the provision should be retained to protect vulnerable business customers, for example, some farmers.

²³ Refer to clause 12.3 of the Energy Retail Code (Vic.).

11 Part 7 – Disconnection

Part 7 of the Code relates to the disconnection of electricity supply. It prescribes the measures to be taken by a retailer and/or distributor when commencing disconnection procedures. It further stipulates when a retailer and distributor may not disconnect a customer's electricity supply.

11.1 Amendments as a result of the last Code review

In response to a request by the Energy Ombudsman, an amendment was made to require retailers to include the telephone number of the Energy Ombudsman on any disconnection warnings sent to their customers.

In addition, some minor editorial amendments were made to clause 7.4(1)(b) for reasons of clarification.

11.2 Background

Section 79 of the Act does not provide the heads of power to grant rights to retailers or distributors (rather, it provides the power for the Authority to make a Code to define standards of conduct). Therefore, the Code does not explicitly grant retailers and distributors the right to disconnect a customer's electricity supply. Instead, it regulates their conduct in relation to disconnection procedures.

It is further noted that the *Energy Operators (Powers) Act 1979* and the *Electricity Act 1945* grant retailers and distributors an explicit right to disconnect a customer's electricity supply in prescribed circumstances, such as where a customer has failed to pay a bill or used electricity illegally. Disconnection rights are also required to be set out in the contract.²⁴

11.3 Division 1, subdivision 1 – Disconnection for failure to pay bill

11.3.1 Background

Clauses 7.1 to 7.3 of the Code specify the procedures to be followed by a retailer when disconnecting a customer's electricity supply for failure to pay a bill.

11.3.2 Jurisdictional Comparison

All States and the NECF prescribe, to some extent, the procedures a retailer must follow when disconnecting a customer's electricity supply.

In relation to SA and Qld, a retailer is only required to follow those procedures if the customer's failure to pay the bill is due to a lack of sufficient income.²⁵

Section 46A of the *Electricity Industry Act 2000* (Vic.) deems that it is a licence condition that the licensee must not disconnect the supply of electricity to a domestic customer if that customer has entered into an agreement with the licensee under the terms of an approved financial hardship policy and is complying with the terms and

²⁴ Regulation 11 *Electricity Industry (Customer Contract) Regulations 2005*

²⁵ Refer to clause 9.2.1 of the Energy Retail Code (SA) and clause 4.18.3 of the Electricity Industry Code (Qld).

conditions of the agreement. The proposed NECF also contains a similar limitation on disconnection.

Reminder notices and disconnection warnings (clause 7.1)

Generally, a retailer is required to send the customer a reminder notice and/or disconnection warning and/or contact the customer prior to arranging for disconnection. The minimum timeframes for sending the notices and the information that must be included in the notices differ between the States.

Table 9: Jurisdictional comparison – Reminder notices and disconnection warnings for failure to pay a bill

	WA	SA	VIC	NSW	ACT	QLD	TA S	NE CF
	COC 7.1	ERC 9.2.2	ERC 13.1 28.3	ESR Sch2 12	CPC 17.4 17.6	EIC 4.18.4	ESI (TC) R 23	—
REMINDER NOTICES								
Retailer must give reminder notice.	✓	✓	✓	✓	✓	✓		✓
Reminder notice must include:								26
• grounds authorising the disconnection				✓	✓			
• retailer's telephone number for billing and payment enquiries	✓							
• advice that the retailer may disconnect the customer's supply and date from which disconnection may occur				✓	✓			
• advice on how the retailer may assist if customer is experiencing payment problems	✓							
• advice on existence of complaint handling processes (incl. Energy Ombudsman/ESCC)				✓	✓			
• advice on concessions				✓	✓			
• advice on payment arrangements				✓	✓			
• request for customer to contact retailer					✓			
• advice on translation services					✓			
• advice on customer's rights				✓				
Reminder notice must be given:								27
• not less than 13 business days from date of dispatch of bill	✓							
• not less than 14 business days from date of dispatch of bill			✓					
CONTACT								
Retailer must use best	✓	✓		✓		✓		✓

²⁶ Minimum information not yet specified.

²⁷ Minimum interval not yet specified.

endeavours to contact customer								
At least one attempt to contact outside of business hours, if all other attempts have failed.				✓				
DISCONNECTION WARNING								
Retailer must give disconnection warning	✓	✓	✓	✓	✓	✓	✓	✓
Disconnection warning must include:								28
<ul style="list-style-type: none"> • grounds authorising the disconnection 				✓	✓			
<ul style="list-style-type: none"> • advice that the retailer may disconnect the customer's supply and date from which disconnection may occur 	✓		✓	✓	✓			
<ul style="list-style-type: none"> • telephone number for payment assistance enquiries 			✓					
<ul style="list-style-type: none"> • advice on existence of complaint handling processes (incl. Energy Ombudsman/ESCC) 	✓			✓	✓		✓	
<ul style="list-style-type: none"> • advice on concessions 				✓	✓			
<ul style="list-style-type: none"> • advice on payment arrangements 				✓	✓			
<ul style="list-style-type: none"> • request for customer to contact retailer 					✓			
<ul style="list-style-type: none"> • advice on translation services 					✓			
<ul style="list-style-type: none"> • advice on customer's rights 				✓				
<ul style="list-style-type: none"> • telephone number of Ombudsman 			✓			✓		
Disconnection warning must be given:								29
<ul style="list-style-type: none"> • not less than 18 business days from the date of dispatch of the bill 	✓							
<ul style="list-style-type: none"> • not less than 22 business days from the date of dispatch of the bill 			✓					
<ul style="list-style-type: none"> • not less than 7 days after reminder notice has been sent 				✓	✓			
<ul style="list-style-type: none"> • after reminder notice has been sent 						✓		
GENERAL								
Retailer must advise customer of:								
<ul style="list-style-type: none"> • available concessions 		✓				✓		
<ul style="list-style-type: none"> • alternative payment arrangements 		✓				✓		
<ul style="list-style-type: none"> • existence of Energy Ombudsman 		✓						
RECORD KEEPING								
Retailer must keep records of actions taken				✓				

28 Minimum information not yet specified.

29 Minimum interval not yet specified.

Limitations on disconnection for failure to pay a bill (clause 7.2)

In addition to the requirement that a retailer notify a customer of its intention/ability to disconnect the customer's electricity supply, most States require certain conditions to be fulfilled before the retailer may arrange for disconnection for failure to pay a bill.

Although the Code is generally consistent with Eastern States' codes and the proposed NECF, one notable difference exists in relation to the Energy Retail Code (Vic.) which provides that no disconnection may occur if the unpaid bill relates to a different supply address (including a previous supply address).

Table 10: Jurisdictional comparison – Limitations on disconnection for failure to pay bill

	WA	SA	VIC	NSW	ACT	QLD	TAS	NE CF
	Code 7.2 7.6(i)	ERC 9.2.3 9.7	ERC 13.1 14(a)	ES(G)R Sch1 7 Sch2 12	CPC 17.1 17.4	EIC 4.18.5 4.18.14	N/A	
A retailer must not arrange for disconnection of a customer's electricity supply for failure to pay a bill:								
• within 1 business day of the expiry of the "final due date"	✓							
• within 5 business days of the expiry of the "final due date"					✓			
• alternative payment arrangements: if the customer has accepted the retailer's offer for alternative payment arrangements and has used reasonable endeavours to settle the debt before the expiry of the "final due date"	✓	✓	✓		✓	✓		
• instalment plan:								
– if the failure does not relate to an instalment under the customer's first instalment plan with the retailer			✓					
– if the customer applies for assistance under the payment plan operated by the supplier (prior to the date specified by the supplier)				✓				
• regulator approved amount: if the amount due is less than an amount determined by the regulator	✓	✓	✓		✓	✓		
• concessions: if the customer has made an application for a concession and is awaiting a decision on the application	✓	✓	✓	✓		✓		✓
• other goods and services: if the customer has failed to pay an amount which does not relate to the supply of	✓	✓	✓			✓		

electricity								
• other supply address:								
– if the bill relates to a different supply address			✓					
– if the bill relates to a different supply address (other than a previous supply address)	✓							
• financial assistance: if the customer has contacted the retailer about financial assistance and the retailer has not (yet) provided advice to the customer			✓					
• ombudsman: if the customer has made a complaint to the ombudsman and the complaint remains unresolved	✓	✓	✓	✓		✓		✓
• hardship complaint: if the customer has made a hardship complaint to the ESCC and the retailer has been advised by ESCC that complaint has been received					✓			
• hardship customer: required to comply with its hardship policy.								✓

Dual fuel contracts (clause 7.3)

The SA, Vic. and Qld codes specify disconnection procedures in the event a customer receives both electricity and gas supply from the same retailer.

Consistent with the SA and Qld codes³⁰ the Code stipulates that for dual fuel contracts a retailer may only arrange for the disconnection of electricity supply 15 business days after gas supply has been disconnected. Although the Vic. code³¹ also provides a shorter disconnection period for gas than electricity, it does not require that gas supply be disconnected before disconnection of electricity may occur.

Further, the Vic. code provides for amendment of tariffs, terms and conditions of the dual fuel contract upon disconnection of the customer's energy supply.³²

The NECF does not make this type of provision at this point in time.

11.4 Division 1, subdivision 2 – Disconnection for denying access to meter

Clause 7.4 of the Code specifies the procedures to be followed by a retailer when disconnecting a customer's electricity supply for denying access to the meter.

11.4.1 Jurisdictional Comparison

Most States permit a retailer to arrange for the disconnection of a customer's electricity supply in the event a customer fails to provide access to the meter.

³⁰ Refer to clause 9.2.3(b)(ii) of the Energy Retail Code (SA) and clause 4.18.5(b) of the Electricity Industry Code (Qld).

³¹ Refer to clause 13.1(c)(A) of the Energy Retail Code (Vic.).

³² Refer to clause 13.1(c)(B) of the Energy Retail Code (Vic.).

However, prior to disconnecting supply, the retailer must comply with prescribed procedures.

The NECF has not outlined specific procedures in detail at this stage.

Refer to the table below for a jurisdictional comparison.

Table 11: Jurisdictional comparison – Disconnection for denying access to meter

	WA	SA	VIC	NSW	ACT	QLD	TAS	NECF
	Code 7.4	ERC 9.4	ERC 13.3	N/A	N/A	EIC 4.18.10	ESI (TC)R 22	
A retailer must not arrange for disconnection of a customer's electricity supply for denying access to the meter, unless:								
• the customer has denied access for:								
– 12 consecutive months	✓							
– 3 consecutive billing cycles		✓	✓					
– 3 consecutive scheduled meter readings						✓		
– 3 successive occasions							✓	✓
• the retailer has requested access in writing at least five business days prior to a scheduled meter reading date	✓							
• the retailer has notified the customer each time the retailer was unable to access the meter		✓	✓			✓		
• the retailer has advised the customer that supply may be disconnected if access is not provided	✓	✓				✓		
• the retailer has given the customer sufficient opportunity to provide alternative access arrangements	✓	✓	✓			✓		
• the retailer has informed the customer of alternative metering arrangements (e.g. PPM or interval meters)	✓							
• the retailer has used best endeavours to contact the customer	✓	✓	✓			✓		
• the retailer has included details of the Energy Ombudsman on the disconnection warning						✓		
• the retailer has given the customer a disconnection warning:	✓	✓	✓			✓	✓	
– with at least five business days notice	✓	✓				✓	✓	
– with at least seven business days notice			✓					

The ECCC notes that, unlike the SA, Vic. and Qld codes, the Code does not require a retailer to notify a customer each time the retailer fails to read the meter.

However, the Code does require a retailer to provide a customer in writing 5 business days notice requesting access to the meter. The ECCC understands that clause 7.4(1)(b) aims to ensure that a retailer notifies a customer at least once prior to a scheduled meter reading date before disconnection may occur. This gives customers a reasonable opportunity to put in place arrangements to accommodate the meter reading person (for example, stay home to open a locked gate or restrain a dog).

11.5 Division 1, subdivision 3 – Disconnection for emergencies

Clause 7.5 of the Code requires a distributor to provide a 24 hour emergency telephone service and restore supply as soon as possible if a customer's supply is disconnected for emergency reasons.

The ACT³³ Consumer Protection Code contains an obligation similar to the Code. In addition, under the Qld and SA codes, a similar obligation is provided for under the standard connection (or equivalent) contracts.

The NECF provides a similar provision.

11.6 Division 2, clause 7.6 – General limitations on disconnection

Clause 7.6 of the Code precludes a retailer from disconnecting a customer's electricity supply in prescribed circumstances. The conditions prescribed in clause 7.6 apply for any type of disconnection,³⁴ with the exception of disconnection for emergency reasons or upon request by the customer.

Clause 7.6 of the Code specifies the timeframes in which a small use customer can be disconnected. Retailers report that in some circumstances a business does not open until after the prescribed time periods (such as a fish and chip shop within a commercial shopping centre) and the premises cannot therefore be disconnected within the timeframes prescribed. The ECCC recommends amendment of this clause to allow for such circumstances.

11.6.1 Jurisdictional Comparison

Most codes contain general limitations on a retailer's ability to disconnect a customer's electricity supply. Refer to the table below for a jurisdictional overview.

³³ Refer to clause 19.3 of the Consumer Protection Code (ACT).

³⁴ For example, disconnection for failure to pay bill, failure to provide access to meter, illegal use, etc.

Table 12: Jurisdictional comparison – Limitations on disconnection

	WA	SA	VIC	NSW	ACT	QLD	TAS	NE CF
	Code 7.6	ERC 9.7	ERC 14(c)	ES(G)R Sch 3 14	CPC 17.1	EIC 4.18.14	ESI (TC)R 24	
A retailer must not arrange for disconnection of a customer's electricity supply:								
<ul style="list-style-type: none"> • complaint: if the customer has made a complaint, directly related to the reason for the proposed disconnection, to the retailer, distributor, electricity ombudsman or another external dispute resolution body and the complaint remains unresolved 	✓	✓				✓		✓
<ul style="list-style-type: none"> • hardship complaint: if the customer has made a hardship complaint to the ESCC following the non-payment of an Account and the ESCC has notified the Utility that the complaint has been received. 					✓			
<ul style="list-style-type: none"> • concessions: if the customer has applied for a concession and a decision on the application has not been made 		✓						✓
<ul style="list-style-type: none"> • after 2.00 pm Monday to Thursday (res. customers) 			✓				✓	
<ul style="list-style-type: none"> • after 3.00 pm Monday to Thursday 	✓	✓		✓	✓	✓		
<ul style="list-style-type: none"> – business customers only 			✓					
<ul style="list-style-type: none"> • after 3.00 pm Monday to Friday 								✓
<ul style="list-style-type: none"> • after 12.00 noon on a Friday 	✓							
<ul style="list-style-type: none"> • on a weekend or public holiday 								✓
<ul style="list-style-type: none"> • on a Saturday, Sunday, public holiday or on the business day before a public holiday, except in the case of a planned interruption 	✓							
<ul style="list-style-type: none"> • on a Friday, on a weekend, on a public holiday or on the day before a public holiday 		✓	✓	✓	✓	✓	✓	
<ul style="list-style-type: none"> – except in the case of a planned interruption 		✓						
<ul style="list-style-type: none"> • between 20 December and 31 December (inclusive) in any year. 						✓		
<ul style="list-style-type: none"> • where a distributor reasonably considers that disconnection would immediately endanger health or safety. 								✓

11.6.2 Recommendation

To enable disconnection of business premises operating only outside of the prescribed hours the ECCC makes the following recommendation.

Recommendation 14

Amend clause 7.6 as follows:

7.6 General limitations on disconnection

Except if disconnection –

- (a) was requested by the **customer**; or
- (b) occurred for emergency reasons, a **retailer** or a **distributor** must not arrange for disconnection or disconnect a **customer's supply address** –
A **retailer** or a **distributor** must not arrange for disconnection or disconnect a **customers supply address** -
- (c) where the **customer** has made a **complaint**, directly related to the reason for the proposed disconnection, to the **retailer**, **distributor**, **electricity ombudsman** or another external dispute resolution body and the **complaint** remains unresolved;
- (d) after 3.00 pm Monday to Thursday;
- (e) after 12.00 noon on a Friday; and
- (f) on a Saturday, Sunday, public holiday or on the **business day** before a public holiday, except in the case of a planned **interruption**,
unless:
 - (g) the customer is a business **customer**; and
 - (h) the business customer's normal trading hours:
 - (i) fall within the time frames set out in subclauses (d), (e) or (f); and
 - (ii) do not fall within any other time period; and
- (i) it is not practicable for the **retailer** or **distributor** to arrange for disconnection at any other time.

11.7 Division 2, clause 7.7 – Life support

Clause 7.7 of the Code sets standards of conduct in relation to the supply of electricity to supply addresses where a resident depends on life support equipment (**life support address**). Under clause 7.7, a retailer may not disconnect a life support address for failure to pay a bill. Further, a distributor must provide customers residing at a life support address at least 3 days written notice of any planned interruptions.

11.7.1 Jurisdictional Comparison

All States and the proposed NECF prohibit the disconnection of electricity supply to life support addresses.³⁵

In addition, most States require retailers and distributors to maintain registers of life support addresses and provide prescribed information to persons residing at a life support address. Refer to the tables below for a jurisdictional overview.

The NECF has not specified the procedures regarding this provision as yet.

Table 13: Jurisdictional comparison – Life support equipment (retailer)

	WA	SA	VIC	NS W	ACT	QLD	TAS
	Code 7.7(1)	ERC 11.1	ERC 26.7	N/ A	CPC 10.1	EIC 4.20	ESI (TC)R 30
confirmation from medical practitioner: If a customer provides a retailer with confirmation from a medical practitioner that a person residing at the customer's supply address requires life support equipment, the retailer must:	✓	✓	✓		✓	✓	✓
• register: register the customer's supply address as a life support address	✓	✓			✓	✓	✓
• give information to distributor: give the customer's distributor relevant information about the customer's supply address [for the purpose of updating the distributor's records and registers]	✓	✓	✓		✓	✓	
• retailer's contact number: give the customer an emergency telephone contact number					✓		✓
• distributor's contact number: give the customer an emergency telephone contact number for the customer's distributor		✓			✓	✓	
• fault: inform the distributor that the customer's supply address is affected by a fault, if the customer provides that information to the retailer			✓				
• contingency plan: assist the customer, upon request, to prepare a contingency plan in case of an unplanned interruption					✓		✓

³⁵

Refer to clause 9.7(b) of the Energy Retail Code (SA), clause 1.9.2 and 1.11.1 of the Electricity Distribution Code (SA), clause 14(b) of the Energy Retail Code (Vic.), clause 5.6.1 of the Electricity Distribution Code (Vic.), clause 10.1(3) of the Consumer Protection Code (ACT), Schedule 1, clause 7 of the *Electricity Supply (General) Regulation 2001* (NSW), clause 4.18.14(a)(ii) of the Electricity Industry Code (Qld) and section 42(1A) of the *Electricity Supply Industry Act 1995* and clause 30(1) of the *Electricity Supply Industry (Tariff Customers) Regulations 1998* (Tas.).

<ul style="list-style-type: none">• planned interruption: give the customer at least 4 business days' notice of any planned interruption							✓
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Table 14: Jurisdictional comparison – Life support equipment (distributor)

	WA	SA	VI C	NSW	ACT	QLD	TAS
	Code 7.7(2)	ERC 1.11.1	ED C 5.6	N/A	CPC 10.1	EIC A9.3 ¹	N/A
Where a distributor has been informed that a person residing at a customer's supply address requires life support equipment, the distributor must:							
• register : register the customer's supply address as a life support equipment address	✓	✓	✓		✓		
• planned interruptions : give the customer written notice of any planned interruptions to supply at the customer's supply address (to be counted from the date of receipt of the notice):	✓	✓	✓		✓	✓	
– 3 days	✓						
– 4 business days		✓	✓		✓		
• contact number : emergency telephone contact number		✓	✓		✓	✓	
• contingency plan : advice to assist the customer to prepare a plan of action in case an unplanned interruption should occur			✓		✓	✓	

¹ Standard Customer Connection Contracts only.

Most codes require a customer to inform a retailer or distributor if the person requiring life support equipment has vacated the supply address or no longer requires the equipment.

12 Part 8 – Reconnection

Part 8 of the Code relates to the reconnection of electricity supply. It requires a retailer and distributor to reconnect a customer's electricity supply if prescribed conditions have been fulfilled. In addition, it specifies the timeframes within which the reconnection must occur.

12.1 Amendments as a result of the last Code review

A new clause was inserted which requires Western Power to create and maintain a priority restoration register. The register aids the establishment of priority reconnection in the event of unplanned interruptions. That is, in case of an unplanned interruption Western Power will endeavour to first restore supply to customers included on the register. Under the new clause, the register must comply with any criteria determined by the Minister for Energy.

12.2 Clause 8.1 – Reconnection by retailer

Clause 8.1 of the Code specifies the circumstances under which a retailer must arrange for the reconnection of electricity supply to a customer's supply address. It also stipulates the timeframes within which a retailer must forward a customer's request for reconnection to the relevant distributor.

12.2.1 Jurisdictional Comparison

Most codes require supply to be reconnected once a customer has remedied the grounds for disconnection.

Notable differences between the obligation to reconnect in the Code and the obligation in other jurisdictions include:

- under the SA, Vic. and Qld codes and the proposed NECF, a customer's right to reconnection is subject to the customer remedying the breach within 10 business days of the date of disconnection;³⁶
- under the SA, Vic. and Tas. codes and regulations and the proposed NECF, the obligation to reconnect³⁷ the supply address is imposed upon the retailer – not the distributor.³⁸ In fact, the Energy Retail Code (Vic.) specifically provides that the obligation of a retailer to reconnect a customer is absolute: *"If reconnection does not occur by the relevant time, it is not sufficient to discharge the retailer's obligation that the retailer may have used best endeavours to procure the relevant distributor to reconnect ..."*.

The NECF does not specify the timeframe for reconnection by the retailer, rather it requires that retailers make appropriate arrangements with the distributor to ensure reconnection occurs as soon as possible.

Further, timeframes for reconnection differ as can be observed in the table below.

³⁶ Refer to clause 10.1 of the Energy Retail Code (SA), clause 15.1 of the Energy Retail Code (Vic.) and clause 4.19 of the Electricity Industry Code (Qld).

³⁷ Although the Electricity Distribution Codes of SA and Vic. also place an obligation to reconnect on the distributor, the same obligation is placed upon the retailer. This differs from the WA Code which only requires a retailer to forward the request for reconnection to the distributor.

³⁸ Refer to clause 10.2, 10.4 and 10.6 of the Energy Retail Code (SA); clause 15.2(b) of the Energy Retail Code (Vic.); clause 25 of the *Electricity Supply Industry (Tariff Customers) Regulations 2008* (Tas.).

Table 15: Jurisdictional comparison – Timeframes for reconnection by retailer

	WA Code 8.1	SA ERC 10	VIC ERC 15.2	NSW ES(G)R Sch 2 13(3)	ACT N/A	TAS ESI (TC)R 25
Same business day , if the request is received:						
• before 3pm on a business day	✓		✓			
• after 3pm but before 9pm on a business day + customer pays any applicable additional after hours reconnection charge			✓			
• before 4pm on a business day (if practicable)						✓
• before 4pm on a business day in metropolitan area (only reasonable endeavours for regional area)		✓				
• after 4pm but before 9pm on a business day + customer pays any applicable additional after hours reconnection charge + customer resides in metropolitan area (only reasonable endeavours for regional area)		✓				
Next business day , if the request is received:						
• after 3pm on a business day	✓					
• after 3pm but before 9pm on a business day + customer fails to pay any applicable additional after hours reconnection charge			✓			
• after 4pm on a business day						✓
• after 4pm but before 9pm on a business day + customer fails to pay any applicable additional after hours reconnection charge		✓				
• after 9pm on a business day		✓	✓			
• on a Saturday, Sunday or public holiday	✓	✓	✓			
Promptly forward request for reconnection to distributor				✓		

12.2.2 Recommendation

The ECCC notes that the timeframe, in some other jurisdictions, of 10 business days for remedying a breach, appears unduly short. For customers on standard form contracts, the timeframe also appears redundant as these customers have a right to supply under the *Electricity Industry (Customer Contracts) Regulations 2005*.³⁹ That is, even if a customer fails to remedy a breach within 10 business days, these regulations require Synergy and Horizon Power to offer to supply electricity under the same contractual arrangements as applied before the breach occurred unless the breach relates to payment of an amount owed to Synergy or Horizon Power and the customer has not entered an arrangement to pay the amount owed.⁴⁰ The ECCC therefore recommends that no such condition be included in the Code.

The ECCC has made a recommendation regarding the improved capture and provision of data regarding reconnection timeframes in Part 12.

12.3 Clause 8.2 – Reconnection by distributor

Clause 8.2 of the Code requires a distributor to reconnect electricity supply to a customer's supply address upon request by a retailer. It further stipulates the timeframes within which a distributor must reconnect a supply address.

³⁹ Refer to regulation 40 of the *Electricity Industry (Customer Contracts) Regulations 2005*.

⁴⁰ Refer to regulation 40(3) of the *Electricity Industry (Customer Contracts) Regulations 2005*.

12.3.1 Jurisdictional comparison

The SA and Vic. Electricity Distribution Codes, the Qld code and the proposed NECF prescribe the timeframes within which a distributor must reconnect a customer's supply address. Refer to the table below for a jurisdictional overview.

Table 16: Jurisdictional comparison – Time frames for reconnection by distributor

	WA Code 8.2	SA EDC 1.10	VIC EDC 13	QLD EIC 4.19.1 & 2.5.5	NECF
As soon as practical and within one business day					✓
Same business day , if the request is received:					
<ul style="list-style-type: none"> before 12 noon on a business day (prescribed feeders/locations) 				✓	
<ul style="list-style-type: none"> before 3pm on a business day by retailer or distributor 			✓		
<ul style="list-style-type: none"> before 4pm on a business day by retailer (only best endeavours for regional area) 		✓			
<ul style="list-style-type: none"> before 5pm on a business day by distributor (only best endeavours for regional area) 		✓			
<ul style="list-style-type: none"> by retailer or distributor after 3pm but before 9pm on a business day + customer pays any applicable additional after hours reconnection charge 			✓		
<ul style="list-style-type: none"> by retailer after 4pm but before 9pm on a business day + customer pays any applicable additional after hours reconnection charge + customer resides in metropolitan area (only reasonable endeavours for regional area) 		✓			
<ul style="list-style-type: none"> by distributor after 5pm but before 10pm on a business day + customer pays any applicable additional after hours reconnection charge + customer resides in metropolitan area (only reasonable endeavours for regional area) 		✓			
Next business day , if the request is received:					
<ul style="list-style-type: none"> after 12 noon on a business day (prescribed feeders/locations) 				✓	
<ul style="list-style-type: none"> before 3pm on a business day by distributor + supply address in metropolitan area 	✓				
<ul style="list-style-type: none"> after 3pm but before 9pm on a business day + customer fails to pay any applicable additional after hours reconnection charge 			✓		
<ul style="list-style-type: none"> by retailer after 4pm but before 9pm on a business day + customer fails to pay any applicable additional after hours reconnection charge 		✓			
<ul style="list-style-type: none"> by distributor after 5pm but before 10pm on a business day + customer fails to pay any applicable additional after hours reconnection charge 		✓			
<ul style="list-style-type: none"> after 9pm on a business day by retailer 		✓			
<ul style="list-style-type: none"> after 9pm on a business day by distributor 			✓		
<ul style="list-style-type: none"> after 10pm on a business day by distributor 		✓			
<ul style="list-style-type: none"> on a Saturday, Sunday or public holiday 		✓	✓	✓	

Within 2 business days , if the request is received after 3pm on a business day or on a Saturday, Sunday or public holiday + supply address in metropolitan area	✓				
Within 5 business days , if the request is received prior to 3pm on a business day + supply address in regional area	✓				
Within 6 business days , if the request is received after 3pm on a business day + supply address in regional area	✓				
Within 10 business days of the customer's request to its retailer (prescribed feeders/locations)				✓	

Under the SA and Vic. codes and the NECF, the obligation to reconnect also arises if the request for reconnection was made by the customer (not the retailer). In particular, where a distributor has disconnected a customer's electricity supply without prior request by a retailer (e.g. illegal use or health and safety reasons), the distributor must reconnect the customer's supply if the customer has remedied the breach which gave rise to the disconnection.

12.3.2 Recommendation

The ECCC notes that the timeframes prescribed in clause 8.2 of the Code are considerably longer than those prescribed in the SA and Vic. Electricity Distribution Codes.

However, the ECCC does not recommend any amendment to these timeframes at this time.

The ECCC has made a recommendation regarding the improved capture and provision of data regarding reconnection timeframes in Part 12.

13 Part 9 – Pre-payment meters in remote communities

Part 9 of the Code regulates the conduct of retailers who have installed or intend to install pre-payment meters (**PPM**) in prescribed remote communities and town reserves.

Part 9 was included in recognition of the fact that various Parts of the Code would not be applicable in a PPM situation as these Parts are based upon the assumption that customers pay for their electricity after consumption has occurred.

13.1 Background

The bulk of the current Code is based on the premise that customers pay for electricity after consumption, as has traditionally been the case in Western Australia.

However, electricity PPMs have been, and continue to be, installed by Horizon Power as part of the Aboriginal and Remote Communities Power Supply Program (ARCPSP) and the Town Reserve Regularisation Program (TRRP).

Unlike standard 'credit' meters, PPMs require customers to pay for electricity before it can be consumed. The prepayment of electricity means that certain sections of the Code, including, for example, requirements relating to billing, are not be relevant for PPM customers.

Consequently, Part 9 of the Code exempts a retailer from having to comply with certain parts of the Code with respect to PPM customers. However, Part 9 currently applies only to PPM customers in a remote or town reserve community in which the ARCPSP or TRRP has been implemented. Although the Code does not explicitly preclude retailers from installing PPMs outside of ARCPSP and TRRP communities, without the exemptions from certain sections of the Code, it would not be practicable or possible for retailers to comply with the obligations imposed by the Code.

In practice therefore, it has been argued that the effect of Part 9 of the Code is to prevent retailers from offering PPMs to electricity customers that do not reside in an ARCPSP or TRRP town or communities.

13.2 Amendments as a result of the last Code review

Any references to 'installation' of PPMs were replaced with references to the 'operation' of PPMs, in recognition of the fact that some PPM can be operated as a credit meter.

Clause 9.4(2) was amended to clarify when information on the conditions of supply should be provided to a PPM customer.

A number of amendments were made consistent with requirements in the South Australian and ACT Prepayment Meter System Codes. Clause 9.4(1) was amended by including a qualification that a customer's consumption information must be provided for the previous two years '*or since the commencement of the pre-payment contract (whichever is the shorter)*'. A new clause was inserted which requires a retailer to remove and replace a PPM at a customer's supply address at no cost if a person residing at the supply address depends on life support equipment. In addition, the customer should be provided with information about the contract options available to the customer. Finally, two new clauses were inserted which addressed the issue of over and undercharging.

The definition of 'recharge facility' was amended by inserting the words 'including a disposable PPM card' in recognition of the fact that not all PPM cards are rechargeable.

Former clause 9.11, which required a retailer to keep records on PPM matters, was transferred to Part 13 as this Part deals with all matters relating to the keeping of records by retailers.

Finally, a recommendation was made for the Authority to commission independent research (including a cost benefit analysis and a regulatory impact statement) regarding the current and possible future operation and regulation of PPMs in WA.

13.3 Jurisdictional Comparison

Tas., SA and the ACT have developed PPM codes to govern the use of PPMs in these jurisdictions.

In the Northern Territory (NT), the ECCC understands from AMPY that over 7000 PPMs have been installed, mainly in Aboriginal communities. Many of these PPMs have been designed to include a facility for the pre-payment of water as well as electricity. The ECCC understands that the use of PPMs is accompanied by a hardship assistance package, whereby PPM cards are distributed by welfare agencies.

The ECCC understands that in NSW a study was commissioned into PPMs in 2003, but no further action has been taken.⁴¹

In Vic., it is a condition of each retailer's electricity licence that the licensee does not implement a PPM meter scheme without the prior approval of the ESC. However, to date the ESC has not received an application for approval from any licensee. At the same time, the Minister has reserved the right to make an order regarding PPMs under section 40E of the *Electricity Industry Act 2000* (Vic.).⁴²

In Qld, PPMs have been used in some remote communities for a number of years. The ECCC understands that there have been some trials in town areas, however, PPM usage has not expanded. The Qld Department of Energy has advised that the use of PPMs in Qld is currently unregulated.⁴³

The NECF proposes that the use of PPM systems for small customers will be regulated.

The Rules will contain (in a separate schedule) the minimum terms and conditions of market retail contracts pertaining to prepayment meter customers.

The Rules will cover the following matters in relation to the use of prepayment meter systems for small customers:

- PPM meter contracts:
 - specific disclosure requirements to obtain a small customer's explicit informed consent to enter into a PPM contract (this is a specific form of market retail contract);

⁴¹ Ministry of Energy and Utilities (NSW), *Proposed Market Operation Rule on Prepayment Metering*, February 2003.

⁴² Section 40E of the *Electricity Industry Act 2000* (Vic.) provides that the Governor in Council may by Order published in the Government Gazette prohibit or regulate the implementation by a licensee of a PPM scheme in respect of the licensee's small retail customers.

⁴³ Although the Electricity Industry Code (Qld) does address the issue of prepayment metering (refer e.g. Chapter 9 – Metering), it does not regulate the circumstances under which prepayment meters may be installed and operated.

- prohibition on entering into a PPM contract with a customer with a life support system;
 - additional requirements to provide information to a small customer who enters into a PPM meter contract (for example, the operating instructions for the meter, information relating to the payment facilities available, credit retrieval and emergency credit);
 - minimum terms and conditions of a PPM contract (for example, a mandatory trial period, provisions relating to the fees and charges that may be recovered through the prepayment meter system);
 - variation of PPM meter tariffs, undercharging, overcharging and recovery for illegal energy use; and
 - termination of the PPM meter contract by the customer, including a request to revert to normal metering or as a result of a transfer to another retailer.
- PPM systems requirements:
 - specific requirements for the prepayment meter itself, including in relation to the information displayed, when the meter will disconnect and reconnect, emergency credit, provision of energy concessions, access to meter data; and
 - requirements in relation to payment facilities.
 - Other matters:
 - a requirement for the retailer to establish a specific telephone service for enquiries, complaints and emergencies relating to PPM systems;
 - hardship and payment difficulties – the PPM system must identify to the retailer instances of self disconnection, where the meter is technically capable, and the retailer must take action to revert a customer to standard metering in certain circumstances; and
 - retention of records in relation to the above.

The ECCC understands that the NECF model is based on the ACT PPM Code.

13.4 Recommendation

It is anticipated that the Authority will receive the independent research report from the Allen Consulting Group in February 2009.

The research includes a cost-benefit analysis and regulatory impact statement regarding the current and possible future use of PPM in WA.

The Authority is currently considering the findings of the research and plans to release the report and, if appropriate, propose amendments to the Code, at some point in early to mid-2009.

Therefore, the ECCC has not made any recommendations, beyond the correction of the typographical error below, regarding Part 9 at this time.

Recommendation 15

Amend clause 9.9(1) to place the word "customer" between the words "meter" and "vacates".

14 Part 10 – Information and Communication

Part 10 of the Code relates to the provision of information by retailers and distributors to customers. It requires retailers and distributors to provide prescribed information to customers and details the conditions under which the information must be given (for example, only upon request, free of charge, etc).

14.1 Amendments as a result of the last Code review

Former clause 10.1(1), which required a retailer to publish tariff variations in the Government Gazette or local newspapers, was deleted as a retailer is already required to inform each customer of any variation in its tariffs. As a consequence of deletion of former clause 10.1(1), former clause 10.1(5) was also deleted.

Consistent with Eastern States' codes, a customer's right to receive historical billing data free of charge was limited to once a year rather than twice a year.

The requirement on a retailer and a distributor to inform a customer of any material amendment to the Code, was deleted in recognition of the fact that some distributors would not be able to comply with this clause and the costs involved in notifying all customers may outweigh any benefits.

Finally, the requirement to include the retailer's telephone number for TTY services on bills, charters, reminder and disconnection notices was extended to also include reference to the telephone number for multi-lingual services.

14.2 Correction of typographical error

Recommendation 16

In clause 10.7(2)(a) insert the word "a" between the words "twice" and "year".

14.3 Clarification of wording in clause 10.7(3)

The ECCC understands some industry participants were unsure of the deadline for the distributor to respond where the distributor required payment. That is, whether it was 10 business days from the date of receipt of the request or the date of payment made.

To ensure clarity the ECCC recommends a minor amendment to the wording of this clause.

Recommendation 17

3) A **distributor** must give a **customer** the consumption data requested under subclause (1) within 10 **business days** of–

(a) the **date of receipt** of the request; or

(b) if payment is required (and is requested by the **distributor** within 2 business days of the request) payment for the **distributor's** reasonable charge for providing the data.

14.4 Information regarding the availability of service standard payments.

The ECCC understands that, at the time the Code was drafted, Western Power (prior to disaggregation) did not have the technology to ensure that service standard payments could be paid automatically to customers as is the case in most other jurisdictions.

The *Electricity Industry (Network Quality and Reliability of Supply) Code 2005* requires that the distributor provide information to eligible customers in writing on an annual basis. Western Power has not yet been able to comply with this requirement due to the fact that the distributor does not have a direct relationship with account holders. Whilst Western Power is exploring options for ensuring that customers are made aware of eligibility, concerns exist regarding the level of customer awareness of service standard payments generally.

There is currently no requirement for retailers to provide information to customers regarding the availability of service standard payments.

Given the absence of an automated payment system and the concerns related to customer awareness of availability of service standard payments the ECCC recommends that a new obligation be placed on retailers to inform customers at least annually of the availability of service standard payments from distributors and retailers.

The ECCC considered the issue of cost recovery in terms of a distributor compensating a retailer for the costs incurred by a retailer in notifying a customer of a distributor's obligation to pay service standard payments. However, the ERA secretariat advised that it received legal advice that it is arguable that the Authority has no heads of power to regulate this matter. Given this legal advice, the fact that some members of the ECCC felt these matters were best dealt with through the contractual arrangements between the retailer and distributor, and the fact that the ECCC has recommended the review in recommendation 8, the majority of the ECCC members determined that there be no further recommendation regarding the issue.

Recommendation 18

A new clause be added to Part 10 of the Code to require retailers to inform customers at least annually regarding the availability of service standard payments from both retailers and distributors.

14.5 Clause 10.11(2) – Special Information Needs

Clause 10.11(2) requires the retailer, and where appropriate, a distributor to provide a telephone number for TTY services and a telephone number for independent multi-lingual services on the bill (and bill related information), reminder notice, disconnection warning notice and customer service charter.

14.5.1 Recommendation

In order to ensure consistency across the board, the ECCC proposes the words “interpreter services” and the national interpreter symbol (see below) be added to this requirement and a new definition be added to clause 1.5. In addition, the ECCC recommends that the requirement for this information to be added to the customer

service charter be removed if the requirement to produce a customer service charter is removed from the Code.

Recommendation 19

Add a new sub-clause 10.11 (2) to read:

(c) the National Interpreter Symbol with the words “Interpreter Services”,

And

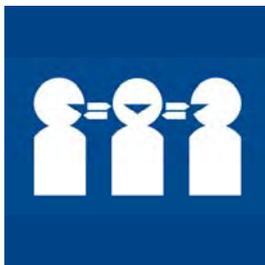
Remove clause 10.11(2)(d)

And

Add a new definition to clause 1.5:

National Interpreter Symbol means the national public information symbol “Interpreter Symbol” (with text) developed by Victoria in partnership with the Commonwealth, state and territory governments in accordance with Australian Standard 2342.

Diagram: National Interpreter Symbol



15 Part 11 – Customer Service Charter

Part 11 of the Code requires retailers and distributors to produce a customer service charter. The obligation to produce a customer service charter aims to promote innovation and differentiation among retailers, and educate and empower customers on their rights and obligations.

15.1 Amendments as a result of the last Code review

The requirement to include information on the ‘availability of different types of meters’ in a retailer’s and distributor’s charter was deleted as it was considered too prescriptive.

Former clause 11.2(2), which required the charter to be provided to all contestable customers upon introduction of contestability, was deleted as the clause had become redundant.

Upon request by a customer, a charter must be dispatched, rather than given, within 2 business days of the request. The amendment recognises that postal delays may occur in regional and remote areas.

15.2 Clause 11.1(1) – Obligation to produce and publish charter

Clause 11.1(1) requires retailers and distributors to produce and publish a customer service charter.

15.2.1 Jurisdictional Comparison

The SA, Vic., Qld and Tas. codes require retailers and distributors to produce a customer service charter.⁴⁴

Charters prepared by retailers and distributors operating in Tas. are also subject to regulatory approval.⁴⁵

In addition to electricity companies, gas and water companies operating in WA are also obliged to produce a charter. Charters relating to the provision of water services are currently subject to regulatory approval.

The NECF does not make mention of customer service charters.

15.2.2 Recommendation

Whilst the ECCC recognises the value of the customer service charter to the customer, the ECCC does not believe that requiring retailers or distributors to produce a customer service charter represents the most effective method of ensuring customers have access to information. Therefore, the ECCC recommends removal of the requirement for retailers to produce a customer service charter.

⁴⁴ The Vic. codes do not contain an express obligation to prepare a charter. However, they do require retailers and distributors to give copies of their charters to their customers. To comply with this requirement, retailers and distributors will have to prepare a charter. Therefore, indirectly, the Vic. codes also require the development of charters by retailers and distributors.

⁴⁵ Refer to clause 8.3.1(a)(1) and 9.6(a) of the Tas. Electricity Code.

The ECCC notes that if the Authority accepts this recommendation, the Authority will be required to amend the standard retails licence to remove the requirement for the licensee to prepare and review the charter.

Recommendation 20

Delete Part 11.

16 Part 12 – Complaints & Dispute Resolution

Part 12 of the Code requires retailers, distributors and marketers to develop, maintain and implement internal processes for handling complaints and resolving disputes. Part 12 prescribes the matters that must be addressed by any complaints handling processes and requires retailers, distributors and marketers to keep records on any complaints received.

16.1 Amendments as a result of the last Code review

The requirement to establish a complaints handling process consistent with 'AS 4269:1995' was amended to require compliance with 'AS ISO 10002-2006' as AS ISO 10002 – 2006 superseded the Australian Standard 4269:1995 in 2006.

An obligation was added to provide a customer with the telephone number of the Energy Ombudsman when advising the customer that they may raise their complaint with an external complaints resolution body.

Former clause 12.1 was amended to remove the obligation on a marketer to establish a complaints handling process 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.

The definition of 'complaint' was amended to be consistent with the definition proposed by the Steering Committee on National Regulatory Reporting Requirements in its 2006 report *National Energy Retail Performance Indicators* (SCONRRR 2006 Report).

The requirement on a retailer and distributor to establish an internal guideline for distinguishing customer queries from customer complaints was deleted and a new requirement was included which requires retailers (only) to comply with any guideline developed by the Authority relating to this matter. The Authority released the Customer Complaints Guideline in November 2008.

Those aspects of former clause 12.5 (record keeping) that did not overlap with the record keeping requirements contained in Part 13 were transferred to Part 13. Any former clause 12.5 requirements that did overlap were deleted.

16.2 Clause 12.1 – Obligation to establish complaints handling process

Clause 12.1 requires retailers, distributors and marketers to establish an internal complaints handling process that complies with Australian Standard ISO 10002-2006 (Complaints Handling). Further, it prescribes the matters that must be addressed by those processes.

16.2.1 Jurisdictional comparison

Most States require a retailer and distributor to establish internal complaints handling processes. Refer to the table below for a jurisdictional overview.

Table 17: Jurisdictional comparison – Complaints handling process

	WA	SA	VIC	NSW	ACT	QLD	TAS	NE CF
	Code 12.1	ERC 3.2 EDC 1.3.2	ERC 28 EDC 10	N/A	CPC 6	EIC 4.6.3	TEC 8.4& 9.10	
A retailer must handle a complaint made by a small customer in accordance with the relevant jurisdictional dispute resolution process.								✓
Subject to approval by regulator		✓						
Consistent with AS 4269:1995			✓ ¹		✓		✓	
Consistent with AS ISO 10002-2006	✓					✓		
Consistent with Benchmark for Industry Based Customer Dispute Resolution Schemes published by the Department of Industry, Tourism and Resources (Cth)			✓ ¹					
CONTENTS								
• how complaints must be lodged by customers	✓	✓						
• how complaints will be handled/resolved, including—	✓	✓						
– a right of the customer to have its complaint considered by a senior employee	✓				✓			
– the information that will be provided to a customer:								
• in its initial response to the customer, the utility's complaint handling practices and procedures					✓			
• advise the customer that the customer has the right to have the complaint considered by a senior employee	✓		✓			✓	✓	
• advise customer of outcome of review of complaint	✓							
• advise customer that if, after raising the complaint to a higher level the customer is still not satisfied with the response, the customer has a right to refer the complaint to the Ombudsman	✓		✓		✓	✓	✓	
• response times for complaints	✓	✓						
• method of response	✓	✓						
• be available at no cost to customers	✓							

<ul style="list-style-type: none"> provide for referral to external dispute resolution processes if complaint not resolved satisfactorily 		✓						
--	--	---	--	--	--	--	--	--

¹ Retailers and distributors may elect to comply with either one of these two standards.

16.3 Clauses 12.3 and 12.4 – Information provision & Obligation to refer complaint

Clause 12.3 of the Code requires a retailer, distributor and marketer to give a customer on request, at no charge, information that will assist the customer in utilising the respective complaints handling processes.

Clause 12.4 of the Code requires a retailer, distributor and marketer, when receiving a complaint that does not relate to its functions, to refer the complaint to the appropriate entity and inform the customer of the referral.

16.3.1 Jurisdictional comparison

Although most codes require a retailer and distributor to inform a customer of their complaints handling processes when responding to the customer’s complaint,⁴⁶ they do not contain a general obligation to provide this information upon request.

Similarly, none of the Eastern States’ codes requires a retailer, distributor or marketer to refer a complaint to the appropriate entity if the complaint does not relate to its functions.

16.4 Provision of records to the Energy Ombudsman

As a result of the last review of the Code, the Authority amended the Code to remove the requirement for a marketer to keep a record of complaints and provide the complaint to the Energy Ombudsman upon request.

As a result of the development of the new GMCC, the Energy Ombudsman has alerted the Authority regarding difficulties its office may experience in retrieving information from third parties (retailers). Therefore, the Authority proposed an inclusion of a clause in the GMCC to allow for the Authority to receive this information directly.

The ECCC proposes the following amendment to the Code to ensure consistency.

The ECCC recommends the clause be added as a new clause to Part 2 to ensure consistency with the GMCC.

⁴⁶ Refer to table 12.1 above.

Recommendation 21

Add a new clause 2.11 which states::

Marketer complaints

(1) A **marketer** must —

(a) keep a record of each **complaint** made by a **customer**, or person contacted for the purposes of **marketing**, about the **marketing** carried out by or on behalf of the **marketer**,

(b) on request by the **electricity ombudsman** in relation to a particular **complaint**, give to the **electricity ombudsman** all information that the **marketer** has relating to the **complaint**.

(2) A record or other information that a **marketer** is required by this Code to keep must be kept for at least 2 years after the last time the person to whom the information relates was contacted by or on behalf of the **marketer**.

17 Part 13 – Record Keeping

Part 13 of the Code requires retailers, distributors and marketers to keep records of prescribed information. The information:

- assists the Authority in monitoring a retailer's and distributor's performance;
- illustrates improvements and/or drops in a retailer's and distributor's performance over time; and
- if published, allows (contestable) customers to compare their retailer's performance with that of other retailers.

17.1 Background

17.1.1 Utility Regulators Forum

In March 2002, the URF published a report titled "National Regulatory Reporting for Electricity Distribution and Retailing Business" (**March 2002 Report**).⁴⁷ The March 2002 Report sets out a national regulatory reporting framework for:

- service performance of retailers;
- service performance of distributors; and
- financial performance of distributors.

The March 2002 Report was published in response to criticism of the, previously, differing regulatory reporting requirements imposed by State regulators.

Compliance with the framework included in the March 2002 Report is not mandatory. That is, jurisdictional regulators have the discretion to determine whether they adopt the framework wholly, in a modified format, or not at all. Although compliance is discretionary, most regulators have largely adopted the framework.

Distributors

No amendments have been proposed to the regulatory reporting framework, as it relates to distribution activities, since its development.

Retailers

In relation to retail activities, the URF Steering Committee on National Regulatory Reporting Requirements released a Discussion Paper⁴⁸ in March 2006 (**SCONRRR Discussion Paper**) on refining the national set of performance indicators for energy retailers.

The SCONRRR Discussion Paper outlined issues arising from the implementation of the national reporting framework and proposed the following improvements:

- revise some of the data definitions employed for the electricity retail sector;

⁴⁷ A copy of the report can be obtained from <http://www.accc.gov.au/content/index.phtml/itemId/332190/fromItemId/3894>

⁴⁸ Utility Regulators Forum - Steering Committee on National Regulatory Reporting Requirements - Retail Working Group, *National Energy Retail Performance Indicators, Discussion Paper*, March 2006. A copy of the report can be obtained from <http://www.escosa.sa.gov.au/site/page.cfm?u=27&c=1669>

- expand the performance indicators to include the gas retail sector;
- add additional indicators for both electricity and gas retail, which more comprehensively monitor the assistance provided to customers experiencing payment difficulties; and
- achieve greater consistency in complaints and call centre reporting.⁴⁹

Following consideration of submissions received during the public consultation period, the URF published a Final Paper titled 'National Energy Retail Performance Indicators' (**May 2007 Report**).

In November 2006, the URF endorsed a series of recommendations published in the May 2007 Report and referred the report to the AER. A copy of the May 2007 Report is available on the Authority's website on the Electricity Licensing Notices page.

17.2 Amendments as a result of the last Code review

A general recommendation was made to amend Part 13, where possible, consistent with the national performance indicators included in the SCORRRR March 2002 and May 2007 Reports.

Consistent with this recommendation, a new requirement was included for retailers and distributors to keep data on percentages, and segregate data relating to residential and non-residential customers. The performance indicator relating to number of customers assessed as experiencing financial hardship was deleted, while new performance indicators on disconnections and reconnections were added. Also, the wording of a number of clauses was amended to provide consistency with SCORRRR definitions and obligations.

In relation to complaints, the number of retail and distribution complaint categories was reduced and data relating to action and time taken to conclude a complaint no longer formed the basis of a performance indicator. New performance indicators were included on direct debit terminations and call centre performance.

A number of amendments were made in addition to those related to the SCORRRR reports. For example, a new performance indicator was included requiring retailers to keep data on the average amount of service standard payments made. Retailers were also required to segregate data on their total number of residential and business accounts into contestable- and non-contestable customers.

17.2.1 Record keeping obligations in other jurisdictions

Most States require retailers and distributors to report on the performance indicators as specified in the March 2002 Report. However, a number of States also require retailers and distributors to report on indicators over and above those included in the March 2002 Report. For example:

- **South Australia:** Energy Industry Guideline No. 1, Electricity Regulatory Information Requirements, Distribution.⁵⁰
- **South Australia:** Energy Industry Guideline No. 2, Energy Retail Code, Retailer.⁵¹

⁴⁹ However, the November 2006 Report notes that: "In the current climate of national energy reform it was decided to limit the scope of the review of performance indicators as much as possible."

⁵⁰ A copy of the guideline can be obtained from <http://www.escosa.sa.gov.au/site/page.cfm?u=55#e72>

⁵¹ *Id.*

- **Victoria:** Information Specification (Service Performance) for Victorian Electricity Distributors (effective 1 Jan 06).⁵²
- **Victoria:** Information Specification (Service Performance) for Victorian Energy Retailers.⁵³
- **Tasmania:** Electricity Supply Industry Performance and Information Reporting Guideline.⁵⁴

The NECF does not propose this type of provision, however, it is understood that the NECF will include a requirement that the AER develop performance reporting guidelines and collect information on a range of matters including those relating to:

- market overview;
- customer service and complaints;
- affordability;
- auditing;
- access; and
- bill information.

17.3 Reporting changes since the last review

The Authority produces retail and distribution performance reporting handbooks which provide a compilation of the performance reporting requirements for licensees. These handbooks are amended, as required, to include new or altered performance reporting requirements in between Code reviews. Since the last review, there have been some minor changes made to both of these handbooks, which should now be reflected in the Code.

17.3.1 Number of days taken to resolve complaints

Clause 13.3(d), 13.7(d), 13.10(d) and 13.13(d) require licensees to keep records regarding the time taken for the appropriate procedures for dealing with the complaint to be concluded. Whilst it is useful for licensees to collect this information, as it provides an indication of the spectrum of time taken, it is difficult to use as a comparative indicator. Therefore, the Authority has added a provision to the reporting handbooks to require licensees to report on the percentage of complaints resolved within 15 business days.

The ECCC recommends amendment to the Code to reflect this change. There will be no additional compliance requirement as a result of this amendment.

⁵² A copy of the guideline can be obtained from <http://www.esc.vic.gov.au/public/Energy/Regulation+and+Compliance/Codes+and+Guidelines/Information+Specifications+For+Service+Performance/Information+Specifications+for+Service+Performance.htm>

⁵³ *Id.*

⁵⁴ A copy of the guideline can be obtained from <http://www.economicregulator.tas.gov.au/domino/otter.nsf/8f46477f11c891c7ca256c4b001b41f2/586119af6594ed01ca2571f4000f2596?OpenDocument>

Recommendation 22

Insert the following new clauses:

13.3(1)(e) percentage of **complaints** from **residential customers** resolved within 15 **business days**.

13.3(1)(f) percentage of **complaints** from **non-residential customers** resolved within 15 **business days**.

13.7(e) percentage of **complaints** from **pre-payment meter customers**, other than those **complaints** specified in clause 13.13(a) concluded within 15 **business days**.

13.10(1)(e) percentage of **customer complaints** concluded within 15 **business days**.

13.13(d) percentage of **complaints** relating to the installation and operation of a **pre-payment meter** at a **customer's supply address** concluded within 15 **business days**.

17.3.2 Separation of metropolitan and regional data related to street lights

Clause 13.9 of the Code requires a distributor to keep records related to street lights and the repair of these lights. Currently the Code requires total numbers to be reported and does not distinguish between metropolitan and regional areas. The Authority has amended the handbook to require data to be reported according to whether it relates to the metropolitan area (as defined in clause 1.5) or a regional area.

Prior to the last review of the Code, the Code required distributors to report on the number of street lights not repaired within 5 days in the metropolitan area and not within 9 days in the regional area. This provision was amended to the more generic requirement to report on street lights not repaired within the agreed timeframe. However, the ECCC understands that this presents a difficulty with data collection and therefore, recommends reversion to the previous requirement.

The ECCC recommends amendment to the Code to reflect these changes.

Recommendation 23

Amend clause 13.9(1) to read:

A **distributor** must keep a record of –

(a) Total number of street lights reported faulty each month in the **metropolitan area**.

(b) Total number of street lights reported faulty each month in the regional area.

(c) Total number of street lights not repaired within 5 days in the **metropolitan area**.

(d) Total number of street lights not repaired within 9 days in the regional area.

(e) Total number of street lights in the **metropolitan area**.

(f) Total number of street lights in the regional area .

(g) Average number of days to repair faulty street lights in the **metropolitan area**.

(h) Average number of days to repair faulty street lights in the regional area.

17.4 Reconnection Timeframes

The ECCC is aware that the Authority has some concerns regarding the failure of distributors to reconnect within the prescribed timeframe. Whilst distributors are required to report on connections within the prescribed timeframe, this figure only includes reconnections that require the establishment of a physical connection at the network end of the connection from the distribution network to the customers premises. The ECCC believes further information should be publicly available regarding this issue. Therefore, the ECCC recommends the following amendments to the Code.

Recommendation 24

Insert the following new clauses for retailers:

The total number of residential customers who the **retailer** requested to be reconnected, other than pursuant to clause 8.1(1)(b); and clause 8.1(1)(c), who were not reconnected ***within the prescribed timeframe;***

The total number of non-residential customers who the **retailer** requested to be reconnected, other than pursuant to clause 8.1(1)(b); and clause 8.1(1)(c), who were not reconnected ***within the prescribed timeframe;***

Insert the following new clause for distributors:

A **distributor** must keep a record of –

- (a) the total number of **reconnections** provided other than:
 - (i) those recorded in clause 13.8(1);
 - (ii) pursuant to clause 8.1(1)(b); and
 - (iii) pursuant to clause 8.1(1)(c),
- (b) the total number of reconnections in clause 13.8(2)(a) who were not reconnected ***within the prescribed timeframe.***

18 Part 14 – Service Standard Payments

Part 14 of the Code requires retailers and distributors to pay a prescribed amount of money to their customers when a service standard has been breached (**service standard payment**). The ECCC understands that the payments are not considered compensation, rather, the payment is considered an incentive for retailers and distributors to change behaviour.

In addition to the payments prescribed in the Code, service standard payments have also been included in the *Electricity Industry (Network Quality and Reliability of Supply) Code 2005*. These include:

- \$20 for failure to give notice of a planned interruption; and
- \$80 for failure to supply electricity for more than 12 hours

The *Electricity Industry (Network Quality and Reliability of Supply) Code 2005* addresses technical issues relating to the quality and reliability of electricity supply. Therefore, payment for breach of these standards has been addressed within the *Electricity Industry (Network Quality and Reliability of Supply) Code 2005* and not the Code.

18.1 Amendments as a result of the last Code review

Application of the service standard payment scheme was extended to all small use customers regardless of their supplier.

One of the service standard payments (notice for planned interruptions) was deleted in recognition of the fact that the standard mirrored clause 18 of the *Electricity Industry (Network Quality and Reliability of Supply) Code 2005*.

The timeframe for applying for a service standard payment was extended from 2 to 3 months.

Consistent with Eastern States' codes, a proviso was added that payment of a service standard payment does not affect the customer's rights to claim damages or any other remedy.

Former clause 14.9 was redrafted for purposes of simplification, and the requirement that a demand for a service standard payment be made in writing was removed.

18.2 Jurisdictional Comparison

Most Eastern States also provide for payments for breach of quality and reliability standards. These standards are generally included in distribution codes⁵⁵ or general energy customer protection codes.⁵⁶

The NECF proposes that retailers and distributors will be required to comply with service standards or guaranteed service level arrangements. The detail of such

⁵⁵ Refer to clause 6.3 of the Electricity Distribution Code (Vic.) and clause 5.3(d) of Part B of the Electricity Distribution Code (SA).

⁵⁶ Refer to clause 6 of Schedule 1 of the Consumer Protection Code (ACT) and clause 2.5 of the Electricity Industry Code (Qld).

standards and to what extent the responsibility for these standards will remain at a jurisdictional level remains unclear.

Payments relating to the quality and reliability of electricity supply have not been addressed in Chapter 19 as they are not included in the Code.

The table below illustrates the service standard payments prescribed by each State (with the exception of those relating to quality and reliability of supply).

Table 18: Jurisdictional comparison – Service Standard Payments

RETAILER		WA COC	SA ERC	VIC EI Act	NSW ES(G)R	ACT CPC	QLD EIC	TAS N/A
Reconnection of supply within prescribed timeframes	per day	\$50						
	maximum	\$250						
Wrongful disconnection	per day	\$50		\$250			<i>refer distributor</i>	
	maximum	\$250		N/A			<i>refer distributor</i>	
Respond to written enquiry or complaint within prescribed timeframes	one-off	\$20				\$20		
Be on time for appointments	one-off		\$20		\$25			
DISTRIBUTOR		COC	EDC	EDC	ES(G)R	CPC	EIC	N/A
Connect customer's supply within prescribed timeframe	per day		\$50	\$50	\$60	\$60	\$40	
	maximum		\$250	\$250	\$300	\$300	N/A	
Reconnect customer's supply within prescribed timeframe	per day						\$40	
	maximum						N/A	
Wrongful disconnection	per day						N/A	
	maximum						\$100	
Planned interruptions (give notice within prescribed timeframes)	one-off	\$20			\$20	\$50	\$20 (domestic customers) \$50 (business customers)	
Planned interruptions (restore supply within timeframe specified in notice)						\$50		

Respond to written enquiry or complaint within prescribed timeframes	one-off	\$20				\$20		
Be on time for appointments	one-off		\$20	\$20	\$25		\$40	
Repair street lights within prescribed timeframes	one-off		\$20		\$15			
Respond to notification of problem or concern that has potential to cause damage or harm (within prescribed timeframes)	per day					\$60		
	maximum					\$300		

18.3 Clause 14.2 – Facilitating customer reconnections

Under clause 14.2 of the Code, a customer is entitled to a payment of \$50 a day (up to a maximum of \$250) if a retailer fails to arrange reconnection of a customer's supply address within the time frames prescribed in the Code.

If reconnection did not occur on time due to an act or omission by the distributor, the retailer is entitled to compensation from the distributor (refer subclause 14.1(2)).

18.3.1 Jurisdictional comparison

Only the Qld code provides for a service standard payment for failure to reconnect a customer's electricity supply within prescribed timeframes.⁵⁷

Under the Qld code, the amount of the payment is \$40 a day⁵⁸ and liability lies with the distributor (as opposed to the retailer).

Instead of providing service standard payments for failure to "reconnect" a supply address in a timely manner, most codes impose service standard payments for failure to "connect" within prescribed timeframes. The table below illustrates the applicable payments.

Table 19: Jurisdictional comparison – Failure to timely connect supply address

	SA EDC Part B 5.3(b)	VIC EDC 6.2	NSW ES(G)R Sch.3 9	ACT CPC Sch. 1 1	QLD EIC 2.5.4
Per day	\$50	\$50	\$60	\$60	\$40
Maximum	\$250	\$250	\$300	\$300	N/A

⁵⁷ Refer clause 2.5.5 of the Electricity Industry Code (Qld).

⁵⁸ There is no specific maximum attached to the amount of payment a customer is entitled to. However, under clause 2.5.15 of the Electricity Industry Code (Qld), a general cap of \$320 per year applies.

18.3.2 Current Performance in WA

Distributors are currently required to provide data on the number of connections established within the prescribed timeframe. This figure only includes reconnections that require the establishment of a physical connection at the network end of the connection from the distribution network to the customer's premises.

Retailers are not required to provide performance reporting information regarding connection or reconnection timeframes.

The ECCC understands that liability for failure to promptly reconnect a supply address was imposed upon the retailer as, under the WA legislative framework, the customer does not have a direct contractual relationship with its distributor. This differs from the Eastern States where customers generally have connection contracts with their distributor.

Further, no service standard payment was imposed in the Code for failure to connect a supply address within prescribed timeframes as the obligation to connect is not contained within the Code but within the *Electricity Industry (Obligation to Connect) Regulations 2005*. The ECCC understands that the Act does not provide the heads of power to impose service standard payments for failure to meet standards of conduct prescribed in an instrument other than the Code.

The ECCC is concerned regarding the issues associated with failure to reconnect within the prescribed timeframe in WA. Given the essential nature of electricity and the safety implications that can be associated with disconnection the ECCC recommends an increase in the service standard payment daily amount (from \$50 to \$60) and maximum payment (from \$250 to \$300).

Recommendation 25

Amend clause 14.1 to increase the daily amount to \$60 and the maximum to \$300.

18.4 Division 3 – Application for Payment

Clause 14.5 of the Code specifies the circumstances under which a retailer or distributor is not required to make a payment for breach of a service standard. These are:

- the failure by the customer to apply for a payment within 3 months; or
- where events or conditions outside the control of the retailer or distributor caused the retailer or distributor to be liable to make the payment.

18.4.1 Jurisdictional Comparison

Application for payment

Only under the ACT code is receipt of a service standard payment subject to the customer applying for the payment. A customer has 3 months to make an application.

Under the Qld code, a distributor must use its best endeavours to automatically give a rebate to an eligible customer.⁵⁹ The other States either expressly or implicitly

⁵⁹ With the exception of payments for failure to keep an appointment (clause 2.5.7), planned interruptions (clause 2.5.8) and reliability (clause 2.5.9). Under clause 2.5.11(b) and (c), a

require retailers and/or distributors to automatically provide customers with rebates in the event a service standard has been breached. Refer to the tables below for a jurisdictional overview.

Table 20: Jurisdictional comparison – Application for service standard payment (Retail)

	WA Code	SA ERC	VIC EIA	NSW ES(G)R	ACT CPC	QLD N/A
Automatic		✓	✓	✓		
Upon request	14.7(1)(a)				11.2(1)(c)	

Table 21: Jurisdictional comparison – Application for service standard payment (Distribution)

	WA Code	SA EDC	VIC EDC	NSW ES(G)R	ACT CPC	QLD EIC
Automatic		✓	✓	✓		2.5.11(a)
Upon request	14.7(1)(a)				11.2(1)(c)	2.5.11(b) and (c)

Although the Qld code requires a distributor to automatically make a payment, it also provides the customer with the right to apply for a payment if the distributor fails to make the payment automatically.⁶⁰

Events outside of control of retailer and/or distributor

Like the Code, the ACT code excludes a retailer’s and distributor’s liability to the extent that events or conditions outside of the control of the utility prevented the utility from complying.

The Qld code⁶¹ includes the following general limitation:

This clause 2.5 does not alter, vary or exclude the operation of sections 97 and 97A of the Electricity Act and sections 119 and 120 of the National Electricity Law, or any other limitations of liability or immunities granted to a distribution entity under electricity legislation.

One payment per affected supply address

The ACT code stipulates that a utility is not required to pay more than one rebate to each affected supply address per event of non-compliance with the service standards.⁶²

This differs from the Qld code⁶³ which requires a distributor to make:

...only one GSL payment per electricity account for each event giving rise to a GSL rebate regardless of the number of account holders or premises listed on the account affected by the event.

customer must apply to receive a payment for breach of clauses 2.5.7 to 2.5.9. A customer has one month to apply for a payment under clause 2.5.7 and 2.5.8, and three months to apply for a payment under clause 2.5.9.

⁶⁰ Refer to clause 2.5.11(a) of the Electricity Industry Code (Qld).

⁶¹ Refer to clause 2.5.17(d) of the Electricity Industry Code (Qld).

⁶² Refer to clause 11.2(2) of the Consumer Protection Code (ACT).

⁶³ Refer to clause 2.5.2(b) of the Electricity Industry Code (Qld).

By agreement

Most codes also explicitly allow for customers and retailers/distributors to negotiate the application and/or amount of service standard payments.⁶⁴

18.4.2 Recommendation

Application for payment

The ECCC understands that, at the time the Code was drafted, Western Power (prior to disaggregation) did not have the technology to ensure that service standard payments could be made automatically.

The *Electricity Industry (Network Quality and Reliability of Supply) Code 2005* requires that the distributor provide information to eligible customers in writing on an annual basis. Western Power has been unable to comply with this requirement due to the fact that the distributor does not have a direct relationship with account holders. Whilst Western Power is exploring options for ensuring that customers are made aware of eligibility, concerns exist regarding the level of customer awareness of service standard payments.

There is currently no requirement for retailers to provide information to customers regarding the availability of service standard payments.

Given the absence of an automated payment system and the concerns related to customer awareness of availability of service standard payments the ECCC recommends that a new obligation be placed on retailers to inform customers at least annually of the availability of service standard payments from distributors and retailers.

A recommendation has been added to Part 10 to reflect this proposal.

18.5 Provisions from other jurisdictions

Some of the Eastern States' codes include provisions that have not been provided for in the Code.

18.5.1 Additional service standard payments

Some States provide for service standard payments in the event a distributor fails to timely repair a street light or a retailer/distributor fails to be on time for an appointment with a customer.

18.5.2 Cap on total claims

Under the Qld Code, a non-contestable customer is not entitled to receive more than \$320 worth of rebates in any one financial year per electricity account (excluding payments for wrongful disconnection).⁶⁵

18.5.3 Damages

Both the Qld and ACT codes explicitly state that receipt of a service standard payment by a customer does not affect the customer's right to damages (etc).⁶⁶

⁶⁴ Refer to clause 11.1(1) of the Consumer Protection Code (ACT). SA and NSW retailers and distributors are only required to make a service standard payment under the applicable standard form contracts. Therefore, if a customer enters into a non-standard contract, the customer and the retailer/distributor may agree to exclude service standard payments from the contract or to amend the amount due for breach of a service standard.

⁶⁵ Refer to clause 2.5.15 of the Electricity Industry Code (Qld).

Further, under the Qld code, a distributor does not make an admission of legal liability by making a service standard payment.⁶⁷

⁶⁶ Refer to clause 2.5.17(a) of the Electricity Industry Code (Qld) and clause 11.4 of the Consumer Protection Code (ACT).

⁶⁷ Refer to clause 2.5.17(b) of the Electricity Industry Code (Qld).

APPENDIX 1 – Draft Code of Conduct for the Supply of Electricity to Small Use Customers

***Code of Conduct for the Supply of Electricity
to Small Use Customers 2008***

PART 1 PRELIMINARY	<u>5</u>	Deleted: 5
1.1 Title	<u>5</u>	Deleted: 5
1.2 Authority	<u>5</u>	Deleted: 5
1.3 Commencement	<u>5</u>	Deleted: 5
1.4 Interpretation	<u>5</u>	Deleted: 5
1.5 Definitions	<u>5</u>	Deleted: 5
1.6 Application	<u>11</u>	Deleted: 5
1.7 Purpose	<u>11</u>	Deleted: 10
1.8 Objectives	<u>11</u>	Deleted: 11
1.9 Amendment & Review	<u>11</u>	Deleted: 11
1.10 Variation from the Code	<u>11</u>	Deleted: 11
PART 2 MARKETING	<u>12</u>	Deleted: 11
DIVISION 1 – OBLIGATIONS PARTICULAR TO MARKETERS	<u>12</u>	Deleted: 12
2.1 Marketers to ensure representatives comply with this Part	<u>12</u>	Deleted: 12
DIVISION 2 – CONTRACTS	<u>12</u>	Deleted: 12
2.2 Entering into contracts	<u>12</u>	Deleted: 12
DIVISION 3 - INFORMATION TO BE PROVIDED TO CUSTOMERS	<u>13</u>	Deleted: 13
2.3 Information to be given before entering into a contract	<u>13</u>	Deleted: 13
2.4 Information to be given at time of or after entering into a contract	<u>13</u>	Deleted: 13
DIVISION 4 – MARKETING CONDUCT	<u>14</u>	Deleted: 13
2.5 Standards of Conduct	<u>15</u>	Deleted: 14
2.6 Contact for the purposes of marketing	<u>15</u>	Deleted: 14
2.7 Conduct when a customer does not wish to be contacted	<u>17</u>	Deleted: 15
DIVISION 5 – MISCELLANEOUS	<u>17</u>	Deleted: 16
2.8 Collection and use of personal information	<u>17</u>	Deleted: 17
2.9 Compliance	<u>17</u>	Deleted: 17
2.10 Presumption of authority	<u>18</u>	Deleted: 17
PART 3 CONNECTION	<u>18</u>	Deleted: 17
3.1 Obligation to forward connection application	<u>18</u>	Deleted: 19
		Deleted: 19
		Deleted: 20
PART 4 BILLING	<u>20</u>	Deleted: 20
DIVISION 1 – BILLING CYCLES	<u>20</u>	Deleted: 20
4.1 Billing cycle*	<u>20</u>	Deleted: 20
4.2 Shortened billing cycle*	<u>20</u>	Deleted: 20
4.3 Bill smoothing	<u>21</u>	Deleted: 21
4.4 How bills are issued	<u>21</u>	Deleted: 21
DIVISION 2 - CONTENTS OF A BILL	<u>22</u>	Deleted: 22
4.5 Particulars on each bill	<u>22</u>	Deleted: 22
DIVISION 3 - BASIS OF BILL	<u>23</u>	Deleted: 23
4.6 Basis of bill	<u>23</u>	Deleted: 23
4.7 Frequency of meter readings	<u>23</u>	Deleted: 23
4.8 Estimations	<u>23</u>	Deleted: 23
		Deleted: 23

4.9	Adjustments to subsequent bills	24	Deleted: 24
4.10	Customer may request meter reading	24	Deleted: 24
DIVISION 4 – METER TESTING		24	Deleted: 24
4.11	Customer requests testing of meters or metering data	24	Deleted: 24
DIVISION 5 – ALTERNATIVE TARIFFS		25	Deleted: 25
4.12	Customer applications	25	Deleted: 25
4.13	Written notification of a change to an alternative tariff.....	25	Deleted: 25
4.14	Overcharging or undercharging as result of change in electricity use.....	25	Deleted: 25
DIVISION 6 – FINAL BILL		25	Deleted: 25
4.15	Request for final bill	25	Deleted: 25
DIVISION 7 – REVIEW OF BILL		26	Deleted: 25
4.16	Review of bill	26	Deleted: 26
4.17	Procedures following a review of a bill	26	Deleted: 26
4.18	Under Charging	26	Deleted: 26
4.19	Overcharging	27	Deleted: 26
PART 5 PAYMENT		28	Deleted: 27
DUE DATES FOR PAYMENT*		28	Deleted: 28
5.2	Minimum payment methods*	28	Deleted: 28
5.3	Direct debit	28	Deleted: 28
5.4	Payment in advance*	28	Deleted: 28
5.5	Absence or illness	28	Deleted: 28
5.6	Late payments	29	Deleted: 28
5.7	Vacating a supply address*	29	Deleted: 29
5.8	Debt collection	30	Deleted: 29
PART 6 PAYMENT DIFFICULTIES & FINANCIAL HARDSHIP		31	Deleted: 31
DIVISION 1 – ASSESSMENT OF FINANCIAL SITUATION		31	Deleted: 31
6.1	Assessment	31	Deleted: 31
6.2	Temporary suspension of actions.....	31	Deleted: 31
6.3	Assistance to be offered	32	Deleted: 32
DIVISION 2 – RESIDENTIAL CUSTOMERS EXPERIENCING PAYMENT DIFFICULTIES OR FINANCIAL HARDSHIP.....		32	Deleted: 32
6.4	Alternative payment arrangements.....	32	Deleted: 32
DIVISION 3 – ASSISTANCE AVAILABLE TO RESIDENTIAL CUSTOMERS EXPERIENCING FINANCIAL HARDSHIP.....		33	Deleted: 33
6.5	Definitions	33	Deleted: 33
<i>Subdivision 1 - Specific assistance available</i>		<i>33</i>	Deleted: 33
6.6	Reduction of fees, charges and debt.....	33	Deleted: 33
6.7	Revision of alternative payment arrangements	33	Deleted: 33
6.8	Provision of information	34	Deleted: 34
6.9	Payment in advance	34	Deleted: 34
<i>Subdivision 2 – Hardship policy</i>		<i>34</i>	Deleted: 34
6.10	Obligation to develop hardship policy	34	Deleted: 34
DIVISION 4 – BUSINESS CUSTOMERS EXPERIENCING PAYMENT DIFFICULTIES		35	Deleted: 34
			Deleted: 35

6.11	Alternative payment arrangements.....	35	Deleted: 35
			Deleted: 36

PART 7 DISCONNECTION ~~36~~

DIVISION 1 – CONDUCT IN RELATION TO DISCONNECTION ~~36~~

<i>Subdivision 1 – Disconnection for failure to pay bill</i>	36	Deleted: 36
7.1 General requirements.....	36	Deleted: 36
7.2 Limitations on disconnection for failure to pay bill	36	Deleted: 36
7.3 Dual fuel contracts.....	37	Deleted: 36
<i>Subdivision 2 – Disconnection for denying access to meter</i>	37	Deleted: 37
7.4 General requirements.....	37	Deleted: 37
<i>Subdivision 3 – Disconnection for emergencies.....</i>	38	Deleted: 37
7.5 General requirements.....	38	Deleted: 38

DIVISION 2 –LIMITATIONS ON DISCONNECTION..... ~~38~~

7.6 General limitations on disconnection.....	38	Deleted: 38
7.7 Life support.....	39	Deleted: 38

PART 8 RECONNECTION ~~41~~

8.1 Reconnection by retailer*	41	Deleted: 40
8.2 Reconnection by distributor	41	Deleted: 40
8.3 Priority Restoration Register.....	42	Deleted: 40
		Deleted: 41

PART 9 PRE-PAYMENT METERS IN REMOTE COMMUNITIES..... ~~43~~

9.1 Definitions.....	43	Deleted: 42
9.2 Application	43	Deleted: 42
9.3 Operation of pre-payment meter	43	Deleted: 42
9.4 Provision of mandatory information.....	43	Deleted: 42
9.5 Life support equipment.....	45	Deleted: 42
9.6 Recharge Facilities	45	Deleted: 44
9.7 Concessions.....	45	Deleted: 44
9.8 Emergency credit.....	46	Deleted: 44
9.9 Credit retrieval, overcharging and undercharging]	46	Deleted: 45
9.10 Recommencement of supply after self-disconnection	47	Deleted: 45

PART 10 INFORMATION & COMMUNICATION ~~48~~

DIVISION 1 – OBLIGATIONS PARTICULAR TO RETAILERS..... ~~48~~

10.1 Tariff information.....	48	Deleted: 47
10.2 Historical billing data.....	48	Deleted: 47
10.3 Concessions.....	48	Deleted: 47
10.4 Energy Efficiency Advice	49	Deleted: 47
10.5 Distribution matters.....	49	Deleted: 48

DIVISION 2 – OBLIGATIONS PARTICULAR TO DISTRIBUTORS ~~49~~

10.6 General information.....	49	Deleted: 48
10.7 Historical consumption data	50	Deleted: 48
10.8 Distribution standards.....	50	Deleted: 48

DIVISION 3 – OBLIGATIONS PARTICULAR TO RETAILERS AND DISTRIBUTORS ~~50~~

10.9 Written information must be easy to understand	50	Deleted: 49
		Deleted: 49

10.10	Code of Conduct.....	<u>50</u>	Deleted: 49
10.11	Special Information Needs	<u>51</u>	Deleted: 49
10.12	Metering.....	<u>51</u>	Deleted: 50
PART 11 CUSTOMER SERVICE CHARTER.....			<u>52</u>
11.1	Obligation to produce and publish a Customer Service Charter	<u>52</u>	Deleted: 51
11.2	Obligation to provide Customer Service Charter	<u>52</u>	Deleted: 51
PART 12 COMPLAINTS & DISPUTE RESOLUTION			<u>53</u>
12.1	Obligation to establish complaints handling process.....	<u>53</u>	Deleted: 52
12.2	Obligation to comply with a guideline that distinguishes customer queries from customer complaints.....	<u>53</u>	Deleted: 52
12.3	Information provision	<u>54</u>	Deleted: 53
12.4	Obligation to refer complaint.....	<u>54</u>	Deleted: 53
PART 13 RECORD KEEPING			<u>55</u>
DIVISION 1 – GENERAL.....			<u>55</u>
13.1	Records to be kept	<u>55</u>	Deleted: 54
DIVISION 2 – OBLIGATIONS PARTICULAR TO RETAILERS.....			<u>55</u>
13.2	Affordability and access.....	<u>55</u>	Deleted: 54
13.3	Customer complaints.....	<u>56</u>	Deleted: 55
13.4	Compensation payments.....	<u>57</u>	Deleted: 56
13.5	Call Centre Performance	<u>57</u>	Deleted: 56
13.6	Supporting information	<u>57</u>	Deleted: 56
13.7	Pre-payment meters	<u>58</u>	Deleted: 56
DIVISION 3 – OBLIGATIONS PARTICULAR TO DISTRIBUTORS			<u>58</u>
13.8	Connections.....	<u>58</u>	Deleted: 57
13.9	Timely repair of faulty street lights.....	<u>58</u>	Deleted: 57
13.10	Customer Complaints.....	<u>59</u>	Deleted: 57
13.11	Compensation payments.....	<u>59</u>	Deleted: 57
13.12	Call Centre Performance	<u>60</u>	Deleted: 58
13.13	Pre-payment meters	<u>60</u>	Deleted: 58
13.14	Supporting information	<u>60</u>	Deleted: 58
DIVISION 4 – PROVISION OF RECORDS TO AUTHORITY			<u>60</u>
13.15	Provision of records to Authority.....	<u>60</u>	Deleted: 58
PART 14 SERVICE STANDARD PAYMENTS.....			<u>61</u>
DIVISION 1 – OBLIGATIONS PARTICULAR TO RETAILERS.....			<u>61</u>
14.1	Facilitating customer reconnections	<u>61</u>	Deleted: 60
14.2	Wrongful disconnections	<u>61</u>	Deleted: 60
14.3	Customer service.....	<u>61</u>	Deleted: 60
DIVISION 2 – OBLIGATIONS PARTICULAR TO DISTRIBUTORS			<u>62</u>
14.4	Customer service.....	<u>62</u>	Deleted: 61
DIVISION 3 – PAYMENT.....			<u>62</u>
14.5	Exceptions	<u>62</u>	Deleted: 61
14.6	Method of payment.....	<u>62</u>	Deleted: 61
14.7	Recovery of payment.....	<u>63</u>	Deleted: 61
			Deleted: 62

Part 1 Preliminary

1.1 Title

The **Code** may be cited as the *Code of Conduct for the Supply of Electricity to Small Use Customers*.

1.2 Authority

The **Code** is made by the Authority under section 79 of the **Act**.

1.3 Commencement

(1) The **Code** ~~came into operation on the day it was published in the Government Gazette.~~

(2) ~~The revisions to the Code come into operation on 1 July 2010.~~

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1.4 Interpretation

- (1) Headings and notes are for convenience or information only and do not affect the interpretation of the **Code** or any term or condition set out in the **Code**.
- (2) An expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency and vice versa.
- (3) A reference to a document or a provision of a document includes an amendment or supplement to, or replacement of or novation of, that document or that provision of that document.
- (4) A reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns.
- (5) Other parts of speech and grammatical forms of a word or phrase defined in the **Code** have a corresponding meaning.
- (6) A reference to a marketing representative arranging a contract is to be read as a reference to a marketing representative entering into the contract on the marketer's behalf, or arranging the contract on behalf of another person (whichever is relevant).
- (7) A reference to an act carried out on behalf of a marketer is a reference to that act being carried out by a marketing representative of the marketer.

1.5 Definitions

In the **Code**, unless the contrary intention appears –
“**Act**” means the *Electricity Industry Act 2004*.

“**alternative tariff**” means a tariff other than the tariff under which the **customer** is currently supplied electricity.

“**Australian Standard**” means a standard published by Standards Australia.

“**Authority**” means the Economic Regulation Authority established under the *Economic Regulation Authority Act 2003*.

“**basic living needs**” includes –

- (a) rent or mortgage;
- (b) other utilities (e.g. gas, phone and water);
- (c) food and groceries;
- (d) transport (including petrol and car expenses);
- (e) childcare and school fees;
- (f) clothing; and
- (g) medical and dental expenses.

“**billing cycle**” means the regular recurrent period in which a **customer** receives a bill from a **retailer**.

“**business customer**” means a **customer** who is not a **residential customer**.

“**business day**” means any day except a Saturday, Sunday or public holiday in Western Australia.

“**change in personal circumstances**” includes –

- (a) sudden and unexpected disability, illness of or injury to the **residential customer** or a dependant of the **residential customer**;
- (b) loss of or damage to property of the **residential customer**; or
- (c) other similar unforeseeable circumstances arising as a result of events beyond the control of the **residential customer**.

“**Code**” means the Code of Conduct for the Supply of Electricity to Small Use Customers, as approved by the Minister with respect to the initial Code or by the Authority for any amendments under section 79 of the **Act**.

“**complaint**” means an expression of dissatisfaction made to an organisation, related to its products or services, or the complaints-handling process itself where a response or resolution is explicitly or implicitly expected.

“**concession**” means a concession, rebate, subsidy or grant related to the supply of electricity.

“**contact**” means contact that is face to face, by **telephone** or by post, facsimile or electronic communication.

“**contestable customer**” means a **customer** at an exit point where the amount of electricity transferred at the exit point is at least the amount prescribed under the *Electricity Corporations (Prescribed Customers) Order 2007 made under the Electricity Corporations Act 2005*, or under another enactment dealing with the progressive introduction of customer contestability. “**cooling-off period**” in relation to a door to door contract or **non-standard contract** means the period of 10 days commencing on and including the day on which the contract is made.

“**contract**” means a **standard form contract** or a **non-standard contract**.

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“**customer**” means a **customer** who consumes not more than 160 MWh of electricity per annum **in aggregate across all of the customer’s supply addresses**,

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“**date of receipt**”, in relation to a notice (including a **disconnection warning**), means –

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(a) in the case of –

- (i) verbal communication, at the time of that communication;
- (ii) hand delivery, on the date of delivery;
- (iii) facsimile or e-mail, on the date on which the sender’s facsimile or email facilities recorded that the facsimile or email was successfully transmitted; and
- (iv) the case of post, on the second **business day** after posting; and

Deleted: “**contract**” means a **standard form contract** or a **non-standard contract**. ¶

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(b) if received after 5:00pm or on a day other than a **business day**, on the next **business day**.

“**disconnection warning**” means a notice in writing issued in accordance with clause 7.1(1)(c) or clause 7.4(1).

“**distributor**” means a person who holds a distribution licence or integrated regional licence under Part 2 of the **Act**.

“**door to door marketing**” means the **marketing** practice under which —

(a) a **marketing representative** –

- (i) goes from place to place;
- (ii) makes **telephone** calls; or
- (iii) uses electronic means,

seeking out persons who may be prepared to enter, as **customers**, into **contracts**; and

(b) the **marketing representative** or some other **marketing representative** then or subsequently enters into negotiations with those prospective **customers** with a view to arranging **contracts**.

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“**dual fuel contract**” means a **non-standard contract** for the sale of electricity and for the sale of gas by a **retailer** to a **contestable customer**.

“**electricity ombudsman**” means the ombudsman appointed under the scheme initially approved by the Minister or by the **Authority** for any amendments under section 92 of the **Act**.

“**electricity marketing agent**” means –

(a) a person who acts on behalf of the holder of a retail licence or an integrated regional licence —

- (i) for the purpose of obtaining new **customers** for the licensee; or
- (ii) in dealings with existing **customers** in relation to **contracts** for the supply of electricity by the licensee;

(b) a person who acts —

- (i) on behalf of one or more **customers**; or

- (ii) as an intermediary between one or more **customers** and a licensee,
- in respect of the supply of electricity to the **customer** or **customers**;
- (c) a person who engages in any other activity relating to the **marketing** of electricity that is prescribed for the purposes of this definition; and
- (d) a representative, agent or employee of a person referred to in paragraph (a), (b) or (c).

“**Electronic Funds Transfer Code of Conduct**” means the Electronic Funds Transfer Code of Conduct issued by the Australian Securities & Investments Commission.

“**electronic means**” means the internet, email, facsimile or other similar means but does not include **telephone**.

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“**emergency**” means an emergency due to the actual or imminent occurrence of an event which in any way endangers or threatens to endanger the safety or health of any person, or the maintenance of power system security, in Western Australia or which destroys or damages, or threatens to destroy or damage, any property in Western Australia.

“**energy efficiency audit**” means an audit for the purpose of identifying energy usage and opportunities for energy conservation within a **premises**.

“**financial hardship**” means a state of more than immediate financial disadvantage which results in a **residential customer** being unable to pay an outstanding amount as required by a **retailer** without affecting the ability to meet the **basic living needs** of the **residential customer** or a dependant of the **residential customer**.

“**historical debt**” means an amount outstanding for the supply of electricity by a **retailer** to a **customer’s** previous **supply address**.

“**interruption**” means the temporary unavailability of supply from the distribution network to a **customer**, but does not include disconnection under Part 7.

“**life support equipment**” means the equipment designated under the Life Support Equipment Electricity Subsidy Scheme.

“**local newspaper**” for any place, means a newspaper circulating throughout Western Australia or in a part of Western Australia that includes that place.

“**marketer**” means –

- (a) a **retailer** who engages in **marketing**; or
- (b) an **electricity marketing agent**, other than a **marketing representative**.

“**marketing**” includes engaging or attempting to engage in any of the following activities by any means, including door to door or by **telephone** or other electronic means –

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- (a) negotiations for, or dealings in respect of, a **contract** for the supply of electricity to a **customer**; or
- (b) advertising, promotion, market research or public relations in relation to the supply of electricity to **customers**.

“**marketing identification number**” means a unique number assigned by a **marketer** to each **marketing representative** acting on its behalf.

“**marketing representative**” means –

- (a) a person who is referred to in paragraph (a) of the definition of **electricity marketing agent** and who is an employee of a **retailer**;
- (b) a person who is referred to in paragraph (c) of the definition of **electricity marketing agent**; or
- (c) a representative, agent or employee of a person in paragraph (a) or (b).

“**meter**” has the meaning given to that term in the *Electricity Industry Metering Code 2005*.

“**metering agent**” means a person responsible for reading the **meter** on behalf of the **distributor**.

“**metropolitan area**” means –

- (a) the region described in Schedule 3 of the *Planning and Development Act 2005*;
- (b) the local government district of Mandurah;
- (c) the local government district of Murray; and
- (d) the townsites, as constituted under section 26 of the *Land Administration Act 1997*, of –
 - (i) Albany;
 - (ii) Bunbury;
 - (iii) Geraldton;
 - (iv) Kalgoorlie;
 - (v) Karratha;
 - (vi) Port Hedland; and
 - (vii) South Hedland.

“**National Interpreter Symbol**” means the national public information symbol “Interpreter Symbol” (with text) developed by Victoria in partnership with the Commonwealth, State and Territory governments in accordance with Australian Standard 2342.

“**non-contestable customer**” means a **customer** other than a **contestable customer**.

“**non-standard contract**” means a contract entered into between a **retailer** and a **customer**, or a class of **customers**, that is not a **standard form contract**.

“**payment difficulties**” means a state of immediate financial disadvantage that results in a **residential customer** being unable to pay an outstanding amount as required by a **retailer** by reason of a **change in personal circumstances**.

“**permitted call times**” are –

- (a) for the purposes of **telephone** and personal **contact** other than at a **customer’s** premises between –

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- (i) 9.00 a.m. and 8.00 p.m. Mondays to Fridays (other than public holidays); and
 - (ii) 9.00 a.m. and 5.00 p.m. Saturdays;
- (b) for the purposes of **contact** at a **customer's** premises between –
- (i) 9.00 a.m. and 7.00 p.m. Mondays to Fridays (other than public holidays); and
 - (ii) 9.00 a.m. and 5.00 p.m. Saturdays.

“**premises**” means premises owned or occupied by a new or existing **customer**.

“**pre-payment meter**” means a **meter** that requires a **customer** to pay for the supply of electricity prior to consumption.

“**pre-payment meter customer**” means a **customer** who has a **pre-payment meter** operating at the **customer's supply address**.

“**Priority Restoration Register**” means a register established under clause 8.3 that determines the order of restoration in the event of an unplanned interruption.

“**regional area**” means all areas in Western Australia other than the **metropolitan area**.

“**relevant consumer representative organisation**” means an organisation that may reasonably be expected to represent the interests of **residential customers** who are experiencing **payment difficulties** or **financial hardship**.

“**reminder notice**” means a notice in writing issued in accordance with clause 7.1(1)(a).

“**residential customer**” means a **customer** who consumes electricity solely for domestic use.

“**retailer**” means a person who holds a retail licence or integrated regional licence under Part 2 of the **Act**.

“**revisions**” means revisions to the **Code** approved by the Authority pursuant to the **Act** and gazetted on [date].

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“**standard form contract**” means a contract that is approved by the Economic Regulation Authority under section 51 of the **Act** or prescribed by the Minister under section 55 of the **Act**.

“**supply address**” means the address to which electricity was, is or may be supplied under a **contract**.

“**telephone**” means a device which is used to transmit and receive voice frequency signals.

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“**TTY**” means telephone typewriter.

“**verifiable consent**” means consent that is given –

- (a) expressly;
- (b) in writing or orally;
- (c) after the **marketer** or **retailer** (as appropriate) has in plain language appropriate to that **customer** disclosed all matters materially relevant to the giving of the consent, including each specific purpose for which the consent will be used; and

- (d) by the **customer** or a nominated person competent to give consent on the **customer's** behalf.

1.6 Application

Subject to clause 1.10, the **Code** applies to –

- (a) **customers**;
- (b) **retailers**;
- (c) **distributors**; and
- (d) **electricity marketing agents**,

in accordance with Part 6 of the **Act**.

1.7 Purpose

The **Code** regulates and controls the conduct of **electricity marketing agents**, **retailers** and **distributors**.

1.8 Objectives

The objectives of the **Code** are to –

- (a) define standards of conduct in the supply and **marketing** of electricity to **customers**; and
- (b) protect **customers** from undesirable **marketing** conduct.

1.9 Amendment & Review

The process for amendment and review of the **Code** is set out in Part 6 of the **Act**.

1.10 Variation from the Code

A **retailer** and a **customer** may agree that the following clauses (marked with an asterisk and an annotation throughout) do not apply, or are to be amended in their application, in a **non-standard contract** –

- (a) 4.1;
- (b) 4.2;
- (c) 5.1(1);
- (d) 5.2;
- (e) 5.4;
- (f) 5.7; and
- (g) 8.1.

Part 2 Marketing

Division 1 – Obligations particular to marketers

2.1 Marketers to ensure representatives comply with this Part

A **marketer** must ensure that its **marketing representatives** comply with this Part.

Division 2 – Contracts

2.2 Entering into contracts

- (1) A **marketer** must, in the course of arranging a **standard form contract** that is entered into as a result of **door to door marketing** or a **non-standard contract** other than in accordance with subclause (2), ensure that the **contract** is signed by the **customer**.

[Note: Under the *Electronic Transactions Act 2003*, any documents or signatures that must be provided under the Code may also be provided electronically (subject to the terms and conditions set out in the *Electronic Transactions Act 2003*.)]

- (2) If a **customer** initiates a request to a **marketer** or **retailer** by **telephone or electronic means** for a **non-standard contract** the contract need not be signed but the **marketer** or **retailer** must obtain and make a record of the **customer's verifiable consent** that the contract has been entered into.
- (3) A **standard form contract** that is not entered into as a result of **door to door marketing** need not be signed by the **customer** but the date of the **customer** entering into the **standard form contract** must be recorded by the **marketing representative**.
- (4) The terms and conditions of a **standard form contract** that is not entered into as a result of **door to door marketing** must be made available to the **customer** on request at no charge.
- (5) A **contract** is entered into as a result of **door to door marketing** if the following conditions are satisfied –
- (a) negotiations leading to the formation of the **contract** (whether or not they are the only negotiations that precede the formation of the **contract**) take place between the **marketing representative** and the **customer** in each other's presence in Western Australia at a place other than at the trade premises of the **marketer**; and
 - (b) the **marketing representative** attends at that place –
 - (i) in the course of **door to door marketing**; and
 - (ii) otherwise than at the unsolicited invitation of the **customer**.
- (6) For the purposes of subclause (5)(b), in determining whether an invitation is solicited or unsolicited –

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- (a) any solicitation by way of advertisement addressed to the public or a substantial section of the public is to be disregarded; but
- (b) if an invitation arises from a communication initiated by the **marketing representative** (other than as described in paragraph (a)) the invitation is not to be regarded as unsolicited.

Division 3 - Information to be provided to customers

2.3 Information to be given before entering into a contract

- (1) Before arranging a **contract**, a **marketing representative** must give a **customer** the following information –
 - (a) that the **customer** is free to choose the **standard form contract** offered by the **retailer**;
 - (b) the difference between a **standard form contract** and a **non-standard contract**;
 - (c) how and when the terms of the **contract** will be given or made available to the **customer**; and
 - (d) that the **customer** is entitled to a written copy of the **contract** when requested.
- (2) For a **standard form contract** that is not entered into as a result of **door to door marketing** or a **non-standard contract** in accordance with clause 2.2(2) above, the **marketing representative** must obtain and make a record of the **customer's verifiable consent** that the information in subclause (1) has been given.
- (3) For a **standard form contract** that is entered into as a result of **door to door marketing** or a **non-standard contract** other than in accordance with clause 2.2(2) above, the **marketing representative** must obtain the **customer's** written acknowledgement that the information in subclause (1) has been given.

2.4 Information to be given at time of or after entering into a contract

- (1) When a **customer** enters into a new **contract** with a **retailer**, a **retailer** or **marketer** must, at the time the **contract** is entered into, offer to give, or make available to the **customer** a copy of the **contract**. If the **customer** accepts the offer, the **retailer** or **marketer** must, at the time the **contract** is entered into, or as soon as possible thereafter, give or make available to the **customer** a copy of the **contract**.
- (2) A **retailer** or **marketing representative** must give the following information to a **customer** –
 - (a) how the **customer** may obtain –
 - (i) a copy of the **Code**; and

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- (ii) details on all relevant tariffs, fees, charges, alternative tariffs and service levels that may apply to the **customer**.
- (b) the scope of the **Code**;
- (c) that a **retailer, distributor, marketer** and **marketing representative** must comply with the **Code**;
- (d) how the **retailer** may assist if the **customer** is experiencing **payment difficulties** or **financial hardship**;
- (e) the **concessions** that may apply to the **customer**;
- (f) the **distributor's** 24 hour **telephone** number for faults and emergencies;
- (g) how the **customer** may access the **retailer's**:
- (i) multi-lingual services (in languages reflective of the **retailer's customer** base); and
- (ii) **TTY** services;
- (h) how to make an enquiry of, or **complaint** to, the **retailer**;
- (i) general information on the safe use of electricity; and
- (j) the details of any right the **customer** may have to rescind the **contract** during a **cooling-off period** and the charges that may apply if the **customer** rescinds the **contract**.
- (3) For a **standard form contract** that is not entered into as a result of **door to door marketing**:
- (a) the information in subclause (2) must be given no later than with or on the **customer's** first bill; and
- (4) (b) if requested by the **customer** and, if the **customer** has not previously been provided a copy of the **contract**, a written copy of the **contract** at no charge to the **customer**. For a **standard form contract** that is entered into as a result of **door to door marketing** or a **non-standard contract** –
- (a) the information in subclause (2), and a copy of the contract must be given before the **customer** has entered into the **contract**;
- (b) the **marketing representative** must obtain the **customer's** written acknowledgement that the information in subclause (2) has been given.
- (5) Despite subclauses (3) and (4), the **retailer** is not obliged to provide the information in subclause (2) to a **customer** where:
- (a) the **retailer** has provided the information to that **customer** within the preceding 12 months; and;
- (b) when the **retailer** is obliged to provide the information to the **customer** pursuant to subclause (3) or (4), the **retailer** informs the **customer** how the **customer** may obtain the information in subclause (2) and, if requested, gives the information to the **customer**.

Division 4 – Marketing Conduct

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2.5 Standards of Conduct

- (1) A **marketing representative** must not, when **marketing**, engage in conduct that is misleading, deceptive or likely to mislead or deceive or that is unconscionable.
- (2) A **marketing representative** must not exert undue pressure on a **customer**, nor harass or coerce a **customer**.
- (3) A **marketing representative** must ensure that the inclusion of **concessions** is made clear to **customers** and any prices that exclude **concessions** are disclosed.
- (4) A **marketing representative** must ensure that all **standard form contracts** that are entered into as a result of **door to door marketing** and all **non-standard contracts** are in writing.
- (5) A **marketer** must ensure that a **customer** is able to contact the **marketer** on the **marketer's telephone** number during the normal business hours of the **marketer** for the purposes of enquiries, verifications and **complaints**.

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2.6 Contact for the purposes of marketing

- (1) A **marketing representative** who makes **contact** with a **customer** for the purposes of **marketing** (other than meeting with a **customer** face to face) must, as soon as practicable, tell the **customer** -
 - (a) his or her first name;
 - (b) the name of the **marketer**, and if different, of the **retailer** on whose behalf the **contact** is being made; and
 - (c) the purpose of the **contact**;and, after having identified the purpose of the **contact**, if the contact is not by **electronic means**, ask if the **customer** wishes to proceed further.
- (2) A **marketing representative** who makes **contact** with a **customer** for the purposes of **marketing** must, on request by the **customer** -
 - (a) provide the **customer** with the complaints **telephone** number of the **marketer** and, if different, of the **retailer** on whose behalf the **contact** is being made; and
 - (b) provide the **customer** with the **marketer's marketing identification number**.
- (3) A marketing representative who meets with a customer face to face for the purposes of **marketing** must:
 - (a) as soon as practicable, tell the **customer** the purpose of the **contact**,
 - (b) wear a clearly visible and legible identity card that shows –
 - (i) his or her first name;
 - (ii) his or her photograph;
 - (iii) his or her **marketing identification number**; and
 - (iv) the name of the **marketer** and, if different, of the **retailer** on whose behalf the **contact** is being made; and
 - (c) as soon as practicable, provide the **customer**, in writing:

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- (i) his or her first name;
 - (ii) his or her **marketing identification number**;
 - (iii) the name of the **marketer** and, if different, of the **retailer** on whose behalf the **contact** is being made;
 - (iv) the complaints **telephone** number of the **marketer** and, if different, of the **retailer** on whose behalf the **contact** is being made; and
 - (v) the **marketer's** business address and Australian Business or Company Number.
- (4) If, when a **marketing representative** makes **contact** with a **customer** for the purposes of **marketing**, the **customer** indicates that he or she wishes the **contact** to end, the **marketing representative** must -
- (a) end the **contact** as soon as practicable; and
 - (b) not attempt to **contact** the **customer** for the purposes of **marketing** for the next 30 days unless the **customer** agrees otherwise.
- (5) Unless requested by the **customer**, a **marketing representative** must not make **contact** with a **customer** for the purposes of **marketing** outside the **permitted call times**, unless the contact is by **electronic means** or the **contact** arises outside the **customer's premises** in circumstances where the **customer** initiates contact with the **marketing representative**.
- (6) A **marketing representative** must ensure that **contact** for the purposes of **marketing** does not continue for more than 15 minutes past the end of the **permitted call times** without the **customer's verifiable consent** unless the **contact** is by **electronic means**.
- (7) A **marketer** must keep the following records each time it initiates **contact** with a **customer** for the purposes of **marketing**-
- (a) the name of the **customer** and -
 - (i) if the **contact** was made by **telephone**, the **telephone** number;
 - (ii) if the **contact** was made at the **customer's premises**, the address of the **premises**;
 - (iii) if the **contact** was made at a place other than the **customer's** premises, the details and address of the location; and
 - (iv) if the **contact** was made by electronic means, the email address or facsimile number of the **customer**;
 - (b) the name of the **marketing representative** who made the **contact**, and
 - (c) the date and time of the **contact**.
- (8) Clause 2.6(7) does not apply where a **marketer** contacts a **customer** in response to a **customer** request or query.

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 "electronic means" means the internet, email, facsimile or other similar means but does not include telephone.

2.7 Conduct when a customer does not wish to be contacted

- (1) If a **customer** who has been **contacted** by a **marketing representative** for the purposes of **marketing** requests not to be **contacted** again on behalf of the **marketer**, the **marketer** must ensure that the **customer** is not **contacted** on behalf of the **marketer** in relation to the supply of electricity by the **retailer** for whom the **marketing** was carried out for the next 2 years unless:
 - (a) the **customer** requests contact; or
 - (b) the **customer** has moved **premises**; or
 - (c) a **marketer** has a legal obligation to contact the **customer**.
- (2) A **marketer** must keep a record of each **customer** who has requested not to be **contacted** (as described in subclause (1)) that includes the name, address and **telephone** number of the **customer** at the time the **customer** made that request.
- (3) A **marketer** must give a copy of the record to the **electricity ombudsman** or the **Authority** on request.
- (4) A **marketer** must provide the **customer** on request with written confirmation that the **customer** will not be **contacted** by or on behalf of the **marketer** in relation to the supply of electricity by the **retailer** for whom the **marketing** was carried out for the next 2 years.
- (5) When engaging in **door to door marketing**, a **marketing representative** must, to the extent practicable, comply with a notice on or near a **premises** indicating that the **customer** does not wish to receive unsolicited mail or other **marketing** information.

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Division 5 – Miscellaneous

2.8 Collection and use of personal information

A **retailer** and a **marketer** must comply with the National Privacy Principles as set out in the *Privacy Act 1998* in relation to information collected under this Part.

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2.9 Compliance

- (1) A **marketer** (other than a **retailer**) who contravenes a provision of the **Code** commits an offence.
Penalty:
 - (a) for an individual, \$5 000;
 - (b) for a body corporate, \$20 000.
- (2) A **marketing representative** who contravenes a provision of this Part commits an offence.
Penalty: \$5 000
- (3) If an **electricity marketing agent** of a **retailer** contravenes a provision of this Part, the **retailer** commits an offence.
Penalty:

“customer” includes a **customer’s** nominated representative.

[Note: The *Electricity Industry (Obligation to Connect) Regulations 2005* provide regulations in relation to the obligation upon a **distributor** to energise and connect a **premises**.

Part 4 Billing

Division 1 – Billing cycles

4.1 Billing cycle*

A **retailer** must issue a bill –

- (a) no more than once a month, unless the **retailer** has –
 - (i) obtained a **customer's verifiable consent** to issue bills more frequently; or
 - (ii) given the **customer** –
 - A. a **reminder notice** in respect of three consecutive bills; and
 - B. notice as contemplated under clause 4.2; and
- (b) no less than once every three months, unless the **retailer** has obtained a **customer's verifiable consent** to issue bills less frequently.

4.2 Shortened billing cycle*

- (1) For the purposes of clause 4.1(a)(ii)(B), a **retailer** has given a **customer** notice if the **retailer** has advised the **customer**, prior to placing the **customer** on a shortened **billing cycle**, that –
 - (a) receipt of a third **reminder notice** may result in the **customer** being placed on a shortened **billing cycle**;
 - (b) if the **customer** is a **residential customer**, assistance is available for **residential customers** experiencing **payment difficulties** or **financial hardship**;
 - (c) the **customer** may obtain further information from the **retailer** on a specified **telephone** number; and
 - (d) once on a shortened **billing cycle**, the **customer** must pay three consecutive bills by the due date to return to the **customer's** previous **billing cycle**.
- (2) Notwithstanding clause 4.1(a)(ii), a **retailer** must not place a **residential customer** on a shortened **billing cycle** without the **customer's verifiable consent** if –
 - (a) the **residential customer** informs the **retailer** that the **residential customer** is experiencing **payment difficulties** or **financial hardship**; and
 - (b) the assessment carried out by the **retailer** under clause 6.1 indicates to the **retailer** that the **customer** is experiencing **payment difficulties** or **financial hardship**.
- (3) If, after giving notice as required under clause 4.1(a)(ii)(B), a **retailer** decides to shorten the **billing cycle** in respect of a **customer**, the **retailer** must give

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the **customer** written notice of that decision within 10 **business days** of making that decision.

- (4) A shortened **billing cycle** must be at least 10 **business days**.
- (5) A **retailer** must return a **customer**, who is subject to a shortened **billing cycle** and has paid three consecutive bills by the due date, on request, to the **billing cycle** that applied to the **customer** before the shortened **billing cycle** commenced.
- (6) A **retailer** must inform a **customer**, who is subject to a shortened **billing cycle**, at least once every three months that, if the **customer** pays three consecutive bills by the due date of each bill, the **customer** will be returned, on request, to the **billing cycle** that applied to the **customer** before the shortened **billing cycle** commenced.

4.3 Bill smoothing

- (1) Despite clause 4.1, in respect of any 12 month period, on receipt of a request by a **customer**, a retailer may provide a **customer** with estimated bills under a bill smoothing arrangement.
- (2) If a retailer provides a **customer** with estimated bills under a bill smoothing arrangement pursuant to subclause (1) the **retailer** must ensure:
 - (a) the amount payable under each bill is initially the same and is set out on the basis of the **retailer's** initial estimate of the amount of electricity the **customer** will consume over the 12 month period;
 - (b) that the initial estimate is based on the **customer's** historical billing data or, where the **retailer** does not have that data, average consumption at the relevant tariff calculated over the 12 month period;
 - (c) that in the sixth month:
 - (i) the **retailer** re-estimates the amount of electricity the **customer** will consume over the 12 month period, taking into account any meter readings and relevant seasonal factors; and
 - (ii) if there is a difference between the initial estimate and the re-estimate of greater than 10%, the amount payable under each of the remaining bills in the 12 month period is to be reset to reflect that difference; and
 - (d) that, at the end of the 12 month period, the meter is read and any undercharging or overcharging is adjusted for under clause 4.14; and
 - (e) the **retailer** has obtained the **customer's** explicit informed consent to the **retailer** billing on that basis.

4.4 How bills are issued

A **retailer** must issue a bill to a **customer** at the **customer's supply address**, unless the **customer** has nominated another address or an electronic address.

Division 2 - Contents of a Bill

4.5 Particulars on each bill

- (1) Unless the **customer** agrees otherwise, a **retailer** must include at least the following information on a **customer's** bill –
- (a) the date of the current **meter** reading or estimate;
 - (b) the current **meter** reading or estimate;
 - (c) total consumption, or estimated consumption;
 - (d) the number of days covered by the bill;
 - (e) the dates on which the account period begins and ends;
 - (f) the relevant tariffs;
 - (g) the amount of any other fees or charges and details of the service provided;
 - (h) a reference ~~that the **customer** may be eligible to receive **concessions** and how the **customer** may find out its eligibility for those **concessions**;~~
 - (i) the amount of any **concessions** provided to the **customer** (other than a rebate relating to air conditioning);
[Note: The rebate relating to air conditioning will continue to be provided to customers. However, the exact amount of the rebate will not be included on the bill, but will be provided separately to customers.]
 - (j) if applicable, a statement on the bill that an additional fee may be imposed to cover the costs of late payment from a **customer**;
 - (k) average daily cost of electricity consumption;
 - (l) average daily consumption;
 - (m) a **meter** identification number (clearly placed on the part of the bill that is retained by the **customer**);
 - (n) the amount due;
 - (o) the due date;
 - (p) a summary of the payment methods;
 - (q) a statement advising the **customer** that assistance is available if the **customer** is experiencing problems paying the bill;
 - (r) a **telephone** number for billing and payment enquiries;
 - (s) a **telephone** number for **complaints**;
 - (t) contact details for the **electricity ombudsman**;
 - (u) the **distributor's** 24 hour **telephone** number for faults and emergencies;
 - (v) the **supply address** and any relevant mailing address;
 - (w) the **customer's** name and account number;
 - (x) the amount of arrears or credit;

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- (y) if applicable and not included on a separate statement –
 - (i) payments made under an instalment plan; and
 - (ii) the total amount outstanding under the instalment plan;
 - (z) advice about the availability of multi-lingual services (in languages reflecting the **retailer's customer** base);
 - (aa) the **retailer's telephone** number for **TTY** services; and
 - (bb) to the extent that the data is available, a graph or bar chart illustrating the **customer's** amount due or consumption for the period covered by the bill, the previous bill and the bill for the same period last year.
- (2) Notwithstanding subclause (1)(bb), a **retailer** is not obliged to include a graph or bar chart on the bill if the bill is not –
- (a) indicative of the **customer's** actual consumption; or
 - (b) based upon a **meter** reading.
- (3) If a **retailer** identifies a **historical debt** and wishes to bill the **customer** for that **historical debt**, the **retailer** must advise the **customer** of –
- (a) the amount of the **historical debt**, and
 - (b) the basis of the **historical debt**,
- before, with or on the **customer's** next bill.

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Division 3 - Basis of Bill

4.6 Basis of bill

- (1) Subject to clause 4.8, a **retailer** must base a **customer's** bill on –
- (a) the **distributor's** or **metering agent's** reading of the **meter** at the **customer's supply address**, or
 - (b) the **customer's** reading of the **meter** at the **customer's supply address**, provided the **customer** agreed with the **retailer** that the **customer** will read the **meter** for the purpose of determining the amount due.
- (2) Prior to a **customer** reading a **meter** under subclause (1)(b), the **retailer** must give the **customer** information that explains in clear, simple and concise language how to read a **meter** correctly.

4.7 Frequency of meter readings

A **retailer** must use its best endeavours to ensure that metering data is obtained, as frequently as required to prepare its bills, and in any event at least once every twelve months in accordance with clause 4.6(1)(a).

4.8 Estimations

- (1) If a **retailer** is unable to reasonably base a bill on a reading of the **meter** at a **customer's supply address**, the **retailer** must give the **customer** an estimated bill.

(2) If a **retailer** bases a bill upon an estimation, the **retailer** must specify in a visible and legible manner on the **customer's** bill that:

(a) the **retailer** has based the bill upon an estimation; and

(b) the **retailer** will tell the **customer** on request;

(i) the basis of the estimation; and

(ii) the reason for the estimation; and

(c) **customer** may request a **meter** reading.

(3) A **retailer** must tell a **customer** on request the –

(a) basis for the estimation; and

(b) reason for the estimation.

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4.9 Adjustments to subsequent bills

If a **retailer** gives a **customer** an estimated bill and the **meter** is subsequently read, the **retailer** must include an adjustment on the next bill to take account of the actual **meter** reading.

4.10 Customer may request meter reading

If a **retailer** has based a bill upon an estimation because the **customer** failed to provide access to the **meter** and the **customer** –

(a) subsequently requests the **retailer** to replace the estimated bill with a bill based on an actual reading of the **customer's meter**;

(b) pays the **retailer's** reasonable charge for reading the **meter** (if any); and

(c) provides due access to the **meter**,

the **retailer** must use its best endeavours to do so.

Division 4 – Meter testing

4.11 Customer requests testing of meters or metering data

(2) If a customer –

(a) requests the **meter** to be tested; and

(b) pays the **retailer's** reasonable charge for testing the **meter** (if any),

the **retailer** must request the **distributor** or **metering agent** to test the **meter**.

(2) If the **meter** is tested and found to be defective, the **retailer's** reasonable charge for testing the **meter** (if any) is to be refunded to the **customer**.

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Division 5 – Alternative Tariffs

4.12 Customer applications

- (1) If a **retailer** offers alternative tariffs and a **customer** –
 - (a) applies to receive an alternative tariff; and
 - (b) demonstrates to the **retailer** that the **customer** satisfies all of the conditions relating to eligibility for the alternative tariff,the **retailer** must change the **customer** to the alternative tariff within 10 **business days** of the **customer** satisfying those conditions.
- (2) For the purposes of subclause (1), the effective date of change will be –
 - (a) the date on which the last **meter** reading at the previous tariff is obtained; or
 - (b) the date the **meter** adjustment is completed, if the change requires an adjustment to the **meter** at the **customer's supply address**.

4.13 Written notification of a change to an alternative tariff

If –

- (a) a **customer's** electricity use at the **customer's supply address** changes or has changed; and
- (b) the **customer** is no longer eligible to continue to receive an existing, more beneficial tariff,

the **retailer** must, prior to changing the **customer** to the tariff applicable to the **customer's** use of electricity at that **supply address**, give the **customer** written notice of the proposed change.

4.14 Overcharging or undercharging as result of change in electricity use

- (1) If a **retailer** has undercharged a **customer** as a result of a change in the **customer's** electricity use at the **customer's supply address**, the period for which the **retailer** may recover any amounts undercharged is limited to 12 months prior to the date on which the **retailer** notified the **customer** under clause 4.13.
- (2) If a **retailer** has overcharged a **customer** as a result of a change in the **customer's** electricity use at the **customer's supply address**, the **retailer** must repay the **customer** the amount overcharged.

Division 6 – Final bill

4.15 Request for final bill

- (1) If a **customer** requests the **retailer** to issue a final bill at the **customer's supply address**, the **retailer** must use reasonable endeavours to arrange for that bill in accordance with the **customer's** request.

- (2) If the **customer's** account is in credit at the time of account closure, the **retailer** must repay the amount to the **customer**.

Division 7 – Review of bill

4.16 Review of bill

Subject to a **customer** –

- (a) paying –
- (i) that portion of the bill under review that the **customer** and a **retailer** agree is not in dispute; or
 - (ii) an amount equal to the average amount of the **customer's** bills over the previous 12 months (excluding the bill in dispute),
- whichever is less; and
- (b) paying any future bills that are properly due,

a **retailer** must review the **customer's** bill on request by the **customer**.

4.17 Procedures following a review of a bill

- (1) If, after conducting a review of a bill, a **retailer** is satisfied that the bill is –
- (a) correct, the **retailer** –
- (i) may require a **customer** to pay the unpaid amount;
 - (ii) must advise the **customer** that the **customer** may request the **retailer** to arrange a **meter** test in accordance with applicable law; and
 - (iii) must advise the **customer** of the existence and operation of the **retailer's** internal complaints handling processes and details of any applicable external complaints handling processes,
- or
- (b) incorrect, the **retailer** must adjust the bill in accordance with clauses 4.18 and 4.19.
- (2) The **retailer** must inform a **customer** of the outcome of the review as soon as practicable, but, in any event, within 20 **business days** from the **date of receipt** of the request for review under clause 4.16.

4.18 Undercharging

- (1) This clause 4.18 applies whether the undercharging became apparent through a review under clause 4.16 or otherwise.
- (2) If a **retailer** proposes to recover an amount undercharged as a result of an act or omission by the **retailer** or **distributor** (including where a **meter** has been found to be defective), the **retailer** must –
- (a) limit the amount to be recovered to no more than the amount undercharged in the 12 months prior to the date on which the **retailer** notified the **customer** that undercharging had occurred;

- (b) list the amount to be recovered as a separate item in a special bill or in the next bill, together with an explanation of that amount;
 - (c) not charge the **customer** interest on that amount or require the **customer** to pay a late payment fee; and
 - (d) offer the **customer** time to pay that amount by means of an instalment payment plan in accordance with clause 6.4(2) and covering a period at least equal to the period over which the recoverable undercharging occurred.
- (3) In this clause –
“undercharging” includes, without limitation, failure to issue a bill.

4.19 Overcharging

- (1) This clause 4.19 applies whether the overcharging became apparent through a review under clause 4.16 or otherwise.
- (2) If a **customer** (including a **customer** who has vacated the **supply address**) has been overcharged as a result of an act or omission of a **retailer** or **distributor** (including where a **meter** has been found to be defective), the **retailer** must use its best endeavours to inform the **customer** accordingly within 10 **business days** of the **retailer** becoming aware of the error, and subject to subclause (6), ask the **customer** for instructions as to whether the amount should be –
 - (a) credited to the **customer’s** account; or
 - (b) repaid to the **customer**.
- (3) If a **retailer** receives instructions under subclause (2), the **retailer** must pay the amount in accordance with the **customer’s** instructions within 12 **business days** of receiving the instructions.
- (4) If a **retailer** does not receive instructions under subclause (2) within 20 **business days** of making the request, the **retailer** must use reasonable endeavours to credit the amount overcharged to the **customer’s** account.
- (5) No interest shall accrue to a credit or refund referred to in subclause (2).

(6) Where the amount referred to in subclause (2) is less than \$45 the **retailer** may:

(a) ask the **customer** for instructions pursuant to subclause (2) (in which case subclauses (3) and (4) apply as if the retailer sought instructions under subclause (2)); or

(b) credit the amount to the **customer’s** account (in which case subclause (3) applies as if the **customer** instructed the **retailer** to credit the **customer’s** account).

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Part 5 Payment

5.1 Due dates for payment*

- (1) The due date on a bill must be at least 12 **business days** from the date of that bill.
- (2) Unless a **retailer** specifies a later date, the date of dispatch is the date of the bill.

5.2 Minimum payment methods*

- (1) A **retailer** must offer a **customer** at least the following payment methods –
 - (a) in person at one or more payment outlets located within the Local Government District of the **customer's supply address**;
 - (b) by mail;
 - (c) by Centrepay;
 - (d) electronically by means of BPay or credit card; and
 - (e) by **telephone** by means of credit card.
- (2) All electronic payment arrangements must comply with the **Electronic Funds Transfer Code of Conduct**.

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5.3 Direct debit

If a **retailer** offers the option of payment by direct debit to a **customer**, the **retailer** must, prior to the direct debit commencing, obtain the **customer's verifiable consent**, and agree with the **customer** –

- (a) wherever possible, the amount to be debited; and
- (b) the date and frequency of the direct debit.

5.4 Payment in advance*

- (1) A **retailer** must accept payment in advance from a **customer** on request.
- (2) Acceptance of an advance payment by a **retailer** will not require the **retailer** to credit any interest to the amounts paid in advance.
- (3) Subject to clause 6.9, for the purposes of subclause (1), \$20 is the minimum amount for which the **retailer** will accept advance payments.

5.5 Absence or illness

If a **residential customer** is unable to pay by way of the methods described in clause 5.2, due to illness or absence, a **retailer** must offer the **residential**

customer on request redirection of the **residential customer's** bill to a third person at no charge.

5.6 Late payments

- (1) A **retailer** must not charge a **residential customer** a late payment fee if –
 - (a) the **residential customer** receives a **concession**, provided the **residential customer** did not receive two or more **reminder notices** within the previous twelve months; or
 - (b) the **residential customer** and the **retailer** have agreed to –
 - (i) a payment extension under Part 6, and the **residential customer** pays the bill by the agreed (new) due date; or
 - (ii) an instalment plan under Part 6, and the **residential customer** is making payments in accordance with the instalment plan; or
 - (c) the **residential customer** has made a **complaint** directly related to the non-payment of the bill to the **retailer** or to the **electricity ombudsman** and the **complaint** remains unresolved or is upheld. If the **complaint** is resolved in favour of the **retailer**, any late payment fee shall only be calculated from the date of the **electricity ombudsman's** decision.
- (2) If a **retailer** has charged a **residential customer** a late payment fee, the **retailer** must not charge an additional late payment fee in relation to the same bill within 5 **business days** from the **date of receipt** of the previous late payment fee notice.
- (3) A **retailer** must not charge a **residential customer** more than 2 late payment fees in relation to the same bill and 12 late payment fees in a year.

5.7 Vacating a supply address*

- (1) Subject to –
 - (a) subclauses (2) and (4);
 - (b) the **customer** giving the **retailer** notice; and
 - (c) the **customer** vacating the **supply address** at the time specified in the notice,a **retailer** must not require a **customer** to pay for electricity consumed at the **customer's supply address** from–
 - (a) the date the **customer** vacated the **supply address**, if the **customer** gave at least 3 **business days** notice; or
 - (b) five days after the **customer** gave notice, in any other case.
- (2) If a **customer** reasonably demonstrates to a **retailer** that the **customer** was evicted or otherwise required to vacate the **supply address**, the **retailer** must not require the **customer** to pay for electricity consumed at the **customer's supply address** from the date the **customer** gave the **retailer** notice.
- (3) For the purposes of subclauses (1) and (2), notice is given if a **customer** –
 - (a) informs a **retailer** of the date on which the **customer** intends to vacate, or has vacated the **supply address**; and
 - (b) gives the **retailer** a forwarding address to which a final bill may be sent.

- (4) Notwithstanding subclauses (1) and (2), if –
- (a) a **retailer** and a **customer** enter into a new **contract** for the **supply address**, a **retailer** must not require the previous **customer** to pay for electricity consumed at the **customer's supply address** from the date that the new **contract** becomes effective;
 - (b) another **retailer** becomes responsible for the supply of electricity to the **supply address**, the previous **retailer** must not require the **customer** to pay for electricity consumed at the **customer's supply address** from the date that the other **retailer** becomes responsible; and
 - (c) the **supply address** is disconnected, the **retailer** must not require the **customer** to pay for electricity consumed at the **customer's supply address** from the date that disconnection occurred.
- (5) Notwithstanding subclauses (1), (2) and (4), a **retailer's** right to payment does not terminate with regard to any amount that was due up until the termination of the **contract**.

5.8 Debt collection

- (1) A **retailer** must comply with the Conduct Principles set out in the guideline on debt collection issued by the Australian Competition and Consumer Commission concerning section 60 of the *Trade Practices Act 1974* of the Commonwealth.
- (2) A **retailer** must not commence proceedings for recovery of a debt –
- (a) from a **residential customer** who has informed the **retailer** in accordance with clause 6.1(1) that the **residential customer** is experiencing **payment difficulties** or **financial hardship**, unless and until the **retailer** has complied with all the requirements of clause 6.1 and (if applicable) clause 6.3; and
 - (b) while a **residential customer** continues to make payments under an alternative payment arrangement under Part 6;
- (3) A **retailer** must not recover or attempt to recover a debt relating to a **supply address** from a person other than the **customer** with whom the **retailer** has or had entered into a contract for the supply of electricity to that **customer's supply address**.

Part 6
Payment Difficulties & Financial Hardship

Division 1 – Assessment of financial situation

6.1 Assessment

- (1) If a **residential customer** informs a **retailer** that the **residential customer** is experiencing **payment problems**, the **retailer** must, (subject to clause 6.2) within 3 **business days**, assess whether the **residential customer** is experiencing **payment difficulties** or **financial hardship**.
- (2) When undertaking the assessment required by subclause (1), a **retailer** must give reasonable consideration to –
 - (a) information –
 - (i) given by the **residential customer**, and
 - (ii) requested or held by the **retailer**, or
 - (b) advice given by an independent financial counsellor or **relevant consumer representative organisation**.
- (3) A **retailer** must advise a **residential customer** on request of the details of an assessment carried out under subclause (1).
- (4) In this clause –

“**payment problems**” includes, without limitation, payment problems relating to a **historical debt**.

6.2 Temporary suspension of actions

- (1) If, for the purposes of clause 6.1, a **residential customer** –
 - (a) requests a **temporary suspension of actions**; and
 - (b) demonstrates to a **retailer** that the **residential customer** has made an appointment with a **relevant consumer representative organisation** to assess the **residential customer’s** capacity to pay,the **retailer** must not unreasonably deny the **residential customer’s** request.
- (2) A **temporary suspension of actions** must be for at least 10 days.
- (3) If a **relevant consumer representative organisation** is unable to assess a **residential customer’s** capacity to pay within the period referred to in subclause (2) and the **residential customer or relevant consumer representative organisation** requests additional time, a **retailer** must give reasonable consideration to the **residential customer’s or relevant consumer representative organisation’s** request.
- (4) In this clause –

“**temporary suspension of actions**” means a situation where a **retailer** temporarily suspends all disconnection and debt recovery procedures

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without entering into an alternative payment arrangement under clause 6.4(1).

6.3 Assistance to be offered

- (1) If the assessment carried out under clause 6.1 indicates to the **retailer** that the **residential customer** is experiencing –
 - (a) **payment difficulties**, the **retailer** must –
 - (i) offer the **residential customer** the alternative payment arrangements referred to in clause 6.4(1); and
 - (ii) advise the **residential customer** that additional assistance may be available if, due to **financial hardship**, the **residential customer** would be unable to meet its obligations under an agreed alternative payment arrangement;
 - or
 - (b) **financial hardship**, the **retailer** must offer the **residential customer** –
 - (i) the alternative payment arrangements referred to in clause 6.4(1); and
 - (ii) assistance in accordance with clauses 6.6 to 6.9.
- (2) Subclause (1) does not apply if a **retailer** is unable to make an assessment under clause 6.1 as a result of an act or omission by a **residential customer**.

Division 2 – Residential customers experiencing payment difficulties or financial hardship

6.4 Alternative payment arrangements

- (1) A **retailer** must offer a **residential customer** who is experiencing **payment difficulties** or **financial hardship** at least the following payment arrangements –
 - (a) additional time to pay a bill; and
 - (b) an interest-free and fee-free instalment plan or other arrangement under which the **residential customer** is given additional time to pay a bill or to pay arrears (including any disconnection and reconnection charges) and is permitted to continue consumption.
- (2) When offering an instalment plan under subclause (1)(b), a **retailer** must –
 - (a) take into account information about the **residential customer's** usage needs and capacity to pay when determining the period of the plan and calculating the amount of the instalments;
 - (b) specify the period of the plan;
 - (c) specify the number of instalments;
 - (d) specify the amount of the instalments which will pay the **residential customer's** arrears (if any) and estimated consumption during the period of the plan;

- (e) specify how the amount of the instalments is calculated;
 - (f) specify that due to seasonal fluctuations in the **residential customer's** usage, paying in instalments may result in the **residential customer** being in credit or debit during the period of the plan;
 - (g) have in place fair and reasonable procedures to address payment difficulties a **residential customer** may face while on the plan; and
 - (h) make provision for re-calculation of the amount of the instalments where the difference between the **residential customer's** estimated consumption and actual consumption may result in the **residential customer** being significantly in credit or debit at the end of the period of the plan.
- (3) If a **residential customer** has, in the previous twelve months, had two instalment plans cancelled due to non-payment, a **retailer** does not have to offer that **residential customer** another instalment plan under subclause (1)(b), unless the **retailer** is satisfied that the **residential customer** will comply with the instalment plan.
- (4) For the purposes of subclause (3), cancellation does not include the revision of an instalment plan under clause 6.7.

Division 3 – Assistance available to residential customers experiencing financial hardship

6.5 Definitions

In this division –

“**customer**” means a **residential customer** who has been assessed by a **retailer** under clause 6.1(1) as experiencing **financial hardship**.

Subdivision 1 - Specific assistance available

6.6 Reduction of fees, charges and debt

- (1) A **retailer** must give reasonable consideration to a request by a **customer**, or a **relevant consumer representative organisation**, for a reduction of the **customer's** fees, charges or debt.
- (2) In giving reasonable consideration under clause 6.6(1), a **retailer** should refer to the guidelines in its hardship policy referred to in clause 6.10(2)(d).

6.7 Revision of alternative payment arrangements

If a **customer**, or a **relevant consumer representative organisation**, reasonably demonstrates to a **retailer** that the **customer** is unable to meet the **customer's** obligations under a previously elected payment arrangement under clause 6.4(1), the **retailer** must give reasonable consideration to –

- (a) offering the **customer** an instalment plan, if the **customer** had previously elected a payment extension under clause 6.4(1)(a); or
- (b) offering to revise the instalment plan, if the **customer** had previously elected an instalment plan under clause 6.4(1)(b).

6.8 Provision of information

A **retailer** must advise a **customer** of the –

- (a) **customer's** right to have the bill redirected at no charge to a third person;
- (b) payment methods available to the **customer**;
- (c) **concessions** available to the **customer**;
- (d) different types of **meters** available to the **customer**;
- (e) energy efficiency information available to the **customer**, including the option to arrange for an **energy efficiency audit**, and
- (f) independent financial and other relevant counselling services available to the **customer**.

6.9 Payment in advance

- (1) A **retailer** must determine the minimum payment in advance amount, as referred to in clause 5.4(3), for **residential customers** experiencing **payment difficulties** or **financial hardship** in consultation with **relevant consumer representative organisations**.
- (2) A **retailer** may apply different minimum payment in advance amounts for **residential customers** experiencing **payment difficulties** or **financial hardship** and other **customers**.

Subdivision 2 – Hardship policy

6.10 Obligation to develop hardship policy

- (1) A **retailer** must develop a hardship policy to assist **customers** in meeting their financial obligations and responsibilities to the **retailer**.
- (2) The hardship policy must –
 - (a) be developed in consultation with **relevant consumer representative organisations**;
 - (b) provide for the training of staff on a **retailer's** obligations to **customers**;
 - (c) ensure that **customers** are treated sensitively and respectfully; and
 - (d) include guidelines –
 - (i) that –
 - A. ensure ongoing consultation with **relevant consumer representative organisations** (including the provision of a direct **telephone** number of the **retailer's** credit

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- management staff, if applicable, to financial counsellors and **relevant consumer representative organisations**); and
- B. provide for annual review of the hardship policy in consultation with **relevant consumer representative organisations**;
- (ii) that assist the **retailer** in identifying **residential customers** who are experiencing **financial hardship**;
 - (iii) for suspension of disconnection and debt recovery procedures;
 - (iv) on the reduction and/or waiver of fees, charges and debt; and
 - (v) on the recovery of debt.
- (3) A **retailer** must give a **customer**, financial counsellor or **relevant consumer representative organisation** on request details of the hardship policy at no charge.
- (4) A **retailer** must keep a record of –
- (a) the **relevant consumer representative organisations** consulted on the contents of the hardship policy;
 - (b) the date the hardship policy was established;
 - (c) the dates the hardship policy was reviewed; and
 - (d) the dates the hardship policy was amended.

Division 4 – Business customers experiencing payment difficulties

6.11 Alternative payment arrangements

A **retailer** must consider any reasonable request for alternative payment arrangements from a **business customer** who is experiencing **payment difficulties**.

Part 7 Disconnection

Division 1 – Conduct in relation to disconnection

Subdivision 1 – Disconnection for failure to pay bill

7.1 General requirements

- (1) Prior to arranging for disconnection of the **customer's supply address** for failure to pay a bill, a **retailer** must –
 - (a) give the **customer** a **reminder notice**, not less than 13 **business days** from the date of dispatch of the bill, including –
 - (i) the **retailer's telephone** number for billing and payment enquiries; and
 - (ii) advice on how the **retailer** may assist in the event the **customer** is experiencing **payment difficulties** or **financial hardship**;
 - (b) use its best endeavours to **contact** the **customer**;
 - (c) give the **customer** a **disconnection warning**, not less than 18 **business days** from the date of dispatch of the bill, advising the **customer** –
 - (i) that the **retailer** may disconnect the **customer** on a day no sooner than 5 **business days** after the **date of receipt** of the **disconnection warning**; and
 - (ii) of the existence and operation of complaint handling processes including the existence and operation of the **electricity ombudsman** and the Freecall **telephone** number of the **electricity ombudsman**.
- (2) For the purposes of subclause (1), a **customer** has failed to pay a **retailer's** bill if the **customer** has not –
 - (a) paid the **retailer's** bill by the due date;
 - (b) agreed with the **retailer** to an offer of an instalment plan or other payment arrangement to pay the **retailer's** bill; or
 - (c) adhered to the **customer's** obligations to make payments in accordance with an agreed instalment plan or other payment arrangement relating to the payment of the **retailer's** bill.

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7.2 Limitations on disconnection for failure to pay bill

- (1) Notwithstanding clause 7.1, a **retailer** must not arrange for the disconnection of a **customer's supply address** for failure to pay a bill –

- (a) within 1 **business day** after the expiry of the period referred to in the **disconnection warning**;
 - (b) if the **retailer** has made the **residential customer** an offer in accordance with clause 6.4(1) and the **residential customer** has –
 - (i) accepted the offer before the expiry of the period specified by the **retailer** in the **disconnection warning**; and
 - (ii) has used reasonable endeavours to settle the debt before the expiry of the time frame specified by the **retailer** in the **disconnection warning**;
 - (c) if the amount outstanding is less than an amount approved and published by the **Authority** in accordance with subclause (2) and the **customer** has agreed with the **retailer** to repay the amount outstanding;
 - (d) if the **customer** has made an application for a **concession** and a decision on the application has not yet been made;
 - (e) if the **customer** has failed to pay an amount which does not relate to the supply of electricity; or
 - (f) if the **supply address** does not relate to the bill (unless the **customer** has failed to make payments relating to an outstanding debt for a **supply address** previously occupied by the **customer**).
- (2) For the purposes of subclause (1)(c), the **Authority** may approve and publish, in relation to failure to pay a bill, an amount outstanding below which a **retailer** must not arrange for the disconnection of a **customer's supply address**.

7.3 Dual fuel contracts

If a **retailer** and a **customer** have entered into –

- (a) a **dual fuel contract**; or
- (b) separate **contracts** for the supply of electricity and the supply of gas, under which –
 - (i) a single bill for energy is; or
 - (ii) separate, simultaneous bills for electricity and gas are, issued to the **customer**,

the **retailer** must not arrange for disconnection of the **customer's supply address** for failure to pay a bill within 15 **business days** from arranging for disconnection of the **customer's** gas supply.

Subdivision 2 – Disconnection for denying access to meter

7.4 General requirements

- (1) A **retailer** must not arrange for the disconnection of a **customer's supply address** for denying access to the **meter**, unless –

- (a) the **customer** has denied access for at least 12 consecutive months;
 - (b) the **retailer** has, prior to giving the **customer** a **disconnection warning** under subclause (f), at least once given the **customer** in writing 5 **business days** notice:
 - (i) advising the **customer** of the next date or timeframe of a scheduled meter reading at the **supply address**;
 - (ii) requesting access to the **meter** at the **supply address** for the purpose of the scheduled meter reading; and
 - (iii) advising the **customer** of the **retailer's** ability to arrange for disconnection if the **customer** fails to provide access to the **meter**;
 - (c) the **retailer** has given the **customer** an opportunity to provide reasonable alternative access arrangements;
 - (d) where appropriate, the **retailer** has informed the **customer** of the availability of alternative **meters** which are suitable to the **customer's supply address**;
 - (e) the **retailer** has used its best endeavours to **contact** the **customer** to advise of the proposed disconnection; and
 - (f) the **retailer** has given the **customer** a **disconnection warning** with at least 5 **business days'** notice of its intention to arrange for disconnection (the 5 **business days** shall be counted from the **date of receipt** of the **disconnection warning**).
- (2) A **retailer** may arrange for the **distributor** to carry out one or more of the requirements referred in subclause (1) on behalf of the **retailer**.

Subdivision 3 – Disconnection for emergencies

7.5 General requirements

If a **distributor** disconnects a **customer's supply address** for **emergency** reasons, the **distributor** must –

- (a) provide, by way of a 24 hour emergency line at the cost of a local call, information on the nature of the **emergency** and an estimate of the time when supply will be restored; and
- (b) use its best endeavours to restore supply to the **customer's supply address** as soon as possible.

Division 2 –Limitations on disconnection

7.6 General limitations on disconnection

Except if disconnection –

- (a) was requested by the **customer**, or
- (b) occurred for **emergency** reasons,

a **retailer** or a **distributor** must not arrange for disconnection or disconnect a **customer's supply address** –

(c) where the **customer** has made a **complaint**, directly related to the reason for the proposed disconnection, to the **retailer, distributor, electricity ombudsman** or another external dispute resolution body and the **complaint** remains unresolved;

(d) after 3.00 pm Monday to Thursday;

(e) after 12.00 noon on a Friday; and

(f) on a Saturday, Sunday, public holiday or on the **business day** before a public holiday, except in the case of a planned **interruption**.

unless:

(g) the **customer** is a **business customer**, and

(h) the **business customer's** normal trading hours:

(i) fall within the time frames set out in subclauses (d), (e) or (f); and

(ii) do not fall within any other time period; and

(i) it is not practicable for the **retailer** or **distributor** to arrange for disconnection at any other time.

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7.7 Life support

- (1) If a **customer** provides a **retailer** with confirmation from an appropriately qualified medical practitioner that a person residing at the **customer's supply address** requires **life support equipment**, the **retailer** must –
 - (a) register the **customer's supply address** as a **life support equipment** address;
 - (b) give the **customer's distributor** relevant information about the **customer's supply address** for the purpose of updating the **distributor's** records and registers; and
 - (c) not arrange for disconnection of that **customer's supply address** for failure to pay a bill while the person continues to reside at that address and require the use of **life support equipment**.
- (2) Where a **distributor** has been informed by a **retailer** under subclause (1)(b) or by a relevant government agency that a person residing at a **customer's supply address** requires **life support equipment**, the **distributor** must –
 - (a) register the **customer's supply address** as a **life support equipment** address;
 - (b) not disconnect that **customer's supply address** for failure to pay a bill while the person continues to reside at that address and require the use of **life support equipment**; and
 - (c) give the **customer** at least 3 days written notice of any planned **interruptions** to supply at the **customer's supply address** (the 3 days to be counted from the **date of receipt** of the notice).
- (3) When a person –
 - (a) who requires **life support equipment**, vacates the **supply address**; or

(b) who required **life support equipment**, no longer requires the **life support equipment**,
a **retailer's** and **distributor's** obligation under subclauses (1) and (2) terminates.

Part 8 Reconnection

8.1 Reconnection by retailer*

- (1) If a **retailer** has arranged for disconnection of a **customer's supply address** due to –
 - (a) failure to pay a bill, and the **customer** has paid or agreed to accept an offer of an instalment plan, or other payment arrangement;
 - (b) the **customer** denying access to the **meter**, and the **customer** has subsequently provided access to the **meter**; or
 - (c) illegal use of electricity, and the **customer** has remedied that breach, and has paid, or made an arrangement to pay, for the electricity so obtained,the **retailer** must arrange for reconnection of the **customer's supply address**, subject to –
 - (a) the **customer** making a request for reconnection; and
 - (b) the **customer** –
 - (i) paying the **retailer's** reasonable charge for reconnection, if any; or
 - (ii) accepting an offer of an instalment plan for the retailer's reasonable charges for reconnection, if any.
- (2) For the purposes of subclause (1), a **retailer** must forward the request for reconnection to the relevant **distributor** –
 - (a) that same **business day**, if the request is received before 3pm on a **business day**; or
 - (b) no later than the next **business day**, if the request is received –
 - (i) after 3pm on a business day, or
 - (ii) on a Saturday, Sunday or public holiday in Western Australia.

8.2 Reconnection by distributor

- (1) If a **distributor** has disconnected a **customer's supply address** on request by the **customer's retailer**, and the **retailer** has subsequently requested the **distributor** to reconnect the **customer's supply address**, the **distributor** must reconnect the **customer's supply address**.
- (2) For the purposes of subclause (1), a **distributor** must reconnect the **customer's supply address** –
 - (a) for **supply addresses** located within the **metropolitan area** –
 - (i) within 1 **business day** of receipt of the request, if the request is received prior to 3pm on a **business day**; and

- (ii) within 2 **business days** of receipt of the request, if the request is received after 3pm on a **business day** or on a Saturday, Sunday or public holiday in Western Australia;
- (b) for **supply addresses** located within the **regional area** –
 - (i) within 5 **business days** of receipt of the request, if the request is received prior to 3pm on a **business day**; and
 - (ii) within 6 **business days** of receipt of the request, if the request is received after 3pm on a **business day**, or on a Saturday, Sunday or public holiday in Western Australia.
- (3) Subclause (2) does not apply in the event of an **emergency**.

8.3 Priority Restoration Register

- (1) A **distributor** must create and maintain a **Priority Restoration Register**.
- (2) The **Priority Restoration Register** must comply with any criteria determined by the Minister.

Part 9

Pre-payment meters in remote communities

9.1 Definitions

In this Part –

“**credit retrieval**” means the ability for a **pre-payment meter customer** to recover any payments made for the supply of electricity.

“**recharge facility**” means a facility where a **pre-payment meter customer** can purchase credit for the **pre-payment meter** including a disposable **pre-payment meter** card.

9.2 Application

- (1) Parts 4, 5, 6 (with the exception of clause 6.10), 7 and 8 and clauses 2.4, 10.2 and 10.7 of the **Code** do not apply to a **pre-payment meter customer**.
- (2) Part 9 only applies to a **pre-payment meter customer** located in a remote or town reserve community in which the Aboriginal and Remote Communities Power Supply Project or Town Reserve Regularisation Program is being implemented.

9.3 Operation of pre-payment meter

- (1) A **retailer** must not operate a **pre-payment meter** at a **residential customer's supply address** without the **verifiable consent** of the **customer** or the **customer's** nominated representative.
- (2) A **retailer** must establish an account for each **pre-payment meter** operating at a **residential customer's supply address**.

9.4 Provision of mandatory information

- (1) A **retailer** must advise a **residential customer** who requests information on the use of a **pre-payment meter**, at no charge and in clear, simple and concise language –
 - (a) of all applicable tariffs, fees and charges payable by the **residential customer** and the basis for the calculation of those charges;
 - (b) of the tariffs, fees and charges applicable to a **pre-payment meter** relative to relevant tariffs, fees and charges which would apply to that **residential customer** if no **pre-payment meter** was operating at the **residential customer's supply address**;
 - (c) how a **pre-payment meter** is operated;
 - (d) how the **residential customer** may recharge the **pre-payment meter** (including details of cost, location and business hours of **recharge facilities**);

- (e) of the emergency credit facilities applicable to a **pre-payment meter**, and
- (f) of **credit retrieval**.
- (2) At the time a **residential customer** enters into a **pre-payment meter contract** at a **residential customer's supply address**, a **retailer** must give the **residential customer** at no charge –
- (a) the information specified within subclause (1);
 - (b) a copy of the **contract**;
 - (c) information on the availability and scope of the **Code** and the requirement that **distributors, retailers** and **marketers** comply with the **Code**;
 - (d) a **meter** identification number;
 - (e) a **telephone** number for enquiries;
 - (f) a **telephone** number for **complaints**;
 - (g) the **distributor's** 24 hour **telephone** number for faults and emergencies;
 - (h) confirmation of the **supply address** and any relevant mailing address;
 - (i) details of any **concessions** the **residential customer** may be eligible to receive;
 - (j) the amount of any **concessions** to be given to the **residential customer**;
 - (k) information on the availability of multi-lingual services (in languages reflective of the **retailer's customer** base);
 - (l) information on the availability of **TTY** services;
 - (m) advice on how the **retailer** may assist in the event the **customer** is experiencing **payment difficulties** or **financial hardship**;
 - (n) advice on how to make a **complaint** to, or enquiry of, the **retailer**;
 - (o) details on external complaints handling processes; and
 - (p) general information on the safe use of electricity.
- (3) A **retailer** must ensure that the following information is shown on or directly adjacent to a **residential customer's pre-payment meter** –
- (a) the positive or negative financial balance of the **pre-payment meter** within 1 dollar of the actual balance;
 - (b) whether the **pre-payment meter** is operating on normal credit or emergency credit;
 - (c) a **telephone** number for enquiries;
 - (d) the **distributor's** 24 hour **telephone** number for faults and emergencies; and
 - (e) details of the **recharge facilities**.
- (4) A **retailer** must give a **pre-payment meter customer** on request, at no charge, the following information –
- (a) total energy consumption;

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- (b) average daily consumption; and
- (c) average daily cost of consumption, for the previous 2 years or since the commencement of the **pre-payment meter** contract (whichever is the shorter), divided in quarterly segments.

9.5 Life support equipment

- (1) A **retailer** must not operate a **pre-payment meter** at the **supply address** of a **residential customer** if the **residential customer**, or a person residing at the **residential customer's supply address**, requires **life support equipment**.
- (2) If a **prepayment meter customer** notifies a **retailer** that a person residing at the **supply address** depends on **life support equipment**, the **retailer** must -
 - (a) remove or render non-operational the **pre-payment meter** at no charge;
 - (b) replace or switch the **pre-payment** to a standard **meter** at no charge; and
 - (c) provide information to the **prepayment meter customer** about the **contract** options available to the **prepayment meter customer**.

9.6 Recharge Facilities

A **retailer** must ensure that –

- (a) at least one **recharge facility** is located –
 - (i) within the remote community; or
 - (ii) within or adjacent to the town reserve of a **pre-payment meter customer**,
- (b) a **pre-payment meter customer**.
 - (i) other than a **customer** within an ARCPSP community can access a recharge facility between the hours of 9:00am to 5:00pm, Monday to Friday; and
 - (ii) within an ARCPSP community can access a **recharge facility** at least 3 hours per day, 5 days per week within the hours determined by the Aboriginal Corporation or relevant entity responsible for the community store facility; and
- (c) the minimum amount to be credited by a **recharge facility** does not exceed 10 dollars per increment.

9.7 Concessions

If a **pre-payment meter customer** demonstrates to a **retailer** that the **pre-payment meter customer** is entitled to receive a **concession**, the **retailer** must ensure that the **pre-payment meter customer** receives the benefit of the **concession**.

9.8 Emergency credit

A **retailer** must ensure that a **pre-payment meter** provides an emergency credit amount to the value of at least 10 dollars.

9.9 Credit retrieval, overcharging and undercharging

- (1) Subject to the **pre-payment meter customer** notifying a **retailer** of the proposed vacation date, a **retailer** must ensure that a **pre-payment meter customer** can retrieve all remaining credit at the time the **pre-payment meter customer** vacates the **supply address**.
- (2) If a **pre-payment meter customer** (including a **prepayment meter customer** who has vacated the supply address) has been overcharged as a result of an act or omission of a **retailer** or **distributor** (including where the **pre-payment meter** has been found to be defective), the **retailer** must use its best endeavours to inform the **pre-payment meter customer** accordingly within 10 **business days** of the **retailer** becoming aware of the error, and ask the **pre-payment meter customer** for instructions as to whether the amount should be –
 - (a) credited to the **pre-payment meter customer's** account; or
 - (b) repaid to the **pre-payment meter customer**.
- (3) If a **retailer** receives instructions under subclause (2), the **retailer** must pay the amount in accordance with the **pre-payment meter customer's** instructions within 12 **business days** of receiving the instructions.
- (4) If a **retailer** does not receive instructions under subclause (2) within 20 **business days** of making the request, the **retailer** must use reasonable endeavours to credit the amount overcharged to the **pre-payment meter customer's** account.
- (5) No interest shall accrue to a credit or refund referred to in subclause (2).
- (6) If a **retailer** proposes to recover an amount undercharged as a result of an act or omission by the **retailer** or **distributor** (including where a **meter** has been found to be defective), the **retailer** must –
 - (a) limit the amount to be recovered to no more than the amount undercharged in the 12 months prior to the date on which the **retailer** notified the **pre-payment meter customer** that undercharging had occurred;
 - (b) list the amount to be recovered as a separate item in a special bill or in the next bill (if applicable), together with an explanation of that amount;
 - (c) not charge the **pre-payment meter customer** interest on that amount or require the **pre-payment meter customer** to pay a late payment fee; and
 - (d) offer the **pre-payment meter customer** time to pay that amount by means of an instalment payment plan in accordance with clause 6.4(2) (as if clause 6.4(2) applied to the **retailer**) and covering a period at least equal to the period over which the recoverable undercharging occurred.

9.10 **Resumption of supply after self-disconnection**

A *retailer* must ensure that supply is resumed through a *pre-payment meter* after self-disconnection as soon as information is communicated to the *pre-payment meter* that a payment causing a positive financial balance of the *pre-payment meter* account has been made.

Part 10 Information & Communication
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Division 1 – Obligations particular to retailers

10.1 Tariff information

- (1) A **retailer** must give notice to each of its **customers** affected by a variation in its tariffs as soon as practicable after the variation is published and, in any event, no later than the next bill in a **customer's billing cycle**.
- (2) A **retailer** must give a **customer** on request, at no charge, reasonable information on the **retailer's** tariffs, including any alternative tariffs that may be available to that **customer**.
- (3) A **retailer** must give a **customer** the information referred to under subclause (2) within 8 **business days** of the **date of receipt**. If requested by a **customer**, the **retailer** must give the information in writing.

10.2 Historical billing data

- (1) A **retailer** must give a **non-contestable customer** on request the **non-contestable customer's** billing data.
- (2) If a **non-contestable customer** requests billing data under subclause (1) –
 - (a) for a period less than the previous two years and no more than once a year; or
 - (b) in relation to a dispute with the **retailer**,the **retailer** must give the billing data at no charge.
- (3) A **retailer** must give a **non-contestable customer** the billing data requested under subclause (1) within 10 **business days** of the **date of receipt** of –
 - (a) the request; or
 - (b) payment for the **retailer's** reasonable charge for providing the billing data (if requested by the **retailer**).
- (4) A **retailer** must keep a **non-contestable customer's** billing data for 7 years.

10.3 Concessions

A **retailer** must give a **customer** on request at no charge –

- (a) information on the types of **concessions** available to the **customer**, and
- (b) the name and contact details of the organisation responsible for administering those **concessions** (if the **retailer** is not responsible).

10.3A Service Standard Payments

A **retailer** must give a **customer** at least once a year written details of the **retailer's** and **distributors** obligations to make payments under Part 14 of this Code including the amount of the payment and the eligibility criteria for the payment.

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10.4 Energy Efficiency Advice

A **retailer** must give a **customer** on request, at no charge, general information on –

- (a) cost effective and efficient ways to utilise electricity (including referring a **customer** to a relevant information source);
- (b) how a **customer** may arrange for an **energy efficiency audit** at the **customer's supply address**; and
- (c) the typical running costs of major domestic appliances.

10.5 Distribution matters

If a **customer** asks a **retailer** for information relating to the distribution of electricity, the **retailer** must –

- (a) give the information to the **customer**, or
- (b) refer the **customer** to the relevant **distributor** for a response.

Division 2 – Obligations particular to distributors

10.6 General information

A **distributor** must give a **customer** on request, at no charge, the following information –

- (a) information on the **distributor's** requirements in relation to the **customer's** proposed new electrical installation, or changes to the **customer's** existing electrical installation, including advice about supply extensions;
- (b) an explanation for any unplanned or approved change in the quality of supply of electricity outside of the limits prescribed by law;
- (c) an explanation for any unplanned **interruption** of supply to the **customer's supply address**;
- (d) advice on facilities required to protect the **distributor's** equipment;
- (e) advice on how to obtain information on protecting the **customer's** equipment;
- (f) advice on the **customer's** electricity usage so that it does not interfere with the operation of a distribution system or with supply to any other electrical installation;
- (g) general information on safe use of electricity;
- (h) general information on quality of supply; and

- (i) general information on reliability of supply.

10.7 Historical consumption data

- (1) A **distributor** must give a **customer** on request the **customer's** consumption data.
- (2) If a **customer** requests consumption data under subclause (1) –
 - (a) for a period less than the previous two years and no more than twice a year; or
 - (b) in relation to a dispute with the **distributor**,the **distributor** must give the consumption data at no charge.
- (3) A **distributor** must give a **customer** the consumption data requested under subclause (1) within 10 **business days** of –
 - (a) the date of receipt of the request; or
 - (b) if payment is required (and is requested by the distributor within 2 business days of the request) payment for the **distributor's** reasonable charge for providing the data.
- (4) A **distributor** must keep a **customer's** consumption data for 7 years.

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10.8 Distribution standards

- (1) A **distributor** must tell a **customer** on request how the **customer** can obtain information on distribution standards and metering arrangements –
 - (a) prescribed under the **Act** or the *Electricity Act 1945*; or
 - (b) adopted by the **distributor**,that are relevant to the **customer**.
- (2) A **distributor** must publish on its website the information specified in subclause (1).

Division 3 – Obligations particular to retailers and distributors

10.9 Written information must be easy to understand

To the extent practicable, a **marketer**, **retailer** and **distributor** must ensure that any written information that must be given to a **customer** by the **marketer**, **retailer** or **distributor** under the **Code** is expressed in clear, simple and concise language and is in a format that makes it easy to understand.

10.10 Code of Conduct

- (1) A **retailer** and a **distributor** must tell a **customer** on request how the **customer** can obtain a copy of the **Code**.
- (2) A **retailer** and a **distributor** must make electronic copies of the **Code** available, at no charge, on the **retailer's** or **distributor's** web site.

- (3) A **retailer** and a **distributor** must make a copy of the **Code** available for inspection at the offices of the **retailer** and **distributor** at no charge.

10.11 Special Information Needs

- (1) A **retailer** and a **distributor** must make available to a **customer** on request, at no charge, services that assist the **customer** in interpreting information provided by the **retailer** or **distributor** to the **customer** (including independent multi-lingual and **TTY** services, and large print copies).
- (2) A **retailer** and, where appropriate, a **distributor** must include:

- (a) the **telephone** number for their **TTY** services; and
 - (b) the **telephone** number for independent multi-lingual services; **and**
 - (c) the **National Interpreter Symbol** with the words “**Interpreter Services**”,
- on the –
- (a) bill and bill related information (including, for example, the notice referred to in clause 4.2(5) and statements relating to an instalment plan);
 - (b) **reminder notice**; **and**
 - (c) **disconnection warning**.

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10.12 Metering

- (1) A **distributor** must advise a **customer** on request, at no charge, of the availability of different types of **meters** and their –
 - (a) suitability to the **customer’s supply address**;
 - (b) purpose;
 - (c) costs; and
 - (d) installation, operation and maintenance procedures.
- (2) If a **customer** asks a **retailer** for information relating to the availability of different types of **meters**, the **retailer** must –
 - (a) give the information to the **customer**, or
 - (b) refer the **customer** to the relevant **distributor** for a response.

Part 11
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<#>A *retailer* and a *distributor* must produce and publish a **Customer Service Charter**.
<#>A **Customer Service Charter** under subclause (1) must address at least the following matters –
<#>a summary of the **customer's** rights and obligations under the **Code** (including, information and assistance to be made available to a **customer** by a **retailer** or **distributor**);
<#>a summary of the **retailer's** or **distributor's** rights and obligations under the **Code** (including, billing, connection, disconnection and reconnection procedures);
<#>an explanation of the complaints handling process;
<#>an explanation of the difference between distribution and retail functions;
<#>reference to key documents in relation to the supply of electricity to **customers**; and
<#>contact details of the **retailer** or **distributor**, the **Authority**, Energy Safety (Department of Consumer and Employment Protection) and the **electricity ombudsman**.
<#>Obligation to provide Customer Service Charter
<#>A *retailer* and a *distributor* must give a **customer** on request, at no charge, a copy of the **retailer's** or **distributor's** **Customer Service Charter**.
<#>For the purposes of subclause (1), a **retailer** or a **distributor** must dispatch a copy of the **Customer Service Charter** to a **customer** within 2 **business days** of the **customer's** request.

Part 12 Complaints & Dispute Resolution

12.1 Obligation to establish complaints handling process

- (1) A **retailer** and **distributor** must develop, maintain and implement an internal process for handling **complaints** and resolving disputes.
- (2) The complaints handling process under subclause (1) must –
 - (a) comply with AS ISO 10002 – 2006;
 - (b) address at least –
 - (i) how **complaints** must be lodged by **customers**;
 - (ii) how **complaints** will be handled by the **retailer** or **distributor**, including –
 - A. a right of the **customer** to have its **complaint** considered by a senior employee within each organisation of the **retailer** or **distributor** if the **customer** is not satisfied with the manner in which the **complaint** is being handled;
 - B. the information that will be provided to a **customer**,
 - (iii) response times for **complaints**;
 - (iv) method of response;
 - (c) detail how the **retailer** will handle **complaints** about a **marketer** or **marketing**; and
 - (d) be available at no cost to **customers**.
- (3) For the purposes of subclause (2)(b)(ii)(B), a **retailer** or **distributor** must at least –
 - (a) when responding to a **customer complaint**, advise the **customer** that the **customer** has the right to have the **complaint** considered by a senior employee within the **retailer** or **distributor** (in accordance with its complaints handling process); and
 - (b) when a **complaint** has not been resolved internally in a manner acceptable to the **customer**, advise the **customer** –
 - (i) of the reasons for the outcome (on request, the **retailer** or **distributor** must supply such reasons in writing); and
 - (ii) that the **customer** has the right to raise the **complaint** with the **electricity ombudsman** or another relevant external dispute resolution body and provide the Freecall **telephone** number of the **electricity ombudsman**.

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12.2 Obligation to comply with a guideline that distinguishes customer queries from customer complaints

A **retailer** must comply with any guideline developed by the **Authority** relating to distinguishing **customer** queries from **customer complaints**.

12.3 Information provision

A *retailer, distributor* and *marketer* must give a *customer* on request, at no charge, information that will assist the *customer* in utilising the respective complaints handling processes.

12.4 Obligation to refer complaint

When a *retailer, distributor* or *marketer* receives a *complaint* that does not relate to its functions, it must refer the *complaint* to the appropriate entity and inform the *customer* of the referral.

Part 13 Record keeping

Division 1 – General

13.1 Records to be kept

Unless expressly provided otherwise, a **retailer**, **distributor** or **marketer** must keep a record or other information that a **retailer**, **distributor** or **marketer** is required to keep by the **Code** for at least 2 years from the last date on which the information was recorded.

Division 2 – Obligations particular to retailers

13.2 Affordability and access

(1) A **retailer** must keep a record of –

(a) the total number of, and percentage of, its **residential customers**:

- (i) who are subject to an **instalment plan**;
- (ii) who have been granted additional time to pay their bill under Part 6;
- (iii) who have been placed on a shortened **billing cycle**;
- (iv) have been disconnected in accordance with clauses 7.1 to 7.3 for failure to pay a bill;
- (v) have been disconnected who were previously the subject of an instalment plan;
- (vi) have been disconnected at the same **supply address** within the past 24 months;
- (vii) have been disconnected while receiving a **concession**;
- ~~(viii) who the **retailer** requested to be reconnected, other than pursuant to clause 8.1(1)(b); and clause 8.1(1)(c), who were not reconnected within the prescribed timeframe;~~
- (ix) have been reconnected at the same **supply address** in the same name within 7 days of having been disconnected;
- (x) have been reconnected in the same name who were previously the subject of an instalment plan.;
- (xi) have been reconnected in the same name and at the same **supply address** within the past 24 months;
- (xii) have been reconnected and who, immediately prior to disconnection, was receiving a **concession**;
- (xiii) who have lodged security deposits; and

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- (xiv) who have had direct debit plans terminated.
- (b) the total number of, and percentage of, its **non-residential customers**:
 - (i) who are subject to an **instalment plan**;
 - (ii) who have been granted additional time to pay their bill under Part 6;
 - (iii) who have been placed on a shortened **billing cycle**;
 - (iv) who have been disconnected in accordance with clauses 7.1 to 7.3 for failure to pay a bill;
 - (v) ~~who the **retailer** requested to be reconnected, other than pursuant to clause 8.1(1)(b); and clause 8.1(1)(c), who were not reconnected, within the prescribed timeframe;~~
 - (vi) have been reconnected at the same **supply address** in the same name within 7 days of having been disconnected;
 - (vii) who have lodged security deposits; and
 - (viii) who have had direct debit plans terminated.

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(2) In this clause –

“**direct debit plans terminated**” means a direct debit plan terminated as a result of a default or non payment in two or more successive payment periods.

“**instalment plan**” means an arrangement between a **retailer** and a **customer** for the **customer** to pay arrears or in advance and continued usage on their account according to an agreed payment schedule (generally involving payment of at least 3 instalments) taking into account their capacity to pay. It does not include **customers** using a payment plan as a matter of convenience or for flexible budgeting purposes.”

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“**within the prescribed timeframe**” means any applicable regulated time limit for reconnections.

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13.3 Customer complaints

(1) A **retailer** must keep a record of –

- (a) the total number of **complaints** received from **residential customers** and **non-residential customers**; and
- (b) the percentage of total **complaints** from **residential customers** and **non-residential customers** that relate to –
 - (i) **billing/credit complaints**;
 - (ii) **transfer complaints**;
 - (iii) **marketing complaints** (including **complaints** made directly to a **marketer**); and
 - (iv) other **complaints**.

[Note: clause 13.7 also provides for the recording of pre-payment meter complaints.]

(c) the action taken by a **retailer** to address a **complaint**,

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(d) the time taken for the appropriate procedures for dealing with the **complaint** to be concluded;

(e) the percentage of **complaints** from **residential customers** resolved within 15 business days; and

(f) percentage of **complaints** from **non-residential customers** resolved within 15 business days.

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(2) A **retailer** must keep a copy of each **complaint** referred to in subclause (1) (including **complaints** made directly to a **marketer**).

(3) In this clause –

“**billing/credit complaints**” includes billing errors, incorrect billing of fees and charges, failure to receive relevant government rebates, high billing, credit collection, disconnection and reconnection, and restriction due to billing discrepancy.

“**marketing complaints**” includes advertising campaigns, contract terms, sales techniques and misleading conduct.

“**transfer complaints**” includes failure to transfer **customer** within a certain time period, disruption of supply due to transfer and billing problems directly associated with the transfer (e.g. delay in billing, double billing).

“**other complaints**” includes poor service, privacy consideration, failure to respond to **complaints**, and health and safety issues.

13.4 Compensation payments

A **retailer** must keep a record of the total number of payments and data on the average amount of payments made under –

(a) clause 14.1;

(b) clause 14.2; and

(c) clause 14.3.

13.5 Call Centre Performance

A **retailer** must keep a record of:

(a) the total number of **telephone** calls to an operator of the **retailer**;

(b) the number of, and percentage of, **telephone** calls to an operator responded to within 30 seconds;

(c) the average duration (in seconds) before a call is answered by an operator; and

(d) the percentage of calls that are unanswered.

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13.6 Supporting information

(1) A **retailer** must keep a record of the total number of –

(a) residential accounts held by **contestable customers**;

(b) residential accounts held by **non-contestable customers**;

(c) **business accounts** held by **contestable customers**; and

(d) **business accounts** held by **non-contestable customers**.

(2) In this clause –

“**business account**” means an account for which a **customer** is eligible to receive a tariff other than a tariff for the supply of electricity for residential purposes.

13.7 Pre-payment meters

A **retailer** must keep a record of –

- (a) the total number of **pre-payment meter customers**;
- (b) the total number of **complaints**, other than those **complaints** specified in clause 13.13(a), relating to a **pre-payment meter customer**;
- (c) the action taken by the **retailer** to address a **complaint**;
- (d) the time taken for the appropriate procedures for dealing with the **complaint** to be concluded; **and**
- (e) **percentage of complaints from pre-payment meter customers, other than those complaints specified in clause 13.13(a) concluded within 15 business days.**

Division 3 – Obligations particular to distributors

13.8 Connections

(1) A **distributor** must keep a record of –

- (a) the total number of connections provided; and
- (b) the total number of connections **not provided on or before the agreed date**.

(2) A **distributor** must keep a record of –

- (a) the total number of reconnections provided other than:
 - (i) those recorded in clause 13.8(1);
 - (ii) pursuant to clause 8.1(1)(b); and
 - (iii) pursuant to clause 8.1(1)(c).
- (b) the total number of reconnections in clause 13.8(2)(a), not provided **within the prescribed timeframe**.

(3) In this clause –

“**not provided on or before the agreed date**” includes connections not provided within any regulated time limit and connections not provided by the date agreed with a **customer**.

“**within the prescribed timeframe**” means any applicable regulated time limit for reconnections.

13.9 Timely repair of faulty street lights

(1) A **distributor** must keep a record of –

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- (a) the total number of street lights reported faulty each month in the metropolitan area;
 - (b) ~~the total number of street lights reported faulty each month in the regional area~~;
 - (c) the total number of street lights not repaired within 5 days in the metropolitan area;
 - (d) the total number of street lights not repaired within 9 days in the regional area;
 - (e) the total number of street lights in the metropolitan area;
 - (f) the total number of street lights in the regional area;
 - (g) the average number of days to repair faulty street lights in the metropolitan area; and
 - (h) the average number of days to repair faulty street lights in the regional area.
- (2) For the purpose of subclause (1), the number of days taken to repair a street light is counted from the date of notification.

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13.10 Customer Complaints

- (1) A **distributor** must keep a record of –
 - (a) the total number of **complaints** (excluding **quality and reliability complaints**) received; and
 - (b) the total number –
 - (i) administrative process or customer service complaints; and
 - (ii) other complaints.
 - (c) the action taken by a **distributor** to address a **complaint** (excluding **quality and reliability complaints**);
 - (d) the time taken for the appropriate procedures for dealing with the **complaint** (excluding **quality and reliability complaints**) to be concluded; and
 - (e) the percentage of customer complaints concluded within 15 business days.
- (2) A **distributor** must keep a copy of each **complaint** referred to in subclause (1).
- (3) In this clause –

“**quality and reliability complaints**” means a complaint as defined in Schedule 1 of the *Electricity Industry (Network Quality and Reliability of Supply) Code 2005*.

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13.11 Compensation payments

A **distributor** must keep a record of the total number of payments made under clause 14.4.

13.12 Call Centre Performance

A **distributor** must keep a record of:

- (a) the total number of **telephone** calls to an operator of the **distributor**;
- (b) the number of, and percentage of, **telephone** calls to an operator responded to within 30 seconds;
- (c) the average duration (in seconds) before a call is answered by an operator; and
- (d) the percentage of calls that are unanswered.

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13.13 Pre-payment meters

A **distributor** must keep a record of –

- (a) the number of **complaints** relating to the installation and operation of a **pre-payment meter** at a **pre-payment meter customer's supply address**;
- (b) the action taken by the **distributor** to address a **complaint**;
- (c) the time taken for the appropriate procedures for dealing with the **complaint** to be concluded; **and**
- (d) the percentage of **complaints** relating to the installation and operation of a **pre-payment meter** at a **customer's supply address** concluded within 15 business days.

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13.14 Supporting information

A **distributor** must keep a record of the total number of **customers** who are connected to the **distributor's** network.

Division 4 – Provision of records to Authority

13.15 Provision of records to Authority

- (1) A **retailer** and a **distributor** must –
 - (a) prepare a report setting out the information in the records required to be kept by Part 13, in respect of each year ending on 30 June; and
 - (b) publish that report not later than the following 1 October.
- (2) A report is published for the purposes of subclause (1) if —
 - (a) copies of it are available to the public, without cost, at places where the **retailer** or **distributor** transacts business with the public; and
 - (b) a copy of it is posted on an internet website maintained by the **retailer** or **distributor**.
- (3) A copy of each report must be given to the Minister and the **Authority** not less than 7 days before it is published under subclause (1).

Part 14
Service Standard Payments

Division 1 – Obligations particular to retailers

14.1 Facilitating customer reconnections

- (1) Subject to clause 14.5, where a **retailer** is required to arrange a reconnection of a **customer's supply address** under Part 8 –
- (a) but the **retailer** has not complied with the time frames prescribed in clause 8.1(2); or
 - (b) the **retailer** has complied with the time frames prescribed in clause 8.1(2) but the **distributor** has not complied with the time frames prescribed in clause 8.2(2),

the **retailer** must pay to the **customer** \$60 for each day that it is late, up to a maximum of \$300.

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- (2) Subject to clause 14.5, if a **retailer** is liable to and makes a payment under subclause (1) due to an act or omission of the **distributor**, the **distributor** must compensate the **retailer** for the payment.

14.2 Wrongful disconnections

Subject to clause 14.5, if a **retailer** fails to follow any of the required procedures prescribed under Part 6 (if applicable) and Part 7 of the **Code** prior to disconnecting an **customer** for failure to pay a bill, the **retailer** must pay to the **customer** \$50 for each day that the **customer** was wrongfully disconnected, up to a maximum of \$ 250.

14.3 Customer service

- (1) Upon receipt of a written query or **complaint** by a **customer**, a **retailer** must –
- (a) acknowledge the query or **complaint** within 10 **business days**; and
 - (b) respond to the query or **complaint** by addressing the matters in the query or **complaint** within 20 **business days**.
- (2) Subject to clause 14.5, if a **retailer** fails to acknowledge or respond to a query or **complaint** within the time frames prescribed under subclause (1), the **retailer** must pay to the **customer** \$20.
- (3) The **retailer** will only be liable to make one payment of \$20, pursuant to subclause (2), for each written query or **complaint**.

Division 2 – Obligations particular to distributors

14.4 Customer service

- (1) Upon receipt of a written query or **complaint** by a **customer**, a **distributor** must –
 - (a) acknowledge the query or **complaint** within 10 **business days**; and
 - (b) respond to the query or **complaint** by addressing the matters in the query or **complaint** within 20 **business days**.
- (2) Subject to clause 14.5, if a **distributor** fails to acknowledge or respond to a query or **complaint** within the time frames prescribed under subclause (1), the **distributor** must pay to the **customer** \$20.
- (3) The **retailer** will only be liable to make one payment of \$20, pursuant to subclause (2), for each written query or **complaint**.

Division 3 – Payment

14.5 Exceptions

- (1) A **retailer** or **distributor** is not required to make a payment under clauses 14.1 to 14.4, if –
 - (a) the **customer** fails to apply to the **retailer** or **distributor** for the payment within 3 months of the non-compliance by the **retailer** or **distributor**, or
 - (b) events or conditions outside the control of the **retailer** or **distributor** caused the **retailer** or **distributor** to be liable to make the payment.
- (2) A **retailer** or **distributor** is not required to make more than one payment to each affected **supply address** per event of non-compliance with the performance standards.
- (3) For the purposes of subclause (2), each **supply address** where an **customer** receives a bill from a **retailer** is a separate **supply address**.

14.6 Method of payment

- (1) A **retailer** who is required to make a payment under clauses 14.1, 14.2 or 14.3 must do so –
 - (a) by deducting the amount of the payment from the amount due under the **customer's** next bill;
 - (b) by paying the amount directly to the **customer**; or
 - (c) as otherwise agreed between the **retailer** and the **customer**.
- (2) A **distributor** who is required to make a payment under clause 14.4 must do so –
 - (a) by paying the amount to the **customer's retailer** who will pass the amount on to the **customer** in accordance with subclause (1);

- (b) by paying the amount directly to the **customer**, or
 - (c) as otherwise agreed between the **distributor** and the **customer**.
- (3) For the avoidance of doubt, a payment made under this part does not affect any rights of a **customer** to claim damages or any other remedy.

14.7 Recovery of payment

- (1) If a **retailer** or **distributor** who is required to make a payment to a **customer** under this Part fails to comply with clause 14.6 within 30 days of the date of demand for payment by the **customer**, then the **customer** may recover the payment in a court of competent jurisdiction as a debt due from the **retailer** or **distributor** (as the case may be) to the **customer**.
- (2) If a **retailer** is entitled under clause 14.1(2) to compensation from a **distributor**, and the **distributor** fails to pay the compensation to the **retailer** within 30 days of the date of demand for compensation payment by the **retailer**, then the **retailer** may recover the compensation payment in a court of competent jurisdiction as a debt due from the **distributor** to the **retailer**.

Attachment 1 – Revisions to the Code

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<u>Commencement</u>	<u>Revision</u>	<u>New</u>
<u>1 July 2010</u>	<u>Definition of contestable customer</u>	"contestable customer" means a <i>customer</i> at an exit point where the amount of electricity transferred at the exit point is at least the amount prescribed under the <i>Electricity Corporations (Prescribed Customers) Order 2007</i> made under the <i>Electricity Corporations Act 2005</i> or under another enactment dealing with the progressive introduction of customer contestability

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APPENDIX 2 – ECCC Terms of Reference

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The Economic Regulation Authority establishes the Electricity Code of Conduct Consultative Committee (ECCC) under section 81 of the *Electricity Industry Act 2004* (Act).

Purpose of the Committee

The ECCC will:

- 1) Provide advice to the Economic Regulation Authority (Authority) on matters relating to the Code of Conduct (For the Supply of Electricity to Small Use Customers) (Code), as stated under section 87 of the Act, at the request of the Authority.
- 2) Provide an opportunity for any interested person to offer comments to the ECCC prior to the provision of the advice referred to in (1), as described in section 89 of the Act, and take those comments into consideration.
- 3) Carry out a review of the Code, as described in section 88 of the Act, as soon as practicable after the first anniversary of its commencement and at the expiry of 2 yearly intervals after that anniversary.
- 4) The object of the review is to re-assess the suitability of the provisions of the Code for the purposes of section 79 (2) of the Code, being:
 - To regulate and control the conduct of:
 - a) the holders of retail licences, distribution licences and integrated regional licences; and
 - b) electricity marketing agents,with the object of –
 - c) defining standards of conduct in the supply and marketing of electricity to customers and providing for compensation payments to be made to customers when standards of conduct are not met; and
 - d) protecting customers from undesirable marketing conduct.
- 5) Provide an opportunity for any interested person to offer comments relevant to the review and take into account any comments received.
- 6) Prepare a report based on the review and give it to the Authority.

Appointment of Members

The Authority has determined that the membership of the Committee shall comprise:

- A Chairperson from the Authority (with no voting right).
- Three members from consumer representative organisations (with one of these from a regional, rural or remote area if possible).
- Three members from industry or industry representative organisations.
- Two members from government agencies.
- An executive officer from the Authority (with no voting right).

The Authority will appoint these individuals through direct approach and/or a public call for expression of interest.

Duties & Responsibilities of Members

Members' duties are to participate and contribute in accordance with the Terms of Reference set out in this document. Initially, it is expected that members will be required to attend at least seven meetings over a period of at least nine months.

If there is a change to the member that impacts on the member's ability to satisfy these duties, the member will notify the Authority.

If the Authority releases information to members, the Authority can impose conditions regarding members' use of that information. Members shall take all reasonable measures to protect documents from unauthorised use or disclosure of information provided to them by the Authority and indicated by the Authority to be "confidential". This confidentiality clause shall survive the expiration or termination of the member's appointment.

Members who believe that any of their external activities would conflict with their position on the Committee must declare their interest to the Committee Chairperson as soon as practicable after becoming aware of the potential conflict, and in any event within fourteen (14) days.

Payments to Members

Under section 81(3) of the Act, the Authority may determine that a member of the Committee is to receive remuneration or an allowance. The Authority has determined that it may pay a non-government consumer organisation representative remuneration in the form of a sitting fee or an allowance in the form of a travel reimbursement at a rate to be determined by the Minister for Public Sector Management.

Committee Secretariat

The Authority will provide a Secretariat whose services will include:

- provision of general administrative and secretarial support to the ECCC;
- organising Committee meetings, including formal meetings and meetings out of session;
- drafting of minutes; and
- preparation and distribution of materials such as issues papers.

LYNDON ROWE
CHAIRMAN

Amended 15 September 2006