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12 August 2010

Regulatory Review - Smart Meters  
Essential Services Commission  
Level 2, 35 Spring Street  
MELBOURNE VIC 3000

Dear Sir/Madam

### **Submission to Regulatory Review - Smart Meters Draft Decision**

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to make a submission to the Essential Services Commission (the **Commission**) Regulatory Review - Smart Meters, Draft Decision (**Draft Decision**).

The way consumers interact with the energy market and the way that they are expected to use energy is changing at a significant rate. The introduction of smart meters is a catalyst for this and adds a level of complexity to these interactions that has not previously existed. As such, it is essential that the Commission introduces measures that mitigate deleterious impacts of these changes on consumers. This is particularly important during the transitional and implementation period as many of the impacts of smart meters are still unknown.

Consumer Action is predominantly supportive of the changes recommended by the Commission to the regulatory framework in its Draft Decision and we believe they go some way to providing consumers with the necessary protection against otherwise unintended and negative outcomes from the introduction of smart meters. We have made some comments in support of, or recommending variations to, aspects of the Draft Decision below, and we continue to engage in discussions with the Victorian Government in relation to broader policy principles that will guide the Commission in the development of additional and significant protections for consumers.

In terms of our remaining concerns, we consider that the Commission has not sufficiently considered the negative implications of the use of the supply capacity control function of smart meters by retailers for credit management, as opposed to by distributors for network management. We are strongly opposed to the use of supply capacity control by retailers. We are also concerned that the Commission does not propose to give consumers more access to unbundled information about network charges and that it has not reviewed the

charging of consumers for disconnection and reconnection given remote connection will make this action much cheaper.

## **About Consumer Action**

Consumer Action is an independent, not-for-profit, campaign-focused casework and policy organisation. Consumer Action provides free legal advice and representation to vulnerable and disadvantaged consumers across Victoria, and is the largest specialist consumer legal practice in Australia.

Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly. Consumer Action has been actively involved in energy advocacy work in Victoria and nationally since the 1990s. Over this time we have provided key consumer input into important energy regulatory processes for consumers, including the current Victorian smart meter rollout and initiatives relating to improved energy price and product information disclosure following the deregulation of Victorian retail energy prices.

Since September 2009 we have also operated a new service, MoneyHelp, a not-for-profit financial counselling service funded by the Victorian Government to provide free, confidential and independent financial advice to Victorians with changed financial circumstances due to job loss or reduction in working hours, or experiencing mortgage or rental stress as a result of the current economic climate.

## **Consumer Advocacy Panel grant recipient**

This project was funded by the Consumer Advocacy Panel ([www.advocacypanel.com.au](http://www.advocacypanel.com.au)) as part of its grants process for consumer advocacy projects and research projects for the benefit of consumers of electricity and natural gas.

The views expressed in this document do not necessarily reflect the views of the Consumer Advocacy Panel or the Australian Energy Market Commission.

## **Response to Draft Decision**

### **1. Assisting vulnerable customers**

#### *Enhanced Hardship Programs*

Consumer Action supports the Commission's approach to including further obligations that enhance retailers' hardship programs, specifically by ensuring that retailers provide consumers with the opportunity to go on the most cost-effective tariff, and to continue to apply flexible arrangements in relation to that tariff, based upon the consumer's ongoing consumption.

We believe this approach will go some way to assisting those consumers experiencing hardship as the introduction of smart meters increases the variety and complexity of tariffs available to consumers, and different tariffs will be more suitable to some consumers than

others, particularly based upon consumption patterns. This complexity further increases the risk that some consumers will be on expensive tariffs that push up their bills unnecessarily. We note that the current *Code of Banking Practice* (dated May 2004) states addresses the issue of account suitability at CI 14 as follows:

If you tell us that you are a low income earner or a disadvantaged person (regardless of whether you are an existing or prospective customer but not if you are a small business), we will provide you with details of accounts which may be suitable to your needs. We will also do this if you ask for this information or if, in the course of dealing personally with you, we become aware that you are in receipt of Centrelink or like benefits.

We also note that the Code was reviewed in 2008 and the *Review of The Code of Banking Practice: Final Report* recommends that clause 14 be expanded to recognise the role of bank's in identifying consumers experiencing financial difficulty, as follows:

If you ask for this information or if, in the course of dealing with you, we become aware that you are in receipt of Centrelink or like benefits, or assess that your needs are suited to an account which attracts no or low fees and charges, we will provide you with factual information about these accounts.

Finally, the act of monitoring those on hardship programs should be iterative and ongoing, we don't view this as a particularly onerous process for retailers.

### *Supply Capacity Control*

We believe the Commission's Draft Decision to not offer Supply Capacity Control products to consumers participating in a retailer's hardship program does not adequately address the inherent issues with potential retail Supply Capacity Control products, or subsequently, the issues raised by consumer groups. Issues such as; health and safety concerns particularly those relating to remote reconnection, the parameters around thresholds of minimum supply which necessarily involve value judgements over how much electricity is enough, consumer understanding about their appliance mix and how much energy they need increasing the risk of consumers agreeing to amounts that can't support their basic needs, the risk to appliance functions with voltage variation, the complexity of contract terms and importantly the threat of and actual repeat disconnection due to consuming over the threshold are significant concerns. Introduction of a retail product such as supply capacity control is akin to the reintroduction of prepayment meters, resulting in consumers facing and experiencing constant self-disconnection. Consumers will be relegated to face disconnection without the support of payment plans or hardship programs and instead will experience increasing and considerable detriment. The remainder regulatory framework, including processes around collection cycles, payment plans and hardship programs are designed to assist consumers in this situation, however introducing an unregulated product that precludes some consumers from access to these protections is remiss.

The Draft Decision does not extend to all residential consumers, let alone low income and vulnerable consumers, only to those participating in hardship programs. Without all of the issues listed above being considered, and risks assessed, the Commission needs to

explicitly state that Supply Capacity Control will not be available as a market offering by retail businesses.

### *Direct Load Control*

An additional issue raised at the most recent consultation and previously by consumer groups is the issue of direct load control (DLC). We are unclear why the Draft Decision has precluded regulatory guidance on this product which may result in consumer confusion and detriment. While DLC will be offered as part of a market contract by retailers, and we understand that consumers will need to provide their explicit informed consent to access it, it is essential consumers have adequate information available to them upon which to base their decision and to make sure they are sufficiently informed. The concept of DLC will be particularly confusing for a number of consumers, as retailers propose to turn off or cycle an appliance at peak times. At minimum, the Commission must consider what DLC products are likely to look like to ensure the timing, length and extent of control the retailer or distributor may have and how this information is communicated to consumers.

## **2. Verifying the accuracy of the bill**

Consumer Action supports the Commission's Draft Decision in relation to data that must be provided on a customer's bill, however additional information that clearly details the time of day a tariff applies should also be included. It is essential that consumers have the opportunity to establish and verify their total consumption and understand their consumption behaviour.

We also note that retailers will be able to determine their own format for this information, we support this as an initial approach, however encourage the Commission to regularly review the way retailers are actually displaying this information, and determine whether further prescription is required.

We support the obligation on retailers to actively explain the new bill formats and their compilation to their customers.

## **3. Estimated and substituted data on bills**

Consumer Action supports the Draft Decision requiring retailers to indicate that a bill is estimated, however believe that the threshold should be lower. In our submission to the Issues Paper we stated that estimations should be eradicated as one of the major benefits to consumers that is intended to flow from the introduction of smart meters. While this remains our view, we accept that, as the Draft Decision explains, on rare occasions an estimation may remain necessary. However, we believe consumers have a right to be alerted if any estimation has been used and this information should importantly be displayed on the bill. Many consumers are acutely aware of their energy use and will notice if a bill appears different in any significant way. We also recommend that where an estimation has occurred, and where retailers are required to notify of an estimation on the bill, that a statement on the bill that says that estimated and substituted data is determined under metrology procedures, with a number to call for more information. This will further allay consumer concerns.

The confidence of distribution businesses in ensuring that these incidences will be minimal should underpin the Commission's Final Decision on the basis that it will be on vary rare occasions that estimation/substitution will occur in any case.

We strongly support the Commission's Draft Decision on substituted data.

As commented in our submission to the Issues Paper, the current regulation do not preclude retail businesses from billing consumers monthly. On this basis, we strongly support the Commission's future proposal to review the period of cost recovery for under charging. We continue to consider that recovery for undercharging where a smart meter is in place should be limited to 3 months only, reflective of three (monthly) billing periods. We do however urge the Commission to set a more definite date for the commencement of this review, in anticipation of current and future billing potential. We believe that waiting for two or three years, as indicated by the Commission at the consultation, will not ensure that these issues are adequately addressed prior to consumers potentially experiencing detriment.

#### **4. Graphical information on the bill**

Consumer Action strongly supports the Commission's Draft Decision in relation to Clause 4.4 of the Energy Retail Code. Displaying the consumption for each month over a 12 month period will assist consumers to identify any seasonal variation or patterns in their use. Further, including the average daily cost for smart meter tariff components over the billing period also helps consumers to understand the relative effects of different tariff segments in relation to their use.

#### **5. Unbundling charges and tariffs on the bill**

Consumer Action does not support the Commission's Draft Decision in relation to unbundling charges on customer bills, that is, the Commission's view that consumers should not have the right to see important information explaining the network charges that make up a significant proportion of their electricity bills. We strongly support the regulation of unbundling charges on bills.

Unbundling of a consumer's bill would be a significant improvement in ensuring transparency of distribution costs and generation costs, ensuring the opportunity to make comparisons across distribution areas and enabling competition by comparison of regulated entities in particular. In relation to the functioning of the retail market, this would give consumers a much more accurate indication of the retail component of their bills, enabling better comparison of retail offers within a distribution area, which is realistically what consumers must do to facilitate effective competition – they are unlikely to move house to access a better price but can shop around retail offers within their distribution area.

#### **6. Notification of tariff variations**

Consumer Action strongly supports the Commission's Draft Decision in relation to Clause 26.4(b) of the Energy Retail Code. This amendment is long overdue and will ensure that consumers have the basic right to be informed of the prices they will be charged before they are actually charged them.

## **7. Shopping around for a better offer**

We agree that a review of how energy offers are marketed and disclosed to consumers is required. Consumer Action looks forward to participating in this review and is currently participating in the related work being undertaken by the Australian Energy Regulator. The ability for consumers to shop around requires being able to access, understand and compare offers readily, and this will be increasingly important with the introduction of any smart meter tariffs that will increase the number and complexity of offers available.

As discussed in our submission to the Issues Paper, easily comparable information must be required on all product and price information, including marketing information, and must be based upon common terminology or definitions. The market is already complex, and without common definitions it will become almost impossible for consumers to navigate offers, particularly with the introduction of time of day tariffs. The telecommunications market in Australia provides a good example of how significant confusion can quickly result from consumers having no way of comparing offers. Use of words like 'cap' and 'unlimited' have become confusing because there is no standard definition. Retail energy businesses may potentially introduce new terms to replace terms we currently take for granted, such as "peak" and "off peak". The potential to further increase the complexity of market offers does not adequately ensure consumers fair and empowered participation in the energy market.

## **8. Enabling access to billing and metering data**

We support this clause on the basis that it is made clear that metering data includes both billing and consumption data. Specifically, the data provided by the retailer must include all billing and consumption data related to the interval data made available to retailers by distribution businesses. To minimise the potential size of this data file, it could be provided in an aggregated form, such as per tariff band, and certainly in varying forms if it was to be provided over the internet. Consumers have a right to access information relevant to their own consumption without impediment.

With reference to the Draft Decision relating to In Home Displays (IHD), we are not clear why the Commission has only considered new provisions in relation to IHDs. We would also strongly urge the Commission to ensure these provisions apply to any electronic provision of data, for example through web portals.

## **9. Facilitating prompt connection, disconnection and reconnection**

Consumer Action strongly supports this Draft Decision. We understand that distribution businesses have concerns in relation to pre-planned disconnection however we believe the Commission can draft appropriate parameters to address these concerns.

## **10. Customer protection under disconnection**

Consumer Action strongly supports this Draft Decision. We urge the Commission to amend the decision slightly however to ensure that any contact made by mail is done so with registered mail, to ensure the retailer knows the customer has received the notification.

Further, however, a full review of costs payable by consumers in relation to disconnection and reconnection must be conducted, as the cost of remote disconnection and connection will be insignificant in comparison to manual disconnection. In accordance with the principle of benefits accruing to customers from the rollout of smart meters, it would make sense that no charge is payable by consumers for this function.

#### **11. Information to new customers after remote disconnection**

We support the Commission's Draft Decision in relation to distribution businesses including a sticker on smart meters, to give consumers entering a property that is not connected to supply some information about how to have their property connected. The wording on the sticker will need to make this clear.

#### **12. Frequency of network billing of retailers by distributors**

Consumer Action supports this Draft Decision.

Should you wish to discuss this submission further, please contact Janine Rayner on 9670 5088.

Yours sincerely

**CONSUMER ACTION LAW CENTRE**

A handwritten signature in black ink that reads "Janine Rayner". The signature is written in a cursive, flowing style.

Janine Rayner  
Senior Policy Officer