



Electricity Code Consultative Committee (ECCC)

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

FINAL REPORT AUGUST 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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1 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 from that anniversary. 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 Final Review Report represents the findings of the second review by the ECCC. Appendix 1 includes a copy of the proposed draft Code incorporating all recommendations made by the ECCC in this report.

1.1 Economic Regulation Authority

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) the need to promote transparent decision-making processes that involve public consultation.

One of the Authority's functions is to monitor, enforce, amend and replace the Code.¹

1.2 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 —

¹ Refer to Part 6 of the Act.

- (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 after consultation with the Electricity Reform Consumer Forum (**ERCF**). The 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.

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 the circumstances and timeframes within which 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 retailers and distributors to compensate a customer for any failure to meet prescribed service standards.

Section 82 of the Act stipulates that compliance with the Code is a mandatory licence condition for retail and distribution licensees and is to be monitored by the Authority. 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 \$100 000; 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 \$20 000 for a body corporate.

1.3 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 (ECCC) 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 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); and
- Mr Gerald Milford Department of Commerce (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.

1.4 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.

1.4.1 Purpose of the Review

The purpose of the Code review² is to “*re-assess the suitability of the provisions of the code of conduct for the purposes of section 79(2)*”³. 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 were encouraged to have regard to the object of the review and the principles, as determined by the ECCC, when making a submission.

1.4.2 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; recommendation 2 (regarding implementation timeframes); recommendation 33 (regarding bill smoothing) where it proposed alternative amendments; and recommendation 34

² Refer to section 88(2) of the Act.

³ 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.”

(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.

1.4.3 Process of this review

Given the comprehensive nature of the first review, completed in May 2007, the ECCC agreed that a more streamlined review was warranted for 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 Draft Review 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.

The ECCC released the Draft Review Report on 6 February 2009 by sending a notice to those registered with the Authority as interested parties (ECCC or electricity licensing matters) and advertising in *The West Australian* (Saturday 7 February 2009 and Saturday 14 February 2009) and a broad range of regional papers.

The ECCC provided a six week consultation period to give interested parties the opportunity to make comments relevant to the review. The consultation period closed on 20 March 2009 and 14 submissions were received from the following:

- Mrs Carol Martin MLA
- Office of Energy
- Energy Ombudsman
- Uniting Care West
- Perth Energy
- Synergy
- WACOSS
- Horizon Power
- WA Local Government Association
- Gosnells Community Legal Centre
- Salvation Army
- St Vincent De Paul
- Western Power
- Alinta Sales

After consideration of the submissions, the ECCC agreed to make a number of recommendations for Code amendments. The ECCC agreed to undertake a second round of targeted consultation as follows.

Firstly, a request for Western Power, Horizon Power, Rottnest Island Authority and the WA Local Government Association (WALGA) to comment on the WALGA proposal to establish a service

standard payment for street lights not repaired within the benchmark timeframe. Submissions regarding this matter were received from:

- Western Power
- WALGA
- Horizon Power

Secondly, a request for WACOSS, Synergy, Horizon Power and Rottneest Island Authority to comment on the proposal to require the Authority to publish an assessment of a retailer’s Financial Hardship Policy. Submissions regarding this matter were received from:

- Synergy
- WACOSS
- Horizon Power

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.

Following consideration of the Final Review Report, the Authority may choose to propose amendments to the Code. If this is the case, 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 prior to providing advice to the Authority.

1.5 Context for Code review

1.5.1 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 approved the Compendium of Gas Customer Licensing Obligations (also known as the Gas Customer Code) which will ensure gas customers receive nearly identical protections as those granted, under this Code, for electricity customers.

1.5.2 Other State Jurisdictions

Most Eastern States’ jurisdictions have developed instruments to cover similar matters to those 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	Electricity Distribution Code

	Operating procedure: Compensation for wrongful disconnection	
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.
- 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.

1.5.3 Ministerial Council on Energy

In light of the establishment of the National Electricity Market (**NEM**) 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 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 proposed framework is known as the National Energy Customer Framework (**NECF**).

The First Exposure Draft of the NECF which includes the National Energy Retail Law, Rules and Regulations was released in April 2009.

The First Exposure Draft was subject to a stakeholder consultation process that closed in June 2009. After consideration of public submissions, a Final Exposure Draft of the Law, Rules and Regulation will be developed for further consultation.

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 NECF, 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.

1.5.4 Inquiry into Australia’s Consumer Protection Framework

On 11 December 2006, the then Treasurer, the Hon. Peter Costello, 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 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. While the Federal Government has not formally responded to the report, many of the Commission’s recommendations have been incorporated into the Council of Australian Government’s (COAG) Seamless National Economy reform agenda. In particular, COAG has agreed to introduce a new, uniform national generic consumer law - the Australian Consumer Law - with effect from 1 January 2011.

In developing the proposed NECF, the MCE has agreed 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.

1.6 Recommendations

1.6.1 Overview

The ECCC has made 50 recommendations as a result of this review of the Code.

Key recommendations include:

- **Reduce requirements related to business customers:** The ECCC has proposed a series of recommendations to reduce the amount of information retailers are required to provide to business customers. Currently certain information is required to be provided at the commencement of the contract, with the first bill or on every bill. The ECCC considers that some of this information, for example information regarding concessions, is not relevant for business customers and places unnecessary compliance costs on retailers.

- **Reduce information provision prescriptiveness:** The ECCC has proposed streamlining and in some cases removal of some information provision requirements relevant to all customers. For example, the ECCC agrees that whilst certain information should be provided to customers, it is not necessary for the Code to prescribe that retailers and distributors produce a customer service charter. The ECCC acknowledges that retailers and distributors may choose to continue to produce charters, however, the ECCC agrees it is not, at this stage, essential that the Authority regulates the production or review of these documents.
- **Financial Hardship:** The ECCC has proposed a number of recommendations related to the issue of financial hardship. These recommendations include the abolition of late payment fees for financial hardship customers and the establishment of a requirement for the Authority to review the financial hardship policies of retailers against the Code and the Authority's *Financial Hardship Policy Guidelines* and publish its findings.
- **Street light repairs:** The ECCC has proposed the introduction of a new service standard payment related to the failure of a distributor to repair street lights within the benchmark timeframe.
- **Marketing related definitions:** The ECCC has agreed that a number of definitions related to marketing are unnecessarily confusing and has proposed some simplification of these definitions within the constraints of superior legislation.
- **Retailer – Distributor interaction:** The ECCC deliberated regarding a range of issues concerning the relationship between the distributor and the retailer. One of the retailers presented a range of scenarios associated with the Code where compliance with certain provisions was dependent upon the distributor fulfilling certain requirements that were either prescribed in other instruments or not prescribed at all. For example, under the Code, a retailer is required to issue a bill at least every 60 days. However, to be able to issue a bill the retailer requires the distributor to read the meter as required under the *Electricity Industry Metering Code 2005* (Metering Code). Rather than endeavour to address a range of these issues through the Code in isolation, the ECCC has recommended that a review of the Metering Code and other instruments be undertaken to address regulatory gaps and inconsistencies.

1.6.2 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

Add a new definition of “accumulation meter” to clause 1.5 to read:

“accumulation meter” has the same meaning as in clause 1.3 of the Electricity Industry Metering Code 2005.

Recommendation 3

Add a new definition of “call centre” to clause 1.5 to read:

“**call centre**” means a system that is capable of automatically recording some or all of the responsiveness indicators.

Recommendation 4

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 exit point is more than 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 5

Amend definition of “**concession**” in clause 1.5 to relate to residential customers only.

Recommendation 6

Move the “**electronic means**” definition in clause 2.6 to the definition section in clause 1.4

Add a definition of “**telephone**” to read:

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

Recommendation 7

Amend definition of “**historical debt**” to read:

means an amount outstanding for the supply of electricity by a **retailer** to a **customer’s** previous **supply address** or addresses.

Recommendation 8

Remove the definitions ‘marketer’ and ‘marketing representative’ from clause 1.5.

Remove reference to ‘marketer’ and ‘marketing representative’ throughout the Code and replace with reference to ‘retailer’ and/or ‘electricity marketing agent’, as appropriate.

Where appropriate, add a provision which expressly states that the division or a particular section does not apply to retailers or customers’ agents.

In clause 10.9 and 12.3 replace reference to ‘marketer’ with ‘electricity marketing agent’.

Consolidate penalty provisions in clause 2.9(1) and (2) into one provision applying to electricity marketing agents with penalties of \$5 000 for individuals and \$20 000 for a body corporate.

Recommendation 9

Amend clause 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.

Recommendation 10

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

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
- (b) if requested by the **customer**, and if the **customer** has not previously been provided a written⁴ copy of the **contract**, a copy of the **contract** must be provided at no charge to the customer.

Amend the reference to subclause (1) in the new clause 2.4(3) and clause 2.4(4).

Recommendation 11

Amend clause 2.8 to read:

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

Recommendation 12

Add a new clause 2.4(5) as to read:

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

- (a) the **retailer** has provided the information to that **customer** within the preceding 12 months; or
- (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**.

For the avoidance of doubt, it is recommended that the words “subject to subclause (5)” be added to the beginning of clause 2.4(3) and clause 2.4(4).

Recommendation 13

Amend clause 2.4.2(e) to relate only to residential customers.

⁴ 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 here for the avoidance of doubt.

Recommendation 14

Amend clause 2.4.2(g) to relate only to residential customers.

Recommendation 15

Add a new clause 2.11 which states:

Electricity marketing agent complaints

(1) An **electricity marketing agent** 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 **electricity marketing agent**;

(b) on request by the **electricity ombudsman** in relation to a particular **complaint**, give to the **electricity ombudsman** within 28 days of receiving the request all information that the **electricity marketing agent** has relating to the **complaint**.

(2) A record or other information that a **electricity marketing agent** 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 **electricity marketing agent**.

Recommendation 16

The ECCC recommends that the appropriate agency undertake a timely 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 17

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

Either the range of dates of the metering supply period or the date of the current meter reading or estimate.

Recommendation 18

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

the current meter reading or estimate if the **customer** has an **accumulation meter** installed.

Recommendation 19

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

with respect to a **residential customer**, a reference that the **residential customer** may be eligible to receive **concessions** and how the **residential customer** may find out its eligibility for those **concessions**;

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

the value of any **concessions** provided to the **residential customer** (other than a rebate relating to air conditioning).

Recommendation 20

The ECCC recommends that the Authority write to the State Government requesting a single source of information regarding concessions.

Recommendation 21

Amend clause 4.5(1)(z) to read: with respect to *residential customers*, the *National Interpreter Symbol* with the words “Interpreter Services”.

Recommendation 22

Amend clause 4.8 to read:

(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 23

Amend clause 4.8(2)(c) to read:

The *customer* may request:

- (i) a verification of a meter reading; and
- (ii) a meter reading.

Recommendation 24

Amend clause 4.19 as follows:

(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 25

Amend clause 5.2(1)(c) to read: for **residential customers**, by Centrepay;

Recommendation 26

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.

Recommendation 27

Add a new clause 5.6(1)(d) to read:

the **residential customer** has been assessed by the retailer under clause 6.1(1) as being in **financial hardship**.

Add a new clause 5.6(4) to read:

If a **residential customer** has been assessed by a retailer as being in financial hardship pursuant to clause 6.1(1), the **retailer** must retrospectively waive any late payment fee charged pursuant to the **residential customer's** last bill prior to the assessment being made.

Recommendation 28

Amend clause 6.2(2) to read:

A **temporary suspension of actions** must be for at least 15 **business days**.

Recommendation 29

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 30

Amend clause 6.8(c) to read:

concessions available to the **customer** and how to access them

Recommendation 31

Amend clause 6.8(f) to read:

independent financial counselling and other relevant consumer representative organisations available to the **customer**.

Recommendation 32

Add a new clause 6.8(g) to read:

availability of any other financial assistance and grants schemes that the **retailer** should reasonably be aware of and how to access them.

Recommendation 33

Amend clause 6.10 to add the following sub-clauses:

- (5) The **retailer** must, unless otherwise notified in writing by the **Authority**, review its hardship policy at least annually and submit to the **Authority** the results of that review within *5 business days* after it is completed.
- (6) The **retailer** may, at any time, review its hardship policy and submit to the **Authority** the results of that review with *5 business days* after it is completed.
- (7) Any review of a **retailer's** hardship policy must have regard to the **Authority's** financial Hardship Policy Guidelines.
- (8) Subject to clause 6.10(9) when a **retailer** has reviewed its hardship policy pursuant to sub-clauses 6.10(5) or 6.10(6), the **Authority** will examine:
 - (i) the review to assess whether a **retailer's** hardship policy has been reviewed consistently with the Financial Hardship Policy Guidelines pursuant to clause 6.10(7); and
 - (ii) the hardship policy to assess whether a **retailer's** hardship policy complies with clause 6.10 of the Code.
- (9) The **Authority** will only conduct a review of a **retailer's** hardship policy pursuant to clause 6.10(8) a maximum of once per year.

Recommendation 34

Amend clause 6.10(2)(b) to read:

- (b) provide for the training of staff:
 - (i) including call centre staff, all subcontractors employed to engage with **customers** experiencing **financial hardship**, energy efficiency auditors and field officers.
 - (ii) on issues related to **financial hardship** and its impacts, and how to deal with consumers consistently with the obligation in sub-paragraph (c).

Recommendation 35

Amend clause 6.10(3) to read:

a **retailer** must give **residential customers**, financial counsellors and relevant consumer representative organisations details of the hardship policy at no charge. The **retailer** must provide all **residential customers** that have been identified by the retailer as experiencing financial hardship, details of the hardship policy, including sending a copy by post, if requested.

Recommendation 36

Amend clause 7.1(1)(b) to read:

Use its best endeavours to contact the **customer**, including by **telephone** or **electronic means** or other method.

Recommendation 37

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 38

Insert the following clause in Part 9

9.2 Application

(1) A **retailer** may only operate a pre-payment meter at a **residential customer's supply address** where the **customer** is 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.

(2) Part 9 only applies to a **pre-payment meter customer** referred to in subclause (1).

Recommendation 39

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

Recommendation 40

Amend clause 10.3 to relate only to **residential customers**.

Recommendation 41

Amend clause 10.7(2)(a) to read:

for a period less than the previous two years and no more than twice a year provided the **customer** has not been given consumption data pursuant to a request under subclause (1) more than twice within the 12 months immediately preceding the request;.

Recommendation 42

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 43

Insert a new clause in Part 10 to read:

10.3A Service Standard Payments

At least once a year, a **retailer** must give a customer written details of a **retailer's** and **distributor's** obligations to make payments to the **customer** under Part 14 of the **Code** and any other obligations to make payments to the **customer** under relevant legislation (including subsidiary legislation) in Western Australia, including the amount of the payment and the eligibility criteria for the payment.

Recommendation 44

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

- (c) the National Interpreter Symbol with the words "Interpreter Services",

Remove clause 10.11(2)(d)

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 45

Delete Part 11.

Recommendation 46

Insert the following new clauses:

13.3(1)(e) percentage of **complaints** from **residential customers** resolved within 15 **business days** and 20 **business days**.

13.3(1)(f) percentage of **complaints** from **non-residential customers** resolved within 15 **business days** and 20 **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** and 20 **business days**.

13.10(1)(e) percentage of **customer complaints** concluded within 15 **business days** and 20 **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** and 20 **business days**.

Recommendation 47

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 48

Insert a new clause 13.2(1)(a)(vii) to read:

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 a new clause 13.(2)(1)(b)(v) to read:

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 a new clause 13.8(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) who were not reconnected **within the prescribed timeframe**.

Recommendation 49

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

Recommendation 50

Add a new clause 14.5:

14.5 Street lighting

(1) Subject to subclause (2) if a **distributor** fails to repair a faulty street light the **distributor** must pay the **customer** who first notifies the fault:

(a) with respect to a metropolitan area, \$20 per day, for each day the street light is not repaired after the first 5 days from the **distributor** being notified of the fault;

(b) with respect to a regional area, \$20 per day, for each day the street light is not repaired after the first 9 days from the **distributor** being notified of the fault.

(2) The **distributor** shall not be liable to make payments under subclause (1) to the extent that the **distributor's** failure to rectify the street light within the prescribed statutory timeframes is due to a natural disaster or other act of god and the **distributor** has taken all reasonable steps to otherwise rectify the fault.

2 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 below.

2.1 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.

2.2 Amendment of typographical and formatting errors throughout the Code

In addition to the recommendations made within this report, the ECCC has agreed that the proposed draft of the Code should include correction of minor typographical and formatting errors.

2.3 Clause 1.3

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.

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].

2.4 Clause 1.5 – Definition of an accumulation meter

The ECCC received a submission requesting that clause 4.5(1)(b) be amended to either apply to residential customers only or to apply to accumulation meters only. Retailers other than Synergy, Horizon Power and Rottneest Island Authority operating in the contestable market (supplying to customers consuming over 50MWh) are required by the *Electricity Industry Metering Code 2005* (Metering Code) to provide service using an interval meter not an accumulation meter. Therefore the ECCC has agreed to propose amendment of clause 4.5(1)(b) to apply to accumulation meters only and therefore requires a definition of accumulation meter.

Recommendation 2

Add a new definition of “accumulation meter” to clause 1.5 to read:

“accumulation meter” has the same meaning as in clause 1.3 of the *Electricity Industry Metering Code 2005*.

2.5 Clause 1.5 – Definition of “Call Centre”

The ECCC received a submission requesting that the Code include a definition of “call centre” consistent with the definition contained within the Authority’s Electricity Compliance Reporting Manual. Adopting this definition will ensure that small retailers that do not operate a call centre are not captured by the requirements of clause 13.5.

Recommendation 3

Add a new definition of “call centre” to clause 1.5 to read:

“**call centre**” means a system that is capable of automatically recording some or all of the responsiveness indicators.

2.6 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 at each exit point through which electricity is supplied to that customer. The definition of "contestable customer" has now been framed around the new wording to refer to a "customer at an exit point where the amount of electricity transferred at the exit point is more than the amount prescribed..."

Recommendation 4

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 exit point is more than 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.

2.7 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).

Some stakeholders suggested that 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. 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.

In the Draft Review Report the ECCC recommended that the definition of 'customer' be amended 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.

Following feedback from several stakeholders regarding this issue the ECCC agreed that any further amendment could further complicate this issue resolved to remove the recommendation.

2.8 Clause 1.5 – Definition of Concession

A number of submissions received requested that the ECCC consider recommending that the provisions of the Code relating to 'concessions' only apply to 'residential' customers and not 'business' customers. Currently the State Government only provides energy related concessions for residential customers in WA. The code contains a number of provisions that require retailers to provide information about the availability of concessions to customers. The ECCC agreed that, at this point in time, given the fact that no concessions are available for businesses, it would be appropriate to recommend that the definition of concessions relate only to residential customers.

Recommendation 5

Amend definition of "**concession**" in clause 1.5 to relate to residential customers only.

2.9 Clause 1.4 – Definition of Telephone and Electronic Means

In the process of making proposed minor amendments to clause 2.2(2) the ECCC proposes that some changes related to definitions in this section occur.

Recommendation 6

Move the "**electronic means**" definition in clause 2.6 to the definition section in clause 1.4

Add a definition of "**telephone**" to read:

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

2.10 Clause 1.5 – Definition of Historical Debt

Clause 1.5 currently defines 'historical debt' as debt relating to the last supply address. One submission pointed out that historical debt can relate to more than one supply address. The ECCC recommends that the definition be amended to reflect this situation.

Recommendation 7

Amend definition of "**historical debt**" to read:

means an amount outstanding for the supply of electricity by a **retailer** to a **customer's** previous **supply address** or addresses.

2.11 Clause 1.5 – Marketing related definitions

One submission was received regarding the unnecessarily complicated nature of marketing related definitions contained in the Code.

The current definition of 'electricity marketing agent' incorporates a number of different concepts. Sub-paragraph (a) refers to a person acting on behalf of a retailer while sub-paragraph (b) refers to a person acting on behalf of a customer. Sub-paragraph (c) is circular and it is not clear to whom it is directed as it refers to a person who engages in "any other activity relating to the marketing of electricity that is prescribed for the purposes of this definition". Sub-paragraph (d) is a representative, agent or employee of a person in (a), (b) or (c).

The reason for including the customer's representative within the definition is not clear as a customer's agent is quite a different concept to a retailer's agent and it is arguable that the latter is not necessarily involved in marketing. In ordinary circumstances, the ECCC would recommend that this definition be amended to separate out the concept of the customer's agent and to clarify the parties intended to be caught by sub-paragraph (b). However, the definition is in exactly the same terms as it appears in section 78 of the Act. In the circumstances, given the Code is subsidiary to the Act and for consistency, the ECCC recommend that no amendment is made to this definition.

The definitions of 'marketer' and 'marketing representative' are effectively sub-sets of the definition of 'electricity marketing agent'. The former is defined to include a retailer who engages in marketing or an electricity marketing agent other than a marketing representative.

A 'marketing representative' is effectively defined to include all electricity marketing agents apart from a retailer or a customers' agent or representative.

The ECCC queries the need for either of these additional definitions and recommends that they be deleted from the Code and replaced with the use of the terms 'retailer' and 'electricity marketing agent', as appropriate. Where a particular division of the Code is not relevant to retailers or customers' agents, the ECCC recommend adding a provision in the relevant division that expressly states that the division or a particular section does not apply to retailers or customers' agents.

Clause 2.9(1) and (2) currently prescribe penalties for marketers (other than retailers) and marketing representatives for breaching the Code. The ECCC recommends that these provisions be replaced with a new provision applying to all electricity marketing agents, other than retailers, but with a higher penalty for corporations as was previously the position for marketers (other than retailers).

The ECCC notes that clauses 10.9 and 12.3 of the Code, which deal with provisions of information to customers, do not currently apply to customer's agents. The ECCC recommends that clause 10.9 and 12.3 be extended to apply to customer's agents as well as other electricity marketing agents.

Recommendation 8

Remove the definitions 'marketer' and 'marketing representative' from clause 1.5.

Remove reference to 'marketer' and 'marketing representative' throughout the Code and replace with reference to 'retailer' and/or 'electricity marketing agent', as appropriate.

Where appropriate, add a provision which expressly states that the division or a particular section does not apply to retailers or customers' agents.

In clause 10.9 and 12.3 replace reference to 'marketer' with 'electricity marketing agent'.

Consolidate penalty provisions in clause 2.9(1) and (2) into one provision applying to electricity marketing agents with penalties of \$5 000 for individuals and \$20 000 for a body corporate.

3 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 retailer or electricity marketing agent 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.

3.1 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 a 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 which set standards for the training of marketing representatives and required marketers to provide their contact details to the Authority.

3.2 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 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; and
- 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 proposed NECF, the retailer is to be ultimately responsible for marketing conduct of staff and persons acting as agents or contracted by the retailer.

3.3 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.

3.3.1 New GMCC

The GMCC was 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 recommended⁵ 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.

In January 2009 the Authority approved the new GMCC which mirrors Part 2 of the Code (the *Code of Conduct for the Supply of Electricity to Small Use Customers*) with the following variations:

These variations include the following:

- 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.

⁵ GMCC Committee, *Draft Report for Review of the Gas Marketing Code of Conduct 2004*, 11 August 2006, pg. 9.

- 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 of clause 2.4(1) 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.
- Amendment of clause 2.8 to require marketers to comply with National Privacy Principles to ensure that small marketers, those that are not constitutional corporations, and currently not covered by the federal *Privacy Act 1988*, are required to comply.

3.3.2 Recommendation

The following recommendations are proposed to ensure consistency between the GMCC and this Code:

Recommendation 9

Amend clause 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.

Recommendation 10

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

For a **standard form contract** that is not entered into as a result of **door to door marketing**:

- the information in subclause (2) must be given no later than with or on the **customer’s** first bill; and
- if requested by the **customer**, and if the **customer** has not previously been provided a written⁶ copy of the **contract**, a copy of the **contract** must be provided at no charge to the customer.

Amend the reference to subclause (1) in the new clause 2.4(3) and clause 2.4(4).

Recommendation 11

Amend clause 2.8 to read:

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

⁶ 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 here for the avoidance of doubt.

3.4 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 into a contract or before the first bill.

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 leaves 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 it, the retailer is not required to provide it. 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.

Recommendation 12

Add a new clause 2.4(5) as to read:

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

- (a) the **retailer** has provided the information to that **customer** within the preceding 12 months; or
- (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**.

For the avoidance of doubt, it is recommended that the words “subject to subclause (5)” be added to the beginning of clause 2.4(3) and clause 2.4(4).

3.5 Clause 2.4.2(e) - Information to be given at the time of or after entering into a contract - Concessions

Clause 2.4.2(e) requires that the customer be provided with information regarding the availability of concessions at the time of or after entering into the contract.

A number of submissions received requested that the ECCC consider recommending that the provisions of the Code relating to ‘concessions’ only apply to ‘residential’ customers and not ‘business’ customers. Currently the State Government only provides energy related concessions for residential customers in WA. The ECCC agreed that, at this point in time, given the fact that no concessions are available for businesses, it would be appropriate to recommend that the definition of concessions relate only to residential customers.

Recommendation 13

Amend clause 2.4.2(e) to relate only to residential customers.

3.6 Clause 2.4.2(g) - Information to be given at the time of or after entering into a contract – Multi-lingual Services

Clause 2.4.2(g) requires that the customer be provided with information regarding the availability of multi-lingual services at the time of or after entering into the contract.

A number of submissions received requested that the ECCC consider recommending that the provision apply only to residential customers. The ECCC agreed to make this recommendation.

Recommendation 14

Amend clause 2.4.2(g) to relate only to residential customers.

3.7 Clause 2.11 – Provision of Information 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, based on a similar clause in the GMCC but with minor amendments as a result of consultation on the Draft Review Report, to the Code to ensure consistency.

Recommendation 15

Add a new clause 2.11 which states:

Electricity marketing agent complaints

(1) An **electricity marketing agent** 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 **electricity marketing agent**,

(b) on request by the **electricity ombudsman** in relation to a particular **complaint**, give to the **electricity ombudsman** within 28 days of receiving the request all information that the **electricity marketing agent** has relating to the **complaint**.

(2) A record or other information that a **electricity marketing agent** 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 **electricity marketing agent**.

4 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.

4.1 Amendments as a result of the last Code review

No amendments were made to Part 3 as a result of the last Code review.

4.1.1 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 2: 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.

4.1.2 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 Part 3.

5 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.

5.1 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 2005* (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.

5.2 Division 1 – Billing cycles

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

5.2.1 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 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;
- owns the energy data obtained from the meter and the standing data for the metering point;
- 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.

Under the Metering Code the only a retailer can take in relation to 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.

5.2.2 Recommendation

The ECCC agreed to the following recommendation.

Recommendation 16

The ECCC recommends that the appropriate agency undertake a timely 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.

5.3 Division 2 – Contents of a bill – Particulars on each bill – clause 4.5(1)(a) – meter reading

Clause 4.5(1)(a) currently requires a retailer to place the date of the current meter reading or estimate on the bill.

The ECCC received a submission from a retailer requesting that this provision be amended to allow for inclusion of either the date of the current meter reading or the range of dates (i.e. the start and end date) of the metering supply period. The ECCC agreed to make this recommendation.

Recommendation 17

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

Either the range of dates of the metering supply period or the date of the current meter reading or estimate.

5.4 Division 2 – Contents of a bill – Particulars on each bill - clause 4.5(1)(b) – meter reading

The ECCC received a submission requesting that clause 4.5(1)(b) be amended to either apply to residential customers only or to apply to accumulation meters only. Retailers other than Synergy, Horizon Power and Rottneast Island Authority operating in the contestable market (supplying to customers consuming over 50MWh per annum) are required by the Metering Code to provide service using an interval meter not an accumulation meter. Therefore the ECCC has agreed to propose amendment of clause 4.5(1)(b) to apply to accumulation meters only.

Recommendation 18

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

the current meter reading or estimate if the **customer** has an **accumulation meter** installed.

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

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.

In addition, as previously stated in this report, a number of submissions were received which recommended that retailers be required to provide concession related information only in the case of residential customers. However, it should be noted that, at some point in the future, concessions may be available to other customers, for example, non-profit organisations.

Recommendation 19

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

with respect to a **residential customer**, a reference that the **residential customer** may be eligible to receive **concessions** and how the **residential customer** may find out its eligibility for those **concessions**;

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

the value of any **concessions** provided to the **residential customer** (other than a rebate relating to air conditioning).

The ECCC agreed with one submission which pointed out the difficulties experienced by parties seeking a central point of reference for available concessions for differing customer classes. The ECCC recommends that the Authority writes to the State Government expressing this concern and seeking a single point of accurate information on concessions.

Recommendation 20

The ECCC recommends that the Authority write to the State Government requesting a single source of information regarding concessions.

5.6 Division 2 – Contents of a bill – Particulars on each bill – clause 4.5(1)(z)- Multi-lingual Services

Clause 4.5(1)(z) currently requires retailers to include advice about the availability of multi-lingual services in languages reflecting the retailer’s customer base. The ECCC is aware that the current clause may result in inconsistencies for customers. The ECCC agreed to recommend the clause be amended to remove the requirement to print languages other than English on the bill and to replace with the words “Interpreter Services” and the National Interpreter Symbol.

In addition, the ECCC received a number of submissions requesting that clause 4.5(1)(z) be amended to apply only to residential customers. The ECCC agreed that it would be appropriate to make such a recommendation.

Recommendation 21

Amend clause 4.5(1)(z) to read: with respect to **residential customers**, the **National Interpreter Symbol** with the words “Interpreter Services”.

5.7 Division 2 – Clause 4.5(3) - Contents of a bill – Historical Debt

Clause 4.5(3) requires that if a retailer identifies a historical debt and wishes to bill the customer for the debt, the retailer must advise the customer of the amount of the historical debt and the basis of the historical debt, before, with or on the customer's next bill.

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; and
- the debt carried forward should not be used as a basis for disconnecting the utility service at the current premises.

There was significant discussion amongst ECCC members with respect to the recording of historical debt on a customer's bill. The outcome of those discussions was that the Code did not require amendment at this stage. Industry representative members of the ECCC agreed to work with consumer representative organisations to address the issue of the availability of historical billing information as part of retailer financial hardship policies.

5.8 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 ECCC is concerned regarding the possible ambiguity with this clause and proposes an amendment.

Recommendation 22

Amend clause 4.8 to read:

(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.

Clause 4.8(2)(c) currently refers to a customer's ability to request a meter reading. Following the receipt of a submission by a retailer, and confirmation that a charge is not currently levied, the ECCC agreed to recommend that the clause should be amended to allow the customer to request a verification (rather than a read).

Recommendation 23

Amend clause 4.8(2)(c) to read:

The **customer** may request:

(i) a verification of a meter reading; and

(ii) a meter reading.

5.9 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 review detailed in recommendation 16.

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.

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 retailer's discretion.

Recommendation 24

Amend clause 4.19 as follows:

(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).

6 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.

6.1 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.

6.2 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.

The ECCC received submissions requesting that the requirement to provide Centrepay apply only to residential customers given the fact that business customers are not eligible to receive payments from Centrelink. The ECCC agreed to make this recommendation.

Recommendation 25

Amend clause 5.2(1)(c) to read: for **residential customers**, by Centrepay;

6.3 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.

6.3.1 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 Vic., the Energy Retail Code⁷ 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.

⁷ Refer to clause 7.4(a) of the Energy Retail Code (Vic).

Table 4: 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 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, NSW⁸ and Vic.⁹ 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 an instalment plan or other payment arrangement;¹⁰ or
- on a case by case basis as considered appropriate by the retailer or ombudsman.

6.3.2 Recommendations

The ECCC received a number of submissions from consumer representative groups, financial counsellors and welfare organisations regarding the issue of late payment fees.

The ECCC understands that there is concern amongst customer stakeholders regarding the burden of late payment fees on customers suffering financial difficulty. However, the ECCC also recognises that retailers incur a cost in sending reminder notices to customers.

⁸ IPART, *Determination No 1, 2007: NSW Electricity Regulated Retail Tariffs and Charges 2007 to 2010*, June 2007, clause 21.3

⁹ Refer to clause 7.4(d) of the Energy Retail Code (Vic.)

¹⁰ Only applicable to Victorian retailers.

The ECCC has agreed to propose the following recommendations with regard to late payment fees.

Recommendation 26

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.

Recommendation 27

Add a new clause 5.6(1)(d) to read:

the **residential customer** has been assessed by the retailer under clause 6.1(1) as being in **financial hardship**.

Add a new clause 5.6(4) to read:

If a **residential customer** has been assessed by a retailer as being in financial hardship pursuant to clause 6.1(1), the **retailer** must retrospectively waive any late payment fee charged pursuant to the **residential customer's** last bill prior to the assessment being made.

7 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.

7.1 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.

7.2 Division 1 – Assessment of financial situation – temporary suspension of actions

Clause 6.2(2) requires the retailer to allow a temporary suspension of action against the customer if a customer has requested a suspension and has made an appointment with a financial counsellor.

The ECCC received submissions from consumer representative groups requesting that, due to the level of demand experienced by financial counsellors, the time period be changed, from 10, to 15 business days. In addition, submissions were received requesting clarification as to whether the days referred to were business days or calendar days.

The ECCC agreed that the days should be clarified as business days and extended to 15 days.

Recommendation 28

Amend clause 6.2(2) to read:

A temporary suspension of actions must be for at least 15 business days.

7.3 Division 1 – Clause 6.1 - Assessment of financial situation – reasonable consideration of more time

Clause 6.1(1) 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.

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;¹¹ or

the retailer [...] believes the customer is experiencing repeated difficulties in paying the customer's bill or requires payment assistance.¹²

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.

The ECCC received a number of submissions seeking amendment of this requirement to allow for the retailer to initiate the assessment rather than wait for customer to inform the retailer. The ECCC did not agree such a recommendation was necessary.

7.4 Division 1 – Clause 6.2 - Assessment of financial situation – reasonable consideration of more time

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 organisations request.

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 29

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.

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

7.5.1 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.

¹¹ Refer to clause 7.6 of the Energy Retail Code (SA) and clause 4.12.9 of the Electricity Industry Code (Qld).

¹² Refer to clause 11.2(b) of the Energy Retail Code (Vic).

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

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

The ECCC received a submission regarding clause 6.8 requesting that a new sub-clause be added which would require a retailer to provide information about the availability of relevant electricity financial assistance and other grant schemes. This proposal would aim to ensure that, where relevant, retailers informed customers of the availability of programs such as the Hardship Utilities Grants Scheme (HUGS). The ECCC agreed to make such a recommendation.

The ECCC received a submission regarding clause 6.8(c) which requires retailers to provide information regarding concessions available to the customer. The ECCC agreed to propose the additional requirement that information about how to access concessions should also be included.

The ECCC received a submission regarding clause 6.8(e) which requires a retailer to provide energy efficiency information available to the customer, including the option to arrange for an energy efficiency audit. The submission proposed that clause 6.8(e) be amended to include the words “at no cost” at the end of the clause. The proponent argued that this would ensure customers were provided with information regarding the new Hardship Efficiency Program (HEP). The ECCC did not reach a majority decision in favour of this proposal. However, given the divergent opinion of members, the ECCC agreed that this proposal should be noted in this report.

The ECCC received a submission regarding clause 6.8(f) which requires retailers to advise customers of independent financial and other relevant counselling services available to the customer. The proponent argued that other relevant consumer representative organisations should be included given they have a defined role under the Code. The ECCC agreed with this and also agreed that, given the diversity of services and the fact that the role provided was not directly related to the financial or consumer issue the term “counselling services” was inappropriate to include and should be removed.

7.5.2 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.¹³ 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.

¹³ Refer to regulation 19(4)(b) of the *Electricity Supply Industry (Tariff Customers) Regulations 1998* (Tas.).

7.5.3 Recommendations

The ECCC agreed it would be appropriate to require retailers to advise customer how to access concessions.

Recommendation 30

Amend clause 6.8(c) to read:

concessions available to the **customer** and how to access them

The ECCC agreed the term “counselling service” should be removed from clause 6.8(f) and the term “consumer representative organisation” should be included.

Recommendation 31

Amend clause 6.8(f) to read:

independent financial counselling and other relevant consumer representative organisations available to the **customer**.

The ECCC agreed that it would be appropriate to place a requirement upon retailers to advise customers of financial assistance schemes that they should reasonably be aware of.

Recommendation 32

Add a new clause 6.8(g) to read:

availability of any other financial assistance and grants schemes that the **retailer** should reasonably be aware of and how to access them.

7.6 Division 3, Subdivision 2 – Hardship policy – Requirement to produce and review

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.

7.6.1 Background

Financial hardship is a significant issue of concern to consumer representative organisations in WA. Consumer representative groups argue that WA has one of the worst disconnection rates of all comparable jurisdictions and Horizon Power has the worst disconnection rate of any retailer in Australia.

The ECCC received a number of submissions requesting that the ECCC propose mandatory compliance with Authority Financial Hardship Policy Guidelines and mandatory approval of retailer financial hardship policies by the Authority. This proposal would mirror the regime in Victoria, where, some have argued as a result of this requirement, disconnection rates have decreased significantly.

Retailers expressed concern that some had already voluntarily introduced improvements in policy and as a result disconnection rates had significantly reduced to where, on an aggregate basis, Western Australia has the third lowest rate of disconnection in Australia.

The ECCC did not agree to recommend mandatory guidelines and ERA approval of retailer hardship policies. However, the ECCC proposed that the model currently in place for dealing with

customer service charters should be adopted in relation to financial hardship policies. That is, the Code would require a hardship policy be reviewed, have consideration for the Authority guidelines, be submitted to the Authority and the Authority would publish its assessment of the policy and its review.

This recommendation was subject to a second round of targeted consultation with Synergy, Horizon Power, Rottneest Island Authority (retailers providing to residential customers) and WACOSS. Submissions were received from Synergy, Horizon Power and WACOSS. Horizon Power submitted that the current requirements regarding financial hardship were sufficient and that to require the Authority to assess the policy would be excessive. Synergy supported the proposal subject to minor amendments which specified the matters the ERA had to take into account when undertaking the review and to limit the frequency of the Authority's assessment to occur annually. WACOSS supported the proposal and the Synergy amendment. The ECCC agreed to propose the recommendation with minor amendments suggested by Synergy.

7.6.2 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 has 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.

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

The proposed NECF requires a retailer implement and comply with a hardship policy which must include:

- early identification by retailers and self-identification of hardship for early response by retailers;
- flexible payment options in accordance with the Rules;
- processes for identifying appropriate government concession programs and financial counselling services to assist in hardship mitigation and notifying customers in hardship of their existence; and
- other programs designed to assist hardship customers.

The draft National Energy Retail Law (NERL) developed for the NECF states a general principle that disconnection of a hardship customer due to inability to pay should be the last resort.

The draft NERL provides that a hardship customer 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 draft Rules provide that the AER must:

- develop national hardship indicators;
- undertake performance reporting on specific hardship indicators as established by the AER;

Whilst it is not proposed that the AER will have an approval role with regard to financial hardship policy (as is the case in Victoria) each retailer will be required to publish its hardship policy. The

AER will be required to monitor and carry out compliance audits (thereby ensuring compliance) as to whether the Hardship Policy complies with the requirements of the Law and Rules.

7.6.3 Recommendation

The ECCC agreed to recommend that retailers be required to review their hardship policies with consideration for the Authority's guidelines, submit to the Authority the results of the review and a copy of the policy and that the Authority should publish its assessment of the review and the policy.

Recommendation 33

Amend clause 6.10 to add the following sub-clauses:

- (5) The **retailer** must, unless otherwise notified in writing by the **Authority**, review its hardship policy at least annually and submit to the **Authority** the results of that review within *5 business days* after it is completed.
- (6) The **retailer** may, at any time, review its hardship policy and submit to the **Authority** the results of that review with *5 business days* after it is completed.
- (7) Any review of a **retailer's** hardship policy must have regard to the **Authority's** financial Hardship Policy Guidelines.
- (8) Subject to clause 6.10(9) when a **retailer** has reviewed its hardship policy pursuant to sub-clauses 6.10(5) or 6.10(6), the **Authority** will examine:
 - (i) the review to assess whether a **retailer's** hardship policy has been reviewed consistently with the Financial Hardship Policy Guidelines pursuant to clause 6.10(7); and
 - (ii) the hardship policy to assess whether a **retailer's** hardship policy complies with clause 6.10 of the Code.
- (9) The **Authority** will only conduct a review of a **retailer's** hardship policy pursuant to clause 6.10(8) a maximum of once per year.

7.7 Division 3, Subdivision 2 – Hardship policy – Staff Training

7.7.1 Background

Clause 6.10(2)(b) requires a retailer to provide for the training of staff on a retailer's obligations to customers with regard to financial hardship.

The ECCC received a submission proposing that the clause be refined to specify which staff should be trained and on which issues.

The ECCC agreed to recommend that clause 6.10(2)(b) be refined.

Recommendation 34

Amend clause 6.10(2)(b) to read:

(b) provide for the training of staff:

- (i) including call centre staff, all subcontractors employed to engage with **customers** experiencing **financial hardship**, energy efficiency auditors and field officers.
- (ii) on issues related to **financial hardship** and its impacts, and how to deal with consumers consistently with the obligation in sub-paragraph (c).

7.8 Division 3, Subdivision 2 – Hardship policy – Availability

Clause 6.10(3) requires that a retailer must give a customer, financial counsellor or relevant consumer representative organisation on request, details of the hardship policy at no charge.

The ECCC received a submission requesting that the ECCC propose an amendment to this clause which would require the retailer to automatically send a copy of the hardship policy to customers assessed as being in hardship.

Recommendation

The ECCC agreed to recommend amendment of clause 6.10(3).

Recommendation 35

Amend clause 6.10(3) to read:

a **retailer** must give **residential customers**, financial counsellors and relevant consumer representative organisations details of the hardship policy at no charge. The **retailer** must provide all **residential customers** that have been identified by the retailer as experiencing financial hardship, details of the hardship policy, including sending a copy by post, if requested.

7.9 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.

7.9.1 Research

The Energy Retail Code¹⁴ (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.

7.9.2 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.

¹⁴ Refer to clause 12.3 of the Energy Retail Code (Vic.).

8 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.

8.1 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.

8.2 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.¹⁵

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

8.3.1 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.

The ECCC received submissions requesting the amendment of clause 7.1(1)(b) to ensure that the retailer was required to use more than one method to contact the customer in the event that it wished to disconnect the customer for non-payment. The ECCC agreed to propose such an amendment.

8.3.2 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.¹⁶

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

¹⁵ Regulation 11 *Electricity Industry (Customer Contract) Regulations 2005*

¹⁶ Refer to clause 9.2.1 of the Energy Retail Code (SA) and clause 4.18.3 of the Electricity Industry Code (Qld).

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

	WA COC 7.1	SA ERC 9.2.2	VIC ERC 13.1 28.3	NSW ESR Sch2 12	ACT CPC 17.4 17.6	QLD EIC 4.18.4	TAS ESI (TC)R 23	NECF
REMINDER NOTICES								
Retailer must give reminder notice.	✓	✓	✓	✓	✓	✓		✓
Reminder notice must include:								17
• 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:								18
• 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 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:								19
• grounds authorising the disconnection				✓	✓			

¹⁷ Minimum information not yet specified.

¹⁸ Minimum interval not yet specified.

¹⁹ Minimum information not yet specified.

• advice that the retailer may disconnect the customer's supply and date from which disconnection may occur	✓		✓	✓	✓			
• telephone number for payment assistance enquiries			✓					
• 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				✓				
• telephone number of Ombudsman			✓				✓	
Disconnection warning must be given:								20
• not less than 18 business days from the date of dispatch of the bill	✓							
• not less than 22 business days from the date of dispatch of the bill			✓					
• not less than 7 days after reminder notice has been sent				✓	✓			
• after reminder notice has been sent							✓	
GENERAL								
Retailer must advise customer of:								
• available concessions		✓					✓	
• alternative payment arrangements		✓					✓	
• existence of Energy Ombudsman		✓						
RECORD KEEPING								
Retailer must keep records of actions taken				✓				

8.3.3 Recommendation

The ECCC agreed to propose an amendment which would require retailers to use more than one form of communication to contact a customer.

Recommendation 36

Amend clause 7.1(1)(b) to read:

Use its best endeavours to contact the **customer**, including by **telephone** or **electronic means** or other method.

8.4 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,²¹ with the exception of disconnection for emergency reasons or upon request by the customer.

²⁰ Minimum interval not yet specified.

²¹ For example, disconnection for failure to pay bill, failure to provide access to meter, illegal use etc.

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.

8.4.1 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.

Table 6: Jurisdictional comparison – Limitations on disconnection

	WA Code 7.6	SA ERC 9.7	VIC ERC 14(c)	NSW ES(G)R Sch 3 14	ACT CPC 17.1	QLD EIC 4.18.14	TAS ESI (TC)R 24	NECF
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. 								✓

8.4.2 Recommendation

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

Recommendation 37

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.

9 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.

9.1 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.

9.2 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.

9.2.1 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 7: 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:					
• before 12 noon on a business day (prescribed feeders/locations)				✓	
• before 3pm on a business day by retailer or distributor			✓		
• before 4pm on a business day by retailer (only best endeavours for regional area)		✓			
• before 5pm on a business day by distributor (only best endeavours for regional area)		✓			
• by retailer or distributor after 3pm but before 9pm on a business day + customer pays any applicable additional after hours reconnection charge			✓		
• 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)		✓			
• 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:					
• after 12 noon on a business day (prescribed feeders/locations)				✓	
• before 3pm on a business day by distributor + supply address in metropolitan area	✓				

• after 3pm but before 9pm on a business day + customer fails to pay any applicable additional after hours reconnection charge			✓		
• by retailer after 4pm but before 9pm on a business day + customer fails to pay any applicable additional after hours reconnection charge		✓			
• by distributor after 5pm but before 10pm on a business day + customer fails to pay any applicable additional after hours reconnection charge		✓			
• after 9pm on a business day by retailer		✓			
• after 9pm on a business day by distributor			✓		
• after 10pm on a business day by distributor		✓			
• 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 proposed 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.

9.2.2 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.

10 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.

10.1 Background

Under Part 9 of the Code electricity PPMs are installed permitted in remote communities and town reserves 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 relevant for PPM customers.

Consequently, Part 9 of the Code exempts a retailer from having to comply with certain parts of the Code when supplying to a customer using a PPM.

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 towns or communities.

In 2008 the Authority contracted the Allen Consulting Group to undertake a cost-benefit analysis and regulatory impact statement regarding the current and possible future use of PPM in WA. The Authority received the report in March 2009.

The Authority has considered the findings of the research and proposed a series of amendments to the Code. These amendments are currently the subject of public consultation by the ECCC.

For this reason, the ECCC has not made significant recommendations regarding Part 9 as part of this review.

10.2 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. As stated above, this report was delivered in March 2009.

10.3 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 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.²²

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.).²³

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.²⁴

Under the NECF not all participating jurisdictions intend to allow for the retailing of energy using prepayment meters. The draft Rules require that the Minister of a participating jurisdiction may, by a notice published in the South Australian Government Gazette, permit the operation of a prepayment meter system within that jurisdiction.

The NECF Exposure Draft Law & Rules contain comprehensive provisions associated with the operation of PPM.

10.4 Recommendation – Clarification regarding current operating areas

The Secretariat has advised the ECCC that the Office of Energy has brought to the Secretariat's attention that there could be some legal argument regarding the issue of whether the Code allows for PPM outside the ARCPSP & TRRP. Given the issue raised by the Office of Energy, a majority of the ECCC has agreed that for the purpose of clarity the clause should be amended to remove any risk of ambiguity.

²² Ministry of Energy and Utilities (NSW), *Proposed Market Operation Rule on Prepayment Metering*, February 2003.

²³ 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.

²⁴ 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.

Recommendation 38

Insert the following clause in Part 9

9.2 Application

(1) A **retailer** may only operate a pre-payment meter at a *residential customer's* **supply address** where the **customer** is 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.

(2) Part 9 only applies to a **pre-payment meter customer** referred to in subclause (1).

10.5 Recommendation – typographical error

In addition, the ECCC recommends correction of a typographical error.

Recommendation 39

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

11 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).

11.1 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.

11.2 Clause 10.3 – Information about concessions

As previously stated in this report, a number of submissions were received which recommended that retailers be required to provide concession related information only in the case of residential customers.

Recommendation 40

Amend clause 10.3 to relate only to **residential customers**.

11.3 Clarification of wording in clause 10.7(2)(a)

Clause 10.7(2)(a) requires that a distributor must give a customer, on request, the customer's consumption data if a customer requests consumption data, for a period less than the previous two years and no more than twice a year.

The ECCC received a submission requesting that the clause be amended to ensure the requirement is not required if the customer has had the data more than twice within the 12 months preceding the request.

Recommendation 41

Amend clause 10.7(2)(a) to read:

for a period less than the previous two years and no more than twice a year provided the **customer** has not been given consumption data pursuant to a request under subclause (1) more than twice within the 12 months immediately preceding the request;.

11.4 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 42

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.

11.5 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 (NQR Code)* requires that the distributor provide information to eligible customers in writing on an annual basis. Western Power has had difficulty complying with this requirement due to the fact that the distributor does not have a direct relationship with account holders. 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 under this Code.

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 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 16, the majority of the ECCC members determined that there be no further recommendation regarding the issue.

The ECCC notes that, whilst the text of the Draft Review Report clearly intends that all service standard payments be included in the obligation to inform customers, an error was found in the recommendation and draft version of the Code circulated with the Draft Review Report. The ECCC agreed that the intention of its recommendation is to capture all service standard payments available to customers under all legislation and subsidiary legislation in Western Australia. The ECCC recommends the 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 43

Insert a new clause in Part 10 to read:

10.3A Service Standard Payments

At least once a year, a **retailer** must give a customer written details of a **retailer's** and **distributor's** obligations to make payments to the **customer** under Part 14 of the **Code** and any other obligations to make payments to the **customer** under relevant legislation (including subsidiary legislation) in Western Australia, including the amount of the payment and the eligibility criteria for the payment.

11.6 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.

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 44

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

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

Remove clause 10.11(2)(d)

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



12 Part 11 – Customer Service Charter

Part 11 of the Code requires retailers and distributors to produce and provide 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.

12.1 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.

12.2 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.

12.2.1 Jurisdictional Comparison

The SA, Vic., Qld and Tas. codes require retailers and distributors to produce a customer service charter.²⁵

Charters prepared by retailers and distributors operating in Tas. are also subject to regulatory approval.²⁶

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.

12.2.2 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.

The ECCC received a submission from the Energy Ombudsman WA requesting that Part 11 be retained due to the value of the information contained within charters. The ECCC agreed that information provision requirements could be further specified, if required, in Part 2 or Part 10 and did not necessitate the requirement for a customer service charter to be produced.

²⁵ 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.

²⁶ 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 retail licence to remove the requirement for the licensee to prepare and review the charter and submit to the Authority for assessment.

Recommendation 45

Delete Part 11.

13 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.

13.1 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.

13.1.1 Recommendation

The ECCC did not receive any submissions regarding this issue and has not proposed any recommendations as part of this review.

14 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.

14.1 Background

14.1.1 Utility Regulators Forum

In March 2002, the Utility Regulators Forum (**URF**) published a report titled "National Regulatory Reporting for Electricity Distribution and Retailing Business" (**March 2002 Report**).²⁷ 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 URF regulatory reporting framework, as it relates to distribution activities, since its development in 2002.

Retailers

In relation to retail activities, the URF Steering Committee on National Regulatory Reporting Requirements released a Discussion Paper²⁸ 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;
- 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

²⁷ A copy of the report can be obtained from <http://www.accc.gov.au/content/index.phtml/itemId/332190/fromItemId/3894>

²⁸ 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>

- achieve greater consistency in complaints and call centre reporting.²⁹

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.

14.2 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 SCONRRR 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 SCONRRR 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 SCONRRR 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.

14.2.1 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.³⁰
- **South Australia:** Energy Industry Guideline No. 2, Energy Retail Code, Retailer.³¹
- **Victoria:** Information Specification (Service Performance) for Victorian Electricity Distributors (effective 1 Jan 06).³²
- **Victoria:** Information Specification (Service Performance) for Victorian Energy Retailers.³³
- **Tasmania:** Electricity Supply Industry Performance and Information Reporting Guideline.³⁴

²⁹ 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."

³⁰ A copy of the guideline can be obtained from <http://www.escosa.sa.gov.au/site/page.cfm?u=55#e72>

³¹ *Id.*

³² 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>

³³ *Id.*

³⁴ A copy of the guideline can be obtained from <http://www.economicregulator.tas.gov.au/domino/otter.nsf/8f46477f11c891c7ca256c4b001b41f2/586119af6594e01ca2571f4000f2596?OpenDocument>

The national regime, as outlined in the proposed NECF, will include annual performance reporting requirements regarding the following matters:

- performance of retailers against national hardship indicators to be developed by the AER;
- performance of regulated entities against any applicable service standards;
- a retail market overview (e.g. the number of retailers and those actively selling to customers); and
- a Retail Market Performance Report on the performance of regulated entities in relation to matters including:
 - customer service and complaints (e.g. in relation to marketing);
 - payment plans
 - de-energisations and re-energisations
 - concessions
 - direct debt defaults; and
 - prepayment schemes.

14.3 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.

14.3.1 Number of days taken to resolve complaints

A number of clauses under Part 13 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 as licensees are already required to report this information as outlined in the handbook.

The Authority received submissions requesting that this recommendation be amended to require a 20 business day time period as opposed to a 15 business day period. The 20 business day proposal is based on the fact that the service standard payment under 14.3(1)(b) becomes available to customers where a complaint is not resolved within 20 business days. The 15 business day requirement reflects the Authority's current data collection requirement as specified in the Electricity Performance Reporting Handbook. The 15 business day time period has been specified to ensure consistency across utility industries in WA (with water and gas). The ECCC agreed that, given licensees were already required to collect data regarding the 15 day requirement (under the handbook) and the 20 day requirement (to monitor eligibility for service standards), both specifications should be included in the Code.

Recommendation 46

Insert the following new clauses:

13.3(1)(e) percentage of **complaints** from **residential customers** resolved within 15 **business days** and 20 **business days**.

13.3(1)(f) percentage of **complaints** from **non-residential customers** resolved within 15 **business days** and 20 **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** and 20 **business days**.

13.10(1)(e) percentage of **customer complaints** concluded within 15 **business days** and 20 **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** and 20 **business days**.

14.3.2 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 47

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.

14.4 Reconnection Timeframes

The ECCC is aware that the Authority has some concerns regarding the failure of distributors to reconnect some customers 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 customer's premises. The ECCC believes further information should be publicly available regarding the issue of failure to reconnect within the required timeframe.. Therefore, the ECCC recommends the following amendments to the Code.

Recommendation 48

Insert a new clause 13.2(1)(a)(vii) to read:

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 a new clause 13.(2)(1)(b)(v) to read:

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 a new clause 13.8(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) who were not reconnected ***within the prescribed timeframe.***

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 NQR Code. 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 NQR Code addresses technical issues relating to the quality and reliability of electricity supply. Therefore, payment for breach of these standards has been addressed within the NQR Code and not the Code.

14.5 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 NQR Code.

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.

14.6 Jurisdictional Comparison

Most Eastern States also provide for payments for breach of quality and reliability standards. These standards are generally included in distribution codes³⁵ or general energy customer protection codes.³⁶

The NECF proposes that retailers and distributors will be required to comply with service standards or guaranteed service level arrangements. The detail of such standards and to what extent the responsibility for these standards will remain at a jurisdictional level remains unclear.

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 8: 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						

³⁵ 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).

³⁶ Refer to clause 6 of Schedule 1 of the Consumer Protection Code (ACT) and clause 2.5 of the Electricity Industry Code (Qld).

Wrongful disconnection	per day	\$50		\$250			<i>refer distributor or</i>	
	maximum	\$250		N/A			<i>refer distributor or</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		

14.7 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)).

14.7.1 Jurisdictional comparison

Only the Qld code provides for a service standard payment for failure to reconnect a customer’s electricity supply within prescribed timeframes.³⁷

Under the Qld code, the amount of the payment is \$40 a day³⁸ 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 9: 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

14.7.2 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 49

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

³⁷ Refer clause 2.5.5 of the Electricity Industry Code (Qld).

³⁸ 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.

14.8 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.

14.8.1 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.³⁹ The other States either expressly or implicitly require retailers and/or distributors to automatically provide customers with rebates in the event a service standard has been breached.

Table 10: 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 11: 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.⁴⁰

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 code⁴¹ 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.

³⁹ 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 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.

⁴⁰ Refer to clause 2.5.11(a) of the Electricity Industry Code (Qld).

⁴¹ Refer to clause 2.5.17(d) of the Electricity Industry Code (Qld).

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.⁴²

This differs from the Qld code⁴³ 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.

By agreement

Most codes also explicitly allow for customers and retailers/distributors to negotiate the application and/or amount of service standard payments.⁴⁴

14.8.2 Recommendation

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 NQR Code requires that the distributor provide information to eligible customers in writing on an annual basis. Western Power has had difficulties complying with this requirement due to the fact that the distributor does not have a direct relationship with account holders.

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.

14.9 Proposed new Clause related to Street Light Outages

The ECCC received a submission stating that Western Power no longer inspects street lights for faults, relying instead on preventative maintenance (bulk globe replacement program) and reporting of faulty street lights by individuals and local governments.

Legal advice provided to the Secretariat suggests that, in Australian law, it is possible to conceive of circumstances in which a failure to maintain or repair street lighting may give rise to a civil liability in damages to a third party injured or suffering loss or damage as a result of negligence or breach of statutory duty on the part of an owner, occupier and/or party responsible for maintenance or repair of the lighting.

The majority of the ECCC has agreed that the provision of a service standard payment when faults are not repaired would provide positive incentives for both the reporting of faulty street lights and their repair.

The ECCC notes that other jurisdictions have instituted a service standard payment for failure to repair street lights within prescribed times. In relation to this issue, the following service standard payment arrangements exist in other jurisdictions:

⁴² Refer to clause 11.2(2) of the Consumer Protection Code (ACT).

⁴³ Refer to clause 2.5.2(b) of the Electricity Industry Code (Qld).

⁴⁴ 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.

- Victoria - a one-off payment of \$10 (if not repaired within 2 days);
- South Australia a \$20 one-off payment;
- NSW a \$15 one-off payment; and
- ACT a \$60 per day payment.

The ECCC undertook targeted consultation with Western Power, Horizon Power and the WA Local Government Association regarding this issue.

Submissions were received from Western Power, Horizon Power and WALGA. Western Power asserted that the service standard payment was unnecessary as it was already looking at methods to improve detection of outages and repair timeframes. WALGA supported the introduction of service standard payments in addition to the work currently undertaken by Western Power. Horizon Power had no objection to the introduction of a service standard payment on the condition that the payment would not apply in circumstances such as “acts of god”.

The ECCC recommends that the Code be amended to include a service standard payment of \$20 per day for failure to repair street lights within 5 days (metropolitan) and 9 days (regional) with a limitation on liability in regard to “acts of god” such as cyclones and major storm events.

Recommendation 50

Add a new clause 14.5:

14.5 Street lighting

(1) Subject to subclause (2) if a **distributor** fails to repair a faulty street light the **distributor** must pay the **customer** who first notifies the fault:

(a) with respect to a metropolitan area, \$20 per day, for each day the street light is not repaired after the first 5 days from the **distributor** being notified of the fault;

(b) with respect to a regional area, \$20 per day, for each day the street light is not repaired after the first 9 days from the **distributor** being notified of the fault.

(2) The **distributor** shall not be liable to make payments under subclause (1) to the extent that the **distributor's** failure to rectify the street light within the prescribed statutory timeframes is due to a natural disaster or other act of god and the **distributor** has taken all reasonable steps to otherwise rectify the fault.

APPENDIX 1 – Draft Proposed 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***

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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** ~~comes into~~ operation ~~upon~~ the day it ~~is~~ published in the Government Gazette.
- (2) ~~Notwithstanding sub-clause (1) clause 8.3(1) will~~ The **revisions to the Code** come into operation on 1 ~~January 2008~~ 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 an **electricity marketing agent** arranging a contract is to be read as a reference to an **electricity marketing agent** entering into ~~an~~ contract on the retailer's or customer's behalf, or arranging the contract on behalf of another person (whichever is relevant).

1.5 Definitions

In the **Code**, unless the contrary intention appears –

“accumulation meter” has the same meaning as in clause 1.3 of the Electricity Industry Metering Code (2005).

“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.

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“**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.

“**call centre**” means a system that is capable of automatically recording some or all of the responsiveness indicators.

“**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 available to residential customers only.

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

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“**contestable customer**” means a **customer** at an exit point where the amount of electricity transferred at the exit point is at least more than the amount prescribed under the *Electricity Transmission and Distribution Systems (Access) Corporations (Prescribed Customers) Order 2007 (Order) made under the Electricity Corporations Act 1994/2005* or under another enactment dealing with the progressive introduction of customer contestability.

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

“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.

“customer” means a *customer* who consumes not more than 160 MWh of electricity per annum.

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

(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

(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) ~~an *marketing representative* *electricity marketing agent*~~ –

- (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* *electricity marketing agent*~~ or some other ~~*marketing representative* *electricity marketing agent*~~ then or subsequently enters into negotiations with those prospective *customers* with a view to arranging *contracts on behalf of, or for the benefit of, a retailer or party other than the customer*.

“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

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(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.

“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 or addresses**.

“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 —~~

~~(d) a **retailer** who engages in **marketing**; or~~

~~(e) 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**.

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“**marketing identification number**” means a unique number assigned by a ~~marketer~~ retailer or other party to each ~~marketing representative~~ electricity marketing agent acting on its behalf.

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“~~marketing representative~~” means –

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- ~~(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).~~

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“**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.

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“**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]**.

“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.

“TTY” means telephone typewriter.

“verifiable consent” means consent that is given –

- (a) expressly;
- (b) in writing or orally;
- (c) after the **retailer** or **electricity marketing agent** (whichever is relevant) 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.

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1.6 Application

Subject to [clause clauses 1.10 and 2.1A](#), 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; and

(f) [005-7](#); and

(g) 8.1.

Part 2 Marketing

Division 1 – Obligations particular to retailers

2.1 Retailers to ensure representatives comply with this Part

A ~~marketer-retailer~~ must ensure that its ~~marketing representative~~ electricity marketing agents comply with this Part.

2.1A Except to limited extent, Customer's agents not required to comply with this Part

Save for clauses 2.7 and 2.9(1), this Part does not apply to persons within subparagraph (b) of the definition of electricity marketing agents in clause 1.5 of this Code.

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Division 2 – Contracts

2.2 Entering into contracts

- (1) An ~~marketer~~ electricity marketing agent 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 or electricity~~ marketing agent by ~~telephone or electronic means~~ for a **non-standard contract** the contract need not be signed but the ~~marketer or retailer~~ retailer or electricity marketing agent 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~~ electricity marketing agent.

- (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

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contract) take place between the ~~marketing representative electricity marketing agent~~ and the **customer** in each other's presence in Western Australia at a place other than at the trade premises of the ~~marketerretailer~~; and

- (b) the ~~marketing representative electricity marketing agent~~ 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 –
 - (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 electricity marketing agent~~ (other than as described in paragraph (a)) the invitation is not to be regarded as unsolicited.

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Division 3 - Information to be provided to customers

2.3 Information to be given before entering into a contract

- (1) Before arranging a **contract**, an ~~marketing representative electricity marketing agent~~ 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 electricity marketing agent~~ 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 electricity marketing agent~~ must obtain the **customer's** written acknowledgement that the information in subclause (1) has been given.

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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~~**electricity marketing agent**, the **retailer** or the **electricity marketing agent** 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~~**electricity marketing agent** 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**.

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(2) A **retailer** or ~~marketing representative~~**electricity marketing agent** must give the following information to a **customer** –

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(a) how the **customer** may obtain –

~~a a copy of the retailer's Customer Service Charter;~~

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(i) a copy of the **Code**; and

(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~~ and **electricity marketing agent** must comply with the **Code**;

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(d) how the **retailer** may assist if the **customer** is experiencing **payment difficulties** or **financial hardship**;

(e) with respect to a residential customer, the **concessions** that may apply to the residential customer;

(f) the **distributor's** 24 hour **telephone** number for faults and emergencies;

(g) with respect to a residential customer, how the residential customer may access the **retailer's**:

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(i) multi-lingual services (in languages reflective of the **retailer's customer** base); and

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(ii) **TTY** services;

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(h) how to make an enquiry of, or **complaint** to, the **retailer**;

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(i) general information on the safe use of electricity; and

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(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**.

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(3) Subject to subclause (5), For a **standard form contract** that is not entered into as a result of **door to door marketing**:

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(a) the information in subclause (42) must be given no later than with or on the **customer's** first bill: and

(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** must be provided at no charge to the **customer**.

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(4) Subject to subclause (5), 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 (4) and a copy of the contract must be given before the **customer** has entered into the **contract**;

(b) the ~~marketing representative~~ **electricity marketing agent** must obtain the **customer's** written acknowledgement that the information in subclause (4) has been given.

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

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

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(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**.

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Division 4 – Marketing Conduct

2.5 Standards of Conduct

(1) ~~An **marketing representative**~~ **electricity marketing agent** must not, when **marketing**, engage in conduct that is misleading, deceptive or likely to mislead or deceive or that is unconscionable.

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(2) ~~An **marketing representative**~~ **electricity marketing agent** must not exert undue pressure on a **customer**, nor harass or coerce a **customer**.

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(3) ~~An **marketing representative**~~ **electricity marketing agent** must ensure that the inclusion of **concessions** is made clear to **customers** and any prices that exclude **concessions** are disclosed.

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(4) ~~An **marketing representative**~~ **electricity marketing agent** 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.

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(5) A ~~**marketer**~~ **retailer or other party** must ensure that a **customer** is able to contact the ~~**marketer**~~ **retailer or other party** on the ~~**marketer's**~~ **retailer's or other party's** telephone number during the normal business hours of the ~~**marketer**~~ **retailer or other party** for the purposes of enquiries, verifications and **complaints**.

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2.6 Contact for the purposes of marketing

(1) ~~An **marketing representative**~~ **electricity marketing agent** 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** -

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(a) his or her first name;

(b) the name of the **marketer** and if different, of the ~~**retailer**~~ **retailer or other party** 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

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electronic means, ask if the **customer** wishes to proceed further.

(2) An ~~marketing representative~~ **electricity marketing agent** who makes **contact** with a **customer** for the purposes of **marketing** must, on request by the **customer** -

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(a) provide the **customer** with the complaints **telephone** number of the ~~marketer, and if different, of the retailer or other party~~ on whose behalf the **contact** is being made; and

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(b) provide the **customer** with the ~~marketer's~~ **electricity marketing agent's marketing identification number**.

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(3) An ~~marketing representative~~ **electricity marketing agent** who meets with a customer face to face for the purposes of **marketing** must:

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(a) as soon as practicable, tell the **customer** the purpose of the **contact**,

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(b) wear a clearly visible and legible identity card that shows -

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(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, retailer, and if different, of the retailer or other party~~ on whose behalf the **contact** is being made; and

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(c) as soon as practicable, provide the **customer**, in writing:

(i) his or her first name;

(ii) his or her **marketing identification number**,

(iii) the name of the ~~marketer, retailer, and if different, of the retailer or other party~~ on whose behalf the **contact** is being made;

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(iv) the complaints **telephone** number of the ~~marketer, retailer, and if different, of the retailer or other party~~ on whose behalf the **contact** is being made; and

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(v) the ~~marketer's~~ business address and Australian Business or Company ~~Number of the retailer or other party on whose behalf the contact is being made~~.

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(4) If, when a ~~marketing representative~~ **electricity marketing agent** 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~~ **electricity marketing agent** must -

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(a) end the **contact** as soon as practicable; and

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(b) not attempt to **contact** the **customer** for the purposes of **marketing** for the next 30 days unless the **customer** agrees otherwise.

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(5) Unless requested by the **customer**, an ~~marketing representative~~ **electricity marketing agent** 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~~ **electricity marketing agent**.

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(6) An ~~marketing representative~~ electricity marketing agent 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**.

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(7) A ~~marketer~~ retailer or other party must keep the following records each time it initiates **contact** with a **customer** for the purposes of **marketing**-

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(a) the name of the **customer** and -

(i) if the **contact** was made by **telephone**, the **telephone** number;

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(ii) if the **contact** was made at the **customer's premises**, the address of the **premises**;

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(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~~ electricity marketing agent who made the **contact**; and

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(c) the date and time of the **contact**.

(8) Clause 2.6(7) does not apply where a ~~marketer~~ retailer or other party contacts a **customer** in response to a **customer** request or query.

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~~(9) In this clause-~~

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~~"electronic means" means the internet, email, facsimile or other similar means but does not include telephone.~~

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2.7 Conduct when a customer does not wish to be contacted

(1) If a **customer** who has been **contacted** by an ~~marketing representative~~ electricity marketing agent for the purposes of **marketing** requests not to be **contacted** again on behalf of the ~~marketer~~ retailer, or other party, the ~~marketer~~ retailer or other party must ensure that the **customer** is not **contacted** on behalf of the ~~marketer~~ retailer or other party 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 ~~retailer or other party~~ has a legal obligation to contact the **customer**.

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(2) A ~~marketer~~ retailer, or other party 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~~ retailer or other party must give a copy of the record to the **electricity ombudsman** or the **Authority** on request.

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(4) A ~~marketer~~ retailer or other party must provide the **customer** on request with written confirmation that the **customer** will not be **contacted** by or on behalf of the ~~marketer~~ retailer or other party in relation to the supply of

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electricity ~~by the retailer for whom the marketing was carried out for~~ for the next 2 years.

- (5) When engaging in **door to door marketing**, an ~~marketing representative~~ **electricity marketing agent** 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 an **electricity marketing agent** must comply with the National Privacy Principles as set out in the *Privacy Act 1998* in relation to information collected under this Part.

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.~~

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- ~~(1) A marketing representative who contravenes a provision of this Part commits an offence.~~

~~Penalty: \$5,000.~~

- ~~(3)(1) If a marketing representative who contravenes a provision of this Part, the retailer commits an offence.~~

~~Penalty:~~

~~(a) for an individual, \$5 000~~

~~(b) for a body corporate, \$20,000.~~

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- ~~(2) If an electricity marketing agent of a retailer contravenes a provision of this Part, the retailer commits an offence.~~

~~Penalty:~~

~~(a) for an individual, \$5 000;~~

~~(b) for a body corporate, \$20 000.~~

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- (3) It is a defence to a prosecution for a contravention of subclause (3)(2) if the **retailer** proves that the **retailer** used reasonable endeavours to ensure that the **electricity marketing agent** complied with the **Code**.

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2.10 Presumption of authority

A person who carries out any **marketing** activity in the name of or for the benefit of –

- (a) a **retailer**, or

(b) an ***electricity marketing agent***,

is to be taken, unless the contrary is proved, to have been employed or authorised by the ***retailer*** or ***electricity marketing agent*** to carry out that activity.

2.11 Electricity marketing agent complaints

(1) An ***electricity marketing agent*** 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 ***electricity marketing agent***, and

(b) on request by the ***electricity ombudsman*** in relation to a particular ***complaint***, give to the ***electricity ombudsman***, within 28 days of receiving the request, all information that the ***electricity marketing agent*** has relating to the ***complaint***.

(2) A record or other information that an ***electricity marketing agent*** 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 ***electricity marketing agent***.

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Part 3 Connection

3.1 Obligation to forward connection application

- (1) If a **retailer** agrees to sell electricity to a **customer** or arrange for the connection of the **customer's supply address**, the **retailer** must forward the **customer's** request for connection to the relevant **distributor** for the purpose of arranging for the connection of the **customer's supply address** (if the **customer's supply address** is not already connected).
- (2) Unless the **customer** agrees otherwise, a **retailer** must forward the **customer's** request for connection to the relevant **distributor** –
 - (a) that same day, if the request is received before 3pm on a **business day**; or
 - (b) the next **business day**, if the request is received after 3pm or on a Saturday, Sunday or public holiday in Western Australia.
- (3) In this clause –

“**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**.

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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.

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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) Either the range of dates of the metering supply period or the date of the current **meter** reading or estimate;
- (b) the current **meter** reading or estimate if the customer has an accumulation meter installed;
- (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 to any concessions that the customer may be eligible to receive; with respect to a residential customer, a statement that the residential customer may be eligible to receive concessions and how the residential customer may find out its eligibility for those concessions;
- (e)(i) the amount-value of any **concessions** provided to the **residential 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;

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- (v) the **supply address** and any relevant mailing address;
 - (w) the **customer's** name and account number;
 - (x) the amount of arrears or credit;
 - (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);~~ with respect to **residential customers**, the **National Interpreter Symbol** with the words **“Interpreter Services”**;
 - (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) ~~specify in a visible and legible manner on the customer's bill that it has done so;~~ the **retailer** has based the bill upon an estimation; and
 - (b) ~~advise the customer that the~~ 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:
 - (i) a verification of a **meter** reading; and
 - (ii) 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

- (1) If a **customer** –
 - (a) requests the **meter** to be tested; and
 - (b) pays the **retailer's** reasonable charge for testing the **meter** (if any),

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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**.

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**.

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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.

~~(1)~~(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.

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~~(2)~~(3) In this clause –

“undercharging” includes, without limitation, failure to issue a bill.

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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) for residential customers, 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.

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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; or
 - (d) the **residential customer** is assessed by the **retailer** under clause 6.1(1) as being in **financial hardship**.
- (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.
- (4) If a **residential customer** has been assessed by a **retailer** as being in **financial hardship** pursuant to clause 6.1(1), the **retailer** must retrospectively waive any late payment fee charged pursuant to the **residential customer's** last bill prior to the assessment being made.

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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** –

~~(b)~~(a) informs a **retailer** of the date on which the **customer** intends to vacate, or has vacated the **supply address**; and

~~(e)~~(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**.

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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).

~~(1)~~(4) In this clause –

“**payment problems**” includes, without limitation, payment problems relating to a **historical debt**.

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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 ~~40~~15 business **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 –

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“temporary suspension of actions” means a situation where a **retailer** temporarily suspends all disconnection and debt recovery procedures 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**.

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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** [and how to access them](#);
- (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 [counselling](#) and other relevant [counselling services](#) [consumer representative organisations](#) available to the **customer**, ~~and~~
- (g) [availability of any other financial assistance and grants schemes that the **retailer** should reasonably be aware of and how to access them](#).

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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:
- (i) including **call centre** staff, all subcontractors employed to engage with customers experiencing **financial hardship**, energy efficiency auditors and field officers;
 - (ii) on issues related to **financial hardship** and its impacts, and how to deal with consumers in a manner consistently with the obligation in sub-paragraph (c);
- (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 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 residential customers**, financial counsellor or counsellors and **relevant consumer representative organisation** on request **organisations** details of the hardship policy at no charge. The **retailer** must provide all **residential customers**, that have been identified by the **retailer** as experiencing **financial hardship**, details of the hardship policy, including by post, if requested.
- (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.
- (5) The **retailer** must, unless otherwise notified in writing by the **Authority**, review its hardship policy at least annually and submit to the **Authority** the results of that review within **5 business days** after it is completed.
- (6) The **retailer** may, at any time, review its hardship policy and submit to the **Authority** the results of that review within **5 business days** after it is completed.
- (7) Any review of a **retailer's** hardship policy must have regard to the **Authority's** Financial Hardship Policy Guidelines.
- (8) Subject to clause 6.10(9) when a **retailer** has reviewed its hardship policy pursuant to sub-clauses 6.10(5) or 6.10(6), the **Authority** will examine:

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(i) the review to assess whether a **retailer's** hardship policy has been reviewed consistently with the Financial Hardship Policy Guidelines pursuant to clause 6.10 (7); and

(ii) the hardship policy to assess whether a **retailer's** hardship policy complies with clause 6.10 of the Code.

(9) The **Authority** will only conduct a review of a **retailer's** hardship policy pursuant to clause 6.10(8) a maximum of once per year.

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**.

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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**, including by telephone or electronic means or other method;
 - (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;

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(d) after 3.00 pm Monday to Thursday;

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(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 –
 - (d) the **customer** making a request for reconnection; and
 - (e) 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, 4.2 and 4.7 of the Code do not apply to~~ A **retailer** may only operate a **pre-payment meter customer** at a **residential customer's supply address** where the **customer** ~~Part 9 only applies to a pre-payment meter customer is~~ 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.
- (2) ~~Part 9 only applies to a pre-payment meter customer referred to in~~ subclause (1).

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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;

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- (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);

~~(a)~~(b) a copy of the **contract**,

~~(b)~~ information on how to obtain a copy of the **retailer's Customer Service Charter**;

~~(d)~~(c) information on the availability and scope of the **Code** and the requirement that **distributors**, **retailers** and **electricity marketing agents** comply with the **Code**;

~~(e)~~(d) a **meter** identification number;

~~(f)~~(e) a **telephone** number for enquiries;

~~(e)~~(f) a **telephone** number for **complaints**;

~~(h)~~(g) the **distributor's** 24 hour **telephone** number for faults and emergencies;

~~(j)~~(h) confirmation of the **supply address** and any relevant mailing address;

~~(j)~~(i) details of any **concessions** the **residential customer** may be eligible to receive;

~~(k)~~(j) the amount of any **concessions** to be given to the **residential customer**;

~~(j)~~(k) information on the availability of multi-lingual services (in languages reflective of the **retailer's customer** base);

~~(m)~~(l) information on the availability of **TTY** services;

~~(n)~~(m) advice on how the **retailer** may assist in the event the **customer** is experiencing **payment difficulties** or **financial hardship**;

~~(e)~~(n) advice on how to make a **complaint** to, or enquiry of, the **retailer**;

~~(p)~~(o) details on external complaints handling processes; and

~~(e)~~(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

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- (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;
 - (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**.

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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).

~~(3)~~(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

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period at least equal to the period over which the recoverable undercharging occurred.

9.10 Recommencement of supply after self-disconnection

A **retailer** must ensure that supply is recommenced -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

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**).

~~(2)~~(4) A **retailer** must keep a **non-contestable customer's** billing data for 7 years.

10.3 Concessions

- A **retailer** must give a **residential customer** on request at no charge –
- (a) information on the types of **concessions** available to the **residential customer**, and
 - (b) the name and contact details of the organisation responsible for administering those **concessions** (if the **retailer** is not responsible).

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10.3A Service Standard Payments

A **retailer** must give a **customer** at least once a year written details of the **retailer's** and **distributor's** obligations to make payments to the **customer** under Part 14 of this **Code** and under any other legislation (including subsidiary legislation) in Western Australia 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 provided the customer has not been given consumption data pursuant to a request under subclause (1) more than twice within the 12 months immediately preceding the request; 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 –
- (a) 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 ~~(if requested by the distributor)~~.
- (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 **retailer** or **distributor** or its **electricity marketing agent** under the **Code** is expressed in clear, simple and concise language and is in a format that makes it easy to understand.

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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)(d) 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)(e) **reminder notice**; **and**
 - (f) **disconnection warning**; **and**
 - (e) **Customer Service Charter**.

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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
Customer Service Charter NOT USED

a. ~~Obligation to produce and publish a Customer Service Charter~~

- ~~(1) A **retailer** and a **distributor** must produce and publish a **Customer Service Charter**.~~
- ~~(2) A **Customer Service Charter** under subclause (1) must address at least the following matters—
 - ~~(2) 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**);~~
 - ~~(3) a summary of the **retailer's** or **distributor's** rights and obligations under the **Code** (including, billing, connection, disconnection and reconnection procedures);~~
 - ~~(4) an explanation of the complaints handling process;~~
 - ~~(5) an explanation of the difference between distribution and retail functions;~~
 - ~~(6) reference to key documents in relation to the supply of electricity to **customers**; and~~
 - ~~(7) contact details of the **retailer** or **distributor**, the **Authority**, Energy Safety (Department of Consumer and Employment Protection) and the **electricity ombudsman**.~~~~

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11.2 ~~Obligation to provide Customer Service Charter~~

- ~~(a) 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**~~
- ~~(b) 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.~~

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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 the **retailer** 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, electricity marketing agent** must give a **customer** on request, at no charge, information that will assist the **customer** in utilising the respective complaints handling processes.

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12.4 Obligation to refer complaint

When a **retailer, distributor** or **marketer, electricity marketing agent** 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.

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Part 13 Record keeping

Division 1 – General

13.1 Records to be kept

Unless expressly provided otherwise, a **retailer**, **distributor** or **marketer** electricity marketing agent must keep a record or other information that a **retailer**, **distributor** or **marketer** electricity marketing agent is required to keep by the **Code** for at least 2 years from the last date on which the information was recorded.

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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**;

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- (xiii) who have lodged security deposits; and
- (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.”

“**within the prescribed timeframe**” means any applicable regulated time limit for reconnections.

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/retailer**); 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**, **and**

- (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 20 **business days**; and
 - (f) percentage of **complaints** from **non-residential customers** resolved within 15 **business days** and 20 **business days**.
- (2) A **retailer** must keep a copy of each **complaint** referred to in subclause (1) (including **complaints** made directly to a **marketerretailer**).
- (3) In this clause –

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“**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

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(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.

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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**; ~~and~~
- (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** and 20 **business days**.

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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**.

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(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.

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(2)(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.

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13.9 Timely repair of faulty street lights

(1) A **distributor** must keep a record of –

- (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 before the agreed date 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~~ 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**); ~~and~~
 - (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 and 20 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*.

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**, ~~and~~
- (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** and 20 **business days**.

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 14.6, 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** \$5060 for each day that it is late, up to a maximum of \$250300.
- (2) Subject to clause 14.6, 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

- (1) Subject to clause 14.6, 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~~ a **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.
- (2) Subject to clause 14.6, 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.

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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 14.6, 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 14.6, 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**.

14.5 Street lighting

- (1) Subject to subclause (2) if a **distributor** fails to repair a faulty street light the **distributor** must pay the **Authority**.
 - (a) with respect to a **metropolitan area**, \$20 per day, for each day the street light is not repaired after the first 5 days from the **distributor** being notified of the fault;
 - (b) with respect to a **regional area**, \$20 per day, for each day the street light is not repaired after the first 9 days from the **distributor** being notified of the fault.
- (2) The **distributor** shall not be liable to make payments under subclause (1) to the extent that the **distributor's** failure to rectify the street light within the prescribed statutory timeframes is due to a natural disaster or other act of god and the **distributor** has taken all reasonable steps to otherwise rectify the fault.

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Division 3 – Payment

14.6 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**.

14.7 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.

14.8 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

<u>Commencement</u>	<u>Revision</u>	<u>New</u>
<u>1 July 2010</u>	<u>Definition of contestable customer</u>	<u>"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 <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</u>

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APPENDIX 2 – ECCC Terms of Reference

APPENDIX 2 – ECCC Terms of Reference

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