

10 May 2007

Consumer Policy Inquiry
Productivity Commission
PO Box 80
Belconnen ACT 2616

Dear Sir/Madam

INQUIRY INTO AUSTRALIA'S CONSUMER POLICY FRAMEWORK

The Energy Retailers Association of Australia (ERAA) welcomes the opportunity to comment on the Productivity Commission's Inquiry Into Australia's Consumer Policy Framework.

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

In reviewing the customer protection framework the Association strongly believes that competition represents the best form of consumer protection. The entry or threat of entry of new firms into a market forces the incumbent firms to operate efficiently and make the most competitive offers to customers in order to gain market share. However, to realise the development of such markets, policy makers must focus on ensuring the barriers to market entry are kept as low as possible.

The ERAA believes that there are two fundamental issues that impact the on efficiency of the energy market, and therefore directly on consumers and businesses.

The first of these issues is the continued introduction and overlap of energy specific consumer protection regimes introduced by the regulators of gas and electricity in the NEM jurisdictions.

These regimes consist of additional codes or regulations in each of the NEM jurisdictions that attempt to deal with the marketing activities of energy retailers, govern the information that must be contained in a customer contract, and address matters such as 'cooling off' periods and termination clauses.

This energy specific consumer protection is an unnecessary burden on the ERAA members and causes significant confusion for our customers.

The ERAA is of the strong view that consumer protections ought to be provided via the mechanisms which are designed to deal with consumer protections such as the Trade Practices Act, State Fair Trading Acts, and Door to Door Sales Acts.

The significant overlap between the two regimes can be confusing and expensive where inconsistencies occur, and can result in compliance issues, which at the end of the day do not serve the overall interests of the customers.

The second significant issue for ERAA members is the continued regulation of retail electricity and gas prices.

This regulation represents a significant barrier to new retailers entering existing markets. Retail price regulation is a transitional measure that is supposed to assist customers. Unfortunately while retail price regulation remains in place, efficient market outcomes will be distorted and effective competition is inhibited.

Ongoing use of price regulation by State governments is often proposed as a way of addressing the issue of energy hardship. However it is our view and the view of many commentators that the ongoing existence of price regulation fails to target those most at risk.

In assisting those customers in energy hardship the ERAA endorses the view that targeted and transparent Community Service Obligations are more effective in helping those most in need without distorting competitive market outcomes.

In the retailing of gas and electricity the ERAA has been a strong supporter of the national reforms that are occurring through the Ministerial Council on Energy to encourage competition through the harmonisation and streamlining of the electricity and gas markets across Australia. However the Association believes the current consumer protection arrangements governing the retailing of gas and electricity are complex and inefficient. The compliance with these regulations impose significant costs upon retailers, which both deters the entry of new retailers and diminishes the benefits that would otherwise flow from energy market reform.

The ERAA thus supports the Commission in its review relating to the energy industry and would direct it in identifying those issues related to consumer policy framework which lessen competition in the retail energy markets and therefore go against the long term interests of all consumers.

Please see our specific comments below.

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

Yours sincerely

[Transmitted Electronically]

Cameron O'Reilly
Executive Director
Energy Retailers Association of Australia

Specific Comments from the Energy Retailers Association of Australia in relation to the Consumer Framework governing the Retail Energy Markets

In reviewing the consumer framework relating to retail energy markets, the ERAA would advocate that the following principles be used.

- Competition is to be preferred over regulation, and represents the most effective form of customer protection;
- Retail price regulation is inefficient, stifles competition and acts as a barrier to the entry of new retailers;
- The Trade Practices Act, Privacy Act, Fair Trading Acts and Door to Door Sales Acts provide for a comprehensive National Consumer Protection regime across all jurisdictions. Duplicating provisions within energy regulation increases the compliance costs for retailers and complexity of the legislation with no associated increase in consumer protection;
- Energy market regulation should only be considered where there is demonstrable market failure;
- National consistency should not be viewed as an end in itself, but a means to improving the quality of regulation; and,
- Energy affordability should be addressed through transparent and government funded Community Service Obligations (CSO's).

Competition

The competition reforms initiated in the mid 90's were largely aimed at delivering a more efficient and low cost energy to end customers through the introduction of competition in the retail energy market.

As noted by the Hilmer Report:

“Competition provides the spur for businesses to improve their performance, develop new products and respond to changing circumstances. Competition offers the promise of lower prices and improved choice for consumers and greater efficiency, higher economic growth and increased employment opportunities for the economy as a whole.”¹

¹ Hilmer Committee (Independent Committee of Inquiry into Competition Policy in Australia, chaired by Professor F. Hilmer 1993, National Competition Policy: Report of the Independent Committee of Inquiry into Competition Policy in Australia, AGPS, Canberra, p.1

In terms of consumer protection, the ERAA believes that where there is the entry or threat of entry of new players; competitive markets will provide customers the best protection against incumbent retailers charging above market prices, or extracting monopoly rents.

While the introduction of full retail contestability has benefited customers in giving them greater choice in relation to their energy needs, the ERAA believes the on-going regulation of retail energy prices, and the current consumer protection frameworks has meant the benefits from the introduction of competition have not been as great as they could be.

Retail Price Regulation

The ERAA is firmly of the view that on going price regulation acts as probably the most significant barrier to competition in retail energy markets.

At the outset of introducing full retail competition in each of the contestable retail markets², governments and regulators saw the need to provide safety net arrangements in the form of a transitional price controls to assist those customers who were unwilling or unable to participate in the market. Price regulation was always seen as a transitional arrangement to prevent the abuse of monopolistic power, by imposing a regulatory discipline on retailers.

Despite there no longer being any risk of market failure jurisdictions have nevertheless retained retail price regulation. While the ERAA recognises that governments may wish to pursue social equity and/ or affordability issues related to the provision of energy, we believe that regulation of retail energy prices is ineffective in addressing the issue of energy affordability and reduces competition thus deterring the entry of new retailers.

The detrimental impact of price regulation in retail energy markets was also highlighted in the recent report to COAG from the Energy Reform Implementation Group where it noted:

“Particularly for energy only electricity markets, suppressing or dampening price signals is risky. It either destroys or diminishes efficient signalling of the need for new supply. Price is the most efficient signalling device of the need for new investment. Suppressing price signals is a barrier to entry, reducing market competitiveness and efficiency.”³

In the most recent ranking of world energy markets Victoria, South Australia and New South Wales were all ranked within the top ten.⁴ While these markets are ranked according to market churn, together with the figures on the number of active retailers in the contestable markets they provide firm evidence that the level of competition is effective.

² Competition in the household and small business sector began in NSW electricity and gas on 1 January 2002, Victoria electricity on 13 January 2002 and gas 1 October 2002, South Australia electricity 1 January 2003 and gas 28 July 2004, ACT electricity 1 July 2003 and gas 1 January 2002. Full retail competition in the household and small business sector is to be introduced in Queensland on 1 July 2007.

³ Energy Reform Implementation Group, [A Report to the Council of Australian Governments by the Energy Reform Implementation Group](#) (Canberra 2007), p. 95

⁴ First Data Utilities and VaasaEmg Utility Customer Switching Research Project. See <http://www.firstdatautilities.com/customer-switching/>

The ERAA supports the assessment of competition being undertaken by the Australian Energy Market Commission, however would emphasise that the final decision to abolish price regulation following the assessment is that of the jurisdictional government.

SEE ATTACHED ENERGY RETAILERS ASSOCIATION OF AUSTRALIA PRICE REGULATION POLICY POSITION PAPER

Retail Regulatory Framework

The Energy Retailers Association of Australia (ERAA) supports the development of a streamlined, efficient and low cost regulatory framework for electricity and gas distribution and retailing at the national level. The ERAA believes the Trade Practices Act (TPA) and Fair Trading Act (FTA) and Privacy Act offer sufficient protection for all consumers of energy, except where market failure can be demonstrated⁵.

The current complexity of regulatory framework governing the retailing of electricity and gas has arisen due to the introduction of additional and unwarranted regulations across the jurisdictions following the introduction of full retail contestability. Such onerous and disparate regulatory requirements impose significant compliance costs upon retailers, which in turn have diminished the benefits from energy market reforms for end-use customers.

The Association supports the current review by the Ministerial Council on Energy of the regulatory framework governing retail and distribution (non-economic), however the ERAA believes the MCE review is unlikely to undertake a comprehensive assessment of the current regulatory frameworks governing the retail energy markets. While the Association supports greater harmonisation of the retail regulatory framework, we do not see this as an end in itself, especially if in the process it leads to the adoption of the most onerous regulations of all markets. It is for this reason we urge the Productivity Commission to conduct its own review of the impact of energy specific regulation on competition in retail energy sector.

SEE ATTACHED ENERGY RETAILERS ASSOCIATION OF AUSTRALIA RETAIL CODE

Energy Hardship

The ERAA acknowledges that both electricity and gas are essential services and that customer hardship is a shared responsibility of the government, the community and retailers. Given the benefits that come to all customers through increased competition, the Association does not support the use of price regulation to address the issue of energy affordability as it distorts the outcomes of the market.

⁵ The United Regulators' Forum acknowledges in their Compliance Monitoring Paper ([http://www.accc.gov.au/content/item.phtml?itemId=779487&nodeId=bb51c2c162d1bdc479a2be5914d5a900&fn=Compliance%20monitoring%20\(Non-pricing%20energy%20retail%20regulation\)%20-%20Utility%20regulators%E2%80%99%20forum%20position%20paper%20-%20November%202006.pdf](http://www.accc.gov.au/content/item.phtml?itemId=779487&nodeId=bb51c2c162d1bdc479a2be5914d5a900&fn=Compliance%20monitoring%20(Non-pricing%20energy%20retail%20regulation)%20-%20Utility%20regulators%E2%80%99%20forum%20position%20paper%20-%20November%202006.pdf)) that energy specific regulation should not duplicate other regulation of general application (for example, the Trade Practices Act, Fair Trading and Door-to-Door Sales legislation) unless the generic regulation is demonstrated as being insufficient or ineffective to apply to the national energy market.

The ERAA recognises retailers have a key role in assisting those customers in temporary hardship through their own programs involving repayment options, advice on energy efficiency and referral to other organisations for additional assistance. Energy affordability for vulnerable customers with permanent difficulties should, like other commodities be the responsibility of government. The ERAA supports the finding from the Productivity Commission's Inquiry into National Competition Policy that:

In retail infrastructure markets, once effective competition has been established, regulatory constraints on prices should be removed. Ensuring that disadvantaged groups continue to have adequate access to services at affordable prices should be pursued through adequate, well targeted and transparent community service obligations (or other appropriate mechanisms), that are monitored regularly for effectiveness.⁶

The ERAA believes adoption of such mechanisms combined in markets where price regulation had been abolished enable competition to develop in the retail markets but ensure customers in long term hardship are supported.

**SEE ATTACHED ENERGY RETAILERS ASSOCIATION OF AUSTRALIA ENERGY
HARDSHIP POLICY POSITION PAPER**

⁶ Productivity Commission, Review of National Competition Policy, (Canberra 2005), p.50



**Energy Retailers
Association of Australia**

Retail Price Regulation

Policy Position Paper

Issued June 2005

Introduction

In Australia, Governments have made significant progress in implementing electricity and gas market reforms. Nearly all jurisdictions have now implemented full retail contestability or committed to a timetable to do so. In some jurisdictions, the energy markets have now been open to full retail competition for over three years.

At the time competition was introduced at the retail level, Governments and regulators expressed a desire to also provide safety net arrangements in the form of transitional price controls for customers who were not able to, or chose not to, participate in the competitive market. The price controls were introduced as a transitional measure and were intended to prevent the abuse of monopoly power by gas and electricity suppliers, by imposing a regulatory discipline as a proxy for market discipline. The presumption was that competition provides the most efficient outcome, which will ensure an acceptable level of customer price protection. Accordingly, it was expected that retail price controls would be removed once competition was established. (See Appendix 1)

Jurisdictional regulators have retained retail price controls for certain customers in electricity and gas in markets that are now open to competition. Retail price regulation appears to be directed at protecting customers in genuine hardship and those who choose not to participate in the competitive market, resulting in a distortion of competition.

Governments continue to allow energy policy to be used to deliver social welfare outcomes. The ERAA believes welfare policy objectives are better addressed through a suite of programs targeted to provide direct and transparent payments to those in genuine hardship.

The ERAA strongly supports arrangements to protect customers in genuine financial hardship but does not support the use of price regulation as a means to do this. In retaining price regulation, governments and jurisdictional regulators are stifling competition and thus preventing the full benefits of competition from being realised.

Current Price Regulation

Gas pricing in the ACT is the only gas market which has become unregulated. The ERAA hopes this precedent will be extended to other jurisdictions when the current price paths lapse.

Table 1: Jurisdictional price paths to 2007 and beyond:

Jurisdiction/fuel	Period
NSW electricity and gas	30 June 2007
Victoria electricity and gas	31 December 2007
ACT electricity	30 June 2006
ACT gas	No price regulation beyond June 2004
SA electricity	31 December 2007
SA gas	Expected until 30 June 2008
The MCE agreed that the Australian Energy Regulator will be responsible for the regulation of distribution and retailing (other than retail pricing), following development of an agreed national framework - Ministerial Council on Energy Report to COAG on Reform of Energy Markets – 11 December 2003.	

Governments can and should strengthen competition in jurisdictional markets by identifying and removing any remaining barriers to effective competition. The ERAA advocates the removal of price caps as a barrier to competition and price regulation should not be extended beyond the current price paths established by jurisdictions.

Position Summary

The ERAA's position is that:

- Prices in a competitive market should not be regulated. Price regulation is inefficient, stifles price and service competition, stifles product innovation and prevents the full benefits of competition from being realised.
- Retail price regulation for electricity and gas should be phased out and more targeted programs for assisting customers in financial hardship should be implemented.
- Similarly, default pricing as a safety net for customers choosing not to participate in the competitive market should only be a transitional measure. General consumer protection laws provide sufficient protection for energy consumers against unfair practices by retailers such as unreasonably high energy prices.
- Price regulation should not be extended beyond current price paths. In the time prior to the expiry of these periods governments should identify and remove any market failures or dysfunctions.
- The responsibility for retail price regulation should remain with the jurisdictions until such time as it is removed.

Rationale for the Removal of Retail Price Regulation

Benefits of unregulated pricing

Removal of retail price regulation will:

- Promote competition in the electricity and gas markets and increase the overall efficiency of the energy industry.
- Expedite the achievement of more cost-reflective pricing. Cost reflective pricing will lead to a more efficient use of resources, and:
 - allow cross-subsidies to be unwound;
 - provide greater incentives for the promotion of energy efficiency;
 - provide price signals to encourage demand management;
 - reduce the need for new investment in generation capacity and transmission and distribution networks;

- increase penetration of renewable energy technologies where economic; and
- support initiatives to reduce greenhouse gas emissions.
- Promote investment in supply and demand side initiatives enhancing the security and reliability of energy supply;
- Remove barriers to entry for second-tier retailers;
- Avoid the need for future significant price increases for customers to facilitate future required investment in the energy market;
- Reduce significant regulatory costs of complex and intrusive price reviews; and
- Create an incentive to implement a more targeted and effective mechanism for assisting vulnerable customers.

Economic efficiency

The ERAA believes that market forces lead to the most efficient use of resources in all but exceptional circumstances – ie where market failure results in less efficient outcomes than might otherwise be possible. Ongoing price regulation of retail energy is stifling competition, particularly where tariffs have been set below cost-reflective levels, creating a barrier for new entrants.

Price regulation, with its inherent cross-subsidies, distorts efficient market outcomes and prevents appropriate price signals reaching customers. Such price signals otherwise influence customer behaviour and consumption. The Parer Review¹ noted that retail price caps prevent flexible and innovative pricing structures and impede demand side response. Price controls (and side constraints) prevent these innovations from developing, and thus frustrate the very objectives that governments are seeking from demand side response.

The Productivity Commission in its Inquiry Report on the Review of Competition Policy Reforms released in February 2005 recommended that once effective competition is established retail price controls be removed. Adequate, well-targeted and transparent community service obligations should be implemented to ensure that disadvantaged groups continue to have access to energy (refer Appendix 1).

When market competition sets retail prices for all customers more efficient outcomes will be realised in the market.

Customer protection

The ERAA believes the removal of price regulation will make way for more efficient pricing outcomes for customers. ERAA considers there is no justifiable link between price regulation and consumer protection, and it recognises that more targeted arrangements are required to assist customers in genuine financial hardship.

The ERAA strongly supports arrangements to protect customers in genuine financial hardship, however more effective policies are needed to address customers in hardship and continued price regulation is not part of the solution.

Customers with insufficient income need to be adequately supported with direct and transparent government subsidies through government welfare programs that are

¹ Towards a Truly National and Efficient Energy Market, COAG Independent Review of Energy Market Directions, December 2002, p.177

simple to administer and which would not interfere with the operation of the retail market. Energy retailers and community groups can assist governments in implementing such programs.

The combination of Government support and successful retailer vulnerable customer hardship programs will support competition in vulnerable customer segments and ensure programs are effective, transparent and efficient.

Default pricing has also been used by Governments to provide a safety net for customers choosing not to participate in the competitive market. It is the ERAA view that this should only be a transitional measure until such time as the market is shown to have effective competition and the customer has a variety of retailers to choose from.

It is well accepted that existing general consumer laws (consisting of State fair-trading legislation, the Commonwealth Trade Practices Act and common law) provide robust protection for consumers in other markets against unconscionable practices by retailers. It is the ERAA view that general consumer protection laws are similarly effective in the retail energy market to ensure that consumers are protected from unconscionable conduct in the form of unreasonably high energy prices.

Some jurisdictions have used retail price regulation as a mechanism for maintaining a level of pricing equity between customers in urban and regional areas. The ERAA believes that these customers should be assisted through transparent subsidies that do not distort the operation of the retail market and that assist in the facilitation of retail competition.

Effectiveness of Competition

The decision of governments in the mid 1990s to introduce competition into retail energy markets was based on the proposition that market based outcomes are the most effective and efficient way to deliver goods and services to customers. Retail prices in the energy market were regulated to prevent abuse of monopoly power by energy suppliers', thereby imposing a regulatory discipline as a proxy for market discipline.

With the introduction of competition in the energy market it is important that price controls are removed to allow prices to move to market-based prices, reflecting the costs and risks of supplying customers. Some jurisdictions and regulators have indicated a willingness to remove price regulation once it has been demonstrated that competition is sufficiently developed.

ERAA is concerned with the current assessment by regulators about what is considered sufficient levels of competition. It can be seen from the results of an IPART survey² released in December 2004 that a high level of customers (74 percent) were aware that they can choose their gas or electricity supplier and that the main reason for changing supplier was that the competitive offer was cheaper. The main reason given for not changing (gas or electricity) supplier was that the customer was happy with their current supplier. The conclusion to be drawn from this is that customers have made a conscious choice and this is what should be measured.

² Residential energy use in Sydney, the Blue Mountains and Illawarra, Results from the 2003 household survey. Independent Pricing and Regulatory Tribunal of New South Wales, Research Paper RP27, December 2004, at p.35

This finding highlights the ERAA's concern that indicators of effective competition chosen by regulators may not actually reflect the effectiveness of competition. For example, some regulators are presuming that a high churn rate indicates competition is more effective than a low churn rate (which can and does arise where customers are satisfied with their existing supplier). Whilst a high churn rate may reflect effective competition a low churn rate does not necessarily indicate a lack of effective competition or market failure/dysfunction. A better indicator might be the number of market offers made to customers or customers indicating that they have made a conscious and informed choice to either churn or remain with their current retailer.

The seeking of positive confirmation that competition is effective is a flawed process and one which is unlikely to result in a level of satisfaction that will justify the decision to remove retail price regulation

The ERAA is strongly of the view that rather than placing the onus of proving that there is effective competition on the industry, jurisdictional regulators and governments should be focusing on the identification and removal of factors causing market failures and dysfunctions, thereby focusing on correction of the market rather than increasing the level and extent of regulation.

The ERAA believes that to rely upon evidence to suggest that competition exists or is sufficiently developed in the energy market, before discontinuing price regulation is somewhat of a paradox. Price regulation is a key impediment to effective competition as market forces should determine prices.

Difficulty in regulating prices

Aside from the fact that price regulation impedes the development of a competitive market, there is the added difficulty associated with determining an appropriate regulated price. This difficulty was articulated by the United Kingdom (UK) regulator Ofgem following its review of gas and electricity competition and supply price regulation³. On the option of continued price caps for suppliers Ofgem commented that:

"Ofgem considers that this option has a number of identified regulatory risks that could unjustifiably prevent or distort competition to the detriment of customers' interests."

In a 2003 press release⁴ Ofgem's Chief Executive Callum McCarthy stated that:

"... All the evidence suggests price competition is a key driver of consumer choice. To artificially set one price for all customers would kill competition, as well as stopping those who shop around from getting better deals. It would also remove the competitive pressure on prices for those customers who remain with their traditional supplier."

Ofgem concluded that price controls would do more harm than good in a competitive market and as a result took the decision to remove price controls from April 2002 following four years of full retail contestability in gas and three years of full retail contestability in electricity.

³ Review of domestic gas and electricity competition and supply price regulation, Conclusions and final proposals, February 2002

⁴ Ofgem Press Release "Vigorous Competition for domestic customers, but Ofgem remains vigilant" – 16 June 2003

The ERAA's position on regulation of retail prices in competitive markets is reinforced by the view taken by the UK regulator Ofgem⁵ with respect to its objectives:

"Protecting Customers

Everything Ofgem does is designed to protect and advance the interests of consumers present and future.

Ofgem does this by:

- *Promoting effective competition, wherever appropriate;*
- *Regulating only where necessary; and*
- *Ensuring that special help is targeted to vulnerable customers."*

In February 2005, the South Australian energy regulator, Lew Owens, stated he would like to remove price caps in the FRC environment as:

*"It is an impossibly difficult task to set caps over a long period. 'This is particularly the case where summer peak loads have a major impact on costs and where tariffs cannot adequately reflect the price variations', he says."*⁶

Cost-reflective tariffs

ERAA advocates a light-handed regulatory approach to setting regulated prices. Whilst price regulation remains in the energy market, tariffs should be set at cost-reflective levels to promote competition by encouraging customers to transfer to market contracts, thus allowing for easy removal of price regulation at the end of the transition period. The setting of regulated tariffs below cost stifles competition and acts as a barrier to new market entrants.

MCE Reforms, AER and pricing

The Ministerial Council on Energy is currently implementing wide-ranging energy market reforms. A new national regulator, the Australian Energy Regulator (AER), has been established and a new national distribution and retail regulatory framework will be implemented from 2006.

In settling the future retail regulatory framework, the ERAA does not support the transfer of retail price regulation to the AER. The ERAA further believes that the current price paths should be left to run their course and then cease.

⁵ Protecting Customers 11/12/2002, Ofgem main page www.ofgem.gov.uk

⁶ esaa Energy Supply Magazine, February 2005, p9

APPENDIX 1

GOVERNMENT AND REGULATORS VIEWS ON PRICE REGULATION IN A COMPETITIVE MARKET

Regulators recognise that safety net arrangements are transitional measures and that they will become unnecessary when effective competition is achieved in the energy market(s):

The Office of Gas and Electricity Markets (UK)

Callum McCarthy, CEO, press release 16 June 2003:

“All evidence suggests that price competition is the key driver of customer choice. To artificially set one price for all customers would kill competition, as well as stopping those who shop around from getting better deals. It would also remove competitive pressures on prices for those customers who remain with their traditional supplier.”

The Independent Pricing and Regulatory Tribunal of NSW

The Independent Pricing and Regulatory Tribunal of NSW, Issues Paper – Review of Gas and Electricity Regulated Retail Tariffs, October 2003 (p.4):

“Extending choice and competition to all retail customers is predicated on the principle that an efficient, competitive market can deliver benefits for customers in terms of both price and quality of service.”

The Essential Services Commission of Victoria

The Essential Services Commission of Victoria, Special Investigation: Review of the Effectiveness of Full Retail Competition for Electricity — Final Report, September 2002 (p.18):

“Competition is not an end in itself, but a means of achieving more efficient use of the community’s resources in the production, supply and consumption of goods and services. Effective competition contributes to this objective by forcing businesses to produce at least cost, to charge cost-based prices and to be innovative in product and process design and in service delivery. In a competitive market place failure to operate in these ways would simply result in loss of sales to more efficient competitors supplying substitute goods and services at the prices and quality preferred by consumers.

For these reasons promoting effective competition is also an efficient means of protecting final customers from the misuse of market power, compared to other more interventionist regulatory approaches.”

The Office of the Regulator General Victoria, Approach to Benchmarking Electricity Retail Costs – Issues Paper, November 2001 (p.4):

“Once retail competition is judged to be effective, the assessment of standing offer tariffs can be less intrusive, since the presence of competition will itself provide protection for consumers.”

The Essential Services Commission of South Australia

The Essential Services Commission of South Australia – Monitoring The Development of Electricity Retail Competition in South Australia - Proposed Approach, ESCOSA, April 2003 (p.22):

“The introduction of full contestability to the retail electricity market was a policy decision implemented by successive South Australian Governments. Underpinning this policy decision is a view that it is the process of competition, rather than regulation, which can, ultimately, deliver maximum benefits to consumers through lower prices, better goods and services and increased efficiency. Competition, it is argued, provides these outcomes in a more expeditious and efficient manner than does direct intervention into a market by a Government.”

The Essential Services Commission of South Australia – Monitoring The Development of Electricity Retail Competition in South Australia - Proposed Approach, ESCOSA, April 2003 (p.1):

“If ESCOSA is to protect the long term interests of South Australian consumers, and given that the electricity retail market in South Australia is now based on the concept that competition will ultimately provide the best protection for consumers, then it is important for ESCOSA to monitor the state of competition in the South Australian electricity retail market.”

The Independent Competition and Regulatory Commission of the ACT

The Independent Competition and Regulatory Commission of the ACT, Final Determination, Review of natural gas prices, May 2001 (p.8):

“Once effective competition is established, market forces should ensure that suppliers provide services of quality demanded by customers, and that they do not earn excessive profits.”

NSW Government

The Ministry of Energy and Utilities, New South Wales Policy Framework to Support Full Retail Competition in Gas, 21 December 2000:

“Therefore, an appropriate level of retail price regulation is required to protect residential and small business customers until there are sufficient competitive pressures in the gas retail market.”

NSW Treasury – Electricity Reform Statement, May 1995 at item 2.6, page 20:

“In the initial period of the market’s operation, continued formal oversight of retail prices which are currently subject to cross subsidy will be required. In addition, it will be desirable for all retail prices to be subject to careful monitoring until such time as the market is shown to be operating effectively”.

Retail Competition in Electricity Supply, Treasury Policy Paper TPP96-1, June 1996, at page 23

“Historically, customers have paid a “total” price for delivered electricity....In a fully competitive market, only the transportation will be regulated. The energy price and any retail charge not included in the energy price will be competitively determined”.

The Productivity Commission

“Community Service Obligations (CSOs) are government requirements for service providers to engage in non-commercial activities to meet affordability and access objectives.”

....all governments have adopted a commonly agreed definition of CSOs and have accepted the principle that costs of CSOs should be transparent and funded directly from consolidated revenue.”

PC Recommendation 10.5

“In retail infrastructure markets, once effective competition has been established, regulatory constraints on prices should be removed. Ensuring that disadvantaged groups continue to have adequate access to services at affordable prices should be pursued through adequate, well targeted and transparent community service obligations (or other appropriate mechanisms), that are monitored regularly for effectiveness.”

Productivity Commission Inquiry Report: Review of Competition Policy Reforms, February 2005.



**Energy Retailers
Association of
Australia**

National Retail Code

NATIONAL ENERGY RETAIL CODE

PREAMBLE

The purpose of the National Energy Retail Code (NERC) is to replace the current range of jurisdictional retail, marketing, and customer consent codes, regulations and guidelines with a single national code. Transfer and metering obligations will be dealt with through separate instruments.

Generally, those provisions in existing regulatory instruments adequately provided for in generic consumer protection law have not been included in the NERC. However, in some instances, to provide for a nationally consistent approach, such provisions have been included. For example, each jurisdictional Fair Trading Act contains cooling off provisions, but these are formulated differently. It is therefore sensible for the NERC to establish a consistent provision.

APPLICATION

This National Energy Retail Code will only apply to an energy contract between a retailer and an energy customer where the customer is:

- (a) a domestic customer;
- (b) the aggregate of the annual energy consumption level for the customer equals or is less than:
 - in the case of a proposed electricity contract, 20MWh of electricity per annum; or
 - in the case of a proposed gas contract, 150GJ of gas per annum; or
 - in the case of a proposed dual fuel contract, 20MWh of electricity per annum or 150 GJ of gas per annum.

PART 1 ENTRY INTO A CONTRACT

1. COOLING-OFF

A retailer must ensure that each market contract it enters into with a small customer confers on the small customer the right to rescind that market contract within the period of 10 business days commencing on, and including, the date on which the customer receives the written confirmation of information about the terms of the contract as outlined in Clause 4.

2. CONSENT

2.1 Customer Transfer

A retailer must not initiate the transfer of a customer without obtaining the explicit informed consent of that customer.

2.2 Explicit Informed Consent

Explicit informed consent is the consent provided by a customer where:

- (a) the customer provides express conscious agreement; and
- (b) the relevant retailer has fully and adequately disclosed all matters relevant to that customer.

2.3 No transfer prior to expiry of cooling off period

A retailer cannot complete a transfer of a customer until the cooling off period (as defined in Clause 1) has expired.

2.4 Records

A retailer must retain records of any explicit informed consent for at least 2 years.

3 MARKETING

3.1 Identification

As soon as practicable following the commencement of any marketing contact with a customer, a retailer must advise the small customer of the purpose of the marketing contact and use its best endeavours to provide a small customer with the following information prior to completion of the marketing contact:

- (a) the name of the salesperson; and
- (b) contact details for the retailer.

3.2 Marketing in Person

A salesperson who makes a marketing contact by visiting a small customer must wear an identification card on his or her chest containing:

- (a) the name of the salesperson;
- (b) a photograph of the salesperson;
- (c) the name of the retailer; and
- (d) the retailer's telephone number.

4 CONTRACT INFORMATION

4.1 Pre-contract disclosure

A retailer must provide the following information to a consumer before entering into a contract:

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

4.2 Provision of written confirmation of Contract Information

A retailer must provide the customer with written confirmation of the matters outlined in section 4.1 as soon as practicable after the customer has entered into the contract.

5 METER READING FOR BILLING PURPOSES

Subject to clause 6, a retail entity must base a customer's bill on:

- (a) an actual reading of the relevant meters at the customer's premises provided by the distribution entity or responsible person determined in accordance with the energy legislation; or
- (b) metering data provided for the relevant meters at the customer's premises provided by the distribution entity or responsible person determined in accordance with the energy legislation

6 ESTIMATED BILLS

The retail entity may provide the customer with an estimated bill:

- (a) based on an estimation of the usage of energy by that customer provided by the distribution entity or responsible person determined in accordance with the energy legislation; or
- (b) otherwise in accordance with the energy legislation, based on:
 - (i) the customer's reading; or
 - (ii) the customer's prior energy usage history at that premises; or
 - (iii) where the customer does not have a prior energy usage history at that premises, the average usage of energy by a comparable customer over the corresponding period.

7 ADVICE THAT A BILL IS AN ESTIMATED BILL

When a retail entity issues a customer with an estimated bill it must publish a notice on that bill advising that the bill is based on an estimated reading of the meter.

8 CHARGES WHERE ACCESS IS DENIED

Where a residential customer has denied access to a meter for the purpose of reading that meter and subsequently requests the retail entity to replace an estimated bill with a bill based on a reading of the meter, the retail entity must comply with that request but may charge that customer any costs it incurs in doing so.

9 LATE PAYMENT FEES

If a customer has breached the customer's obligation to pay an amount due on or before the pay by date on a retailer's initial bill, the retailer may impose a late payment fee.

PART 3 PAYMENT DIFFICULTIES

10 Customer obligation to inform retailer of payment difficulties

Where a customer is experiencing payment difficulties such that the customer is not able to pay the retailer's bill by the due date, the customer is obliged to contact the retailer and inform the retailer of this fact.

11 Obligation to offer instalment plan

Where a customer informs the retail entity that the customer is experiencing payment difficulties, the retail entity must offer the residential customer, as soon as is reasonably practicable, an instalment plan which complies with clause 12.

12 Obligations on retail entities when offering instalment plans

A retail entity offering an instalment plan must:

- (a) in determining the period of the plan and calculating the amount of the instalments ensure that the plan provides for the payment of arrears and ongoing consumption over the specified period of time, which should not exceed 12 months; and
- (b) in determining the period of the plan take into account information from the residential customer about the residential customer's usage needs and capacity to pay.

Part 4 SHORTENED COLLECTION PERIOD

13 Shortened collection period

Where a retail entity has issued a customer:

- (a) reminder notices in respect of three consecutive bills; or
- (b) two consecutive disconnection warnings,

the retail entity may place the customer on a shortened collection period in relation to the relevant customer sale contract.

14 Retail entities' obligations prior to placing a customer on a shortened collection period

Before a retail entity may place a customer on a shortened collection period, the retail entity must inform the customer that:

- (a) receipt of a third reminder notice (or second disconnection warning) may result in the customer being placed on a shortened collection period;
- (b) being placed on a shortened collection period will result in the customer not receiving a reminder notice until the customer has paid three consecutive bills by the pay by date; and
- (c) in the case of a residential customer only, alternative payment arrangements, such as instalment plans offered by the retail entity, are available.

15 Notice

- (a) Where after giving notice as required in clause 14 a retail entity decides to shorten the collection period in respect of a customer, the retail entity must give the customer written notice of that decision, and the steps that the customer must take to be taken off the shortened collection cycle.
- (b) Any notice given under paragraph (a) must advise the customer of the existence of the retail entity's dispute resolution processes.

16 Effect of customer compliance with shortened collection period

Where a customer on a shortened collection period pays three consecutive bills by the pay by date, the retail entity must return the customer to the collection period that applied before the shortened collection period commenced.

PART 5 DISCONNECTION OF A CUSTOMER

17 DISCONNECTION FOR NON-PAYMENT OF A BILL

17.1 Disconnection for non-payment of a bill

Subject to clause 17.2 and 17.3 a retail entity may arrange to disconnect a customer's premises in accordance with this clause if a customer has not:

- (a) paid a bill; or
- (b) agreed to an offer (made in accordance with clause 12) of an instalment plan or other payment option to pay a bill; or
- (c) adhered to the customer's obligations to make payments in accordance with an agreed instalment plan or other payment option relating to the payment of bills.

17.2 Collection cycle

- (a) If a customer is not on a shortened collection period under clause 13, a retailer must not disconnect the customer for non-payment of a bill unless the retailer has sent the customer;
 - an overdue notice; and
 - after the expiry of the period referred to in the overdue notice, given the customer a written disconnection warning that the retail entity may disconnect the customer on a date no earlier than 7 business days from the date of dispatch of the disconnection warning;
- (b) If a customer is on a shortened collection period under clause 13, a retailer must not disconnect the customer for non-payment of a bill unless the retailer has sent the customer a written disconnection warning that the retail entity may disconnect the customer on a date no earlier than 7 business days from the date of dispatch of the disconnection warning.

17.3 Limitation on disconnection of customers with payment difficulties

Where the customer has contacted the retailer in accordance with clause 10 and advised the retailer that because of a lack of sufficient income on the part of the customer, the customer is unable to pay a bill, the retail entity must not request the

disconnection of the residential customer's premises except in accordance with clauses 17.4 and 17.5.

17.4 Obligations prior to disconnection of customers

Where 17.3 applies, the retail entity must have:

- (a) used its best endeavours to contact the residential customer
- (b) given the residential customer information on government funded concessions;
- (c) offered the residential customer alternative payment options of the kind referred to in clause 12;
- (d) advised the residential customer of the existence and operation of the external dispute resolution scheme.

17.5 Circumstances when a residential customer may be disconnected

Provided the retail entity has complied with clause 17.4, the retail entity may disconnect the residential customer immediately if the residential customer:

- (a) has refused or failed to accept the offer before the expiry of the 7 business days period in the disconnection warning; or
- (b) has accepted the offer, but has refused or failed to take any reasonable action towards settling the debt before the expiry of the 7 business days period in the disconnection warning.

17.6 No obligation to offer instalment plan

A retail entity is not obliged to offer an instalment payment plan as provided in clause 11 where the customer has in the previous twelve months had an instalment plan cancelled due to non payment.

18 DISCONNECTION FOR REFUSAL TO PROVIDE ACCEPTABLE IDENTIFICATION OR REFUNDABLE ADVANCE

A retailer may disconnect a customer if the customer refuses when required to provide acceptable identification (if the customer is a new customer of the retailer) or a refundable advance but only if:

- a) the retailer has given the customer a disconnection warning including a statement that the retailer may disconnect the customer on a day no sooner than 10 business days after the date of receipt of the notice; and
- b) the customer has continued not to provide the acceptable identification or the refundable advance.

19 DISCONNECTION FOR DENYING ACCESS TO A METER

- a) Where a customer fails to allow, for 6 months (or such longer period as the retail entity nominates), access to the customer's premises to read a meter, the retail entity may arrange for the disconnection of the customer's premises.

- b) A retail entity must not exercise its disconnection right under paragraph (a) unless the retail entity has:
- i. given the customer an opportunity to offer reasonable alternative access arrangements;
 - ii. on each of the occasions access was denied, given the customer written notice requesting access to the meter or meters at the premises and advising of the retail entity's ability to arrange for disconnection under this clause;
 - iii. used its best endeavours to contact the customer personally; and
 - iv. given the customer a written disconnection warning with 7 business days notice of its intention to arrange for the disconnection.

20 ILLEGAL USE

Notwithstanding any of the provisions in this Code, except for clause 21, a retail entity may arrange for the disconnection of a customer's premises immediately where the energy supply has been used otherwise than in accordance with the energy legislation.

21 WHEN A RETAIL ENTITY MUST NOT DISCONNECT

A retail entity must not arrange for the disconnection of a customer's premises:

- (b) where the customer or a person residing at the customer's premises has advised the retail entity that a person ordinarily residing at the premises is dependent on designated life support equipment in accordance with the provisions of clause 24;
- (b) where a customer has made a complaint, directly related to the reason for the proposed disconnection, to the external dispute resolution scheme or another external dispute resolution body and the complaint remains unresolved;
- (b) where the customer has formally applied for assistance from a government agency responsible for the administration of energy concessions, rebates, or grants, and a decision on the application has not been made;
- (b) after 3.00pm on a business day; or
- (b) on a Friday, on a weekend, on a public holiday or on the day before a public holiday, unless agreed to otherwise between the customer and the retailer.

PART 6 RECONNECTION AFTER DISCONNECTION

22 RETAIL ENTITY AND CUSTOMER OBLIGATIONS

Where a retail entity has arranged for the disconnection of a customer's premises:

- (a) Under clause 17 for non-payment of a bill and the customer has within 10 business days of the date on which the disconnection occurred paid or agreed to accept an offer (made in accordance with clause 12) of an instalment plan and made an instalment payment in accordance with the installment plan, or other payment option; or
- (b) under clause 19 because access to the meter was denied and the customer has within 10 business days of the date on which the disconnection occurred provided access to the meter; or
- (c) under clause 20 for a customer using energy in breach of the energy legislation, and the customer has within 10 business days of the date on which the disconnection occurred remedied that breach by a person authorised to do so under energy law, and has paid, or made an arrangement to pay, for the energy so obtained;

the retail entity must arrange for the reconnection of the customer's premises in accordance with this clause, subject to:

- (d) clause 23 of this Code;
- (e) the customer making a request for reconnection; and
- (f) the customer first paying the prescribed fee under the Energy legislation for reconnection.

23 TIME FOR RECONNECTION

Where under clause 22 a retail entity is obliged to arrange for the reconnection of a customer's premises, then it must contact the relevant distributor and request reconnection:

- if the request is made by the relevant time on a business day, then on the same day or as otherwise agreed with the customer;
- if the request is made after the relevant time on a business day, then by the next business day or as otherwise agreed with the customer;
- if the request is made on a non- business day, then on the next business day or as otherwise agreed with the customer.

PART 7 SPECIAL NEEDS

24 LIFE SUPPORT EQUIPMENT

24.1 Life support equipment

Where a customer provides a retail entity with confirmation from a registered medical practitioner or a hospital that a person residing at the customer's premises requires life support equipment, the retail entity must:

- (a) register the premises as a life support equipment address and give to the distribution entity relevant information about the premises for the purposes of updating the distribution entity's records and registers;
- (b) not arrange for the disconnection of that premises while the person continues to reside at that address and requires the use of life support equipment; and
- (c) give the customer an emergency telephone contact number for the customer's distribution entity.

24.2 Cessation of requirement for life support equipment

A customer whose premises has been registered under this clause must inform the retail entity if the person for whom the life support equipment is required vacates the premises or no longer requires the life support equipment.

24.3 LANGUAGE AND LARGE PRINT NEEDS

A retail entity must:

- (a) provide access to multi-lingual services (for languages common to the relevant residential customer base) to meet the reasonable needs of its residential customers; and

- (b) provide, on request by a residential customer, large print versions of this Code, at a reasonable charge.

PART 8 GENERAL

25 ILLEGAL USE

25.1 Retail entities' right of recovery for illegal use

If a retail entity has undercharged or not charged a customer as a result of the customer's fraud or intentional consumption of electricity otherwise than in accordance with the electricity legislation, the retail entity may estimate the consumption for which the customer has not paid and bill or take debt recovery action for all of that unpaid amount.

25.2 Non-application of payment difficulties

Clause 11 does not apply if, during the course of the customer's dealings with the retail entity, the customer is convicted of an offence involving fraud or theft of electricity.

26 EXPIRY OF A FIXED-TERM CONTRACT

If the energy contract between a customer and a retail entity is a fixed term contract prior to the expiry of the fixed term, the retailer must notify the customer of the following information:

- that the energy contract is due to expire;
- when the expiry will occur;
- of the tariff and terms and conditions that will apply to the customer beyond the expiry of the fixed term if the customer does not exercise any other option (which the retailer may determine at its discretion)

The information must be given no later than 28 days before the expiration of the fixed term

27 COMPLAINT HANDLING

A retailer must handle a complaint by a customer in accordance with the relevant Australian Standard on Complaints Handling or the 'Benchmark for Industry Based Customer Dispute Resolution Schemes' published by the Department of Industry, Tourism and Resources (Cth).

PART 9 DEFINITIONS

(to be decided)

Section	Explanation for Deletion/Amendment
Application	In a competitive market, customers consuming more than 20MWh and/or 150GJ will have considerable bargaining power, and should not be included in the scope of an Energy Retail Code.
Customer Charter	There is no need to impose this requirement, as the provision of customer charters would be driven by consumer demand. In the event customers are looking for information in a certain format, in a competitive market energy companies will move to provide this information.
Applications & Connections	Retailers should be free to determine what information they require from customers prior to opening an account with the customer.
Billing	<p><u>Billing cycles</u></p> <p>While there are potential benefits associated with shortening the billing period, retailers will be effectively constrained by the significant costs associated with issuing additional bills. Further, retailers require flexibility around billing periods to negotiate meter reading cycles with meter providers, and to cater for changing customer needs.</p> <p><u>Content of a bill</u></p> <p>There is no need for regulation in respect of the content of a bill, except in so far as necessary to compel the provision of the customer's MIRN/ NMI/ DPI ID on bills. Retailers are constrained from removing any information important to a consumer by the administrative costs that would be incurred from responding to customer complaints or queries in respect of their bills. Customers expect to see a basic level of information about the services they are being charged for, and it is in a retailer's interests to minimise customer queries and dissatisfaction by ensuring the information is as comprehensive and comprehensible as possible</p>
Undercharging & Overcharging	<p>Retailers should be subject to the same statutory limitations as other suppliers of goods and services in Australia .</p> <p>However, in the event that regulation is deemed to be necessary, then regulation should be premised on the following objectives:</p>

	<ul style="list-style-type: none"> • establishing a fair and certain time period in which retailers should endeavour to bill customers for goods and services provided during that period; • establishing a customer's right to be reimbursed for any amount of an overcharge (excluding interest). There does not need to be any regulation in respect of the means by which a retailer reimburses the customer – it is enough that the retailer is under an obligation to make the reimbursement, and retailers and customers are then able to agree on the means of reimbursement.
Truncated collection cycle or late payment fees	<p>As many as half of all customers fail to pay their bill by the due date. Retailers incur significant costs when customers pay their bills late – namely the cash flow costs incurred on late payment, and the cost of sending out reminder letters.</p> <p>The ERAA believes there are two ways in which this issue can be addressed:</p> <ul style="list-style-type: none"> • to put all payments on a 'shortened collection cycle', whereby customers do not receive a reminder notice, but only receive a disconnection warning after the late payment of a bill. Customers who need additional time to pay for reasons of financial difficulty would need to call their retailers and make those arrangements; or • allow retailers to levy late fees, with a mandatory exception for customers experiencing financial difficulty.
Payment Methods	Payment methods can be varied already under certain jurisdictional codes. Retailers have a clear interest in getting paid, and are going to provide customers with the most convenient options for paying bills according to demand.
Review of a Bill	This area would be adequately covered by the dispute resolution procedures.
Security Deposits	It is not necessary to regulate the provision of security deposits in a competitive market.
Force Majure	Covered in contract.



**Energy Retailers
Association of Australia**

**Vulnerable Customer
Position Paper**

Issued June 2005

ERAA Position Paper - Vulnerable Customers

PREFACE

This policy was prepared in light of the establishment of the Committee of Inquiry into Financial Hardship of Energy Customers by the Victorian Government on 13 March 2005.

This paper is designed to be read in conjunction with the ERAA's Retail Price Regulation Paper which was drafted at the same time as this Hardship policy.

Historically governments through their ownership of utilities have administered social policy relating to customer hardship. Energy reform in recent years has resulted in the introduction of competition and in some States the complete privatisation of the energy industry.

Despite the introduction of these reforms jurisdictional regulators have retained price controls for certain customers in electricity and gas markets that are now open to competition. One of the main arguments put forward for maintaining regulated pricing of energy is to protect those customers in genuine hardship.

ERAA considers there is no justifiable link between price regulation and consumer protection, and sees that more targeted arrangements are required to assist customers in genuine financial hardship.

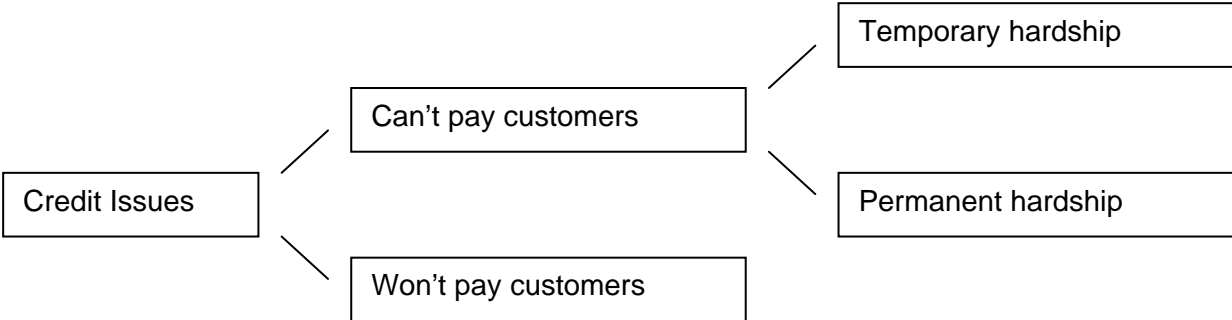
The ERAA strongly supports arrangements to protect customers in genuine financial hardship, however more effective policies are needed to address customers in hardship and continued price regulation is not part of the solution.

Customers with insufficient income need to be adequately supported with direct and transparent government subsidies through government welfare programs that are simple to administer and which do not interfere with the operation of the retail market. Energy retailers and community groups can assist governments in implementing such programs.

The combination of Government support and successful retailer vulnerable customer hardship programs will support competition in vulnerable customer segments and ensure programs are effective, transparent and efficient.

INTRODUCTION

Customers who do not pay their bills fall into two classes of customers: those who are in genuine financial hardship – the vulnerable or “can’t pay” customers; and those who choose not to pay: the “won’t pay” customers. Vulnerable or “can’t pay” customers can further be classified as being in either temporary hardship or in permanent hardship.



The ERAA believes it is important to recognise these distinctions, as different approaches are needed to appropriately manage the different issues associated with these different customer classes.

This paper only discusses the ERAA’s position with respect to the management of the vulnerable or “can’t pay” customers. (As retailers have collections and debt recovery procedures already established in relation to those customers who “won’t pay”.)

ERAA POSITION

The ERAA recognises that sections of our community can face financial hardship and personal and social difficulties.

Historically, Australian government-owned energy utility companies have administered social policy relating to customer hardship. However, energy industry reform in recent years has resulted in Governments introducing competition, and in some states, with complete privatisation of the energy industry. Utility companies have now been separated into discrete companies responsible for generation, transmission, distribution and retailing.

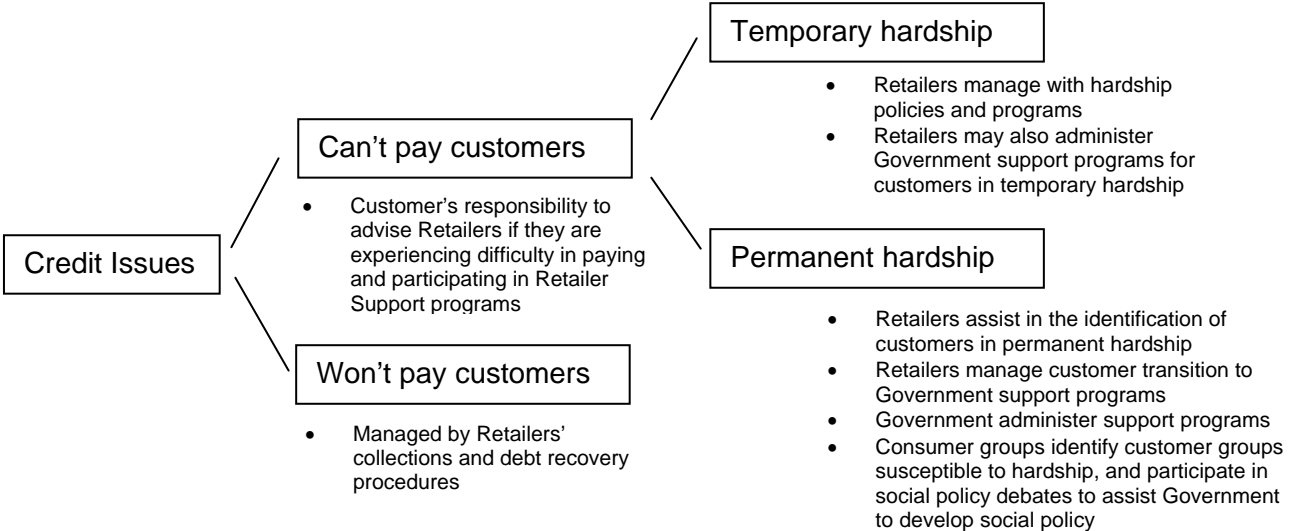
The development of sustainable solutions for managing customer hardship has not kept pace with these reforms. The ERAA believes that there needs to be a realignment of objectives and the approach to protecting customers in genuine financial hardship and will seek to engage governments, consumer groups and welfare organisations to address this important issue.

The ERAA’s position is that:

- The implementation of vulnerable customer frameworks is a mutual social obligation, shared between customers, the energy industry, Governments and the broader community.
- Vulnerable customers are defined as those customers who, due to genuine financial hardship, are unable to pay for the energy they have used, be it permanent or temporary in nature.
- Vulnerable protection frameworks should be available to all vulnerable customers as defined above.
- Retailers should continue to assist those customers in temporary hardship through the provision of energy on credit, offering extended collections periods and payment plans, referral for financial advisers, government support agencies, and providing advice on energy efficiency.
- Energy affordability for vulnerable customers with permanent difficulties is best managed through comprehensive, direct social support programs, which are funded by governments, and are transparent and simple to administer. Energy retailers and community groups can assist governments in implementing such programs.
- The combination of transparent Government support and successful retailer Vulnerable Customer hardship programs will support competition in vulnerable customer segments and ensure programs are effective, transparent and efficient.
- Price regulation should not be used as a means to protect vulnerable customers. Price regulation is ineffective in protecting the vulnerable customers and has other unintended consequences including the introduction of cross-subsidies, which are inefficient and stifle market development; product innovation; investment in supply and demand management initiatives and energy efficiency.
- The ERAA will continue to work with Governments and the community to ensure that interaction with vulnerable customers is fair and equitable, and that the energy industry is providing efficient and effective hardship programs to its vulnerable customers.

SUMMARY OF RESPONSIBILITIES

In support of the ERAA’s position, the following diagram summarises the responsibilities for managing vulnerable customers.



Part A of this paper provides a background and rationale to vulnerable customer policy

Part B outlines a role for Retailers in dealing with vulnerable customers, and

Part C presents the rationale for the policy principles adopted by the ERAA.

PART A. BACKGROUND

Definition of a Vulnerable Customer

The paper on Background Information on Vulnerable Customers provides analysis of various vulnerable customer policies from organisations in Australia and overseas. In these policies, each organisation has attempted to define “vulnerable customers”, and not surprisingly given the complexity of the issues involved, each organisation has a different definition. However, one recurring theme is that “vulnerable” customers cannot afford to pay for the energy that they have used due to genuine financial hardship.

Vulnerable customers can be further characterised as follows, and may require different types of assistance:

- Permanent hardship customers are generally those with low or fixed incomes and may require ongoing assistance.
- Temporary hardship customers are those who have experienced a sudden change in living circumstances such as ill health, unemployment, a death in the family, a loss arising from an accident, or some other genuine financial difficulty. These customers generally require flexibility and temporary assistance such as an extension of time to pay, a one-off grant, or a payment arrangement.

Vulnerable customers can therefore be defined as those that are genuinely not able to afford to pay for their energy usage as a result of social or personal circumstances beyond their reasonable control, be it permanent or temporary in nature. These customers, due to their inability to pay, are at risk of being disconnected if left unaided.

Responsibility for Vulnerable Customers

Hardship situations are driven by a number of social and personal problems. Some of these circumstances are temporary in nature, while others are permanent. They impact on essentials of life such as food, clothing, health and utilities and therefore affect livelihood. With respect to utilities and in particular energy, lack of affordability and accessibility may exacerbate these customers’ particular situation and lifestyle.

Historically, Australian government-owned energy utility companies have administered social policy relating to customer hardship. However, energy industry reform in recent years has resulted in Governments introducing competition, and in some states, with complete privatisation of the energy industry. Utility companies have now been separated into discrete companies responsible for generation, transmission, distribution and retailing.

The development of sustainable solutions for managing customers in genuine financial hardship has not kept pace with these reforms. As a result, traditional expectations for the management of hardship have shifted the burden for social policy to a very small group in the Australian community, the energy retailers.

The ERAA acknowledges that customer vulnerability is of serious concern for all Australians, including energy retailers. However, it is becoming increasingly clear that a solution cannot be found in one small section of the community. As a result, the ERAA recommends a shared social responsibility between the customer; the energy industry; State and Federal Governments; and the Australian community.

Responsibility should be shared as follows:

- **Customer** – Receives the energy and is obliged to pay. Customers are also responsible for advising retailers if they are having difficulty and seeking out and participating in programs designed to assist them.
- **Energy Industry** – Produces, distributes and sells the energy to the customer in a safe, reliable and least cost method. Energy retailers provide support to customers in genuine temporary financial hardship by providing reasonable payment plans, referral of customers to other available sources of help, and advice on energy efficiency (via hardship policies and programs). This support may also include administration of Government support programs. Retailers also assist in the identification of vulnerable customers in genuine permanent financial hardship and can assist in the transition of these customers to Government support programs.
- **Governments** – Determine social policy and put in place agencies and arrangements to fund and implement these policies. Governments are responsible for the administration of support programs for customers in permanent hardship, and also provide support to low-income earners by way of financial support through pensions and allowances, etc. (The paper on Background Information on Vulnerable Customers, Section B, outlines the various government concessions and rebate assistance schemes currently available to energy customers.)
- **Community** – Shares the responsibility for seeking to ensure Australia is a fair and equitable society. Community groups play an important role in identifying customer groups and individuals who are susceptible to genuine financial hardship, referring customers to available sources for help, and participating in social policy debates to assist Governments to develop appropriate policy.

Lack of access to energy supply has a significant impact on customers and their participation in society. However, given that energy only comprises 2-5% of average weekly household expenditure¹, solving energy hardship alone for vulnerable customers will do little to improve their participation in society.

In addition, energy industry specific programs to identify and assist customers with low income will result in duplication of effort, lead to unnecessary and multiple assessments by the different utilities causing customer frustration, and can result in the customers in most need of help not getting the assistance due to lack of coordination of support.

¹ Source: ABS Household Expenditure Survey, 2001. Households earning \$1,000 per week spend approximately 2% of income on domestic fuel and power, while households earning \$200 per week spend approximately 5%.

A sustainable, “whole of community” approach is required which is targeted to those in genuine need. Only a holistic strategy developed by Governments to address the affordability of those customers genuinely unable to pay for energy use will ensure a transparent and focused targeting of those customers who are in real need of support.

While there is a growing understanding of the importance of the need for a whole of community approach (refer to footnotes ² & ³ below), there appears to be a lack of recognition in some circles that energy affordability is a broader social issue.

PART B ROLE FOR RETAILERS

The challenge for industry

The challenge to industry is to identify vulnerable customers in genuine financial hardship situations and work with Governments to assist those customers at risk due to their inability to pay for energy used.

Participation by Energy Retailers

Energy retailers are positioned to support customers who may be experiencing genuine financial hardship and then moving these customers into a more sustainable program with mutual obligations from all sectors.

The ERAA recognises that early identification and support by retailers is important in assisting in the reduction of long-term energy hardship. It is also important that customers advise energy retailers of their inability to pay, otherwise it is very difficult to differentiate between customers who genuinely can't pay as opposed to customers who won't pay.

Energy Retailers are also well positioned to assist in the early identification of inefficient appliances and poor quality housing, and providing this information to the owners of these assets (being either Government or private investors). However, unless there is a “whole of community” approach, which includes participation by housing stock owners, this information will not result in an improvement of the quality of housing for vulnerable customers.

There are currently obligations on retailers to provide ongoing support to vulnerable customers, such as:

- Flexible debt recovery options,
- Advice on the best payment solutions available to make payments manageable,
- Advice on the relevant concessions available, from pensioner to life support rebates,
- Free referral to registered financial support and community organisations on a voluntary basis as required,
- Energy consumption information and advice on ways to make cost savings,

² Comments from Final Report by the Essential Services Commission of Victoria to Minister Special Investigation: Effectiveness of Retail Competition and Consumer Safety Net in Gas and Electricity, page 33, “The Commission considers that these issues could be addressed more effectively on a whole-of-government basis, which sought to better focus and coordinate existing government programs that are designed to address aspects of these customer problems.”

³ Comments from Productivity Competition’s Report on transitional and distributional impacts of competition reforms, discussion draft, page 174, that the interests of vulnerable users are “best handled through transparent community service obligation payments, rather than through the general suppression of prices.”

Retailers provide information to customers on how to access support from government relief agencies and charities to assist with a temporary problem or to address a more long-term issue. It is at the point when the customer contacts the Retailer and advises of their difficulty in paying the bill, that the customer can be assessed by the Retailer (with input from a relevant agency) and be identified as a vulnerable energy customer and receive the necessary support to ensure continued access to energy services.

The majority of Retailers have voluntarily developed Vulnerable Customer Hardship programs (in some cases, over and above Code requirements) that provide specialised and targeted support to vulnerable customers, and provide dedicated staff to assist customers in hardship. All retailers offer payment plans to assist customers with temporary problems.

Retailers are committed to continuing the development of their support programs for customers experiencing genuine financial hardship in an endeavour to mitigate the risk of increasing debt and disconnection.

PART C. PRINCIPLES

Economic Efficiency

Economic efficiency requires that pricing of products and services are such that they do not result in distorted signals in the market.

Equity and transparency

Access to energy is considered to be essential to minimum standard of living and is a right of all.

Governments may have views on equity grounds that customers in certain situations should pay a particular price. For example, some governments assist customers in remote locations through rebate schemes to ensure that they are not disadvantaged due to their location and that their charges do not vary significantly from those paid by customers in city regions.

Jurisdictions implementing such equity policies should do so in a transparent manner such that the true pricing signals remain.

Administrative Simplicity

Administrative simplicity requires that the complexity and cost of regulatory arrangements supporting equity principles and vulnerable customers be minimised. This includes the administration costs of measurement, monitoring, verification and compliance associated with relevant schemes to achieve governments' objectives.

Regulatory Certainty

Regulatory certainty requires that governments take a national, long-term approach to Vulnerable Customer policies. This includes the establishment of a regulatory framework that has well thought out objectives, which are nationally consistent.