Electricity Code Consultative Committee (ECCC)

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

DRAFT REVIEW REPORT FEBRUARY 2007

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

For further information, contact:

Economic Regulation Authority
Perth, Western Australia
Phone: (08) 9213 1900

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1 Introduction

This Draft Review Report presents the preliminary findings of the statutory review carried out by the Electricity Code Consultative Committee (**ECCC**) in respect of the *Code of Conduct for the Supply of Electricity to Small Use Customers 2005* (**Code**).

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

In reviewing the Code, the ECCC has made a number of preliminary Recommendations to retain, amend and delete provisions of the Code (Refer to Chapter 4). Issues on which the members of the ECCC were unable to reach agreement are reflected in the Discussion Points (Refer to Chapter 5).

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

Submissions should be addressed to:

Paul Kelly
ECCC Chairman
Level 6, Governor Stirling Tower
197 St Georges Terrace
PERTH WA 6000
Telephone: (08) 9213 1900
Fax: (08) 9213 1999
Email: eccc@era.wa.gov.au

Submissions may be provided in hard-copy or electronic form and must be received by the close of business on Thursday, 5 April 2007.

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

Confidentiality

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

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

2 Executive Summary

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

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

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

2.1 Review process

The ECCC was established by the Authority in August 2006 and includes industry, consumer and government representatives. Refer to paragraph 3.2.1 for a list of ECCC members and Appendix 2 for the ECCC's Terms of Reference.

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

2.1.1 Draft Review Report

In undertaking its review of the Code, the ECCC held a series of meetings between September and December 2006. At these meetings, the members of the ECCC discussed the need for amendments to the Code. The outcomes of those meetings were captured in a number of Position Papers. The general content of the Position Papers is included in Chapters 6 to 19 of this Draft Review Report.

Where the members of the ECCC reached general agreement as to whether to delete, amend or retain a clause, the ECCC made a Recommendation accordingly. Where members did not reach agreement, it was agreed that further public comment would be sought on the issue before a Recommendation was finalised. Chapters 4 and 5 contain a summary of all Recommendations and Discussion Points included in the Position Papers.

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

2.1.2 Public Consultation

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

The ECCC has therefore provided for a six week consultation period to give interested parties the opportunity to make comments relevant to the review. The consultation period closes on Thursday, 5 April 2007.

2.1.3 Final Review Report

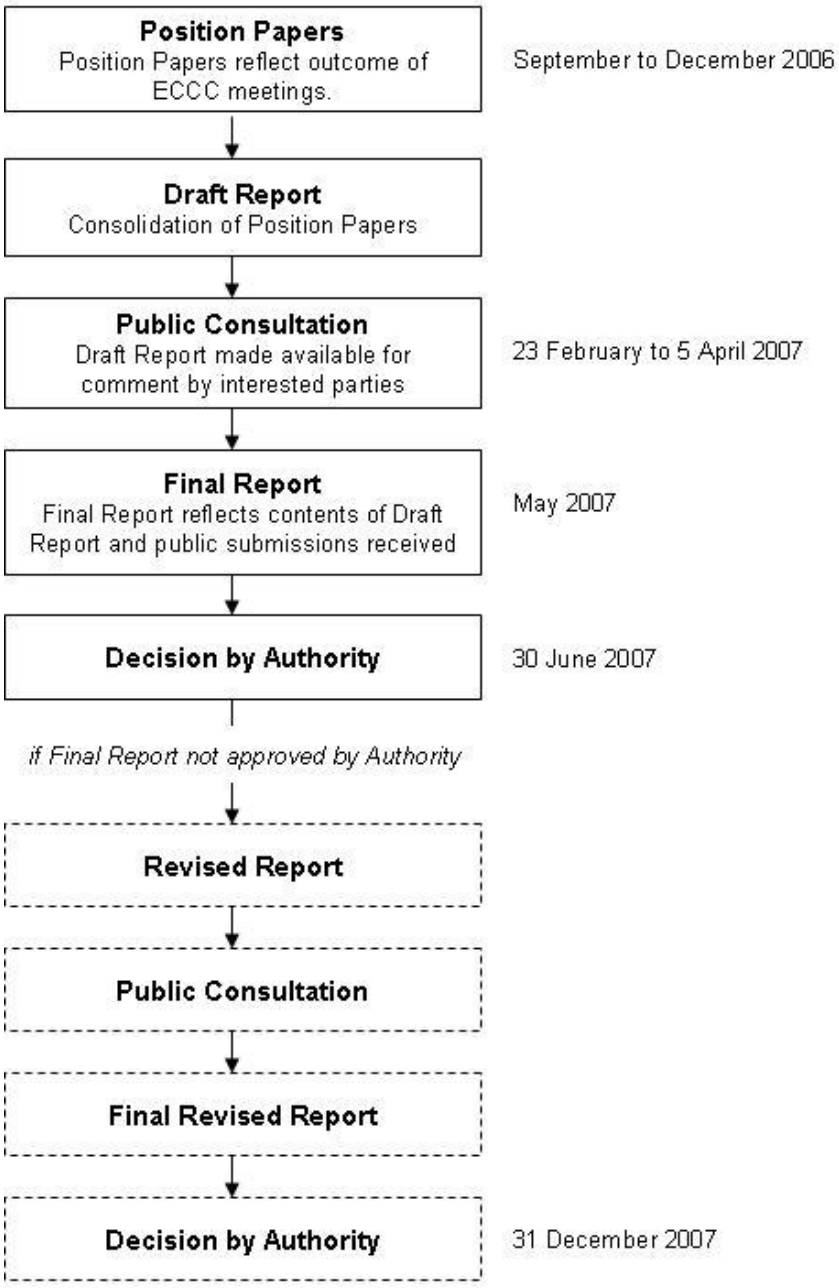
Following consideration by the ECCC of written submissions, the ECCC will produce its Final Review Report for consideration by the Authority.

2.1.4 Amendment of the Code

As the Code Administrator, only the Authority may make amendments to the Code. Therefore, although the ECCC is responsible for Code reviews, only the Authority can implement any Recommendations made by the ECCC through amendment of the Code.

If the Authority accepts the Recommendations of the ECCC, it is envisaged that the review will be completed by 30 June 2007.

However, if the Authority does not accept the Recommendations of the ECCC and requires amendments to be made, the Authority will be required, under the Act, to refer these amendments back to the ECCC for advice. Should this scenario arise, the ECCC will be required to provide an additional opportunity for interested persons to make submissions. In this event, it is envisaged that the review will be completed by 31 December 2007.



2.2 Purpose of the Review

The purpose of this Code review[1] is to "*re-assess the suitability of the provisions of the code of conduct for the purposes of section 79(2)*[2]." To further guide the ECCC's deliberations, the ECCC approved six principles complementing the object of the review. These principles do not seek to expand, limit or modify the object of the review and must at all times be read in context of the object of the review.

The principles are as follows:

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

Principle 2 Efficient regulation to keep compliance costs at a minimum without compromising principle 1.

Principle 3 The benefits of simple, clear and concise codes for both electricity consumers and electricity retailers/distributors.

Principle 4 The extent to which the Code can be monitored by the Authority.

Principle 5 Consideration of the possibility that a single energy code may be developed in the future to ensure that gas is consistent with electricity.

Principle 6 Identify any redundant, spent, duplicated or omitted provisions.

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

2.3 Summary of the ECCC's findings

In reviewing the Code, the ECCC has identified a number of Code provisions which, in the opinion of the ECCC, require amendment or further consideration. The following paragraphs summarise the main issues identified by the ECCC.

Interested parties are invited to comment on all Recommendations and Discussion Points made by the ECCC. However, the Recommendations and Discussion Points do not intend to limit the matters on which comment may be provided. That is, comment is invited on the suitability of all Code provisions – not only those subject to a Recommendation or Discussion Point.

2.3.1 Notes (Recommendation 1.1)

The Code contains a large number of explanatory notes. Legal advice has confirmed that the notes within the Code are for information only and do not affect the legal interpretation of the Code.

In an effort to simplify and clarify the Code, the ECCC recommends that the explanatory notes be minimised as far as is practicable. Therefore, a large number of the Recommendations made in this Draft Review Report relate to the deletion of notes and, in

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1 Refer to section 88(2) of the Act.

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

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

(b) electricity marketing agents,

with the object of —

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

(d) protecting customers from undesirable marketing conduct."

many cases, the transfer of the intent of a note to a separate publication called *A Guide to Understanding the Code of Conduct (For the Supply of Electricity to Small Use Customers)* (**Guide**).

2.3.2 Divergence from the Code (Discussion Point 1.1)

Clause 1.10 lists a number of Code provisions from which a retailer and customer may agree to deviate in their non-standard contract. Some stakeholders have argued that the scope of clause 1.10 should be extended by:

- including additional clauses; and/or
- allowing business customers to contract out of all provisions of the Code.

Expansion of the scope of clause 1.10 would provide retailers and customers with greater flexibility when negotiating the terms and conditions of non-standard contracts. This could promote competition in the retailing of electricity by encouraging innovation and differentiation between retailers. In turn, customers could benefit from lower prices and contracts which could be better tailored to suit their specific needs.

However, the ECCC also recognizes the need to retain an appropriate level of customer protection in the Code.

The ECCC seeks input from interested parties regarding this issue to aid its deliberations.

2.3.3 Duplication of marketing provisions

A review of Part 2 (Marketing) of the Code by legal counsel has identified a large amount of duplication between the Code and other legislative instruments, such as the *Trade Practices Act 1974* (Cwlth), the *Fair Trading Act 1987* (WA) and the *Door to Door Trading Act 1987* (WA).

In the interest of delivering efficient, clear and concise regulation, the members of the ECCC considered opportunities for reducing the amount of duplicate legislation. Hence, a large number of the Recommendations in relation to Part 2 propose deletion of provisions that are already addressed in other legislative instruments.

In a number of instances, the ECCC recommends retention of duplicate provisions. For example, where deletion of the provision would leave a customer without recourse to the Energy Ombudsman[3] or where it was considered appropriate to retain a basic level of protection in the Code.[4]

In a further effort to minimise duplication, the ECCC also recommends amalgamation of various clauses with similar content.[5]

2.3.4 Shortened billing cycles (Discussion Point 4.1)

One of the members of the ECCC, WACOSS, has proposed an amendment to the Code which would allow customers to elect a billing cycle different (i.e. shorter) from the retailer's standard billing cycle. The rationale for the proposal is that shorter billing cycles could assist customers in better managing their finances, as the amount due would be smaller and, therefore, less likely to result in an accumulation of large debt. Furthermore, by being able to elect a different billing cycle, customers could coordinate their bills to coincide with pay or benefit cycles.

Some industry representatives on the ECCC have opposed the proposal on financial grounds. According to these members, the additional costs involved in providing for

[3] Refer, for example, to Recommendation 2.18.

[4] Refer, for example, to Recommendation 2.11.

[5] Refer, for example, to Recommendation 2.24.

shorter billing cycles (i.e. in terms of systems changes, meter reading, printing and collection of accounts) would outweigh the benefits identified by WACOSS.

It was further noted that some retailers already offer payment in advance facilities (such as the “Budget Card”) which allow customers to reduce the size of their bill by making advance payments.

As the members of the ECCC did not reach agreement in relation to this issue, further input is sought from interested parties.

2.3.5 Bill smoothing (Discussion Point 4.2)

An alternative method of providing customers with smaller and, therefore, more manageable bills is ‘bill smoothing’.

Bill smoothing provides for the apportionment of the total amount due for a period in equal amounts over a regular payment cycle. The amount is estimated initially and then adjusted at regular intervals through an actual meter read. Regular monitoring is undertaken and adjustments are made to the arrangement should significant variations in usage occur.

At present, the Code does not include a right for customers to request bill smoothing.

Comment is invited from interested parties as to whether such a right should be provided for within the Code.

2.3.6 Separate bills (Discussion Point 4.3)

WACOSS has proposed that customers who have an outstanding debt be supplied with separate accounts for historical debt and current consumption charges (i.e. individual bills). WACOSS believes that this practice would assist customers to understand their debt and budget payments for both the current and historical accounts thus reducing the level of disconnections for non-payment.

Synergy has indicated that it does not believe separate billing would assist customers to manage total debt and would result in an increase in administration costs.

Further input is sought from stakeholders regarding this issue.

2.3.7 Alternative tariffs (Discussion Point 4.4)

The Code does not stipulate the procedures a retailer must follow in the event of a change to the tariff (for example, an increase in the supply charge). Although these matters have already be addressed by law for Synergy and Horizon Power, there may be benefit in specifying these matters in the Code for other retailers.

Comment is invited as to whether an amendment should be made to the Code to specify the procedures a retailer must follow if there is a change to the customer’s tariff.

2.3.8 Payment plans for business customers (Discussion Point 6.1)

Clause 6.11 of the Code requires a retailer to consider any reasonable request for alternative payment arrangements from a business customer who is experiencing payment difficulties.

Although the ECCC is of the opinion that it is unlikely that a retailer will refuse to negotiate an alternative payment arrangement with a business customer, further input is sought from (small) business representatives as to whether the clause should be retained or deleted.

2.3.9 Priority reconnection register (Discussion Point 7.1)

Western Power keeps a register of persons dependent on life support equipment. The definition used by Western Power is different to the definition of life support contained within the Code. The register is kept for the purpose of identifying priority reconnection in the event of unplanned interruptions. That is, in the case of an unplanned interruption, Western Power will endeavour to first restore supply to customers included on the register.

At present, establishment of the register is not addressed in the Code. Comment is invited as to whether the Code should address this matter and if so, in what manner.

2.3.10 Pre-payment meters

Pre-payment meters (**PPM**) require a customer to pay for electricity prior to consumption. A customer must purchase "credit" from a designated outlet and download the credit onto the PPM. The PPM will allow the customer to consume electricity to the value of the amount of credit downloaded.

Geographical limitations (Discussion Point 9.1)

At present, the Code (effectively) only allows installation of PPMs in aboriginal communities taking part in the Aboriginal Remote Communities Power Supply Project (**ARCPSP**) and the Town Reserve Regularisation Program (**TRRP**).

Some members of the ECCC have proposed that the scope of Part 9 be widened to allow for the operation of PPMs in areas outside those currently prescribed.

Although none of the members have opposed extension of Part 9 in principle, some members have indicated that they would only support such an extension if additional safeguards were provided for within Part 9.

As members of the ECCC did not reach agreement on this issue, input is sought from interested parties in relation to the following:

- should clause 9.2(2) be amended to allow operation of PPMs outside the TRRP and ARCPSP;
- if so, to what extent should operation of PPMs be allowed (i.e. universally throughout Western Australia (**WA**) or only in additional specified areas);
- if so, what changes should be made to Part 9 to accommodate the expansion; and
- what evidence can be provided to substantiate this position?

Costs (Discussion Point 9.2)

PPMs are provided free of charge to customers taking part in the ARCPSP and the TRRP. However, PPMs are generally more expensive than standard meters. Furthermore, additional costs may be involved in the installation of a PPM and the reversal of the PPM to a standard meter (if a customer no longer wishes to use the PPM).

Therefore, if the scope of Part 9 is expanded to areas other than ARCPSP and the TRRP communities, customers in those areas may be charged the full costs of the PPM, the applicable installation costs and any reversal costs (if the customer terminates their PPM contract).

Although it is important to ensure that PPM products do not become uneconomic and unworkable, consideration may be given to imposing some restrictions as to the costs that may be imposed in relation to PPMs.

Comment is invited in relation to the following:

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

Independent research (Discussion Point 9.3)

One of the members of the ECCC suggested that the Authority commission independent research into (an expansion of) the use of pre-payment meters in WA.

In particular, the member suggested that the Authority commission research to determine whether the Code should allow for the use of prepayment meters in WA outside of ARCPSP and TRRP communities and the standards of conduct that should apply in that event.

Alternatively, if the Authority decides to expand the scope of Part 9 as part of the current review, it was suggested that research be commissioned to evaluate any concerns and/or benefits with the use of PPMs in WA. Such research should be conducted some time after experience has been gained with PPMs in the wider community (for example, prior to a third review of the Code).

Input is sought as to whether the ECCC should request that the Authority commission independent research into PPMs (as appropriate).

National consistency (Discussion Point 9.4)

The standards of conduct currently included in the Code differ from those prescribed in the South Australian (**SA**) and Australian Capital Territory (**ACT**) Prepayment Meter System Codes and the proposed Tasmanian (**Tas.**) Prepayment Meter Retail Code[6]. These Codes cater specifically for the use of PPMs,

Accordingly, the ECCC gave consideration to the amendment of Part 9 to improve consistency between the jurisdictional regulatory frameworks.

However, some members questioned the appropriateness of adopting (parts of) the SA, ACT and (proposed) Tas. codes as experience with these codes to date is limited and they may not be suitable in the WA context.

The following input is sought from interested parties:

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

Provision of information (Discussion Point 9.5)

Clause 9.4(2) lists the information that must be provided by a retailer “at the time a pre-payment meter is installed” or “an account is established”. The ECCC notes that the information included in subclause (2) differs substantially from the information that must be provided under the SA and ACT Prepayment Meter System Codes.

[6] In September 2006, the Tasmanian Code Change Panel made Draft Recommendations to the Regulator in respect of a proposal to include a Prepayment Meter Retail Code in the Electricity Code (Tas.).

The ECCC invites feedback as to whether clause 9.4(2) should be amended to ensure consistency with the SA and ACT codes (i.e. if clause 9.2(2) is amended to allow operation of PPMs outside ARCPSP and TRRP communities).

Information on PPM (Discussion Point 9.6)

Clause 9.4(3) requires a retailer to ensure that prescribed information is displayed on or adjacent to the PPM. The information requirements of clause 9.2(3) differ from those prescribed in the SA and ACT Prepayment Meter System Codes. It is noted that this inconsistency may be a barrier to entry for retailers seeking to enter the WA market as their PPMs may not meet the requirements of the Code.

Comment is sought as to whether clause 9.4(3) should be amended to ensure consistency with the SA and ACT codes (i.e. if clause 9.2(2) is amended to allow operation of PPMs outside ARCPSP and TRRP communities).

Credit retrieval (Discussion Point 9.7)

Clause 9.9 of the Code requires a retailer to refund to a customer any credit remaining in the PPM after the customer has vacated the premises. Horizon Power has advised that considerable costs are involved in arranging special meter readings for persons vacating a supply address in a remote community. Horizon Power has requested that clause 9.9 either be deleted or its application limited to credit retrievals of at least $100.

Input is sought from interested parties as to whether clause 9.9(1) should be amended to require credit retrieval only for amounts over $100.

Record keeping (Discussion Point 9.8)

Clause 9.11 of the Code requires retailers and distributors to keep records of the number of customers who are being supplied under a PPM contract (retailer only) and the number of complaints received and actions taken to resolve the complaint (retailer and distributor). The Code requirements differ from those included in both the SA and ACT codes.

Comment is invited as to whether the current record keeping requirements under the Code in relation to PPMs are appropriate or require amendment.

2.3.11 Complaints handling processes (Discussion Point 12.1)

Clause 12.1 requires retailers, distributors and marketers to establish an internal complaints handling process and specifies the matters that must be addressed by the process.

The ECCC invites comment as to whether some of the requirements included in clause 12.1(2)-(4) should be amended or deleted to increase consistency with other jurisdictions? If so, in what manner?

2.3.12 Complaints relating to marketing activities (Discussion Point 12.2)

Clause 12.1 requires marketers to establish a complaints handling process. Unlike WA, most Eastern States do not impose an obligation on marketers to develop a complaints handling process. Instead they require the retailer to establish internal processes for handling complaints and disputes resulting from its marketing activities.

Comment is invited as to whether clause 12.1 should be amended to remove the obligation on a marketer to establish complaints handling processes and, instead, require a retailer to ensure that it has in place complaints handling processes to deal with complaints arising from marketing activities carried out on its behalf.

Furthermore, should the reference to marketer be deleted from clause 12.3?

2.3.13 Delineating complaints from queries (Recommendation 12.7)

The Utility Regulators Forum (**URF**) recently published a report on a number of retail performance indicators, including the number of complaints received. To ensure that retailers are consistent in the classification of customer enquiries and complaints, the report includes a guideline providing guidance on when to log customer contact as a complaint and how to categorise complaints. The report also includes a number of case studies to assist retailers in distinguishing complaints from enquiries.

Members of the ECCC agreed to the adoption of the URF guideline for the purpose of complaints handling and record keeping. It was agreed to recommend that the Authority publish a guideline which mirrors the URF guideline.

The guideline will replace any guidelines developed by retailers under clause 12.2 of the Code.

2.3.14 Record keeping

The URF has developed national regulatory reporting frameworks to monitor the service performance of retailers and distributors. The performance indicators applied in these frameworks differ from those prescribed under Part 13 of the Code.

Whilst the majority of ECCC members support the objective of moving towards a national reporting regime there was a diversity of opinion within the ECCC as to how national consistency could be achieved.

Some members felt that given the relatively low level of representation WA had on the Committee which developed the proposed national regime there was insufficient assessment undertaken as to the electricity industry's ability to comply with the regime or the costs of doing so in WA.

Synergy also argued that, if the national regulatory reporting framework is adopted, it should be established through the licence framework, not the Code. This would be consistent with other States, which have generally implemented their performance reporting through the imposition of a licence guideline established by the respective regulators specifically for that purpose.

In January 2007 the Authority released the Electricity Compliance Reporting Manual which requires that licensees move towards compliance and reporting on the data set agreed by the URF.

Many of the Recommendations in respect of Part 13 relate to the amendment or deletion of current performance indicators and the addition of new indicators to improve consistency with the national framework.

Additional time to pay a bill (Discussion Point 13.1)

Under the national framework, retailers do not have to keep data as to the number of customers that have been allowed additional time to pay their bill.

Further input is invited from stakeholders to guide the ECCC's deliberations.

Shortened billing cycles (Discussion Point 13.2)

Under the national framework, retailers are not required to keep data as to the number of customers that have been placed on a shortened billing cycle.

Further input is sought from interested parties.

Service standard payments (Discussion Point 13.3)

At present, the Code requires retailers and distributors to keep records of the number of payments made under Part 14 of the Code. The ECCC notes that there may also be value in keeping data on the average amount of payment made under clauses 14.2 and 14.3 as this will give some indication as to the extent to which the service standards have been breached.

Comment is invited as to whether clauses 13.4(a) and (b) should be amended by adding an obligation upon retailers to keep data on the average amount of payments made under clauses 14.2 and 14.3 of the Code.

2.3.15 Service standard payments

Part 14 of the Code requires retailers and distributors to pay a prescribed amount of money to their customers when a service standard has been breached.

Application: non-contestable customers (Discussion Point 14.1)

Access to service standard payments is currently limited to customers who consume less than 50 MWh of electricity per year. In all other States, with the exception of Queensland (**Qld**), either all customers or all small use customers are entitled to service standard payments in the event of a breach of service standard.

Comment is invited as to whether the scope of Part 14 should be extended to all small use customers.

Application: retailers other than Synergy & Horizon Power (Discussion Point 14.2)

At present, the only retailers that –in practice– are obliged to make payments under Part 14 are Synergy and Horizon Power.

Comment is invited as to whether clause 14.1 should be amended to make service standard payments available to all (non-contestable) small use customers regardless of their retailer.

Facilitating reconnections (Discussion Point 14.3)

Under clause 14.2 of the Code, a customer is entitled to a payment of $50 a day if a retailer fails to arrange the timely reconnection of a customer's supply address. A cap of $250 applies to the total amount of payment a customer may receive per breach.

The ECCC invites feedback as to whether the cap on the total amount payable should be amended. And, if so, in what manner?

Wrongful disconnections (Discussion Point 14.4)

Under clause 14.3 of the Code, a customer is entitled to a service standard payment of $50 per day (up to a maximum of $250) if a retailer fails to follow the prescribed disconnection procedures. The amount of payment is less than that prescribed in Victorian (**Vic.**) legislation ($250 per day, no maximum) and more than Qld (one-off payment of $100).

Input is sought as to whether clause 14.3 should be amended. In particular, should the amount payable and/or the cap be amended? If so, in what manner?

Application for payment (Discussion Points 14.5 and 14.6)

Under the Code, a customer must make an application to receive a service standard payment. A customer has two months to apply for the payment. Most Eastern States'

codes require retailers and distributors to automatically provide the payment to the customer.

The ECCC understands that, at the time the Code was drafted, Western Power Corporation did not have the technology to ensure that service standard payments could be made automatically. The ECCC understands that at the time the Government considered that the cost of such a system may exceed the total amount of payments.

To aid its deliberations, the ECCC seeks input as to whether clause 14.7(1)(a) should be amended to remove the requirement for the customer to apply for the payment. In addition, if payment is not to be automatic, should the two month time limit for making applications be extended or, alternatively, reduced?

By agreement (Discussion Point 14.7)

At present, the Code does not allow non-contestable customers and their retailers and/or distributors to contract out of the requirements included in Part 14.

Comment is invited as to whether non-contestable customers should be allowed to contract out of Part 14 under a non-standard contract.

New service standards (Discussion Point 14.8)

Eastern States' codes contain a number of service standards that are not included in the Code (for various reasons) (Refer to Appendix 24).

Feedback is sought as to whether any of the provisions related to service standard payments in other jurisdictions, but not currently contained in the Code, should be included in the Code. If so, which provisions should be included? Also, should any of the current service standard payments be removed from the Code?

3 Background

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

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

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

(a) the need to promote regulatory outcomes that are in the public interest;

(b) the long-term interests of consumers in terms of the price, quality and reliability of goods and services provided in relevant markets;

(c) the need to encourage investment in relevant markets;

(d) the legitimate business interests of investors and service providers in relevant markets;

(e) the need to promote competitive and fair market conduct;

(f) the need to prevent abuse of monopoly or market power; and

(g) promote transparent decision-making processes that involve public consultation.

One of the Authority's functions is to monitor, enforce, amend and replace the *Code of Conduct for the Supply of Electricity to Small Use Customers* as required.[7]

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

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

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

(b) electricity marketing agents,

with the object of —

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

(d) protecting customers from undesirable marketing conduct.

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

3.1.1 Development of the Code

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

[7] Refer to Part 6 of the Act.

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

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

3.1.2 Contents of the Code

Matters addressed within the Code include:

Part 1 – Preliminary	Part 1 contains definitions, commencement dates and stipulates which Code clauses a retailer and customer may deviate from in a non-standard contract.
Part 2 – Marketing	Part 2 sets out the rights and obligations of persons marketing electricity. Part 2 is generally consistent with the *Gas Marketing Code of Conduct 2004.*
Part 3 – Connection	Part 3 requires a retailer to forward a customer's application within prescribed timeframes to ensure timely connection.
Part 4 – Billing	Part 4 details the procedures to be followed by a retailer when billing a customer for the supply of electricity.
Part 5 – Payment	Part 5 sets out minimum payment periods and methods, and the circumstances under which a late payment fee may be imposed.
Part 6 – Payment difficulties & Financial hardship	Part 6 requires a retailer to provide assistance to customers who are experiencing payment difficulties or financial hardship.
Part 7 – Disconnection	Part 7 stipulates the procedures a retailer and distributor must follow before disconnecting a customer's electricity supply.
Part 8 – Reconnection	Part 8 outlines under which circumstances and within which timeframes a retailer and distributor must arrange for reconnection of a customer's electricity supply.
Part 9 – Prepayment Meters in Remote Communities	Part 9 includes requirements for the use of prepayment meters in remote communities, such as informed consent, provision of information, and credit retrieval.
Part 10 – Information & Communication	Part 10 details the information to be provided by a retailer and distributor to a customer.
Part 11 – Customer Service Charter	Part 11 requires a retailer and distributor to develop a customer service charter.
Part 12 – Complaints & Dispute Resolution	Part 12 requires a retailer and distributor to establish complaints handling processes in accordance with AS 4269:1995.

Part 13 – Record keeping	Part 13 requires a retailer and distributor to keep records on prescribed matters.
Part 14 – Service Standard Payments	Part 14 requires Synergy, Horizon Power and Western Power to compensate a customer for any failure to meet prescribed service standards.

3.1.3 Compliance with the Code

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

- serve a letter of reprimand on the licensee;
- order the licensee to pay a monetary penalty fixed by the Authority but not exceeding $100 000; and/or
- cause the contravention to be rectified to the satisfaction of the Authority.

In the event of a material breach of licence, the Governor may cancel a licensee's licence.

Penalties for electricity market agents (who are not licensees) are set out in the Code and range from $5 000 for an individual to $20 000 for a body corporate.

3.2 Mandatory review of the Code

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

(a) the first anniversary of its commencement; and

(b) the expiry of each two yearly interval after that anniversary.

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

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

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

3.2.1 Electricity Code Consultative Committee

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

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

- Economic Regulation Authority — Chairman
- Synergy — Industry representative

- Horizon Power — Industry representative
- Chamber of Commerce and Industry — Industry representative
- Western Australian Council of Social Services (WACOSS) — Consumer representative
- Geraldton Resource Centre — Consumer representative
- Consumer Credit Legal Service — Consumer representative
- Office of Energy — Government representative
- Department of Consumer and Employment Protection — Government representative

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

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

3.2.2 Endorsed Review Principles

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

> to re-assess the suitability of the provisions of the code of conduct for the purposes of section 79(2).[8]

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

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

Principle 2 Efficient regulation to keep compliance costs at a minimum without compromising principle 1.

Principle 3 The benefits of simple, clear and concise codes for both electricity consumers and electricity retailers/distributors.

Principle 4 The extent to which the Code can be monitored by the Authority.

Principle 5 Consideration of the possibility that a single energy code may be developed in the future to ensure that gas is consistent with electricity.

Principle 6 Identify any redundant, spent, duplicated or omitted provisions.

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

The principles take into account the Authority's recent experience with the review of the *Gas Marketing Code of Conduct 2004* (**GMCC**) and the experience of other jurisdictions with their code review processes.

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[8] Section 79(2) of the Act reads: "*The code of conduct is to regulate and control the conduct of —*
(a) the holders of retail licences, distribution licences and integrated regional licences; and
(b) electricity marketing agents,
with the object of —
(c) defining standards of conduct in the supply and marketing of electricity to customers and providing for compensation payments to be made to customers when standards of conduct are not met; and
(d) protecting customers from undesirable marketing conduct."

3.2.3 Code Review Process

Development of Draft Review Report

In undertaking its review of the Code, the ECCC held a series of meetings between September and December 2006. In preparation for each meeting, members of the ECCC were provided with Discussion Papers on parts of the Code. The Discussion Papers were prepared by the Authority's Secretariat and evaluated each clause of the Code.

At the meetings, the members of the ECCC discussed the contents of the Discussion Papers. Where the members of the ECCC reached agreement as to whether or not to amend a clause, the ECCC made a Recommendation accordingly. Where members did not reach agreement, it was agreed to seek further public comment on the issue.

On behalf of the ECCC, the Secretariat incorporated the outcome of the ECCC meetings into each Discussion Paper, which then became a Position Paper.

The general content of the Position Papers is included in Chapters 6 to 19 of this Draft Review Report. Chapters 6 to 19 also contain all Recommendations made by the ECCC and the reasoning for those Recommendations. Matters left open for discussion are included in the Discussion Points.

Chapters 4 and 5 contain a summary of all Recommendations and Discussion Points included in the Position Papers.

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

Public consultation

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

Final Review Report

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

If the Authority accepts the Recommendations of the ECCC in their entirety, it is envisaged that the review will be completed by 30 June 2007.

However, if the Authority forms an alternate opinion requiring other amendments, the Authority will be required, under the Act, to refer these amendments back to the ECCC for advice. Should this scenario arise, the ECCC will be required to provide an additional opportunity for interested persons to make submissions. In this event, it is envisaged that the review will be completed by 31 December 2007.

Summary of Review Process

The following table illustrates the key milestones for the review and their relevant timeframes.

Table A.1: Key milestones in Code Review (1)

Key Milestones	Timeline
Public Release of Draft Review Report for Public Consultation	23 February 2007
Closing Date for Public Submissions on Draft Review Report	5 April 2007
Circulation of: • Report on Submissions • Revised Draft Review Report	18 April 2007
ECCC Meeting 6 • Discussion of Submissions & Revised Draft Review Report	3 May 2007
Circulation of Draft Final Review Report to Committee	10 May 2007
ECCC Meeting 7 • Approval of Final Review Report to the Authority	17 May 2007
Delivery of Final Review Report to Authority	25 May 2007
Authority decision regarding Final Review Report	30 June 2007

As noted previously, should the Authority propose an alternative amendment, the Authority is required to forward this proposal to the ECCC for advice and the ECCC is required to provide an opportunity for interested parties to make comment, consider these comments and provide a Final Review Report to the Authority. In this event, the following (additional) process is proposed:

Table A.2: Key milestones in Code Review (2)

Key Milestones	Timeline
Circulation of Authority communication to Committee regarding proposed amendments / additions	12 July 2007
ECCC Meeting 8 • Consideration of Authority communication	19 July 2007
Circulation of Draft Committee Report regarding Authority proposal	2 August 2007
ECCC Meeting 9 • Approval of Draft Committee Report regarding Authority proposal	9 August 2007
Public Release of Draft Committee Report regarding Authority proposal for Public Consultation	21 August 2007
Closing Date for Public Submissions on Draft Review Report	2 October 2007
Circulation of: • Report on Submissions • Revised Draft Committee Report regarding Authority proposal	18 October 2007
ECCC Meeting 10 • Discussion of Submissions & Revised Draft Review Report	23 October 2007
Circulation of Draft Final Review Report to Committee	8 November 2007
ECCC Meeting 11 • Approval of Final Review Report to the Authority	15 November 2007
Delivery of Final Review Report to Authority	29 November 2007
Authority decision regarding Final Review Report	21 December 2007

3.3 Context for Code review

Most Eastern States' jurisdictions have developed instruments to cover the same matters that are dealt with by the Code. As can be observed in the table below, these mechanisms are currently provided for across a range of different instruments either developed through the parliamentary (legislative) or agency/regulator processes (regulatory).

Table A.3: Code equivalent comparison with other jurisdictions in Australia

	Electricity Retailers	Electricity Distributors	Legislative	Regulatory
WA	Code of Conduct for the Supply of Electricity to Small Use Customers	Code of Conduct for the Supply of Electricity to Small Use Customers	✓	
SA	Energy Retail Code Energy Marketing Code Prepayment Meter System Code	Electricity Distribution Code		✓
Vic.	Electricity Industry Act 2000 Energy Retail Code Code of Conduct for Marketing Retail Electricity	Electricity Distribution Code		✓[1]
NSW	Electricity Supply Act 1995 Electricity Supply (General) Regulations 2001 Energy Marketing Code of Conduct	Electricity Supply Act 1995 Electricity Supply (General) Regulations 2001 Energy Marketing Code of Conduct	✓	
ACT	Consumer Protection Code Prepayment Meter System Code	Consumer Protection Code		✓
Qld	Electricity Regulation 1994 Electricity Industry Code	Electricity Regulation 1994 Electricity Industry Code	✓	
Tas.	Electricity Supply Industry Act 1995 Tasmanian Electricity Code Electricity Supply Industry (Tariff Customers) Regulations 1998	Electricity Supply Industry Act 1995 Tasmanian Electricity Code	✓	
NT	Electricity Standards of Service Code	Electricity Standards of Service Code		✓

[1] Although most matters have been addressed by regulatory means, some matters have been dealt with legislatively (e.g. payment for wrongful disconnection is addressed in the *Electricity Industry Act 2000* (Vic.)).

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

3.3.1 Ministerial Council on Energy

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

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

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

While WA has, as yet, elected not to participate in the national arrangements for electricity, provision has been made in the Australian Energy Markets Agreement for WA to join the national arrangements by agreement at a later date.

3.3.2 Utility Regulators Forum

In anticipation of the MCE's potential development of a single energy consumer protection code, the Utility Regulators Forum established the Steering Committee on Energy Retail Consistency (**SCERC**) to undertake activities (including a review of opportunities for greater national consistency in regulatory instruments) relating to energy retailing and the development of model regulatory instruments.

The SCERC includes representatives of the national and State electricity regulators and relevant departments from NSW, Vic., ACT, Qld, Tas., SA and WA. Whilst WA will not, at this stage, be transferring electricity regulation to the AER, the Authority considers that there is merit, in many cases, in the pursuit of consistency between jurisdictions. Accordingly, papers developed by SCERC and other URF committees have been referenced in the remainder of this Draft Review Report.

3.3.3 Experience of Eastern States' regulators

Recent discussions between the Secretariat and Eastern States' regulators indicates that most jurisdictions view consistency, both between jurisdictions and between fuel sources (i.e. electricity and gas), as two important aims in the further development of regulatory frameworks.

In this regard, several States have adopted consumer protection codes that address the retailing of both gas and electricity. The amalgamation of multiple codes into a single instrument may involve less regulatory compliance and cost, particularly in light of the potential for future retail competition across energy sectors (i.e. dual-fuel).

4 Recommendations

Part 1

Recommendation 1.1 The notes throughout the Code be corrected, updated, provided for within the Code where applicable and minimised as far as practicable.

Recommendation 1.2 Delete note under the definition of "business customer" in clause 1.5 and include within Guide.

Recommendation 1.3 Delete note under the definition of "complaint" in clause 1.5.

Recommendation 1.4 Delete note under the definition of "concession" in clause 1.5.

Recommendation 1.5 Delete note under the definition of "contact" in clause 1.5 and include in the definition.

Recommendation 1.6 Delete notes under the definition of "customer" in clause 1.5 and include within Guide.

Recommendation 1.7 Delete note under the definition of "dual fuel contract" in clause 1.5.

Recommendation 1.8 Delete note under paragraph (a) in the definition of "metropolitan area" in clause 1.5 and include within Guide.

Recommendation 1.9 Delete note under the definition of "personal information" in clause 1.5.

Recommendation 1.10 Delete note under the definition of "premises" in clause 1.5.

Recommendation 1.11 Delete notes under clause 1.7 and include within Guide.

Recommendation 1.12 Delete note under clause 1.8.

Recommendation 1.13 Delete note under clause 1.9 and include within Guide.

Recommendation 1.14 Amend clause 1.2 by deleting reference to Schedule 3, section 1 and including instead reference to section 79 of the Act.

Recommendation 1.15

- Retain clause 1.3(1) without amendment.
- Delete clauses 1.3(2) to 1.3(6).

Recommendation 1.16 Amend definition of "Code" in clause 1.5 by deleting reference to Schedule 3, Division 1 and including instead reference to section 79 of the Act.

Recommendation 1.17 Amend definition of "contestable customer" in clause 1.5 to read:

> "**contestable customer**" means a customer at an exit point where the amount of electricity transferred at the exit point is at least the amount prescribed under the *Electricity Transmission and Distribution Systems (Access) Act 1994* or under another enactment dealing with the progressive introduction of customer contestability.

Recommendation 1.18 Amend definition of "electricity ombudsman" in clause 1.5 by deleting reference to Schedule 3, Division 2 and including instead reference to section 92 of the Act.

Recommendation 1.19 Amend definition of "financial hardship" in clause 1.5 by inserting the letter "a" before "mount" to read "amount".

Recommendation 1.20 Delete reference to the *Metropolitan Region Town Planning Scheme Act 1959* from part (a) of the definition of "metropolitan area" in clause 1.5 and include instead Schedule 3 of the *Planning and Development Act 2005*.

Recommendation 1.21 Amend definition of "concession" in clause 1.5 to read "means a concession, rebate, subsidy or grant related to the supply of electricity".

Recommendation 1.22 Amend definition of "disconnection warning" in clause 1.5 by including reference to clause 7.4(1).

Recommendation 1.23 Amend definition of "marketing representative" in clause 1.5 by deleting current wording and including instead:

a person:

(a) who is referred to in paragraph (a) of the definition of 'electricity marketing agent' and who is an employee of a retailer;

(b) a person who is referred to in paragraph (c) of the definition of 'electricity marketing agent'; or

(c) a representative, agent or employee of a person in paragraph (a) or (b).

Recommendation 1.24 Amend definition of "meter" in clause 1.5 to align the definition with the definition included in the Metering Code.

Recommendation 1.25 Retain clauses 1.6 to 1.9 without amendment.

Part 2

Recommendation 2.1 Where possible, provisions related to door to door marketing within the Code should be consistent with the DDT Act.

Recommendation 2.2 Delete objectives and include within Guide.

Recommendation 2.3 Delete note under clause 2.5(4).

Recommendation 2.4 Delete note under clause 2.6(1)(b).

Recommendation 2.5 Delete note under the heading of clause 2.7 and add the following words at the beginning of clause 2.7(1):

When a ***customer*** enters into a new contract with a ***retailer***,…

Recommendation 2.6 Delete note under clause 2.7(1)(k).

Recommendation 2.7 Delete note under clause 2.7(2) and insert the words "or on" between "with" and "the" in clause 2.7(2).

Recommendation 2.8 Delete note under clause 2.7(4).

Recommendation 2.9 Delete note under clause 2.10(2)(c) and include within Guide.

Recommendation 2.10 Delete note under clause 2.13(5).

Recommendation 2.11

- Retain clause 2.1 without amendment.
- Delete clauses 2.2 to 2.4 inclusive.

Recommendation 2.12 Delete clause 2.6(1)(d).

Recommendation 2.13 Amend clause 2.7(1)(d) by deleting "the terms of the contract including –" and including instead:

details of, at a minimum, those terms relating to:

Recommendation 2.14 Amend clause 2.7(1)(d) by adding the following subclauses:

- the charges applicable to the ***customer***;
- the consequences of a ***customer*** not paying his or her bill;
- the circumstances in which interruptions to electricity supply may occur;
- ***complaints*** handling procedures; and
- the circumstances in which the contract may be terminated.

Recommendation 2.15 Endeavour be made to standardise customer protection across all modes of marketing.

Recommendation 2.16 Subject to Recommendation 2.7, retain clause 2.7(2) without amendment.

Recommendation 2.17 No amendments be made to the cooling off provisions within the Code.

Recommendation 2.18 Retain clause 2.8(1) without amendment.

Recommendation 2.19 Retain clause 2.8(2) without amendment.

Recommendation 2.20 Delete clause 2.8(4).

Recommendation 2.21 Retain clause 2.8(5) without amendment.

Recommendation 2.22 Delete clause 2.8(6).

Recommendation 2.23 Delete clause 2.8(7).

Recommendation 2.24 Amalgamate clauses 2.9(1), 2.9(2), 2.10(1), 2.11(1) and 2.12(1).

Recommendation 2.25 Delete clause 2.9(1)(b).

Recommendation 2.26 Amalgamate clauses 2.10(2) and 2.11(2).

Recommendation 2.27 Delete clauses 2.10(1) and 2.11(1) to the extent they overlap with subclauses (2).

Recommendation 2.28 Amalgamate clauses 2.10(3) and 2.11(3).

Recommendation 2.29 Amalgamate clauses 2.9(4), 2.10(5) and 2.11(4).

Recommendation 2.30 Amalgamate clauses 2.9(3), 2.10(4) and 2.12(2).

Recommendation 2.31 Amalgamate clauses 2.9(5), 2.10(6) and 2.11(5).

Recommendation 2.32 Amalgamate clauses 2.9(6), 2.10(7), 2.11(6) and 2.12(3).

Recommendation 2.33 Amend clause 2.13(1) by deleting "use reasonable endeavours" and including a caveat that clause 2.13 has not been breached in prescribed circumstances (e.g. if the customer has moved house).

Recommendation 2.34 Amend clause 2.14 by deleting current wording and including instead:

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

Recommendation 2.35 Retain clauses 2.15 and 2.16 without amendment.

Part 3

Recommendation 3.1 Delete objectives and include within Guide.

Recommendation 3.2 Amend the note under clause 3.1(3) by deleting current wording and including instead:

The *Electricity Industry (Obligation to Connect) Regulations 2005* provide regulations in relation to the obligation upon a ***distributor*** to energise and connect a ***premises***.

Recommendation 3.3 Retain clause 3.1 without amendment.

Part 4

Recommendation 4.1 Delete objectives and include within Guide.

Recommendation 4.2 Delete note under heading of clause 4.1.

Recommendation 4.3 Delete note under clause 4.1(b).

Recommendation 4.4 Delete notes under heading of clause 4.2.

Recommendation 4.5 Delete note under clause 4.2(2).

Recommendation 4.6 Delete note under clause 4.3 and amend the clause to read:

A ***retailer*** must issue a bill to a ***customer*** at the ***customer's supply address***, unless the ***customer*** has nominated another address or an email address.

Recommendation 4.7 Delete note under 4.4(1)(p).

Recommendation 4.8 Delete note under 4.4(1)(bb).

Recommendation 4.9 Delete note under clause 4.4(2)(b).

Recommendation 4.10 Delete note under clause 4.4(3).

Recommendation 4.11 Delete note under clause 4.5(1)(b) and include within Guide.

Recommendation 4.12

- Delete note under clause 4.10.
- Number the current clause subclause (1).
- Include a new subclause (2):

  If the ***meter*** is tested and found to be defective, the ***retailer's*** reasonable charge for testing the ***meter*** (if any) is to be refunded to the ***customer***.

Recommendation 4.13

- Delete note under clause 4.11(2).
- Add new definition to clause 1.5 of the Code defining "alternative tariff" to read:

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

Recommendation 4.14 Delete note under clause 4.12.

Recommendation 4.15 Delete notes under clause 4.13(1) and (2).

Recommendation 4.16 Delete notes under clause 4.14(1) and (2).

Recommendation 4.17 Delete note under clause 4.17(3).

Recommendation 4.18

- Delete note under clause 4.18(4).
- Amend clause 4.18(2) to read:

> If a ***customer*** (including a ***customer*** who has vacated the ***supply address***) has been overcharged…

Recommendation 4.19 Amend clause 4.4(1)(j) to read:

> if applicable, a statement on the bill that an additional fee may be imposed to cover the costs of late payment from a ***customer***.

Recommendation 4.20 Delete clause 4.7(2).

Recommendation 4.21 Delete clause 4.6 and insert instead:

> A ***retailer*** must use its best endeavours to ensure that metering data is obtained, as frequently as required to prepare its bills, and in any event at least once every twelve months in accordance with clause 4.5(1)(a).

Recommendation 4.22 Clause 4.14(2) be amended to read:

> If the ***customer's*** account is in credit at the time of account closure the ***retailer*** must repay the amount to the ***customer***.

Recommendation 4.23 Retain Division 7 without amendment.

Part 5

Recommendation 5.1 Delete note under heading of clause 5.1.

Recommendation 5.2 Delete note under heading of clause 5.2.

Recommendation 5.3 Delete note under heading of clause 5.4.

Recommendation 5.4 Delete note under clause 5.4(3).

Recommendation 5.5 Delete note under clause 5.5.

Recommendation 5.6 Delete note under heading of clause 5.7.

Recommendation 5.7 Delete note under clause 5.8(3) and include within Guide.

Recommendation 5.8 Retain clause 5.1 without amendment.

Recommendation 5.9 Retain clause 5.2 without amendment.

Recommendation 5.10 Delete clause 5.3(c) and (d).

Recommendation 5.11 Retain clause 5.4 without amendment.

Recommendation 5.12 Retain clause 5.5 without amendment.

Recommendation 5.13 Amend clause 5.6 by including a new subclause (4) which states:

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

Recommendation 5.14 Retain clause 5.7 without amendment.

Recommendation 5.15 Retain clause 5.8(1) without amendment.

Recommendation 5.16 Retain clause 5.8(2) without amendment.

Recommendation 5.17 Retain clause 5.8(3) without amendment.

Part 6

Recommendation 6.1 Delete objectives and include within Guide.

Recommendation 6.2 Delete note under clause 6.1(4).

Recommendation 6.3 Delete note under clause 6.3(1)(a)(ii).

Recommendation 6.4 Delete note under clause 6.3(2).

Recommendation 6.5 Delete note under clause 6.4(2)(h).

Recommendation 6.6 Delete note under clause 6.6.

Recommendation 6.7 Delete note under clause 6.7(b).

Recommendation 6.8 Delete note under clause 6.8(a).

Recommendation 6.9 Delete note under clause 6.8(b) and include within Guide.

Recommendation 6.10 Delete note under clause 6.8(e).

Recommendation 6.11 Delete note under clause 6.9.

Recommendation 6.12 Retain clauses 6.1 to 6.3 without amendment.

Recommendation 6.13 Retain clause 6.4 without amendment.

Recommendation 6.14 Include new clause 6.6(2) to read:

> In giving reasonable consideration under clause 6.6(1), a retailer should refer to the guidelines in its hardship policy referred to in clause 6.10(2)(d).

Recommendation 6.15 Amend clause 6.9 to read:

> (1) A ***retailer*** must determine a minimum payment in advance amount, as referred to in clause 5.4(3), for ***residential customers*** experiencing ***payment difficulties*** or ***financial hardship*** in consultation with ***relevant consumer representative organisations***.
>
> (2) A ***retailer*** may apply different minimum payment in advance amounts for ***residential customers*** experiencing ***payment difficulties*** or ***financial hardship*** and other ***customers***.

Recommendation 6.16 Retain clause 6.10 without amendment.

Part 7

Recommendation 7.1 Delete objectives under Part 7 and include within Guide.

Recommendation 7.2 Delete note under "Division 1 – Conduct in relation to disconnection".

Recommendation 7.3 Delete note under clause 7.1(1)(c)(ii).

Recommendation 7.4 Delete note under clause 7.2(1)(a).

Recommendation 7.5 Delete note under clause 7.2(1)(f).

Recommendation 7.6 Retain clauses 7.1 to 7.3 without amendment.

Recommendation 7.7 Delete clause 7.4(1)(b) and insert instead:

> The ***retailer*** has, prior to giving the ***customer*** a ***disconnection warning*** under subclause (f), at least once given the ***customer*** in writing 5 ***business days*** notice:
>
> - advising the ***customer*** of the next date of a scheduled ***meter*** reading at the supply address;
> - requesting access to the ***meter*** at the supply address for the purpose of the scheduled ***meter*** reading; and
> - advising the ***customer*** of the ***retailer's*** ability to arrange for disconnection if the ***customer*** fails to provide access to the ***meter***.

Recommendation 7.8 Retain clause 7.5 without amendment.

Recommendation 7.9 Delete clause 7.6(iii) and (iv) and insert instead:

> (iii) on a Friday, on a weekend, on a public holiday or on the day before a public holiday.

Recommendation 7.10 Delete clause 7.7(2).

Part 8

Recommendation 8.1 Delete objectives under Part 8 and include within Guide.

Recommendation 8.2 Delete note under heading of clause 8.1.

Recommendation 8.3 Retain clause 8.1 without amendment.

Recommendation 8.4 Retain clause 8.2 without amendment.

Part 9

Recommendation 9.1 Delete objectives and include within Guide.

Recommendation 9.2 Delete notes under clause 9.2(1) and include within Guide.

Recommendation 9.3 Delete note under clause 9.2(2) and include within Guide.

Recommendation 9.4

- Delete note under clause 9.4(1)(d).
- Amend clause 9.4(1)(d) to read:

how the ***residential customer*** may recharge the ***pre-payment meter*** (including details of cost, location and business hours of ***recharge facilities***).

Recommendation 9.5 Delete note under clause 9.8 and include within Guide.

Recommendation 9.6 Delete the word "installed" from the definition of "pre-payment meter customer" in clause 9.1 and include instead "operating".

Recommendation 9.7 Delete the words "install", "installation" and" installed" as they appear in clauses 9.1, 9.3(1), 9.3(2) and 9.4(1)(b) and include instead "operating", "operate", "operation" and "operated" as appropriate.

Recommendation 9.8 Subject to recommendation 9.7, retain clause 9.3(1) without amendment.

Recommendation 9.9 Subject to recommendation 9.4 and 9.7, retain clause 9.4(1) without amendment.

Recommendation 9.10 Delete the words "at the time a pre-payment meter is installed" and "an account is established" in clause 9.4(2) and include instead:

at the time a residential ***customer*** enters into a ***pre-payment meter contract***.

Recommendation 9.11 Amend clause 9.4(4) by including after "previous 2 years":

or since the commencement of the ***pre-payment meter contract*** (whichever is the shorter)

Recommendation 9.12 Include the following provision in Part 9 of the Code:

If a prepayment meter ***customer*** notifies a ***retailer*** that a person residing at the ***supply address*** depends on ***life support equipment***, the ***retailer*** must:

- remove or render non-operational the ***pre-payment meter*** at no charge;
- replace or switch the ***pre-payment*** to a standard ***meter*** at no charge; and
- provide information to the prepayment meter ***customer*** about the contract options available to the prepayment meter ***customer***.

Recommendation 9.13 Retain definition of "life support equipment" in clause 1.5 without amendment.

Recommendation 9.14 Amend the definition of "recharge facility" in clause 9.1 by including:

including a disposable ***pre-payment meter*** card.

Recommendation 9.15 Retain clause 9.7 without amendment.

Recommendation 9.16 Amend clause 9.8 to reduce emergency credit to $9.00.

Recommendation 9.17

- Delete clause 9.9(2).
- Include two new clauses which address overcharging and undercharging as a result of an act or omission of the retailer or distributor or a faulty meter and provide consistency with the SA and ACT codes.

Recommendation 9.18 Retain clause 9.10 without amendment.

Recommendation 9.19 Transfer clause 9.11 to Part 13.

Part 10

Recommendation 10.1 Delete objectives and include within Guide.

Recommendation 10.2 Delete note under clause 10.1(5).

Recommendation 10.3 Delete note under heading of clause 10.2.

Recommendation 10.4 Delete note under clause 10.2(3)(b).

Recommendation 10.5 Delete note under clause 10.4(c).

Recommendation 10.6

- Delete note under clause 10.6(b).
- Amend clause 10.6(b) to read:

  an explanation for any unplanned or approved change in the quality of supply of electricity outside of the limits prescribed by law.

Recommendation 10.7 Delete note under heading of clause 10.7.

Recommendation 10.8 Delete note under clause 10.7(3)(b).

Recommendation 10.9 Delete note under clause 10.10(3).

Recommendation 10.10 Delete clause 10.1(1).

Recommendation 10.11 Delete clause 10.1(5).

Recommendation 10.12 Amend clause 10.2(2)(a) to limit a customer‘s right to receive historical billing data free of charge to once a year.

Recommendation 10.13 Retain clause 10.4 without amendment.

Recommendation 10.14 Retain clauses 10.6 and 10.7 without amendment.

Recommendation 10.15 Delete the letter “a” between “obtain” and “information” in clause 10.8(1).

Recommendation 10.16 Delete clauses 10.10(4) to (6).

Recommendation 10.17 Amend clause 10.11(2) to also require reference to be made to independent multi-lingual services on the documents included in subclauses (a) to (d).

Recommendation 10.18 Retain clause 10.12 without amendment.

Part 11

Recommendation 11.1 Delete objectives and include within Guide.

Recommendation 11.2 Delete note under clause 11.1(2)(a).

Recommendation 11.3 Delete note under clause 11.1(2)(f).

Recommendation 11.4 Delete note under clause 11.2(2).

Recommendation 11.5 Retain clause 11.1(1) without amendment.

Recommendation 11.6 Delete clause 11.1(2)(d).

Recommendation 11.7 Delete clause 11.2(2).

Recommendation 11.8 Delete the word "give" in clause 11.2(3) and include instead "dispatch".

Part 12

Recommendation 12.1 Delete objectives and include within Guide.

Recommendation 12.2 Delete note under clause 12.1(2)(b)(i).

Recommendation 12.3 Delete note under clause 12.2(1)(b).

Recommendation 12.4 Delete note under clause 12.5(2).

Recommendation 12.5 No requirement be made for the Authority to approve the licensee's complaints handling process.

Recommendation 12.6 Delete clause 1.5 (definition of complaint) and insert instead:

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

Recommendation 12.7

- Amend the title of clause 12.2 to read "Obligation to comply with a guideline that distinguishes customer queries from customer complaints".
- Delete the text of clause 12.2 and insert instead:

> A ***retailer*** must comply with any guideline developed by the ***Authority*** relating to distinguishing ***customer*** queries from ***customer complaints***.

Recommendation 12.8 Delete clause 12.1(2)(a).

Recommendation 12.9 Retain clauses 12.3 and 12.4 without amendment.

Recommendation 12.10 Delete clause 12.5.

Recommendation 12.11 Amend Part 13 to include an obligation upon a retailer and distributor to keep a record of the complaint itself (including complaints made directly to a marketer)

Recommendation 12.12 Amend clause 13.3(1)(b)(iii) to explicitly include complaints made directly to a marketer.

Part 13

Recommendation 13.1 Amend Part 13 to be consistent with the national performance indicators included in the March 2002 and November 2006 Report.

Recommendation 13.2 Delete objectives and include within Guide.

Recommendation 13.3 Delete note under clause 13.3(1)(d).

Recommendation 13.4 Delete note under clause 13.5(1).

Recommendation 13.5

- Delete note under clause 13.10.

- Amend clause 13.10 by deleting "connections" and including instead "***customers*** who are connected to the ***distributor's*** network".

Recommendation 13.6 Amend clause 13.1 to reduce time period from three years to two years.

Recommendation 13.7 Include, where appropriate and consistent with the URF-supported recommendations, an obligation on retailers and distributors to keep data on percentages.

Recommendation 13.8 Include, where appropriate and consistent with the URF-supported recommendations, an obligation on retailers and distributors to disaggregate data relating to residential and non-residential customers.

Recommendation 13.9 Delete clause 13.2(1)(a) of the Code.

Recommendation 13.10 Amend clause 13.2(1)(b) of the Code by including the March 2002 Report definition of instalment plan (including the amendments proposed in the November 2006 Report).

Recommendation 13.11 Include the following performance indicators in clause 13.2(1):

- disconnection of customers previously on a budget instalment plan;
- disconnections in the same name and address within the past 24 months; and
- disconnections of concession card customers.

Recommendation 13.12 Amend clause 13.2(1)(f) of the Code by requiring retailers to keep data on "the number and percentage of reconnections at the same premises in the same name within 7 days of disconnection" (whereby percentage is measured by reference to the total number of customers disconnected for failure to pay the amount due).

Recommendation 13.13 Include the following performance indicators in clause 13.2(1):

- reconnection in the same name of customers previously on a budget instalment plan;
- reconnections in the same name and address within the past 24 months; and
- reconnection in the same name of Government funded rebate customers.

Recommendation 13.14 Amend clause 13.2(1)(g) to read "number of customers who have lodged security deposits".

Recommendation 13.15 Amend clause 13.3(1)(b) of the Code by deleting subclauses (iv), (v) and (vi) and amending subclause (i) to read "billing/credit complaints".

Recommendation 13.16 Amend clause 13.3(2) of the Code be deleting the definitions of "billing and account complaint", "customer transfer complaint" and "marketing complaint" and inserting instead the following definitions as proposed by the URF in its November 2006 Report:

- **"billing/credit complaints"** includes billing errors, incorrect billing of fees and charges, failure to receive relevant government rebates, high billing, credit collection, disconnection and reconnection, and restriction due to billing discrepancy.
- **"marketing complaints"** includes advertising campaigns, contract terms, sales techniques and misleading conduct.
- **"transfer complaints**" includes failure to transfer customer within a certain time period, disruption of supply due to transfer and billing problems directly associated with the transfer (e.g. delay in billing, double billing).
- **"other complaints"** includes poor service, privacy consideration, failure to respond to complaints, and health and safety issues.

Recommendation 13.17 Retain clause 13.3(1)(c) without amendment.

Recommendation 13.18 Any information collected under clause 13.3(1)(c) should not form the basis of a performance indicator.

Recommendation 13.19 Amend clause 13.3(1)(d) to read:

> the time taken for the appropriate procedures for dealing with the ***complaint*** to be concluded.

Recommendation 13.20 Any information collected under this clause 13.3(1)(d) should not form the basis of a performance indicator.

Recommendation 13.21

- Retain clause 13.5 without amendment.
- Examine this provision at next Code review.

Recommendation 13.22 Delete clause 13.6 and include instead:

- total number of connections provided; and
- total number of connections not provided on or before the agreed date.

Recommendation 13.23 Add the following subclause to clause 13.6:

> **"not provided on or before the agreed date"** includes connections not provided within any regulated time limit and connections not provided by the date agreed with a ***customer***.

Recommendation 13.24 Amend clause 13.7 consistent with URF recommendations generally.

Recommendation 13.25 Include "(excluding quality and reliability complaints)" after the word complaints in clauses 13.8(a), (c) and (d).

Recommendation 13.26 Delete clauses 13.8(b) and insert instead:

> The total number of:
>
> (i) administrative process or customer service ***complaints***; and
>
> (ii) other ***complaints***.

Recommendation 13.27 Insert new subclause defining "quality and reliability complaints" as:

> means a complaint as defined in Schedule 1 of the *Electricity Industry (Network Quality and Reliability of Supply) Code 2005*.

Recommendation 13.28 Amend clause 13.8(c) of the Code by deleting the term "rectify" and including instead "address".

Recommendation 13.29 Any information collected under clause 13.8(c) should not form the basis of a performance indicator.

Recommendation 13.30 Amend clause 13.8(d) of the Code to read:

> the time taken for the appropriate procedures for dealing with the ***complaint*** (excluding quality and reliability complaints) to be concluded.

Recommendation 13.31 Any information collected under clause 13.8(d) should not form the basis of a performance indicator.

Recommendation 13.32 Delete clause 13.9(a) of the Code.

Recommendation 13.33 Retain clause 13.9(b) without amendment.

Recommendation 13.34 Subject to Recommendation 13.5, retain clause 13.10 without amendment.

Recommendation 13.35 Replace clause 13.11 of the Code with a provision akin to section 27 of the Quality and Reliability of Supply Code.

Recommendation 13.36 Insert a new clause in Division 2 of Part 13 which requires retailers to keep records of:

- number of direct debit plan terminations; and
- percentage of direct debit plans terminated.

Recommendation 13.37 Insert an explanation/definition to clarify that only plans terminated as a result of default/non payment in two successive payment periods are to be included.

Recommendation 13.38 Insert a new clause in Division 2 and 3 of Part 13 which requires retailers and distributors to keep records of:

- total number of telephone calls to an operator;
- number of operator calls responded to within 30 seconds;
- percentage of operator calls responded to within 30 seconds;
- average wait before call answered by operator (secs); and
- percentage of calls abandoned.

Recommendation 13.39 Include in the Guide a note (for clauses on telephone service) stating that retailers and distributors (as appropriate) may opt to provide data relating to telephone services collectively for all customers (regardless of consumption level).

Part 14

Recommendation 14.1 Delete objectives and include within Guide.

Recommendation 14.2 Delete note under clause 14.4(2).

Recommendation 14.3 Delete note under clause 14.5(1).

Recommendation 14.4 Delete note under clause 14.7(1)(a).

Recommendation 14.5 Delete note under clause 14.9(3).

Recommendation 14.6 Amend clause 14.1 by deleting "a relevant corporation" and inserting instead "the Electricity Networks Corporation or the Regional Power Corporation."

Recommendation 14.7 If reference to "non-contestable customer" is retained in clause 14.1, the clause should be revisited if/when full retail contestability is introduced in WA.

Recommendation 14.8 Retain clause 14.2 without amendment.

Recommendation 14.9 Incorporate the note under clause 14.4 within the clause.

Recommendation 14.10 Delete clause 14.5.

Recommendation 14.11 Incorporate the note under clause 14.4 within clause 14.6.

Recommendation 14.12 Retain clause 14.7(1)(b) without amendment.

Recommendation 14.13 Retain clause 14.7(2) without amendment.

Recommendation 14.14 Retain clause 14.8 without amendment.

Recommendation 14.15 Retain clause 14.9 without amendment.

Recommendation 14.16 Delete reference to a "written" demand from clauses 14.9(1), (2) & (3).

Recommendation 14.17 Amend clause 14.9 to read as follows:

> (1) If a ***retailer*** or ***distributor*** who is required to make a payment to an ***eligible customer*** under this Part fails to comply with clause 14.8 within 30 days of the date of demand for payment by the ***eligible customer***, then the ***eligible customer*** may recover the payment in a court of competent jurisdiction as a debt due from the ***retailer*** or ***distributor*** (as the case may be) to the ***eligible customer***.
>
> (2) If a ***retailer*** is entitled under clause 14.2(2) to compensation from a ***distributor***, and the ***distributor*** fails to pay the compensation to the ***retailer*** within 30 days of the date of demand for the compensation payment by the ***retailer***, then the ***retailer*** may recover the compensation payment in a court of competent jurisdiction as a debt due from the ***distributor*** to the ***retailer***.

5 Discussion Points

5.1 Part 1

Discussion Point (1.1) Should the scope of clause 1.10 be left as is, extended or reduced?

5.2 Part 4

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

Discussion Point (4.2) Should Part 4, Division 1 be amended to include a provision for bill smoothing?

Discussion Point (4.3) Should clause 4.4(3) be amended to require a retailer to issue separate bills for current amounts due and historical debt and if so, should individual reference numbers be assigned to each bill?

Discussion Point (4.4) Should the Code prescribe the procedures a retailer must follow if there is a change to the tariff?

5.3 Part 6

Discussion Point (6.1) Should clause 6.11 be retained or deleted?

5.4 Part 7

Discussion Point (7.1) Should the Western Power Networks register for priority reconnection be contained within the Code?

5.5 Part 9

Discussion Point (9.1) Should clause 9.2(2) be amended to allow operation of PPMs outside of ARCPSP and TRRP communities?

If so, should there be universal application or only in additional specified areas?

If so, what changes should be made to Part 9?

What evidence can be provided to substantiate this position?

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

If so, on what basis?

Discussion Point (9.3) Should the ECCC request that the Authority commission independent research regarding PPMs:

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

Discussion Point (9.4) If clause 9.2(2) is amended to allow operation of PPMs outside of ARCPSP and TRRP communities, should provisions similar to those contained in ACT and SA code be added to Part 9?

If so, should an exemption apply for ARCPSP and TRRP communities and, if so, on what basis?

Discussion Point (9.5) If clause 9.2(2) is amended to allow operation of PPMs outside of ARCPSP and TRRP communities, should clause 9.4(2) be amended to ensure consistency with the SA and ACT codes?

Discussion Point (9.6) If clause 9.2(2) is amended to allow operation of PPMs outside of ARCPSP and TRRP communities, should clause 9.4(3) be amended to ensure consistency with the SA and ACT codes?

Discussion Point (9.7) Should clause 9.9(1) be amended to require credit retrieval only for amounts over $100?

Discussion Point (9.8) Should the record keeping requirements contained within clause 9.11 be amended? If so, in which manner?

5.6 Part 10

Discussion Point (10.1) Should the scope of clause 10.2 of the Code be extended to include contestable customers?

5.7 Part 12

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

Discussion Point (12.2) Should clause 12.1 be amended to remove the obligation on a marketer to establish complaints handling processes and, instead, require a retailer to ensure that it has in place

complaints handling processes to deal with complaints arising from marketing activities carried out on its behalf? If so, should the reference to marketer also be removed from clause 12.3?

5.8 Part 13

Discussion Point (13.1) Should clause 13.2(1)(c) be retained or deleted?

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

Discussion Point (13.3) Should clause 13.4(a) and (b) be amended by including an obligation upon retailers to keep data on the average amount of any payments made under clauses 14.2 and 14.3 of the Code?

5.9 Part 14

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

Discussion Point (14.2) Should clause 14.1 be amended to make service standard payments available to all non-contestable customers regardless of their supplier?

Discussion Point (14.3) Should the cap on the amount payable be amended? If so, in what manner?

Discussion Point (14.4) Should clause 14.3 be amended? In particular, should the amount payable and/or the cap be amended? If so, in what manner?

Discussion Point (14.5) Should clause 14.7(1)(a) be amended to remove the requirement for the customer to apply for the payment?

Discussion Point (14.6) Should the time limit for making a service standard payment be extended or, alternatively, reduced?

Discussion Point (14.7) Should non-contestable customers be allowed to contract out of Part 14?

Discussion Point (14.8) Should any of the provisions related to service standard payments in other jurisdictions but not currently contained in the Code be included in the Code? If so, which provisions should be included?

Should any of the current service standard payments be removed from the Code?

6 Part 1 – Preliminary

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

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

6.1 Proposed removal of notes throughout the Code

Throughout the Code explanatory notes appear in brackets "[ ]". The ERCF included notes in the original Code to ensure that those interpreting the new Code had further guidance as to the purpose or background to specific sections or clauses.

The original Code is more than 40 pages in length and contains a lot of text in small font. The complexity and level of detail within the Code resulted in the Office of Energy producing a 30 page Guide. This publication provides a clear explanation of the Code.

In preparing for the review of the Code, the ECCC has explored opportunities for simplifying and clarifying the Code. The Secretariat's legal advisor has indicated that the notes within the Code are for information only and do not affect the interpretation of the Code.

Recommendation 1.1

The notes throughout the Code be corrected, updated, provided for within the Code where applicable and minimised as far as practicable.

6.1.1 Notes within Part 1

In accordance with Recommendation 1.1, the ECCC recommends the following amendments be made to the notes in Part 1 of the Code.

Recommendation 1.2

Delete note under the definition of "business customer" in clause 1.5 and include within Guide.

Recommendation 1.3

Delete note under the definition of "complaint" in clause 1.5.

Recommendation 1.4

Delete note under the definition of "concession" in clause 1.5.

Recommendation 1.5

Delete note under the definition of "contact" in clause 1.5 and include in the definition.

Recommendation 1.6

Delete notes under the definition of "customer" in clause 1.5 and include within Guide.

Recommendation 1.7

Delete note under the definition of "dual fuel contract" in clause 1.5.

Recommendation 1.8

Delete note under paragraph (a) in the definition of "metropolitan area" in clause 1.5 and include within Guide.

Recommendation 1.9

Delete note under the definition of "personal information" in clause 1.5.

Recommendation 1.10

Delete note under the definition of "premises" in clause 1.5.

Recommendation 1.11

Delete notes under clause 1.7 and include within Guide.

Recommendation 1.12

Delete note under clause 1.8.

Recommendation 1.13

Delete note under clause 1.9 and include within Guide.

6.2 Clauses 1.1 to 1.4

Clauses 1.1 to 1.4 prescribe how the Code may be cited (clause 1.1), the provision under which the Code was made (clause 1.2), when the Code commenced (clause 1.3) and how certain code matters should be interpreted (clause 1.4).

The Secretariat's legal advisor has confirmed that the Code was made pursuant to section 79 of the Act and therefore the reference in clause 1.2 requires amendment to reflect this.

At the time the Code was gazetted, the members of the ERCF agreed to a staged commencement of the Code:

- to provide electricity marketing agents, retailers and distributors with sufficient time to implement compliance procedures; and
- in acknowledgement of the fact that the office of the Energy Ombudsman had not yet been established.

Clause 1.3 therefore includes different commencement dates for some clauses.

As all clauses are now operational, it is recommended that clause 1.3 be amended to reflect this situation.

Recommendation 1.14

Amend clause 1.2 by deleting reference to Schedule 3, section 1 and including instead reference to section 79 of the Act.

Recommendation 1.15

- Retain clause 1.3(1) without amendment.
- Delete clauses 1.3(2) to 1.3(6).

6.3 Clause 1.5

Clause 1.5 defines terms used throughout the Code.

Some of the definitions included in clause 1.5 are incorrect and require amendment. These include:

- **Code** – reference to Schedule 3, Division 1 is incorrect. Correct reference is section 79 of the Act.
- **contestable customer** – The definition is inconsistent with the criteria prescribed in the *Electricity Distribution Access Order 2006* (**Access Order**) for determining a customer's contestability status. The current definition allows customers to aggregate consumption for multiple sites. Also, the words "more than 50MWh per annum" are inconsistent with the Access Order which speaks of "at least 50 MWh per annum".

  In considering an amendment to this definition, the ECCC considered replacing the Code definition of "contestable customer" with the definition used in the Access Order or the *Electricity Industry Customer Transfer Code 2004* (**Transfer Code**). The ECCC believed that consistency with the Transfer Code would be desirable.

  The Transfer Code states:

  > **"contestable"** in relation to a customer, means a customer at an exit point where the amount of electricity transferred at the exit point exceeds the amount prescribed under section 93 of the *Electricity Corporation Act 1994* or under another enactment dealing with the progressive introduction of customer contestability.

  However, section 93 of the (former)[9] *Electricity Corporation Act 1994* has since been repealed[10].

  Therefore, the ECCC agreed that the Code definition of "contestable customer" should not be amended to accord with that of the *Electricity Industry Customer Transfer Code 2004*. Rather, the definition could be amended as follows:

  > **"contestable customer"** means a ***customer*** at an exit point where the amount of electricity transferred at the exit point is at least the amount prescribed under the *Electricity Transmission and Distribution Systems (Access) Act 1994* or under another enactment dealing with the progressive introduction of customer contestability.

  This would ensure that the definitions are consistent without referencing a provision which has been repealed.
- **electricity ombudsman** - reference to Schedule 3, Division 2 is incorrect. Correct reference is section 92 of the Act.
- **financial hardship** – the letter "a" in the word "amount" has inadvertently been omitted. Amend to read "amount".
- **metropolitan area** – the Department of Planning and Infrastructure has advised that the definition of metropolitan area is contained within Schedule 3 of the *Planning and Development Act 2005*. This Act replaces the *Metropolitan Region Town Planning Scheme Act 1959*. Accordingly, part (a) of the definition should be amended to reflect the current legislation.

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9 The *Electricity Corporation Act 1994* has been renamed the *Electricity Transmission and Distribution Systems (Access) Act 1994*.

10 Refer to Schedule 5, section 14 of the *Electricity Corporations Act 2005*.

Recommendation 1.16

Amend definition of "Code" in clause 1.5 by deleting reference to Schedule 3, Division 1 and including instead reference to section 79 of the Act.

Recommendation 1.17

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

> **"contestable customer"** means a ***customer*** at an exit point where the amount of electricity transferred at the exit point is at least the amount prescribed under the *Electricity Transmission and Distribution Systems (Access) Act 1994* or under another enactment dealing with the progressive introduction of customer contestability.

Recommendation 1.18

Amend definition of "electricity ombudsman" in clause 1.5 by deleting reference to Schedule 3, Division 2 and including instead reference to section 92 of the Act.

Recommendation 1.19

Amend definition of "financial hardship" in clause 1.5 by inserting the letter "a" before "mount" to read "amount".

Recommendation 1.20

Delete reference to the *Metropolitan Region Town Planning Scheme Act 1959* from part (a) of the definition of "metropolitan area" in clause 1.5 and include instead reference to Schedule 3 of the *Planning and Development Act 2005*.

The ECCC also recommends amendment of the following definitions to improve the clarity of the Code:

- **concession** – There have been a number of changes and additions to concessions since the Code was initially developed. Listing each of the current relevant concessions in a list within the Code can mean that the Code will be out of date nearly as soon as amendment or addition is made. Further, it is not the responsibility of the Authority or the ECCC to provide public information and education regarding concessions. The Office of Energy, the Department of Community Development and the Office of State Revenue produce information on their agency's websites and/or through printed educational materials. For this reason, the ECCC recommends that the definition of "concession" be amended to read:

  > "means a concession, rebate, subsidy or grant related to the supply of electricity".

  Information directing licensees or customers to relevant sources could be readily included in the Guide.

- **disconnection warning** – Currently, the definition of disconnection warning only refers to clause 7.1(1)(c) (failure to pay a bill). However, clause 7.4(1) (failure to provide access to the meter) also requires retailers to provide a disconnection warning to customers. Therefore, the ECCC recommends that reference to clause 7.4(1) be included in the definition of disconnection warning.

- **marketing representative** - The ECCC agreed that clause 2.8 of the Code which relates to standards of marketing conduct, should not apply to a "customer representative" as is currently the case due to the Code definition of "marketing representative". To this end, the ECCC has proposed that the definition of "marketing representative" be amended to exclude part (b) of the definition of "electricity marketing agent".

- **meter** - At the time the Code was drafted, the *Electricity Industry Metering Code 2005* (**Metering Code**) was not yet in place. Therefore, it was decided that the Code would refer to the definition of "meter" as used in the *Energy Operators (Powers) Act 1979*. Since then, the Metering Code has been established and includes a definition of meter. As the Metering Code has been made under the same Act as the Code, it is proposed that the Code definition be amended to reflect the definition used in the Metering Code.

Recommendation 1.21

Amend definition of "concession" in clause 1.5 to read:

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

Recommendation 1.22

Amend definition of "disconnection warning" in clause 1.5 by including reference to clause 7.4(1).

Recommendation 1.23

Amend definition of "marketing representative" in clause 1.5 by deleting current wording and including instead:

a person:

(a) who is referred to in paragraph (a) of the definition of 'electricity marketing agent' and who is an employee of a ***retailer***;

(b) a person who is referred to in paragraph (c) of the definition of 'electricity marketing agent'; or

(c) a representative, agent or employee of a person in paragraph (a) or (b).

Recommendation 1.24

Amend definition of "meter" in clause 1.5 to align the definition with the definition included in the Metering Code.

All matters concerning pre-payment meters, including the definition of pre-payment meter, are addressed in Part 14 of this Draft Review Report.

6.4 Clauses 1.6 to 1.9

Clauses 1.6 to 1.9 concern who the Code applies to (clause 1.6), the purpose and objectives of the Code (clauses 1.7 and 1.8), and the process for amendment and review of the Code (clause 1.9).

As clauses 1.6 to 1.9 reflect the content of the Act, no amendments to these clauses are proposed.

Recommendation 1.25

Retain clauses 1.6 to 1.9 without amendment.

6.5 Clause 1.10

6.5.1 Background

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

Where a retailer and a customer agree to terms and conditions other than those contained in the standard form contract, supply is taken to occur under a "non-standard contract".

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

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

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

At the time the Code was drafted, some industry and small business consumer representatives of the ERCF advocated the insertion of additional provisions in clause 1.10. It was argued that an expansion of the scope of clause 1.10 would provide retailers and customers with greater flexibility when negotiating the terms and conditions of non-standard contracts. This would promote competition in the retailing of electricity by encouraging innovation and differentiation between retailers.

In turn, customers could benefit from lower prices and contracts which could be better tailored to suit their specific needs.

At the time, the ERCF agreed not to amend clause 1.10 but to revisit clause 1.10 as part of the first review of the Code. It was argued that any review should have regard to the practical experiences of retailers and customers since the Code's gazettal.

6.5.2 Stakeholder perspectives

Some stakeholders consider that contestable business customers should have the ability to contract out of the Code under a non-standard contract considering that the *Electricity Industry (Customer Contract) Regulations 2005* already prescribe mandatory terms and conditions applicable to that contract.

6.5.3 Research

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

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

Table 1.1: Jurisdictional comparison – Variation clauses

	WA Code 1.10	SA ERC 1.3.2	VIC ERC Appendix 1	NSW Refer footnote 11	ACT Refer footnote 12	QLD Refer footnote 13	TAS N/A
Billing cycle	4.1	6.1.1	3.2(a) 3.2(b)				
Shortened billing cycle	4.2						
Contents of bill – minimum payment options		6.3.4(i)	4.2(m)				
Contents of bill - apportionment		6.3.4(u)					
Contents of bill - graph			4.4(a)				
Due date	5.1(1)	7.1.1	7.1(b)				
Minimum payment methods	5.2	7.2	7.2(a)				
Instalment payment options		7.7.1					
Payment in advance	5.4	7.11	7.3				
Adjustments after estimation			5.4(a)				
Vacating a supply address	5.7						
Transfer to alternative tariffs		6.8.1					
Reconnection times	8.1						
Minimum termination notice			24.1(b)				

In addition to a "variation clause", the *Energy Retail Code* (SA) also includes a provision which allows retailers and prescribed customers to contract out of the entire code (as opposed to only prescribed provisions).

Although under the *Electricity Act 1996* (SA) a customer's consumption level is determined by reference to individual connection points, clause G (Preliminary) of the SA code[14] allows business customers to aggregate their consumption levels for more than

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

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

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

13 Part 4 of the Electricity Industry Code (Qld) applies to all customers supplied under a standard customer sale contract. As all non-contestable customers (i.e. small use customers) are supplied under a standard customer sale contract, small use customers are currently not able to contract out of Part 4 of the Electricity Industry Code. This will however change with the introduction of retail contestability on 1 July 2007. From this date, all customers will be able to contract out of Part 4 of the Electricity Industry Code.

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

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

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

one connection point for the purposes of the code. Clause G therefore provides prescribed customers and retailers with greater contractual freedom.

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

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

6.5.4 Discussion

The ECCC seeks further input from interested parties regarding this issue before a recommendation is made.

Discussion Point (1.1)
Should the scope of clause 1.10 be left as is, extended or reduced?

7 Part 2 – Marketing

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

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

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

7.1 Gas Marketing Code of Conduct

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

The Gas Marketing Code of Conduct commenced operation on 31 May 2004. Unlike the Code, which covers a range of matters concerning small use electricity customers, there is no code covering matters beyond marketing for customers in the gas industry.

To ensure consistency between the marketing of electricity and gas, Part 2 of the Code was modelled upon the GMCC. Although generally consistent, Part 2 does not represent an exact duplication of the GMCC[15].

7.1.1 Review of GMCC

The Gas Marketing Code Consultative Committee (**GMCC Committee**) is required to undertake a review of the GMCC after twelve months of operation and provide a report to the Authority. The GMCC Committee commenced its review of the GMCC in May 2005.

As part of its review, the GMCC Committee prepared a Principles Paper[16] which was issued for public comment by the Authority on 3 January 2006.

The Authority received three submissions[17] in relation to the Principles Paper. Following receipt of these submissions, the GMCC Committee undertook a review of the GMCC to identify any overlap between the GMCC and existing State and Commonwealth laws. Following consideration of the report on legal overlap and taking into account the submissions received, the GMCC Committee recommended[18] repeal of the GMCC and replacement with a regulatory instrument which includes those elements of the GMCC not duplicated in other laws and other relevant requirements. In addition, it was

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15 The ERCF agreed to some minor changes, such as:

- reduction in permitted contact hours (refer to definition of "permitted call times");

- requirement for marketing representatives to provide marketing identification numbers (e.g. refer to clause 2.9(1)(b) of the Code); and

- an obligation upon a marketer to provide a written statement of compliance to a retailer (refer to clause 2.4 of the Code).

16 GMCC Committee, *Principles Paper for the Review of the Gas Marketing Code of Conduct 2004*, 23 December 2005.

17 Submissions were received from the Consumers Association of Western Australia (Inc), Energy Ombudsman of Western Australia and Western Power Corporation.

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

recommended that compliance with the regulatory instrument should be enforced through insertion of a licence condition into gas trading licences.

These recommendations were the subject of a public consultation period which concluded on 5 October 2006.

Copies of the documents referred to above may be obtained from www.era.wa.gov.au.

7.1.2 Impact of GMCC review on Code marketing provisions

If the Authority agrees to implement the GMCC Committee's recommendations as they currently stand, the GMCC will be repealed and replaced with a regulatory instrument. The regulatory instrument will consist of those elements of the GMCC that are not duplicated in other laws and other relevant requirements. This would be relatively simple to achieve given that the GMCC does not extend any further than marketing, unlike the Code.

At this stage, neither the GMCC Committee's recommendations, nor the contents of the proposed regulatory instrument have been approved. Therefore, it would have been premature for the ECCC to consider adopting the GMCC Committee's recommendations to guide its deliberations on Part 2.

7.2 Overlap with other legislation

As highlighted in the GMCC Committee's Draft Report, many clauses of the GMCC overlap with State and Commonwealth legislation or relevant common law principles. According to legal counsel, the overlap is such that overlap provisions may be removed without reducing the level of consumer protection or the effectiveness of the Code.

7.2.1 Applicable legislation

As the Code closely resembles the GMCC, it may be assumed that the same duplication applies to the Code. However, to determine the exact level of overlap, the Secretariat engaged legal counsel to perform a comparable review in relation to the Code.

The review identified a large amount of duplication, similar to the outcome of the GMCC review. Consistent with the GMCC Committee's recommendations, the ECCC considers there to be merit in focusing the review of Part 2 upon minimising duplication of legislation between the Code and other legislative instruments.

Therefore, the analysis of Part 2 below concentrates to a large extent upon identifying opportunities for the removal of redundant provisions. This is consistent with the ECCC guiding Code review principles of:

- delivering efficient regulation to keep compliance costs at a minimum; and
- the benefits of simple, clear and concise codes.

Any proposed deletions do not intend to reduce the level of protection available to consumers.

7.2.2 Non-applicable legislation

In addition to the duplications identified between the Code and applicable legislation, the Secretariat also instructed legal counsel to review overlap between the Code and the *Door to Door Trading Act 1987* (WA) (**DDT Act**).

At present, the DDT Act does **not** apply to the marketing of electricity supply contracts by virtue of regulation 2A of the *Door to Door Trading Regulations 1987* (WA) (**DDT Regulations**).

The review identified a number of Code provisions that overlap with the DDT Act (refer to Appendix 3 and, as applicable, paragraphs hereinafter).

In preparing this Draft Review Report, the ECCC looked at possible options for achieving consistency between the door to door marketing of electricity and other products. This consistency could be achieved in one of two ways:

Firstly, by removing regulation 2A of the DDT Regulations, these Code provisions could be deleted. This would make the marketing of electricity supply contracts more in line with the marketing of other goods and services.

Secondly, by amending the Code to ensure that provisions are equal to and no greater nor less than the DDT Act provisions.

Removal of regulation 2A of the DDT Regulations would significantly impact on the rights of small use business customers as the DDT Act does not apply to business customers.

Also, as responsibility for the DDT Regulations lies with the Minister for Consumer Protection, deletion of regulation 2A would require the support of the Minister for Consumer Protection and the Department of Consumer and Employment Protection.

The ECCC determined that Code provisions should be amended to be generally consistent with the DDT Act without compromising the review principles.

Recommendation 2.1

Where possible, provisions related to door to door marketing within the Code should be consistent with the DDT Act.

7.3 Notes within Part 2

In accordance with Recommendation 1.1, the ECCC recommends the following amendments to the notes in Part 2 of the Code.

Recommendation 2.2

Delete objectives and include within Guide.

Recommendation 2.3

Delete note under clause 2.5(4).

Recommendation 2.4

Delete note under clause 2.6(1)(b).

Recommendation 2.5

Delete note under the heading of clause 2.7 and include the following words at the beginning of clause 2.7(1):

> When a ***customer*** enters into a new contract with a ***retailer***,…

Recommendation 2.6

Delete note under clause 2.7(1)(k).

Recommendation 2.7

Delete note under clause 2.7(2) and insert the words “or on” between “with” and “the” in clause 2.7(2).

Recommendation 2.8

Delete note under clause 2.7(4).

Recommendation 2.9

Delete note under clause 2.10(2)(c) and include within Guide.

Recommendation 2.10

Delete note under clause 2.13(5).

7.4 Division 1 – Obligations particular to marketers

Part 2 speaks of retailers, marketers and marketing representatives. Each of these persons has their own responsibilities in the marketing of electricity, which may at times overlap.

Generally speaking, the term “marketer” refers to the company that markets electricity to small use customers. A marketer may be the retailer itself or, if a retailer has outsourced its marketing activities, a third party.

Persons working on behalf of the marketer (either as an employee, agent or representative) are referred to as “marketing representatives”. These persons will physically call the customer by phone, contact the customer at their home etc.

7.4.1 Background

Division 1 imposes various obligations on marketers. These obligations aim to ensure that a marketer assumes responsibility for actions carried out on its behalf by marketing representatives. Division 1 requires a marketer to ensure that marketing representatives comply with Part 2 of the Code (clause 2.1) and that they are adequately trained (clause 2.2). Furthermore, it requires marketers to provide their contact details to the Authority (clause 2.3) and, if applicable, a statement of compliance (with Part 2) to the retailer on whose behalf the marketing is being carried out (clause 2.4).

7.4.2 Recommendation

Amendments relating to duplication

In light of the review undertaken by legal counsel, the ECCC discussed the need for clauses 2.1 to 2.4.

The ECCC noted that it is within the interests of a marketer to ensure that its marketing representatives are appropriately trained as the marketer would likely be liable for the conduct of its marketing representatives under the common law principles of agency or vicarious liability.

The ECCC considered that in relation to clause 2.4(2), equivalent provisions are included in the *Trade Practices Act 1974* (Cwlth)[19] (**TPA**) and the *Fair Trading Act 1987* (WA)[20] (**FTA**). These provisions may be seen as more useful, as they are widely used and

[19] Section 52 of the TPA states “A corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.”.

[20] Section 10 of the FTA states “A person shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.”.

clearly interpreted and the penalty provisions in the TPA and FTA are more onerous than those in the Code.

In addition, a retailer cannot evade its responsibilities in relation to marketing under the Code. Firstly, clause 2.15(3) of the Code makes a retailer liable for the conduct of electricity marketing agents (which include marketers and marketing representatives) marketing on its behalf. Secondly, there is a presumption in clause 2.16 that a person who carries out marketing activities on behalf of a retailer or electricity marketing agent is taken (unless the contrary is proven) to be employed or authorised to carry out that activity. Thirdly, a retailer will be liable for breach of licence in the event it contravenes the Code. Finally, clause 6 of the standard electricity retail licence template requires a retailer to ensure that an electricity marketing agent complies with the Code.

As a retailer is liable for any breach by a marketer acting on its behalf, a strong incentive currently exists for retailers to put in place compliance procedures. In light of this incentive, it could be argued that the compliance procedures currently provided for in clauses 2.1, 2.2 and 2.4 of the Code are overly prescriptive. Retailers should be able to implement compliance procedures as they see fit.

In relation to clause 2.3, it is noted that provision exists in a retailer's licence for the Authority to seek information. Although clause 2.3 enables the Authority to seek information directly from marketers, information specified in clause 2.3 is of a type that a retailer would be expected to have. Therefore, if the Authority would like to receive the information prescribed in clause 2.3, it could direct the retailer to provide it for any marketers acting on its behalf.

The ECCC considered whether a proposal should be made to delete clauses 2.1 – 2.4 altogether and resolved that clause 2.1 should be retained and that clauses 2.2 – 2.4 could be proposed for deletion.

Recommendation 2.11

- Retain clause 2.1 without amendment.
- Delete clauses 2.2 to 2.4 inclusive.

7.5 Division 3 – Information to be provided to customers

7.5.1 Background

Division 3 specifies the information a marketing representative must give to a customer both before (clause 2.6) and, at the time of, or after (clause 2.7) entering into a contract.

Clause 2.7 requires a retailer to provide prescribed information to a customer at the time of, or after, the customer has entered into a contract. The ECCC understands that one stakeholder sought clarification during the development of the Code as to when a customer enters into a contract.

The stakeholder argued that a retailer should only be obliged to provide the information specified in clause 2.7 to new customers of the retailer. It was argued that where a customer's circumstances change, for example, the customer moves house, but the retailer continues to supply the customer, the obligation of clause 2.7 should not arise.

The explanatory note to clause 2.7 aims to clarify this matter. However, the ECCC understands that the explanatory note is not wholly correct as (contrary to the explanatory note) many customers who move house and continue to be supplied by their retailer are provided with a new account number.

7.5.2 Recommendation

Amendments relating to duplication

Clause 2.6(1)(d) requires a marketing representative to tell a customer their name and the name, address and telephone number of the marketer and, if different, of the retailer on whose behalf the marketing is being carried out.

Clauses 2.9 to 2.12 regulate a marketing representative's conduct when contacting a customer for marketing purposes. Under clauses 2.9 to 2.12, a marketing representative must tell a customer their name, the name of the marketer and, if different, the name of the retailer. Where the contact is in person or by electronic means, the marketer must also provide the marketer's and, if different, the retailer's business address and complaints telephone number. If contact is made by phone, information relating to business address and complaints telephone number must be provided upon request.

In light of the significant overlap between clause 2.6(1)(d) and clauses 2.9 to 2.12, members of the ECCC propose the deletion of clause 2.6(1)(d) of the Code.

Recommendation 2.12
Delete clause 2.6(1)(d).

Clause 2.7(1)(d)(i) of the Code requires a retailer or marketing representative to provide a customer with the terms of the contract, including the type and frequency of bills the customer will receive. The ECCC considered the adequacy of clause 2.7(1)(d) in terms of whether it contained the appropriate information regarding terms and conditions of the contract at the time of or after entering the contract.

Currently, clause 2.7(1)(d) states:

> (1) A retailer or marketing representative must give the following information to a customer - ...
>
> (d) the terms of the contract including -
>
> (i) the type and frequency of bills the customer will receive; and
>
> (ii) the payment methods available to the customer;

Whilst the ECCC notes that the sub-clauses are non-exhaustive, that is, they are not the only information that is required to be given to the customer, the ECCC proposes that an expanded list of the key terms of the contract be provided to the customer.

Recommendation 2.13
Amend clause 2.7(1)(d) by deleting "the terms of the contract including –" and including instead:

details of, at a minimum, those terms relating to:

Recommendation 2.14
Amend clause 2.7(1)(d) by adding the following subclauses:

- the charges applicable to the ***customer***;
- the consequences of a ***customer*** not paying his or her bill;
- the circumstances in which interruptions to electricity supply may occur;
- complaints handling procedures; and
- the circumstances in which the contract may be terminated.

Amendments otherwise

The ECCC notes that the Code applies different customer protection regimes depending on the mode of marketing (i.e. contact at premises, by telephone or otherwise), in particular, the type of information that must be provided, the timing for providing that information, and access to cooling-off periods. Members of the ECCC considered standardisation of customer protection levels across all modes of marketing. Further discussion regarding the technicalities of amalgamation is contained in paragraph 7.7 below. However, an in-principle decision was made by the ECCC prior to any further consideration of this Part of the Code.

Recommendation 2.15
Endeavour be made to standardise customer protection across all modes of marketing.

Provision of information

At present, the Code only requires a marketer to provide a customer with the terms and conditions of the contract before entering into the contract if the contract was entered into as a result of door to door marketing[21] or is a non-standard contract.[22] This means that customers who enter into a standard form contract that was not the result of door to door marketing may do so without having seen the terms and conditions of the contract.

Furthermore, a retailer does not have to provide the information specified in clause 2.7 to a customer who elects to be supplied under a standard form contract (not the result of door to door marketing) until the first bill. These customers may therefore receive this essential information well after having entered into the contract.

Members of the ECCC considered amendment of clause 2.7 by requiring a retailer to provide the information specified in clause 2.7(1) and a copy of the customer contract to all customers before, at the time of, or within 2 business days of the customer entering into the contract.

However, this would only apply to standard form contracts entered into via methods other than door to door marketing. The fact that standard form contracts are subject to approval by the Authority and can be terminated at any time by giving 5 business days notice (refer to regulation 23 of the *Electricity Industry (Customer Contracts) Regulations 2005*) coupled with clause 2.7(1)(a), which requires a retailer to tell a customer how they may obtain a copy, and clause 2.5(3), which requires the retailer to provide a copy of the contract to the customer on request at no charge, may be seen as providing sufficient protection.

Therefore, the ECCC agreed that contract provision requirements should remain as they are. In addition, the ECCC agreed that clause 2.7(1)(d) should be expanded to more comprehensively reflect the terms of the contract (refer to Recommendation 2.14).

Recommendation 2.16
Subject to Recommendation 2.7, retain clause 2.7(2) without amendment.

21 Including unsolicited telephone or email provided that some of the negotiations between the marketing representative and the customer occurred in each other's presence at a place other than the trade premises of the marketer.

22 Refer to clause 2.7(3)(a) of the Code.

Access to cooling-off period

At present, a person has access to the cooling-off period if the contract was entered into as a result of door to door marketing or is a non-standard contract (refer to regulations 22 and 32 of the *Electricity Industry (Customer Contracts) Regulations 2005*). Persons who enter into a standard form contract other than as a result of door to door marketing do not have access to a cooling-off period.

It could be argued that customer protection would be strengthened if a cooling-off period was provided to all customers who enter into an electricity supply contract.

Members of the ECCC gave consideration to making a Recommendation that the cooling-off period be extended to cover standard form contracts entered into by means other than door to door marketing. This could be actioned through either amendments to the Code, (resulting in new provisions in both the Code and regulations that concern this area), or through a Recommendation to the Minister for Energy for an amendment to regulation 22 of the *Electricity Industry (Customer Contracts) Regulations 2005* to provide that cooling-off periods apply to all standard form contracts.

However, all standard form contracts may be terminated at any time by giving the retailer 5 days notice (refer to regulation 23 of the *Electricity Industry (Customer Contracts) Regulations 2005*). Therefore, a cooling-off period for standard form contracts (other than as a result of door to door marketing) does not provide much additional protection to what is already available.

On this basis, the ECCC determined that no change was required to the cooling-off period provisions.

Recommendation 2.17
No amendments be made to the cooling-off period provisions within the Code.

7.6 Division 4 – Clause 2.8

Clause 2.8 of the Code sets standards of conduct for the marketing of electricity supply contracts. Under clause 2.8, a marketing representative must not engage in misleading or deceptive conduct or harass or coerce a customer into signing a contract.

7.6.1 Recommendation

Amendments relating to duplication

Subclause (1)

Subclause (1) of clause 2.8 prohibits a marketing representative from engaging in conduct "that is misleading, deceptive or likely to mislead or deceive or that is unconscionable".

Subclause (1) overlaps with sections of both the TPA and the FTA:

- Section 52 of the TPA:

  A corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive, or is likely to mislead or deceive.

- Section 51AB of the TPA:

  A corporation shall not, in trade or commerce, in connection with the supply or possible supply of goods or services to a person, engage in conduct that is, in all the circumstances, unconscionable.

- Section 10 of the FTA:

A person shall not, in trade or commerce, engage in conduct that is misleading or deceptive, or is likely to mislead or deceive.

- Section 11 of the FTA:

  A supplier shall not, in trade or commerce, in connection with the supply or possible supply of goods or services to a person, engage in conduct that is, in all the circumstances, unconscionable.

Legal counsel has advised that the provisions in the TPA and FTA are more useful than clause 2.8(1) of the Code, as they are widely used and clearly interpreted. In addition, the penalty provisions in the TPA and FTA are more significant than those provided for in the Code.

In light of the above, members of the ECCC considered deletion of clause 2.8(1) of the Code. However, the ECCC agreed that if clause 2.8(1) were removed an individual customer could not have their complaint addressed through the Energy Ombudsman and that this circumstance would be undesirable. Therefore the ECCC agreed to retain clause 2.8(1).

Recommendation 2.18
Retain clause 2.8(1) without amendment.

Subclause (2)

Subclause (2) specifies that a marketing representative must not exert undue pressure on a customer, nor harass or coerce a customer.

Legal counsel has advised that it could be argued that subclause (2) is covered by sections 51AB of the TPA and section 11 of the FTA. However, there is a technical risk that there is a gap in protection.

If the TPA and FTA do not cover harassment, duress or coercion, electricity customers will not be protected to the same extent as any other customer purchasing a good or service as a result of door to door marketing (unless the exemption for electricity supply contracts in relation to the DDT Act is removed[23]).

If the TPA and FTA do cover harassment, duress and coercion, there is a technical risk that it would not apply to all customers.

Section 51AA of the TPA incorporates the common law concerning unconscionable conduct in the TPA. Broadly, under common law, for conduct to be unconscionable, a party must take advantage of another party with a special disadvantage. A special disadvantage has been held by the Courts to include age, illiteracy, disability, financial need, ignorance, sickness and a lack of explanation where explanation is necessary. The categories of “special disadvantage” are broad, but there is a technical risk that they do not cover all customers.

Section 51AB of the TPA concerns unconscionable conduct in connection with the supply of goods or services to a person. Section 51AB does not reference the common law but provides factors which the Court may have regard to (such as bargaining power of the parties, whether the consumer was able to understand the documents, etc.). This means

[23] In relation to customers purchasing a good or service as a result of door to door marketing (other than electricity supply contracts), sections 12(1) and (2) of the DDT Act provide:

No dealer or other person shall, for the purpose of, or in the course of negotiating a contract to which this Act applies, harass or coerce a consumer.

No dealer or other person shall harass or coerce a consumer for the purpose of dissuading or preventing the consumer from exercising a right conferred on the consumer by this Act.

that the provision is potentially wider and may not have the limitations that section 51AA has. However, this point has not been conclusively resolved.

After discussion, the ECCC agreed that for the reasons outlined with reference to clause 2.8(1), clause 2.8(2) should be retained.

Recommendation 2.19
Retain clause 2.8(2) without amendment.

Subclause (4)

Subclause (4) of the Code requires a marketing representative to give a customer on request the contact details of the marketer.

Refer to the discussion in relation to Recommendation 2.12 above.

Recommendation 2.20
Delete clause 2.8(4).

Subclause (5)

Subclause (5) requires a marketing representative to ensure that all standard form contracts that are entered into as a result of door to door marketing and all non-standard contracts are in writing.

Subclause (5) partially overlaps with clause 7(1)(b) of the DDT Act which states:

> The following requirements must be complied with in relation to a prescribed contract:
>
> (b) the contractual terms must be printed or typewritten (apart from any insertions or amendments to the printed or typewritten form, which may be handwritten);

The scope of subclause (5) is slightly wider than that of clause 7(1)(b) of the DDT Act as it also applies to non-standard contracts that were not entered into as a result of door to door marketing. The ECCC agreed that it was desirable to retain this clause without amendment.

Recommendation 2.21
Retain clause 2.8(5) without amendment.

Subclause (6)

Subclause (6) prohibits a marketing representative from representing a non-standard contract as a standard form contract to a customer.

According to legal counsel, representing that a non-standard contract is a standard form contract to a customer would constitute misleading or deceptive conduct. Accordingly, subclause (6) is covered by subclause (1) and section 52 of the TPA and section 10 of the FTA.

Members of the ECCC agreed that clause 2.8(6) should be deleted.

Recommendation 2.22
Delete clause 2.8(6).

Subclause (7)

Subclause (7) requires that a marketer must ensure that any comparisons and claims made by a retailer are timely, accurate and verifiable. The ECCC agreed that this provision was excessive and should be deleted.

Recommendation 2.23
Delete clause 2.8(7).

7.7 Division 4 – Clauses 2.9 to 2.12

Clauses 2.9 to 2.12 of the Code set individual standards for four marketing modes:

- marketing by telephone;
- marketing at a customer's premises;
- marketing by personal contact other than at customer's premises; and
- marketing by electronic means.

7.7.1 Recommendation

Considerable overlap exists between the contents of clauses 2.9 to 2.12 of the Code. Legal counsel has advised that clauses 2.9 to 2.12 could safely be amalgamated without reducing the level of customer protection. Amalgamation would result in a significant reduction of any overlap and, thereby, simplify the contents of the Code.

Information to be provided to customers (on contact)

All four clauses require a marketing representative to tell a customer prescribed information when contacting the customer. The following table illustrates the extent of duplication between the clauses.

Table 2.1: Overview of duplication between clauses 2.9(1) to 2.12(1).

	2.9(1) & (2) by telephone	**2.10(1)** **2.10(2)** at customer premises	**2.11(1)** **2.11(2)** other than at customer premises	**2.12(1)** by electronic means
A marketing representative must […] as soon as practicable tell a customer/give the customer the following information:				
• his or her first name	✓	✓	✓	✓
• his or her marketing identification number	✓	✓	✓	✓
• the name of the marketer and, if different, of the retailer on whose behalf the contact is being made	✓	✓	✓	✓
• the business address of the marketer and, if different, of the retailer on whose behalf the call is being made				✓
• the Australian Business or Company Number of the marketer [and, if different, of the retailer on whose behalf the call is being made]		✓	✓	✓
• the marketer's e-mail address or other means of electronic conduct				✓
• the purpose of the call/visit/contact/marketing	✓	✓	✓	✓

• the complaints telephone number of the marketer and, if different, of the retailer		✓	✓	✓
• a statement that acceptance of the offer will result in a contractual relationship between the customer and the retailer				✓
• ask if the customer wishes to proceed	✓	✓	✓	
On request, a marketing representative must provide a customer with:				
• his or her marketing identification number	✓			
• the complaints telephone number of the marketer and, if different, of the retailer on whose behalf the call is being made	✓			

Basic Information

For all modes of marketing, a marketing representative must provide:

- his or her first name;
- his or her marketing identification number;
- the name of the marketer and, if different, of the retailer on whose behalf the contact is being made; and
- the purpose of the contact.

Members of the ECCC proposed amalgamation of these requirements into one single clause.

Recommendation 2.24
Amalgamate clauses 2.9(1), 2.9(2), 2.10(1), 2.11(1) and 2.12(1) .

Marketing Identification Number

The ECCC discussed the need for clauses 2.9(1)(b) and 2.9(2)(a) which require a marketing representative to provide his or her marketing identification number when making a telephone call. It could be argued that marketing identification numbers should only be an internal measure for a marketer to identify its marketing representatives. However, the ECCC agreed that the requirement to provide a marketing identification number requirement upon request should be retained.

Recommendation 2.25
Delete clause 2.9(1)(b).

Contact via Email

The ECCC notes that clause 2.12(1) which sets standards for marketing by electronic means is also addressed under section 17(1) of the *Spam Act 2003* (Cwlth):

> A person must not send, or cause to be sent, a commercial electronic message that has an Australian link unless:
>
> (a) the message clearly and accurately identifies the individual or organization who authorised the sending of the message; and
>
> (b) the message includes accurate information about how the recipient can readily contact the individual or organization; and…'

Although clause 2.12(1) of the Code is slightly more prescriptive, the difference is minor and section 17(1) of the *Spam Act 2003* appears to achieve the objectives of the Code.

However, for reasons of consistency, it is proposed that clause 2.12(1) be amalgamated with clauses 2.9(1), 2.9(2), 2.10(1) and 2.11(1) (Refer to Recommendation 2.24).

Information to be provided to customers (in writing)

Where a marketing representative contacts a prospective customer in person, the marketing representative must provide certain information in writing (refer to clauses 2.10(2) and 2.11(2)). The information requirements included in both clauses are identical.

Members of the ECCC agreed to recommend amalgamation of clauses 2.10(2) and 2.11(2).

Recommendation 2.26
Amalgamate clauses 2.10(2) and 2.11(2).

The information requirements of clauses 2.10(2) and 2.11(2) significantly overlap with those included in clauses 2.10(1) – 2.11(1) (verbally) and 2.10(3) – 2.11(3) (identity card). As the information included in clauses 2.10(2) and 2.11(2) must already be relayed verbally and shown on the marketing representative's identity card, it could be argued that they result in unnecessary duplication.

Members of the ECCC therefore recommended deletion of clauses 2.10(1) and 2.11(1) to the extent they overlap with subclauses (2).

Recommendation 2.27
Delete clauses 2.10(1) and 2.11(1) to the extent they overlap with subclauses (2).

Identity cards

Clauses 2.10(3) and 2.11(3) require a marketing representative who contacts a prospective customer in person to wear a clearly visible and legible identity card. The information that must be included on the identity card under each clause is identical.

Therefore, members of the ECCC considered that amalgamation of clauses 2.10(3) and 2.11(3) would be worthwhile.

Recommendation 2.28
Amalgamate clauses 2.10(3) and 2.11(3).

Permitted call times

Unless requested by a customer, a marketing representative must not contact a customer outside the permitted call times if the marketing occurred by phone or in person (clauses 2.9(4), 2.10(5) and 2.11(4) of the Code). As the three clauses are identical, members of the ECCC considered that amalgamation would be worthwhile.

Recommendation 2.29
Amalgamate clauses 2.9(4), 2.10(5) and 2.11(4).

End of conversation and prohibition on re-contact

If a customer indicates that they wish to end the conversation or proceed no further, a marketing representative must, as applicable, end the conversation or leave the premises as soon as practicable and not attempt to contact the customer again for the purpose of marketing for the next 30 days (clauses 2.9(3), 2.10(4) and 2.12(2)).

The following table shows the overlap between the applicable provisions:

Table 2.2: Overview of duplication between clauses 2.9(3), 2.10(4) and 2.12(2).

	2.9(3) by telephone	2.10(4) at customer's premises	2.12(2) by electronic means
If, […], a customer indicates that the customer wishes to end the conversation/the marketing representative to leave/to proceed no further, the marketing representative/marketer must:			
• end the conversation/leave the premises as soon as practicable	✓	✓	
• not attempt to contact the customer for the purposes of marketing for the next 30 days unless the customer agrees otherwise	✓	✓	✓

Members of the ECCC agreed that amalgamation of clauses 2.9(3), 2.10(4) and 2.12(2) would be worthwhile.

The Secretariat notes that there is some overlap between clause 2.10(4) and section 10 of the DDT Act. Section 10 of the DDT Act states:

> A dealer who calls at premises for the purpose of negotiating a contract to which this Act applies or for an incidental or related purpose shall leave the premises at the request of the occupier of the premises or any person acting with the actual or implied authority of the occupier.

Section 10 of the DDT Act does not preclude a marketing representative from contacting the customer again for the purposes of marketing for the next 30 days.

For reasons of consistency, the ECCC agreed to retain clause 2.10(4) and amalgamate clauses 2.9(3), 2.10(4) and 2.12(2).

Recommendation 2.30
Amalgamate clauses 2.9(3), 2.10(4) and 2.12(2).

Contact beyond permitted call times

Under clauses 2.9(5), 2.10(6) and 2.11(5) of the Code, a marketing representative must not continue customer contact for more than 15 minutes past the end of the permitted call times, unless the customer provides verifiable consent.

Members of the ECCC considered amalgamation of clauses 2.9(5), 2.10(6) and 2.11(5) to be worthwhile.

Also, one member of the ECCC believed that "verifiable consent" was an excessive requirement.

Recommendation 2.31
Amalgamate clauses 2.9(5), 2.10(6) and 2.11(5).

Record keeping

Regardless of the mode of marketing, a marketer must keep prescribed records of the marketing engaged in by its marketing representatives (clauses 2.9(6), 2.10(7), 2.11(6) and 2.12(3) of the Code).

A marketer must keep the records for a period of three years (clause 13.1) and provide the records, on request, to the Authority (clause 13.11). The obligation to keep records is intended to enable the identification of marketing representatives, and to assist in dealing with enquiries and complaints.

The following table illustrates the overlap between clauses 2.9(6), 2.10(7), 2.11(6) and 2.12(3):

Table 2.3: Overview of duplication between clauses 2.9(6), 2.10(7), 2.11(6) and 2.12(3).

	2.9(6) by telephone	2.10(7) at customer premises	2.11(6) other than at customer premises	2.12(3) by electronic means
A marketer must keep the following records about each contact made [on behalf of the marketer]:				
• the name of the customer	✓	✓	✓	
• the telephone number of the customer	✓			
• the address of the customer		✓	✓	
• the e-mail address of the customer				✓
• the name of each marketing representative who made or was involved in the contact	✓	✓	✓	
• the date and time of the contact	✓	✓	✓	✓
• the location of the contact			✓	
• any correspondence between the customer and the marketer				✓

According to legal counsel, these clauses are substantially similar and could be amalgamated. Members of the ECCC therefore considered amalgamation of clauses 2.9(6), 2.10(7), 2.11(6) and 2.12(3) to be worthwhile.

The ECCC notes that both the SA and Vic. marketing codes of conduct require a retailer to keep records on marketing activities (refer to Appendix 4).

Recommendation 2.32
Amalgamate clauses 2.9(6), 2.10(7), 2.11(6) and 2.12(3).

7.8 Division 4 – Clause 2.13

7.8.1 Background

Clause 2.13 of the Code specifies the procedures a marketer must follow in the event a customer requests not to be contacted again on behalf of the marketer. This includes using reasonable endeavours not to contact the customer for the next two years, keeping a do-not-contact list and providing written confirmation to the customer (on request) that the customer will not be contacted again for the next two years.

In June 2006, legislation to create a national Do Not Call Register passed through Federal Parliament. The legislation establishes minimum contact standards for telemarketers. Those standards cover matters such as permitted calling hours and the provision of certain information by telemarketers.

Establishment of the register is anticipated for May 2007.

7.8.2 Recommendation

Although the *Do Not Call Register Act 2006* significantly overlaps with clause 2.13, there are some key differences:

Table 2.4: Comparison of clause 2.13 and the Do Not Call Register Act 2006

	cl. 2.13 Code	Do Not Call Register Act 2006
Application	Persons	Telephone numbers
Type of customer	Small use customers (<160 MWh / year)	Residential customers[1]
Duration	2 years	3 years
Extent of obligation	Use reasonable endeavours	Mandatory
Types of marketing	- by telephone - in person at customer's premises - by electronic means	- by telephone

[1] Telephone number must be used or maintained exclusively or primarily for private or domestic purposes.

As the obligation of clause 2.13 relates to customers, an absolute prohibition on contact is problematic. For example, a person may move house without a marketer's knowledge. If the marketer were to unintentionally contact the person again by virtue of the customer having a different phone number, the marketer would have breached clause 2.13. The ECCC understands that the ERCF therefore agreed to require a marketer to only use "reasonable endeavours" in complying with clause 2.13.

However, the "use reasonable endeavours" is difficult to monitor. Deletion of "use reasonable endeavours" would improve the Authority's ability to monitor compliance with clause 2.13(1).

Although at least one member of the ECCC did not support deletion of the term "use reasonable endeavours", the majority of ECCC members supported amendment of clause 2.13(1) by deleting "use reasonable endeavours" and including a caveat that clause 2.13 has not been breached in prescribed circumstances (e.g. if the customer has moved house).

However, the ECCC would welcome further comment on its preliminary Recommendation.

Recommendation 2.33

Amend clause 2.13(1) by deleting "use reasonable endeavours" and including a caveat that clause 2.13 has not been breached in prescribed circumstances (e.g. if the customer has moved house).

7.9 Division 5 – Clause 2.14

Clause 2.14 of the Code addresses the issue of collection and use of personal information. Essentially, it precludes a marketer from disclosing the information to third parties unless otherwise provided.

7.9.1 Recommendation

According to legal counsel, the requirements of clause 2.14 (with the exception of subclause (7)) are addressed under the *Privacy Act 1988* (Cwlth) (**Privacy Act**) (refer to Appendix 5).

Although subclause (7) is not addressed in the Privacy Act, legal counsel has advised that the obligation contained in subclause (7) should be standard practice in order to comply with the National Privacy Principles and therefore does not need to be the subject of a Code provision.

The ECCC notes that some uncertainty exists as to whether the Privacy Act and the National Privacy Principles set out in Schedule 3 to the Privacy Act apply to the Electricity Retail Corporation (**Synergy**), the Electricity Networks Corporation (**Western Power**) and the Regional Power Corporation (**Horizon Power**).

In light of the above, the ECCC generally, although not unanimously, agreed with deletion of clause 2.14 and insertion of the following clause:

> A retailer must comply with the National Privacy Principles as set out in the *Privacy Act 1998* (Cwlth) in relation to information collected under this Part.

Reference to marketers and marketing representatives has been excluded from the new clause as they are already subject to the Privacy Act.

Recommendation 2.34

Amend clause 2.14 by deleting current wording and including instead:

> A ***retailer*** must comply with the National Privacy Principles as set out in the *Privacy Act 1998* (Cwlth) in relation to information collected under this Part.

7.10 Division 5 – Clauses 2.15 and 2.16

Clauses 2.15 and 2.16 of the Code prescribe penalties for breaches of the Code and include a presumption of authority where a person carries out a marketing activity in the name of, or for the benefit of, a retailer or electricity marketing agent.

7.10.1 Recommendation

The penalties prescribed in clause 2.15 are consistent with those provided for in sections 83 and 84 of the Act. Similarly, the presumption of authority included in clause 2.16 follows section 85 of the Act.

As clauses 2.15 and 2.16 reflect the contents of the Act, no amendments are proposed to these clauses.

Recommendation 2.35
Retain clauses 2.15 and 2.16 without amendment.

8 Part 3 – Connection

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

8.1 Notes within Part 3

In accordance with Recommendation 1.1, the ECCC recommends the following amendments to the notes in Part 3 of the Code.

Recommendation 3.1

Delete objectives and include within Guide.

Recommendation 3.2

Amend the note under clause 3.1(3) by deleting current wording and including instead:

> The *Electricity Industry (Obligation to Connect) Regulations 2005* provide regulations in relation to the obligation upon a ***distributor*** to energise and connect a ***premises***.

8.2 Clause 3.1 – Obligation to forward connection application

Under clause 3.1(1), a retailer who agrees to sell electricity to a customer or arrange for the connection of a customer's supply address, must forward the customer's connection application to the relevant distributor. Subclause (2) sets out when the application must be forwarded which, unless otherwise agreed with the customer, must be:

a) the same day, if the connection application is received before 3pm on a business day; or

b) the next business day, if the application is received after 3pm or on a Saturday, Sunday or public holiday in WA.

Clause 3.1 ensures that a retailer forwards a customer's connection application promptly, thereby minimising the amount of time the customer is without supply.

Upon receipt of the connection application, the distributor must energise or connect (as applicable) the customer's premises in accordance with the *Electricity Industry (Obligation to Connect) Regulations 2005*.

Subclause (3) allows a customer to nominate a representative to arrange connection for the customer.

8.2.1 Research

The Vic. and the SA Energy Retail Codes include clauses similar to clause 3.1. Refer to the table below for an overview of the timeframes within which connection applications must be forwarded to the distributor.

Table 3.1: Jurisdictional comparison – Timeframes for forwarding connection applications

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

[1] Regulation 31 of the *Electricity Supply Industry (Tariff Customers) Regulations 1998* (Tas.) requires a retailer to provide a customer with an electrical connection within a prescribed timeframe. Although the obligation is imposed on the retailer, connections will in reality be performed by the distributor. Therefore, regulation 31 is effectively an amalgamation of clause 3.1 of the Code and the *Electricity Industry (Obligation to Connect) Regulations 2005* (WA). For this reason, it has not been included in the table.

In addition to the obligation on the retailer to forward the connection application within a prescribed timeframe, most Eastern States' codes also provide the retailer with the right to require the customer to provide prescribed information or perform a prescribed act prior to agreeing to sell electricity (e.g. provide identification or ensure safe access to the supply address).

The ECCC understands that this right was not included in the original development of the Code so as to avoid potential conflict with the *Electricity Industry (Customer Contracts) Regulations 2005*.

Regulation 40 of the *Electricity Industry (Customer Contracts) Regulations 2005* requires Synergy and Horizon Power to offer to supply electricity under a standard form contract to any small use customer who requests supply. Subregulations (2) and (3) stipulate situations where the obligation to offer to supply does not arise. That is, where the premises are not connected to a distribution system, or where the person owes an amount of money and has not entered into an arrangement or has not complied with the terms of the arrangement, the obligation to supply does not arise.

Inclusion of a specific right for a retailer to require a customer to provide information or perform an act as a condition of supply could be construed to thwart regulation 40 as it would provide for exceptions to the obligation to offer to supply over and above those already included in subregulations (2) and (3) of regulation 40. Therefore, no equivalent clause was included in the Code at the time.

The ECCC notes that retailers other than Synergy or Horizon Power are not prevented from requiring prospective customers to provide information or do certain things as a condition of supply.

Given that these matters are dealt with through regulation the ECCC does not believe there is any need to make a similar addition to the Code.

8.2.2 Recommendation

Given the existing consistency between these clauses and other codes and the absence of any identified issues with these provisions, members of the ECCC recommend no change be made to clause 3.1.

Recommendation 3.3
Retain clause 3.1 without amendment.

9 Part 4 – Billing

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

9.1 Notes within Part 4

In accordance with Recommendation 1.1, the ECCC recommends the following amendments to the notes in Part 4 of the Code.

Recommendation 4.1
Delete objectives and include within Guide.

Recommendation 4.2
Delete note under heading of clause 4.1.

Recommendation 4.3

Delete note under clause 4.1(b).

Recommendation 4.4
Delete notes under heading of clause 4.2.

Recommendation 4.5
Delete note under clause 4.2(2).

Recommendation 4.6
Delete note under clause 4.3 and amend the clause to read:

> A ***retailer*** must issue a bill to a ***customer*** at the ***customer's supply address***, unless the ***customer*** has nominated another address or an email address.

Recommendation 4.7
Delete note under 4.4(1)(p).

Recommendation 4.8
Delete note under 4.4(1)(bb).

Recommendation 4.9
Delete note under clause 4.4(2)(b).

Recommendation 4.10
Delete note under clause 4.4(3).

Recommendation 4.11
Delete note under clause 4.5(1)(b) and include within Guide.

Recommendation 4.12

- Delete note under clause 4.10.
- Number the current clause subclause (1).
- Include a new subclause (2) which reads:

If the ***meter*** is tested and found to be defective, the ***retailer's*** reasonable charge for testing the ***meter*** (if any) is to be refunded to the ***customer***.

Recommendation 4.13

- Delete note under clause 4.11(2).
- Add new definition to clause 1.5 of the Code which defines "alternative tariff" as follows:

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

Recommendation 4.14

Delete note under clause 4.12.

Recommendation 4.15

Delete notes under clause 4.13(1) and (2).

Recommendation 4.16

Delete notes under clause 4.14(1) and (2).

Recommendation 4.17

Delete note under clause 4.17(3).

Recommendation 4.18

- Delete note under clause 4.18(4).
- Amend clause 4.18(2) to read:

  If a ***customer*** (including a ***customer*** who has vacated the ***supply address***) has been overcharged…

9.2 Division 1 – Billing cycles

Clause 4.1 specifies the minimum and maximum term for billing cycles. Under clause 4.1, a retailer must bill a customer at least once every three months, but no more than once every month.

The ECCC understands that the maximum term was included to ensure that customers have manageable billing cycles. The minimum term intends to ensure that retailers do not harass financially vulnerable customers by imposing unduly short billing cycles.

A retailer and customer may agree to a billing cycle shorter or longer than the one prescribed in clause 4.1. In addition, clause 4.1(a)(ii) in conjunction with clause 4.2 allows a retailer to unilaterally impose a shorter billing cycle in prescribed circumstances. If a retailer elects to impose a shorter billing cycle, it must comply with the requirements set out in clause 4.2.

Clause 4.3 prescribes that a bill must be issued at the customer's supply address, unless the customer has nominated another address.

9.2.1 Stakeholder Perspectives

The ECCC understands that WACOSS proposes an amendment to clause 4.1 which would allow the customer to elect a shortened billing cycle. WACOSS argues that customers could receive the following benefits from a shortened billing cycle:

- the accounts are smaller and so more easily managed;

- bills can be coordinated to coincide with pay or benefit cycles;
- it reduces the number of cases of large debts; and
- if customers do get behind, the arrears are able to be addressed relatively easily.

It should be noted that there is nothing preventing a customer from requesting a shortened billing cycle as the Code provides for a shortened billing cycle by mutual consent. However, there is no requirement upon a retailer to accept this request.

Although the Code allows a retailer, under certain circumstances, the capacity to impose a shortened billing cycle, Horizon Power has indicated that at present it only uses shortened billing cycles for larger customers (i.e. those consuming more than $1500 in electricity per month). Horizon Power has indicated that it is reluctant to offer a shortened billing cycle given the cost of meter reading and customer dissatisfaction with billing based on estimates. Therefore, Horizon Power does not support extension of clause 4.1 to allow customers the capacity to shorten their billing cycle.

Synergy currently bills customers on a bi-monthly basis and does not support extension of clause 4.1 to allow customers the capacity to shorten the billing cycle due to the additional costs related to systems changes, printing, collection of accounts and meter reading.

Some retailers in WA currently offer a “Budget Card” facility to allow customers to make regular payments towards their account.

9.2.2 Research

The maximum billing cycle prescribed in clause 4.1 is consistent with those of Eastern States:

Table 4.1: Jurisdictional comparison – Billing cycles

WA Code 4.1(b)	SA ERC 6.1.1	VIC ERC 3.2	NSW ES(G)R 29(1)	ACT CPC 13.3	QLD EIC 4.8.1	TAS ESI(TC)R 13	NT
At least once every 3 months (or as otherwise agreed in a non-standard contract)	At least once every 3 months (or as otherwise agreed in a market contract)	At least once every 3 months unless otherwise agreed	At least once every 3 months	At least once every 120 days unless otherwise agreed	At least once every 3 months	At least once every 3 months	At least once every 3 months

It is noted that none of the Eastern States have prescribed a minimum term for billing cycles.

The SA, Vic. and Qld codes contain provisions comparable to clause 4.2 of the Code. Appendix 6 provides a jurisdictional comparison of matters addressed in clauses dealing with shortened billing cycles.

Furthermore, the SA[24] and Qld[25] codes contain a provision equivalent to clause 4.3 of the Code.

None of the other jurisdictions allows for a customer to choose a shortened billing cycle. The table below provides a comparison of bill shortening provisions in all jurisdictions.

Table 4.2: Jurisdictional comparison – Use of shortened billing cycle

[24] Refer to clause 6.2 of the Energy Retail Code (SA).

[25] Refer to clause 4.8.2 of the Electricity Industry Code (Qld).

	WA Code 4.1(a)	SA ERC 6.1.1(c) 7.9.1	VIC ERC 9.1(b)	NSW	ACT	QLD EIC 4.8.1(c) 4.15.1	TAS N/A
By agreement with informed customer consent	✓	✓	✓	See footnote 26	See footnote 27	✓	
After 3 reminder notices on consecutive bills	✓	✓	✓			✓	
After 2 disconnection warnings on consecutive bills		✓	✓			✓	

Whilst no other jurisdictions require retailers to provide shortened billing cycles at the customer's request, the Vic. code does provide customers with the right to negotiate a shorter billing cycle.

Under clause 10 of the Energy Retail Code (Vic.) a retailer and a customer may agree a billing cycle with a regular recurrent period of less than three months. The agreement is not effective unless the customer gives explicit informed consent. Also, under the agreement, the retailer may impose an additional retail charge on the customer for making the different billing cycle available.

In addition, Victorian retailers may provide their customers with estimated bills under a "bill smoothing arrangement".[28] Whilst a customer does not have a right to bill smoothing, the Energy Retail Code (Vic.) contains provisions for a retailer to make this service available to its customers.

Bill smoothing is a method of apportioning the total amount for a period in equal amounts over a regular payment cycle. The amount is estimated initially and then adjusted at regular intervals through an actual meter read. Regular monitoring is undertaken and adjustments are made to the arrangement should significant variations in usage occur. Bill smoothing may be of assistance to some customers by assisting with cash flow and budget management.

Currently, Alinta offers gas customers "bill smoothing" as a billing option.

9.2.3 Discussion

Given the absence of consensus within the ECCC regarding the proposal that clause 4.1 be extended to provide that the customer be able to elect a shortened billing cycle, the ECCC seeks further input from stakeholders regarding this issue.

Discussion Point (4.1)

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

Discussion Point (4.2)

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

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26 NSW regulations prescribe a maximum 3 month billing cycle. A retailer's standard billing cycle can only be shortened by agreement in a negotiated contract. A retailer can adopt a billing cycle shorter than 3 months as its standard billing cycle for all of its customers. However, if it wants to apply a billing cycle shorter than its standard billing cycle for specific customers only, it must have the customer's consent.

27 The Consumer Protection Code (ACT) states "unless the customer and the utility have agreed to an alternative arrangement". There is no informed consent requirement specifically related to this issue.

28 Refer to clause 5.3 of the Energy Retail Code (Vic).

9.3 Division 2 – Contents of a bill

9.3.1 Background

Clause 4.4(1) specifies the information that a retailer must include on its bills. A retailer and customer may agree to deviate from subclause (1).

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

At the time the Code was drafted, customer representative organisations advised the ERCF that they were often contacted by customers who had received unusually large bills. Many of these customers were unaware that the bill included an amount for historical debt. Therefore, it was agreed that the Code require retailers to clearly identify this on the bill.

Furthermore, customer representative organisations argued that failure to pay a bill relating to a historical debt should not be grounds for disconnection. Consequently, it was argued that amounts due relating to historical debts should not be allowed to be added to a customer's current bill.

In addition, it was argued that bills relating to historical debt should be provided with a separate reference number to allow customers to easily track their amount of debt outstanding.

At the time, the latter arguments were not agreed to by the members of the ERCF.

9.3.2 Stakeholder perspectives

The ECCC has been asked by WACOSS to address this issue as part of the review of the Code. The ECCC understands that WACOSS would like customers to be supplied with an account which separates historical debt from current consumption charges. WACOSS believes that this practice would assist customers to understand their debt and budget payments for both the current and historical accounts thus reducing the level of disconnections for non payment.

The ECCC understands that Synergy does not believe separate billing would assist customers to manage total debt and would increase administration costs.

9.3.3 Research

Most jurisdictions prescribe, to some extent, the matters that a retailer must include on its bill as a minimum. Appendix 7 provides a jurisdictional overview of Code provisions where a Code exists.

The SA,[29] Vic[30] and Qld[31] codes contain a clause which prescribes how payment must be applied in the event a bill includes charges for goods and services other than electricity supply (e.g. gas supply, appliances etc). The ECCC understands that, during the development of the Code, legal counsel for the Office of Energy advised that inclusion of an equivalent clause in the Code was outside of the Code's permitted scope. Hence, no similar clause was included in the Code.

None of the Eastern States' codes contain provisions similar to those proposed by WACOSS (i.e. separate bills and account numbers for historical debts and current amounts due).

[29] Refer to clause 6.3.3 of the Energy Retail Code (SA).

[30] Refer to clause 4.6 of the Energy Retail Code (Vic).

[31] Refer to clause 4.8.3 of the Electricity Industry Code (Qld).

9.3.4 Discussion

The ECCC was not able to reach agreement regarding the proposal to separate historical debt from the current account. Therefore the ECCC seeks further input on this issue from stakeholders during the public consultation period.

Discussion Point (4.3)

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

9.3.5 Recommendation

The ECCC agreed that clause 4.4(1)(j) should be amended to simplify the clause.

Recommendation 4.19

Amend clause 4.4(1)(j) to read:

> if applicable, a statement on the bill that an additional fee may be imposed to cover the costs of late payment from a ***customer***.

9.4 Division 3 – Basis of a bill

9.4.1 Background

Division 3 of Part 4 specifies how a retailer must determine a customer's consumption level and, thereby, the amount due.

Under clause 4.5, a retailer may determine a customer's consumption level based upon the distributor's, metering agent's or customer's reading of the meter. Although a retailer may request a customer to read the meter (for example because the customer is located in a remote area), the customer is not obliged to do so.

A retailer must use its best endeavours to ensure that a customer's meter is read as often as required to prepare a bill and, in any event, at least once every twelve months.

If a retailer is unable to base a customer's bill on a meter reading, the retailer must base the bill upon an estimate. Clause 4.7 specifies how the estimate may be determined. Where a bill is based upon an estimate and the meter is subsequently read, the retailer must include an adjustment on the next bill to take account of the actual meter reading.

At the time the Code was developed, consumer representative organisations advised that some customers receive bills based upon estimates for prolonged periods of time. In the event a retailer consistently underestimates the amount due, a customer may unknowingly accumulate a substantial debt with the retailer.

To address this issue, the Code requires retailers to clearly identify on the bill that the amount due is based upon an estimate. In addition, clause 4.17(2)(a) stipulates that retailers may not recover any amount outstanding due to underestimation if a period of over 12 months has elapsed.

It has also been argued that an obligation should be placed upon a retailer to obtain metering data independently at least once every 12 months (i.e. from a distributor or metering agent). The distribution representative advised at the time that this was not

economically viable. Therefore, it was agreed that clause 4.6 could also be met by a retailer by obtaining the data from the customer (refer to clause 4.5(1)(b)).

9.4.2 Research

Refer to Appendix 8 for a jurisdictional overview as to how the matters addressed in clauses 4.5 to 4.9 of the Code are dealt with in other jurisdictions.

9.4.3 Recommendation

Since the Code was gazetted, the Government has implemented the Metering Code. The Metering Code sets out standards for the metering of electricity generation and consumption.

Part 5 of the Metering Code deals with the provision of metering services. It sets out the detailed procedures for ascertaining energy data, including validation, substitution and estimation.

At the time the Metering Code was drafted it is understood that legal counsel for the Office of Energy advised that the validation, substitution and estimation procedures set out in the Metering Code were inconsistent with clause 4.7(2) of the Code. The ECCC has reviewed clause 4.7(2) of the Code against Part 5 and Appendix 3 of the Metering Code and notes that there are inconsistencies between the requirements under the Code and the Metering Code.

The ECCC considers it undesirable to have conflicting legislation. As the Metering Code was developed to specifically deal with the *"metering of the supply of electricity by licensees"* (refer to section 39(2)(a) of the Act), the ECCC considers it appropriate that the Code reflect the contents of the Metering Code on matters related to metering.

Therefore, consistent with the principles of efficient regulation, the ECCC recommends deletion of clause 4.7(2).

Recommendation 4.20
Delete clause 4.7(2).

Clause 5.4 of the Metering Code requires a network operator to use reasonable endeavours to obtain at least one meter reading that generates an actual value per year.

As discussed above, at the time the Code was drafted, it is understood that the ERCF was advised by the distribution representative that this was not economically viable. Therefore, clause 4.6 of the Code permits retailers to use metering data obtained via a customer reading without requiring independent reading.

In light of the enactment of clause 5.4 of the Metering Code and consistent with the principles of best-practice consumer protection, the ECCC recommends amendment of clause 4.6 of the Code by deleting clause 4.6 and inserting instead:

> A retailer must use its best endeavours to ensure that metering data is obtained, as frequently as required to prepare its bills, and in any event at least once every twelve months in accordance with clause 4.5(1)(a).

Recommendation 4.21
Delete clause 4.6 and insert instead:

> A ***retailer*** must use its best endeavours to ensure that metering data is obtained as frequently as required to prepare its bills, and in any event at least once every twelve months in accordance with clause 4.5(1)(a).

9.5 Division 5 – Alternative tariffs

Division 5 deals with alternative tariffs. Clause 4.11 sets out the conditions under which a retailer must transfer a customer to an alternative tariff.

If a customer's type of electricity use at a supply address has changed (e.g. a customer on a residential tariff starts up a business at the supply address) and a retailer transfers a customer to another tariff which disadvantages the customer, clause 4.12 requires the retailer to notify the customer in writing of the transfer prior to the transfer.

Where a customer's change in electricity usage results in over- or underpayment, the retailer must refund or may recoup the amount over- or undercharged (as applicable) (refer to clause 4.13).

9.5.1 Research

Provisions similar to those contained in Division 5 are only included in the SA[32] and Qld[33] codes.

Whilst most other jurisdictions stipulate the procedures a retailer must follow in the event of a change to the tariff (for example, an increase in the supply charge) as opposed to the change in tariff type, the ECCC understands that these matters are not addressed in the Code to avoid duplication.

Section 63 of the *Energy Operators (Powers) Act 1979* and by-law 11 of the *Energy Operators (Electricity Retail Corporation) (Charges) By-laws 2006* and *Energy Operators (Regional Power Corporation) (Charges) By-laws 2006* already specify how a retailer may impose tariff changes. However, the *Energy Operators (Powers) Act 1979* only applies to Synergy and Horizon Power and whilst there is the ability to prescribe the provisions to other retailers under section 45 of the Act, this has not been done. Therefore, to the extent that there would be duplication in the Code if these matters were addressed it would, at this stage, only be duplication for Synergy and Horizon Power.

9.5.2 Discussion

The ECCC invites comments as to whether the Code should specify the procedures a retailer (other than Synergy or Horizon) must follow if there is a change to the tariff (e.g. an increase).

Discussion Point (4.4)

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

9.6 Division 6 – Final bill

Clause 4.14 of the Code requires a retailer to use best endeavours to issue a final bill upon and in accordance with a customer's request. If a customer is in credit at the time the final bill is issued, the retailer must refund the amount in credit.

32 Refer to clause 6.8 of the Energy Retail Code (SA).

33 Refer to clause 4.11 of the Electricity Industry Code (Qld).

9.6.1 Recommendation

The SA[34], Vic[35] and Qld[36] codes contain provisions similar to clause 4.14 of the Code. Given this consistency and the absence of any issues associated with this provision the ECCC recommends that this clause be retained.

However, the ECCC agreed that clause 4.14(2) could be amended to improve clarity. Currently, the clause requires that the retailer must repay any amount in credit at the time the customer requests the final bill. Given the fact that the customer may continue to consume electricity between the time of notice and the time of account closure the ECCC agreed an amendment would be appropriate.

Recommendation 4.22

Clause 4.14(2) be amended to read:

> If the ***customer's*** account is in credit at the time of account closure the ***retailer*** must repay the amount to the ***customer***.

9.7 Division 7 – Review of bill

Division 7 specifies the procedures for review of a bill. Under clause 4.15, a retailer must review a customer's bill provided the customer pays that part of the bill that is not in dispute. If the review demonstrates that the bill was correct, the retailer may require the customer to pay the disputed amount. If the bill was incorrect, the retailer must adjust the bill accordingly (refer to clause 4.16).

Clauses 4.17 and 4.18 set out the procedures to be followed by a retailer once it has been established that a customer has been under– or overcharged.

9.7.1 Research

Appendix 9 provides a jurisdictional overview in relation to the review of bills. Appendices 10 and 11 provide a jurisdictional overview of under- and overcharging provisions.

One of the main points of divergence between the jurisdictions appears to be whether a customer is entitled to interest on any amounts overcharged. Both the NSW and Tas. regulations require a retailer to credit interest on any overcharged amount paid by a customer.

9.7.2 Recommendation

Recommendation 4.23

Retain Division 7 without amendment.

34 Refer to clause 9.8 of the Energy Retail Code (SA).

35 Refer to clause 13.5 of the Energy Retail Code (Vic).

36 Refer to clause 4.17.14 of the Electricity Industry Code (Qld).

10 Part 5 – Payment

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

10.1 Notes within Part 5

In accordance with Recommendation 1.1, the ECCC recommends the following amendments to the notes in Part 5 of the Code

Recommendation 5.1
Delete note under heading of clause 5.1.

Recommendation 5.2
Delete note under heading of clause 5.2.

Recommendation 5.3
Delete note under heading of clause 5.4.

Recommendation 5.4
Delete note under clause 5.4(3).

Recommendation 5.5
Delete note under clause 5.5.

Recommendation 5.6
Delete note under heading of clause 5.7.

Recommendation 5.7
Delete note under clause 5.8(3) and include within Guide.

10.2 Clause 5.1 – Due dates

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

10.2.1 Research

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

Table 5.1: Jurisdictional comparison – Due dates

WA Code 5.1	SA ERC 7.1.1	VIC ERC 7.1(b)	NSW ES(G)R 30(1)	ACT CPC 13.7(1)	QLD EIC 4.12.1	TAS ESI(TC)R 13(2)(a)
The due date on a bill must be at least **12 business days** from the date of that bill. Unless a retailer specifies a later date, the date of dispatch is the date of the bill.	Payment due not less than **12 business days** after the date on which the bill is sent out, unless otherwise agreed under a market contract.	Payment due not less than **12 business days** from the date of dispatch. Unless a retailer specifies a later date, the date of dispatch is the date of the bill.	Payment due not less than **12 business days** after the date on which bill sent out.	Payment due not less than **12 business days** after the date on which the bill is sent out, unless otherwise agreed.	Unless otherwise agreed with a customer, the pay by date specified in the bill must not be less than **12 business days** after the date the bill has been sent.	Payment due at least **14 days** after account sent out when billing period greater than 1 month, otherwise **10 days**.

10.2.2 Recommendation

As the standard prescribed in clause 5.1 is consistent with those of most Eastern States, the ECCC recommends no amendments be made to clause 5.1.

Recommendation 5.8
Retain clause 5.1 without amendment.

10.3 Clause 5.2 – Minimum payment methods

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

10.3.1 Research

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

Table 5.2: Jurisdictional comparison – Minimum Payment Methods

	WA Code 5.2	SA ERC 7.2	VIC ERC 7.2	NSW ES(G)R 30(2)	ACT CPC 13.7(2)	QLD EIC 4.12.3	TAS TEC 9.4
in person at one or more payment outlets/ network of agencies:	✓	✓	✓	✓	✓	✓	✓
• located within the Local Government District of the customer's supply address	✓						
• by cash, cheque or credit card				✓			
by mail:	✓	✓	✓	✓	✓	✓	✓
• by means of cheque or credit card				✓			
by Centrepay	✓						
electronically by BPay or credit card	✓						
by telephone by means of credit card	✓			✓			✓
by direct debit:		✓	✓	✓		✓	✓
• from a cheque, savings or credit card account				✓			
by any other method agreed with retailer				✓			

10.3.2 Recommendation

With the exception of direct debit, the Code offers customers a wide range of available payment methods. Whilst direct debit may be offered there is no requirement that it must be offered.

Some members of the ECCC expressed concern that the requirement on a retailer to offer many payment methods may constitute a barrier to entry for some retailers. For example, a retailer may wish to offer only the electronic payment option to keep its costs low so as to be able to offer lower tariffs.

However, as a retailer and customer may opt to contract out of clause 5.2 (refer to clause 1.10) and in the absence of full retail contestability, it was agreed to retain the current payment options.

Recommendation 5.9
Retain clause 5.2 without amendment.

10.4 Clause 5.3 – Direct debit

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

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

10.4.1 Research

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

Table 5.3: Jurisdictional comparison – Direct debit

	WA Code 5.3	SA ERC 7.3	VIC ERC 7.2(b)	QLD EIC 4.12.4
the amounts	✓	✓	✓	✓
the frequency of those payments (direct debits)	✓	✓	✓	✓
the date of the debit	✓		✓	
that the customer may at any time unilaterally cancel the direct debit by notifying:				
• the retailer		✓	✓	✓
that if the customer cancels the direct debit by notifying the retailer, the retailer will:				
- accept that notification and no longer rely on the direct debit authority; and		✓		✓
- use its best endeavours to notify the financial institution of the cancellation			✓	
• the relevant financial institution		✓	✓	✓
that if the customer cancels the direct debit by notifying the relevant financial institution, the customer must use its best endeavours to notify the retailer		✓	✓	✓
• the retailer ***and*** the relevant financial institution	✓			
that if the customer cancels the direct debit by notifying the relevant financial institution and the retailer, the retailer must acknowledge that the direct debit no longer applies	✓			
an alternative payment arrangement upon cancellation of direct debit by customer.			✓	
that if a last resort event occurs in respect of the retailer, the retailer will immediately cancel the direct debit and notify the customer and the financial institution of the cancellation		✓	✓	

It is noted that the SA, Vic. and Qld codes require a retailer to provide direct debit arrangements (refer to table 5.2 above). No such obligation applies to WA retailers.

10.4.2 Recommendation

Under the Code, a customer must notify both the retailer and the relevant financial institution of cancellation of a direct debit authority. One member of the ECCC noted that this requirement is inconsistent with current banking practice[37] which allows a customer to cancel a direct debit unilaterally by notifying its financial institution.

Members of the ECCC agreed to delete clause 5.3(c) and (d) to reflect current banking practice.

Recommendation 5.10
Delete clause 5.3(c) and (d).

[37] Refer to the Code of Banking Practice. A copy of this code can be downloaded from http://www.bankers.asn.au

10.5 Clauses 5.4 & 5.5 – Payment in advance & Redirection of bill

10.5.1 Background

Clause 5.4 of the Code requires a retailer to accept advance payments made by a customer. A retailer may determine a minimum amount for which the retailer will accept advance payments.

The ECCC understands that the ERCF agreed to allow a retailer to determine a minimum advance payment in recognition of the costs involved in accepting payments (for example, where a payment is made through Australia Post, a retailer must pay a fee to Australia Post for the service provided).

Clause 5.5 requires a retailer to redirect a bill, upon a customer's request, to a third person at no charge if the customer is unable to pay by the retailer's offered payment methods due to illness or absence.

10.5.2 Research

Requirements in relation to advance payment differ between States. Refer to the table below for a jurisdictional overview.

Table 5.4: Jurisdictional comparison – Advance payments

	WA Code 5.4	SA ERC 7.11	VIC ERC 7.3	NSW ES(G)R 30(5)	ACT CPC 13.14	QLD ERC 4.12.7	TAS N/A
Retailer must offer/accept payment advance facilities	✓	✓	✓	✓		✓	
- only if customer is experiencing payment difficulties					✓		
No interest accrues on amounts paid in advance	✓	✓				✓	
Retailer may determine minimum amount for which it will accept payment in advance	✓						

In relation to redirection of a bill, only the SA[38] and Qld[39] codes contain an equivalent provision.

10.5.3 Recommendation

The ECCC understands that the Steering Committee on Energy Retail Consistency is contemplating omitting an equivalent clause on advance payments in the proposed national Energy Retail Code. According to SCERC, such a clause is not considered necessary as *"it is considered most unlikely that a retailer would not accept payment in advance and there has been no evidence that this is a problem"*.

Although some members supported deletion of clauses 5.4 and 5.5 for the reasons outlined by SCERC, the ECCC agreed to retain clauses 5.4 and 5.5 to provide certainty to:

38 Refer to clause 7.4 of the Energy Retail Code (SA).

39 Refer to clause 4.12.7 of the Electricity Industry Code (Qld).

- consumers that they will be able to make payments in advance and have their bill redirected; and
- retailers that they will not have to pay interest on any amount paid in advance.

Recommendation 5.11
Retain clause 5.4 without amendment.

Recommendation 5.12
Retain clause 5.5 without amendment.

10.6 Clause 5.6 – Late payment fee

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

10.6.1 Research

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

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

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

Table 5.5: Jurisdictional comparison – Late payment fees

	WA Code 5.6	VIC ERC 7.4	NSW ERD[1] Sch2
No late payment fee applies:			
• If customer receives a concession, provided the customer: - is a residential customer; and - has not received two or more reminder notices within the previous 12 months.	✓		
• If customer has agreed to payment extension and pays by new due date	✓	✓	✓
• If customer has agreed to instalment plan and makes payments in accordance with plan	✓	✓	✓
• If customer has made a complaint directly related to the non-payment of the retailer's bill to the retailer or to the Ombudsman and the complaint remains unresolved		✓	✓
A retailer must not impose a late payment fee within 5 business days of the due date of the bill that is subject to late payment (provided the customer has received notice to this effect)			✓
A retailer must not charge a late payment fee if it has already charged a fee in relation to the same bill less than 5 business days earlier	✓		
A retailer must not charge more than 1 late payment fee in relation to same bill			✓
A retailer must not charge more than 2 late payment fees in relation to same bill	✓		

[40] Refer to clause 7.4(a) of the Energy Retail Code (Vic).

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

[1] IPART, *NSW Electricity Regulated Retail Tariffs 2004/05 to 2006/07 - Final Report and Determination*

Furthermore, NSW[41] and Vic.[42] also require that already levied fees be waived in the event:

- the customer has contacted a welfare agency or support service for assistance; or
- where [part of] the payment is made by a Government relief voucher; or
- a customer contacts retailer within 5 business days of receiving disconnection warning to enter into instalment plan or other payment arrangement;[43] or
- on a case by case basis as considered appropriate by the retailer or ombudsman.

10.6.2 Recommendation

The ECCC understands that the restrictions imposed under the Code were drafted to reflect Western Power Corporation's (now Synergy and Horizon Power) late payment fee policy at the time.

It is further noted that both Synergy and Horizon Power are entitled by law to impose a fee for overdue account notices.[44] Removal of their right to impose such a fee would require amendment of the applicable by-laws.

The ECCC agrees that retailers should be able to continue to charge a late payment fee as this is consistent with Eastern States' practice. However, it was proposed that, consistent with Eastern States' practice, an additional subclause be included in clause 5.6. This sub-clause would preclude a retailer from imposing a late payment fee in the event a customer has made a complaint directly related to the non-payment of the bill to the retailer or to the Energy Ombudsman and the complaint remains unresolved.

Recommendation 5.13

Amend clause 5.6 by including a new subclause (4) which states:

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

10.7 Clause 5.7 – Vacating a supply address

Clause 5.7 of the Code sets out the procedures to be followed when a customer vacates a supply address.

41 IPART, *NSW Electricity Regulated Retail Tariffs 2004/05 to 2006/07 - Final Report and Determination*, Schedule 2

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

43 Only applicable to Victorian retailers.

44 Refer to Schedule 4 of the *Energy Operators (Electricity Retail Corporation) (Charges) By-Laws 2006* and Schedule 4 of the *Energy Operators (Regional Power Corporation) (Charges) By-Laws 2006*.

10.7.1 Research

Most States require a customer to provide the retailer notice of the customer's intention to vacate the premises. In return, a retailer may not charge a customer for electricity consumed after a prescribed period. Refer to the table below for a jurisdictional overview.

Table 5.6: Jurisdictional comparison – Vacating supply address

	WA Code 5.7	SA ERC 1.6	VIC ERC 7.6	NSW ES(G)R Sch2 5[1]	ACT CPC 13.11	QLD EIC B.16[1]	TAS N/A
Customer must:							
• provide notice of (intended) vacation date	✓	✓	✓	✓	✓	✓	
• provide forwarding address	✓		✓		✓	✓	
• provide access to the meter		✓					
Customer's obligation to pay ceases:							
• from date meter is read or metering data obtained (within 3 b/d)		✓			✓		
• from date a new contract applies to the supply address, if applicable	✓	✓	✓	✓		✓	
• from date a new retailer becomes responsible for supply to the supply address, if applicable	✓	✓	✓				
• from disconnection, if the supply address has been disconnected	✓		✓		✓	✓	
• from date of notification, if customer was evicted	✓		✓				
• from date of vacation, if customer provided at least 3 business days notice; or	✓	✓	✓	✓[2]	✓		
• 3 business days after customer gave notice, any other case		✓	✓	✓[2]	✓	✓	
• 5 days after customer gave notice, any other case	✓						
• as agreed between retailer and customer						✓	

[1] Only applies to customers supplied under standard form contract.
[2] 72 hours (as opposed to 3 business days)

In addition, most codes expressly stipulate that a retailer's right to payment does not terminate as a result of a customer vacating a supply address.

10.7.2 Recommendation

Although the standards included in the Energy Retail Code (Vic.) and the WA Code are nearly identical, the wording of both clauses differs substantially. The ECCC understands that this is because the Vic. code is drafted so as to impose obligations upon customers, a matter which is not permitted under the WA Code.

During the drafting of the WA Code, legal counsel advised that the Act does not provide the heads of power to impose obligations on customers or grant rights to retailers. This is because section 79 of the Act specifies that the Code must regulate and control the conduct of retailers, distributors and marketing agents. As a result, the Code has been drafted to only impose obligations on retailers, distributors and marketing agents.

Furthermore, it is noted that the WA Code is the only code under which a customer's obligation to pay ceases 5 days after notification if the customer notified the retailer less than 3 business days in advance. Under all other instruments, a customer's obligation ceases 3 business days after notification.

Members of the ECCC understand that this discrepancy is intentional and aims to minimise any inconsistency between the Code and section 62(4) of the *Energy Operators (Powers) Act 1979*. Under section 62(4), a customer is not liable for electricity consumed if the customer gives an energy operator (i.e. Synergy or Horizon Power) at least 5 days notice of its intention to vacate the supply address.

Removal of the inconsistency with the *Energy Operators (Powers) Act 1979* requires amendment of that Act or the *Electricity Industry (Code of Conduct) Regulations 2005*.[45] Therefore, the ECCC recommends no change at this time.

Recommendation 5.14
Retain clause 5.7 without amendment.

10.8 Clause 5.8 – Debt collection

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

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

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

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

10.8.1 Research

Only the Vic. Energy Retail Code contains provisions in relation to debt collection.[46] These provisions are consistent with subclause (1) and (2) of clause 5.8.

10.8.2 Recommendation

In relation to subclause (1), it could be argued that a retailer is already required to comply with section 60 of the TPA and therefore, indirectly, the guidelines issued by the ACCC under section 60. However, members of the ECCC agreed to retain clause 5.8(1) for reasons of certainty. In particular, one member of the ECCC argued that, as the guidelines are not binding, it is uncertain that a Court will require a retailer to comply with them. By embedding them within the Code, it is clear that retailers are bound by these guidelines.

Recommendation 5.15
Retain clause 5.8(1) without amendment.

[45] These regulations set aside prescribed provisions of other Acts and regulations in favour of the Code.

[46] Refer to clause 11.4 of the Energy Retail Code (Vic).

With respect to subclause (2), whilst it appears unlikely that a retailer would commence debt proceedings while negotiating alternative payment arrangements or receiving payments under an instalment plan, the issue remains of concern to some consumer representative organisations.

Although subclause (2) is not included in any instruments other than the WA and Vic. codes, members of the ECCC agreed to retain the clause.

Recommendation 5.16
Retain clause 5.8(2) without amendment.

The ECCC understands that subclause (3) was inserted to address a situation whereby a retailer attempts to collect a debt from a person residing at the supply address with whom the retailer does not have a contractual relationship.

Under sections 62(1)-(3) of the *Energy Operators (Powers) Act 1979*, an energy operator (i.e. Synergy or Horizon Power) may collect a debt from any consumer of electricity. The term "consumer" allowed energy operators to recover consumption charges from any person consuming electricity at the supply address, regardless of whether that person had entered into a contract with the energy operator for the supply of electricity. In light of section 62(1)-(3), there was no need for an energy operator to enter into contractual relationships with its customers.

With the restructuring of the electricity industry, Government considered it appropriate to increase consumer protection by, among other things, requiring contractual relationships between electricity customers and their retailers.[47]

To ensure that a retailer is no longer able to collect a debt from a person other than the account holder, the *Electricity Industry (Code of Conduct) Regulations 2005* provide that sections 62(1)-(3) of the *Energy Operators (Powers) Act 1979* do not apply in relation to the supply of electricity to small use customers.

Clause 5.8(3) of the Code reinforces the *Electricity Industry (Code of Conduct) Regulations 2005* by expressly stating that a debt may only be collected from the account holder.

Although sections 62(1)-(3) of the *Energy Operators (Powers) Act 1979* are already inoperative by virtue of the *Electricity Industry (Code of Conduct) Regulations 2005*, the members of the ECCC note that the lack of a positive provision to allow such conduct is not the same as a prohibition against engaging in such conduct. That is, even though sections 62(1)-(3) of the *Energy Operators (Powers) Act 1979* are inoperative, without the prohibition in subclause (3), there is a risk that such practices may be engaged in.

Furthermore, the ECCC understands that there have been cases reported by consumer representative organisations and the Energy Ombudsman where a retailer has, in fact, attempted to pursue a person other than the account holder for payment.

Therefore, the ECCC recommends retention of clause 5.8(3).

[47] Refer to Part 3, Division 2 of the Act which provides for the making of standard form and non-standard contracts. In addition, section 59 of the Act provides for the making of regulations (*Electricity Industry (Customer Contracts) Regulations 2005*) that assign a default supplier to each supply address. In the event a customer fails to notify a retailer that the customer has commenced taking supply, the customer is deemed to have entered into a standard form contract with the default supplier for its supply address. As a result, all customers are deemed to be supplied under a contract.

Recommendation 5.17
Retain clause 5.8(3) without amendment.

10.9 Apportionment & merchant fees

Some codes address the matters of apportionment and dishonour & merchant fees.

With regard to apportionment, the provisions will generally prescribe how a retailer must apply a payment made by a customer.[48] That is, the codes generally require a retailer to direct any payments received firstly to the supply of energy. Any amounts remaining are to be directed towards other goods and services.

The ECCC understands that the Code does not address this matter as legal counsel advised at the time the Code was developed that section 79 of the Act does not provide the heads of power to address matters that are not related to the supply of electricity (such as the supply of gas and other goods and services).

In relation to dishonour & merchant fees, other codes generally allow a retailer to recover any dishonour or merchant fees incurred.[49] As discussed under paragraph 10.7.2, legal counsel advised the ERCF that the Code may not grant rights to retailers. Therefore, no equivalent provision was included in the Code. However, the ECCC notes that the absence of an explicit right does not preclude retailers from attempting to recover such fees.

[48] Refer, for example, to clauses clauses 6.3.2 and 6.3.3 of the Energy Retail Code (SA), clauses 4.5 and 4.6 of the Energy Retail Code (Vic.) and clause 4.8.3(c) of the Electricity Industry Code (Qld).

[49] Refer, for example to clause clause 7.10 of the Energy Retail Code (SA), clause 7.5 of the Energy Retail Code (Vic.) and clause 4.12.5 of the Electricity Industry Code (Qld).

11 Part 6 – Payment Difficulties and Financial Hardship

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

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

In both instances, the retailer is obliged to offer the customer prescribed assistance (additional time to pay or an instalment plan). However, additional assistance is available to customers experiencing financial hardship (refer to clauses 6.5 to 6.9 of the Code).

None of the Eastern States' codes currently distinguish between payment difficulties and financial hardship.

11.1 Notes within Part 6

In accordance with Recommendation 1.1, the ECCC recommends the following amendments to the notes in Part 6 of the Code.

Recommendation 6.1
Delete objectives and include within Guide.

Recommendation 6.2
Delete note under clause 6.1(4).

Recommendation 6.3
Delete note under clause 6.3(1)(a)(ii).

Recommendation 6.4
Delete note under clause 6.3(2).

Recommendation 6.5
Delete note under clause 6.4(2)(h).

Recommendation 6.6
Delete note under clause 6.6.

Recommendation 6.7
Delete note under clause 6.7(b).

Recommendation 6.8
Delete note under clause 6.8(a).

Recommendation 6.9
Delete note under clause 6.8(b) and include within Guide.

Recommendation 6.10
Delete note under clause 6.8(e).

Recommendation 6.11
Delete note under clause 6.9.

11.2 Division 1 – Assessment of financial situation

11.2.1 Background

Division 1 of the Code requires a retailer to assess a customer's capacity to pay a bill. The assessment must be carried out within 3 business days and must have regard to any information provided by the customer, held by the retailer or advice given by a financial counsellor or relevant consumer representative organisation.

Assessment

An assessment only needs to be carried out if a customer has informed its retailer that the customer is experiencing payment problems.

During the development of the Code, some members of the ERCF argued that there should be an obligation upon retailers to contact a customer if the retailer's credit management processes indicate that the customer may be experiencing payment problems.

These members noted that some customers may not contact their retailer because they do not know that assistance is available, have negative experiences contacting their retailer, or find it difficult to acknowledge they have payment problems.

Other members argued that a retailer's credit management processes are not designed to identify customers experiencing payment problems. Also, many customers who do not pay their bill on time do not have payment problems.

Members of the ERCF agreed that the onus should be on the customer to contact the retailer.

Temporary suspension

A retailer must temporarily suspend any debt recovery or disconnection procedures if a customer demonstrates to the retailer that the customer has made an appointment with a financial counsellor or relevant consumer representative organisation. Clause 6.2 aims to provide customers and their financial counsellors sufficient time to meet and assess the customer's financial situation. Any outcomes of this meeting may be taken into account by the retailer when assessing the customer's capacity to pay a bill (refer to clause 6.1(2)(b)).

As a financial counsellor may not always be able to meet a customer within the prescribed 10 days, clause 6.2(3) requires a retailer to give reasonable consideration to an extension of time.

In relation to clause 6.2, one of the members of the ERCF argued that a moratorium should only be granted if the customer's financial counsellor confirms the appointment with the retailer.

Assistance

If a retailer concludes that a customer is experiencing payment difficulties or financial hardship the retailer must offer the customer additional time to pay the bill, or an instalment plan. For those customers who are deemed to be in financial hardship, the retailer must also consider a reduction of fees and amendment of an existing payment arrangement (if applicable) and provide prescribed information.

11.2.2 Research

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

> the retailer's credit management processes indicate or ought to indicate to the retailer that a residential customer is experiencing payment difficulties[50]; or
>
> the retailer […] believes the customer is experiencing repeated difficulties in paying the customer's bill or requires payment assistance[51].

Upon notification by a customer that a customer is experiencing payment problems, all States require a retailer to provide prescribed assistance to its customers.

As none of the Eastern States' codes defines the term "payment difficulties", it is uncertain whether this term is equivalent to the WA definition of "payment difficulties" or "financial hardship". Therefore, the WA Code has not been included in the following jurisdictional comparison.

Table 6.1: Jurisdictional comparison – Payment difficulties

	SA	VIC	ACT	NSW	QLD	TAS
	ERC 7.6	ERC 11.2	CPC 13.14	ES(G)R 6(1)	EIC 4.12.9 4.13	ESI (TC)R 19
Upon notification by customer (or otherwise being aware) that a customer is experiencing payment problems, a retailer must:						
• assess the customer's capacity to pay		✓				
• provide evidence of the assessment, upon request		✓				
• offer alternative payment arrangements, being						
– an instalment plan	✓	✓	✓	✓	✓	✓
– option of making payments in advance towards future bills	✓	✓	✓	✓	✓	
• provide information on:						
– customer's right to have bill redirected to a third party (provided the third party consents to the redirection)	✓				✓	
– State Government assistance programs/concessions	✓	✓	✓			
– independent financial and other relevant counselling services.	✓	✓	✓		✓	✓
– energy efficiency (by telephone)		✓				

None of the Eastern States' codes provides for a moratorium if a customer has made an appointment with a financial counsellor as prescribed in clause 6.2 of the Code.

11.2.3 Recommendation

Although none of the Eastern States' codes makes a distinction between "payment difficulties" and "financial hardship", the ECCC is of the view that the distinction is a valid one and therefore supports its retention.

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

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

The distinction ensures that all customers who experience payment problems will have access to alternative payment arrangements. However, only if the problems are of an on-going nature is the retailer required to offer additional assistance. The ECCC considers it appropriate that matters such as consideration of reduction of charges and referral to financial counsellors only come into play if a customer is experiencing prolonged payment problems (i.e. financial hardship).

Moreover, the ECCC considers it appropriate that the Code does not impose an obligation on retailers to actively identify customers experiencing payment problems. As noted above, a retailer's credit management processes are not designed to undertake this task. Furthermore, it is likely that only a small percentage of those customers who did not pay their bill by the due date would be experiencing payment problems. The cost involved in identifying these customers is likely to outweigh any benefits involved.

Accordingly, it appears reasonable to place a responsibility on a customer to notify a retailer of any payment problems. Once the customer has notified the retailer, the retailer is obliged to offer the assistance prescribed under the Code. Therefore, the ECCC proposes that no amendments be made to clauses 6.1 to 6.3 of the Code.

Recommendation 6.12
Retain clauses 6.1 to 6.3 without amendment.

11.3 Division 2 – Alternative payment arrangements

11.3.1 Background

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

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

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

11.3.2 Research

Most jurisdictions require a retailer to offer alternative payment arrangements to a customer who is experiencing payment difficulties. Table 6.1 above illustrates the alternative payment arrangements a retailer must offer in SA, Vic., ACT, NSW, Qld and Tas. As can be observed in table 6.1, all States require a retailer to offer a customer the option of entering into an instalment plan. In addition, section 43(2)(a) of the *Electricity Industry Act 2000* (Vic.) requires retailers to provide for flexible payment options under their hardship policies. These policies must be approved by the Essential Services Commission (Vic.) (**ESC**) and/or the Minister.

Table 6.2 below illustrates the requirements for instalment plans in each State.

Table 6.2: Jurisdictional comparison – Instalment plans

	WA Code 6.4(2)	SA ERC 7.7.4	VIC ERC 12.2	ACT N/A	NSW ES(G)R 6(2)	QLD EIC 4.13	TAS ESI (TC)R 19
An instalment plan must:							
• take into account information about the customer's usage needs and capacity to pay when determining the period of the plan and calculating the amount of the instalments	✓	✓	✓		✓	✓	✓
• specify the period of the plan	✓	✓	✓		✓	✓	
• specify the number of instalments	✓	✓	✓		✓	✓	
– not less than 4 (unless the customer agrees otherwise)		✓				✓	
• specify the amount of the instalments which will pay the customer's arrears (if any) and estimated consumption during the period of the plan	✓	✓	✓		✓	✓	
• specify how the amount of the instalments is calculated	✓	✓	✓			✓	
• specify that due to seasonal fluctuations in the customer's usage, paying in instalments may result in the customer being in credit or debit during the period of the plan	✓	✓				✓	
• monitor the customer's compliance with the plan		✓	✓			✓	
• have in place fair and reasonable procedures to address payment difficulties a customer may face while on the plan	✓	✓	✓		✓	✓	
• make provision for re-calculation of the amount of the instalments where the difference between the customer's estimated consumption and actual consumption may result in the customer being significantly in credit or debit at the end of the period of the plan	✓		✓				
• offer energy efficiency advice			✓				
• offer advice on the availability of independent financial counsellors			✓				
• provide procedures that are fair and reasonable for dealing with payment difficulties faced by a customer who is obtaining the benefit of the scheme					✓		
• provides for monitoring of customer's electricity consumption (if instalment plan exceeds 3 months)							✓
• provide for adjustment of instalments by agreement (if instalment plan exceeds 3 months)							✓
• if the customer is to pay in advance, the basis on which instalments are calculated, and					✓		

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

11.3.3 Recommendation

In light of the general consistency between the WA Code and the SA, Qld and Vic. codes, the ECCC proposes that no amendments be made to clause 6.4 of the Code.

Recommendation 6.13
Retain clause 6.4 without amendment.

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

11.4.1 Background

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

Reduction of fees, charges or debt

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

Amend alternative payment arrangements

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

Information

Clause 6.8 of the Code requires a retailer to provide prescribed information to customers experiencing financial hardship. Information must be provided on the customer's right to have a bill redirected to a third person, availability of alternative payment arrangements, concessions, alternative metering arrangements (e.g. PPM), financial counselling services, and advice in relation to energy efficiency.

During the development of the Code, a number of stakeholders suggested that a retailer should be obliged to offer, free of charge, energy efficiency field audits to customers experiencing financial hardship.

However, the ERCF agreed that not all retailers will have the expertise to undertake such audits. It was therefore considered inappropriate to require retailers to undertake field audits. It was also noted that the provision of free energy efficiency field audits would be more appropriately addressed under a Government energy efficiency program than under the Code.

Section 43(2)(b) of the *Electricity Industry Act 2000* (Vic.) requires that provision for the auditing of a domestic customer's electricity usage and flexible options for the purchase of replacement electrical equipment be included within the hardship policy that must be approved by the ESC and/or the Minister.

Minimum advance payment amount

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

11.4.2 Research

Clause 6.6 – Reduction of fees, charges and debt

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

Clause 6.7 – Amendment of alternative payment arrangements

Only the *Electricity Supply Industry (Tariff Customers) Regulations 1998* (Tas.) contains a similar provision.[52] However, the trigger for amendment of an instalment plan under the Tas. regulations is not changes in the customer's ability to make payments under the plan, but agreement between the retailer and customer to take account of accruing liabilities for electricity consumption.

Clause 6.8 – Provision of information

Refer to table 6.1 for an overview of the information that other States require retailers to provide to customers experiencing payment difficulties.

Clause 6.9 – Advance payments

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

11.4.3 Recommendation

The ECCC notes that the obligations included in Division 3, subdivision 1 may exceed the current customer protection levels of codes in other States.

For many of the obligations included in Division 3, subdivision 1, no equivalent provisions exist in Eastern States' codes. Where equivalent provisions are included, the Code exceeds those of other States.

However, the ECCC also notes that hardship and affordability issues are key concerns of all stakeholders within the industry in other jurisdictions and that work is underway in a number of other States to address these issues. For example, in 2005, an expert Committee was formed in Vic. to advise the Government on key principles, policies and programs to address consumer hardship in the energy area. The ECCC understands that the Vic. Government is currently implementing a number of recommendations including legislation to prevent disconnection solely on account of a customer's incapacity to pay.

The ECCC recommends minor amendments to clauses 6.6 and 6.9 to incorporate the intent of the notes that previously lay below.

Recommendation 6.14

Include new clause 6.6(2) to read:

> In giving reasonable consideration under clause 6.6(1), a retailer should refer to the guidelines in its hardship policy referred to in clause 6.10(2)(d).

Recommendation 6.15

Amend clause 6.9 to read:

> (1) A ***retailer*** must determine a minimum payment in advance amount, as referred to in clause 5.4(3), for ***residential customers*** experiencing ***payment difficulties*** or ***financial hardship*** in consultation with ***relevant consumer representative organisations***.

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

(2) A ***retailer*** may apply different minimum payment in advance amounts for ***residential customers*** experiencing ***payment difficulties*** or ***financial hardship*** and other ***customers***.

11.5 Division 3, Subdivision 2 – Hardship policy

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

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

11.5.1 Research

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

However, the Vic. government has made provisions in its *Electricity Industry Act 2000* relating to financial hardship. These provisions deem as a licence condition the requirement for a retailer to develop a financial hardship policy and submit this to the ESC and, under some circumstances, the Minister for approval. A copy of the relevant provisions from the *Electricity Industry Act 2000* are attached at Appendix 12.

11.5.2 Recommendation

Although clause 6.10(1) requires a retailer to develop a hardship policy, there is no requirement for the hardship policy to be approved by an independent organisation, such as the Authority.

Some members of the ECCC argued that the Code does not provide a basis for approving a hardship policy as clause 6.10 provides minimal guidance as to the contents, and standards, to be included in a hardship policy.

Furthermore, the ECCC understands that clause 6.10(3) only requires a retailer to provide details of the hardship policy, not the hardship policy itself. This distinction was made in recognition of the fact that some of the contents of the policy may be confidential. Therefore, the ERCF did not consider it appropriate to require a retailer to provide copies of the hardship policy to third parties.

Although some members of the ECCC questioned the value of clause 6.10 (as currently drafted), it was agreed to retain clause 6.10 at this stage.

Recommendation 6.16
Retain clause 6.10 without amendment.

11.6 Division 4 – Business customers

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

11.6.1 Research

TheEnergy Retail Code[53] (Vic.) contains a provision similar to clause 6.11 of the Code. Under the Vic. code, if the retailer agrees to the customer's request, the retailer may impose an additional retail charge on the customer.

11.6.2 Discussion

The ECCC is of the opinion that it is unlikely that a retailer will refuse to negotiate an alternative payment arrangement with a business customer who is experiencing payment difficulties and therefore recommends its deletion. However, the ECCC seeks further input from small business representatives as to whether the clause should be retained or deleted.

Discussion Point (6.1)
Should clause 6.11 be retained or deleted?

[53] Refer to clause 12.3 of the Energy Retail Code (Vic.).

12 Part 7 – Disconnection

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

12.1 Background

As discussed in paragraph 10.7.2, section 79 of the Act does not provide the heads of power to grant rights to retailers or distributors. Therefore, the Code does not explicitly grant retailers and distributors the right to disconnect a customer's electricity supply. Instead, it regulates their conduct in relation to disconnection procedures.

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

12.2 Notes within Part 7

In accordance with Recommendation 1.1, the ECCC recommends the following amendments to the notes in Part 7 of the Code.

Recommendation 7.1
Delete objectives under Part 7 and include within Guide.

Recommendation 7.2
Delete note under "Division 1 – Conduct in relation to disconnection".

Recommendation 7.3
Delete note under clause 7.1(1)(c)(ii).

Recommendation 7.4
Delete note under clause 7.2(1)(a).

Recommendation 7.5
Delete note under clause 7.2(1)(f).

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

12.3.1 Background

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

During the development of the Code consumer representative organisations argued that failure to pay a bill or make payments under an instalment plan relating to a historical debt should not be grounds for disconnection.

However, the ERCF noted that the Code already grants customers the right to (re)negotiate instalment plans for outstanding debt. At the time, it was considered inappropriate to impose an unconditional prohibition upon retailers to disconnect a customer for failure to pay a debt relating to a previous supply address.

12.3.2 Research

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

In relation to SA and Qld, a retailer is only required to follow those procedures if the customer's failure to pay the bill is due to a lack of sufficient income.[54]

Section 43A of the *Electricity Industry Act 2000* (Vic.) deems that it is a licence condition that the licensee must not disconnect the supply of electricity to a domestic customer if that customer has entered into an agreement with the licensee under the terms of an approved financial hardship policy and is complying with the terms and conditions of the agreement.

Reminder notices and disconnection warnings (clause 7.1)

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

Refer to Appendix 13 for a jurisdictional comparison.

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

In addition to the requirement that a retailer notify a customer of its intention/ability to disconnect the customer's electricity supply, most States require certain conditions to be fulfilled before the retailer may arrange for disconnection for failure to pay a bill. Refer to Appendix 14 for a jurisdictional comparison.

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

Dual fuel contracts (clause 7.3)

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

Consistent with the SA code[55], the WA Code stipulates that for dual fuel contracts a retailer may only arrange for the disconnection of electricity supply 15 business days after gas supply has been disconnected. Although the Vic. code[56] also provides a shorter disconnection period for gas than electricity, it does not require that gas supply be disconnected before disconnection of electricity may occur.

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54 Refer to clause 9.2.1 of the Energy Retail Code (SA) and clause 4.17.2 of the Electricity Industry Code (Qld).

55 Refer to clause 9.2.3(b)(ii) of the Energy Retail Code (SA).

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

Furthermore, the Vic. code provides for amendment of tariffs, terms and conditions of the dual fuel contract upon disconnection of the customer's energy supply.[57]

12.3.3 Recommendation

The ECCC notes that Part 7, Division 1 is generally consistent with Eastern States' codes and therefore recommends no amendments be made to clauses 7.1 to 7.3 of the Code.

Recommendation 7.6
Retain clauses 7.1 to 7.3 without amendment.

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

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

12.4.1 Research

Most States permit a retailer to arrange for the disconnection of a customer's electricity supply in the event a customer fails to provide access to the meter. However, prior to disconnecting supply, the retailer must comply with prescribed procedures. Refer to the table below for a jurisdictional comparison.

Table 7.1: Jurisdictional comparison – Disconnection for denying access to meter

	WA Code 7.4	SA ERC 9.4	VIC ERC 13.3	NSW N/A	ACT N/A	QLD EIC 4.17.9	TAS ESI (TC)R 22
A retailer must **not** arrange for disconnection of a customer's electricity supply for denying access to the meter, unless:							
• the customer has denied access for:							
– 12 consecutive months	✓						
– 3 consecutive billing cycles		✓	✓			✓	
– 3 successive occasions							✓
• the retailer has requested access in writing at least five business days prior to a scheduled meter reading date	✓						
• the retailer has notified the customer each time the retailer was unable to access the meter		✓	✓			✓	
• the retailer has advised the customer that supply may be disconnected if access is not provided	✓	✓				✓	
• the retailer has given the customer sufficient opportunity to provide alternative access arrangements	✓	✓	✓			✓	
• the retailer has informed the customer of alternative metering arrangements (e.g. PPM or interval meters)	✓						
• the retailer has used best endeavours to	✓	✓	✓			✓	

[57] Refer to clause 13.1(c)(B) of the Energy Retail Code (Vic.).

contact the customer							
• the retailer has given the customer a disconnection warning:	✓	✓	✓			✓	✓
– with at least five business days notice	✓	✓				✓	✓
– with at least seven business days notice			✓				

12.4.2 Recommendation

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

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

In light of the total number of meter readings undertaken, it appears unreasonable to require a retailer to make such arrangements on an on-going basis.

The ECCC understands that members of the ERCF agreed that the requirement to notify a customer at least once before a scheduled meter reading was more useful than an obligation to notify the customer each time after the retailer had failed to gain access to the meter.

However, the ECCC also notes that the obligation included in clause 7.4(1)(b) appears ambiguous as it does not expressly refer to the meter reading date. The ECCC therefore recommends that clause 7.4(1)(b) be clarified as follows:

> The ***retailer*** has, prior to giving the ***customer*** a ***disconnection warning*** under subclause (f), at least once given the ***customer*** in writing 5 ***business days*** notice:
>
> - advising the ***customer*** of the next date of a scheduled meter reading;
> - requesting access to the ***meter*** for the purpose of the scheduled meter reading; and
> - advising the ***customer*** of the ***retailer's*** ability to arrange for disconnection if the ***customer*** fails to provide access to the ***meter***.

Some members of the ECCC noted that clause 7.4 appears to allow a retailer to disconnect a customer's electricity supply even if the customer has continued to pay its (estimated) bills while refusing access to the meter.

However, it was noted that, under the Metering Code, a distributor must obtain at least one actual meter reading a year. If a distributor is unable to meet its obligation due to a customer failing to provide access, a remedy should be available to compel the customer to provide access.

In addition, clause 7.4 does not provide a retailer with the right to disconnect a customer 's electricity supply for failure to provide access to the meter. It merely prescribes the standards that a retailer must take into account when disconnecting a customer's supply for failure to provide access.

The ECCC therefore agreed to retain clause 7.4.

Recommendation 7.7

Delete clause 7.4(1)(b) and insert instead:

The ***retailer*** has, prior to giving the ***customer*** a ***disconnection warning*** under subclause (f), at least once given the ***customer*** in writing 5 ***business days*** notice:

- advising the ***customer*** of the next date of a scheduled meter reading at the supply address;
- requesting access to the ***meter*** at the supply address for the purpose of the scheduled meter reading; and
- advising the ***customer*** of the ***retailer's*** ability to arrange for disconnection if the ***customer*** fails to provide access to the ***meter***.

12.5 Division 1, subdivision 3 – Disconnection for emergencies

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

12.5.1 Research

The ACT[58] Consumer Protection Code contains an obligation similar to the WA code. In addition, under the Qld and SA codes, a similar obligation is provided for under the standard connection (or equivalent) contracts.

12.5.2 Recommendation

Recommendation 7.8

Retain clause 7.5 without amendment.

12.6 Division 2, clause 7.6 – General limitations on disconnection

Clause 7.6 of the Code precludes a retailer from disconnecting a customer's electricity supply in prescribed circumstances. The conditions prescribed in clause 7.6 apply for any type of disconnection,[59] with the exception of disconnection for emergency reasons or upon request by the customer.

12.6.1 Research

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

[58] Refer to clause 19.3 of the Consumer Protection Code (ACT).

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

Table 7.2: Jurisdictional comparison – Limitations on disconnection

	WA Code 7.6	SA ERC 9.7	VIC ERC 14(c)	NSW ES(G)R Sch 3 14	ACT CPC 17.1	QLD EIC 4.17.13	TAS ESI (TC)R 24
A retailer must **not** arrange for disconnection of a customer's electricity supply:							
• **complaint**: if the customer has made a complaint, directly related to the reason for the proposed disconnection, to the retailer, distributor, electricity ombudsman or another external dispute resolution body and the complaint remains unresolved	✓	✓				✓	
• **hardship complaint**: if the Customer has made a hardship complaint to the ESCC following the non-payment of an Account and the ESCC has notified the Utility that the complaint has been received.					✓		
• **concessions**: if the customer has applied for a concession and a decision on the application has not been made		✓					
• after 2.00 pm Monday to Thursday (res. customers)			✓				✓
• after 3.00 pm Monday to Thursday	✓	✓		✓	✓	✓	
– business customers only			✓				
• after 12.00 noon on a Friday	✓						
• on a Saturday, Sunday, public holiday or on the business day before a public holiday, except in the case of a planned interruption	✓						
• on a Friday, on a weekend, on a public holiday or on the day before a public holiday		✓	✓	✓	✓	✓	✓
– except in the case of a planned interruption		✓					
• between 20 December and 31 December (inclusive) in any year.						✓	

12.6.2 Recommendation

The ECCC recommends that clause 7.6 of the Code be amended to preclude a retailer from disconnecting supply "on a Friday, weekend, public holiday or the day before a public holiday" consistent with the requirements of Eastern States' codes.

Recommendation 7.9

Delete clause 7.6(iii) and (iv) and insert instead:

(iii) on a Friday, on a weekend, on a public holiday or on the day before a public holiday.

12.7 Division 2, clause 7.7 – Life support

Clause 7.7 of the Code sets standards of conduct in relation to the supply of electricity to supply addresses where a resident depends on life support equipment (**life support**

address). Under clause 7.7, a retailer may not disconnect a life support address for failure to pay a bill. Furthermore, a distributor must provide customers residing at a life support address at least 3 days written notice of any planned interruptions.

12.7.1 Stakeholder perspectives

Western Power has requested that the obligation on a distributor to keep a register of life support addresses be removed from the Code. Western Power believes that it is sufficient for the retailer to keep the register and be responsible for ensuring that no disconnection requests are forwarded where the property is a life support address.

Western Power has advised that it already keeps a register of persons dependent on life support equipment (**WP register**). The WP register is kept for the purpose of establishing priority reconnection in the event of unplanned interruptions. That is, in case of an unplanned interruption Western Power will endeavour to first restore supply to customers included on the WP register.

The ECCC understands that a person is eligible for inclusion on the WP register if the person depends on life support equipment, as defined by Western Power, after medical advice. The definition employed by Western Power is more restrictive than the definition included in the Code.

The ECCC understands that, if Western Power would apply the Code definition of "life support equipment" to determine eligibility for the WP register, it would be difficult to establish priority as "too many" persons would be included on the list.

Western Power is of the opinion that the WP register is of more benefit to customers than the register it is required to keep under the Code. Therefore, it has requested that it no longer be required to keep a register of life support addresses for the purposes of the Code.

12.7.2 Research

All States prohibit the disconnection of electricity supply to life support addresses.[60]

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

Table 7.3: Jurisdictional comparison – Life support equipment (retailer)

	WA Code 7.7(1)	SA ERC 11.1	VIC ERC 26.7	NSW N/A	ACT CPC 10.1	QLD EIC 4.19	TAS ESI (TC)R 30
confirmation from medial practitioner: If a customer provides a retailer with confirmation from a medical practitioner that a person residing at the customer's supply address requires life support equipment, the retailer must:	✓	✓	✓		✓	✓	✓
• **register**: register the customer's supply address as a life support address	✓	✓			✓	✓	✓
• **give information to distributor**: give	✓	✓	✓		✓	✓	

[60] Refer to clause 9.7(b) of the Energy Retail Code (SA), clause 1.9.2 and 1.11.1 of the Electricity Distribution Code (SA), clause 14(b) of the Energy Retail Code (Vic.), clause 5.6.1 of the Electricity Distribution Code (Vic.), clause 10.1(3) of the Consumer Protection Code (ACT), Schedule 1, clause 7 of the *Electricity Supply (General) Regulation 2001* (NSW), clause 4.17.13(a)(ii) of the Electricity Industry Code (Qld) and section 42(1A) of the *Electricity Supply Industry Act 1995* and clause 30(1) of the *Electricity Supply Industry (Tariff Customers) Regulations 1998* (Tas.).

the customer's distributor relevant information about the customer's supply address [for the purpose of updating the distributor's records and registers]							
• **retailer's contact number**: give the customer an emergency telephone contact number					✓		✓
• **distributor's contact number**: give the customer an emergency telephone contact number for the customer's distributor		✓			✓	✓	
• **fault**: inform the distributor that the customer's supply address is affected by a fault, if the customer provides that information to the retailer			✓				
• **contingency plan**: assist the customer, upon request, to prepare a contingency plan in case of an unplanned interruption					✓		✓
• **planned interruption**: give the customer at least 4 business days' notice of any planned interruption							✓

Table 7.4: Jurisdictional comparison – Life support equipment (distributor)

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

[1] Standard Customer Connection Contracts only.

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

12.7.3 Recommendation

The ECCC notes that the Code does not require customers to inform their retailer or distributor of a relevant change in circumstance as the Code may not impose obligations on customers (refer to paragraph 10.7.2). Instead, the Code provides that a retailer's and distributor's obligations cease in the event the relevant person has vacated the supply address or no longer requires life support equipment.

The ECCC also notes that the requirement that a distributor provide 3 days' notice of planned interruptions was drafted to be consistent with Schedule 1, clause 6 of the *Electricity (Supply Standards and System Safety) Regulations 2001*. Although Schedule 1 has since been repealed, a similar obligation has been included in the *Electricity Industry (Network Quality and Reliability of Supply) Code 2005* (refer to clause 11 which requires a distributor to give 72 hours notice of planned interruptions) (**Quality and Reliability of Supply Code**).

The only difference between both obligations is that notice under the Code must be given in writing.

In relation to Western Power's request for deletion of clause 7.7(2) of the Code, the members of the ECCC support Western Power's request on the grounds that:

- clause 11 of the Quality and Reliability of Supply Code already requires Western Power to provide customers 3 days notice of planned interruptions;
- a prohibition to disconnect for failure to pay a bill is more appropriately imposed upon a retailer, as the retailer is responsible for all billing arrangements (refer subclause (2)(b)); and
- it appears unduly onerous to require Western Power to keep two registers in relation to life support addresses, particularly as the WP register would appear to be of more value to customers requiring life support.

Recommendation 7.10
Delete clause 7.7(2)

12.7.4 Discussion

Discussion Point (7.1)
Should the WP register for priority reconnection be contained within the Code?

13 Part 8 – Reconnection

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

13.1 Notes within Part 8

In accordance with Recommendation 1.1, the ECCC recommends the following amendments to the notes in Part 8 of the Code.

Recommendation 8.1

Delete objectives under Part 8 and include within Guide.

Recommendation 8.2

Delete note under heading of clause 8.1

13.2 Clause 8.1 – Reconnection by retailer

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

13.2.1 Research

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

Notable differences between the obligation to reconnect include:

- under the SA and Vic. codes, a customer's right to reconnection is subject to the customer remedying the breach within 10 business days of the date of disconnection;[61]
- under the SA, Vic. and Tas. codes and regulations, the obligation to reconnect[62] the supply address is imposed upon the retailer – not the distributor.[63] In fact, the Energy Retail Code (Vic.) specifically provides that the obligation of a retailer to reconnect a customer is absolute: *"If reconnection does not occur by the relevant time, it is not sufficient to discharge the retailer's obligation that the retailer may have used best endeavours to procure the relevant distributor to reconnect …"*.

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

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61 Refer to clause 10.1 of the Energy Retail Code (SA) and clause 15.1 of the Energy Retail Code (Vic.).

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

63 Refer to clause 10.2, 10.4 and 10.6 of the Energy Retail Code (SA); clause 15.2(b) of the Energy Retail Code (Vic.); clause 25 of the *Electricity Supply Industry (Tariff Customers) Regulations 1998* (Tas.).

Table 8.1: Jurisdictional comparison – Timeframes for reconnection by retailer

	WA Code 8.1	SA ERC 10	VIC ERC 15.2	NSW ES(G)R Sch 2 13(3)	ACT N/A	QLD EIC 4.18	TAS ESI (TC)R 25
Same business day, if the request is received:							
• before 1pm on a business day (CBD or urban feeder)						✓	
• before 3pm on a business day	✓		✓				
• after 3pm but before 9pm on a business day + customer pays any applicable additional after hours reconnection charge			✓				
• before 4pm on a business day (if practicable)							✓
• before 4pm on a business day in metropolitan area (only reasonable endeavours for regional area)		✓					
• after 4pm but before 9pm on a business day + customer pays any applicable additional after hours reconnection charge + customer resides in metropolitan area (only reasonable endeavours for regional area)		✓					
Next business day, if the request is received:							
• after 1pm on a business day (CBD or urban feeder)						✓	
• after 3pm on a business day	✓						
• after 3pm but before 9pm on a business day + customer fails to pay any applicable additional after hours reconnection charge			✓				
• after 4pm on a business day							✓
• after 4pm but before 9pm on a business day + customer fails to pay any applicable additional after hours reconnection charge		✓					
• after 9pm on a business day		✓	✓				
• on a Saturday, Sunday or public holiday	✓	✓	✓			✓	
• relates to short rural feeder						✓	
Promptly forward request for reconnection to distributor				✓			
As agreed with customer (long rural feeder)						✓	

13.2.2 Recommendation

The ECCC notes that the timeframe of 10 business days for remedying a breach (as prescribed under the SA and Vic. codes) appears unduly short. For customers on standard form contracts, the timeframe also appears redundant as these customers have a right to supply under the *Electricity Industry (Customer Contracts) Regulations 2005*.[64] That is, even if a customer fails to remedy a breach within 10 business days, these regulations require Synergy and Horizon Power to offer to supply electricity under the same contractual arrangements as applied before the breach occurred. The ECCC therefore recommends that no such condition be included in the Code.

The ECCC also considers it inappropriate to impose the obligation to reconnect on the retailer, as opposed to the distributor, as the retailer is not in a position to perform reconnections. It appears appropriate, as provided for by the Code, to require a retailer to forward the application within prescribed timeframes while the obligation to reconnect remains with the distributor.

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

Recommendation 8.3
Retain clause 8.1 without amendment.

13.3 Clause 8.2 – Reconnection by distributor

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

13.3.1 Research

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

Table 8.2: Jurisdictional comparison – Time frames for reconnection by distributor

	WA Code 8.2	SA EDC 1.10	VIC EDC 13
Same business day, if the request is received:			
• before 3pm on a business day by retailer or distributor			✓
• before 4pm on a business day by retailer (only best endeavours for regional area)		✓	
• before 5pm on a business day by distributor (only best endeavours for regional area)		✓	
• by retailer or distributor after 3pm but before 9pm on a business day + customer pays any applicable additional after hours reconnection charge			✓
• by retailer after 4pm but before 9pm on a business day + customer pays any applicable additional after hours reconnection charge + customer resides in metropolitan area (only reasonable endeavours for regional area)		✓	
• by distributor after 5pm but before 10pm on a business day + customer pays any applicable additional after hours reconnection charge + customer resides in metropolitan area (only reasonable endeavours for regional area)		✓	
Next business day, if the request is received:			
• before 3pm on a business day by distributor + supply address in metropolitan area	✓		
• after 3pm but before 9pm on a business day + customer fails to pay any applicable additional after hours reconnection charge			✓
• by retailer after 4pm but before 9pm on a business day + customer fails to pay any applicable additional after hours reconnection charge		✓	
• by distributor after 5pm but before 10pm on a business day + customer fails to pay any applicable additional after hours reconnection charge		✓	
• after 9pm on a business day by retailer		✓	
• after 9pm on a business day by distributor			✓
• after 10pm on a business day by distributor		✓	
• on a Saturday, Sunday or public holiday		✓	✓
Within 2 business days, if the request is received after 3pm on a business day or on a Saturday, Sunday or public holiday + supply address in metropolitan area	✓		
Within 5 business days, if the request is received prior to 3pm on a business day + supply address in regional area	✓		
Within 6 business days, if the request is received after 3pm on a business day + supply address in regional area	✓		

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

13.3.2 Recommendation

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

The ECCC understands that the ERCF agreed to the timeframes of 5 and 6 business days for regional areas in recognition of the fact that Western Power generally visits remote towns once a week. Western Power Corporation advised at the time that considerable costs would be involved if Western Power Corporation would be required to visit these towns more often.

Recommendation 8.4
Retain clause 8.2 without amendment.

14 Part 9 – Pre-payment meters in remote communities

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

Part 9 was included in recognition of the fact that various Parts of the Code would not be applicable in a PPM situation as these Parts are based upon the assumption that customers pay for their electricity after consumption has occurred. Part 9 aims to ensure that customers who choose to pay for their electricity through PPMs receive comparable protection to that provided for customers who use standard meters.

14.1 Background

14.1.1 Pre-payment meters

Pre-payment or "pay-as-you-go" meters require a customer to pay for electricity prior to consumption. A customer must purchase "credit" from a designated outlet and download the credit onto the PPM. The PPM will allow the customer to consume electricity to the value of the amount of credit downloaded.

Once the customer's credit runs out, the supply of electricity to the customer's supply address is disconnected. The customer's electricity supply will remain disconnected until additional credit is downloaded onto the PPM.

Various types of PPM are available, each with their own functionalities. Some PPMs require credit to be downloaded onto the PPM through the use of a pre-payment card (either single or multiple use), others use keypad technology and emerging models are able to be programmed using wireless and GPS (global positioning system) technology. Some meters are able to provide consumption data back to the retailer remotely (for example, either through the use of a smart-card or remote control technology), while others require manual reading.

The PPM function itself may be provided by:

- a dedicated PPM meter;
- a "standard meter" that has been programmed to function as a PPM; or
- a device fitted to a "standard meter" enabling the "standard meter" to function as a PPM.

PPMs currently used in WA are AMPY Magnetic Card Operated Prepayment Meters (CPM). AMPY is the major provider of PPMs in Australia.

14.1.2 Use of PPMs

PPMs are used increasingly throughout the world. According to a report by KMPG on consumer issues with PPMs:[65]

> PPMs have been established in the UK for many years and are being adopted in a growing number of countries. These include countries in Africa and South America, as well as Ireland, New Zealand, New Guinea and Fiji.

[65] KPMG, *Consumer issues with pre-payment meters – Final Report*, April 2004, pg. 15.

Australia

In Australia, the use of PPMs is most prolific in Tas. As at October 2005, approximately 17.5% of Tas. electricity customers had their electricity supplied through a PPM.[66]

At present, the use of PPMs in Tas. is unregulated. However, the Office of the Tasmanian Energy Regulator has referred the issue of PPM Code development to the Tas. Code Change Panel. The Code Change Panel has developed a draft PPM Code which is substantially similar to the SA PPM Code. The ECCC understands that the primary motivation for Code development in Tas. is the significant extent of PPM implementation and issues regarding financially disadvantaged or vulnerable customers.

In the Northern Territory (**NT**), the ECCC understands from AMPY that over 7000 PPMs have been installed, mainly in Aboriginal communities. Many of these PPMs have been designed to include a facility for the pre-payment of water as well as electricity.

NSW commissioned a study into PPMs in 2003, but has to date not taken any further action.[67]

In Vic., it is a condition of each retailer's electricity licence that the licensee does not implement a pre-payment meter scheme without the prior approval of the ESC. However, to date the ESC has not received an application for approval from any licensee. At the same time, the Minister has reserved the right to make an order regarding PPMs under section 40E of the *Electricity Industry Act 2000* (Vic.).[68]

In Qld, PPMs have been used in some remote communities for a number of years. The ECCC understands that there have been some other trials in town areas over the years, however, PPM usage has not expanded. The Qld Department of Energy has advised that the use of PPMs in Qld is currently unregulated.[69]

SA and the ACT have developed PPM codes to govern the use of PPMs in these jurisdictions. These codes are relatively new and the ECCC understands that roll-out of PPMs has been slow to date.

Western Australia

In WA, PPMs are currently being rolled out in town reserves and communities taking part in the Aboriginal and Remote Communities Power Supply Project and the Town Reserves Regularisation Project. Refer to Appendix 15 for a list of the communities and town reserves involved.

Both projects provide for the transfer of electricity retail and distribution responsibilities from the communities and town reserves involved to Horizon Power. The projects are jointly funded by the State and Federal governments.

The objective of both programs is to improve the quality and reliability of supply to remote communities and town reserves by regularising their electricity supply. In addition, it is anticipated that regularisation of supply will result in significant cost reductions for the communities and customers involved.

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66 Office of the Tas. Energy Regulator, *Aurora Pay As You Go Review – Final Report*, October 2005, pg. 5.

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

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

69 Regulation 83(d) of the *Electricity Regulation 1994* (Qld) allows a retailer to use methods of charging for electricity supplied or sold by the entity to customers the entity considers appropriate, including, payment in advance by using a credit meter.

The ECCC understands that in developing the supply arrangements for the communities to be serviced by ARCPSP, the State and Federal Governments agreed that pre-payment meters be installed for all residential customers in these communities. The ECCC understands that this was done in an effort to ensure that the business risks associated with the new non-interconnected systems are minimised and that the underlying funding arrangements are sustainable. Community consent to the installation of pre-payment meters was made a prerequisite for participation in ARCPSP. The ECCC understands that all of the five communities were consulted on the use of pre-payments meters as part of the ARCPSP supply arrangements and agreed to be included in the project on this basis.

14.1.3 Advantages and disadvantages of PPMs

Opinions differ about the desirability of PPMs. Proponents generally argue that PPMs are a useful budgeting tool for many customers as they allow customers to monitor and, if necessary, adjust their consumption. Critics often argue that PPMs do not address the "real" issue, i.e. a customer's inability to pay and can, in fact, result in more frequent outages and disconnection.

Appendix 16 lists a number of studies undertaken in relation to PPMs. Of particular interest is a study undertaken by KPMG on behalf of the Essential Services Commission of SA (**ESCOSA**). The study (**KPMG report**[70]) examines potential consumer issues with the installation of PPMs in SA.

In summary, the KPMG report concluded that PPMs have the potential to offer benefits to many customers, while they may present concerns to some customers, particularly more vulnerable customers.

To date, no research has been undertaken in relation to the need and/or desirability of roll-out of PPMs in WA.

Advantages of PPMs

The KPMG report identified a number of benefits associated with PPMs, including:[71]

- an increased ability for consumers to monitor and adjust electricity expenditure, as the PPM can provide real time information on usage rates and costs*;
- avoidance of large bills, as PPMs allow customers to pay for electricity in more frequent, smaller increments;
- allowing payment to be better aligned with electricity consumed, thus avoiding overpayment resulting from either estimated meter readings, where the meter has not been able to be read, or errors in meter reading;
- avoidance of disconnection/reconnection fees, charged under other arrangements to consumers who cannot afford to pay their electricity bills;
- eliminating the need to accommodate meter readers for security conscious consumers;
- providing a convenient way to repay debt where a portion of the consumer's credit purchase will automatically go towards repaying previous debt; and
- the ability for consumers to be offered more flexible tariff structures, for example time-of-use tariffs, where that functionality is provided by the PPM and the retailer chooses to offer a more flexible tariff*.

It should be noted that a number of advantages listed above are particular to the type of technology utilised. The meters currently being installed or operating in ARCPSP and TRRP communities are not the most sophisticated PPMs available and therefore may not provide capacity for these benefits. The points distinguished by an '*' at the end of the

70 KPMG, *Consumer issues with pre-payment meters – Final Report*, April 2004.

71 KPMG, *Consumer issues with pre-payment meters – Final Report*, April 2004, pg. 1-2.

sentence indicate a benefit that may not be derived from the technology in use in ARCPSP and TRRP communities.

Also, in its report, KPMG noted that many of the benefits associated with PPMs could also be achieved through alternative mechanisms. For example, large bills could also be avoided through bill smoothing or Centrepay.

Disadvantages of PPMs

The KPMG report also identified various concerns in relation to the use of PPMs, including:[72]

- the hidden nature of fuel related poverty where PPMs are installed, as the rates of disconnection are not necessarily recorded and the aggregate effect on consumers is therefore not measured;
- the absence of an effective safety net for consumers (e.g. hardship policies, instalment plans, etc);
- the potential for consumers to be coerced into installing a PPM (e.g. customers with bad debts, where a customer moves into a premises already fitted with a PPM, where a caravan park or retirement village owner installs PPMs or makes the rental agreement subject to a customer having a PPM installed, etc);
- use of the PPM (e.g. complicated system, inconvenient location/display, access to recharge facilities, etc);
- health and safety issues as a result of (frequent) disconnection; and
- higher costs (e.g. no credit retrieval, higher tariffs, entry and exit fees, costs in relation to purchasing credit (such as time, travel, inconvenience), etc).

14.1.4 Customer experience

Most customers who receive electricity supply through a PPM appear to be satisfied with their chosen payment method.

Surveys carried out in the United Kingdom in 1997[73], 1999[74] and 2001[75] indicated high levels of customer satisfaction (93%, 91% and 85% respectively). Furthermore, in respect of the 2001 survey, two thirds of those customers who indicated that they were satisfied with their PPM were aware that this method of payment was more expensive, in the UK, than other methods.

In 2006, a similar survey was carried out in Tas. by the Tasmanian Council of Social Services (**TasCOSS**)[76]. One of the questions in the survey asked whether – if a customer was able to switch meter systems today without cost – would the customer keep using their PPM or change to a standard meter and receive quarterly bills. Of those customers surveyed, 95% said that they would keep using their PPM.[77]

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72 KPMG, *Consumer issues with pre-payment meters – Final Report*, April 2004, pg. 3-4.

73 MORI, *Electricity Competition Review Research Study Conducted for OFFER*, June 1999, pg. 92.

74 MORI, *Electricity Competition Review Research Study Conducted for OFFER*, June 1999, pg. 92.

75 Electricity Association, *Affording Gas and Electricity: Self Disconnection and Rationing by Prepayment and Low Income Credit Consumers and Company Attitudes to Social Action*, March 2001, pg. 2.

76 TasCOSS, *Pre-payment meters in Tasmania: Consumer views and issues*, August 2006.

77 TasCOSS, *Pre-payment meters in Tasmania: Consumer views and issues*, August 2006, pg. 41.

The results of the TasCOSS survey are similar to those of a survey carried out by Aurora Energy in 2003. The research carried out by Aurora Energy demonstrated an overall customer satisfaction level of 94%.[78]

14.2 Notes within Part 9

In accordance with Recommendation 1.1, the ECCC recommends the following amendments to the notes in Part 9 of the Code.

Recommendation 9.1
Delete objectives and include within Guide.

Recommendation 9.2
Delete notes under clause 9.2(1) and include within Guide.

Recommendation 9.3
Delete note under clause 9.2(2) and include within Guide.

Recommendation 9.4
- Delete note under clause 9.4(1)(d).
- Amend clause 9.4(1)(d) to read:

  how the ***residential customer*** may recharge the ***pre-payment meter*** (including details of cost, location and business hours of ***recharge facilities***).

Recommendation 9.5
Delete note under clause 9.8 and include within Guide.

14.3 Clause 9.1 – Definitions

Clause 9.1 of the Code includes definitions for "credit retrieval", "pre-payment meter customer" and "recharge facility". A definition of the term "pre-payment meter" is included in clause 1.5 of the Code.

14.3.1 Recommendation

A "pre-payment meter customer" is currently defined as a customer who has a pre-payment meter "installed" at the customer's supply address. The ECCC is aware that the PPMs used by Horizon Power and emerging PPM technology have the capacity to be programmed as either credit or debit meters. Therefore, a PPM may be installed at a customer's address but may or may not be operating as a PPM. Part 9 coverage is only intended for circumstances where a PPM is operated as a debit meter not when operating as a credit meter.

Recommendation 9.6
Delete the word "installed" from the definition of "pre-payment meter customer" in clause 9.1 and include instead "operating".

[78] Office of the Tasmanian Energy Regulator, *Aurora Pay As You Go Review – Final Report*, October 2005, pg. 37.

Throughout Part 9 the words “install”, “installation”, “installed” appear in clauses 9.1, 9.3(1), 9.4(1)(b) and 9.4(2). The ECCC proposes a similar amendment be made to remove these and replace with “operating”, “operate”, “operation” and “operated” as appropriate.

Recommendation 9.7

Delete the words “install”, “installation” and” installed” as they appear in clauses 9.1, 9.3(1), 9.3(2) and 9.4(1)(b) and include instead “operating”, “operate”, “operation” and “operated” as appropriate.

14.4 Clause 9.2 – Application

14.4.1 Background

Clause 9.2(2) of the Code specifies that Part 9 only applies to pre-payment meter customers located in remote or town reserve communities taking part in the ARCPSP or TRRP.

The ECCC understands that, during the development of the Code, one of the members of the ERCF raised concerns in relation to a general roll-out of PPMs in WA. At that time, members of the ERCF agreed to limit the scope of Part 9 to those communities that agreed to participate in the ARCPSP or TRRP.

14.4.2 Stakeholder perspectives

Horizon Power has indicated that it would like to offer the installation of PPMs to customers throughout its operating areas. Horizon Power believes that it is important to offer customers choice and is strongly in favour of extending the Part 9 provisions to all of WA.

Synergy has indicated that they would like the discretion to be able to offer PPMs to their customers. Synergy considers that customers should have the choice to accept a PPM if the service is offered by a retailer irrespective of the geographic location or customer demographic. Synergy has also indicated that retailers should not be compelled to provide PPMs, that it is appropriate that service standards applicable to PPMs be prescribed and that public consultation occur on these standards.

The Office of Energy has highlighted that there are Aboriginal communities that are not strictly defined as being town reserves under TRRP but have identical supply arrangements to town reserves. That is, there are entire communities that are supplied by Horizon Power via a single meter and account. The current application of the Code to only ARCPSP and TRRP communities prevents Horizon Power (or Synergy) offering its customers in these communities the option of using pre-payment meters.

The Office of Energy believes that extension of Part 9 of the Code to cover all of the Aboriginal communities currently supplied by Synergy and Horizon Power would align with the policy intent of the TRRP (i.e. regularisation), provides more flexibility for these customers and alleviates the pressure on the communities to act as retailers. It also does not make the operation of pre-payment meters in these communities dependent on TRRP funding.

WACOSS has indicated that they would consider supporting the expansion of PPMs into further prescribed areas if the following conditions were met:

- Provision of analysis confirming that the use of PPMs in ARCPSP and TRRP communities has not resulted in negative impacts on consumers.

- That the meters used in new prescribed areas were based on technology capable of providing:
  - Automatic switch to emergency credit;
  - Information regarding the frequency and duration of disconnections;
  - Information regarding current consumption; and
  - Information about total consumption, daily average consumption, costs of consumption and other costs.
- There is no cost to users for installation, connection, disconnection, reconnection or return to standard meter.
- The areas were identified by thorough and consultative research as appropriate locations for expanded trials.
- There was a commitment to monitoring and reporting on the trials.

14.4.3 Discussion

Although the Code does not preclude retailers from installing PPMs, in practice, installation of PPMs outside of ARCPSP and TRRP communities is problematic as clause 9.2(2) indicates that Part 9 (including the exemption of clause 9.2(1)) does not apply in those situations. Without the application of Part 9, a licensee cannot be granted the exemptions it provides for Parts 4, 5, 6 (with the exception of clause 6.10), 7 and 8 and clauses 2.7, 10.2 and 10.7 of the Code. Without the exemptions, service provision with a PPM would be nonsensical (for example) because a licensee would still be required to issue regular bills even though there is no consumption payable by bill. Compliance with the Code may not be possible in these instances, therefore, in practice, licensees are prevented from offering PPMs to customers outside prescribed areas.

There are a variety of opinions amongst stakeholders as to the merits of PPMs and the principles that should be used when giving this matter further consideration.

The ECCC seeks further input from stakeholders regarding this issue during the public consultation phase. Stakeholders are encouraged to substantiate their claims by providing further evidence.

Discussion Point (9.1)

Should clause 9.2(2) be amended to allow operation of PPMs outside of ARCPSP and TRRP communities?

If so, should there be universal application or only in additional specified areas?

If so, what changes should be made to Part 9?

What evidence can be provided to substantiate this position?

Discussion Point (9.2)

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

If so, on what basis?

Discussion Point (9.3)

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

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

SA and the ACT have catered for the use of PPMs in their respective States through the development of specific codes. Retailers who wish to supply customers through PPMs in SA and the ACT must do so in accordance with their respective Prepayment Meter System Codes. However, as yet, the take-up of PPMs in these States has been limited. This may be explained, in part, by the fact that approval was only recently granted.

The SA and ACT codes include various matters that are currently not addressed under the WA Code. These codes are attached at Appendices 18 and 19 respectively. The ECCC is interested in receiving feedback from stakeholders as to whether additional provisions that are contained in other codes should be included in Part 9 and if so, on what basis.

Discussion Point (9.4)

If clause 9.2(2) is amended to allow operation of PPMs outside of ARCPSP and TRRP communities should provisions similar to those contained in ACT and SA code be added to Part 9?

If so, should an exemption apply for ARCPSP and TRRP communities and, if so, on what basis?

14.5 Clause 9.3 – Consent

Clause 9.3(1) of the Code requires a retailer to obtain a customer's, or a customer's nominated representative's, verifiable consent prior to installing a PPM. Subclause (1) aims to ensure that customers are not coerced into accepting a PPM.

In addition, subclause (2) requires a retailer to establish an account for each PPM installed or operated by the retailer. Subclause (2) aims to ensure that a retailer collects essential data for any of its PPMs, such as the location of the PPM, the customer associated with the PPM and the customer's consumption data (if applicable).

14.5.1 Stakeholder perspectives

Consumer representative organisations often cite the issue of coercion as one of the major concerns in relation to PPMs. They generally argue that customers with bad debts could be specifically targeted by retailers wishing to install PPMs. These customers may believe that they have no choice but to agree to the use of a PPM in light of their bad debt history. This is especially problematic if a prepayment metering arrangement is not the most appropriate arrangement to meet a customer's needs.[79]

[79] Also refer: KPMG, *Consumer issues with pre-payment meters – Final Report*, April 2004, pg. 79.

According to the KPMG report[80], (actual or perceived) coercion may arise through:

- the pre-existence of meters at a supply address, providing an incentive for a customer to maintain the metering arrangement;
- retirement or caravan park owners installing PPMs, leaving tenants no choice about their metering arrangements;
- the exit and entry costs of switching meters; and
- a customer paying off a debt with the retailer through the PPM.

The ECCC understands that Horizon Power provides an education program for all households prior to the agreement for PPM installation, undertakes ongoing liaison with Housing Officers in ARCPSP and TRRP communities and is considering providing follow-up education sessions. The ECCC understands that around 95% of customers have agreed to have PPMs installed and that there has been a strong demand from customers actively approaching Horizon Power requesting installation.

The PPM model used by Horizon Power can be switched, by a meter operator, to become a credit meter. Horizon Power has indicated that if a customer chooses to return to a credit meter arrangement then this would be easily organised.

The ECCC understands that the Office of Energy is keen to ensure that the Code provides a clear indication of verifiable consent. Particularly where the verifiable consent is provided by a customer's nominated representative (in most cases, the Aboriginal Corporation, Council or Association of the community) in relation to the roll out of PPMs under the ARCPSP.

14.5.2 Research

The SA[81] and ACT[82] Prepayment Meter System Codes require a retailer to obtain a customer's explicit informed consent to enter into a PPM contract in provisions similar to clause 9.3(1).

The following table compares the definitions of explicit informed (or verifiable) consent for WA, SA and ACT.

Table 9.1: Definitions of explicit informed / verifiable consent in WA, SA and ACT.

	WA COC 1.5	SA ECTCC 2	ACT CPC 32
Provision of information	The marketer or retailer must, in plain language appropriate to that customer, disclose all matters materially relevant to the giving of consent, including each specific purpose for which the consent will be used.	• Retailer has fully and adequately disclosed all matters relevant to that customer, including each specific purpose for which the consent will be used. • All disclosures are truthful and have been provided in plain language appropriate to that customer.	Customer must have been fully and accurately informed of what the customer is consenting to.
Understanding	Customer must provide consent expressly.	Customer provides express conscious agreement.	Customer must understand what they are consenting to.

80 Also refer: KPMG, *Consumer issues with pre-payment meters – Final Report*, April 2004, pg. 79.

81 Refer to clause 2.2.1 of the *Prepayment Meter System Code* (SA).

82 Refer to clause 4.2(1) of the *Prepayment Meter System Code* (ACT).

Person who may provide consent	Customer or a nominated person competent to give consent on the customer's behalf.	Customer	Customer
Form of consent			
• **writing**	✓	✓	✓
• **verbally**	✓	✓	
• **electronically**	✓[1]	✓	✓
Record keeping		A retailer must retain records of any explicit informed consent obtained for at least 2 years.	

[1] Although not expressly provided, consent may be provided electronically as "in writing" includes by electronic means under the *Electronic Transactions Act 2003*.

Both the SA[83] and ACT[84] codes specify that the explicit informed consent of a customer can be obtained only after timely, accurate, verifiable and truthful information about the contract has been provided to the customer.

Furthermore, the SA code[85] stipulates that a retailer must not use undue harassment or coercion in connection with the sale or possible sale of energy to a customer under a PPM contract.

The ACT code[86] precludes a retailer from requiring a customer to install or maintain the installation of a PPM system.

14.5.3 Recommendation

The ECCC notes that the requirements for installation of a PPM in WA are generally consistent with those in SA and ACT with two notable exceptions:

- the SA and ACT codes include provisions relating to marketing of PPMs whereas the Code contains provisions that concern marketing generally; and
- Part 9 of the Code expressly allows a customer to nominate a representative to provide consent on its behalf.

Marketing

Unlike Part 9 of the WA Code, the SA and ACT codes include provisions relating specifically to the marketing of PPM contracts. For example, the SA code precludes a retailer from unduly harassing or coercing a customer to install a PPM.[87]

The ECCC queries the need for inclusion of similar marketing provisions in Part 9 as a retailer is already required to comply with the marketing provisions included in Part 2 of the Code. It is the view of the ECCC that this would result in unnecessary duplication.

Nomination of a representative

The ECCC understands that the phrase "or the customer's nominated representative" was, partly, included to ensure that residents of remote communities and town reserves

83 Refer to clause 2.2.2 of the *Prepayment Meter System Code* (SA).

84 Refer to clause 4.2(2) of the *Prepayment Meter System Code* (ACT).

85 Refer to clause 2.2.3 of the *Prepayment Meter System Code* (SA).

86 Refer to clause 4.1(3) of the *Prepayment Meter System Code* (ACT).

87 Refer to clause 2.8(2) of the Code for a similar prohibition for WA retailers and marketers.

could nominate one or more persons (from their community) to negotiate the instalment of pre-payment meters on their behalf (for example, in relation to participation in the ARCPSP or TRRP).

The ECCC understands that, in practice, there is a lack of clarity surrounding the definition of the "customer's representative". There is also a lack of clarity regarding the circumstances where disagreement may exist between the "customer" and the "customer's representative".

The ECCC understands that the Office of Energy is keen to ensure that the Code is consistent with the Government's policy with regard to the implementation of ARCPSP. The ECCC understands that the Office of Energy believes that a clearer indication of verifiable consent for the installation and operation of prepayment meters in ARCPSP is required.

The Office of Energy has requested that an amendment be made to ensure that, in the case of ARCPSP, the relevant Aboriginal Corporation, Council or Association be deemed to be these customers' nominated representative for the purposes of this project and that the approval of the Aboriginal Corporation, Council or Association be the only consent requirement. To make this type of change an additional subclause would be added to clause 9.3(1). This subclause would need to include a statement that clause 9.3(1) does not apply to ARCPSP.

The ECCC has received legal advice that this type of amendment may require further legal investigation prior to proceeding. For this reason, the ECCC recommends no such amendment proceed at this time.

Recommendation 9.8
Subject to recommendation 9.7, retain clause 9.3(1) without amendment.

14.6 Clause 9.4 – Information requirements

For a customer to make a decision about whether to commence, stay with or exit from a PPM arrangement, the customer must have access to comprehensive information on PPMs.[88] Clause 9.4 therefore stipulates the information a retailer must provide to a customer:

- upon request (subclause 1 and 4);
- at the time of installation (subclause 2); and
- on, or directly adjacent to, the PPM (subclause 3).

14.6.1 Research

Both the SA[89] and ACT[90] codes require a retailer to provide prescribed information to customers in relation to the installation of PPMs. Refer to Appendix 17 for an overview of the type of information that must be provided.

The ECCC notes that, although the information listed in clauses 2.3 (SA) and 4.3 (ACT) is nearly identical, the timing for providing the information appears different. Under the ACT

88 Also refer: KPMG, *Consumer issues with pre-payment meters – Final Report*, April 2004, pg. 40.

89 Refer to clauses 2.3.2, 2.4.1 and 2.4.3 of the *Prepayment Meter System Code* (SA).

90 Refer to clauses 4.3, 4.4 and 4.7 of the *Prepayment Meter System Code* (ACT).

code, the information must be provided prior to the customer entering into the contract where practicable.[91]

Under the SA code, the information must be provided "at the time" the contract is entered into.[92] This appears to imply that the information may, for example, be included in the contract without previously having been given to the customer.

The timing for providing information under the SA code is similar to that under the WA Code.

14.6.2 Recommendation

Subclause (1)

Subclause (1) requires a retailer to provide a customer with information upon the customer's request. No obligation currently exists upon a retailer to provide the information to a customer other than upon the customer's request.

It could be argued that this information should be provided to any customer prior to the customer entering into a PPM contract with the retailer.

However, clause 2.6 already lists the information a retailer must provide to a customer prior to the customer entering into a contract. A requirement to provide additional information in relation to PPM contracts would be inconsistent with clause 2.6 of the Code.

Therefore, the ECCC recommends no amendments be made to clause 9.4(1).

Recommendation 9.9

Subject to recommendation 9.4 and 9.7, retain clause 9.4(1) without amendment.

Subclause (2)

Subclause (2) lists the information that must be provided by a retailer "at the time a pre-payment meter is installed" or "an account is established".

The ECCC notes that the current wording of subclause (2) appears ambiguous as it refers to "at the time a pre-payment meter is installed" or "an account is established" without indicating any order between these events. Furthermore, a PPM could be installed or an account could be established well after a customer has entered into a contract.

The ECCC therefore recommends amendment of clause 9.4(2) by replacing "at the time a pre-payment meter is installed" and "an account is established" with "at the time a customer enters into a pre-payment meter contract."

Recommendation 9.10

Delete the words "at the time a pre-payment meter is installed" and "an account is established" in clause 9.4(2) and include instead:

at the time a residential ***customer*** enters into a ***pre-payment meter contract***.

Furthermore, the ECCC notes that the information included in subclause (2) differs substantially from the information that must be provided under the SA and ACT codes. (refer to Appendix 17, table 9.6)

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91 Refer to clause 4.5 of the *Prepayment Meter System Code* (ACT).

92 Refer to clause 2.3.2 of the *Prepayment Meter System Code* (SA) in conjunction with clause 14 of the *Energy Marketing Code* (SA).

The ECCC is interested in receiving feedback from stakeholders as to whether clause 9.4(2) should be amended to improve consistency with Eastern States' legislation.

Discussion Point (9.5)
If clause 9.2(2) is amended to allow operation of PPMs outside of ARCPSP and TRRP communities should clause 9.4(2) be amended to ensure consistency with the SA and ACT codes?

Subclause (3)

Subclause (3) requires a retailer to ensure that prescribed information is displayed on or adjacent to the PPM.

Horizon Power has advised that subclause (3) appears to favour certain types of PPMs. The requirement in subclause (3) that information is displayed on or directly adjacent to the PPM appears to preclude the use of PPMs with displays separate from the PPM. These displays may, for example, be located inside a customer's home while the PPM itself is located at the property boundary. However, the ECCC understands that this type of technology is not currently employed and therefore suggests that the issue be addressed in the next Code review.

The ECCC notes that the information requirements of the SA and ACT codes differ from those of the WA Code (Refer to Appendix 17, table 9.7). The ECCC is interested in feedback from stakeholders as to whether clause 9.4(3) should be amended to improve consistency with Eastern States' legislation.

It is noted that the current inconsistency may be a barrier to entry for retailers seeking to enter the WA market as their PPMs may not meet the requirements of the Code.

Discussion Point (9.6)
If clause 9.2(2) is amended to allow operation of PPMs outside of ARCPSP and TRRP communities should clause 9.4(3) be amended to ensure consistency with the SA and ACT codes?

Subclause (4)

Subclause (4) requires a retailer to give a customer on request and at no charge, information on the customer's total energy consumption, average daily consumption, and average daily cost of consumption. The information must be provided for the previous 2 years and be divided into quarterly segments.

The ECCC notes that Horizon Power has indicated that they would seek for this requirement to be removed altogether as they have stated that it is not possible to provide the customer with accurate information.

The information included in subclause (4) is consistent with the requirements of the SA[93] and ACT[94] codes. The ECCC therefore proposes no amendments be made to the information requirements of subclause (4).

The ECCC also notes that both the SA and ACT codes contain a qualification in relation to the period for which information must be provided. Both codes stipulate that information must be provided for "the previous two years or since the commencement of the […]

[93] Refer to clause 2.4.3 of the *Prepayment Meter System Code* (SA).

[94] Refer to clause 4.7(2) of the *Prepayment Meter System Code* (ACT).

contract (whichever is the shorter)". It is recommended that a similar qualification be included in the WA Code.

Recommendation 9.11

Amend clause 9.4(4) by including after "previous 2 years":

or since the commencement of the ***pre-payment meter contract*** (whichever is the shorter)

14.7 Clause 9.5 – Life support equipment

Clause 9.5 of the Code prohibits a retailer from operating a PPM if a customer, or a person residing at the customer's supply address, is dependent on life support equipment.

14.7.1 Stakeholder perspectives

As the impacts of disconnection can be significant for customers dependent on life support equipment, most jurisdictions do not allow PPMs to be installed and/or operated at these customers' supply addresses.

Some stakeholders have argued that where a definition of life support equipment is linked to an electricity subsidy scheme the definition may not necessarily include all relevant equipment.[95] Electricity subsidy schemes tend to only provide benefits for the use of equipment which uses relatively large amounts of electricity. However, some equipment may use relatively small amounts of electricity but may still be essential to some customers.

Horizon Power has indicated that they have had contact with at least two customers who have sought PPM installation and have been unable to receive a PPM due to their need for life support equipment.

14.7.2 Research

Both the SA[96] and ACT[97] codes prohibit the installation of PPMs at residences where a person depends on life support equipment. Refer to the table below for an overview as to their respective content.

Table 9.2: Life support equipment

	WA COC 9.5	SA PPMSC 2.5.1(h) 2.5.1(i)	ACT PPMSC 4.8
A retailer must record premises as a life support supply address			✓
A retailer must not install a PPM at a life support supply address			✓
A retailer must not operate a PPM at a life support supply address	✓		
A retailer must not enter into a PPM contract with a customer who requires life support equipment		✓	
If a customer notifies the retailer of dependence on life support equipment, the retailer must:			

95 Refer, for example, to page 2 of the submission by Energy Australia on the ICRC *Issues Paper – Prepayment Meters Draft Industry Code (Report 3 of 2006)*, http://www.icrc.act.gov.au/__data/assets/pdf_file/21114/EA_submission.pdf

96 Refer to clause 2.5.1(h) and (i) of the *Prepayment Meter System Code* (SA).

97 Refer to clause 4.8 of the *Prepayment Meter System Code* (ACT).

• remove or render non-operational the PPM at no cost to the customer		✓	✓
• install a standard meter or revert the PPM to a standard operating mode so that the PPM operates as a standard meter at no cost to the customer		✓	✓
• provide information about, and a general description of, the contract options available to the customer		✓	✓

14.7.3 Recommendation

The WA Code currently precludes a retailer from "operating" a PPM at a supply address where a person depends on life support equipment. The term "operate" aims to ensure that a retailer ceases to operate the PPM as soon as the retailer becomes aware that a person residing at the supply address depends on life support equipment. This may occur after the meter has been installed (ACT) or contract has been signed (SA).

The ACT code requires a retailer to register a premises as a life support address upon the customer providing evidence to this effect. The ECCC does not recommend that an equivalent clause be included in Part 9 of the Code. Given that a PPM cannot be operated at a life support address and the fact that clause 7.7 covers arrangements relating to life support addresses where a credit meter operates, there is no need to include this type of provision in Part 9.

The SA and ACT codes contain obligations over and above those included in the WA code, including:

- cessation must occur free of charge;
- a standard meter must be installed free of charge; and
- retailer must provide customer with information about contract options available to the customer.

The ECCC recommends that a similar provision be included in the Code.

Recommendation 9.12

Include the following provision in Part 9 of the Code:

If a prepayment meter ***customer*** notifies a ***retailer*** that a person residing at the ***supply address*** depends on ***life support equipment***, the ***retailer*** must:

- remove or render non-operational the ***pre-payment meter*** at no charge;
- replace or switch the ***pre-payment meter*** to a standard ***meter*** at no charge; and
- provide information to the prepayment meter ***customer*** about the contract options available to the prepayment meter ***customer***.

The ECCC notes that "life support equipment" has been defined by reference to the Life Support Equipment Electricity Subsidy scheme. As noted above, additional equipment may exist which has not been included in the subsidy scheme but which is essential for some customers. For example, nebulisers used for the treatment of asthma.

The ECCC recognises that it does not have the medical expertise to decide whether the equipment currently included in the definition of "life support equipment" is adequate.

The ECCC understands that the Office of Energy led the process of developing the Life Support Equipment Electricity Subsidy Scheme, in collaboration with the Department of Health, Disability Services Commission and the Office of Seniors' Interests. The State

Government introduced the Life Support Equipment Electricity Subsidy Scheme in the 2004/05 Budget. Under this scheme, life support is defined in terms of a person's dependency on using a prescribed type of life support equipment (e.g. ventilators, heart pumps, nebulisers) in their homes, under specialist medical advice. However, the ECCC understands that the Government undertakes regular reviews of the scheme and considers the addition of other types of life support equipment, where appropriate.

The Office of Energy has indicated that the definition of life support relies on whether it can be established that a person is (a) dependent on using life support equipment to survive; and is (b) using life support equipment under specialist medical advice. Under the scheme, the use of medical equipment only to provide comfort to a person is not regarded to be life support.

Recommendation 9.13

Retain definition of “life support equipment” in clause 1.5 without amendment.

14.8 Clause 9.6 – Recharge facilities

14.8.1 Background

Clause 9.6 of the Code aims to ensure that a customer has convenient access to a recharge facility. Clause 9.6 prescribes standards in relation to the location of the recharge facility, minimum opening hours of the facility, and minimum allowable payments.

In relation to opening hours, clause 9.6 currently requires retailers to ensure that the recharge facility is accessible between 9am and 5pm, Monday to Friday. The Authority recently received an urgent request from Horizon Power, the Office of Energy and the Minister for Energy to amend clause 9.6.

According to Horizon Power, it is unable to comply with clause 9.6(b) with regard to ARCPSP communities due to the variation in opening hours of community stores in remote communities and the absence of alternative commercial facilities for the sale of PPM cards.

Horizon Power has therefore requested that clause 9.6(b) be amended to read:

> a pre-payment meter customer:
>
> (i) other than a customer within an ARCPSP community can access a recharge facility between the hours of 9:00am to 5:00pm, Monday to Friday;
>
> (ii) within an ARCPSP community can access a recharge facility at least 3 hours per day, 5 days per week within the hours determined by the Aboriginal Corporation or relevant entity responsible for the community store facility.

Subject to public consultation, the Authority intends to amend clause 9.6(b) in accordance with Horizon Power’s request.

Interested parties were provided with the opportunity to make comments in the period of 25 January to 16 February 2007.

14.8.2 Stakeholder perspectives

Horizon Power has requested that the current minimum payment amount of $10.00 be amended.

At present, the amount of emergency credit[98] and the minimum payment amount are the same ($10.00). If a customer uses emergency credit, any payment made afterwards will first be used to replenish the emergency credit facility. If a customer uses all available emergency credit ($10.00) and then downloads the minimum payment amount ($10.00), the PPM-display will state that no credit is available as all credit will have been directed towards the emergency credit facility.

According to Horizon Power, customers have been advised of this issue but often forget that payment will first be used to reload the emergency credit facility. For example, if a $10 payment is made the PPM will show a $0 balance and will fail to operate unless the customer presses the emergency credit button. Occasionally, customers have approached Horizon Power claiming that the PPM card is faulty. Horizon suggests that if the minimum amount payable were in excess of the emergency credit, for example $20.00, then this issue would be eliminated (see also paragraph 2.8).

The ECCC proposes to address this matter through amendment of the emergency credit provisions, rather than an increase of the minimum spend amount.

The Office of Energy has clarified that the prepayment meters used in ARCPSP and TRRP communities are operated via disposable cards purchased in fixed denominations and therefore the term 'recharge facility' is not accurate in representing the retail arrangements in these communities.

14.8.3 Research

Both the SA[99] and ACT[100] codes prescribe standards in relation to recharge facilities and minimum allowable payments. Refer to the tables below for a comparative overview.

Table 9.3: Recharge facilities

	WA COC 9.6	SA PPMSC 4.5.1	ACT PPMSC 5(6)
BY CASH		✓	✓
Location of recharge facility			
• readily accessible		✓	✓
• within remote community, or within or adjacent to the town reserve	✓		
Number of facilities			
• one or more	✓		
• two or more		✓	✓
Opening hours			
• 9.00 am to 5 pm (Monday to Friday)	✓		
• 9.00 am to 5 pm (every day, except Christmas Day)		✓	
• 9.00 am to 6 pm (every day, except Christmas Day)			✓
BY TELEPHONE		✓	✓
24 hours, 7 days a week		✓	✓
By credit card, debit card, electronic funds transfer or any other telephone payment method which is acceptable to the retailer and agreed by the customer		✓	✓
ELECTRONICALLY		✓	✓
24 hours, 7 days a week		✓	✓
ANY OTHER METHOD (AGREED WITH CUSTOMER)		✓	✓
24 hours, 7 days a week		✓	✓
ANY OTHER METHOD (APPROVED BY REGULATOR)			✓

98 Refer to clause 9.8 of the Code.

99 Refer to clauses 4.5.1 and 4.5.2 of the *Prepayment Meter System Code* (SA).

100 Refer to clause 5(6) and 5(7) of the *Prepayment Meter System Code* (ACT).

Table 9.4: Minimum payments

	WA COC 9.6	SA PPMSC 4.5.2	ACT N/A
No more than A$10.00	✓	✓	

Although the SA and ACT codes set standards for various payment methods, a retailer is not obliged to offer more than one payment method.

14.8.4 Recommendation

The ECCC notes that clause 9.6 of the Code, as currently drafted, does not offer protection to customers who have a PPM installed that may be credited otherwise than in person as the clause does not include safeguards for this situation. The ECCC understands that this is not currently an issue in ARCPSP and TRRP communities, however, this may be an issue if clause 9.2(2) is amended to allow operation of PPMs outside of ARCPSP and TRRP communities and an alternative meter model is used.

The ECCC notes that the Office of Energy has pointed out that 'recharge facility' is not an accurate term to describe the place where disposable cards are purchased for PPMs. However, the ECCC also notes that to remove this term would potentially complicate situations where recharge may be applicable in the near future. For this reason, the ECCC proposes an addition to the definition of 'recharge facility' in clause 9.1 rather than a replacement.

Recommendation 9.14

Amend the definition of 'recharge facility' in clause 9.1 by including:

including a disposable ***pre-payment meter*** card.

14.9 Clause 9.7 – Concessions

Clause 9.7 of the Code ensures that a PPM customer receives the same concessions as the customer would be entitled to receive if the customer was supplied through a "standard" meter.

14.9.1 Research

The ECCC understands that Horizon Power currently provides the supply charge rebate by programming the PPM at the supply address whilst the Dependent Child Rebate and Seniors Air Conditioning Rebate are paid by electronic funds transfer to the customer's bank account once every two months.

Clause 4.3.1(d) of the SA code stipulates that customers who are entitled to the State Government energy concession must receive the benefit of that entitlement.

The ACT code does not include a specific obligation on retailers to ensure that a PPM customer has access to concessions. However, as part of the information requirements, a retailer must inform a customer of "the method by which the small customer will receive any energy concessions to which they are entitled".[101]

14.9.2 Recommendation

The ECCC proposes no amendments be made to clause 9.7.

[101] Refer to clause 4.3(4) of the *Prepayment Meter System Code* (ACT).

Recommendation 9.15
Retain clause 9.7 without amendment.

14.10 Clause 9.8 – Emergency credit

Clause 9.8 specifies that a PPM must provide a customer with emergency credit. The amount of emergency credit must be at least $10.00.

14.10.1 Research

Both the SA[102] and ACT[103] codes stipulate that a PPM must provide an amount of emergency credit of at least $10.00.

14.10.2 Recommendation

Horizon Power has indicated, as discussed in paragraph 14.8.2 above, that the effect of the emergency credit amount ($10.00) and the minimum spend amount ($10.00) being the same is that customers will need to press the emergency credit button after loading a new credit otherwise they will remain without power and there will be no indication as to the reason for this (e.g. alarm programmed to sound at +$3.00).

The ECCC has suggested that one method of preventing this situation could be by reducing the emergency credit to A$9.00.

Recommendation 9.16
Amend clause 9.8 to reduce emergency credit to $9.00.

14.11 Clause 9.9 – Credit retrieval and transfer

Clause 9.9 of the Code requires a retailer to refund to a customer any credit remaining in the PPM after the customer has vacated the premises. The obligation is conditional upon the customer notifying the retailer of the proposed vacation date.

In addition, a retailer must ensure that a customer can retrieve or transfer any credit remaining in a faulty meter.

14.11.1 Stakeholder perspectives

Horizon Power has advised that considerable costs are involved in arranging special meter readings for persons vacating a supply address in a remote community. For most communities, a meter reading person from the nearest depot has to be deployed because no certified local meter reading person will be available in the community. In many cases, a meter reading person will be required to drive three to four hours (both ways) to carry out the meter reading.

Although customers have to pay a special meter reading fee of $19.00, the cost of providing the meter reading is significantly higher.

Horizon Power has requested that clause 9.9 either be deleted or its application limited to credit retrievals of at least $100.00.

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102 Refer to clause 4.3.1(e) of the *Prepayment Meter System Code* (SA).

103 Refer to clause 5(4) of the *Prepayment Meter System Code* (ACT).

14.11.2 Research

Both the SA[104] and ACT[105] code require a retailer to explain to a customer how the customer can obtain a refund of any credit remaining in the PPM when the PPM contract is terminated or otherwise ends.

However, neither code prescribes a meter reading or credit retrieval fee in relation to PPMs.

14.11.3 Discussion

The ECCC notes that customers who are being supplied through a "standard" meter and make payments in advance will receive a refund if they are in credit at the time they vacate their premises (refer to clause 4.14(2) of the Code). Acceptance of Horizon Power's proposal would place PPM customers in a disadvantageous position.

In addition, the proposal would also deny customers who reside in a community where a certified meter reading person is present, access to credit retrieval.

However, the ECCC appreciates that the cost of providing a special meter read may be disproportionate in certain circumstances.

Discussion Point (9.7)

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

14.11.4 Recommendation

Subclause (2) requires a retailer to refund or transfer any credit if a PPM is found to be faulty. The ECCC proposes that this subclause be replaced with two new clauses which address the issues of overcharging and undercharging as a result of an act or omission of the retailer or distributor.

This would be consistent with the SA[106] and ACT[107] codes and clauses 4.17 and 4.18 of the Code.[108]

Recommendation 9.17

- Delete clause 9.9(2).
- Include two new clauses which address overcharging and undercharging as a result of an act or omission of the retailer or distributor or a faulty meter and provide consistency with the SA and ACT codes.

14.12 Clause 9.10 – Recommencement of supply

Clause 9.10 of the Code requires that supply recommences as soon as a customer downloads sufficient credit onto the PPM to cause a positive financial balance.

104 Refer to clause 2.5.1(g) of the *Prepayment Meter System Code* (SA).

105 Refer to clause 4.7(1)(a) of the *Prepayment Meter System Code* (ACT).

106 Refer to clauses 4.8 and 4.9 of the *Prepayment Meter System Code* (SA).

107 Refer to clauses 8 and 9 of the *Prepayment Meter System Code* (ACT).

108 Clauses 4.17 and 4.18 of the Code address (among other things) over- and undercharging resulting from a faulty meter.

14.12.1 Research

Both the SA[109] and ACT[110] codes stipulate that where supply has been disconnected through the PPM, the PPM must be capable of recommencing supply as soon as information is communicated to the PPM that a payment has been made to the PPM account.

Under the SA code, supply must recommence only if the amount of the payment exceeds the amount of emergency credit.

The ACT code does not require a payment to exceed the emergency credit amount. This is because the ACT code stipulates that at least 70% of a customer's payment must be applied to the supply of energy. The remaining 30% may be applied to repayment of the emergency credit (or any other amount, such as an outstanding debt).[111]

14.12.2 Recommendation

Recommencement of supply is closely related to the issues raised above regarding emergency credit and recharge facilities.

Recommendation 9.18
Retain clause 9.10 without amendment.

14.13 Clause 9.11 – Record keeping

Clause 9.11 of the Code requires retailers and distributors to keep records on the number of customers who are being supplied under a PPM contract (retailer only) and the number of complaints received and action taken to resolve the complaint (retailer and distributor).

14.13.1 Research

Both the SA and ACT codes require a retailer to keep records in relation to their PPM customers.

Under the SA code[112], a retailer must maintain verifiable records of customer contacts in relation to payment difficulties and hardship. The records must be kept in a format which permits the retailer to answer any enquiries from ESCOSA, the SA Industry Ombudsman or any other entity.

The ACT code[113] requires a "utility" to keep quarterly records on:

- the number of the utility's small use customers that use PPMs;
- the number of the utility's small use customers who have self-disconnected because of financial difficulties;
- the number of PPMs removed or rendered non-operational during the trial period; and
- the number of PPMs removed after the trial period as a result of small use customers facing financial difficulties.

109 Refer to clause 4.3.1(c) of the *Prepayment Meter System Code* (SA).
110 Refer to clause 5(3) of the *Prepayment Meter System Code* (ACT).
111 Refer to clause 5(7) of the *Prepayment Meter System Code* (ACT).
112 Refer to clause 4.4.3 of the *Prepayment Meter System Code* (SA).
113 Refer to clause 6(3) of the *Prepayment Meter System Code* (ACT).

14.13.2 Discussion

Comment is invited from stakeholders as to whether the current record keeping requirements under the Code in relation to PPMs are appropriate or require amendment.

Discussion Point (9.8)

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

14.13.3 Recommendation

Part 13 of the Code deals with all matters relating to the keeping of records by retailers and distributors. For ease of reference, the ECCC recommends that the record keeping obligations contained in clause 9.11 be transferred to Part 13.

Recommendation 9.19

Transfer clause 9.11 to Part 13.

15 Part 10 – Information and Communication

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

15.1 Notes within Part 10

In accordance with Recommendation 1.1, the ECCC recommends the following amendments to the notes in Part 10 of the Code.

Recommendation 10.1
Delete objectives and include within Guide.

Recommendation 10.2
Delete note under clause 10.1(5).

Recommendation 10.3
Delete note under heading of clause 10.2.

Recommendation 10.4
Delete note under clause 10.2(3)(b).

Recommendation 10.5
Delete note under clause 10.4(c).

Recommendation 10.6
- Delete note under clause 10.6(b).
- Amend clause 10.6(b) to read:

  an explanation for any unplanned or approved change in the quality of supply of electricity outside of the limits prescribed by law.

Recommendation 10.7
Delete note under heading of clause 10.7.

Recommendation 10.8
Delete note under clause 10.7(3)(b).

Recommendation 10.9
Delete note under clause 10.10(3).

15.2 Division 1 – Obligations particular to retailers

Division 1 specifies the information that must be provided by a retailer to its customers, including information relating to:

- tariffs and tariff changes;
- historical billing data;

- concessions;
- energy efficiency advice; and
- distribution matters.

15.2.1 Research

Most States require retailers to provide prescribed information to their customers. The following paragraphs compare the information requirements contained within the Code with those included in Eastern States' codes.

Tariff information (clause 10.1)

Although most States require that a retailer inform a customer of applicable tariffs and changes in tariffs, the SA and NSW obligation[114] only applies to customers supplied under a standing or default contract (similar to a standard form contract).

Table 10.1: Jurisdictional comparison – Tariff information

	WA Code 10.1	SA ERC Part B 9.1 9.3	VIC ERC 26.4	NSW ES(G)R 21.1	ACT CPC 12.1 12.2	TAS ESI (TC)R 5&26
A retailer must give notice to a customer of its tariffs and any variation in its tariffs:	✓	✓		✓	✓	✓
• in the Government Gazette	✓[1]	✓				
• in a local newspaper	✓[1]			✓[1]		✓
• by notice to each customer	✓[1]			✓[1]		
• on its website		✓			✓	
A retailer must give notice to each of its customers affected by a variation in its tariffs as soon as practicable after the variation is published and, in any event, no later than the next bill in a customer's billing cycle	✓		✓			
A retailer must give a customer on request, at no charge, reasonable information on the retailer's tariffs, including any alternative tariffs that may be available to that customer:	✓		✓		✓	✓
• within 8 business days	✓					
• within 10 days						✓
• within 10 business days			✓			
• in writing (upon request)	✓		✓			
A retailer must provide a customer with reasonable information setting out the components of the charges which appear on a bill, upon request		✓				

[1] These modes of publication are not cumulative. That is, a retailer has fulfilled its obligation by giving notice through only one of the modes prescribed.

Historical billing data (clause 10.2)

SA, Vic., NSW, ACT and Qld require a retailer to provide a customer with historical billing data upon request.

Under the WA Code, the obligation only relates to non-contestable customers.

[114] Refer to Part B, clause 9 of the Energy Retail Code (SA) and regulation 21(1) of the *Electricity Supply (General) Regulation 2001* (NSW).

Table 10.2: Jurisdictional comparison – Historical billing data

	WA Code 10.2	SA ERC 6.3.6	VIC ERC 27	NSW ES(G)R 33	ACT CPC 13.6	QLD EIC 4.8.6	TAS N/A
A retailer must give a customer on request the customer's billing data	✓	✓	✓	✓	✓	✓	
Free of charge: A retailer must give billing data free of charge, if the customer requests the billing data:	✓	✓	✓	✓	✓	✓	
• for a period covering no more than the previous 12 months					✓		
• for a period covering no more than the previous 2 years and no more than:	✓	✓	✓	✓		✓	
– once a year			✓	✓			
– twice a year	✓						
• in relation to a dispute	✓		✓				
Reasonable charge: A retailer may require a customer to pay a reasonable charge for providing the data if	✓	✓	✓	✓	✓	✓	
• the data relates to a period more than the previous 12 months					✓		
• the data relates to a period more than the previous 2 years.	✓	✓	✓	✓		✓	
• is requested more than once a year			✓	✓			
• is requested more than twice a year	✓						
Within reasonable time: A retailer must provide the data within a reasonable time of receiving request				✓			
10 business days: A retailer must provide the data within 10 business days if the data relates to a period covering:	✓	✓	✓			✓	
• no more than the previous 2 years	✓	✓	✓			✓	
• more than the previous 2 years	✓		✓				
20 business days: A retailer must use best endeavours to provide the data within 20 business days if the data relates to a period covering more than the previous 2 years		✓				✓	
Record keeping: A retailer must keep the customer's billing data for at least:	✓	✓	✓			✓	
• 2 years			✓			✓	
• 7 years	✓	✓					

Concessions (clause 10.3)

The SA[115], Vic.[116] and Qld[117] codes require a retailer to provide a customer with information in relation to concessions the customer may be entitled to. The information only has to be provided upon request by the customer.

Energy Efficiency Advice (clause 10.4)

The Vic.[118] and ACT[119] codes require a retailer to provide a customer, upon request, with energy efficiency advice. Under the ACT code, a utility may recover the reasonable cost of providing the information.

115 Refer to clause 7.5 of the Energy Retail Code (SA).

116 Refer to clause 26.5 of the Energy Retail Code (Vic.).

117 Refer to clause 4.12.8 of the Electricity Industry Code (Qld).

118 Refer to clause 26.6 of the Energy Retail Code (Vic.).

Under the NSW regulations[120], a customer supply contract must contain a requirement that the retailer provide "free of charge, if requested to do so by the customer, information about energy efficient consumption."

Distribution matters (clause 10.5)

None of the Eastern States' codes contains an obligation similar to that included in clause 10.5 of the Code.

15.2.2 Recommendation

Tariff information (clause 10.1)

In relation to clause 10.1, the ECCC recommends deletion of subclause (1). Under subclause (2), a retailer is already required to inform each customer of any variation in its tariffs. It appears unduly burdensome to require a retailer to also publish this information in the Government Gazette or local newspapers.

In addition, the methods prescribed in subclause (1) are not cumulative. By complying with subclause (2), a retailer automatically complies with subclause (1)(c) and therefore subclause (1). As a result, subclause (1) does not appear to add much value.

Furthermore, the ECCC notes that no other code requires a retailer to publish the information and notify each person.

Recommendation 10.10
Delete clause 10.1(1).

The ECCC recommends deletion of clause 10.1(5). Currently, clause 10.1 only requires that tariff information be provided to customers if the tariff is prescribed by law. At present the majority of Synergy's and Horizon Power's tariffs are prescribed by law.[121] Tariffs offered by any other retailers are not prescribed by law.

The ECCC understands that the limitation of clause 10.1(5) was included to ensure that a retailer would not be required to publish all of its tariffs (for example, tariffs individually negotiated with a customer). However, if clause 10.1(1) is deleted (as recommended above), the limitation included in clause 10.1(5) is no longer required.

The ECCC also notes that deletion would ensure that a retailer must advise all customers of any variation in tariff, not only those on a prescribed tariff.

Recommendation 10.11
Delete clause 10.1(5).

Historical billing data (clause 10.2)

The ECCC requests further input as to whether the scope of clause 10.2 should be extended to include contestable customers.

119 Refer to clause 7.1(2)(d) of the Consumer Protection Code (ACT).

120 Refer to Schedule 1, regulation 1(3)(n) of the *Electricity Supply (General) Regulation 2001* (NSW).

121 Refer to *Energy Operators (Electricity Retail Corporation)(Charges) By-Laws 2006* and the *Energy Operators (Regional Power Corporation)(Charges) By-Laws 2006*.

Although the *Electricity Industry Customer Transfer Code 2004*[122] requires a network operator to provide a retailer with a contestable customer's historical consumption data, there is no requirement on the retailer to pass this information on to the customer.

At the moment, contestable customers have access to their historical consumption data by virtue of clause 10.7 of the Code. However, the obligation under clause 10.7 to provide historical consumption data is placed upon the distributor not the retailer.

By extending the scope of clause 10.2 to include contestable customers, these customers would also be able to:

- access the data directly from their retailer; and
- not only have access to consumption information, but also to information relating to amounts billed.

This would be consistent with Eastern States' codes.

Discussion Point (10.1)

Should the scope of clause 10.2 of the Code be extended to include contestable customers?

The ECCC recommends that, consistent with Eastern States' codes, a customer's right to receive historical billing data free of charge be limited to once a year rather than twice a year as is currently the case.

Recommendation 10.12

Amend clause 10.2(2)(a) to limit a customer's right to receive historical billing data free of charge to once a year.

Energy Efficiency Advice (clause 10.4)

In relation to clause 10.4, the ECCC notes that some stakeholders have argued that other agencies and/or organisations may be better placed than a retailer to provide this type of information to customers (for example, Sustainable Energy Development Office (WA) or Australian Greenhouse Office).

However, it should also be noted that retailers can enlist the support and advice of these types of instrumentalities in meeting their obligation to consumers. Furthermore, retailers have the same or similar obligation in other jurisdictions including Vic., ACT and SA and therefore the current clause is generally consistent with other States. For this reason, the ECCC recommends that clause 10.4 be retained.

Recommendation 10.13

Retain clause 10.4 without amendment.

[122] Note that information requirements under both codes differ. Under the Code, a retailer must provide historical **billing** data. Under the *Electricity Industry Customer Transfer Code 2004*, a network operator must provide historical **consumption** data.

15.3 Division 2 – Obligations particular to distributors

Division 2 specifies the information that must be provided by a distributor to customers, including information relating to:

- safety;
- quality and reliability;
- historical consumption data; and
- distribution standards.

15.3.1 Research

General information (clause 10.6)

Only the Electricity Distribution Code (Vic.) contains a specific information provision in relation to distributors. The following table illustrates any overlap and differences between the provision included in the Vic. code and clause 10.6 of the Code.

Table 10.3: Jurisdictional comparison – General information to be provided by distributor

	WA Code 10.6	VIC EDC 9.1
Information on the distributor's requirements in relation to the customer's proposed new electrical installation, or changes to the customer's existing electrical installation, including advice about supply extensions	✓	✓
An explanation for any change in the quality of supply of electricity outside of the limits prescribed by law	✓	
An explanation for any unplanned interruption of supply to the customer's supply address	✓	✓
Advice on facilities required to protect the distributor's equipment	✓	✓
Advice on how to obtain information on protecting the customer's equipment	✓	
Advice on the customer's electricity usage so that it does not interfere with the operation of a distribution system or with supply to any other electrical installation	✓	✓
General information on safe use of electricity	✓	
General information on quality of supply:	✓	✓
General information on reliability of supply	✓	✓
Information about the distributor's targets for reliability and quality of supply		✓

Some of the information a distributor must provide under the Vic. code is of a more technical nature and would fall outside the scope of the WA Code. Therefore, this information has not been included in the table above (e.g. refer to clause 9.3 on "planning information".)

Under the ACT Consumer Protection Code[123], a distributor must, on request, provide a customer with information about load profiles and power factors.

Historical consumption data (clause 10.7)

None of the Eastern States' codes contains an obligation similar to that included in clause 10.7 of the Code.

[123] Refer to clause 7.1(2)(a) of the Consumer Protection Code (ACT).

Distribution standards (clause 10.8)

The Electricity Distribution Code (Vic.)[124] requires a distributor to give a customer, on request, information on "where the customer may obtain a copy of the standards which are given force by this Code".

15.3.2 Recommendation

The ECCC notes that clause 10.8(1) contains a typographical error being inclusion of the letter "a" between the words "obtain" and "information".

With the exception of correction of the typographical error, the ECCC recommends that no amendments be made to clauses 10.6 to 10.8.

Recommendation 10.14

Retain clauses 10.6 and 10.7 without amendment.

Recommendation 10.15

Delete the letter "a" between "obtain" and "information" in clause 10.8(1).

15.4 Division 3 – Obligations particular to retailers and distributors

Division 3 of the Code contains information requirements applicable to both retailers and distributors.

15.4.1 Stakeholder perspectives

Under clause 10.10(4) of the Code, a retailer and distributor must inform a customer of any material amendment to the Code that affects the customer's rights and obligations in relation to the retailer or distributor.

Western Power has advised that it will not be able to meet its obligations under clause 10.10(4) as it is not in a position to contact its customers.

The ECCC understands that Western Power does not keep records on any person(s) residing at a supply address or their contact details. This information is held by the retailer. The ECCC understands that Western Power only holds information relevant to meters.

15.4.2 Research

Written information must be easy to understand (clause 10.9)

None of the Eastern States' codes contains a similar obligation.

Code of Conduct (clause 10.10)

Only the Vic. Energy Retail Code[125] and Electricity Distribution Code[126] and the Electricity Industry Code (Qld)[127] contain an obligation similar to clause 10.10 of the Code.

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124 Refer to clause 9.1.10(c) of the Electricity Distribution Code (Vic.).

125 Refer to clause 26.3 of the Energy Retail Code (Vic.).

126 Refer to clause 9.1.4 of the Electricity Distribution Code (Vic.).

127 Refer to clause 4.3 of the Electricity Industry Code (Qld).

The obligation included in the Vic. and the Qld codes differs from the WA Code as it requires the retailer and distributor to provide a copy of the code to the customer. Under the WA Code, a retailer and distributor only have to inform a customer *how* the customer may obtain a copy of the code.

It is noted that the Vic. codes allow a retailer and distributor to impose a charge for providing a copy of the code to the customer.

Special information needs (clause 10.11)

Most codes require a retailer and/or distributor to make available to its customers services that may assist customers in interpreting any information provided by the retailer, such as interpretation services, TTY services and large-print copies.

Refer to the table below for a jurisdictional overview.

Table 10.4: Jurisdictional comparison – Special information needs

	WA Code 4.4(1) 10.11	SA ERC 11.2 6.3.4(r) EDC 1.11.2	VIC ERC[1] EDC[1]	NSW ES (G)R[1]	ACT CPC[1]	QLD EIC[1]	TAS ESI (TC)R 28
Access to multi-lingual/Interpreter services	✓	✓	✓			✓	✓
Reference to multi-lingual/interpreter services to be included on:							
• information given prior to entering into contract				✓			
• information given in relation to last resort supply event occurring				✓			
• contract				✓			
• bill	✓	✓	✓	✓	✓	✓	
• disconnection warning					✓		
Access to TTY services	✓						✓
Reference to TTY services to be included on:							
• bill	✓						
• bill related information	✓						
• disconnection warning	✓						
• Customer Service Charter	✓						
Large print copies:	✓						
• only of Customer Service Charter & Code		✓	✓				
• only of tariff							✓
• only of Code summary					✓		

[1] The requirements are contained within various provisions.

Metering (clause 10.12)

None of the Eastern States' codes contains a similar provision.

15.4.3 Recommendation

The ECCC recommends deletion of clauses 10.10(4) to (6) of the Code.

As noted by Western Power, a distributor is not in a position to comply with this clause. Furthermore, the costs involved in notifying all customers may outweigh any benefits.

Also, the Secretariat notes that, although an equivalent clause is only included in the Vic. Energy Retail Code, the Vic. situation differs from WA in that Parts 1 to 9 of the Vic. code

form part of any retail contract.[128] As a result, any amendment of the Vic. Energy Retail Code results in an amendment of the contract between the retailer and its customers.

The WA Code, however, does not form part of a customer contract. Where an amendment of the Code would require amendment of a customer contract, the retailer would be required to publish the amendment under regulation 16(2)(b) of the *Electricity Industry (Customer Contracts) Regulations 2005*.

In light of the above, the ECCC considers the obligations contained in clauses 10.10(4) to (6) to be redundant.

Recommendation 10.16
Delete clauses 10.10(4) to (6).

The ECCC notes that the requirements contained in clause 10.11 already provide a strong level of customer protection relative to most other codes. However, the ECCC considers that in the interests of customer protection there may be merit in extending clause 10.11(2) to require a retailer and distributor (if applicable) to also include reference to interpreter services on the documents referred to in subclauses (a) to (d).

Recommendation 10.17
Amend clause 10.11(2) to also require reference to be made to independent multi-lingual services on the documents included in subclauses (a) to (d).

For reasons of consistency, it could be argued that clause 10.12 of the Code should be deleted. However, with the increasing diversification of metering technology likely to occur over the next few years, the ECCC recommends retention of clause 10.12 and consideration of this matter at the next Code review.

Recommendation 10.18
Retain clause 10.12 without amendment.

[128] Refer to clause 1 of the Essential Services Commission (Vic.) Determination included in the Energy Retail Code (pg.1).

16 Part 11 – Customer Service Charter

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

16.1 Notes within Part 11

In accordance with Recommendation 1.1, the ECCC recommends the following amendments to the notes in Part 11 of the Code.

Recommendation 11.1
Delete objectives and include within Guide.

Recommendation 11.2
Delete note under clause 11.1(2)(a).

Recommendation 11.3
Delete note under clause 11.1(2)(f).

Recommendation 11.4
Delete note under clause 11.2(2).

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

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

16.2.1 Research

The SA, Vic. and Tas. codes require retailers and distributors to produce a customer service charter.[129]

Charters prepared by retailers and distributors operating in Tas. are also subject to regulatory approval.[130]

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

16.2.2 Recommendation

The ECCC is of the view that customer service charters play an important role in educating and empowering customers by informing them of their rights and obligations particularly when provision of a copy of the Standard Form Contract is not mandatory.

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

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

However, the ECCC does not support mandatory approval of customer service charters by the Authority for the following reasons:

- failure to develop a charter in accordance with the Code results in a breach of the Code and, therefore, breach of licence (which is subject to penalties prescribed in the Act); and
- the Authority already has a review role in relation to mandatory periodical reviews of charters and amendments made to charters. The Authority's review role in relation to charters is set out in a retailer's and distributor's licence[131] and the Customer Service Charter Guidelines (August 2006).[132]

Recommendation 11.5
Retain clause 11.1(1) without amendment.

16.3 Clauses 11.1(2) – Matters to be addressed in charter

16.3.1 Background

Clause 11.1(2) of the Code specifies the matters that a retailer and distributor must address in their charter.

The ECCC understands that, during the development of the Code, members of the ERCF agreed not to require retailers and distributors to include reference in their respective charters to rights and obligations included in legislative instruments[133] other than the Code. The decision aimed to ensure that charters did not become unduly lengthy.

However, to raise awareness that additional rights and obligations may apply, the ERCF agreed that a charter should include a general reference to key legislative instruments other than the Code which relate to the supply of electricity to customers. Refer to clause 11.1(2)(f).

16.3.2 Research

The SA, Vic. and Tas. codes all (generally) specify the required content for charters. Refer to the table below for a jurisdictional overview.

131 Refer to clauses 15 and 16 of the Electricity Retail Licence (template), clauses 12 and 13 of the Electricity Distribution Licence (template) and clauses 15 and 16 of the Integrated Regional Licence (template).

132 Copies of the licence templates and the guidelines can be found at www.era.wa.gov.au.

133 This requirement is included in the SA and Vic. codes. Refer to clause 2.1.4 of the Energy Retail Code (SA), clause 1.1.3(d) of the Electricity Distribution Code (SA), clause 26.2(b) of the Energy Retail Code (Vic.) and clause 9.1.3 of the Electricity Distribution Code (Vic.).

Table 11.1: Jurisdictional comparison – Minimum contents charter

	WA Code 11.1	SA (ret) ERC 2.1	SA (dist) EDC 1.1.3	VIC (ret) ERC 26.2	VIC (dist) EDC 9.1	TAS (ret) TEC 9.6	TAS (dist) TEC 8.3.1
Summary of respective rights and obligations under the:							
• Code	✓	✓	✓	✓	✓		
• contract		✓	✓				
• Act and associated regulations		✓	✓	✓	✓		
• respective Industry Codes			✓	✓	✓		
Explanation of the complaints handling process	✓					✓	✓
Availability of different types of meters	✓						
Explanation of the difference between distribution and retail functions	✓						
Reference to key documents in relation to the supply of electricity to customers	✓						
Contact details of:							
• retailer	✓						
• distributor	✓					✓	✓
• Authority	✓						
• Energy Safety (Department of Consumer and Employment Protection)	✓						
• Energy Ombudsman	✓						
Identity of the distributor					✓		
Guaranteed service levels					✓		
Services to be provided by retailer/distributor						✓	✓
Level of services to be provided by retailer/distributor						✓	✓
The basis on which accounts are prepared and the frequency of issue						✓	
Payments options and means available						✓	

16.3.3 Recommendation

Under subclause (d), a retailer and distributor must include within their charters information regarding the "availability of different types of meter". The ECCC is of the opinion that subclause (d) is too prescriptive and therefore recommends its deletion.

Recommendation 11.6
Delete clause 11.1(2)(d).

16.4 Clauses 11.2 – Provision of charter

Clause 11.2 of the Code specifies when a retailer and distributor must provide a charter to a customer. A charter must be provided to a customer upon request and as soon as practicable after 1 January 2005 for contestable customers.

16.4.1 Stakeholder perspectives

Western Power has advised that it does not have a cost effective direct mail capability for its charters. According to Western Power, it does not have a direct relationship with energy customers and would incur significant additional costs to disseminate hard copies to many customers [in general]. Western Power suggests that it is able to have its charter

made available on its website and to provide copies to customers on request. Additionally, Western Power has offered to supply copies of its charters to retailers for distribution, if so required.

Horizon Power noted that, when distributing Customer Service Charters by mail, the customer may not always receive the charter within 2 business days as (particularly in remote areas) mail is not always delivered within 2 business days. Therefore, Horizon Power requested amendment of clause 11.2(3) to require a retailer and distributor to dispatch (as opposed to give) the charter within 2 business days.

16.4.2 Research

The SA, Vic. and Tas. codes all specify when a charter must be provided to a customer. Refer to the table below for a jurisdictional overview.

Table 11.2: Jurisdictional comparison – Provision of charter

	WA (ret) Code 11.2	WA (dist) Code 11.2	SA (ret) ERC 2.1.2	SA (dist) EDC 1.1.3	VIC (ret) ERC 26.2	VIC (dist) EDC 9.1.2	TAS (ret) TEC 9.6	TAS (dist) TEC 8.3.1
Upon request	✓	✓	✓	✓	✓	✓	✓	✓
When entering into a new customer contract	✓[1]		✓	✓	✓			
When being connected to the distribution system					✓	✓	✓	✓
For contestable customers, as soon as practicable after 1 January 2005	✓	✓						
At least once every 5 years						✓		
As directed by Commission (to large customers only)				✓				
Publish on website							✓	

[1] Refer clause 2.7 of the Code. This clause only requires a retailer to tell a customer *how* the customer may obtain a copy of the retailer's Customer Service Charter.

16.4.3 Recommendation

In relation to Western Power's request, the ECCC notes that the Code does not require Western Power to provide its charter to customers other than upon request. Hence, no amendments are proposed to clause 11.2 to accommodate the concerns raised.

With regard to subclause (2), the ECCC understands that this subclause was included to ensure that customers who became contestable on 1 January 2005 would be able to easily compare the services offered by their incumbent retailer with those of other retailers. As contestability has since been introduced and all contestable customers have been provided with this information, the ECCC recommends deletion of clause 11.2(2) after the Authority is convinced that this requirement has been fulfilled.

Recommendation 11.7
Delete clause 11.2(2).

The ECCC agreed to Horizon Power's request that clause 11.2(3) be amended to require a retailer and distributor to dispatch their charter within 2 business days.

Recommendation 11.8
Delete the word "give" in clause 11.2(3) and include instead "dispatch".

17 Part 12 – Complaints & Dispute Resolution

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

17.1 Notes within Part 12

In accordance with Recommendation 1.1, the ECCC recommends the following amendments to the notes in Part 12 of the Code.

Recommendation 12.1

Delete objectives and include within Guide.

Recommendations 12.2

Delete note under clause 12.1(2)(b)(i).

Recommendation 12.3

Delete note under clause 12.2(1)(b).

Recommendation 12.4

Delete note under clause 12.5(2).

17.2 Clause 12.1 – Obligation to establish complaints handling process

Clause 12.1 requires retailers, distributors and marketers to establish an internal complaints handling process that complies with Australian Standard 4269:1995 (Complaints Handling). Furthermore, it prescribes the matters that must be addressed by those processes.

17.2.1 Research

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

Table 12.1: Jurisdictional comparison – Complaints handling process

	WA Code 12.1	SA ERC 3.2 EDC 1.3.2	VIC ERC 28 EDC 10	NSW N/A	ACT CPC 6	QLD EIC 4.6.1	TAS TEC 8.4& 9.10
Subject to approval by regulator		✓					
Consistent with AS 4269:1995	✓		✓[1]		✓	✓	✓
Consistent with Benchmark for Industry Based Customer Dispute Resolution Schemes published by the Department of Industry, Tourism and Resources (Cth)			✓[1]				
CONTENTS							
• how complaints must be lodged by customers	✓	✓					
• how complaints will be handled/resolved, including—	✓	✓					
– a right of the customer to have its complaint considered by a senior employee	✓				✓		
– the information that will be provided to a customer:							
• in its initial response to the customer, the utility's complaint handling practices and procedures					✓		
• advise the customer that the customer has the right to have the complaint considered by a senior employee	✓		✓			✓	✓
• advise customer of outcome of review of complaint	✓						
• advise customer that if, after raising the complaint to a higher level the customer is still not satisfied with the response, the customer has a right to refer the complaint to the Ombudsman	✓		✓		✓	✓	✓
• response times for complaints	✓	✓					
• method of response	✓	✓					
• be available at no cost to customers	✓						
• provide for referral to external dispute resolution processes if complaint not resolved satisfactorily		✓					

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

None of the Eastern States requires a marketer to establish a complaints handling process. Instead, most States require a retailer to establish internal processes for handling complaints and disputes resulting from its marketing activities.[134] That is, if a customer is unhappy with a marketer's performance, it may lodge a complaint directly with the retailer on whose behalf the marketer is undertaking marketing activities.

Under the WA Code, a customer may lodge the complaint directly with the marketer. However, the marketer must ensure that its complaints handling process provides for review by a retailer of complaints and disputes carried out by the marketer on behalf of that retailer (refer to clause 12.1(4)). This is consistent with the GMCC.

[134] Refer to clause 15 of the Energy Marketing Code (SA) and clause 10 of the Code of Conduct for Marketing Retail Energy in Victoria.

17.2.2 Discussion

The ECCC has recommended (in Recommendations dealing with Marketing in Part 2 of the Code) that the obligations on marketers in the Code be reduced and replaced by obligations on the retailer to ensure that marketers comply with the Code. This will shift responsibility for a marketer's compliance with the Code from the Authority to retailers by making retailers liable for the conduct of their marketers.

Consistent with this approach, the ECCC seeks further comment on whether some obligations on marketers under Part 12 be removed and the obligation to ensure that they occur be placed on the retailer.

Discussion Point (12.1)

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

Discussion Point (12.2)

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

17.2.3 Recommendation

The ECCC notes that, under the SA code, a retailer's and distributor's complaints handling processes are subject to approval by the regulator. The ECCC recommends that this requirement not be included in the WA Code for the following reasons:

- a retailer and distributor must undertake an independent performance audit every 24 months of the effectiveness of measures taken by them to meet their licence conditions. As compliance with the Code (and therefore clause 12.1) is a licence condition, any failure to establish a complaints handling process in accordance with the Code will become apparent during this mandatory audit; and
- to be effective, any requirement on the Authority to approve a complaints handling process would also require that the Authority approve any amendments to the process. It could be argued that this would impose an unnecessary administrative burden on retailers and distributors and reduce their flexibility in responding to changing circumstances.

Recommendation 12.5

No requirement be made for the Authority to approve the licensee's complaints handling process.

17.3 Clause 12.2 – Guideline

17.3.1 Background

During the development of the Code, members of the ERCF sought clarification about the distinction between customer enquiries and complaints. It was argued that, at times, it

may be difficult to determine whether a matter raised by a customer is a complaint. For example, a customer may be unhappy with the location of an electricity pole in their front yard. If the customer asks the distributor to move the pole, the request could be seen either as a simple query or as a complaint.

To address the issue of when a query constitutes a complaint, clause 12.2 of the Code requires retailers, distributors and marketers to develop internal guidelines that assist their staff in distinguishing customer queries from customer complaints.

17.3.2 Research

Consistent with AS 4269:1995, the Code defines "complaint" as:

> Any expression of dissatisfaction with a product or service offered or provided.

None of the Eastern States' codes defines the term "complaint" for the purpose of establishing complaints handling processes.

However, the term "complaint" has been defined for regulatory reporting purposes. SA and Vic. define complaint as:

> a written or verbal expression of dissatisfaction about an action, a proposed action, or a failure to act, or in respect of a product or service offered by or provided by a retailer, its employees or contractors. This includes failure by a retailer to observe its published practices or procedures.[135]

This definition is similar to the definition proposed by the Steering Committee on National Regulatory Reporting Requirements (**SCONRRR**):

> a written or verbal expression of dissatisfaction about an action, a proposed action, or a failure to act, or in respect of a product or service offered or provided by, an electricity entity.[136]

SCONRRR was established by the Utility Regulators Forum to oversee the development of the requirement for consistent reporting standards. ACT, Qld and Tas. all use the SCONRRR definition for reporting requirements on complaints.

In November 2006, the URF released a report[137] in which it proposed a number of amendments to retail performance indicators, including the definition of complaint. The new definition proposed by the URF reads:

> An expression of dissatisfaction made to an organisation, related to its products/services, or the complaints-handling process itself where a response or resolution is explicitly or implicitly expected.[138]

In addition, the report includes a draft "National Reporting Guideline – Complaints".[139] The guideline aims to achieve "consistency in the way complaints are recorded and reported and enable more effective comparisons between retail businesses".[140] The guideline contains definitions of the terms "complaint" and "enquiry", provides guidance on when to log customer contact as a complaint and how to categorise complaints. Furthermore, it includes a number of case studies to assist retailers in distinguishing complaints from enquiries.

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135 Refer to Definitions in the SA *Energy Industry Guideline No. 2 - Energy Regulatory Information: Energy Retail Code, Retailer* (pg. 27); Definitions in the Vic. *Decision Paper - Information Specification (Service Performance) for Victorian Energy Retailers* (pg. 17).

136 Utility Regulators Forum, *National regulatory reporting for electricity distribution and retailing businesses - discussion paper*, March 2002.

137 Utility Regulators Forum, Steering Committee on National Regulatory Reporting Requirements – Retail Working Group, *National Energy Retail Performance Indicators*, November 2006.

138 *Id*., pg. 12.

139 *Id.*, Appendix 1.

140 *Id.,* Appendix 1.

17.3.3 Recommendation

As noted above, the obligation in clause 12.2 to establish a guideline aims to provide employees of retailers, distributors and marketers guidance as to when a matter raised by a customer constitutes an enquiry and when a complaint.

However, as clause 12.2 does not provide retailers and distributors with further guidance as to the contents or standards to be included in the guideline, the clause appears to be of limited value. The ECCC therefore recommends deletion of clause 12.2.

In relation to retail activities, the ECCC recommends inclusion of a new clause 12.2 which requires retailers to comply with a guideline on complaints to be produced by the Authority which will mirror the URF agreed guideline. A copy of the URF guideline is included in Appendix 20.

As the URF guideline does not apply to distributors or marketers, the ECCC recommends that the scope of the new clause 12.2 not be extended to include distributors or marketers.

These recommendations are consistent with the approach adopted by the URF.

Furthermore, the ECCC recommends that the definition of "complaint" be amended consistent with the definition proposed by the URF and that reference to AS4269:1995 be deleted from clause 12.1(2)(a).

Recommendation 12.6

Delete clause 1.5 (definition of complaint) and insert instead:

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

Recommendation 12.7

- Amend the title of clause 12.2 to read "Obligation to comply with a guideline that distinguishes customer queries from customer complaints".
- Delete the text of clause 12.2 and insert instead:

> A ***retailer*** must comply with any guideline developed by the ***Authority*** relating to distinguishing ***customer*** queries from ***customer complaints***.

Recommendation 12.8

Delete clause 12.1(2)(a).

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

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

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

17.4.1 Research

Although most codes require a retailer and distributor to inform a customer of their complaints handling processes when responding to the customer's complaint,[141] they do not contain a general obligation to provide this information upon request.

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

17.4.2 Recommendation

Whilst these clauses may contain provisions in excess of those in the codes of other jurisdictions, these types of provision may be catered for in the approved complaints handling procedures for individual licensees.

The ECCC proposes the retention of these clauses.

Recommendation 12.9
Retain clauses 12.3 and 12.4 without amendment.

17.5 Clause 12.5 – Record keeping

Clause 12.5 of the Code requires retailers, distributors and marketers to keep records of complaints made by customers and to make those records, upon request, available for inspection by the Authority and the Energy Ombudsman.

The records must be kept for a period of 3 years after the date on which the complaint was resolved.

17.5.1 Research

Only the ACT requires retailers and distributors to keep records in relation to complaints in addition to the general record keeping obligations for reporting purposes.

17.5.2 Discussion

The ECCC notes that clause 12.5 significantly overlaps with clauses 13.3 and 13.8 of the Code. Under clauses 13.3 and 13.8, a retailer and distributor must keep records of:

- total number of complaints;
- total number of complaints classified by type of complaint;
- the action taken to address the complaint; and
- the time taken to address the complaint.

The records must be kept for a period of 3 years from the last date on which the information was recorded (clause 13.1) and must be provided to the Authority on request (clause 13.11).

In light of the significant overlap, the ECCC recommends deletion of clause 12.5.

However, the ECCC notes that Part 13 does not:

- contain record keeping obligations in relation to marketers;

[141] Refer to table 12.1 above.

- contain an obligation on a retailer or distributor to provide records upon request to the Energy Ombudsman; nor
- require a retailer and distributor to keep a record of the complaint itself (only the number of complaints).

The ECCC believes that these obligations are of value and therefore recommends that they be incorporated into Part 13. With regard to the record keeping obligation on marketers (first bullet point above), the ECCC recommends that retailers and distributors be required to keep records of any complaints made directly to marketers acting on their behalf.

Recommendation 12.10

Delete clause 12.5.

Recommendation 12.11

Amend Part 13 to include an obligation upon a retailer and distributor to keep a record of the complaint itself (including complaints made directly to a marketer).

Recommendation 12.12

Amend clause 13.3(1)(b)(iii) to explicitly include complaints made directly to a marketer.

18 Part 13 – Record Keeping

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

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

18.1 Background

18.1.1 Utility Regulators Forum

In March 2002, the URF published a report titled "National Regulatory Reporting for Electricity Distribution and Retailing Business" (**March 2002 Report**).[142] The March 2002 Report sets out a national regulatory reporting framework for:

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

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

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

Distributors

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

Retailers

In relation to retail activities, the URF Steering Committee on National Regulatory Reporting Requirements released a Discussion Paper[143] in March 2006 (**SCONRRR Discussion Paper**) on refining the national set of performance indicators for energy retailers.

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

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

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

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

- expand the performance indicators to include the gas retail sector;
- add additional indicators for both electricity and gas retail, which more comprehensively monitor the assistance provided to customers experiencing payment difficulties; and
- achieve greater consistency in complaints and call centre reporting.[144]

Following consideration of submissions received during the public consultation period, the URF published a Final Paper titled 'National Energy Retail Performance Indicators' (**November 2006 Report**).

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

Throughout this Chapter reference is made to both the March 2002 Report and the November 2006 Report. This is for two reasons. Firstly, the March 2002 Report is the only report dealing with distribution matters. Secondly, the November 2006 Report builds on the March 2002 Report and therefore cannot be read in isolation from the first report.

18.1.2 Record keeping obligations in other jurisdictions

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

- **South Australia**: Energy Industry Guideline No. 1, Electricity Regulatory Information Requirements, Distribution[145]
- **South Australia**: Energy Industry Guideline No. 2, Energy Retail Code, Retailer[146]
- **Victoria**: Information Specification (Service Performance) for Victorian Electricity Distributors (effective 1 Jan 06) [147]
- **Victoria**: Decision Paper, Information Specification (Service Performance) for Victorian Energy Retailers [148]
- **Tasmania**: Electricity Industry Guideline No. 3, Customer Service Plan Guideline (Retail) [149]
- **Tasmania**: Electricity Industry Guideline No. 4, Distribution [150]

Appendix 21 provides a detailed overview of the performance indicators included in the above documents.

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

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

146 *Id*.

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

148 *Id*.

149 A copy of the guideline can be obtained from http://www.energyregulator.tas.gov.au/domino/otter.nsf/8f46477f11c891c7ca256c4b001b41f2/d110ed9896aa412eca256cd3001db186?OpenDocument

150 A copy of the guideline can be obtained from http://www.energyregulator.tas.gov.au/domino/otter.nsf/8f46477f11c891c7ca256c4b001b41f2/1e0dcfc1d5f8ece6ca256cd3001de28b?OpenDocument

18.1.3 Record keeping obligations under the Code

Code performance indicators differ from national indicators

The performance indicators included in Part 13 of the Code do not mirror those included in the March 2002 Report or the November 2006 Report.

The ECCC understands that, during the development of the Code, members of the ERCF questioned the appropriateness of some of the performance indicators included in the March 2002 Report and, therefore, agreed to deviate from the national regulatory reporting framework as required.

In relation to the differences between the Code and national performance indicators, the Authority has expressed the (interim) view that it considers:

> that there is potentially significant value in Western Australia's distribution and retail licensees being required to report their service performance in accordance with [the Utility Regulators Forum's] standards. This would enable:
>
> - Licensees' performance to be benchmarked against similar businesses in other jurisdictions.
> - The Authority, licensees, other industry participants and, importantly, electricity customers to understand better the level of service that Western Australian customers are receiving, relative to equivalent customers in other jurisdictions.[151]

Publication of performance data

Retailers and distributors have been obliged to keep records of the data specified in Part 13 of the Code since 30 April 2005[152]. The Authority recently published a Draft Electricity Compliance Reporting Manual[153] for public comment. The manual provides a list of all compliance requirements for licensees and a timeframe for licensees to report on any non-compliance matters relating to each licence obligation (including Part 13 of the Code).

The Authority aims to finalise the manual by early 2007 so as to allow licensees sufficient time to prepare compliance reports for the 2006-2007 financial year.

In the interim, the Authority has written to retailers and distributors requesting all data collected under Part 13 of the Code for the period 1st July 2005 to 30th June 2006 be provided to the Authority and published on the website of the licensee by 30th November 2006.

18.1.4 ECCC perspectives on integrating the URF recommendations in WA

Whilst the majority of the ECCC members support the objective of moving to a national reporting regime there was a diversity of opinion within the ECCC as to how national consistency could be achieved.

Some members felt that given the relatively low level of representation WA had on the Committee which developed the proposed national regime there was insufficient assessment undertaken as to the electricity industry's ability to comply with the regime or the costs of doing so in WA.

Synergy argued that, consistent with the principles of best practice regulation, the adoption of a national regime in WA should warrant specific consultation by the Authority and not be included as part of the Code. Furthermore, Synergy argued that using the

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151 Draft Electricity Compliance Reporting Manual, pg. 13. A copy of the draft manual can be obtained from http://www.era.wa.gov.au/electricity/noticesDrafts.cfm

152 Refer to clause 1.3(5) of the Code.

153 A copy of the draft manual can be obtained from http://www.era.wa.gov.au/electricity/noticesDrafts.cfm

Code for this purpose will not achieve one of the stated objectives of national reporting for distributors on a consistent basis, given the Code does not apply to the supply of electricity in all circumstances, but is limited to supply situations of <160 MWh per annum. Synergy argues that this limitation is overcome if performance reporting is established through the licence framework.

The ECCC notes that most Eastern States have implemented performance reporting through the imposition of a licence guideline established by the respective regulators specifically for that purpose.

18.2 General

National consistency

As detailed above, the performance indicators included in the Code differ from those included in the national regulatory reporting framework.

Consistent with the Authority's (interim) view, the ECCC recommends that Part 13 be amended to provide for consistency with the national performance indicators included in the March 2002 and November 2006 Report. It is noted that this recommendation does not entail replacement of Part 13 with the performance indicators proposed by the URF.

Instead, the ECCC proposes that those performance indicators that are similar to the national indicators be amended to ensure consistency. In addition, national indicators that are not yet included in Part 13 should be added. However, where the Code provides for additional performance indicators, the ECCC proposes retention of those indicators (e.g. service standard payments).

Also, the ECCC recognises that some differentiation may continue to be necessary to ensure that any regional differences are taken into account.

Recommendation 13.1

Amend Part 13 to be consistent with the national performance indicators included in the March 2002 and November 2006 Report.

The remainder of this paper has been drafted to be consistent with Recommendation 13.1.

For ease of reference, Appendices 22 and 23 illustrate the performance indicators as recommended by the ECCC.

Exception to national consistency

The ECCC notes that retention of the "Part 13" performance indicators for distributors in the Code will preclude one-on-one comparison between WA distributors and distributors operating in other States. This is because, under the Code, a distributor may only be required to collect information in relation to its small use customers.

Under the March 2002 Report, distributors must collect data in relation to all distribution customers (regardless of consumption level).

18.3 Notes within Part 13

In accordance with Recommendation 1.1, the ECCC recommends the following amendments to the notes in Part 13 of the Code.

Recommendation 13.2
Delete objectives and include within Guide.

Recommendation 13.3
Delete note under clause 13.3(1)(d).

Recommendation 13.4
Delete note under clause 13.5(1).

Recommendation 13.5
- Delete note under clause 13.10
- Amend clause 13.10 by deleting "connections" and including instead "***customers*** who are connected to the ***distributor's*** network".

18.4 Clause 13.1 – Records to be kept

Clause 13.1 requires retailers, distributors and marketers to keep records and any other information that a retailer, distributor or marketer is required to keep under the Code for a period of at least 3 years from the last date on which the information was recorded.[154]

18.4.1 Research

None of the Eastern States' retail or distribution codes contain a general obligation to keep records for a specified amount of time.

However, minimum timeframes for keeping records have been included in some Eastern States' marketing codes.[155] These timeframes generally range between 1 and 2 years.

The lack of a general obligation to keep records for a specified amount of time may be explained by the fact that all States already require retailers and distributors to collect and provide (to the regulator) performance data at specified intervals.

18.4.2 Discussion

The ECCC considers there to be merit in requiring retailers and distributors to keep certain records for a prescribed amount of time, in particular records relating to complaints[156] and marketing activities[157].

However, the ECCC also recognises that, under the proposed compliance procedures[158], data relating to compliance with Part 13 must already be provided to the Authority at set intervals (i.e. annually). It could be argued that an obligation to keep this data for an additional three years would add little value.

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154 With the exception of historical billing and consumption data which, under clauses 10.2(4) and 10.7(4) of the Code, must be kept for at least 7 years.

155 Refer to the Code of Conduct for Marketing Retail Energy in Victoria and Energy Marketing Code (SA).

156 Refer to clause 12.5 of the Code.

157 Refer, for example, to clause 2.9(6) of the Code.

158 Refer to draft Electricity Compliance Reporting Manual.

Therefore, the ECCC proposes that the time period be reduced from three years to two and that this matter be examined during the next Code review.

Recommendation 13.6
Amend clause 13.1 to reduce time period from three years to two years.

18.5 Clause 13.2 (retailers) – Affordability and access

Clause 13.2 of the Code requires retailers to keep records on performance indicators that may provide insight into issues relating to affordability and access. Under clause 13.2, records must be kept as to the total number of customers who:

- have been assessed as experiencing financial hardship;
- are subject to an instalment plan under Part 6;
- have been granted additional time to pay their bill under Part 6;
- have been placed on a shortened billing cycle;
- have been disconnected in accordance with clauses 7.1 to 7.3 for failure to pay a bill;
- have been reconnected at the same supply address within 30 days of having been disconnected for failure to pay a bill; and
- have provided a refundable advance.

18.5.1 Research

As all States have (largely) adopted the performance indicators as proposed by the URF in its March 2002 Report, the "research" sections hereinafter will only discuss those indicators. In addition, to the extent that the URF has proposed[159] an amendment to those indicators in its November 2006 Report, the proposed amendment will also be discussed.

Financial hardship

Neither the March 2002 nor the November 2006 Report proposes that retailers keep data as to the number of customers that have been assessed by a retailer as experiencing financial hardship.

This may be explained by the fact that some codes do not contain a specific obligation upon retailers to assess whether a customer is experiencing financial hardship.

Instalment plan

The March 2002 Report proposes that retailers keep data as to the number and percentage of customers on instalment plans. Instalment plans are defined as:

> An arrangement between a retailer and a customer for the customer to pay arrears and continued usage on their account according to an agreed payment schedule and capacity to pay. It does not include customers using a payment plan as a matter of convenience or for flexible budgeting purposes.

[159] Note that the amendments proposed in the March 2002 Report and the November 2006 Report are merely proposals. Each jurisdictional regulator has the opportunity to review their retailer information specification and consider amending them to make them consistent with the findings of the November 2006 Report.

The November 2006 Report proposes that the following amendments be made to the definition of instalment plan:

- the definition should state that instalment plans are generally considered as plans involving at least three instalments;
- the definition should acknowledge that the plans enable customers to make payments in instalments, by arrears or advance, taking into account their capacity to pay; and
- the key point is that the arrangements enable the customer to continue to receive supply and avoid disconnection.

Additional time to pay a bill

Neither the March 2002 nor the November 2006 Report proposes that retailers keep data as to the number of customers that have been allowed additional time to pay their bill.

Shortened billing cycle

Neither the March 2002 nor the November 2006 Report proposes that retailers keep data as to the number of customers that have been placed on a shortened billing cycle.

Disconnection

The March 2002 Report proposes that retailers keep data as to the number and percentage of customers that have been disconnected due to failure to pay the amount due.

In the SCONRRR Discussion Paper, the URF notes that[160]:

> Since the release of the March 2002 Report, the extent to which financially disadvantaged customers are being disconnected has emerged as an issue in a number of jurisdictions. There is some concern that by themselves the current indicators of total disconnections and reconnections are not sufficient to identify the extent to which financially disadvantaged customers are being disadvantaged.

Therefore, the URF proposes[161] that the following additional information be collected from retailers (in relation to residential customers only):

- disconnection of customers previously on a budget instalment plan;

  Customers whose supply was disconnected for non payment of amount owed and the customer is, or has been in the previous 24 months, repaying arrears through a budget instalment plan.

- disconnections in the same name and address within the past 24 months; and

  Customers whose supply was disconnected for non payment of an amount owed and who have been disconnected for non payment of an account on one or more occasions in the previous 24 months.

- disconnections of concession card customers.

  Disconnection of customers who receive a State Government administered energy concession through the Federal Concession Card Scheme, or other government-funded rebate schemes.

160 Refer to Discussion Paper, pg. 9.

161 Refer to November 2006 Report, pg. 22-23.

Reconnection

The March 2002 Report proposes that retailers keep data as to the number and percentage of reconnections at the same premises in the same name within 7 days of disconnection (as a percentage of total number of customers disconnected for failure to pay the amount due).

In its November 2006 Report, the URF proposes[162] that the following additional information be collected from retailers (in relation to residential customers only):

- reconnection in the same name of customers previously on a budget instalment plan;

  Customers whose supply has been reconnected and the customer is, or has been in the previous 24 months, repaying arrears through a budget instalment plan.

- reconnections in the same name and address within the past 24 months; and

  Customers whose supply was reconnected in the same name at the same premises following a disconnection for non payment and who have been disconnected for non payment of an account on one or more occasions in the previous 24 months.

- reconnection in the same name of Government funded rebate customers.

  Customers who receive a State Government administered energy concession through the Federal Concession Card Scheme (or other government-funded rebate schemes) and whose supply was reconnected in the same name at the same premises following a disconnection for non payment.

Refundable advance

In its March 2002 Report, the URF suggests that information be collected as to the number and percentage of customers (residential and non-residential) who have lodged security deposits.

No amendments have been proposed to this indicator in the November 2006 Report.

18.5.2 Recommendation

Percentages

Unlike the Code, the March 2002 and the November 2006 Report require retailers and distributors to not only keep data as to the total number of customers affected in relation to each performance indicator, but also the relevant percentages.

The ECCC understands that the members of the ERCF agreed to omit the requirement to keep data on percentages as this data is derived from the total numbers and could therefore easily be calculated independently. That is, the ERCF questioned the need for including an obligation in the Code that did not provide additional value.

Although the ECCC appreciates the ERCF's reasoning for omitting the obligation to collect data in percentage form, for reasons of consistency, it is recommended that this obligation be included in the Code.

Recommendation 13.7

Include, where appropriate and consistent with the URF supported recommendations, an obligation on retailers and distributors to keep data on percentages.

[162] Refer to November 2006 Report, pg. 22-23.

Classification (residential & non-residential)

Unlike the Code, the March 2002 Report and the November 2006 Report propose that retailers and distributors disaggregate some of the data as to residential and non-residential customers.

The ECCC understands that the members of the ERCF agreed not to require retailers to further categorize data in relation to residential and non-residential customers upon advice by retail licensees that this would involve significant additional costs.

Although the ECCC appreciates the ERCF's reasoning for omitting the obligation to disaggregate data, for reasons of consistency, it is recommended that this obligation be included in the Code.

Recommendation 13.8
Include, where appropriate and consistent with the URF supported recommendations, an obligation on retailers and distributors to disaggregate data relating to residential and non-residential customers.

Financial hardship

Neither the March 2002 Report nor the November 2006 Report proposes that retailers keep data as to the number of customers that have been assessed by a retailer as experiencing financial hardship. Accordingly, the ECCC proposes deletion of this requirement at this time.

Recommendation 13.9
Delete clause 13.2(1)(a) of the Code.

Instalment plan

Although the Code requires retailers to keep data as to the number of customers on instalment plans, it does not include a definition of the term "instalment plan". The ECCC understands that no definition was included to minimise confusion. That is, the ERCF wanted to ensure that all instalment plans entered into under Part 6 of the Code were captured, not only those that met the March 2002 Report definition.

To achieve consistency in reporting standards, the ECCC recommends amendment of clause 13.2(1)(b) consistent with the URF's recommendations.

Recommendation 13.10
Amend clause 13.2(1)(b) of the Code by including the March 2002 Report definition of instalment plan (including the amendments proposed in the November 2006 Report).

Additional time to pay a bill

The ECCC invites comments from interested parties as to whether clause 13.2(1)(c) should be retained or deleted.

Discussion Point (13.1)
Should clause 13.2(1)(c) be retained or deleted?

Shortened billing cycle

The ECCC invites comments from interested parties as to whether clause 13.2(1)(d) should be retained or deleted.

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

Disconnection

The ECCC recommends that the additional disconnection performance indicators, as proposed in the November 2006 Report, be included in the Code.

Recommendation 13.11
Include the following performance indicators in clause 13.2(1):

- disconnection of customers previously on a budget instalment plan;
- disconnections in the same name and address within the past 24 months; and
- disconnections of concession card customers.

Reconnection

Two main differences exist between the Code and the March 2002 Report performance indicator on reconnections.

Firstly, the March 2002 Report requires data to be kept on reconnections at the same premises and in the same name. Under the Code, data only has to be kept for reconnections at the same premises.

Secondly, the March 2002 Report only requires data to be collected for reconnections that occurred within 7 days, while under the Code data must be collected for all reconnections that occur within 30 days.

The ECCC understands that the members of the ERCF agreed to extend the timeframe for capturing reconnection data to ensure that not only those reconnections are captured where supply is restored relatively quickly (i.e. 7 days), but also those where supply is disconnected for a substantial amount of time (i.e. 30 days). Rationale for the divergence was a recognition that prolonged periods of disconnection would have a more severe impact on customers than short periods of disconnection.

To achieve consistency in reporting standards, the ECCC recommends amendment of clause 13.2(1)(f) consistent with the URF's recommendations.

Recommendation 13.12
Amend clause 13.2(1)(f) of the Code by requiring retailers to keep data on "the number and percentage of reconnections at the same premises in the same name within 7 days of disconnection" (whereby percentage is measured by reference to the total number of customers disconnected for failure to pay the amount due).

In addition, the ECCC recommends that the additional reconnection performance indicators, as proposed in the November 2006 Report, be included in the Code.

Recommendation 13.13

Include the following performance indicators in clause 13.2(1):

- reconnection in the same name of customers previously on a budget instalment plan;
- reconnections in the same name and address within the past 24 months; and
- reconnection in the same name of Government funded rebate customers.

Refundable advance

The ECCC notes that clause 13.2(1)(g) is generally consistent with the URF's proposal. However, for reasons of consistency, the ECCC recommends that the wording of clause 13.2(1)(g) be amended consistent with the wording used in the November 2006 Report.

Recommendation 13.14

Amend clause 13.2(1)(g) to read "number of customers who have lodged security deposits".

18.6 Clause 13.3 (retailers) – Customer complaints

Clause 13.3 of the Code requires a retailer to keep prescribed information as to the number of customer complaints received. The complaints must be classified into seven categories, being:

- billing and account complaints;
- customer transfer complaints;
- marketing complaints;
- connection complaints;
- disconnection complaints;
- reconnection complaints; and
- other complaints.

In addition, a retailer must keep records as to the action taken by a retailer to address a complaint and the time taken for a complaint to be resolved.

18.6.1 Research

Complaint categories

The March 2002 Report proposes that retailers collect data as to the total number of complaints received, classified by billing or account complaints and other complaints.

In the SCONRRR Discussion Paper, the URF noted[163] that:

- the current definition of complaints should be amended to provide greater clarity;
- consistency in reporting between retailers needs to be improved; and

[163] Refer to SCONRRR Discussion Paper, pg. 4.

- changes to the current indicators are warranted to gain a better appreciation of the key customer groups that are making complaints and the nature of those complaints.

Accordingly, the URF proposes a number of amendments to the complaint performance indicator. The new complaints performance indicator proposes that retailers classify complaints received into the following four categories[164]:

- Billing/credit complaints

  Includes billing errors, incorrect billing of fees and charges, failure to receive relevant government rebates, high billing, credit collection, disconnection and reconnection, and restriction due to billing discrepancy.

- Marketing complaints

  Includes advertising campaigns, contract terms, sales techniques and misleading conduct.

- Transfer complaints

  Includes failure to transfer customer within a certain time period, disruption of supply due to transfer and billing problems directly associated with the transfer (e.g. delay in billing, double billing).

- Other complaints

  Includes poor service, privacy consideration, failure to respond to complaints, and health and safety issues.

The complaints data should be disaggregated under residential and non-residential categories.

In addition, the URF proposes to amend the definition of complaint to read:

> An expression of dissatisfaction made to an organisation, related to its products/services, or the complaints-handling process itself where a response or resolution is explicitly or implicitly expected.[165]

The November 2006 Report also includes a Complaints Guideline which intends to resolve "continuing practical application issues in the identification and the reporting of complaints".[166]

Action taken to address complaint

Neither the March 2002 nor the November 2006 Report proposes that retailers keep data in relation to action taken to address complaints.

Time to conclude complaint

Neither the March 2002 nor the November 2006 Report proposes that retailers keep data in relation to the time it takes to conclude a complaint.

18.6.2 Discussion

Complaint categories

In relation to the disaggregation of complaint data, the ECCC recommends that clause 13.3(1)(b) be amended to provide for four (4) complaint categories – consistent with the proposal by the URF in its November 2006 Report.

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164 Refer to November 2006 Report, pg. 12.

165 Refer to November 2006 Report, pg. 12.

166 Refer to November 2006 Report, pg. 11.

Recommendation 13.15

Amend clause 13.3(1)(b) of the Code by deleting subclauses (iv), (v) and (vi) and amending subclause (i) to read "billing/credit complaints".

Recommendation 13.16

Amend clause 13.3(2) of the Code be deleting the definitions of "billing and account complaint", "customer transfer complaint" and "marketing complaint" and inserting instead the following definitions as proposed by the URF in its November 2006 Report:

- **"billing/credit complaints"** includes billing errors, incorrect billing of fees and charges, failure to receive relevant government rebates, high billing, credit collection, disconnection and reconnection, and restriction due to billing discrepancy.
- **"marketing complaints"** includes advertising campaigns, contract terms, sales techniques and misleading conduct.
- **"transfer complaints"** includes failure to transfer customer within a certain time period, disruption of supply due to transfer and billing problems directly associated with the transfer (e.g. delay in billing, double billing).
- **"other complaints"** includes poor service, privacy consideration, failure to respond to complaints, and health and safety issues.

Furthermore, the ECCC reiterates its proposal (refer to Recommendation 12.6) that the definition of "complaint" be amended consistent with that proposed by the URF.

Action taken to address complaint & Time to conclude complaint

Although neither the March 2002 nor the November 2006 Report proposes that retailers keep data as to action and time taken to address and conclude a complaint, the ECCC considers there to be merit in requiring retailers to keep this data. In particular, the information may assist external dispute resolution bodies and/or the Authority in evaluating the appropriateness of any action taken by a retailer to address a complaint.

However, the ECCC notes that it is difficult to capture this type of information in terms of numbers and/or percentages (i.e. performance indicators).

Therefore, the ECCC recommends that retailers continue to retain these records but that the information does not form the basis of a performance indicator.

Recommendation 13.17

Retain clause 13.3(1)(c) without amendment.

Recommendation 13.18

Any information collected under clause 13.3(1)(c) should not form the basis of a performance indicator.

Recommendation 13.19

Amend clause 13.3(1)(d) to read:

> the time taken for the appropriate procedures for dealing with the complaint to be concluded.

Recommendation 13.20

Any information collected under clause 13.3(1)(d) should not form the basis of a performance indicator.

18.7 Clause 13.4 (retailers) – Compensation payments

Clause 13.4 of the Code requires retailers to keep records on the total number of service standard payments made under clauses 14.2 (facilitating customer reconnections), 14.3 (wrongful disconnection) and 14.4 (customer service).

18.7.1 Research

Neither the March 2002 Report nor the November 2006 Report propose that retailers keep data relating to the number of service standard payments made.

This may be explained by the fact that service standards for which payments are due differ between the States, making it difficult to compare performance across jurisdictions.

18.7.2 Recommendation

Although neither the March 2002 Report nor the November 2006 Report suggests that retailers keep records on the number of service standard payments made, the ECCC considers there to be value in recording this data.

The ECCC also notes that, in addition to the number of payments made, there may be value in keeping data as to the average amount of payment made under clauses 14.2 and 14.3 as this will give some indication as to the extent to which the service standards have been breached.

Comment is invited as to whether clauses 13.4(a) and (b) should be amended by adding an obligation upon retailers to keep data as to the average amount of payments made under clauses 14.2 and 14.3 of the Code.

Discussion Point (13.3)

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

18.8 Clause 13.5 (retailers) – Supporting information

18.8.1 Background

Clause 13.5 of the Code requires retailers to keep records on the total number of residential and business accounts.

The ECCC understands that members of the ERCF agreed to deviate from the URF's proposed performance indicators (which relates to customer numbers) in recognition of the fact that Western Power Corporation's IT systems would be unable to provide data as to the number of customers supplied.

That is, Western Power Corporation's IT systems recorded customer information under account numbers, not customer details. This means that where a customer has (for example) three accounts, the IT system registers three accounts as opposed to one customer.

18.8.2 Research

In its March 2002 Report, the URF proposes that retailers keep information regarding the total number of residential and business customers.

No amendments to this indicator have been proposed in the November 2006 Report.

18.8.3 Recommendation

Given the cost of converting from recording accounts to recording customers and the relative merits of this the ECCC does not propose that clause 13.5 be amended at this time. However, the ECCC recommends that this issue be explored during the next Code review.

Recommendation 13.21

- Retain clause 13.5 without amendment.
- Examine this provision at next Code review.

18.9 Clause 13.6 (distributors) – Connections

Clause 13.6 of the Code requires distributors to keep records on the number of connections established, and the number of connections which were not established on time.

18.9.1 General

As the November 2006 Report does not relate to distributors, hereinafter reference will no longer be made to the report (with the exception of complaints).

In addition, as the Code does not address matters relating to quality and reliability of supply or asset management, those parts of the national regulatory reporting framework will not be discussed. Instead, the following paragraphs will focus exclusively on the nationally proposed performance indicators for customer service as provided by distribution companies.

18.9.2 Research

In its March 2002 Report, the URF proposes that distributors collect data as to the:

- total number of connections provided; and
- total number of connections not provided on or before the agreed date.

The number of connections not provided on or before the agreed date "includes connections not provided within any regulated time limit and connections not provided by the date agreed with a customer". [167]

18.9.3 Recommendation

Although the Code and the March 2002 Report essentially require the same data to be collected, the ECCC recommends amendment of clause 13.6 to ensure consistency with the March 2002 Report.

Recommendation 13.22

Delete clause 13.6 and include instead:

- total number of connections provided; and
- total number of connections not provided on or before the agreed date.

[167] March 2002 Report, pg. 8.

Recommendation 13.23

Add the following subclause to clause 13.6:

> **"not provided on or before the agreed date"** includes connections not provided within any regulated time limit and connections not provided by the date agreed with a ***customer***.

18.10 Clause 13.7 (distributors) – Timely repair of faulty street lights

Clause 13.7 of the Code requires distributors to keep records on the number of street lights reported faulty each month and the time taken to repair the street light.

18.10.1 Research

In its March 2002 Report, the URF proposes that distributors collect data as to the:

- average number of street lights "out" during each month;
- number of faulty street lights not repaired before agreed date;
- average number of days to repair faulty street light; and
- total number of street lights.

The number of days taken to repair a street light is counted "from the date of notification of a faulty street light rather than the date the street light ceased working".[168]

18.10.2 Recommendation

In relation to the national performance indicator "number of faulty street lights not repaired before agreed date", the ECCC notes that neither the Code nor any other regulatory instruments prescribes the timeframe within which street lights should be repaired. However, where a complaint of an outage has been made it would be reasonable to expect that the distributor would provide an indication of the date by which the repair would be complete.

Recommendation 13.24

Amend clause 13.7 consistent with URF recommendations generally.

18.11 Clause 13.8 (distributors) – Customer complaints

Clause 13.8 of the Code requires distributors to keep records on the number of complaints received (per category) and the action and time taken to rectify a complaint.

18.11.1 Research

Complaint categories

In its March 2002 Report, the URF proposes that distributors collect data as to the:

- total number of customer complaints; and
- total number of customer complaints relating to:

[168] March 2002 Report, pg. 8.

- reliability of supply;
- technical quality of supply;
- administrative process or customer service; and
- other.

A complaint is defined by Australian Standard 4269:1995 as any expression of dissatisfaction with a product or service offered.[169]

Similar to the Code and the March 2002 Report, the Quality and Reliability of Supply Code requires distributors to keep data as to the total number of complaints received in relation to breaches of quality and reliability standards. However, unlike the Code and the March 2002 Report, the Quality and Reliability of Supply Code does not require a break-down between reliability and quality of supply complaints.

The Quality and Reliability of Supply Code does require distributors to report on the total number of breaches of each provision included in Part 2 as identified by monitoring. As these provisions relate to either quality or reliability, the information will effectively provide a break-down of quality and reliability breaches.

Action taken to address complaint & time to conclude complaint

The March 2002 Report does not include a proposal for distributors to keep data in relation to the action and time taken to rectify a complaint.

18.11.2 Recommendation

Complaint categories

Under the Code, distributors are required to disaggregate their data into seven categories whereas the March 2002 Report only provides for four categories. For reasons of consistency, it would be preferable if clause 13.8(b) were amended to provide for four complaint categories consistent with the March 2002 Report.

However, the ECCC notes that two of the four categories proposed in the March 2002 Report significantly overlap with the requirements of the Quality and Reliability of Supply Code. Although not identical[170], the ECCC is of the opinion that they are substantively similar to warrant deviation from the March 2002 Report.

Therefore, to minimise any duplication between the Code and the Quality and Reliability of Supply Code, the ECCC recommends that clause 13.8 be amended by removing reference to reliability and quality of supply complaints from the Code.

It is noted that by excluding reliability and quality of supply complaints from clause 13.8, distributors will no longer be obliged to keep records on the action and time taken to conclude a complaint, as this matter is not addressed under the Quality and Reliability of Supply Code. However, this issue should be addressed though amendment of the Quality and Reliability of Supply Code, not the Code.

169 March 2002 Report, pg. 8.

170 As noted above, the Quality and Reliability of Supply Code does not provide for a break-down between quality and reliability standards. Also, unlike the Quality and Reliability of Supply Code, the Code requires distributors to keep records on complaints not related to quality and reliability of supply.

Recommendation 13.25

Include "(excluding quality and reliability complaints)" after the word complaints in clauses 13.8(a), (c) and (d).

Recommendation 13.26

Delete clauses 13.8(b) and insert instead:

> The total number of:
>
> (i) administrative process or customer service ***complaints***; and
>
> (ii) other ***complaints***.

Recommendation 13.27

Insert new subclause defining "quality and reliability complaints" as:

> means a complaint as defined in Schedule 1 of the *Electricity Industry (Network Quality and Reliability of Supply) Code 2005*.

Although the newly proposed definition of "complaint" in the November 2006 Report only applies to retailers, for reasons of consistency, the ECCC recommends that the same definition be used by distributors.

The ECCC therefore reiterates its proposal that the definition of "complaint" be amended consistent with that proposed by the URF (refer Recommendation 12.6).

Action taken to address complaint & Time to conclude complaint

Although the March 2002 Report does not propose that distributors keep data as to action and time taken to address a complaint, the ECCC considers there to be merit in requiring distributors to collect this data. In particular, the information may assist external dispute resolution bodies and/or the Authority in evaluating the appropriateness of any action taken by a distributor to address a complaint.

However, the ECCC notes that it is difficult to capture this type of information in terms of numbers and/or percentages (i.e. performance indicators).

Therefore, the ECCC recommends that distributors continue to retain these records but that the information does not form the basis of a performance indicator.

For reasons of consistency, the ECCC also recommends that the wording of clauses 13.8(c) and (d) be amended consistent with clauses 13.3(1)(c) and (d) (i.e. "address" and "conclude" instead of rectify").

Recommendation 13.28

Amend clause 13.8(c) of the Code by deleting the term "rectify" and including instead "address".

Recommendation 13.29

Any information collected under clause 13.8(c) should not form the basis of a performance indicator.

Recommendation 13.30

Amend clause 13.8(d) of the Code to read:

> the time taken for the appropriate procedures for dealing with the ***complaint*** (excluding quality and reliability complaints) to be concluded.

Recommendation 13.31
Any information collected under clause 13.8(d) should not form the basis of a performance indicator.

18.12 Clause 13.9 (distributors) – Compensation payments

Clause 13.9 of the Code requires distributors to keep records on the total number of service standard payments made under clauses 14.5 (planned interruptions) and 14.6 (customer service).

18.12.1 Research

The March 2002 Report does not include a proposal for distributors to keep data relating to the number of service standard payments made.

This may be explained by the fact that service standards for which payments are due differ between the States, making it difficult to compare performance across jurisdictions.

18.12.2 Recommendation

As the ECCC has made Recommendation 14.10, clause 13.9(a) should be deleted.

Recommendation 13.32
Delete clause 13.9(a) of the Code.

Although the March 2002 Report does not propose that retailers keep records on the number of service standard payments made, the ECCC considers there to be value in recording this data. It is therefore recommended that clause 13.9(b) be retained.

Recommendation 13.33
Retain clause 13.9(b) without amendment.

18.13 Clause 13.10 (distributors) – Supporting information

Clause 13.10 of the Code requires distributors to keep records on the total number of connections.

18.13.1 Research

The March 2002 Report does not include a proposal for distributors to keep data relating to the number of connections.

18.13.2 Recommendation

Although the March 2002 Report does not propose that retailers keep records on the number of connections, the ECCC considers there to be value in recording this data. For example, to determine the relative level of complaints a distributor receives (i.e. as a percentage of total customers/connections), it is useful to know the distributor's total number of connections.

Therefore, the ECCC recommends retention of clause 13.10.

Recommendation 13.34
Subject to Recommendation 13.5, retain clause 13.10 without amendment.

18.14 Clause 13.11 – Provision of records to the Authority

Clause 13.11 of the Code requires retailers, distributors and marketers to give to the Authority on request "information within the scope of the request that the Code requires them to keep and that they have relating to compliance with the Code".

18.14.1 Research

The obligation included in clause 13.11 is not a performance indicator, but a general information provision requirement. A similar obligation is therefore not included in the March 2002 Report.

18.14.2 Recommendation

The ERA Act provides the Authority with the heads of power to obtain information and documents, as required.[171] Additional powers to obtain information are also provided in retail and distribution licences.

Under section 27 of the Quality and Reliability of Supply Code, a licensee is required to produce a report of the data, publish the report and make available at its business premises and on its website and provide a copy to the Authority not less than seven days before it is published.

For the purpose of consistency, the ECCC proposes replacement of clause 13.11 of the Code with a provision akin to section 27 of the Quality and Reliability of Supply Code.

Recommendation 13.35
Replace clause 13.11 of the Code with a provision akin to section 27 of the Quality and Reliability of Supply Code.

18.15 Performance indicators not included in Code

The March 2002 and November 2006 Report include a number of performance indicators that are not included in the Code. These are:

- **Retailers only**: Direct debit cancellations – as a result of defaults
- **Retailers and distributors**: Telephone service

18.15.1 Direct debit cancellations

National regulatory framework

In its March 2002 Report, the URF proposed that retailers keep records as to the number and percentage of customers who default on direct debit payments. The definition of

[171] Refer to section 51 of the ERA Act.

default was to be determined by each retailer, but "generally involves multiple failed attempts to process a direct debit payment" [172].

In its November 2006 Report, the URF proposed amendment of the performance indicator. Data should now be collected as to "the number of direct debit plans terminated as a result of default/non payment". This definition excludes the termination of direct debit plans by choice. It would also generally require a default or rejection to occur in two successive payment periods to reflect, as far as possible, true default on payments, rather than an error or a transitory shortfall.[173]

Code

At the time of the development of the Code, some members of the ERCF noted that a large number of customers included within this statistic would be customers who had changed banks, forgot to deposit their account on time (etc). As a result, the statistic would not provide the data it intended to register.

In view thereof, the performance indicator was not included in the Code.

The ECCC notes that the URF appears to agree with the ERCF's findings as it has amended its performance indicator so as to only require data to be recorded on direct debit defaults resulting from non payment/default in two successive payment periods.

In light of the URF's proposed amendments to the direct debit default performance indicator, the ECCC recommends inclusion of the indicator into the Code.

Recommendation 13.36

Insert a new clause in Division 2 of Part 13 which requires retailers to keep records on:

- number of direct debit plan terminations; and
- percentage of direct debit plans terminated.

Recommendation 13.37

Insert an explanation/definition to clarify that only plans terminated as a result of default/non payment in two successive payment periods are to be included.

18.15.2 Telephone service

National regulatory framework

In its March 2002 Report, the URF proposed that retailers and distributors keep records as to telephone service and inquiries. The performance indicator aimed to determine a retailer's and distributor's efficiency in having calls answered by a call centre or an operator. A telephone call was considered "answered" when a caller speaks to a human operator or to an interactive service that provides the information requested.[174]

In its November 2006 Report, the URF proposed amendment of the performance indicator. Data should now only be collected on calls made to an operator.

Code

The ECCC understands that, at the time of the development of the Code, Western Power Corporation advised that it would experience difficulty in collecting data on its call centre

172 March 2002 Report, pg. 19.

173 November 2006 Report, pg. 17.

174 March 2002 Report, pg. 25.

performance as its distribution business had outsourced call centre activities to the retail business.

Furthermore, the Code may only impose obligations upon retailers and distributors in relation to small use customers. As a result, inclusion of a performance indicator on telephone service would require retailers and distributors to establish which calls were made by small use customers and which were not. This may be problematic.

In light of Western Power Corporation's advice, the limited scope of the Code and general confusion about the type of data that should be collected (IVR, automated payment lines, operator calls, etc), the performance indicator was omitted from the Code.

In view of the amendments proposed by the URF to the performance indicator, the ECCC now recommends inclusion of the indicator into the Code.

In addition, the ECCC recommends that an explanatory note be included in the Guide stating that retailers and distributors may opt to provide data relating to telephone service collectively for all customers (regardless of consumption level). This would minimise any additional costs on retailers and distributors, while ensuring the data is consistent with that collected by Eastern States' retailers (only[175]).

Recommendation 13.38

Insert a new clause in Division 2 and 3 of Part 13 which requires retailers and distributors to keep records on:

- total number of telephone calls to an operator;
- number of operator calls responded to within 30 seconds;
- percentage of operator calls responded to within 30 seconds;
- average wait before call answered by operator (secs); and
- percentage of calls abandoned.

Recommendation 13.39

Include in the Guide a note (for clauses on telephone service) stating that retailers and distributors (as appropriate) may opt to provide data relating to telephone services collectively for all customers (regardless of consumption level).

[175] The Secretariat notes that any data collected by WA distributors under the new performance indicator will **not** be consistent with that collected by Eastern States distributors, as Eastern States distributors will collect telephone service data in accordance with the March 2002 Report (as opposed to the November 2006 Report).

19 Part 14 – Service Standard Payments

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

In addition to the payments prescribed in the Code, service standard payments have also been included in the Quality and Reliability of Supply Code. These include:

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

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

Most Eastern States also provide for payments for breach of quality and reliability standards. These standards are generally included in distribution codes[176] or general energy customer protection codes[177].

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

Appendix 24 illustrates the service standard payments prescribed by each State (with the exception of those relating to quality and reliability of supply).

19.1 Notes within Part 14

In accordance with Recommendation 1.1, the ECCC recommends the following amendments be made to the notes in part 14 of the Code.

Recommendation 14.1
Delete objectives and include within Guide.

Recommendation 14.2
Delete note under clause 14.4(2).

Recommendation 14.3
Delete note under clause 14.5(1).

Recommendation 14.4
Delete note under clause 14.7(1)(a).

Recommendation 14.5
Delete note under clause 14.9(3).

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

177 Refer to clause 6 of Schedule 1 of the Consumer Protection Code (ACT) and clause 5.9 of the Electricity Industry Code (Qld).

19.2 Clause 14.1 – Definitions

Clause 14.1 defines the term "eligible customer" as a non-contestable customer who is supplied with electricity from a distribution system operated by a relevant corporation.

The definition ensures that service standard payments are only available to non-contestable customers (i.e. those customers who consume less than 50 MWh of electricity per year) who are supplied with electricity from a distribution system operated by a relevant corporation (i.e. Western Power or Horizon Power) [178].

As only Synergy and Horizon Power supply electricity to non-contestable customers connected to a relevant corporation's distribution system, service standard payments by a retailer are currently only available to customers of Synergy and Horizon Power.

Therefore, service standard payments are paid to customers of Horizon Power, Synergy and Western Power.

19.2.1 Research

With the exception of NT, all States require retailers and/or distributors to make a payment to customers in the event a prescribed service standard has been breached.

Unlike WA, the Eastern States have imposed the obligation to make a payment on all retailers and/or distributors – not only the incumbent retailer and/or incumbent distributor.

In addition, in some States payment must not only be made to non-contestable or small use customers, but to all customers regardless of consumption level. Refer to the tables below for an overview of the type of customers entitled to service standard payments in each jurisdiction where service standard payments apply.

Table 14.1: Jurisdictional comparison – Retail customers eligible for service standard payment

	Clause	Non-contestable customers		Small use customers		Large use customers	
		SFC	non-SFC	SFC	non-SFC	SFC	non-SFC
WA	14.1 Code	✓*	✓*				
SA	Part B of ERC	N/A	N/A	✓[179]			
VIC	40B(5) EIA	N/A	N/A	✓	✓		
ACT	11 CPC[180]	N/A	N/A	✓	✓	✓	✓
NSW	40(3) ES(G)R	N/A	N/A	✓[181]			
QLD	N/A						
TAS	N/A						

* If supplied by "relevant corporation"

178 Refer to section 45(5) of the *Electricity Industry Act 2004*.

179 Electricity Standing Contract and Electricity Default Contract.

180 Refer to definition of "customer".

181 Customer Supply Contract.

Table 14.2: Jurisdictional comparison – Distribution customers eligible for service standard payment

	Clause	Non-contestable customers		Small use customers		Large use customers	
		SFC	non-SFC	SFC	non-SFC	SFC	non-SFC
WA	• 14.1 Code • 16 Quality and Reliability of Supply Code	✓*	✓*				
SA	Part B of EDC	N/A	N/A	✓[182]		✓[182]	
VIC	6 EDC[183]	N/A	N/A	✓[184]	✓[184]	✓[184]	✓[184]
ACT	11 CPC9[183]	N/A	N/A	✓	✓	✓	✓
NSW	40(3) ES(G)R	N/A	N/A	✓[185]	✓[186]	✓	
QLD	2.5.2 EIC	✓[187]	✓[187]				
TAS	Refer footnote [188]			✓	✓	✓	✓

* If supplied by "relevant corporation"

19.2.2 Discussion

The current definition of "eligible customer" effectively limits the application of service standard payments to customers who are:

- non-contestable; and
- supplied by Western Power or Horizon Power (with Synergy or Horizon Power as their retailer).

Non-contestable

As can be observed in tables 1 and 2 above, only under the WA Code is access to service standard payments limited to customers who consume less than 50 MWh of electricity per year. In all other States, with the exception of Qld, either all customers or all small use customers (supplied under prescribed contracts) are entitled to service standard payments in the event of a breach of service standard.

Comment is invited as to whether the scope of Part 14 should be extended to all small use customers.

Discussion Point (14.1)

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

182 Standard Connection and Supply Contract.

183 Refer to definition of 'customer'.

184 A person whose electrical installation is connected to the distributor's distribution system or who may want to have its electrical installation connected to the distributor's distribution system and includes an embedded generator.

185 Standard Form Customer Connection Contract.

186 Negotiated Customer Connection Contract

187 If named account holder for premises or (for PPM) occupier of premises. Note that from 1 July 2007 all customers in Qld will be contestable. Also note that a small use or contestable customer for the purposes of the Electricity Act (Qld) is a customer who consumes less than 200 MWh of electricity per year.

188 OTTER, *Investigation of prices for electricity distribution services and retail tariffs on mainland Tasmania - final report and proposed maximum prices*, September 2003 (pg. 126). The service standards prescribed in the report only apply for breach of quality and reliability standards and have, therefore, not been taken into account hereinafter.

The Act originally defined relevant corporation as Western Power Corporation or a subsidiary of Western Power Corporation. However, with the implementation of Regulation 69 of the *Electricity Corporations (Consequential Amendments) Regulations 2006* clause 14.1 of the Code is taken to be amended by deleting "a relevant corporation" and inserting instead "the Electricity Networks Corporation or the Regional Power Corporation."

The ECCC proposes that the term 'relevant corporation' in clause 14.1 be amended consistent with the regulation.

Recommendation 14.6

Amend clause 14.1 by deleting "a relevant corporation" and inserting instead "the Electricity Networks Corporation or the Regional Power Corporation."

The ECCC notes that, if full retail contestability is introduced in WA, Part 14 will no longer apply as there would no longer be any "non-contestable customers". The ECCC therefore proposes that, if reference to non-contestable customers is retained in clause 14.1, the clause be revisited at the time full retail contestability is introduced in WA.

Recommendation 14.7

If reference to "non-contestable customer" is retained in clause 14.1, the clause should be revisited if / when full retail contestability is introduced in WA.

Distribution system operated by a relevant corporation

At present, the only retailers that supply electricity to non-contestable customers are Synergy, Horizon Power and Rottnest Island Authority.[189]

However, a retailer other than Synergy or Horizon Power may supply electricity to non-contestable customers connected to a distribution network operated by a distributor other than a relevant corporation. This is because the *Electricity Distribution Access Order 2006* only precludes the supply of electricity to non-contestable customers connected to Western Power's or Horizon Power's distribution system.

The phrase "supplied with electricity from a distribution system operated by a relevant corporation" ensures that a retailer, such as Rottnest Island Authority, who supplies non-contestable customers (other than those connected to Western Power's or Horizon Power's distribution system), does not have to make service standard payments in the event of a breach of service standards.

Comment is invited as to whether the scope of clause 14.1 should be extended by removing the phrase "supplied with electricity from a distribution system operated by a relevant corporation".

Discussion Point (14.2)

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

[189] A number of persons, who do not hold a retail or integrated regional licence by virtue of being exempt (and are therefore not "retailers"), also supply electricity to non-contestable customers. For example, mining companies, on-suppliers etc.

19.3 Clause 14.2 – Facilitating customer reconnections

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

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

19.3.1 Research

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

Under the Qld code, the amount of the payment is $40 a day[190] and liability lies with the distributor (as opposed to the retailer).

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

Table 14.3: Jurisdictional comparison – Failure to timely connect supply address

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

19.3.2 Recommendation

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

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

The ECCC also notes that the amount of the payment is similar to those prescribed in other States for failure to timely connect[191] and reconnect[192] a customer's electricity supply.

In light of the above, the ECCC recommends that clause 14.2 of the Code be retained as is.

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

191 SA, Vic., NSW, ACT and Qld.

192 Qld.

Recommendation 14.8
Retain clause 14.2 without amendment.

Discussion Point (14.3)
Should the cap on the amount payable be amended? If so, in what manner?

19.4 Clause 14.3 – Wrongful disconnections

Under clause 14.3 of the Code, a customer is entitled to a service standard payment of $50 per day (up to a maximum of $250) if a retailer fails to follow the disconnection procedures as prescribed in the Code, including the requirement to offer prescribed assistance to customers experiencing payment difficulties or financial hardship.

19.4.1 Research

The Vic. and Qld codes both include service standard payments for wrongful disconnection.

Under section 40B of the *Electricity Industry Act 2000* (Vic.), a retailer who disconnects supply to a customer's premises in breach of the contract terms and conditions which specify when supply may be disconnected is liable for a service standard payment of:

> $250 for each whole day that the supply of electricity is disconnected and a pro rata amount for any part of a day that the supply of electricity is disconnected[193]

Clause 2.5.3 of the Electricity Industry Code (Qld) provides for a one-off service standard payment of $100 for wrongful disconnection.[194] The payment is not taken into account for the purposes of determining whether a customer has received the maximum amount that may be claimed in any financial year (i.e. $320).[195]

19.4.2 Discussion

Comment is invited on clause 14.3, in particular whether the amount of the prescribed service standard payment is appropriate.

Discussion Point (14.4)
Should clause 14.3 be amended? In particular, should the amount payable and/or the cap be amended? If so, in what manner?

19.5 Clause 14.4 – Customer Service

Under clause 14.4 of the Code, a customer is entitled to a service standard payment of $20 if a retailer fails to either:

193 Unless regulations specify otherwise.

194 Wrongful disconnection occurs where a distributor (i) was not entitled to disconnect under electricity legislation or relevant contractual arrangements with that customer; or (ii) fails to comply with the procedures for disconnection required of the distributor under the relevant contractual arrangements with that customer.

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

- acknowledge a written query or complaint within 10 business days; or
- respond to a written query or complaint by addressing the query or complaint within 20 business days.

A retailer is only required to make one payment per complaint, regardless of whether both clauses 14.4(1)(a) and (b) have been breached.

19.5.1 Research

Only under the ACT code is failure to acknowledge or respond to a written query or complaint subject to a service standard payment. Breach of the service standard is subject to a payment of $20.

19.5.2 Recommendation

According to the note under clause 14.4, a retailer is only required to make one payment per written complaint or query. However, this is not specified within clause 14.4. The ECCC recommends that the note under clause 14.4 be incorporated within the clause.

Recommendation 14.9
Incorporate the note under clause 14.4 within the clause.

19.6 Clause 14.5 – Planned interruptions

Under clause 14.5 of the Code, a customer is entitled to a service standard payment of $20 if a distributor fails to notify a customer of a planned interruption at least 3 days before the interruption.

19.6.1 Research

Under the NSW, ACT and Qld codes, failure to give timely notice of a planned interruption is subject to a service standard payment. Refer to the table below for a jurisdictional overview.

Table 14.4: Jurisdictional comparison – Failure to provide timely notice of planned interruption

WA Code 14.5	NSW ES(G)R Sch 3 cl 10	ACT CPC Sch 1 cl 5	QLD EIC 5.8
$20	$20	$50	$20 (domestic customer) $50 (domestic customer)

19.6.2 Recommendation

Clause 18 of the Quality and Reliability of Supply Code requires a distributor to pay a customer $20 if the distributor fails to give the customer at least 72 hours notice. The Quality and Reliability of Supply Code replaces Schedule 1, clause 6 of the *Electricity (Supply Standards and System Safety) Regulations 2001*.

As clause 18 mirrors clause 14.5 of the Code, the ECCC recommends deletion of clause 14.5.

Recommendation 14.10
Delete clause 14.5.

19.7 Clause 14.6 – Customer service

Under clause 14.6 of the Code, a customer is entitled to a service standard payment of $20 if a distributor fails to either:

- acknowledge a written query or complaint within 10 business days; or
- respond to a written query or complaint by addressing the query or complaint within 20 business days.

19.7.1 Research

Only under the ACT code is failure to acknowledge or respond to a written query or complaint subject to a service standard payment ($20).

19.7.2 Recommendation

Unlike clause 14.4, clause 14.6 does not include an explanatory note specifying that a distributor is only required to make one payment per written complaint or query. The ECCC recommends that clause 14.6 be amended consistent with Recommendation 14.9.

Recommendation 14.11
Incorporate the note under clause 14.4 within clause 14.6.

19.8 Clause 14.7 – Exceptions

Clause 14.7 of the Code specifies the circumstances under which a retailer or distributor is not required to make a payment for breach of a service standard. These are:

- failure by the customer to apply for a payment within 2 months; and
- cause for breach of service standard outside of control of retailer or distributor.

19.8.1 Research

Application for payment

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

Under the Qld code, a distributor must use its best endeavours to automatically give a rebate to an eligible customer.[196] The other States either expressly or implicitly require retailers and/or distributors to automatically provide customers with rebates in the event a service standard has been breached. Refer to the tables below for a jurisdictional overview.

[196] With the exception of payments for failure to keep an appointment (clause 2.5.7), planned interruptions (clause 2.5.8) and reliability (clause 2.5.9). Under clause 2.5.11, a customer must apply to receive a payment for breach of clauses 2.5.7 to 2.5.9. A customer has one month to apply for a payment under clause 2.5.7 and 2.5.8, and three months to apply for a payment under clause 2.5.9.

Table 14.5: Jurisdictional comparison – Application for service standard payment (Retail)

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

Table 14.6: Jurisdictional comparison – Application for service standard payment (Distribution)

	WA Code	SA EDC	VIC EDC	NSW ES(G)R	ACT CPC	QLD EIC
Automatic		✓	✓	✓		5.10 & 5.11
Upon request	14.7(1)(a)				11.2(1)(c)	

Although the Qld code requires a distributor to automatically make a payment, it also provides the customer with the right to apply for a payment if the distributor fails to make the payment automatically.[197]

Events outside of control of retailer and/or distributor

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

The Qld code[198] includes the following general limitation:

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

One payment per affected supply address

The ACT code stipulates that a utility is not required to pay more than one rebate to each affected supply address per event of non-compliance with the service standards.[199]

This differs from the Qld code[200] which requires a distributor to make:

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

By agreement

Most codes also explicitly allow for customers and retailers/distributors to negotiate the application and/or amount of service standard payments.[201]

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

198 Refer to clause 2.5.17(c) of the Electricity Industry Code (Qld).

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

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

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

19.8.2 Discussion

Application for payment

The ECCC understands that, at the time the Code was drafted, Western Power Corporation did not have the technology to ensure that service standard payments could be made automatically. The ECCC understands that at that time the Government considered the cost of such a system may exceed the total amount of payments. Therefore, consistent with the ACT model, the Government agreed that service standard payments only needed to be made upon request by a customer.

Discussion Point (14.5)
Should clause 14.7(1)(a) be amended to remove the requirement for the customer to apply for the payment?

Furthermore, the ECCC invites comment as to the appropriateness of the two month time limit for making an application for a service standard payment.

Discussion Point (14.6)
Should the time limit for making a service standard payment be extended or, alternatively, reduced?

By agreement

At present, the Code does not allow non-contestable customers and their retailers and/or distributors to contract out of the requirements included in Part 14. Comment is invited as to whether non-contestable customers should be allowed to contract out of Part 14 under a non-standard contract.

Discussion Point (14.7)
Should non-contestable customers be allowed to contract out of Part 14?

19.8.3 Recommendation

Events outside of control of retailer and/or distributor

The ECCC recommends that no amendment be made to clause 14.7(1)(b) of the Code.

Recommendation 14.12
Retain clause 14.7(1)(b) of the Code without amendment.

One payment per affected supply address

The ECCC recommends that no amendment be made to clause 14.7(2) of the Code.

Recommendation 14.13
Retain clause 14.7(2) of the Code without amendment.

19.9 Clause 14.8 – Method of payment

Clause 14.8 of the Code specifies the methods by which a retailer and distributor must make a service standard payment.

19.9.1 Research

The ACT and Qld codes specify the methods by which a service standard payment must be made to a customer. In relation to SA and Vic., the method of payment is only specified for retailers in the respective Energy Retail Codes. Refer to the table below for a jurisdictional overview.

Table 14.7: Jurisdictional comparison – Method of payment

	WA Code 14.8	SA ERC EDC	VIC EIA EDC	NSW ES(G)R	ACT CPC 11.3	QLD EIC 2.5.12	TAS N/A
Credit customer's next bill (directly by retailer)	✓	✓[1]	✓[1]		✓		
Credit customer's next bill (distributor pays retailer who credits customer's bill)	✓				✓	✓ [o]	
By cash or cheque					✓		
By making a direct payment	✓		✓[1]		✓[3]		
As otherwise agreed	✓				✓		
Unspecified		✓[2]	✓[2]	✓			

[o] Payment may only be credited against consumption charges
[1] Retailer
[2] Distributor
[3] Only if customer has discontinued the service

In addition, the QLD and Vic. codes specify that payment must be made "promptly" or "as soon as practicable".[202]

19.9.2 Recommendation

The ECCC proposes that the methods prescribed under the WA Code provide retailers and distributors with sufficient flexibility to choose a method of payment that minimises the cost involved in administering the payment scheme, while providing certainty to customers as to how they may receive a payment. The ECCC therefore proposes retention of clause 14.8.

Recommendation 14.14
Retain clause 14.8 of the Code without amendment.

The ECCC proposes that no clause be added to specify the timeframe within which a retailer or distributor must make a payment to a customer, as clause 14.9 of the Code already ensures that – if a retailer or distributor does not make a payment within 30 days of the customer's request – the customer may recover the payment in court. The ECCC proposes that clause 14.9 provides sufficient incentive for retailers and distributors to make any service standard payment promptly.

[202] Refer to clause 2.5.14 of the Electricity Industry Code (Qld), clause 6.4 of the Electricity Distribution Code (Vic.) and clause 40B(3) of the Electricity Industry Act 2000 (Vic.).

Recommendation 14.15
Retain clause 14.9 of the Code without amendment.

19.10 Clause 14.9 – Recovery of payment

19.10.1 Background

Clause 14.9 of the Code specifies that, if a retailer or distributor does not make a payment to a customer within 30 days of the customer requesting payment, the customer may recover the payment in a court of competent jurisdiction.

The ECCC understands that, at the time the Code was drafted, legal counsel for Government recommended insertion of clause 14.9 to ensure customers had redress in the event a retailer or distributor failed to make a service standard payment.

19.10.2 Research

None of the other codes includes a clause similar to clause 14.9 of the Code.

19.10.3 Recommendation

The ECCC notes that clause 14.9 refers to a written demand for payment by the eligible customer. However, as clause 14.7 does not require an application for payment to be made in writing, it is recommended that the requirement for a written demand for payment be removed.

Recommendation 14.16
Delete reference to a "written" demand from clauses 14.9(1), (2) & (3).

The ECCC also proposes that the wording of clause 14.9 be amended for the purposes of simplification.

Recommendation 14.17
Amend clause 14.9 to read as follows:

(1) If a ***retailer*** or ***distributor*** who is required to make a payment to an ***eligible customer*** under this Part fails to comply with clause 14.8 within 30 days of the date of demand for payment by the ***eligible customer***, then the ***eligible customer*** may recover the payment in a court of competent jurisdiction as a debt due from the ***retailer*** or ***distributor*** (as the case may be) to the ***eligible customer***.

(2) If a ***retailer*** is entitled under clause 14.2(2) to compensation from a ***distributor***, and the ***distributor*** fails to pay the compensation to the ***retailer*** within 30 days of the date of demand for compensation payment by the ***retailer***, then the ***retailer*** may recover the compensation payment in a court of competent jurisdiction as a debt due from the ***distributor*** to the ***retailer***.

19.11 Provisions from other jurisdictions

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

19.11.1 Additional service standard payments

As can be observed in Appendix 24, some States also provide for service standard payments in the event a distributor fails to timely repair a street light or a retailer/distributor fails to be on time for an appointment with a customer.

19.11.2 Cap on total claims

Under the Qld Code, a non-contestable customer is not entitled to receive more than $320 worth of rebates in any one financial year per electricity account (excluding payments for wrongful disconnection).[203]

19.11.3 Customer is no longer a customer of the utility

Under the Qld Code, if a non-contestable customer is no longer the account holder for the premises, a distributor does not need to make a payment after the final bill.[204]

19.11.4 Damages

Both the Qld and ACT codes explicitly state that receipt of a service standard payment by a customer does not affect the customer's right to damages (etc).[205] Furthermore, under the Qld code, a distributor does not make an admission of legal liability by making a service standard payment.[206]

Discussion Point (14.8)

Should any of the provisions related to service standard payments in other jurisdictions but not currently contained in the WA Code be included in the Code? If so, which provisions should be included?

Should any of the current service standard payments be removed from the Code?

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

204 Refer to clause 2.5.12(c) of the Electricity Industry Code (Qld).

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

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