

9 October 2007

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Dr. John Tambyln
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By email: <submissions@aemc.gov.au>
and to <Rajat.Sarawat@aemc.gov.au>

Dear Dr. Tamblyn

**Re: Retail Competition Review – First Draft Report Response
Stakeholder consultations, timelines and robust enquiry**

I attach an revised open submission for publication in several parts including this covering letter, mainly focused on aspects of stakeholder consultations – from a private citizen end-consumer perspective, the kind of voice rarely if ever heard in deliberative and consultation processes, though I have also referred to an important issue raised before with AEMC – the plight of embedded consumers.

The main body of this non-privileged submission is primarily dedicated to the whole stakeholder consultative processes and perceptions of current limitations, as well as some selected issues regarding evaluative design and process, including information gathering and interpretation, and passing comment on the market conduct and the plight of embedded consumers. Finally there is the question of caution about rushed decisions that could lead to widespread dissonance and market failure.

A more detailed submission will be prepared to deal with evaluative processes, information gathering and interpretation issues under 3.2.2.1 and 3.2.2.2 as well as other issues, but some immediate issues are common to several groups undertaking reviews and inquiries. I have concerns about economic as well as non-economic parameters and a host of issues that are yet to be raised which could be raised individually, topic by topic, if preferred.

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To save repetition the attachments are jointly prepared for the MCE Market Reform Team, the AEMC Team; the Productivity Commission, with the principal differences being the covering letter addressee details.

Just to clarify – all material previously sent by e-mail to AEMC was intended to be taken into account. My initial submission dated 2 August contained material that has always been pertinent to the Retail Competition Review, since it referred to policies and conduct within the marketplace that remain detrimental to consumers and contrary to existing provisions.

Market conduct and policies are important components of assessing how regulatory control should be addressed. I had always intended that earlier material to be published but for some reason this did not occur. Subsequent to that I forwarded copies of considerable privileged and non-privileged material, including copy correspondence sent to other agencies. That material was also meant to be taken into account. More is in preparation and I believe pertinent to the current Retail Competition Review.

Unless the needs of embedded end-consumers are protected and other consumer protections enhanced rather than eroded, ongoing consumer detriment will result. The market is not mature enough for full deregulation including price or considerable lightening of regulatory load for an essential service, though rationalizing makes sense. Shifting responsibility to charities and government agencies for consumer protection and away from those making profits does not deal with equitable distribution for all those who are disadvantaged and vulnerable – that responsibility is incumbent on the community as a whole.

I remain particularly concerned about pricing, charging and conduct in relation to bulk hot water services – retailers are licenced to sell gas and electricity not hot water services. Gas does not pass through water meters and is measured in megajoules or cubic meters not in terms of cents per litre. Many concerns had been expressed about these issues throughout the years.

Embedded end-consumers with no separate meters are inappropriately being held contractually responsible where that responsibility lies with landlords. They are also being bullied, threatened and even coerced in endeavours to enforce upon them contractual status where none should exist. If this sort of conduct is blatant when strict regulations are in place, though possibly not enforced, what is likely to happen in a free-for-all self-regulatory climate?

These issues need to be urgently addressed in consumer protection. I will prepare more material focused on the situation of embedded consumers - one that has not been addressed to date despite all the concerns that have been raised. Other concerns about vulnerable and disadvantaged consumers will also be addressed again. I remain very concerned about proposals to remove safety net provisions.

CUAC has already raised concerns about merits review and advocacy issues and have presented arguments regarding draft legislation that differentiates between “*user and consumer associations*” and “*user or consumer interest groups*” I refer in particular to CUAC’s Submission to the Ministerial Council on Energy 2006 Legislative Package: Gas and Consumer Advocacy.

There is no settled position yet about terminology or how the consumer policy framework will be structured, but these issues should not be forgotten.

Meanwhile my open published submission to the National Framework for Energy Efficiency (NFEE2) dated 25 September 2007¹ covers much of the ground and is readily available. The Retail Policy Group will also have an interest in those issues. I intend to respond when time permits in more detail to the Composite Consultation Paper of the Retail Policy Working Group also.

In determining small customer definitions, it is insufficient to rely upon consumption levels alone, and in any case where no meters exist to measure either gas or electricity, consumption cannot be measured in litres using water meters posing as gas or electricity meters without violating the basic principles of trade measurement practice; contractual law, residential tenancy provisions, common law rights.

Whilst the body of the main submission (10 pages) is predominantly about stakeholder consultation, I felt it was important to draw some initial attention to this matter since previous non-privileged material submitted was not published.

Suggestions for a complete revamp of the consumer policy framework has been eloquently suggested by CHOICE (ACA) and several other agencies with separation of governance and accountability parameters under a new consumer framework that is not under the umbrella of departments responsible for regulation.

Time constraints and difficulty obtaining data sought, despite being government policy documents. had slowed me down for months, though I have considerably more material to proffer. I can only hope that overlapping deadlines with other submissions will not prevent me from providing more detailed responses to the Retail Competition Review now that the First Draft Report has been published. I am also in a position to add to the material contained in the NERA consulting reports with a focus on other angles and detail not covered, but will leave this till the main body of the Draft Report is addressed.

This letter and attachments are intended for publication and the first of my responses to the Retail Competition Review First Draft Report made available on 5 October 2007 with response deadline of 9 November. Since I am within the timelines, I hope this will be acceptable. For technical reasons I am unable to convert this into a .pdf document. I hope this will not preclude online publication. I will forward also by mail.

Please accept this in the spirit intended – with the view to offering constructive end-user perspectives. Please retain me indefinitely on your mailing list as an interested stakeholder.

I appreciate the opportunity of expressing my views and concerns in this matter.

Sincerely

Madeleine Kingston

¹ Submission dated 25 September 2007 to National Framework on Energy Efficiency (NFEE2) Found at http://www.nfee.gov.au/about_nfee.jsp?xcid=67

Attachments with open submission AEMC; MCE; and Productivity Commission

ATTACHMENTS WITH OPEN SUBMISSION AEMC; MCE; AND PRODUCTIVITY COMMISSION

1. Main Submission prepared for Productivity Commission Consumer Inquiry; AEMC's Retail Competition Review First Draft Response and for the MCE Market Reform Team as a single submission (10 pages + 6 cov letter comprising together the main submission total 16 pages)
2. Attachment 2 summarizing a selection of important deadlines that overlap for government enquiries, reviews and consultative processes (5 13 pages)
3. Cover letter dated 6 October to MCE Market Reform Team (6 pages) (not sent to AEMC as substantially similar)
4. Letter 12 June 2007 from CUAC to AEMC Chairman re information gathering processes (2 pages)

List of copy addressees overleaf

Courtesy copies to:

1. MCE Market Reform Team <MCETMarketReform@industry.gov.au>
2. Productivity Commission attention Jill Irvine <consumer@pc.gov.au> (Consumer Inquiry)
3. Dr. Rajat Sarawat, Senior Director, AEMC Retail Competition First Draft Response 1 <rajat.sarawat@aemc.gov.au>
4. Peter Batchelor, Minister for Energy and Resources <peter.batchelor@parliament.vic.gov.au>

Additional individual copies to ~~19~~ **28** community organizations as listed overleaf. In addition I have written personally to many of these agencies and have received responses

ADDITIONAL COPIES TO COMMUNITY ORGANISATIONS AS LISTED (Expanded)

To stimulate discussion about end- consumer perspectives and to highlight important deadlines for submission. Many have received personalised letters also and have provided responses

VICTORIA

1. Consumer Utilities Action Centre (CUAC) attention Kerry Connors Executive Officer <kerry.connors@cuac.org.au>
2. Consumer Action Law Centre (CALV) attention Carolyn Bond, CEO; Janine Rayner Senior Policy Officer; <janine.rayner@consumeraction.org.au>; Gerard Brody, Director Policy and Campaigns <ceo@consumeraction.org.au>; <gerard@consumeraction.org.au> and NEM Project Coordinator Natasha Leigh
3. St Vincent de Paul Society Victoria, Attn Gavin Dufty, Social Policy and Research <gavin@svdp-vic.org.au>
4. Victorian Council for Social Services Attention Dean Lombard Policy Analyst and Policy Projects – Energy and Water Attn Dean Lombard <dean.lombard@vcoss.org.au> and Cheryl Wragg <cheryl.wragg@vcoss.org.au>
5. Kildonan Child and Family Services (Uniting Care) Attn Poul Bottern, CEO <info@kcfs.org.au> and Fiona Duffy Board Member (social justice, governance, management issues)
6. Footscray Community Legal Centre <footlegal@iinet.net.au>
7. Energy Action Group (EAG) Attn John Dick <johnd@melbpc.org.au>
8. Public Interest Law Centre Victoria Attn Sue Woodward Lawyer/Policy Officer; Phillip Lynch, Director and Principal Solicitor, Human Rights <pilch@vicbar.com.au>
9. Consumer Affairs Victoria (CAV) Attn James Latham <james.latham@justice.vic.gov.au> and Paul Myers <paul.myers@justice.vic.gov.au>

NSW

10. Public Interest Advocacy Centre (PIAC) NSW Attention Hugh O'Neill <hugh@piac.asn.org>
11. Public Interest Law Clearing House NSW Elissa Freeman efreeman@piac.asn.au
12. Consumer Credit Legal Centre NSW <CCLC_NSW@clc.net.au> and direct copy Fiona Guthrie Director <fionaguthrie@creativeparks.com.au>
13. National Electricity Consumer Advocacy Centre c/o Axton Jones by email: djlb@axtonjones.com.au Attn David Bremner, Executive Officer
14. Australian Consumers Association (ACA) Attn Director Gordon Renouf and Panel Member National Electricity Consumer Advocacy Centre <grenouf@choice.com.au>

SOUTH AUSTRALIA

15. Uniting Care Wesley Inc South Australia Attn Chris Talbot, Executive Manager, Research and Development; <enquiries@wesleyadelaide.org.au> and Mark Henley Manager Advocacy and Communication, and Editor Wesley Voice <mark.henley@ucwesleyadelaide.org.au> Attention also Energy Friends South, Energy Friends West and Financial Counselling
16. South Australia Council of Social Services (SACOSS) Attn Karen Grogan Executive Director; Policy Officer Anna Kennett <karen.grogan@sarboss.org.au> <anna@sacoss.org.au> and Andrew Nance c/o SACOSS
17. Total Environment Centre NSW, Resource Conservation Campaigner Attn Jane Castle <jane.castle@tec.org.au>

ACT

18. Director Care Inc. Financial Counselling Service, by email Attn David Tennant <david.tennant@carefcs.org>
19. ACT Consumer Law Centre Attn Amy Kilpatrick <amy.kilpatrick@carefcs.org>
20. ACT Council of Social Service Attn Director Ara Cresswell <Ara@actcoss.org.au>
21. Australian Council of Social Services Attention Linda Hancock VCOSS Representative <info@acoss.org.au>

QUEENSLAND

22. Griffith University Centre for Credit and Consumer Law Attn Nicola Howell <n.howell@griffith.edu.au>
23. Queensland Council of Social Services Attn Fiona Caniglia Manager Policy and Communications <qcross@qcross.org.au>
24. Queensland Consumers Association c/o Attention Ian Jarratt <ijarratt@australiainmail.com>

TASMANIA

25. Tasmanian Council of Social Services <admin@tascoss.org.au> and direct copy Kath McLean <kath@tascoss.org.au>

WESTERN AUSTRALIA

26. Western Australian Council of Social Services Attn Aden Barker, Senior Policy Officer <aden@wacoss.org.au> and Stephanie Nazer, Senior Policy Officer, Consumer Utilities Project <stephanie.nazer@wacoss.org.au>
27. Department of Consumer and Employment Protection WA <consumer@docep.wa.gov.au>

NORTHERN TERRITORY

28. Northern Territory Council of Social Services <admin@ntcoss.org.au> and Public Officer Wendy Morton <wendy.morton@ntcoss.org.au>

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OPEN SUBMISSION

**MINISTERIAL COUNCIL ON ENERGY
MARKET REFORM TEAM**

AUSTRALIAN ENERGY MARKET COMMISSION
**(Retail Competition Review First Draft Report - selected
issues)**

PRODUCTIVITY COMMISSION
(Inquiry into Australia's Consumer Policy Framework)

**DISCUSSION OF QUALITY OF STAKEHOLDER
CONSULTATION, CONSUMER DETRIMENT;
SELECTED EVALUATIVE DESIGN PARAMETERS**

Madeleine Kingston

9 October 2007

Reaching all stakeholders in the consultative process

The purpose of this focused submission is to discuss the consultative process and requirements from an end-consumer perspective.

At present, submission restrictions and unrealistic deadlines have the ongoing effect of being demoralizing to both industry and community stakeholders, and appear to be imposing undue burdens especially on small community agencies dependent on inadequate funding support, and on private citizens with even fewer resources and backing. The resulting compromise represents an issue of inequality in stakeholder participation in governmental decision-making processes. This is not what the government could be intending.

As a private citizen and newcomer to the consultative processes, I have appreciated routine notification through the WebIndustry e-mail service which has reduced the burden of searching for deadlines online. The processes for securing end-consumer input are not as extensive or sophisticated as they might be. My involvement has been more by accident than design rather late in the piece. Pity, since I had the energy and the will to participate actively. There is always another year.

Meanwhile, I would like to make a few points for the end-user community, especially those who are dependent on essential services, have no choices; are under-represented; live in a reform climate that is fraught with uncertainty and instability; and rely on economic concepts that may have lost touch with social justice principles or otherwise refuse to give these any credence on the basis that **universal obligations may not be compatible with effective energy retail market competition**¹ and that *“The benefits arising from these reforms are expected to flow to end users and the community as a whole.”*²

Not all consumers have ready computer or printer access, or even Internet access. Some are without computer skills at all or for other reasons cannot benefit from these measures to inform them of participatory options and processes. Their needs cannot be met by current tools to secure wide community participation in the marketplace. In order to reach all stakeholders and allow meaningful consultative opportunity advertising in local newspapers, libraries, community agencies, citizens’ advice bureau and the like may have elicited a wider community input.

It is my view that in addition to a formal submission process, more informal methods of communication should be made available in order to make sure that wide stakeholder input is obtainable. As mentioned, not everyone has ready internet access or printer access and in any case the cost of printing and dispatch particularly for long documents can be prohibitive.

¹ See for example Dufty, G (2004). Who Makes Social Policy?– The rising influence of economic regulators and the decline of elected Governments. VCOSS Congress Paper 2004

¹ Powerpoint presentation World Forum on Energy Regulation, Rome September 2003 “Are Universal Service Obligations Compatible with Effective Energy Retail Market Competition? John Tamblin (then) Chairperson Essential Services Commission Victoria.

² See for example MCE Issues Paper 2004 National Framework for Retail and Distribution Regulation of Electricity and Gas

A little flexibility with these issues would go a long way if there is to be any serious commitment to reaching the widest community representation, especially amongst end-users, who currently do not belong to any association or community organization, as parameters do not allow for this.

In the Draft Report on Retail Competition prepared by the AEMC and published on 5 October with several supporting attachments, including the Wallis Consulting Retailer Survey, Consumer Survey and two market analyses by NERA Economic Consulting, it is clear that even large corporate vertically integrated gentailers, as well as the smaller new entrants into the market are feeling the time and cost burdens of what is seen as a dispensable regulatory burden and consultative process.

In the scheme of things, these corporate organizations have better resources than do individuals, ready access to legal and advice from experts on how to argue against regulatory burdens.

By contrast, small poorly funded community organizations cannot begin to compete from a resource perspective, and they face continuing external threat to their very existence and commitment to supporting community goals and ideals by endeavouring to address social justice principles and their formulation as a specialist task that requires specialist training.

Further down the track are the private citizens, with varying degrees of personal and financial resources and varying skills in engaging with the consultative process.

I have appreciated the opportunity of involvement, though cannot do justice to the AEMC Draft Report in the timelines available.

I do not believe that members of general public, particularly end-users have much awareness of their options to make submissions to Inquiries and Reviews such as those being undertaken by the Productivity Commission, the AEMC and NFEE, which suggests that merely publishing details on a website unknown to the general public and cursory advertising in a single newspaper may reach few target markets.

It should be remembered that community agencies such as Consumer Utilities Advocacy Centre and Consumer Action Law Centre do not have individual members, but are set up as companies limited by guarantee with the object of pursuing consumer interests.

The joint submission to the Productivity Commission by CHOICE (108) and others has provided a powerful, credible consumer policy framework that runs differently to the current one. This is the framework that should be enthusiastically embraced by the Government and put in place with the least possible delay.

Consumer Utilities Advocacy Centre (CUAC) has made an important submission about merits and advocacy review processes and the definition of user or consumer groups. These are important concepts for consideration and would be addressed if the CHOICE proposals are adopted.³

³ CUAC Submission to the Ministerial Council on Energy 2006 Legislative Package: Gas and Consumer Advocacy.

The views of private citizens may not be as proactively sought as desirable, and in any case, community input generally has not always been found to be represent meaningful dialogue.

In their joint submission to the Ministerial Council on Energy 2006 Legislative Package: Gas and Consumer Advocacy, CUAC and CALV made the following comment, which perhaps the AEMC as rule-maker could take into account:

“It is our experience that decision-makers, including Government and regulators, rarely indicate that a submission or piece of research has altered or affected their decision. When stakeholders’ views are recorded, often one will be cited to represent a range of views. And, as the SCO is aware, even when advocacy is valid, well-considered and appropriate, the decision-maker can still elect to take an opposite position, having weighed input from a range of stakeholders.”

It would seem that there is far more room for collaborative discussion with other sections within the MCE including Policy Working Groups (Such as the Market Reform Team The Retail Policy Working Group; the National Framework for Energy Efficiency), as the issues being individually considered by each of these groups may have some relevance to the goals of the AEMC in determining competition effectiveness.

These observations are valid also for input from all stakeholders that is sought, which needs to allow **realistic timeframes for response** and mechanisms to transparently show how stakeholder inputs are processed and weighed up, including during public forum consultations.

The CUAC and others in their formal submission to the AEMC dated 12 June 2007 had commented as follows:

You should also be aware that these limited timelines also constrain the capacity of consumer and community organizations to gather information about the impacts and effectiveness of competition among their constituencies..⁴

I would like to continue to be involved as an end-consumer and to access a variety of consultative processes, but admit to feeling rather jaded and overwhelmed by the impossibility of the task that I have set myself as an end-consumer – to be actively involved in the consultative process where possible and where the meeting of deadlines is in any way feasible.

I repeat that private citizens are not normally aware of the processes and deadlines involved in taking a greater part in stakeholder input and most just don’t have the resources to keep up with submission expectations.

Finally, I believe that the process of consultation should be ongoing and that members of the community, aside from consumer agencies and organizations should be co-opted on an ongoing or ad hoc basis to obtain some direct end-user perspectives.

⁴ Extract from submission to AEMC dated 12 June 2007 from CUAC representing the views of Consumer Utilities Advocacy Centre Ltd, Consumer Action Law Centre, Victorian Council of Social Service and St Vincent de Paul Society Victoria

Unrealistic over-lapping deadlines for stakeholder consultation

There are a number of issues that I would like to raise whilst considering how best I can respond to aspects of the AEMC First Draft Report and numerous other deadlines, and prepare also for a submission to the Productivity Commission, the Retail Policy Group and other related stakeholder consultative initiatives.

I feel sure that many community organizations will feel the same as I do – too little time has been allowed for any meaningful dialogue and most stakeholders with limited resources must by now be quite overwhelmed by the burdens created by overlapping deadlines that just do not allow for appropriate response.

Nonetheless I intend to do what I can to respond to at least some of the consultation documents as a latecomer who knew little about community participation initiatives in the arenas named until a couple months ago.

The deadline for response to the AEMC Retail Competition Draft Report is 9 November, allow barely over a month for further detailed stakeholder responses. The new reading burden alone for this exercise is around 625 pages with some complex issues to examine within Draft Report within the time available or for that matter most of the others in the melting pot. This Report, published on 5 October contains 146 pages plus appendices (20 pages) and four lengthy reports from Wallis Consulting (181 pages) and NERA Economics respectively (105 pages and 111 pages).

Similar burdens exist for other important deadlines. Since all of these MCE and related deadlines for regulatory reform, legislative re-engrossment and consumer policy re-vamping run concurrently, it is entirely unrealistic for the government to expect careful consideration of the range of issues raised, new findings from surveys that have only just been published, and to respond in any meaningful way.

At the same time, state reviews and regulations are also being rushed through with similar unrealistic and overlapping deadlines in a frenzied exercise to beat the calendar and achieve what is possible before election fever sets in and before the COAG deadlines descend. Decisions that are made in this sort of rush have the potential to compromise careful consideration of all relevant factors and all stakeholder responses.

There is nothing new about these concerns, but perhaps it is fairly novel for an end-user to be expressing them on behalf of the entire stakeholder community, especially with regard to energy reform where the proposed changes are major not only with reduction of regulatory burden, harmonization and standardization goals, but also with complete changeover of regulatory control.

Submission and timeline requirements that have the effect of dampening enthusiasm, or making it virtually impossible to participate at all, fall into the realm of exclusion policies, leaving a significant proportion of the general population without access to fundamental equity principles. Proposals to minimize regulation to such an extent within the energy industry – providing an essential service, even to the extent of doing away altogether with safety net protections as may be soon formally proposed will also leave such individuals without proper protection, but that topic deserves more dedicated input.

In relation to the AEMC consultative process, I note the comment in the Draft Report published on 5 October that a ‘private citizen’ indicated intent to submit, such a submission did not arrive. I wish to clarify that single point since I am the private citizen in question.

I have already invested countless hours in preparing material for the AEMC, Productivity Commission, Retail Policy Group and National Framework on Energy Efficiency 2. A lengthy submission at short notice was prepared for the last-named whilst further submissions to the others are as yet incomplete.

I was told that the AEMC “*could not prevent me*” as a private citizen from sending in material during late September. However, it certainly was not my perception that the input was actively encouraged at that stage, as the AEMC Team was in the process of preparing a draft report. I was advised that it would be prudent to wait for the published First Draft before responding, which after all was said and done made sense since at that stage not even the external Consultants’ Reports were available and there is still one that is outstanding despite response deadline for 9 November to the Draft First Report.

My earlier request for clarification of the AEMC’s attitude to receiving material was thwarted with a written letter of discouragement because deadlines had passed, but an invitation was issued to attend the public forum. Time constraints precluded as robust and complete stakeholder input as may have been ideal.

When I enquired of AEMC staff about making a written submission following earlier correspondence with AEMC I was informed that the subject matter was unlikely to be of interest to Retail Competition issues. I disagree, since it was about market conduct and impacts on mostly vulnerable and disadvantaged embedded or “inset” consumers living in private rental accommodation, caravan parks or rooming houses – a class of consumers neglected from arrangements and considerations who have suffered detriment in silence for many years.

I have not lost interest in making one or more submission to the AEMC and other parties, using material already well on the way to completion, but I have been overwhelmed by the numerous overlapping deadlines and the enormity of the task and other pressures.

In the case of AEMC, the requirement to submit material as a hardcopy if submitted by e-mail, but in any case by hard-copy, may be a burdensome and expensive requirement for individual consumers and poorly-funded organizations.

I remain extremely concerned about the very short timeframes that have been offered for response to an extensive First Draft Report of the Retail Competition Review undertaken by AEMC. No individual or agency can do proper justice to any response in those timeframes, which coincide with other deadlines for the Productivity Commission, the Response to Consultations on the Second Exposure Drafts of the National Electricity Law Amendments and the National Gas Law.

The community at large has expressed ongoing concerns about the speed with which proposed change is occurring. Most community agencies have commented on the rushed nature of public consultation and have suggested that tokenism in these efforts will not meet community needs for such consultation. I add my voice to those concerns.

In particular CUAC has already suggested that effective consumer consultation needed to draw from different models.

Key concepts identified were:

1. A clear, genuine commitment to consult, beyond either manipulation or tokenism
2. Use of a wide range of consultation mechanisms rather than a single method
3. Commitment of appropriate resources
4. A mix of formal and less formal arrangements; and
5. Public accountability and transparency.

These principles are upheld in numerous quarters.

I have felt overwhelmed by the number of responses that are required to be made within similar time-frames and feel that the AEMC may have missed out on the benefit of the range and depth of inputs that may have been accessible to the AEMC had the timelines not been so tight whilst overlapping with timelines for other submissions.

I made a substantial submission to the National Framework on Energy Efficiency in late September and because of those deadlines had to put to one side other submissions in preparations, which are now receiving my attention.

I also feel that there is far more room for collaborative discussion with other sections within the MCE including Policy Working Groups (such as the Market Reform Team The Retail Policy Working Group; the National Framework for Energy Efficiency; and VESC Metering Issues including smart metering and interval meter roll-out). The issues being individually considered by each of these groups may have some relevance to the goals of the AEMC in determining competition effectiveness. In addition, the AEMC Team should be encouraged to refer and rely on submissions to the Productivity Commission in order to gauge stakeholder inputs that may not be duplicated on the AEMC site.

The following observations by several respected community organizations are valid also for input from all stakeholders that is sought, which needs to allow **realistic timeframes for response** and mechanisms to transparently show how stakeholder inputs are processed and weighed up, including during public forum consultations.

“You should also be aware that these limited timelines also constrain the capacity of consumer and community organizations to gather information about the impacts and effectiveness of competition among their constituencies. We propose the Commission undertake the following three pieces of research.”⁵

- ***Are consumers able to make the right choice?***
- ***Product details: price and non-price features***
- ***Contract terms and conditions***

CUAC and others have referred to concerns *“supported by UK research by Wilson and Waddams Price (2006) which found that 27-38% of consumers actually reduced their surplus as a result of switching. Misleading sales were deemed not to be the reason for that poor choice, and the researchers suggested that confusing tariff and price structures play a part in poor decision-making.”*

It is of concern that quantitative rather than qualitative research regarding switching decisions of consumers has been undertaken. As observed by CUAC such a study has not been undertaken in any depth in Victoria or anywhere in Australia and it was believed that this would provide much-needed information about whether consumers are indeed operating effectively in the market. It is usual in an evaluative process to form and publish strategic formative design, assumptions and limitations. The evaluative process appears not to be transparent in this regard if these measures were undertaken at all.

Many submissions to the Productivity Commission and to AEMC have referred to the pitfalls of attempting to accurately interpret switching behaviour and the risks of relying on information provision alone, given heuristic decision-making, complexity of information and other factors.

On face value the simple information obtained to date on quantitative grounds may be quite insufficient to inform the AEMC about likely consumer behaviour. Regardless of reward, in an unstable market environment switching behaviour may not eventuate in the way envisaged.

Many of the questions posed in this limited submission have been asked many times over – for several years, before the introduction of Full Retail Contestability in 2003 by those at the coal-face with expertise and commitment to serving the whole community and particular those with disadvantage and vulnerability. They have been repeated by academics, social policy workers, and numerous community agencies in the current policy climate.

Yet consideration is being given to minimizing protections or off-loading limited protection to charities or social security agencies in order to simplify the compliance effort. It seems that nothing has changed.

⁵ Extract from submission to AEMC dated 12 June 2007 from CUAC representing the views of Consumer Utilities Advocacy Centre Ltd, Consumer Action Law Centre, Victorian Council of Social Service and St Vincent de Paul Society Victoria

Brief comment on quality of data – more dedicated treatment follows in a future submission.

As noted in the submission to the Productivity Commission by the Ministerial Council on Consumer Affairs (MCCA)

Behavioural economics provides a more sophisticated framework for analysing consumers' decision making, recognizing that problems not only arise from the availability of information but also because natural biases or short-cuts in decision making cause consumers to ignore or misinterpret information. Such problems require innovative solutions.

These views were supported by those of Pirac Economics (Deborah Cope), CUAC and many others at home and overseas.

The Ministerial Council on Consumer Affairs (MCCA) also noted that:

“consumer involvement in government decision making ensures that policies are better informed and gain trust and legitimacy”

There are questions about the evaluative process undertaken in terms of original strategic planning at formative evaluative stage, such as program logic, external threats, comparisons, boundaries, implicit and explicit, weaknesses and limitations of program design; needs assessment, clarifiable parameters; implementation; short and long term impacts; causal linkages; plans for settled program longitudinal re-evaluation and (if these parameters were ever conceived, since the two Wallis Consulting Reports do not suggest this) and about in-depth longitudinal follow-up.

None of this can be undertaken in the sort of rush that appears to have characterized the frenzied data-gathering and consultative process.

Rushed predictions about likely consumer behaviour based on the kind of data gathered so far may bring not only disappointments but could result in market failure that will be costly to redress, as much as retailers are looking forward to experimenting with an open market free of both price regulation and regulatory burden believed to be excessive. Every consumer organizations making submissions has cautioned against hasty decisions poorly supported by evidence and has urged a more robust application of behavioural economic principles in a 21st century environment.

These are all factors that may ultimately impact adversely on final decision-making processes and may be extremely difficult to undo after the event. Competition goals in terms of improving the economy and meeting consumer needs may suffer detrimentally because of these rushed decisions. Whilst these may not be views expressed that the AEMC wishes to hear yet again, they represent valid concerns that have been sustained by community organizations from the outset.

I cannot describe how pressurized consumers and other stakeholders must feel with concurrent deadlines to meet with one submission after another and without proper opportunity to respond in a comprehensive and meaningful way on each occasion.

This letter and enclosure merely comment on the consultative process and not on the any one report.

I remain extremely concerned about the very short timeframes that have been offered for response to an extensive First Draft Report. No individual or agency can do proper justice to any response in those timeframes, which coincide with other deadlines for the Productivity Commission, the Response to Consultations on the Second Exposure Drafts of the National Electricity Law Amendments and the National Gas Law.

Now the Smart Meter responses are sought by the Essential Services Commission, with overlapping deadlines. Just published material totals 625 pages plus all that went before, draft discussions, written submissions and the like. The roll-out of Interval Meters and Smart Meters have also caused consternation and the rush with which these matters have been considered even before the appliances are equipped with the technical facilities to flag consumption pattern consequences.

I have felt overwhelmed by the number of responses that are required to be made within similar time-frames and feel that the AEMC may have missed on the benefit of the range and depth of inputs that may have been accessible to the AEMC had the timelines not been so tight whilst overlapping with timelines for other submissions.

I made a substantial submission to the National Framework on Energy Efficiency in late September and because of those deadlines had to put to one side other submissions in preparations, which are now receiving my attention.

I felt that I should formally record these views before returning to the onerous task of endeavouring to meet some of the impossible deadlines for community response. I am sending a similar submission for publication on the Productivity Commission website since I believe that the process of robust stakeholder consultation is an important one. This cannot be adequately achieved in the timelines provided.

In conclusion this submission is a principally a further caution about rushed processes and compromised stakeholder consultation as well as rushed decisions based on less than robust data available to date, seemingly undertaken without the benefit of a formal scientifically-based evaluative study. The study design has not been clarified at all, if it existed. Data seems to have been gathered and interpretations placed based on superficial analysis of churn rates perhaps without proper regard to behavioural economics.

In the frantic rush to minimize regulatory burden is too much being sacrificed? I urge the AEMC to study submissions to the Productivity Commission and other arenas and to delve deeper into assessment of public informed public opinion. What are the likely consequences of dissonance for the entire community if the decisions made are not sustained by actual events? Could these rushed decisions lead to irreversible economic damage and harm both energy providers and users of all descriptions in the process? When will public confidence be restored? Without confidence consumer protection remains compromised.

Madeleine Kingston

Attachments as listed on covering letter. Individual copies to those listed on covering letter, pages 5 and 6

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MCE TIMETABLES FOR RESPONSE and other related deadlines

I National Framework for Energy Efficiency NFEE2 Consultations –

Submissions received and flexibility allowed. Draft Report in preparation, deadlines unknown, but COAG meets in December, so likely to overlap with all other submission deadline

II Gas Access Review Arrangement Draft Decision 2008-2012 28 August 2007

There are some date discrepancies. Upload date online says 28 August and submissions by **29 October**, but the paper itself says written submissions are sought by 1 October 2007, and is dated 4 September 2007

III Standing Committee of Officials of the Ministerial Council on Energy Cost-Benefit Analysis of Options for a National Smart Meter Roll-Out (Phase One – National Minimum Functionality) Regulatory Impact Statement

Reading material totals to 625 pages just made available online 5 October for consultation response plus all previous documents and submissions. This does not count the AER publication The State of the Energy market (320) which went to press in July 2007 and has just become available.

In conjunction with other overlapping and important MCE reading the material alone let alone producing an informed response will take many weeks

By September 2007, MCE will agree to a national minimum functionality for smart meters, including open communication protocols to support competition. Replacement criteria for existing meters will also be agreed to minimise costs of unnecessary replacements.

- By end 2007, MCE will finalise the cost-benefit analysis.
- By March 2008, MCE will also agree to any specific areas where replacement and roll-out may be exempt or delayed, on the basis of local factors which are demonstrated to reduce net benefits for consumers, as informed by the results of the cost-benefit analysis.

Comment:

Notified by WebIndustry Mail 5 October 2007 34 pages (plus hundreds of pages in attachments, total 625 pages).

Deadline for response 1 November 2007

The Cost-benefit Analysis comes in six separate work streams provided by different expert consultants working as a team:

Stream 1: Overview report (34 pages), with recommendations on specific functions - and appendix - NERA

NERA Economic Consulting Report dated 17 September – (183 pages) Made available by WebIndustry EMail **5 October** with SCO RIS to those who were already on the web mailing list

Cost benefit analysis Smart Meters Phase 1 Overview Report. Report for the MCE Smart Meter Working Group

Stream 2: Networks benefits - CRA (61 pages)

Cost Benefit Analysis of Smart Metering and Direct Load Control Stream 2 network benefits and recurring Costs Phase 1 Report – CRA International September 2007 – avail 5 October 2007 via WebIndustry Mail – now online (61 pages)

Stream 3: Retail benefits - KPMG (98 pages)

Cost Benefit Analysis of Smart Metering and Direct Load Control Workstream 3 Retailer Impacts – Phase 1 Report MCE Sept 2007 – made available 5 October – deadline for response (98 pages)

Stream 4: Consumer benefits – NERA (195 pages)

Cost Benefit Analysis of Smart Metering and Direct Load Control Work Stream 4 Consumer Impacts Phase 1 Report for MCE

Stream 5: Market benefits – CRA (68 pages)

Cost Benefit Analysis of Smart Metering and Direct Load Control Stream 5 Economic impacts on wholesale electricity market and greenhouse gas emission outcomes Phase 1 Report (68 pages) September 2007 made available 5 October 2007

Stream 6: Transitional costs - EMCa (169 pages)

Cost Benefit Analysis of Smart Metering and Direct Load Control Work Stream 6 Transitional Implementation Costs Phase 1 Report Costs for additional functionalities: A Report to the MCR – Energy Marketing Consulting Associates 16 Sept. made available 5 October 2007 (169 pages)

Stream 6: Transitional costs - EMCa

The reports are for comment only and do not represent a settled position by MCE, participating jurisdictions, the SCO or any jurisdictional supporting officers.

An executive summary, describing the scope and recommendations, is provided as part of the Overview report. These reports consider the overall costs and benefits of including *advanced* smart meters functions in any agreed national minimum functionality and how those cost and benefits may accrue to different stakeholders under a range of different

scenarios. The reports are being released for stakeholder comment as independent papers. They have not yet been considered by SCO and do not represent a policy position. SCO recognises that there are a range of questions raised in these reports that may benefit from further stakeholder input and is hence seeking such input prior to forming any views.

These reports *do not* address the overall costs and benefits of a smart meter roll-out – nor do they have any discussion on the possible extent of any such roll-out. Similarly they do not yet take into account jurisdictional and regional variations in costs and benefits. Nothing in these reports will pre-empt any decision on whether or not a roll-out of smart meters will occur. These matters will be informed by a subsequent Phase 2 report.

These reports do not consider any related policy decisions around tariff issues or consumer support. These matters would need to be taken into account by the MCE in any decision in a national roll-out of smart meters.

To meet the COAG timeframes, and as discussed in the Regulatory Impact Statement, any decisions on a national minimum functionality would, at this stage, be independent of any decision to roll-out smart meters. Any such decision, by the MCE would be informed by these reports and this public consultation.

Submissions

SCO welcomes written submissions on the above documents. Submissions may be submitted electronically by close of business on **1 November 2007** to:

Manager, MCE Secretariat, Department of Industry, Tourism and Resources, GPO Box 9839 Canberra ACT 2601 MCEMarketReform@industry.gov.au

The general public is highly unlikely to have heard of the SCO of the MCE or have any idea how to respond to the papers published

[SCO of MCE Regulatory Impact Statement 34 pages](#)

<http://www.mce.gov.au/index.cfm?event=object.showContent&objectID=69CCEAFB-E095-8812-C4F70D97977D8BD0>

IV MCE Australian Energy Market Operator Consultation Paper

The Ministerial Council on Energy (MCE) Standing Committee of Officials (SCO) has today released a consultation paper relating to the establishment of the Australian Energy Market Operator (AEMO).

This consultation paper addresses issues relating to a new national framework for managing the market operation functions of both electricity and gas. In particular, the paper outlines issues and options on different functional, board selection, governance and ownership structures for the AEMO. Feedback is specifically sought on these arrangements.

The consultation paper is for comment only and does not represent a settled position of MCE, participating jurisdictions, the SCO, Market Operator Working Group or any energy market participants.

Submissions

Those who wish to make written submissions on the consultation paper may do so by submitting their documents electronically to MCEMarketReform@industry.gov.au or in written form by close of business on **25 October 2007** to:

Manager, MCE Secretariat, Department of Industry, Tourism and Resources, GPO Box 9839 Canberra ACT 2601

V NATIONAL ELECTRICITY (ECONOMIC REGULATION OF DISTRIBUTION SERVICES) AMENDMENT RULES 2007

Subordinate Legislation No. [] of 2007

Deadline for community response uncertain

VI Central Dispatch and Integration of Wind and Other Intermittent Generation

Extension of deadlines to 22 November 2007

On 4 October 2007, the Commission published a notice under section 107 of the National Electricity Law (NEL) extending the period of time for the preparation of the draft determination for the proposed National Electricity Amendment (Central Dispatch and Integration of Wind and Other Intermittent Generation) Rule 2007 by six weeks to 22 November 2007. The Commission made this decision in order to analyse additional late submissions, to have opportunities to meet with key stakeholders and to consider the complex nature of the issues raised in submissions.

VII Review of the effectiveness of competition in the electricity and gas retail markets

The AEMC has published the First Draft Report of its review of the effectiveness of competition of electricity and gas retailing in Victoria. The First Draft Report contains the Commission's preliminary assessment that competition in both electricity and gas retailing in Victoria is effective.

Consultation on the report has now commenced. Submissions in response to the First Draft Report must be received no later than 5pm, Friday 9 November 2007. Further information and a copy of the First Draft Report can be found on the AEMC website.

Total new reading material 565

4 of 13

071009 Appdx #2 to Main Submission (updated) 13 pages
Retail Competition Review – First Draft Response (1) and
Productivity Commission Inquiry into Consumer Policy
MCE and related arenas

Quality of Stakeholder Consultation; Consumer Detriment; Selected Evaluative design parameters
Madeleine Kingston

Plus contents of all previous material and submission

This represents weeks of reading and digesting

Response is required no later than 5 PM 9 November and the deadlines are concurrent with deadlines for numbers of other equally important MCE and other related deadlines.

148 pages plus appendices (20 pages) and four length reports

Wallis Consulting Retail Review (104 pages)

Consumer Survey (181 pages)

Gas Supply Chain Nera Consulting (105 pages)

Wholesale Electricity Market (111 pages)

Notice of First Draft Report

Gas & Electricity Retail Competition Review in Victoria

The Australian Energy Market Commission (AEMC) has published the First Draft Report on its assessment of the effectiveness of retail competition in gas and electricity markets in Victoria in accordance with the Request for Advice received from the Ministerial Council on Energy.

Submissions must be received by **9 November 2007**. Submissions should be forwarded to submissions@aemc.gov.au and in accordance with any other requirements set out in the First

Draft Report. The AEMC publishes all submissions on its website subject to a claim of confidentiality.

Further details on the above matter are available on the AEMC's website www.aemc.gov.au

All documents in relation to the above matter are published on the AEMC's website and are available for inspection at the offices of the AEMC.

Level 5, 201 Elizabeth Street, Sydney NSW 2000. Telephone: (02) 8296 7800

Facsimile: (02) 8296 7899

John Tamblyn Chairman Australian Energy Market Commission

4 October 2007

IX Productivity Commission

Issues paper 27 pages. Plus 108 submissions running into hundreds of pages in total

Draft report due October 2007 (unknown length)

Deadlines – a few weeks dates not specified but will overlap with numerous other deadlines endeavouring to secure meaningful reciprocal dialogue

This is a crucial Inquiry with extensive stakeholder interest. Response to the complex issues paper and Draft Reports deserves careful time and thought. Since deadlines for this will overlap with deadlines for other important consultative initiatives for MCE perusal, sadly continuing community consultation for all of these initiatives will be compromised if it occurs at all.

Ministerial Council on Energy
Energy Market Reform Bulletin No. 104
Australian Energy Market Operator Consultation Paper

The Ministerial Council on Energy (MCE) Standing Committee of Officials (SCO) has today released a consultation paper relating to the establishment of the Australian Energy Market Operator (AEMO).

This consultation paper addresses issues relating to a new national framework for managing the market operation functions of both electricity and gas. In particular, the paper outlines issues and options on different functional, board selection, governance and ownership structures for the AEMO. Feedback is specifically sought on these arrangements.

The consultation paper is for comment only and does not represent a settled position of MCE, participating jurisdictions, the SCO, Market Operator Working Group or any energy market participants.

Submissions

Those who wish to make written submissions on the consultation paper may do so by submitting their documents electronically to [**MCETMarketReform@industry.gov.au**](mailto:MCETMarketReform@industry.gov.au) or in written form by close of business on **25 October 2007** to:

Manager, MCE Secretariat,
Department of Industry, Tourism and Resources,
GPO Box 9839
Canberra ACT 2601

Submissions will be made publicly available on the MCE website. If you do not want all or part of your submission made publicly available, or you consider any part of your submission to be confidential or commercial-in-confidence, you should make this clear in your submission.

MCE Standing Committee of Officials
5 October 2007

MCE Internet Email Update

The following content has been added or changed on the MCE Internet site:

- [Energy Market Reform Bulletin No. 105 - Second Exposure Draft of Distribution National Electricity Rules Amendments](#)

<http://www.mce.gov.au/index.cfm?event=object.showContent&objectID=6DFF131D-BB87-2BE4-4CE53E0B0289EC16>

- [Australian Energy Market Operator Consultation Paper, October 2007](#)

<http://www.mce.gov.au/index.cfm?event=object.showContent&objectID=69BD552D-BF84-39AF-F11642AED187FFA6>

- [Principle NER Changes from First Exposure Draft \(October 2007\)](#)

<http://www.mce.gov.au/index.cfm?event=object.showContent&objectID=6D88B7CC-FEE1-3FBD-591F8A0ABD4EFABE>

- [Second Exposure Draft National Electricity \(Economic Regulation of Distribution Services\) Amendment Rules 2007](#)

<http://www.mce.gov.au/index.cfm?event=object.showContent&objectID=6D83A99B-9181-4A5D-3EFB7150FD409C6A>

- [Energy Market Reform Bulletin No. 104 - Australian Energy Market Operator Consultation Paper, October 2007](#)

<http://www.mce.gov.au/index.cfm?event=object.showContent&objectID=69C0C7AF-A9C3-CCF0-344118A67A4489FA>

Ministerial Council on Energy
Energy Market Reform Bulletin No.105

Second Exposure Draft of Distribution National Electricity Rules amendments

This Bulletin announces the release by the Standing Committee of Officials (SCO) of the Ministerial Council on Energy of a second exposure draft of the amendments to the National Electricity Rules. These amendments will be made after the South Australian *National Electricity (South Australia) (National Electricity – Miscellaneous Amendments) Amendment Bill* has been passed and comes into force.

The draft does not include NSW/ACT or Queensland transitional arrangements which will be consulted upon separately with interested stakeholders.

The Rules reflect the SCO Response to Submissions on the Draft of the National Electricity Rules (Energy Market Reform Bulletin No. 95). A summary of changes made between the first and second exposure drafts is also provided. Officials will be meeting with industry, user and consumer associations and regulators (refer to Attachment A for the list of associations) on 11 October 2007 to discuss whether there are any critical drafting issues with the implementation of the agreed policy. Please direct any comments through those groups.

MCE Standing Committee of Officials

5 October 2007

MCE Internet Email Update

The following content has been added or changed on the MCE Internet site:

- [Regulatory Impact Statment - Phase 1 - 20071003 - For Public Consultation](#)
<http://www.mce.gov.au/index.cfm?event=object.showContent&objectID=68D8BE80-0F21-BFC2-2F12B014310D5D7B>
- [Smart Meters - Stream 1 - Overview - Phase 1 - NERA](#)
<http://www.mce.gov.au/index.cfm?event=object.showContent&objectID=68C17755-C8B0-05C6-EB0F8B3B53CAF74F>
- [Smart Meters - Stream 1 - Overview Appendix G - Phase 1 - NERA](#)
<http://www.mce.gov.au/index.cfm?event=object.showContent&objectID=68C4CF88-9A25-B529-58F3FFF30A32DF99>
- [Smart Meters - Stream 2 - Networks - Phase 1 - CRAI](#)
<http://www.mce.gov.au/index.cfm?event=object.showContent&objectID=68C7FBF9-0079-1189-6C9746766C40C913>
- [Smart Meters - Stream 3 - Retail - Phase 1 - KPMG](#)
<http://www.mce.gov.au/index.cfm?event=object.showContent&objectID=69994C43-0F77-CD73-CCD88530A287ADCE>
- [Smart Meters - Stream 4 - Consumers - Phase 1 - NERA](#)
<http://www.mce.gov.au/index.cfm?event=object.showContent&objectID=68CF0E94-C086-6579-9A1C4134F1DC6AD7>
- [Smart Meters - Stream 5 - Market Modelling - Phase 1 - CRAI](#)
<http://www.mce.gov.au/index.cfm?event=object.showContent&objectID=68D182D0-FBF8-322F-A6B6E964239DA523>

- [Smart Meters - Stream 6 - Transitional - Phase 1 - EMCa](#)

<http://www.mce.gov.au/index.cfm?event=object.showContent&objectID=68D44C60-D9DF-2617-9F4B422A07C066F9>

- [Energy Market Reform Bulletin No. 103 - Smart Meters Cost Benefit Analysis Phase 1 - National Minimum Functionality](#)

<http://www.mce.gov.au/index.cfm?event=object.showContent&objectID=69CCEAFB-E095-8812-C4F70D97977D8BD0>

Ministerial Council on Energy

Energy Market Reform Bulletin No. 106

Report of the Joint Working Group on Natural Gas Supply

This Bulletin announces the release of the following two documents by the Standing Committees of Officials of the Ministerial Council on Energy and Ministerial Council on Mineral and Petroleum Resources:

1.
the Final Report of the Joint Working Group on Natural Gas Supply; and
2.
the report prepared for the Joint Working Group by McLennan Magasanik Associates.

The Joint Working Group's Terms of Reference were released with Bulletin No. 81 on 7 February 2007.

Comments may be made electronically by close of business on Monday 5 November 2007 to:

Mr Andrew Taylor

Department of Industry and Resources, Western Australia

Andrew.TAYLOR@doir.wa.gov.au

Telephone 08 9222 0442

Stakeholder feedback will further inform the work of two Ministerial Councils in addressing the issues raised in the reports.

MCE Standing Committee of Officials

09 October 2007

Registration of Foreign Based Persons and Corporations as Trader Class Participants

On 11 October 2007, the Commission published a notice under section 107 of the NEL extending the period of time for publishing its draft Rule determination on the Registration of foreign based persons and corporations as Trader class participants Rule by a further three weeks to 1 November 2007.

[More info.](#)

Australian Energy Market Commission

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Minor Changes

The Commission has published its Rule determination for the National Electricity Amendment (Minor Changes) Rule 2007 in accordance with section 102 of the National Electricity Law (NEL). The Commission intends to make the Rule under section 103 of the NEL as soon as practicable and no later than the date the next Rule is made by the Commission.

[More info.](#)

Australian Energy Market Commission

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12 June 2007

Dr John Tamblyn
Chair
Australian Energy Market Commission
1 Market St
Sydney NSW 2000

Dear Dr Tamblyn

This letter represents the views of the Consumer Utilities Advocacy Centre Ltd, Consumer Action Law Centre, Victorian Council of Social Service and St Vincent de Paul Society Victoria.

We are writing to encourage the Australian Energy Market Commission to more actively consult with consumers in its assessment of the effectiveness of competition in Victoria, and to collect and share information about the products available in the marketplace.

Despite the Commission's clear intention and willingness to consult with consumer representatives, we believe that the tight timelines for the Review and the limited time within those to elicit direct input from consumers will inevitably constrain the participation of consumers, as well as the collection of information about consumers' experience in the marketplace. Groups such as ours will do our best to redress the balance, but we believe strongly that there would be great value in the Commission enabling customers to have direct contact, to hear firsthand about their experiences in the market and help identify consumer issues that might require further investigation.

As such, we propose the Commission provide a dedicated resource – at minimum, a toll free number and email address – to enable it to collect information directly from consumers. Our organisations would be happy to promote that service as broadly as possible through our networks.

You should also be aware that these limited timelines also constrain the capacity of consumer and community organisations to gather information about the impacts and effectiveness of competition among their constituencies. We propose the Commission undertake the following three pieces of research.

- ***Are consumers able to make the right choice?***

The first relates to the growing concern among consumer organisations and welfare agencies that consumers are choosing energy products that are more expensive than their previous contract. These concerns were supported by UK research by Wilson and Waddams Price (2006) which found that 27-38% of consumers actually *reduced* their surplus as a result of switching. Misleading sales were

October 24, 2007

deemed not to be the reason for that poor choice, and the researchers suggested that confusing tariff and price structures play a part in poor decision-making.

The customer survey that is being developed by the Commission offers an opportunity to easily identify consumers who have switched suppliers: a ready made (reasonably representative) sample group who could be asked in further detail about their experiences after switching, to assess whether they made a choice that was in their best interests.

We strongly recommend that the Commission take advantage of the opportunity to undertake a separate survey with this group. Analysis on the *quality* of switching decisions has not been undertaken in any depth in Victoria (or indeed in Australia), and would provide much-needed information about whether consumers are indeed operating effectively in the market.

- ***Product details: price and non-price features***

The second piece of research relates to information already being gathered, which is to assess the details of products in the market and, particularly, information about prices, tariff structures, and non-price incentives.

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- ***Contract terms and conditions***

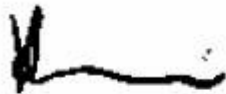
We also request that the Commission collect and collate information about the available contractual terms and conditions, which are also emerging as an issue (particularly since a consumer agency recently found instances of terms and conditions pertaining to direct debit that were clearly in breach of the Retail Code). We strongly recommend the Commission collect the following information: details on contract period; how many contracts are evergreen or have a zero termination fee; and how many require direct debit payment as a condition of entry.

For the latter two projects, the review timelines do not permit our organisations to undertake this research. The Commission alone has the resources to collect such information and we assume will be doing so as a matter of course in its analysis.

We also ask that this information gathering be undertaken as a matter of urgency, so that the research can be shared with consumer organisations at an early stage in the process, to assist them in analysing the impact on their constituencies.

We would also reiterate our appreciation for the Commission's openness in the review process, and we look forward to working closely with the Commission on this Review. We would be happy to discuss the above in more detail with you.

Yours sincerely



Kerry Connors
Executive Officer