

ON THE WIRE

National Electricity Market **Capacity Building in the Community Sector**

July 2005

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PROJECT UPDATE

NEM Network members should stay tuned for the release of the Ministerial Council on Energy's Options Paper on the National Framework for Electricity and Gas Distribution and Retail Regulation.

The last edition of On the Wire referred to a 1-day community roundtable that was being planned for April to enable community advocates to prepare a response to the Options Paper. However, the roundtable has been postponed to account for a delay in the release of the Options Paper. The delay is apparently due to discussions around transfer of retail pricing controls to the newly formed Australian Energy Regulator. It was originally proposed that while all other economic regulation would be transferred, the States/Territory would have a choice in relation to the transfer of retail pricing. We will advise NEM Network members of the Roundtable arrangements as soon as possible. In the meantime, advocates wanting to talk about agenda items for the Roundtable should contact the Project Coordinator.

A training workshop was held in Brisbane on 13 May 2005. The Project Coordinator provided a one-hour introductory session on the NEM regulatory framework and an explanation of how the wholesale market operates. The following industry, government, regulator and community sector speakers generously contributed workshops as part of the training session:

- Andrew Olds - Department of Energy;
- John Jones - Energy Consumer Protection Office;
- Matt Rogers - Queensland Competition Authority;
- Helen Poropat - Ergon;
- Simone Watson - Centre for Credit and Consumer Law; and
- Stephanie Long - Friends of the Earth.

There were thirteen attendees at the training day, including financial counselors,

environmental and consumer advocates. NEM Network members should contact the Project Coordinator if they are interested in arranging other training days.

After nearly two years as the Project Coordinator, Natasha Leigh, is leaving the CLCV to take on a role as in-house counsel for NEMMCO. The CLCV is currently recruiting a new Project Coordinator. In the meantime you can contact Anna Stewart on anna@clcv.net.au or (03) 9629 6300.

FOCUS ISSUE

Cross-ownership rules in energy

The *Electricity Industry Act 2000* (Vic) (EIA) and *Gas Industry Act 2001* (Vic) both contain cross-ownership rules. The cross-ownership rules set quantitative limits on the percentage ownership allowed across the transmission, distribution and generation sectors of the energy industry in Victoria.

Victoria is the only Australian State/Territory to have an added layer of merger restrictions to the current restrictions contained in the *Trade Practices Act 1974* (Cth) (TPA). Since 1974 the TPA has contained a prohibition against mergers that are likely to substantially lessen competition. This prohibition is contained in section 50. South Australia did have cross-ownership limitations but these expired on 31 December 2002. There are also some very minor provisions in the licences in respect of AGL SA (standing contract retailer), ElectraNet (transmission) and ETSA Utilities (distribution) to prevent, to a limited extent, common directors and accounts and to ensure any shared services are provided in a non-discriminatory manner (see clause 11 in the relevant licences). Similar ring fencing arrangements are provided for in other jurisdictions.

Cross-ownership rules are not unique to the energy sector. Cross-ownership rules have applied to media ownership since 1986 and the current act with respect to media is a result of several amendments to the *Broadcasting*



(*Ownership and Control*) Act 1989 (current media cross ownership rules are contained in *Broadcasting Services Act* 1992 (Cth)). The rationale for media cross ownership limitation is to encourage diversity of opinion.

The rationale for the introduction of the cross-ownership rules in the energy sector in Victoria (and the reason for retaining them) is that, while the TPA may be able to assess some aspects of energy market reintegration appropriately, for example, horizontal retail mergers, there are limitations with the TPA approach that could lead to significant errors in assessment of the impacts of vertical reintegration or generation-generation mergers. A negative impact might result in increased prices and a reduced quality of service of both retail and distribution services for consumers. This is because the TPA does not allow consideration of features unique to a specific industry. The unique features of the energy industry are well documented, including:

- the complexities of the alignment of energy traded in the wholesale NEM pool and the forward ‘contract’ market;
- the low elasticity of demand; and
- existing market power in areas such as connections and metering.

Under the TPA, the Australian Competition and Consumer Commission will conduct a more sophisticated analysis of competition issues only where the proposed merger breaches ACCC established ‘safe harbours’. A merger will not breach the ‘safe harbours’ where the four largest competitors have a market share of less than 75 per cent and the merged entity a market share of less than 40 per cent. This market-based approach could have significant shortcomings in assessment of energy market mergers where significant impacts, for example on price, may not be apparent when considering ownership concentration alone, particularly where the whole of the Australian market is the reference point.

The constitutional implications of existence of both section 50 of the TPA and the Victorian cross-ownership rules originally meant that even where a merger would be considered by the ACCC not to breach section 50, if it was caught by the strict limits in the cross-ownership rules, it would be blocked. This is because the commonwealth does not have constitutional power over energy. The

Commonwealth’s power in respect of section 50 of the TPA comes from the power to legislate for corporations under s 51(xx) of the Constitution. In fact, the existence of the national electricity market arises as a result of an intergovernmental agreement between the Commonwealth, State and Territory governments, namely the Australian Energy Market Agreement (originally the National Electricity Market Legislation Agreement of 9 May 1996), which brings about complementary legislation to establish the current national institutional framework.

From 31 December 2000, the then Office of the Regulator General obtained power to grant exemption to the cross-ownership rules (this was later transferred to the ACCC). The rules now provide that a person will not hold a ‘prohibited interest’ in another licensed generator, transmitter or distributor where the ACCC makes an assessment that no competition issue arises. On the other hand, if the ACCC takes action to prevent a merger and the merger would also breach the prohibited interest provisions of the cross-ownership rules, the effect of the cross-ownership rules is to block the merger, and therefore block an appeal of the ACCC decision to a court. That is, the cross-ownership rules defer to a decision of the ACCC where the ACCC considers the merger is not likely to raise a competition issue. However, if the ACCC considers that the merger raises a competition issue, and the merger would also breach the quantitative limits, the merger is automatically blocked by the rules. While the risks of judicial errors in energy merger cases are recognised (although arguably the risk associated with the Federal Court upholding AGL’s appeal in the Loy Yang case is still to be determined) a better approach might be that these risks are minimised through clear legislative requirements and not by preventing judicial review

Similarly, a concern with the current form of the cross-ownership restrictions is the ease with which they can be amended. Section 119 of the EIA confers power upon the Governor in Council to make regulations for or with respect to any matter required or permitted by the EIA or necessary to be prescribed to give effect to the EIA (subject to disallowance by parliament). This became apparent in the AGL acquisition of Loy Yang A. To enable this merger, the Victorian Government amended the cross-ownership rules by making the *Electricity Industry (Prohibited Interest)*



Regulations 2003 which increased the amount of ownership allowable in the case of a distributor acquiring a share of a generator from 20% to 35%, the exact percentage control that AGL sought to acquire in Loy Yang A. Government should be able to make law to satisfy its policy objectives, however, arguably, specific decisions to carry out or enforce those objectives should be made by an independent regulator and not by Government, and only after carrying out a qualitative analysis of the individual case.

In any event, the Victorian Government has canvassed removal of the cross-ownership rules and released an issues paper to this effect in February 2005. The Issues Paper essentially canvases whether there is greater detriment in across the board quantitative restrictions as opposed to the risks of error in case-by-case assessments of energy sector mergers that is available under the TPA.

In our view, there are a number of risks involved in the strict application of quantitative restrictions:

- there is no scope to focus on the consumer interest. That is, where strict quantitative limits are applied, there is a risk that, by virtue of not allowing a degree of regulatory judgment in the specific case, a merger is blocked that could have benefited the overall community through efficiency of production and overall economic development; and
- there is also the risk that new entrants will be discouraged from entering the market because of perceived difficulties of exit.

One option not specifically discussed in the Issues Paper was whether there could be quantitative restrictions, or 'safe harbours', specifically applicable to the energy sector, that are used to complement the TPA. Currently section 50 decisions are carried out in the context of general mergers guidelines.

Possibly the major problem with the current operation of the Victorian cross-ownership rules is their limited application. That is, the Victorian energy specific merger rules have a limited effect because they impact on mergers between Victorian licensed operators only and have no impact on mergers between Victorian and non-Victorian energy sector businesses. If the energy sector is to become truly national, then arguably State based ownership restrictions are pointless.

ACROSS THE NATION

This section of On the Wire focuses on recent activities in the NEM jurisdictions. In this edition we have news of the following:

- Introducing FRC into Queensland;
- An update of the energy sector landscape in Western Australia; and
- The Victorian Government's Hardship Inquiry.

Queensland

FRC – A chance to change for the better?

The current landscape

The picture presented to Queensland consumers should full retail contestability (FRC) be introduced, is that it is a chance to change for the better. This article explores whether that is true for Queensland's domestic electricity consumers.

In 2001, the Queensland Government announced that it would not be extending the roll out of retail contestability to domestic customers, and indeed still states this on the Office of Energy website. The Queensland Government commissioned a report by PA Consulting, *Report on the Review of Costs and Benefits of FRC in the Queensland Electricity Industry (Costs and benefits of FRC Report)*², which is on the Office of Energy website, which found that the cost of implementation of FRC would be greater than the benefit to consumers over a five-year period. If the community service obligation payments continue (and the Government says they will) then the estimated payments over a five-year period is predicted to increase by \$271 million if capped cost reflective network pricing is introduced and by \$152 million if postage stamped network pricing (differential pricing depending on location) is introduced in conjunction with FRC.

As a result of Queensland failing to have introduced FRC as yet, the National Competition Council has withheld from Queensland a number of annual competition payments. In 2004, \$22.6 million was withheld from Queensland. It is perhaps no surprise then to have read a report in the Courier Mail on April 15 this year, indicating that the Queensland Treasurer has confirmed



that a review of FRC has taken place and will be considered by Cabinet shortly.

The Queensland retail electricity industry is currently operated as a statutory monopoly. Two government owned corporations, Energex in metropolitan South East Queensland and Ergon in the rest of the state, are the only retail providers of electricity to domestic consumers.

Non-contestable customers of Energex and Ergon presently pay regulated uniform tariffs regardless of their geographical location. This means that they do not currently pay the real cost of their electricity supply. The Queensland Government provides significant subsidies in the form of community service obligation payments to the two retailers to compensate them for the losses that result from the application of the regulated uniform tariff. The difference between the revenue received from those customers on the regulated tariff (franchise customers) and the actual cost to Energex and Ergon of supplying those customers, gives rise to a community service obligation payment from the Queensland Government. This will naturally be higher in respect of customers located in remote and rural areas that are more costly to serve.

The relationship between the consumer and the retailer is regulated by state legislation, the *Electricity Act 1994* and the *Electricity Regulations 1994*, which, when compared to other States and Territories, contain far fewer consumer protection mechanisms. The detail of customer accounts are not specified, there is no requirement for hardship policies and no provision concerning limitations on disconnection or requirements for reconnection.

Is FRC a chance to change for the better?

The recognised benefits that may result from retail competition include customer choice and improved product and service offerings. Reduced capital investment requirements for electricity generation, transmission and distribution infrastructure may also result if cost reflective price signals result in more rational and responsive consumption patterns.

However, consumer surveys in both Germany and the UK³ indicate that consumers, in making the decision to switch retailers, are not always predictably rational or responsive, and are influenced by the following factors:-

- Lower prices – but these prices have to be significantly lower than the existing

suppliers. Studies have indicated that price alone, in many cases, is not the sole consideration in determining whether to switch to a new supplier. In the UK, consumers indicated that they were unwilling to switch suppliers unless the lower prices offered could be guaranteed in the mid to long term;

- Opportunity for retribution against the poor quality of service of a previous supplier;
- Improved energy efficiency through the provision of information in relation to how to minimise energy usage in the home (an energy audit);
- The source of the energy, in particular whether the energy was produced from renewable sources; and
- Whether incentives to change suppliers were offered, such as a gift for changing suppliers or the new supplier performing all necessary paperwork to facilitate the change of supplier.

It might be impossible to reach a stage where retailers are competing on price in Queensland, particularly if lower prices cannot be guaranteed in the mid term. The Costs and Benefits of FRC Report indicated that prices may increase for some consumers by up to 250% if FRC is introduced. Queensland needs to be wary of these estimated increases and ensure that appropriate mechanisms are put in place to deal with this issue, for example, a regulated retail tariff.

Experience from other jurisdictions also shows that in emerging markets, competition alone may also not be sufficient to ensure consumers are protected from poor service outcomes. The idea behind competition is that the threat of a customer switching to a competitor will encourage retailers to compete on service. This might mean that a retailer is encouraged to 'lift their game' and increase their level of customer service in line with a rival in the market. However, this relies on there being a sufficient influx of quality competitors to create this competition. Where this does not occur then, at least until the market is sufficiently developed, appropriate consumer protections are essential.

The Queensland *Electricity Act* does not contain sufficient protections to adequately deal with a quasi-competitive market. The *Trade Practices Act 1974* (Cth) and the State's *Fair Trading Act 1989* are insufficiently



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specific in their terms to deal with the issues surrounding electricity retailing.

At the minimum, the contents of energy specific consumer protections for Queensland domestic consumers should deal with issues such as:

- Standard term contracts;
- Internal and external dispute resolution;
- Access to a copy of the contract to the consumer;
- Late payment fees and interest on overdue accounts;
- Termination, disconnection and reconnection;
- Alternative payment methods;
- Contents of the account/bill;
- Dealing with “bundled” or “extra” items on the account;
- Bill smoothing and payment plans;
- Hardship policies and payment plans; and
- Miss-selling.

While many consumer advocates are reluctant to accept FRC, we nevertheless need to ensure that we make the most of the opportunity to advocate for changes for the better. We need to identify what the regulatory landscape should look like after the introduction of FRC and what is involved in achieving this. The content of consumer submissions on these issues needs to be informed by both the experiences of the southern States and Territories and international jurisdictions.

Simone Watson
Senior Research Assistant
Centre for Credit and Consumer Law

Western Australia

Electricity Reform in WA

Electricity Reform in WA is well under way. While the disaggregation of the State’s leading electricity provider and state-owned monopoly, Western Power, is still pending parliamentary approvals for the Government’s “second-time-lucky” attempt, other aspects of the market and regulatory framework are beginning to come on line.

In March 2005, WACOSS received funding from the state Department of Consumer and Employer Protection, to establish the new

Consumer Utilities Project (CUP). The project staff, *Kate Mills* and *Irina Cattalini*, work with consumers and consumer representative organisations to advocate for better outcomes for customers in the electricity reform process and the provision of utilities more broadly. A coordinated forum for consumer advocacy work, such as the CUP, has been absent from the electricity reform process up until now.

The main activities of the CUP include:

- providing information, education and training regarding utility issues to the non-government sector;
- providing information for utility consumers;
- supporting consumer representation in decision-making processes regarding utility issues;
- researching issues affecting utility consumers;
- developing policy and advocating on behalf of utility consumers; and
- facilitating partnerships between stakeholders in utility service provision.

CUP also offers a hotline for the community utilities sector to provide information and support to caseworkers about customer rights and responsibilities under new legislation. The hotline cases reported are being recorded in a database that will be used to analyse the effectiveness of new customer protection mechanisms, such as the Western Power Hardship Policy, over the coming twelve months.

Some of the priority issues for consumers that have been highlighted early on in the project include: the on-selling of electricity, which is largely unregulated in WA, particularly through pre-payment meters; consumer protection for bottled LPG; and the availability, consistency and effectiveness of concessions and rebates for low-income consumers.

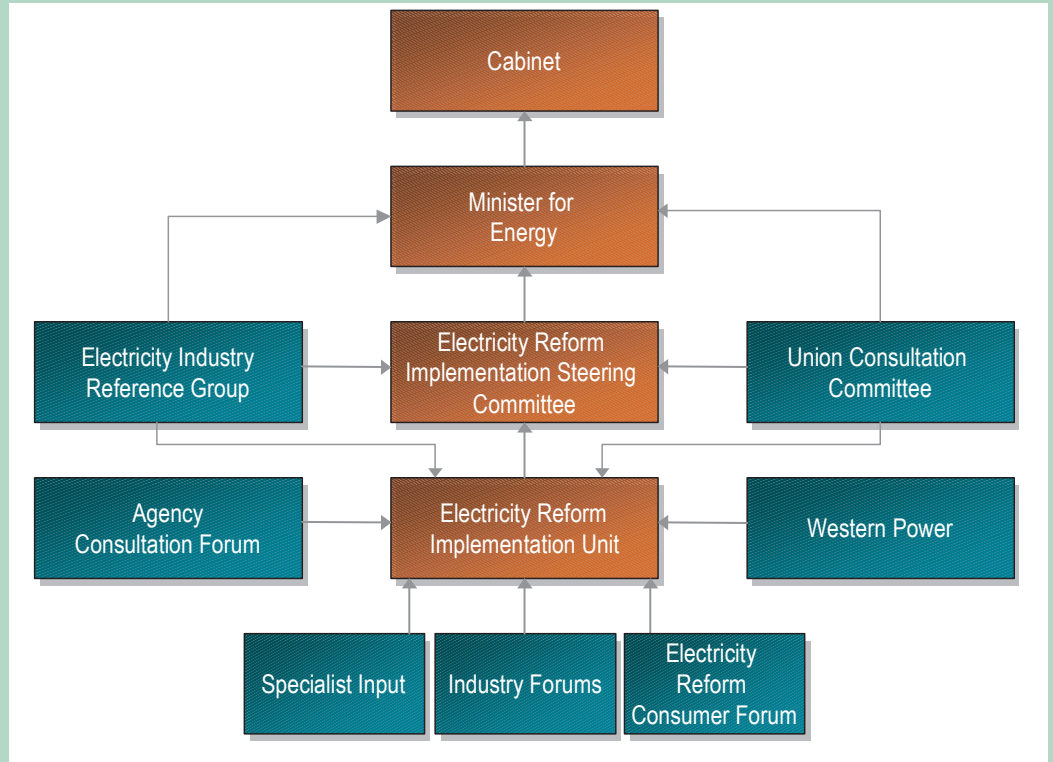
The project is funded until June 2006. WACOSS will be seeking ongoing funding with the intention of establishing an ongoing independent utilities consumer advocacy group for Western Australia.

The electricity reform process in WA began in August 2001, when the State Government established the Electricity Reform Taskforce (ERTF), which released its final report in



October 2002. Since then, a number of reform implementation committees and government departmental units have been established to contribute to the implementation process. Most of these comprise of industry and government representatives. The Electricity Reform Consumer Forum (the **Forum**) was also established which included two consumer advocates, one of whom was hosted by WACOSS but was only able to take part in the second half of the ERCF process.

The major players in the design and implementation of reform are indicated in the diagram below.



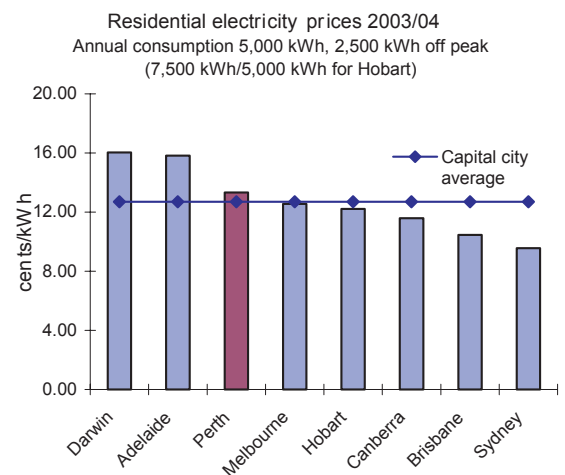
SOURCE: High level administrative framework" Project Implementation Plan, Executive Summary, Electricity Reform Implementation Unit, WA Government Office of Energy: August 2003.

Electricity pricing

One of the prime motivators of electricity reform was the comparatively higher prices paid by some consumers for electricity in Western Australian, compared to other states, and the difficulty in addressing this issue with a monopoly retailer. The price variations are depicted below, based on analysis undertaken by the Electricity Supply Association of Australia. One of the central platforms for reform is a guarantee that the standard tariff for consumers will not increase. Whether or not lower prices for electricity will be delivered remains to be seen.

SOURCE: Electricity Pricing in Australia 2003 / 2004 Office of Energy, Government of Western Australia, 2004.

Consumption Profile:	
On peak (MWh/annum)	2.5
Off peak (MWh/annum)	2.5
Load factor (%)	
Peak demand (kW)	
<hr/>	
Approximate annual bill (WA)	\$700
Capital city prices (cents/kWh):	
Sydney	9.56
Melbourne	12.56
Brisbane	10.46
Adelaide	15.82
Perth	13.32
Hobart	12.21
Canberra	11.59
Darwin	16.04
<hr/>	
Capital city average	12.70



Electricity reform consumer forum

The Forum was set up in January 2004 to “provide small use consumer representatives the opportunity to give advice and feedback to Government on electricity reform matters affecting consumers and for Government to keep electricity consumer representatives informed of electricity reform implementation issues.”

One of the significant roles of the Forum was to develop the Customer Service Code, which came into operation on 1 January 2005 as the Code of Conduct for the Supply of Electricity to Small Use Customers (the **Code**). While WACOSS was very pleased that consumers were getting a seat at the reform table, it is fair to say that the process was rushed and the involvement onerous. Our incapacity, due to the absence of funding for part of the Forum and the number of industry compared to consumer representatives, meant there were some missed opportunities. Nonetheless there were some significant achievements and the Code delivers a good degree of protection to consumers. These protections include the Energy Ombudsman Scheme, obligation to connect arrangements, mandatory licensing of electricity suppliers, regulated retail tariffs and supplier of last resort arrangements.

Code of Conduct

The Code was designed to regulate the conduct of electricity retailers, distributors and marketing agents towards small customers using less than 160kWh per year. The Code includes regulations to protect contestable customers who purchase more than 50kWh per year.

While the Code contains a wide range of information relevant to electricity customers, the section most relevant to people experiencing financial hardship is *Part 6 - Payment Difficulties and Financial Hardship*. This section requires retailers to assess whether a customer is experiencing payment difficulties or financial hardship and consequently determines the actions they must take in assisting that customer. The Code refers to a three-tiered process that retailers must adopt when addressing non-payment of bills by customers.

‘Payment difficulties’ means the customer is in a state of immediate financial disadvantage by reason of a change in personal circumstances. In this case, the retailer must offer a payment extension and instalment plan.

‘Financial hardship’ refers to more than immediate financial disadvantage. In this case, the retailer must offer a payment extension or instalment plan as well as considering a reduction of fees, a revision of instalment plans and additional supportive information.

Where the customer is deemed to be able to pay the bill, but has failed to do so, the retailer may place the customer on a shortened billing cycle, commence debt recovery procedures and may disconnect the customer’s supply address.

While a customer experiencing financial hardship is seeking assistance from a relevant consumer representative, the Code provides rules pertaining to a 10-day suspension of action (eg. disconnection or debt recovery practices). Retailers are also required to develop a hardship policy to assist customers and guide retailer conduct towards them.

The Code offers the most valuable protections to the most vulnerable electricity consumers, but it is far from a perfect system. Numerous complaints continue to be reported through the WACOSS CUP Hotline and already there are indications that loopholes are appearing. For example, while the Code prevents a retailer from claiming debt from consumers other than the contractual account holder, WACOSS is receiving reports that Western Power is refusing connection to homes unless all residents in the home sign up to the account.

“For the first time, residential customers are afforded extensive service standard protections which have been determined by Government and enforced by the Economic Regulation Authority.”

Such was the comment of the WA Minister for Energy in parliament last month when reading in the Bills for disaggregating Western Power. He went on to say:

“Strengthening of customer protection mechanisms has been a key aspect of the electricity industry reform. Enhanced measures include establishment of a Customer Service Code, a Network Quality and Reliability Code, an Energy Ombudsman scheme, the implementation of an electricity licensing regime and a Supplier of Last Resort Scheme. Compliance with these arrangements will be administered by the independent Economic Regulation Authority, backed by significant penalties for non-compliance.”



Interestingly enough, the Economic Regulation Authority (ERA) is still just getting up to speed with its new responsibilities. There has been understandable confusion as to the roles and responsibilities of the ERA in enforcing compliance with the Code. Western Power has fallen behind in its implementation of a hardship policy that was required by 31 March 2005 under the Code, and it took some prompting from the WACOSS CUP before the ERA acknowledged its jurisdiction to get involved in the matter. This simply reflects the importance of having consumer representatives working within the reform framework to ensure that established customer protection mechanisms are followed.

Economic Regulation Authority

The key body for enforcing the Code to ensure customer protection is the ERA, which is responsible for developing and enforcing electricity licensing. Breaches of the Code or of orders from the Energy Ombudsman constitute licence breaches. The ERA is in the process of creating licences and licence conditions for electricity generators, transmitters, distributors and retailers – through individual or integrated licences. Initial submissions have been published on the ERA website and further public consultation is being undertaken on the development of licence conditions.

The WACOSS CUP has contributed recommendations to the licence conditions, focusing on enforcement of external codes and regulation, with particular regard to compliance, penalties for breaching, and public reporting of information, to ensure adequate customer protection. The submission is available at <http://wacoss.org.au/utilities/electricity.htm>

The Energy Ombudsman

Since 1 July 2005 a new industry based customer dispute resolution mechanism, known as the Energy Ombudsman, has come into place.

The Energy Ombudsman extends the powers of the Parliamentary Commissioner, as the Ombudsman of the Gas Industry Ombudsman Scheme (GIO), to include jurisdiction over the electricity industry. To date, the GIO has been unwilling to make much of its statistical data publicly available. It is anticipated that the level of public reporting of the Energy Ombudsman will be greatly improved. It is important to access information about complaints through the Ombudsman scheme,

particularly with regards to customer disconnections, in order to evaluate the effectiveness of the consumer protection mechanisms delivered through energy reform.

Financial assistance for consumers

The Western Australian Emergency Relief sector continues to support low-income and disadvantaged consumers with emergency support to cover electricity costs, in order to prevent disconnection and the social impacts of disconnection. Over recent years, the amount of funding these agencies are expending in order to meet sector demand is becoming an increasingly significant proportion of their total expenditure, thereby placing a heavy burden on the agencies.

WACOSS and the WA Emergency Relief Forum have been pleased to be supported by Western Power through the Western Power Assist Scheme (**the Scheme**), and attest to the value of the scheme for low-income and disadvantaged Western Australians. The scheme assists hundreds of individuals and families from the metropolitan, rural and regional areas each year, although it certainly goes nowhere near meeting the demand for assistance from these agencies. The Scheme has proven useful when used as a part payment, in conjunction with financial assistance from Emergency Relief agencies and a contribution from the customer and has been a useful method to kick-start a customer repayment plan.

The Scheme prevents hundreds of households from having their supply of electricity disconnected. Families who suffer disconnection are often placed in situations where they are unable to heat their living space, cook food or bathe their children. There are also documented cases of fire where families have been forced to use candles, resulting in serious safety concerns for those households and their neighbours. The social and health costs of disconnection are also well known within the community and are receiving increasing attention from the Western Australian public.

Despite the value of the Western Power Assist Scheme, WACOSS is continuing to advocate for more progressive financial assistance schemes. The CUP is seeking more progressive practices from the Government and utilities, which may target low-income and disadvantaged homes with energy audits and retrofitting, aiming to improve energy efficiency and comfort. WACOSS has also



made numerous requests for a Utility Relief Grant Scheme from the State Government, which we are hoping will be considered as part of a broader review of State Concessions.

Irina Cattalini
Senior Policy Officer
Western Australia Council of Social Services (WACOSS)

Victorian Update

Committee of Inquiry into Financial Hardship of Energy Consumers

On 13 March 2005 the Victorian Minister for Energy and Resources, the Hon. Theo Theophanous, announced the establishment of a Committee of Inquiry into Financial Hardship of Energy Consumers (the Inquiry). The terms of reference for the Inquiry are:

1. Assess the level and underlying causes of energy consumer hardship, taking into account information and analysis undertaken by the Essential Services Commission (ESC);
2. Review recent studies dealing with utility debt conducted by the Committee for Melbourne, the Department of Justice, the Consumer Utilities Advocacy Centre, and other relevant parties, as well as relevant policies and practices in Australia and overseas;
3. Assess the impact on consumer hardship of the policies and practices of Victorian energy retailers, Government departments and agencies, and financial counsellors and welfare agencies;
4. Recommend a broad allocation of responsibility for, and means of mitigating energy consumer hardship between, retailers, Government and consumers;
5. Recommend changes to the policies, programs, regulations and practices of energy retailers, the ESC, the Energy and Water Ombudsman (EWOV), Government departments and agencies, financial counsellors and welfare agencies, to improve the mitigation of consumer hardship, and recommend measures for the better coordination of hardship mitigation; and

6. Advise whether changes should be made to the collection and analysis of data on energy consumer hardship to better assess its nature and extent.

There are three Committee members appointed by the Minister to undertake the Inquiry, namely, Professor John Nieuwenhuysen AM (Monash University), Ms Cath Scarth (Brotherhood of St Laurence) and Mr John Huitfeldt (Customer Service Benchmarking Australia). A Reference Group comprised of representatives from welfare and consumer organisations and the energy industry has been appointed to assist the Committee.

An Issues Paper for consultation with stakeholders was released in May 2005, with submissions due on 20 June 2005. The Committee is scheduled to complete its report in August 2005.

The CLCV was one of many organisations to make a submission to the Inquiry. In summary, our view of the adequacy of the consumer protection measures currently in place in Victoria, particularly the *Energy Retail Code* and the concessions system, as well as the services offered by EWOV with respect to complaints handling, is that generally they are able to deliver protection to energy consumers experiencing financial hardship, whatever the cause of that hardship may be. However, there is scope for improving and strengthening existing measures, primarily in relation to more robust enforcement of the Retail Code by the ESC and through the implementation of an effective and state-wide retrofitting program.

We also agree, as recommended in our submission, that consideration be given to the cost of energy and whether current tariff structures are compounding financial hardship for low-income and disadvantaged consumers. In our view, the Victorian Government should retain reserve powers to monitor retail prices and to intervene on social equity grounds if prices rise to a level that is unaffordable for households in financial hardship. Beyond 2007, consideration must be given to the development of tariff structures based on social equity and environmental considerations. Obviously any impacts on low-income households as a result of changes to tariff structures will need to be carefully monitored and concessions used to ameliorate negative impacts.



Anna Stewart is the Acting Executive Director and Principal Solicitor at the Consumer Law Centre Victoria (CLCV). Before joining the CLCV, Anna spent four years at a large Australian commercial law firm practising in the area of construction and engineering law (both litigious and non-litigious). During that time, Anna was seconded to the Public Interest Law Clearing House (of which she is now a Board Member) and was also the pro bono coordinator for the firm's Melbourne office. Anna manages the CLCV consumer law practice and undertakes a range of policy and advocacy work on a variety of issues including utilities, telecommunications, fair-trading and access to justice. Anna is currently a member of the executive committee of the Consumers' Federation of Australia, the Consumer Utilities Advocacy Centre Reference Group, the Standards Australia Environment, Safety and Materials Standards Sector Board and the customer consultative committees of the Essential Services Commission, AGL and Consumer Affairs Victoria. Anna holds Arts and Law (Honours) degrees.

Clearly, if we are to tackle the complex problem of financial hardship and energy affordability, all stakeholders, including regulators, government, industry and consumers, have a role to play. Fundamentally, the Victorian Government as a whole needs to take the lead on this issue given that ultimately it is a social issue with serious consequences for the community at large. It is the Victorian Government's responsibility to ensure that legislative and regulatory frameworks are put in place to assist energy consumers in financial hardship and to implement and support concessions systems and energy efficiency programs that are sufficiently and cost-effectively resourced. There also needs to be adequate resourcing of the financial counselling and social welfare sectors, as many of these agencies are currently expected to fill the gaps, despite chronic resource constraints.

Anna Stewart
Acting Executive Director
Consumer Law Centre Victoria

MEMBER FOCUS

Each edition of *On the Wire* focuses on one of the NEM Network's members, looking at what they do, how they are funded and their recent engagement with energy issues. In this edition, the focus is on the Consumer Law Centre Victoria (CLCV).

The CLCV has a unique history. In the late 1980s, the Consumer Credit Legal Service (Vic) objected to the licensing of a large finance company on the ground that the company was engaging in dishonest and unfair selling practices. The circumstances of the case made it impossible to identify (for the purpose of compensation) every single consumer who may have been wronged by the finance company. The solution chosen was to compensate consumers at large under the doctrine of "cy pres". "Cy pres" (under the law of Trusts) means to compensate "as near as possible". The "cy pres" solution resulted in the finance company paying \$2.25 million into a fund to establish a centre that would advocate for, and work in the interests of, Victorian consumers. Accordingly, the CLCV was established in 1993 with a core funding-base independent of government.

That funding, together with other funding from a range of sources including government and philanthropic funds, has enabled the CLCV to carry on many significant campaigns over

12 years. Of course, one of the significant projects that the CLCV has been able to carry out recently has been the NEM Capacity Building Project, of which *On the Wire* is one component.

Over recent years, the CLCV has played a prominent role in creating improved consumer protection in the Victorian gas, water and electricity industries, contributed extensively to the national debate regarding responsible credit provision by banks and the creation of affordable, accessible basic bank products and contributed to the development of major consumer movement capacity building projects such as the Victorian Consumer Credit Fund and the Consumer Utilities Advocacy Centre.

The CLCV also runs a Consumer Legal Practice with funding from Consumer Affairs Victoria. The Consumer Legal Practice is dedicated to assist low-income and vulnerable Victorian consumers. Our Consumer Legal Practice directly creates access to justice for Victorians who would otherwise be unable to seek legal redress in relation to their problems and informs the CLCV's advocacy for systemic policy change and early intervention strategies to prevent consumer detriment. Since mid-2003, the CLCV has also been engaged in an Outreach Project designed to facilitate access to our free Consumer Legal Practice for rural and regional and Indigenous consumers and to improve our knowledge of systemic issues affecting rural/regional and Indigenous consumers. The Outreach Project has been generously funded for two years by the William Buckland Foundation and the Collie Foundation.



THE NEM NETWORK

This page lists the community agencies that are members of the NEM Network and the regulators, government agencies, consultants and educational institutions that are interested in the NEM Network.

Community Agencies

Tasmania

Anglicare Tasmania Inc
Phillip Powell, Financial Counsellor, Financial Counselling Service Devonport

Consumers' Federation of Australia
Jane Hutchison, Representative

Tasmanian Environment Centre
Margaret Steadman, Coordinator

Hobart Community Legal Service
Jane Hutchison, Manger

National Council of Women Tasmania
Catherine Catt, Consumer Affairs Advisor

Tasmanian Council of Social Service
Kath McLean, Policy Officer

Australian Capital Territory

ACT Council of Social Service
Karen Nicholson, Senior Policy Officer

Care Inc Financial Counselling and Consumer Law Centre of the ACT
David Tennant, Director
Tim Gough, Principal Solicitor

South Australia

Aboriginal Legal Rights Movement Inc
Margaret Gipson, Low Income Support Program Co-ordinator

Anglicare SA
Rosalie Fahlbusch, Coordinator Energy Empowerment Program

Conservation Council SA
Andrew Nance, Community Energy Coordinator
Jess Gilding, Cool Communities Facilitator

Henley & Grange Residents Association
Jim Fitzpatrick, Representative

Lutheran Community Care
Anne Halman, Project Officer, Low Income Support Program
Greg Were, Low Income Services Manager
Jan Bean, Financial Counsellor

South Australian Council of Social Service
Rhonda Turley, Project Officer
Andrew Nance, Coordinator Electricity Consumer Advocates Training Project
Rosalyne Williams, Project Officer

St Vincent de Paul Society (SA) Inc
Tania Elliot, Training and Development Officer

The Salvation Army
Julie Parr, Manager Arndale Family Support Services

Uniting Care Wesley (Adelaide)
Julie McMahon, Community Development Worker
Sue Heathcote, Community Development Worker

Uniting Care Wesley (Port Adelaide)
John Morris, Budget Counsellor, NELS Coordinator

Queensland

Alternative Technology Association
Wendy Miller, Convenor Brisbane

Brisbane Consumers' Association
Ian Jarratt, Member

Centre for Credit and Consumer Law (Griffith University)
Fiona Guthrie, Chair
Nicola Howell, Director

Energy Users' Association of Australia
Josh Hankey, Queensland Development Manager

Homeless Persons' Legal Centre
Michelle Bradfield, Coordinator

Lifeline Brisbane Financial Counselling
Gregory Mowle, Coordinator

Queensland Council of Social Service
John Rochester, Communications and Marketing Manager
Ana Maria Allimont Holas, Multicultural Project Officer

Queensland Conservation Council
Kirsten Macey, Cool Communities Facilitator

Queensland Consumers' Association
Cherie Dalley, President

Queensland Public Interest Law Clearing House
Tony Woodyatt, Coordinator

Tenants Union
Penny Carr, Coordinator

Victoria

Alternative Technology Association
Kane Thornton, Energy Policy Manager

Australian Conservation Foundation
Julie Taylor Mills, Co-ordinator Climate Change Business Leaders Roundtable

Brotherhood of St Laurence
Professor Paul Smyth, General Manager, Social Action and Research (also University of Melbourne Centre for Public Policy)

Consumer Utilities Advocacy Centre
Kerry Connors, Executive Officer
May Mauseth Johnson, Senior Policy Officer

Environmental Defenders Office (Vic)
Brendan Sydes, Principal Solicitor

Environment Victoria
Darren Gladman, Director Global Warming Campaign

Financial and Consumer Rights Council
Sue Fraser, Utilities Working Group Convenor
Marie Stivala-Andrews, Utilities Working Group Convenor

Moreland Energy Foundation Ltd
Esther Abram, CEO

St Vincent de Paul Society Victoria
Gavin Dufty, Policy and Research

Victorian Aboriginal Legal Service
Frank Guivarra, Director
Robin Inglis, Policy Officer

Victorian Council of Social Service
Angela Savage, Policy Analyst

New South Wales

Australian Consumers' Association
Charles Britton, Policy Officer IT and Communications



Australian Conservation Foundation
Monica Ricta, Coordinator Sustainability Program

Baptist Community Services
Pam Batkin, General Manager Family and
Community Services

Climate Action Network Australia
Julie-Anne Richards, General Co-ordinator

**Combined Pensioners and Superannuants
Association of NSW Inc**
David Skidmore, Policy and Information Officer

Council on the Ageing
Brenda Bailey, Senior Policy Officer

Financial Counsellor's Association of NSW Inc
Elizabeth Terry, President

Friends of the Earth, Eco-Sydney Campaign
Ted Floyd, Campaigner

New South Wales Council of Social Service
Michelle Burrell, Deputy Director Policy

**Public Interest Advocacy Centre, Utility
Consumers' Advocacy Program**
Jim Wellsmore, Senior Policy Officer
Elissa Freeman, Policy Officer

St Vincent de Paul Society National Council
John Falzon, National Researcher

Tenants Union
Michelle Jones, Executive Officer

Smith Family
Christina Fica, Project Manager

Total Environment Centre
Jane Castle, Resource Conservation Campaigner

Western Sydney Community Forum
Joan Gennery, Transport Development Worker

WWF Australia
Anna Reynolds, Climate Change Manager

Western Australia

Conservation Council of Western Australia
Tristy Fairfield, Greenhouse and Energy
Campaigner

Sussex Street Community Law Service
Andrea Highman, Coordinator Consumer Credit &
Financial Counselling Access Project
Iris Watt, Financial Counsellor

Western Australia Council of Social Service
Lanie Chopping, Team Leader, Social Policy
Lyn Levy, Project Worker, Electricity Reform
Consumer Forum

Regulators, Government Agencies, Consultants, Educational Institutions

Tasmania

Office of the Tasmanian Energy Regulator
Andrew Reeves, Regulator

Australian Capital Territory

Essential Services Consumer Council
Peter Sutherland, Chairperson

Fair Trading Advisory Committee
Peta Spender, Chair

**Independent Competition and Regulatory
Commission**
Ian Primrose, Chief Executive Officer

Legal Aid ACT
Linda Crebbin, Deputy Director

South Australia

Energy Industry Ombudsman
Nick Hakof, Ombudsman

**Essential Services Commission of South
Australia**
Lew Owens, Chairperson

**Centre for Labour Research, University of
Adelaide**
John Spoehr, Executive Director
Kathryn Davidson, Researcher

City of Charles Sturt
Jeff Thomas, Community Development Officer

Northern Adelaide Region Councils
Ann Gibbons, CCP Project Officer

**SA State Office, Australian Government
Department of Family and Community Services**
Keith Crammond, Senior Policy Officer

South Australian Housing Trust
Theresa Walker, Housing Support Co-ordinator,
Parks Regional Office

Queensland

Bardak Group
Dr Robert Booth, Managing Director

Queensland Competition Authority
Gary Henry, Director

Office of Energy
Sandra Hosking, Principal Policy Analyst

Victoria

**Department of Infrastructure, Energy and
Security Division**
Sally Moxham, Senior Policy Officer

D Nelthorpe Consulting Pty Ltd
Denis Nelthorpe, Director

Energy and Water Ombudsman (Victoria) Ltd
Fiona McLeod, Energy and Water Ombudsman
(Victoria)

Essential Services Commission
Wendy Heath, Regulatory Program Manager

Headberry Partners P/L
David Headberry, Principle

Sustainable Energy Authority Victoria
Katrina Woolfe, Functional Leader, Capacity
Building

New South Wales

**Department of Energy, Utilities and
Sustainability**
Chris Dunstan, Associate Director Market
Development; Joyce Fu; Market Development
Analyst, Sustainable Energy Team, Energy Systems
Branch

Independent Pricing and Regulatory Tribunal
Fiona Towers, Director Energy

National

**Australian Competition and Consumer
Commission**
Catriona Lowe, Director Consumer Liaison
Sebastian Roberts, General Manger Electricity
Branch

Permission to publish names has been provided by all
those listed above.

Please provide any additional names to the NEM Project
Coordinator to be included in network.

