Electricity Code Consultative Committee

Draft Review Report

2013 Review of the *Code of Conduct for the Supply of Electricity to Small Use Customers*

4 October 2013

Contents

1 Invitation for Submissions

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

The *Electricity Industry Act 2004* (**Electricity Act**) requires that the ECCC undertake a review of the Code every two years and provide a report to the Economic Regulation Authority (**Authority**).

The Electricity Act states that the purpose of the review is to 're-assess the suitability of the provisions of the code of conduct for the purposes of section 79(2)'. Section 79(2) sets out the objective of the code as follows:

> 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.

The ECCC has made a number of preliminary recommendations to include, amend or delete provisions of the Code. The ECCC has also posed a number of questions.

The ECCC invites written submissions from interested parties.

Submissions should be addressed to:

Mr Paul Kelly
ECCC Chairman
PO Box 8469
PERTH BC WA 6849
Fax: (08) 6557 7999
Email: eccc@erawa.com.au

Submissions may be provided in hard-copy or electronic form and must be received by 4pm on Friday, 1 November 2013.

Should you require further information, please contact Dr David Leith, Executive Officer ECCC on (08) 6557 7928.

Confidentiality

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

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

2 Executive Summary

The Authority is required by the Electricity Act to establish a committee, the ECCC, to advise it on matters relating to the Code. The ECCC must review the Code every two years. The ECCC is required to undertake public consultation as part of the review and to report the review findings to the Authority.

This report outlines the proposed recommendations of the ECCC's 2013 review of the Code. The report is a draft. After considering the issues raised in submissions, the ECCC will prepare a Final Review Report for the Authority.

Where the ECCC has been unable to reach agreement to make a recommendation due to the lack of availability of information, or where the ECCC has not fully explored issues, the ECCC has posed questions to which interested parties can respond.

Interested parties should note that the absence of a particular issue from this report does not preclude it from being considered by the ECCC.

Attachment 1 of this report is a marked up copy of the Code incorporating the recommendations made by the ECCC in this Draft Review Report.

3 Background

3.1 The Electricity Market in Western Australia

The *Electricity Industry Act 2004* (**Act**) includes provisions for the licensing of electricity supply. Electricity licences issued by the Authority under the Act are classified into the following five categories:

a) Distribution – construct and operate electricity distribution networks.

b) Generation – construct and operate electricity generation works.

c) Retail – sell electricity to customers.

d) Transmission – construct and operate electricity transmission networks.

e) Integrated Regional – one or more of the activities detailed in (a) to (d) above.

The Code applies to retailers, distributors and integrated regional licensees that supply electricity to small use customers and electricity marketing agents that market to small use customers. A small use customer is a customer who consumes less than 160 MWh of electricity per annum. Currently, 160 MWh of electricity costs approximately $40,000. There are six retailers approved to supply small use customers:

- Electricity Retail Corporation (t/a **Synergy**)
- Alinta Sales Pty Ltd (t/a **Alinta Energy**)
- Clear Energy Pty Ltd
- Regional Power Corporation (t/a **Horizon Power**)
- Perth Energy Pty Ltd
- Rottnest Island Authority (**RIA**)

According to data provided to the Authority for the 2011/12 reporting year, Synergy is the largest retailer in the State with just over 982,000 residential and non-residential small use customers, or approximately 96% of the total market. Horizon Power, which retails in a number of areas of the State outside the South West Interconnected System (**SWIS**), had almost 42,000 customers, or approximately 4% of the total market. The remaining customers were divided between Alinta Energy (1,449), Perth Energy (68) and RIA (25).

Clear Energy reported that it did not supply any customers during the year ending 30 June 2012.

Western Power is the monopoly distribution network provider to small use customers within the SWIS, with just under 1,016,000 customer connections (approximately 95.8% of the State total) and over to 90,000km of distribution lines (data provided for the 2011/12 reporting year).

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

The Code regulates and controls the conduct of retailers, distributors and electricity marketing agents who supply and market electricity to residential and non-residential small use customers. The Code was developed to protect the interests of customers who have little or no market power. For this reason, the Code only applies to customers who consume no more than 160 MWh of electricity per annum.

The Code is made under section 79 of the Act and was first established in 2004 by the Minister for Energy after being developed by the Electricity Reform Consumer Forum. Upon gazettal on 31 December 2004, responsibility for the Code transferred to the Authority.

The Code covers a broad range of issues including:

- Connection
- Disconnection
- Reconnection
- Billing
- Payment
- Payment Difficulties & Financial Hardship
- Information Provision
- Complaints
- Record Keeping
- Service Standard Payments
- Pre-payment Meters

The Code has the power of subsidiary legislation.

3.3 Electricity Code Consultative Committee

Under section 81 of the Act, the Authority is required to establish a committee to advise on matters relating to the Code. This committee, known as the Electricity Code Consultative Committee, was established on 1 September 2006.

Under section 88 of the Act, the committee must carry out a review of the Code as soon as practicable after the first anniversary of its commencement and then every two years.

3.3.1 Terms of Reference

In 2013, the Authority approved amendments to the ECCC Terms of Reference (**Attachment 2**) for the ECCC. The ECCC Terms of Reference allows for the ECCC to comprise:

- a Chairperson (from the Authority's Secretariat), who has no voting rights;
- an executive officer (from the Authority's Secretariat) who has no voting right;
- a government agency representative from the Department of Commerce;
- a government agency representative from the Public Utilities Office;
- four consumer organisation representatives;
- four industry representatives.

3.3.2 Committee Members

Appointments for the current term of the ECCC were made in May 2013. Current members of the ECCC are:

Industry representatives:

- Catherine Rousch (Alinta Energy)
- Gino Giudice (Western Power)
- Simon Thackray (Synergy)
- Greg Will (Horizon Power)

Consumer organisation representatives:

- Charles Brown (Financial Counsellors Association of WA)
- Drew Pearman[1] (Chamber of Commerce & Industry)
- Chris Twomey (WACOSS)
- David Kernohan (Consumer Credit Legal Service (WA) Inc.)

Government representatives:

- Gerald Milford (Department of Commerce)
- Alex Kroon (Public Utilities Office)

Authority staff:

- Paul Kelly, Executive Director, Licensing, Monitoring & Customer Protection holds the position of Chairperson.
- David Leith, A/Assistant Director, Customer Protection is executive officer.

3.4 Previous Code Reviews

Since the establishment of the Code, the ECCC has undertaken three reviews of the Code. The first review was completed in 2007 and the second review in 2010. Concurrently with the second review, the ECCC undertook a review of pre-payment meter arrangements under the Code (Part 9 of the Code). The third review was completed in 2012. The current Code, the *Code of Conduct for the Supply of Electricity to Small Use Customers 2012*, was gazetted on 9 November 2012 and came into effect on 1 January 2013.

On 21 June 2013, amendments to the pre-payment meter grandfathering provisions and the life support provisions of the Code were gazetted. The amendments came into effect on 1 July 2013.

[1] Drew Pearman has recently resigned from the ECCC. A replacement representative from the Chamber of Commerce and Industry is in the process of being arranged.

3.5 Code Review Process

The ECCC's Executive Officer prepared a Discussion Paper for the consideration of the ECCC in August 2013. The ECCC met to discuss the issues outlined in the Discussion Paper and after considering a draft, has approved this report.

The Electricity Act requires that the ECCC undertake consultation with interested parties and consider any submissions made before providing its advice to the Authority. The ECCC has provided a four-week period for this consultation process.

Following receipt of submissions the ECCC will consider the issues raised and provide a Final Review Report to the Authority.

After consideration of the Final Review Report the Authority may decide to propose amendments to the Code. The Electricity Act requires the Authority to send proposed amendments to the ECCC for advice. The ECCC must further undertake consultation with interested parties before providing that advice.

Upon receipt of the ECCC's advice, the Authority will make its final decision.

4 General

4.1 Application of the Code

Clause 1.6 (a) of the Code refers to the Code applying to customers, as follows:

> Subject to clause 1.10, the ***Code*** applies to –
> (a) ***customers***;
> (b) ***retailers***;
> (c) ***distributors***; and
> (d) ***electricity marketing agents***,
> in accordance with Part 6 of the ***Act***.

Section 79 (Part 6) of the Act provides that the Code is to regulate and control the conduct of retailers, distributors and electricity marketing agents; it does not include reference to customers.

Legal advice on this issue has been sought and legal counsel agrees that clause 1.6(a) should be deleted. Legal counsel notes that clause 9.4(3) imposes an obligation on pre-payment customers. Legal counsel has recommended that clause 9.4(3) be amended as follows:

> (3) Where the ***pre-payment meter customer*** requests reversion of a ***pre-payment meter*** under subclause (1) after the date calculated in accordance with subclause (2), the ***retailer*** may charge the ***pre-payment meter customer*** ~~must pay the ***retailer's***~~ a reasonable charge for reversion to a standard ***meter*** ~~(if any)~~. However, the ~~The~~ ***retailer's*** obligations under subclause (1) –
>
> (a) if the ***customer*** is a ***residential pre-payment meter customer,*** are not conditional on the ***customer*** paying the ***retailer's*** reasonable charge for reversion to a standard ***meter*** (if any); and
>
> (b) if the ***customer*** is not a ***residential pre-payment meter customer,*** may be made conditional on the ***customer*** paying the ***retailer's*** reasonable charge for reversion to a standard ***meter*** (if any).

Recommendation 1

Delete clause 1.6(a).

Recommendation 2

Amend clause 9.4(3) as set out above.

4.2 References to customers

Throughout the code, customers are referred to as either “it” or “their” based on whether the clause is referring to an individual customer (in which case "its" would be appropriate) or to all or a group of customers in a plural sense (in which case "their" would be appropriate).

A review of the Code has identified some instances where the reference may be incorrect. The ECCC considers the following amendments to be appropriate.

Amend the definition of ‘instalment plan’ as follows:

> **"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~~ its account according to an agreed payment schedule (generally involving payment of at least 3 instalments) taking into account ~~their~~ the customer's capacity to pay…

Recommendation 3

Amend the definition of ‘instalment plan’ as set out above.

Amend clause 10.11(2) as follows:

> (2) A ***retailer*** and, where appropriate, a ***distributor*** must include in relation to ***residential customers*** –
> (a) the ***telephone*** number for ~~their~~ its ***TTY*** services;
> (b) the ***telephone*** number for independent multi-lingual services; and
> (c) the ***National Interpreter Symbol*** with the words “Interpreter Services”,
> [...]

Recommendation 4

Amend the reference to ‘their’ in clause 10.11(2)(a) to ‘its’.

5 Consistency with the Gas Compendium

5.1 Definitions of complaints categories

As part of the 2012 review of the Compendium of Gas Customer Licence Obligations (**Compendium**), the Authority amended the definitions of "billing/credit complaints" and "other complaints" by inserting the words "complaints related to" after the word "includes" as follows:

> **"billing/credit complaints"** includes complaints related to 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.
>
> **"other complaints"** includes complaints related to poor service, privacy consideration, failure to respond to complaints, and health and safety issues.

These amendments were made to enhance the readability of these definitions. The ECCC recommends that the definitions of "billing/credit complaints" and "other complaints" be amended so they are consistent with the Compendium.

Recommendation 5

Amend the definitions of "billing/credit complaints" and "other complaints" by inserting the words "complaints related to" after the word "includes".

While the 2012 review of the Compendium resulted in amendments to the definitions of "billing/credit complaints" and "other complaints", no amendments were made to the definitions of "marketing complaints" and "transfer complaints". It is believed this was due to an oversight.

The ECCC also recommends that the definitions of "marketing complaints" and "transfer complaints" be amended so that there is consistency across the definitions. This amendment would mean the definitions would be amended as follows:

> **"marketing complaints"** includes complaints related to advertising campaigns, contract terms, sales techniques and misleading conduct.
>
> **"transfer complaints"** includes complaints related to 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).

Recommendation 6

Amend the definitions of "marketing complaints" and "transfer complaints" by inserting the words "complaints related to" after the word "includes".

6 Part 2 - Marketing

6.1 Achieving Consistency with the Australian Consumer Law

The Australian Consumer Law (**ACL**) prescribes a cooling-off period of 10 business days for all unsolicited consumer agreements. For door-to-door contracts, the contract regulations[2] provide for a cooling-off period of 10 days. The definition of 'cooling-off period' in the Code reads as follows:

> "**cooling-off period**" means the period of 10 days commencing on and including the day on which the contract is made.

The definition of "cooling off period" in the ACL relates to terminating unsolicited consumer agreements whereas in the Code it relates to information to be given in respect of agreements that are not unsolicited agreements (see clause 2.4(2)(j) of the Code). In this light, the definition of "cooling off period" could be redefined as "means the period specified in the ***contract*** as the cooling off period". In that way the retailer or electricity marketing agent would have to explain either the ACL cooling off period or the customer contracts cooling off period as relevant. The ECCC may therefore wish to consider whether the definition of cooling-off period should be amended as follows:

> "**cooling-off period**" means the period ~~of 10 days commencing on and including the day on which the contract is made~~ specified in the contract as the cooling-off period.

Recommendation 7

Amend the definition of 'cooling-off period' in clause 1.5 to read as follows:

> "**cooling-off period**" means the period specified in the ***contract*** as the cooling-off period.

6.2 The National Energy Customer Framework

The Ministerial Council on Energy (**MCE**) (now Standing Council on Energy and Resources or **SCER**) has developed the National Energy Customer Framework (**NECF**). The NECF is a set of laws and rules governing retail and distribution non-price regulation in the National Energy Market (**NEM**). Whilst the WA Government participates in the SCER, the ECCC understands that there is no intention of implementing the NECF in WA at this stage.

The NECF was originally scheduled to be implemented on 1 July 2012 by all States and Territories, with the exception of Western Australia and the Northern Territory. Although Tasmania and the ACT implemented the NECF on 1 July 2012 as scheduled, all other States opted to delay the implementation of the NECF.

[2] *Electricity Industry (Customer Contracts) Regulations 2005*

South Australia and New South Wales implemented the NECF on 1 February 2013 and 1 July 2013 respectively. The ECCC understands that Victoria will commence the NECF as soon as is practicable and Queensland is yet to consider its application of the NECF.[3]

During the 2011 Review of the Code, the ECCC considered the provisions of NECF that related to marketing and whether any of these provisions should be implemented through the Code. The ECCC agreed that, given the fact that the NECF had not yet been implemented, it would be premature to propose anything other than noting the NECF changes. The ECCC therefore agreed to recommend that the Authority note the National Energy Customer Framework, but not to propose any amendments to the Code to achieve consistency at this time.

As the NECF has now taken effect in some jurisdictions, the ECCC may wish to consider the NECF provisions that relate to marketing and whether consistency with the Code should be implemented.

Recommendation 8 outlines a specific recommendation in relation to consistency with the NECF. In addition to this recommendation, the ECCC may wish to consider whether any other changes should be recommended in relation to the NECF.

Question 1

Should any changes (other than that set out in Recommendation 8) be made to the Code in light of the NECF?

6.2.1 No canvassing or advertising signs

Under the NECF, a retailer must comply with any signs at a customer's premises indicating that canvassing is not permitted at the premises, or that no advertising or similar material is to be left at the premises.[4]

The Australian Consumer Law does not include provisions regarding canvassing or advertising.

Given the absence of a choice of retailer for the majority of electricity customers, there may not currently be a need for no canvassing or advertising signs, however, if such a clause is inserted into the *Gas Marketing Code of Conduct* (as is currently proposed by the Gas Marketing Code Consultative Committee[5]), the ECCC considered it sensible to include a similar clause in the Code for the purposes of consistency.

Therefore, the ECCC recommends that a new clause be inserted in the Code which requires an electricity marketing agent or retailer to comply with any signs at a person's

---

[3] Australian Government, Department of Resources, Energy & Tourism, *National Energy Customer Framework*, http://www.ret.gov.au/energy/energy_markets/national_energy_customer_framework/Pages/NationalEnergyCustomerFramework.aspx (accessed Thursday, 11 April 2013).

[4] Rule 66 of the National Energy Retail Rules.

[5] Further information on the Gas Marketing Code Consultative Committee's (GMCCC) review of the *Gas Marketing Code of Conduct* can be found on the Authority's website http://www.erawa.com.au/licensing/gas-licensing/gas-marketing-code/

premises indicating that canvassing is not permitted at the premises; or that no advertising or similar material is to be left at the premises or in a letterbox or other receptacle at or associated with the premises.

The ECCC may further wish to consider recommending that the Authority develop a new webpage regarding the use of do-not-knock stickers. This webpage could, for example, include a link to the ACCC's website from which customers can download a copy of the ACCC's do-not-knock sticker. The webpage could also provide guidance on where customers should consider placing their sticker and what the use of the sticker means for them.

Recommendation 8

Insert the following new clause into the Code:

> **No canvassing or advertising signs**
> A ***retailer*** or ***electricity marketing agent*** who visits a person's ***premises*** for the purposes of ***marketing*** must comply with any clearly visible signs at a person's ***premises*** indicating
>
> (a) canvassing is not permitted at the ***premises***; or
>
> (b) no advertising or similar material is to be left at the ***premises*** or in a letterbox or other receptacle at, or associated with, the ***premises***.

Recommendation 9

Should the Authority develop a new webpage regarding the use of do-not-knock stickers?

NOTE: If the Authority decides to develop a new webpage regarding the use of do-not-knock stickers as a result of considering the GMCCC's advice, the ECCC will not need to make the same recommendation.

6.3 Definition – Electricity marketing agent

The definition of an 'electricity marketing agent' in the Code is as follows:

> **"electricity marketing agent"** means—
>
> (a) a person who acts on behalf of the holder of a retail licence or an integrated regional licence—
>
> (i) for the purpose of obtaining new ***customers*** for the licensee; or
>
> (ii) in dealings with existing ***customers*** in relation to ***contracts*** for the supply of electricity by the licensee;
>
> (b) a person who engages in any other activity relating to the ***marketing*** of electricity that is prescribed for the purposes of this definition;
>
> (c) a representative, agent or employee of a person referred to in subclause (a) or (b); or
>
> (d) not a person who is a customer representative.

The ECCC notes that the definition of 'electricity marketing agent' refers to 'the holder of a retail licence or an integrated regional licence'. Throughout the Code, the holder of a retail licence (or the holder of an integrated regional licence whose activities include retail) is referred to as a 'retailer'. For reasons of consistency, the ECCC recommends

that the reference to 'the holder of a retail licence or an integrated regional licence' in the definition of 'electricity marketing agent' be replaced with 'a retailer'.

Recommendation 10

Replace the reference to 'the holder of a retail licence or an integrated regional licence' with 'a retailer' in the definition of 'electricity marketing agent'.

6.4 References to legislation

The explanatory note at the beginning of Part 2 refers to various pieces of legislation. Legal counsel has advised that the note should be amended to reference the titles of the legislation in full, as well as to change the reference from Australian Consumer Law (WA) to the Fair Trading Act 2010 (WA). The note would then read as follows:

> **NOTE:** This ***Code*** is not the only compliance obligation in relation to marketing. Other State and Federal laws apply to marketing activities, including but not limited to the ~~*Australian Consumer Law (WA)*~~ *Fair Trading Act 2010* (WA), the *Spam Act 2003* (Cth), the *Spam Regulations 2004* (Cth), the *Do Not Call Register Act 2006* (Cth), the *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007* (Cth) and the *Privacy Act 1988* (Cth).

Recommendation 11

Amend the note at the beginning of Part 2 to include the full titles of legislation and to change the reference from Australian Consumer Law (WA) to the Fair Trading Act 2010 (WA).

6.5 Rationalisation of contract protections

The Electricity Code, as well as the *Gas Marketing Code of Conduct* (**Gas Marketing Code**), offers different levels of protection for customers depending on whether the contract is a standard form contract, a non-standard contract, an unsolicited consumer agreement or a 'solicited' consumer agreement. These protections are set out in clauses 2.2, 2.3 and 2.4 and are considered by some to be overly complex.

The ECCC therefore considered whether these protections could be rationalised, in particular the restructure of clauses 2.2, 2.3 and 2.4 into two new clauses: 2.2 and 2.3. The new clause 2.2 would include the requirements for entering into a standard form contract, while new clause 2.3 would set out the obligations for entering into a non-standard contract.

The objective of restructuring these clauses is to improve customer protection by improving clarity regarding the obligations imposed on retailers and gas/electricity marketing agents.

As part of the restructure of clauses 2.2 to 2.4, the ECCC also considered that some of the obligations in clauses 2.2 to 2.4 required amendment. These amendments can be summarised as follows:

Consent requirements for non-standard contracts

Existing clause 2.2(1) requires that non-standard contracts entered into as a result of the internet[6] be signed by the customer. All other non-standard contracts require the customer's verifiable consent.[7]

The ECCC agreed that the same consent requirements should apply to all non-standard contracts and recommends that the customer's verifiable consent should be required when entering into any non-standard contract.

Providing a copy of the contract to the customer

The Code contains a number of clauses regarding the provision of the contract to customers. The ECCC agreed to rationalise these clauses into a single obligation and recommends that retailers be required to give, or make available, a copy of the contract at no charge to each customer.

The recommended new obligation no longer allows a retailer to provide, or make available, a copy of the contract only if the customer accepts the retailer's offer to do so. A copy of the contract must now always be given, or made available, to the customer. The ECCC does not believe that the amended obligation is substantially more onerous on retailers as the words 'make available' allow a retailer to simply refer a customer to the retailer's website.

The amendment ensures that all customers who enter into a non-standard contract which is not in a 'template' format (and not available from the retailer's website) will always be given a copy of their contract.

When a copy of the contract must be provided to the customer

Existing clause 2.4(1) provides that, if a customer accepts a retailer's offer for a copy of the contract, the retailer must give, or make available, a copy of the contract as soon as possible, but no more than 28 days later.

The ECCC agreed that the maximum timeframe of 28 days for providing a copy of the contract was excessive. The ECCC was particularly concerned that for contracts subject to a cooling-off period, this could result in the customer being provided with details of the cooling-off period *after* the cooling-off period had expired.

The ECCC agreed that the timeframe for giving, or making available, copies of contracts should be consistent with the timeframes specified within the ACL and recommended that for contracts entered into other than by telephone a copy of the contract should be provided at the time the contract is entered into. For contracts entered into over the telephone, the contract should be provided within 5 business days of the customer entering into the contract.

---

[6] Clause 2.2(1) of the Code provides that 'an electricity marketing agent must, in the course of arranging a non-standard contract, other than in accordance with subclause (2), ensure that the contract is signed by the customer'. Subclause (2) applies to non-standard contracts initiated by the customer. Clause 2.2(1) is further subject to subclause (5) which provides that the clause does not apply to contracts that are unsolicited consumer agreements. In practice, clause 2.2(1) only applies to non-standard contracts entered into as a result of the internet; however, this is not apparent from reading the clause. Clause 2.2(1) is an example of complex drafting within the Code which the ECCC was keen to simplify.

[7] Clause 2.2(2) of the Code

Advising a customer about the availability of a standard form contract
Clause 2.3 requires an electricity marketing agent, if acting on behalf of Synergy or Horizon Power, to tell a customer, before arranging a contract, that the customer is free to choose the retailer's standard form contract and, before arranging a non-standard contract, the difference between a standard form contract and a non-standard contract.

The ECCC agreed there is no logical need to tell a customer that they are free to choose the standard form contract before arranging a standard form contract.

The ECCC agreed to recommend that the requirement on Synergy and Horizon to inform a customer that the customer is free to choose the standard form contract as currently specified in clause 2.3 should only be required before a customer enters into a non-standard contract.

Cooling-off periods
Existing clause 2.4 requires a retailer or electricity marketing agent to give a customer information on any applicable cooling-off periods. For non-standard contracts, the information has to be provided before the customer enters into the contract unless the information has already been provided to the customer within the preceding 12 months. Alternatively, a retailer or electricity marketing agent can opt to tell a customer how the customer can obtain this information.

The ECCC agreed that it was undesirable that information on cooling-off periods could in some instances be given to a customer after the cooling-off period had ended and recommended that this information should always be provided before a customer enters into a non-standard contract.

In relation to standard form contracts that are not unsolicited consumer agreements, the ECCC noted that cooling-off periods do not apply to these types of contracts. The ECCC therefore agreed to recommend deletion of the requirement that retailers must provide information on cooling-off periods for these types of contracts.

Information requirements for standard form contracts
Existing clause 2.4(3)(b) requires a retailer or electricity marketing agent to provide specified information to customers before they enter into a standard form contract that is an unsolicited consumer agreement. For all other standard form contracts this information may be provided with the customer's first bill.

As the specified information does not affect the terms of the contract, there is no apparent reason why this information should be provided *before* a customer enters into a standard form contract that is an unsolicited consumer agreement.

The ECCC agreed to recommend that the specified information could be provided with the first bill for all standard form contracts.

Consent requirements for the provision of specified information
Existing clause 2.4(3)(b) further requires a retailer or electricity marketing agent to provide the specified information before a customer enters into a non-standard contract and to obtain the customer's written acknowledgement that this information has been provided.

As the specified information does not affect the terms of the contract, the ECCC agreed to recommend that written acknowledgement could be replaced with verifiable consent. This would ensure consistency in the consent requirements throughout new clause 2.3.

The proposed new clauses (2.2 and 2.3) can be found in the mark up of the Code in **Attachment 1**.

Recommendation 12

Amend clauses 2.2, 2.3 and 2.4 to rationalise the requirements for standard form contracts and non-standard contracts to create:

- a new clause 2.2 (entering into a standard form contract), which includes all the requirements for entering into a standard form contract; and
- a new clause 2.3 (entering into a non-standard contract), includes all the requirements for entering into a non-standard contract.

6.6 Entering into contracts (in respect of definition of verifiable consent)'

NOTE: If Recommendation 12 is accepted by the Authority, then the below issue would no longer exist.

The definition of verifiable consent in the Code is as follows:

> **"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.

While the definition of verifiable consent allows, for example, a customer to nominate the Department of Housing to give consent on their behalf, it can be difficult for the retailer to verify such nominations in situations where the customer lives in a remote area (and therefore does not enjoy 'normal' access to communications) or where the customer's literacy or English language skills are poor.

Question 2

If Recommendation 12 is not accepted by the Authority, should an amendment be made to the Code to address the issue of obtaining verifiable consent?

6.7 Reference to 'non-standard form contract'

NOTE: If the ECCC agrees to Recommendation 12, then Recommendation 13 will not be required.

Clause 2.4(3)(b) of the Code refers to a 'non-standard form contract'. This is a grammatical error. The correct term is 'non-standard contract', as defined in clause 1.5 of the Code.

Recommendation 13

If Recommendation 12 is not accepted by the Authority, amend the reference to 'non-standard form contract' to 'non-standard contract'.

6.8 Clause 2.5(2) – Non-standard contracts to be in writing

Clause 2.5(2) of the Code requires a retailer or electricity marketing agent to ensure that non-standard contracts that are not unsolicited consumer agreements are in writing. If the Authority accepts Recommendation 12 (that a copy of the contract is given, or made available, to all customers when entering into a contract) then this effectively requires all non-standard contracts to be in writing, making clause 2.5(2) redundant.

Recommendation 14

If Recommendation 12 is accepted by the Authority, delete clause 2.5(2) from the Code.

6.9 Clause 2.6(2)(a) – Telling a customer the purpose of the contact

Clause 2.6(2)(a) of the Code requires a retailer to tell a customer the purpose of the contact when negotiating a contract that is not an unsolicited consumer agreement with the customer face to face. In practice, the clause only applies to contracts entered into face to face at the retailer's business or trade premises.

If a customer enters into a contract at the retailer's premises, the purpose of the contact should be readily apparent to the customer. Therefore, the ECCC believes clause 2.6(2)(a) should be deleted.

Recommendation 15

Delete clause 2.6(2)(a) from the Code.

6.10 Clause 2.6(3) and (4) – Record keeping when initiating contact with a customer

Under clause 2.6(3), each time a retailer initiates contact with a customer for the purpose of marketing, it must keep a record of the name of the customer, the electricity marketing agent involved and the date and time of the contact. Due to the broad definition of 'marketing', this means that details of virtually all contact with customers needs to be recorded.

In addition, there are certain circumstances where it is impractical for a retailer to comply with clause 2.6(3). For example, if a retailer approaches a person at a shopping centre and provides that person with a brochure detailing its product offerings, the retailer is legally obliged to obtain that person's name.

The ECCC noted these issues and considered the purpose for which these records may currently be collected under clause 2.6(3). The ECCC could not discern a persuasive reason to require a retailer to keep these types of records. The ECCC

considered whether these records may be necessary for complaints handling purposes. However, clauses 2.9(1) and clause 13.3 already require an electricity marketing agent and retailer to keep records of any complaints received.

The ECCC agreed that clause 2.6(3) should be deleted. As clause 2.6(4) simply clarifies that clause 2.6(3) does not apply where an electricity marketing agent contacts a customer in response to a customer request or query, it is logical for it to be deleted in addition to clause 2.6(4).

Recommendation 16

Delete clauses 2.6(3) and (4) from the Code.

6.11 Clause 2.9(2) – Record keeping

Clause 2.9(2) addresses the issue of record keeping. It requires an electricity marketing agent to keep records or other information that the electricity marketing agent is required to keep under the Code for at least 2 years.

Although clause 2.9(2) is included under the heading 'Electricity marketing agent complaints', the clause does not only relate to complaints but to any types of records.

The ECCC considered whether clause 2.9(2) should become a stand-alone clause to clarify the general nature of the record-keeping obligation and that a new heading should be inserted.

Recommendation 17

Amend clause 2.9(2) to become a stand-alone clause to clarify the general nature of the record-keeping obligation.

6.12 Clarification of provisions that apply to the retailer and the electricity marketing agent

The ECCC is concerned that certain references in the Code to retailers apply to retailers and electricity marketing agents. Conversely, certain references to electricity marketing agents apply to electricity marketing agents and retailers.

The ECCC considered whether amendments should be made to rectify incorrect references.

Recommendation 18

Replace references to 'retailers' and references to 'electricity marketing agents' with 'retailers and electricity marketing agents' as appropriate throughout the Code.

6.13 References to 'other party'

While the ECCC sought to clarify provisions in the Code that apply to retailers and electricity marketing agents (as per Recommendation 18 above), the ECCC also considered a related matter - references to 'other party' in the Code. These references appear to be a hangover from when the Code purported to apply to consumer representatives (i.e. marketers who act on behalf of consumers rather than retailers). These have been removed, as the definition of 'electricity marketing agent' no longer includes consumer representatives. Further, there is an issue with enforcement. It is difficult to see how the Authority could meaningfully enforce the Code against a party other than a retailer.

Recommendation 19

Delete all instances of 'other party' from the Code.

7 Part 4 - Billing

7.1 Benchmarks on bills

The Australian Energy Regulator (**AER**) released its *Guidance on electricity consumption benchmarks on residential customers' bills* in May 2012 (**Attachment 3**). The Guidance was developed to assist retailers understand the benchmarking requirements of the Retail Law and Retail Rules under the National Energy Customer Framework (**NECF**). While Western Australian has not adopted the NECF, the ECCC may still wish to consider the AER's Guidance on benchmarking on bills.

The introduction of a requirement for retailers to include benchmarks on bills would incur costs for the retailer, which could in turn lead to an increase in tariffs. The ECCC is interested to understand the following:

- Would this information be useful to customers?
- Would benchmarking assist customers to reduce their consumption?
- Is the bill the appropriate medium for this kind of information to be provided to customers?

Question 3

Taking into account any costs and benefits, should any benchmarking requirements be added to the Code? If so, what form should they take?

7.2 Information on a customer's bill

Synergy has raised concerns regarding the amount of information that retailers are required to include on a customer's bill.

This concern was recently highlighted by the National Energy Affordability Roundtable[8] (**the Roundtable**) in its report to the Standing Council on Energy and Resources (**SCER**)[9] in May 2013. The report stated that there was agreement among stakeholders that there is too much information on the energy bill, and recommended that the SCER and retailers undertake a review of the customer energy bill format and bill information requirements.

The ECCC is interested to understand whether customers feel there is too much information included on bills and whether this makes it difficult for customers to find the information they require.

Question 4

Are there any bill content requirements that should be removed from the Code?

[8] The Roundtable was hosted by the Australian Energy Ombudsmen, the Energy Retailers Association of Australia and the Australian Council of Social Service.

[9] The Standing Council on Energy and Resources is chaired by the Commonwealth and is comprised of energy and resources Ministers from the states, territories and New Zealand.

7.3 Average daily cost of electricity consumption

As a result of the last Code review, a definition of 'consumption' was inserted into the Code. The definition is as follows:

> "**consumption**" means the amount of electricity supplied by the retailer to the customer's premises as recorded by the meter.

The ECCC is aware that some retailers include the daily average cost of electricity consumption on their bills, but included in the calculation of the "daily average cost of electricity consumption" are other charges that are consumption-related. These consumption-related charges include:

- Supply charge
- Renewable Energy Buyback credits
- Renewable Energy Buyback application fee
- Feed In Tariff credits
- Account establishment fee
- GST

The ECCC considered whether clause 4.5(1)(m) should be amended to refer to "the average daily cost of consumption including charges ancillary to the consumption of electricity".

Recommendation 20

Amend clause 4.5(1)(m) as follows:

the average daily cost of ~~electricity~~ ***consumption*** including charges ancillary to the ***consumption*** of electricity

7.4 Information on how to read a meter

Clause 4.6(2) requires a retailer to provide information to a customer that explains how to read a meter. The ECCC understands that in many instances it is the network operator that provides this information to customers e.g. in the form of a self read card. There is not, however, an obligation in the Code for distributors to provide this information to customers.

Question 5
Should there be an obligation, comparable to clause 4.6(2)(a), on a distributor to provide information to customers on how read a meter?

7.5 Final bill

7.5.1 Refund after a final bill

Clause 4.14(2) requires a retailer to repay any amount that the account is in credit when an account is closed. There is no time limit set for the repayment. The ECCC considered that this issue needs to be addressed, and recommends that a time limit of 12 business days be introduced, which is consistent with the timeframe for providing a refund after an overcharge.

Recommendation 21

Introduce a 12 business day time limit regarding the refund of credit after a final bill.

7.5.2 Transfer of credit after a final bill

The ECCC has noted that the Code does not permit a customer to transfer any credit from their closed account to their new account. The ECCC considered that flexibility in this regard could be convenient for customers.

Recommendation 22

Amend clause 4.14(2) to allow a retailer to transfer a credit to another account if requested by a customer.

7.5.3 Use of credit or overcharge to off-set debt

The ECCC considered the issue that if a customer owes a retailer a debt under one or more contracts with that retailer, there is currently no ability to off-set that debt before a credit or an overcharge is repaid to a customer. Some retailers believe it is not in the interest of a customer to be disconnected or to have their credit rating reported for an outstanding debt when that debt could be totally or partially offset by the credit.

Recommendation 23

Include off-set provisions within clauses 4.14, 4.18 and 4.19.

7.6 Overcharging and bill adjustments

Clauses 4.18 (overcharging) and 4.19 (adjustments) state that if an overcharged amount or adjustment in favour of the customer is $75 or more, the retailer must ask the customer whether they want the amount credited to their account or refunded. If the retailer does not receive instructions from the customer within 20 business days, the retailer can credit the amount to the customer's account.

The ECCC understands the majority of customers do not respond within 20 business days and are therefore credited the amount on the bill. However, this does not occur until after the 20 business day period. The ECCC considered whether an overcharge or an adjustment in favour of a customer for amounts of $75 or more should be automatically credited to the customer's account unless the customer requests a refund within 5 business days of being notified of the overcharge or adjustment.

Recommendation 24

Amend the '20 business days' in clauses 4.18(4) and 4.19(4) to '5 business days'.

8 Part 5 - Payment

8.1 Direct debit

Clause 5.3, which relates to 'direct debit', appears to mix up the process for commencing the direct debit arrangement and the process for the retailer to take each payment from the customer's account. In addition, there is no definition of 'direct debit' in the Code. A possible solution could be to amend clause 5.3 as follows:

> If a ***retailer*** offers the option of payment by a ***direct debit arrangement*** to a ***customer***, the ***retailer*** must, prior to the ***direct debit arrangement*** commencing, obtain the ***customer's verifiable consent***, and agree with the ***customer*** the date of commencement of the ***direct debit arrangement*** and the frequency of the direct debits. ~~–~~
> ~~(a) wherever possible, the amount to be debited; and~~
> ~~(b) the date and frequency of the direct debit.~~

And to insert a definition as follows:

> "**direct debit arrangement**" means an arrangement offered by a retailer to automatically deduct a payment from a customer's nominated account and entered into with a customer in accordance with clause 5.3.

Recommendation 25

Amend clause 5.3 as suggested above.

Recommendation 26

Insert a definition for 'direct debit arrangement' in the Code.

8.2 Late payment fees

Clause 5.6(3) of the Code reads:

> 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.

The ECCC considered the following amendment may improve the clarity of this clause:

> A retailer must not charge a residential customer more than 2 late payment fees in relation to the same bill ~~and~~ or more than 12 late payment fees in a year.

Recommendation 27

Amend clause 5.6(3) as follows:

> A retailer must not charge a residential customer more than 2 late payment fees in relation to the same bill ~~and~~ or more than 12 late payment fees in a year.

8.3 Vacating a supply address

8.3.1 Notice when vacating a supply address

The timeframes for giving notice are not consistent across legislation. Clause 5.7(1) of the Code requires a customer to give a retailer at least 3 business days notice prior to

vacating the supply address. If the customer does not do this, the retailer can require the customer to pay for electricity consumed at the supply address for up to 5 days after the customer does give notice to the retailer.

The Energy Operators Powers Act s62(4) states that the liability for charges is 5 days; the Electricity Contract Regulations (reg 23) states that the notice required to terminate a contract is 5 days; and the Western Power Model Service Level Agreement provides 3 business days for customers in metropolitan areas and 5 business days for country areas.

It would be preferable to have clear and consistent time periods specified for a customer to provide a vacating notice. Legal counsel have advised that in order to achieve consistency with the Energy Operators (Powers) Act and the Customer Contracts Regulations, the notice requirements in the Code could be simplified so that a customer is not liable for any charges if it gives not less than 5 days notice of its intention to vacate. This will involve a small dilution of customer protection (3 business days to 5 days). If so, clause 5.7(1) could be amended as follows:

> **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—
>
> (d) the date the ***customer*** vacated the ***supply address***, if the ***customer*** gave at least 5 days ~~3 ***business days***~~ notice; or
> (e) 5 days after the ***customer*** gave notice, in any other case.

Recommendation 28

Amend clause 5.7(1)(d) by changing '3 business days' to '5 days'.

8.4 ACCC debt recovery guideline

As part of the 2011 Code review the ECCC sought to remove duplication between the Code of Conduct, Australian Consumer Law, Electronic Funds Transfer Code and other legislation. However, removal of the ACCC debt recovery guideline was not considered as part of the previous Code review and reference to it still appears in clause 5.8(1) as follows:

> A ***retailer*** must comply with Part 2 of the Debt collection guideline for collectors and creditors issued by the Australian Competition and Consumer Commission concerning section 50 of the ***Australian Consumer Law (WA)***.

The ECCC considered whether compliance with the ACCC guideline should continue to be mandated as a retail licence condition under the Code given the existence of applicable law such as the Australian Consumer Law.

Recommendation 29

Delete clause 5.8(1) from the Code.

9 Part 6 – Payment Difficulties & Financial Hardship

9.1 Part 6 - general

The ECCC considered whether Part 6 of the Code is too prescriptive and, as a result, makes it more difficult for retailers to assist customers experiencing payment difficulties or financial hardship. The ECCC would like to understand whether it would it be beneficial to customers if the Code specified outcomes instead of prescribing processes.

Question 6

A. Should Part 6 of the Code be made less prescriptive?

B. If so, which particular clauses should be amended?

9.2 Assessments under clause 6.1

If a customer informs a retailer that they are experiencing payment problems, the retailer is required, under clause 6.1 of the Code, to assess whether the customer is experiencing payment difficulties or financial hardship. Clause 6.2 of the Code states that, for the purposes of clause 6.1, a retailer must not unreasonably deny a customer's request for a temporary suspension of actions,[10] provided the customer demonstrates they have made an appointment with a financial counsellor.

The current drafting of clauses 6.1 and 6.2 means it is not clear whether or not a retailer is able to put off the assessment in clause 6.1 in order for a customer to see a financial counsellor under clause 6.2.

The ECCC's legal counsel has offered the following amendment as a possible solution to this issue.

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) –

(a) within 3 ***business days*** assess whether the ***residential customer*** is experiencing ***payment difficulties*** or ***financial hardship***; and

(b) if the ***retailer*** cannot make the assessment within 3 ***business days***, refer the ***residential customer*** to an independent financial counsellor or ***relevant consumer representative organisation*** to make the assessment.

(2) When undertaking the assessment required by subclause (1)(a), 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*** (if any).

(3) A ***retailer*** must advise a ***residential customer*** on request of the details and outcome of an assessment carried out under subclause (1).

[10] The Code defines 'temporary suspension of actions' as 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).

6.2 Temporary suspension of actions

(1) If a ***retailer*** refers a ***residential customer*** to an independent financial counsellor or ***relevant consumer representative organisation*** under subclause (1)(b) then the ***retailer*** must grant the ***residential customer*** a ***temporary suspension of actions***.

(2) If, a ***residential customer*** informs a ***retailer*** that the ***residential customer*** is experiencing ***payment problems*** under ~~for the purposes of~~ clause 6.1, and 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)~~(3) A ***temporary suspension of actions*** must be for at least 15 ***business days***.

~~(3)~~(4) 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)~~(3) 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.

Legal counsel also suggests that clauses 4.2(2)(b) and 5.6(4) be amended as follows:

Clause 4.2(2)(b):

(b) the assessment carried out ~~by the retailer~~ under clause 6.1 indicates to the ***retailer***…

Clause 5.6(4):

(4) If the ***residential customer*** has been assessed ~~by the retailer~~ as being in ***financial hardship*** pursuant to clause 6.1(1)…

Recommendation 30

Amend the Code as above in relation to financial hardship assessments.

9.3 Customers already assessed for financial hardship / payment difficulties

The ECCC considered the scenario of a customer receiving a financial hardship assessment by an independent financial counsellor or relevant consumer representative organisation prior to approaching the retailer. The ECCC considered the following:

- Is the retailer able to rely on the assessment performed by an independent financial counsellor or relevant consumer representative organisation for the purposes of clause 6.1 of the Code? Or does the retailer have to start the process from the beginning?
- It is appropriate for the Code to prescribe processes to this level of detail?

Question 7

Should amendments be made to the Code to allow for a situation where a customer has been assessed by an independent financial counsellor or relevant consumer representative organisation before approaching the retailer?

9.4 Financial hardship and payment difficulties records

Under clause 6.1, a retailer is required to assess whether a customer is experiencing payment difficulties or financial hardship if a customer informs a retailer that they are experiencing payment problems.

The ECCC considered it would be useful information for the Authority, government departments and consumer groups if retailers were required to keep a record of the number of customers who have been assessed and found to be experiencing financial hardship, payment difficulties or neither (and the basis upon which these decisions were made), and report on the number of customers who have been assessed and found to be experiencing financial hardship, payment difficulties or neither.

The ECCC notes that if the ECCC decides to make a recommendation that the reporting indicators should be taken out of Part 13 (see Question 17), then the ECCC will need to separately write to the Authority requesting that the Reporting Manual include a requirement for retailers to record and report on assessments performed under clause 6.1.

Recommendation 31

Amend the Code to require retailers to keep a record of, and report on, the number of customers who have been assessed and found to be experiencing financial hardship, payment difficulties or neither (and the basis upon which these decisions were made).

9.5 Energy efficiency audits

Under clause 6.8, a retailer is required to provide certain information to customers who are experiencing financial hardship, including "energy efficiency information available to the customer, including the option to arrange for an energy efficiency audit" (clause 6.8(e)). In 2012, the state government closed the Hardship Efficiency Program (**HEP**) which offered the audits, therefore, this clause may need to be reviewed.

Recommendation 32

Amend clause 6.8(e) to reflect the fact that free energy efficiency audits are no longer available as the HEP has been closed.

9.6 Financial Hardship Policies

9.6.1 Content requirements

Clause 6.10 sets out the obligation for a retailer to develop a hardship policy. In particular, clause 6.10(2) sets out the requirements for the policy itself, as follows:

> (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 ***customers*** consistently with the obligation in subclause (c);

(c) ensure that ***customers experiencing financial hardship*** 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.

The ECCC considered whether all or part of clause 6.10(2) could become general requirements, so that the policy itself only contains information that is of interest to customers. For example, while clause 6.10(2)(b) requires a hardship policy to provide for the training of staff on issues related to financial hardship, this is not something that necessarily needs to appear in the policy.

The content requirements for hardship policies could then either be specified in a new subclause or in the Authority's Financial Hardship Policy Guidelines. Content requirements could possibly include the following:

- a statement encouraging customers to contact their retailer if a customer is having trouble paying the retailer's bill.
- a statement advising that the retailer will treat all customers sensitively and respectfully;
- an objective set of hardship indicators
- an overview of the assistance available to customers in financial hardship in accordance with Part 6 of the Energy Codes
- an overview of any concessions and grants that may be available to its customers.

Clause 6.10(2) could become general requirements rather than content requirements, for example as follows:

The ***retailer*** must:

(a) develop its hardship policy in consultation with ***relevant consumer representative organisations****;*

(b) provide training for staff

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

(c) ensure that ***customers experiencing financial hardship*** are treated sensitively and respectfully;

(d) provide for annual review of the hardship policy in consultation with ***relevant consumer representative organisations***;

The ECCC may decide that this clause should also specify that the retailer must develop guidelines regarding the requirements in subclauses 6.10(2)(d)(ii) – (v).

The ECCC also considered clause 6.10(3), which states that "A retailer must give residential customers, financial counsellors and relevant consumer representative organisations details of the hardship policy at no charge." It is unclear what details the retailer has to provide. The ECCC considered whether the Code should instead specify that the retailer must provide a 'copy of' the policy. The clause may also benefit from the clarification that details of (or a copy of) must be provided *on request*.

Question 8

A. Should the policy content requirements only require matters to be included which are directly relevant to customers?

B. If so, should the other content requirements be moved to the Financial Hardship Policy Guidelines, or should they be retained in the Code as a requirement on retailers to provide supporting information on the implementation of their hardship policy to the Authority?

C. Are there any other changes that should be made to hardship policy requirements?

Question 9

A. Should the Code specify that a copy of the policy must be provided (as opposed to details of the policy)?

B. If so, should the Code specify that a copy of the policy is only required to be provided upon request?

9.6.2 Comply with policy or 'have regard to'?

When reviewing its policy, a retailer is required under clause 6.10(7) of the Code to 'have regard to' the Authority's Financial Hardship Policy Guidelines (**Guidelines**). Under clause 6.10(8) the Authority must 'examine' whether the policy has been reviewed consistently with the Guidelines. The ECCC considered the difference between having 'regard to' and being 'consistent with' and whether or not clause 6.10(7) should be amended to require a retailer's review of its hardship policy to be consistent with the Guidelines.

Question 10

Should clause 6.10(7) be amended to require a retailer's review of its hardship policy to be consistent with the Guidelines?

9.6.3 Non-compliance with FHP review requirements

The ECCC considered whether there is a lack of clarity in clause 6.10(8) about what happens if the Authority determines that a financial hardship policy has not been reviewed consistently with the Guidelines. For example, would this constitute a breach of the Code?

Question 11

Should clause 6.10(8) be amended to clarify the effect of non-compliance with the obligation to review hardship policies consistently with the Guidelines?

9.6.4 Assessment vs. approval

Clause 6.10(8) provides for the Authority to assess financial hardship policies submitted by retailers. The ECCC considered whether this role should remain as an assessment role or whether it should be altered to an approval role.

Relevantly, in the NECF (s.43 of the *National Energy Retail Law (South Australia) Act 2011*), the Australian Energy Regulator approves retailer hardship policies. It is important to note, however, that under the NECF there is no (annual) review requirement. Only the initial hardship policy, and any amendments to the policy, are subject to approval.

Question 12

Should financial hardship polices be required to be approved instead of assessed?

9.6.5 Special information needs

Clause 10.11 requires the inclusion of information regarding TTY and multi-lingual services on the bill, reminder notice and disconnection warning as follows:

10.11 Special Information Needs

(1) A ***retailer*** and a ***distributor*** must make available to a ***residential customer*** on request, at no charge, services that assist the ***residential customer*** in interpreting information provided by the ***retailer*** or ***distributor*** to the ***residential customer*** (including independent multi-lingual and ***TTY*** services, and large print copies).

(2) A ***retailer*** and, where appropriate, a ***distributor*** must include in relation to ***residential customers*** –

(a) the ***telephone*** number for their ***TTY*** services;
(b) the ***telephone*** number for independent multi-lingual services; and
(c) the ***National Interpreter Symbol*** with the words "Interpreter Services",

on the –

(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***);
(e) ***reminder notice***; and
(f) ***disconnection warning***.

The ECCC considers it is appropriate for this information to also be included in financial hardship policies. The ECCC agreed, however, that the requirement should appear in clause 6.10 (which sets out the other requirements for financial hardship policies) rather than clause 10.11.

Legal counsel has suggested adding a new subclause to clause 6.10 as follows:

6.10 Pre-payment meters
[…]
(2) The hardship policy must –
[…]
(d) be available in large print copies and include:
(i) the National Interpreter Symbol with the words "Interpreter Services"
(ii) information on the availability of independent multi-lingual services; and
(iii) information on the availability of ***TTY*** services; and

Recommendation 33

Amend clause 6.10 to specify that information regarding TTY and multi-lingual services are to be included in a financial hardship policy.

10 Part 7 - Disconnection

10.1 Minimum amount owing

Clause 7.2(2) states:

> 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.

To date, the Authority has not approved a minimum amount as per this clause.

The Australian Energy Regulator (**AER**), on 1 July 2012, introduced an amount $300 below which disconnection for non-payment of a bill cannot occur. This amount applies to both electricity and gas and across all States and Territories that are applying the Retail Law and Rules (**NECF**). The ECCC considered whether a minimum amount should be set.

Question 13

A. Should the Authority set a minimum amount?

B. If so, what should the minimum amount be?

10.2 Emergency number at the cost of a local call

Clause 7.5(a) (Disconnections for emergencies – general requirements) requires a distributor to provide a 24 hour emergency line at the cost of a local call. The ECCC understands that distributors are unable to comply with this clause if a customer calls the number using a mobile phone.

In April 2012, the Australian Communications & Media Authority (**ACMA**) made an in-principle decision to put in place new arrangements so that from 1 January 2015, calls to 1800/13 numbers from mobile phones will be free or the cost of a local call. The ACMA is currently considering public submissions it received on the issue from consultation in June 2013.

Given it is not currently possible for licensees to comply with this clause if a customer calls the emergency line using a mobile phone, the ECCC considered the clause should be amended to exclude mobile phones.

Recommendation 34

Amend clause 7.5(a) to specify that the requirement does not apply to calls from mobile phones.

10.3 Limitations on Disconnection

Clause 7.6 sets out the general limitations on disconnections 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—

(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,

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 paragraphs (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.

As this clause is currently drafted, both a retailer and distributor would be in breach of the Code in the situation where a retailer requested a distributor to disconnect a customer, but the customer had an unresolved complaint lodged with the Ombudsman. The ECCC considered whether it is appropriate for a distributor to be in breach in such a scenario.

The Code could be amended so that a retailer and distributor would only be precluded from disconnecting a customer's supply address if they have prior knowledge that the customer had made a complaint to the retailer or distributor (as applicable) or the Energy Ombudsman.

Question 14

Should clause 7.6 be amended to include a requirement for the retailer or distributor to have prior knowledge that the customer has made a complaint to the retailer or distributor (as applicable) or the Energy Ombudsman?

The ECCC also considered whether the word 'and' at the end of subclause 7.6(e) should be changed to 'or' and whether the word 'or' should be added to the end of subclauses 7.6(c) and 7.6(d). This would clarify that a retailer or distributor can be in breach of an individual subclause – not all of the subclauses need to have been breached.

Recommendation 35

Amend the word 'and' at the end of subclause 7.6(e) to 'or' and add the word 'or' to the end of subclauses 7.6(c) and (d).

10.4 Life support

10.5 Timing of life support application

The ECCC notes that clause 7.7(2)(b)(ii) does not permit a life support application to be submitted earlier than the next day once the retailer has received notification from a customer that they require life support equipment. Clause 7.7(2)(b)(ii) reads:

7.7 Life Support

(2) If a ***customer*** registered with a ***retailer*** under subclause (1) notifies the ***retailer*** of a change of the ***customer's supply address***, contact details, ***life support equipment***

or that the ***customer's supply address*** no longer requires registration as a ***life support equipment*** address, the ***retailer*** must –

(a) register the change of details;

(b) notify the ***customer's distributor*** of the change of details –

(i) that same day, if the notification is received before 3pm on a ***business day***; or

(ii) the next ***business day***, if the notification is received after 3pm or on a Saturday, Sunday or ***public holiday***; and

(c) continue to comply with subclause (1)(d) with respect to that ***customer's supply address***.

To amend this unintended consequence, the words "by no later than" could be inserted at the commencement of clause 7.7(2)(b)(ii). The same scenario exists in clause 7.7(1)(c)(ii).

Recommendation 36

Insert the words "by no later than" at the commencement of clause 7.7(1)(c)(ii) and 7.7(2)(b)(ii).

10.5.1 Electronic acknowledgement by life support customers

Clause 7.7(3)(d) requires a distributor to use best endeavours to obtain verbal or written acknowledgement from a customer, or someone residing at the supply address, that a notice of a planned interruption has been received. Clause 7.7(3)(d) is as follows:

(3) Where a ***distributor*** has been informed by a ***retailer*** under subclause (1)(c) or by a relevant government agency that a person residing at a ***customer's supply address*** requires ***life support equipment***, or of a change of details notified to the ***retailer*** under subclause (2), the ***distributor*** must –

[…]

(d) prior to any planned ***interruption***, provide at least 3 ***business days*** written notice to the ***customer's supply address*** (the 3 days to be counted from the ***date of receipt*** of the notice), and use best endeavours to obtain verbal or written acknowledgement from the ***customer*** or someone residing at the ***supply address*** that the notice has been received.

The ECCC considered that it would be beneficial to customers and industry to allow a customer's acknowledgement to be provided electronically (e.g. via email or text).

Recommendation 37

Amend the Code to allow customers to be able to provide the acknowledgement required under clause 7.7(3)(d) by electronic means such as text and email.

10.5.2 No contact requested by life support customers

In relation to the confirmation required from a customer under clause 7.7(3)(d), the ECCC notes that some customers have been requesting their distributor not to contact them to seek this confirmation. As the Code is presently drafted, customers are not able to give their consent to not be contacted. The ECCC considered whether or not it is appropriate that a customer should be able to 'opt out' of having to provide this confirmation.

Question 15

Should customers be able to 'opt out' of having to provide the confirmation under clause 7.7(3)(d)?

10.5.3 Where notice of interruption has already been provided

As the Code is presently drafted, there is an inconsistency between clauses 7.7(3)(d) and 7.7(4). Under clause 7.7(3)(d), a distributor can seek the necessary confirmation from "the customer or someone residing at the supply address. Under clause 7.7(4), the distributor must try and contact the customer prior to the planned interruption (i.e. there is no option for the distributor to contact 'someone residing at the supply address'.

7.7(4) reads as follows:

> (4) Where the ***distributor*** has –
>
> (a) already provided notice of a planned ***interruption*** under the ***Electricity Industry Code*** that will affect a ***supply address***; and
>
> (b) has been informed by a ***retailer*** under subclause 7.7(1)(c) or by a relevant government agency that a person residing at a ***customer's supply address*** requires ***life support equipment***,
>
> the ***distributor*** must use best endeavours to ***contact*** that ***customer*** prior to the planned ***interruption***.

The ECCC considered it to be appropriate for the words "*or someone residing at the supply address"* be added to clause 7.7(4) to make it consistent with clause 7.7(3)(d).

Recommendation 38

Insert the words "*or someone residing at the supply address"* into clause 7.7(4).

11 Part 9 – Pre-payment meters (PPMs)

11.1 PPMs - general

Part 9 of the Code sets out the requirements for PPMs. These requirements include the technical features of the PPMs that provide specific protections and entitlements to customers.

The PPM must show the up-to-date positive or negative account balance and whether it is operating in normal or emergency credit mode. The PPM service must disconnect only at specified days and times. The PPM must be capable of reporting back to the retailer information about disconnections and must be able to re-commence supply as soon as a payment is received into the account.

At present, no retailer has been able to source a model of PPM that, along with its back-office support, complies with the current Code's technical requirements.

Comparison with smart meters now in use

The ECCC made a preliminary comparison between the technical requirements for PPMs in the current Code and the specifications of smart meters now being used in the Perth Solar City trial. The aim of the comparison was to see whether, in theory, the smart meters could be converted to operate as pre-payment meters. Overall, the investigation showed that the smart meters do not meet the Code requirements, particularly the capability to provide a positive or negative financial balance, to operate in normal or emergency credit and to give information about disconnections and to restore supply after a payment to the account. For these requirements to be met, there would have to be "back office" changes and possible firmware changes to the meters.

Comparison with NECF

The above technical requirements of the PPM are generally mirrored in the NECF. The NECF has an additional obligation that the PPM must display the current consumption information in both KWh or MJ and dollars (regulation 129). Under both jurisdictions, the PPM must be able to disconnect only at certain times and days, although there are minor differences in the detail of when. Both require the PPM to be capable of reporting back to the retailer information about disconnections and must be able to re-commence supply as soon as a payment is received into the account.

Attachment 4 shows a comparison between the Code's PPM requirements and those in the NECF[11]. Please note the comparison table does not capture the reverse cross-check (NECF provisions that have no equivalent in the Code), apart from the occasional relevant note.

[11] The NECF comprises the provision of the National Energy Retail Law (**NERL**) and the National Energy Retail Rules (**NERR**).

Customer preferences

The ECCC understands that PPMs are the preferred type of meter in many regional and remote communities in WA. Residents of these communities have limited ability to manage credit accounts. Where customers have neither credit cards or the internet, there may be no method of paying an account. The existing card-type PPM has proven popular, and has caused fewer disconnections than credit accounts.

The current grandfathering provisions within the Code mean that a PPM meter that has been damaged or destroyed cannot be replaced. This is because, when a previously grandfathered PPM "is upgraded or modified for any reason (other than the initial installation)", it must comply with the requirements of Part 9 of the Code (and as mentioned above, a Code compliant PPM is yet to be sourced). This is causing frustration for some residents who want to continue using a PPM after theirs has been damaged or destroyed but discover they have to return to using a regular credit meter.

The current grandfathering provisions have also led to the problem that in some communities there are customers who have PPMs and others who are on regular credit meters. This has occurred in communities that have expanded since the grandfathering restrictions came into being. Even if a resident wants to have a PPM, the Code prevents them from having one. This situation is seen to create inequity in communities.

In light of this information, the ECCC considered whether the PPM requirements are still appropriate or are having the unintended and unwanted consequence.

Question 16

Are there any PPM requirements that should be amended in the Code?

11.2 PPMs and life support equipment

Clause 9.5 sets out requirements and restrictions for PPM services in relation to customers who use life support equipment. The ECCC noted the concern expressed by some industry representatives that the absence of any reference to clause 7.7 within clause 9.5 means that a PPM customer or prospective PPM customer may be able to claim the status of being a life support customer without meeting the medical certification requirements set out in clause 7.7. The ECCC agreed to amend the clause to remove this doubt.

Legal counsel suggests that clause 9.5 be amended as follows:

9.5 Life support equipment

~~(1)~~ If a ***pre-payment meter 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 ~~A~~ ***retailer*** must not provide a ***pre-payment meter service*** at the ***customer's supply address*** and ~~of a **residential customer** if the **residential customer**, or a person residing at the **residential customer's supply address**, requires **life support equipment**.~~

~~(2)~~ (1) ~~If a ***pre-payment meter customer*** notifies a ***retailer*** that a person residing at the ***supply address*** depends on ***life support equipment***,~~ the ***retailer*** must, or must immediately arrange to –

[…]

Recommendation 39

Amend clause 9.5 as suggested by legal counsel.

11.3 PPM reversion and life support equipment

Clause 9.5(3) sets out the timeframes within which a distributor must revert a PPM upon request by a retailer following a customer notifying the retailer that they depend on life support equipment. The clause reads:

> **Clause 9.5(3)**
> If a ***retailer*** requests the ***distributor*** to revert a ***pre-payment meter*** under subclause (2), the ***distributor*** must revert the ***pre-payment meter*** at the ***customer's supply address*** as soon as possible and in any event no later than –
>
> (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***;
>
> (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***.

Horizon Power expressed its concern that in areas where road access may hinder or prevent access, such as Kalumburu, Yungngora, Ardyaloon and Beagle Bay, compliance with the 5 and 6 business day timeframes in clause 9.5(3)(b) could require chartering a plane, typically at the expense of around $5,000.

The ECCC agreed to amend the time limits for satisfying the reversion obligations in regional areas to 10 business days.

Recommendation 40

Amend the timeframes in subclauses 9.5(3)(b) from 5 and 6 business days to 9 and 10 business days respectively.

11.4 Duplication of requirements

Clauses 9.6(c)(i) and (ii) appear to be saying the same thing. Clause 9.6(c) reads:

> **9.6 Requirements for pre-payment meters**
> A retailer must ensure that a pre-payment meter service -
> [...]
> (c) is capable of recommencing supply and supply is recommenced -
>
> (i) as soon as information is communicated to the pre-payment meter that a payment to the account has been made; and
>
> (ii) as soon as possible after payment to the account has been made.

The ECCC agreed to remove the redundancy by deleting clause 9.6(c)(ii).

Recommendation 41

Delete clause 9.6(c)(ii) .

11.5 PPMs and debt recovery

Concern was expressed that the current debt provisions can put PPM customers into a 'debt trap' which can lead to more frequent disconnections. The credit retrieval, overcharging and undercharging provisions for PPMs are set out in clause 9.10. The debt recovery provisions are set out in clause 9.11 as follows:

> **Clause 9.11.**
> Where a *customer* owes a debt to a *retailer*, the *retailer* may only adjust the tariff payable by a *pre-payment meter customer* to recover any amount owing at a maximum of $10 on the first day and then at a rate of no more than $2 per day thereafter, unless otherwise authorised by an applicable law.

The ECCC considered analysis conducted by industry that showed various scenarios of usage payments and debt recovery patterns for PPMs under the Code. The analysis appeared to confirm that the debt recovery provisions of clause 9.11 result in a high number of disconnections.

In its 2011 review of the Code, the ECCC considered the matter of debt trap. To avoid this situation, it recommended that the provision be added to clause 9.11 to allow a retailer to recover an amount owing by an initial maximum of $10.

The ECCC has agreed that this addition has not rectified the issue of debt and recommends that clause 9.11 be deleted.

Recommendation 42

Delete clause 9.11.

11.6 Incorrect clause reference

Clause 9.13(2) makes reference to clauses 9.7(1)(a) and 9.12. The ECCC noted that these references are incorrect as a result of not being updated following changes to Part 9 following the 2011 Code review. The ECCC recommends that these clause references be updated to 9.6(a) and 9.11.

NOTE: If the ECCC decides to recommend to the Authority that clause 9.11 should be deleted (see Recommendation 42) the reference to clause 9.11 within clause 9.13(2) will need to be deleted.

Recommendation 43

Amend the reference to clauses '9.7(1)(a) and 9.12' in clause 9.13(2) to clauses '9.6(a) and 9.11'.

12 Part 12 – Complaints and dispute resolution

12.1 Complaints and marketing

Clause 12.1(2)(c) states that a complaints handling process must "detail how the retailer will handle complaints about the retailer or marketing".

In addition to complaints about the retailer and marketing, the ECCC considers this clause should also include complaints about electricity marketing agents. An 'electricity marketing agent' is defined in clause 1.5 of the Code.

Recommendation 44

Amend clause 12.1(2)(c) to include complaints about electricity marketing agents.

13 Part 13 – Record keeping

13.1 Format of Part 13

Part 13 of the Code sets out the record keeping and reporting requirements for retailers and distributors. The ECCC considered whether there is duplication of reporting requirements under the Code and electricity licences. Clause 16.1 of electricity licences states:

> The *licensee* must provide to the *Authority* any information that the *Authority* may require in connection with its functions under the *Act* in the time, manner and form specified by the *Authority*.

The Authority's Electricity Compliance Reporting Manual (**Reporting Manual**)[12] includes a set of tables that retailers and distributors are required to complete each year. The tables incorporate all of the data records that are currently included in Part 13 of the Code, as well as data that is required under other regulatory instruments. Each year, the Authority publishes a set of datasheets that enable retailers and distributors to provide to the Authority the data required under the Reporting Manual. The Authority also publishes separate handbooks that provide guidance to retailers and distributors on how to complete the datasheets.

The ECCC considered whether the requirement for each retailer and distributor to prepare and publish a report setting out the information currently required under Part 13 of the Code be moved to the Reporting Manual. The Reporting Manual could include pro-forma report templates for retailers and distributors to complete at the same time as they prepare the datasheets. Under this proposal, the obligations to provide a copy of the report to the Authority and the Minister for Energy (Part 13.17(3)), and to publish a report by 1 October each year would also be moved to the Reporting Manual. The advantage of this approach is that retailers and distributors can complete the datasheets and the report at the same time, and with the same source data. The completed datasheets and report can then be provided to the Authority together, with a copy of the report being provided to the Minister at the same time.

Question 17

Should the reporting indicators of Part 13 be removed from the Code?

13.2 Capturing the number of events

The ECCC considered whether reporting requirements should be capturing the number of events, rather than the number of accounts. For example, clause 13.2(a)(v) requires a retailer to keep a record of the total number of, and percentage of, its residential customer accounts that have been disconnected for failure to pay a bill. In the instance of a customer being disconnected twice in one year, this indicator count would be '1'. It may be more useful to capture the number of events (i.e. how many times a customer has been disconnected for failure to pay a bill - in this instance, '2' events).

[12] The Electricity Compliance Reporting Manual is available on the Authority's website at http://www.erawa.com.au/licensing/electricity-licensing/regulatory-guidelines/

The ECCC notes that this recommendation (Recommendation 45) will be redundant if the Authority takes the reporting indicators out of Part 13 (see Question 17).

Recommendation 45

Change reporting requirements to capture the number of events as opposed to the number of accounts.

13.3 Complaints definitions

The reporting clauses (in Part 13 of the Code) refer to complaints being "concluded" whereas the service standard payment clauses (in Part 14 of the Code) refer to complaints being "responded to". Other clauses refer to complaints being "resolved" or "unresolved".

Instances of the words respond/responding, resolved/unresolved and concluded in the Code have been identified as follows:

"other complaints" includes poor service, privacy consideration, failure to respond to ***complaints***, and health and safety issues.

5.6 Late payments
(1) A ***retailer*** must not charge a ***residential customer*** a late payment fee if—
[…]
(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

7.6 General limitations on disconnection
Except if ***disconnection***—
[…]
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;

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) […]
(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***—

13.3 Customer complaints
(1) A ***retailer*** must keep a record of—
[…]
(d) the time taken for the ***complaint*** to be concluded;
(e) the percentage of ***complaints*** from ***residential customers*** concluded within 15 ***business days*** and 20 ***business days***; and
(f) the percentage of ***complaints*** from ***business customers*** concluded within 15 ***business days*** and 20 ***business days***.

13.7 Pre-payment meters
(1) A ***retailer*** must keep a record of—
[…]
(d) the time taken for the ***complaint*** to be concluded;

(e) the percentage of ***complaints*** from ***pre-payment meter customers*** other than those ***complaints*** specified in clause 13.13(1)(a) concluded within 15 ***business days*** and 20 ***business days***;

13.10 Customer complaints
(1) A ***distributor*** must keep a record of—
[…]
(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***.

13.13 Pre-payment meters
(1) A ***distributor*** must keep a record of—
[…]
(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***.

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.

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.

The ECCC agreed there is value in using consistent terminology for actions which the retailer and distributor must take when a customer complains. There is also value in defining the terms used in these clauses.

The ECCC agreed that the terms "concluded" and "resolved" are both used to describe the end of a complaint process. "Concluded" should be replaced in each instance by "resolved" in the above clauses. The term "resolved" should be defined.

The ECCC agreed that the term "resolve" should be defined using the principles of Australian Standard AS ISO 10002-2006[13]. This principle makes clear that a complaint can be resolved, even if it has not been to the customer's satisfaction, provided all of the processes in the organisation have been exhausted. Clause 12.1(2)(a) of the Code requires a retailer's or distributor's complaints handling process to comply with Australian Standard AS ISO 10002-2006.

The proposed definition is:

Resolved means the decision or determination made by the ***retailer*** or ***distributor*** (as relevant) with respect to the ***complaint***, where the ***retailer*** or ***distributor***, having regard to the nature and

[13] Australian Standard: Customer Satisfaction – Guidelines for complaints handling in organizations.

particular circumstances of the ***complaint***, has used all reasonable steps to ensure the best possible approach to addressing the ***complaint***.

The above definition of 'resolved' only refers to the handling of complaints by a retailer or a distributor – it does not apply to complaints made to the electricity ombudsman or another external dispute resolution body. Clause 5.6(c) and 7.6(c) both refer to the electricity ombudsman and clause 7.6(c) refers to 'another external dispute resolution body'. Therefore, following the creation of the definition of 'resolved', further amendments are required to clause 5.6(c) and 7.6(c). Legal counsel suggested clauses 5.6(c) and 7.6(c) can be amended as follows:

5.6 Late payments

A ***retailer*** must not charge a ***residential customer*** a late payment fee if –

[…]

(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~~ is not ~~***un***~~***resolved*** by the ***retailer*** or is not determined or is upheld by the ***electricity ombudsman*** (if a ***complaint*** has been made to the ***electricity ombudsman***). If the ***complaint*** is ~~resolved~~ determined by the ***electricity ombudsman*** in favour of the ***retailer***, any late payment fee shall only be calculated from the date of the ***electricity ombudsman's*** decision; or

7.6 General limitations on disconnection

Except if ***disconnection*** –

[…]

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~~ is not ~~***un***~~***resolved*** by the ***retailer*** or ***distributor*** or determined by the ***electricity ombudsman*** or external dispute resolution body; or

Recommendation 46

Insert a definition of 'resolved' as follows:

'Resolved' means the decision or determination made by the licensee with respect to the complaint, where the licensee, having regard to the nature and particular circumstances of the complaint, has used all reasonable steps to ensure the best possible approach to addressing the complaint.

Recommendation 47

Replace references to 'concluded' with 'resolved'.

The ECCC notes that Recommendation 47 will be redundant if the Authority takes the reporting indicators out of Part 13 (see Question 17).

Recommendation 48

Amend clauses 5.6 and 7.6 to allow for the situation where a complaint has been made to the Ombudsman or external dispute resolution body.

Recommendation 49

Delete the reference to 'query' in clauses 14.3 and 14.4.

13.4 Categorisation of late bills

Clause 4.1 states that a customer must be issued with a bill no more than once a month and no less than once every three months, unless an exception applies, as follows:

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 3 consecutive bills; and

(B) notice as contemplated under clause 4.2; and

(b) no less than once every 3 months, unless the ***retailer*** –

(i) has obtained a ***customer's verifiable consent*** to issue bills less frequently;

(ii) has not received the required metering data from the ***distributor*** for the purposes of preparing the bill, despite using best endeavours to obtain the metering data from the ***distributor***; or

(iii) is unable to comply with this timeframe due to the actions of the ***customer*** where the ***customer*** is supplied under a deemed contract pursuant to regulation 37 of the *Electricity Industry (Customer Contracts) Regulations 2005* and the bill is the first bill issued to that ***customer*** at that ***supply address***.

Clause 13.2(a)(i) requires a retailer to report on bills that were sent outside these timeframes and categorise them as follows:

13.2 Affordability and access

A retailer must keep a record of –

(a) the total number of, and percentage of, its residential customer accounts that -

(i) have been issued with a bill outside the timeframes prescribed in clause 4.1, categorised according to circumstances where the delay is due to fault on the part of the retailer; due to the retailer not receiving the required metering data from the distributor in accordance with clause 4.1(b)(ii); and due to the actions of the customer in accordance with clause 4.1(b)(iii);

From a technical point of view, the circumstances listed in clause 13.2(a)(i) fall within the exceptions in clause 4.1, therefore the timeframes prescribed in clause 4.1 would not apply. The ECCC considered amending clause 13.2(a)(i) as follows so that it is clear what retailers are required to report on.

13.2 Affordability and access

A retailer must keep a record of –

(a) the total number of, and percentage of, its ***residential customer accounts*** that –

(i) have been issued with a bill less than 1 month since the preceding bill where subclauses 4.1(a)(i) and 4.1(a)(ii) do not apply;

(ii) have been issued with a bill more than 3 months since the preceding bill without the ***residential customer's verifiable consent***, categorised according to the circumstances where the delay in issuing the bill was due to –

(A) fault on the part of the ***retailer***;

(B) the ***retailer*** not receiving the required metering data from the ***distributor*** in accordance with clause 4.1(b)(ii);or

(C) the actions of the ***customer*** in accordance with clause 4.1(b)(iii).

Recommendation 50

Amend clause 13.2(a)(i) as specified above in order to clarify the reporting requirements.

13.5 Shortened billing cycles

Clause 13.2(a)(iv) reads:

> A retailer must keep a record of the total number of, and percentage of, its residential customer accounts that have been placed on a shortened billing cycle under Part 6;

There is no reference to shortened billing cycles in Part 6. The ECCC considered whether this clause should instead make reference to Part 4, and in particular clause 4.1(a)(ii). Clause 4.1(a)(ii) reads as follows:

> **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 3 consecutive bills; and
> (B) notice as contemplated under clause 4.2; and
> […]

The ECCC notes that this recommendation will be redundant if the Authority takes the reporting indicators out of Part 13 (see Question 17).

Recommendation 51

Amend the reference to 'Part 6' in clause 13.2(a)(iv) to 'clause 4.1(a)(ii)'.

13.6 Wording consistency

Clauses 13.2(a)(ix) and 13.2(b)(vi) both deal with reconnection, and ideally should have consistent wording.

Clause 13.2(a)(ix) reads as follows:

> the retailer has requested to be reconnected, pursuant to clause 8.1(1)(a), at the same supply address and in the same name within 7 days of requesting the residential customer account to be disconnected under subclause (v) [our emphasis];

Clause 13.2(b)(vi) reads as follows:

> the retailer has requested to be reconnected, pursuant to clause 8.1(1)(a), at the same supply address and in the same name within 7 days of requesting the business customer account to be disconnected under clauses 7.1 to 7.3 [our emphasis];

The ECCC considered whether clause 13.2(b)(vi) should be amended to refer to subclause 13.2(b)(v) instead of clauses 7.1 and 7.3 so that it is consistent with clause 13.2(a)(ix).

Recommendation 52

Amend clause 13.2(b)(vi) to refer to subclause 13.2(b)(v) instead of clauses 7.1 and 7.3.

13.7 'Customer' vs 'pre-payment meter customer'

Clauses 13.7(1)(f), (g) and (h) refer to customers who are reverting to a standard meter after having a pre-payment meter service, as follows:

13.7 Pre-payment meters

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

[…]

(f) the total number of ***customers*** who have reverted to a standard ***meter*** within 3 months of the later of the installation of the ***pre-payment meter*** or the date that the ***customer*** agrees to enter into a ***pre-payment meter contract***;

(g) the total number of ***customers*** who have reverted to a standard ***meter*** in the 3 month period immediately following the expiry of the period referred to in subclause (f);

(h) the total number of ***customers*** who have reverted to a standard ***meter***;

For the purpose of clarity, the ECCC considered that the reference to "customers" in these clauses should specify that they were previously pre-payment meter customers. The amended clause would read as follows:

13.7 Pre-payment meters

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

[…]

(f) the total number of ***customers*** who were ***pre-payment meter customers*** who have reverted to a standard ***meter*** within 3 months of the later of the installation of the ***pre-payment meter*** or the date that the ***customer*** agrees to enter into a ***pre-payment meter contract***;

(g) the total number of ***customers*** who were ***pre-payment meter customers*** who have reverted to a standard ***meter*** in the 3 month period immediately following the expiry of the period referred to in subclause (f);

(h) the total number of ***customers*** who were ***pre-payment meter customers*** who have reverted to a standard ***meter***;

Recommendation 53

Insert the words 'who were ***pre-payment meter customers'*** after the term ***'customers'*** in clauses 13.7(1)(f), (g) and (h).

14 Part 14 – Service standard payments (SSPs)

14.1 SSPs references to obligations

The ECCC noted that the obligation to respond to a customer's query or complaint is detailed in Part 14 (service standard payments) and not part 12 (complaints and dispute resolution). For greater transparency, the ECCC believes the compliance obligation should appear in Part 12 instead of Part 14, which would mean Part 14 only sets out the service standard payment. This would be consistent with the other clauses of Part 14, where the compliance obligation is set out elsewhere in the Code. For example, clause 14.1 sets out the SSP where connections are not performed within specified timeframes, with the timeframes being set out in Part 8 (Reconnection) of the Code.

Legal Counsel has suggested that the timeframes for dealing with queries and complaints contained in clauses 14.3(1) and 14.4(1) can be moved to clause 12.1, by inserting a new subclause (4) as follows:

12.1 Obligation to establish complaints handling process

[…]

(4) For the purpose of subclause (2)(b)(iii), a ***retailer*** or ***distributor*** must, on receipt of a written ***complaint*** by a ***customer*** –

(a) acknowledge the ***complaint*** within 10 ***business days***; and

(b) respond to the ***complaint*** by addressing the matters in the ***complaint*** within 20 ***business days***

and by deleting subclauses 14.3(1) and 14.4(1) and amending 14.3(2) and 14.4(2) as follows:

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)~~ (1) Subject to clause 14.6, if a ***retailer*** fails to acknowledge or respond to a query or ***complaint*** within the time frames prescribed ~~under~~ in subclause ~~(1)~~12.1(4), the ***retailer*** must pay to the ***customer*** $20.

~~(3)~~ (2) The ***retailer*** will only be liable to make 1 payment of $20, pursuant to subclause (1) ~~(2)~~, for each written query or ***complaint***.

And:

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)~~ (1) Subject to clause 14.6, if a ***distributor*** fails to acknowledge or respond to a query or ***complaint*** within the time frames prescribed ~~under~~ in subclause ~~(1)~~12.1(4), the ***distributor*** must pay to the ***customer*** $20.

~~(3)~~ (2) The ***distributor*** will only be liable to make 1 payment of $20, pursuant to subclause (1) ~~(2)~~, for each written query or ***complaint***.

NOTE: If Recommendation 49 is accepted, the word 'query' in the above two clauses will be deleted.

Recommendation 54

Create a new subclause 12.1(4).

Recommendation 55

Delete subclauses 14.3(1) and 14.4(1) and amend 14.3(2) and 14.4(2) as suggested by legal counsel.

ATTACHMENTS

Attachment 1 – Mark-up of Code showing recommendations

Attachment 2 – Terms of Reference

Attachment 3 – AER Guidelines

Attachment 4 – Comparison with NECF – PPMs