



**Draft Decision**

**Proposed amendments to the  
Electricity Industry Code requiring  
prior notice for price changes**

**December 2009**

Level 19, 12 Creek Street Brisbane Queensland 4000  
GPO Box 2257 Brisbane Qld 4001  
Telephone (07) 3222 0555  
Facsimile (07) 3222 0599

[general.enquiries@qca.org.au](mailto:general.enquiries@qca.org.au)  
[www.qca.org.au](http://www.qca.org.au)

---

## SUBMISSIONS

Public involvement is an important element of the decision-making processes of the Queensland Competition Authority (the Authority). The Authority is releasing this Draft Decision to provide an opportunity for interested parties to comment on the proposal to introduce a requirement for electricity retailers to give their small customers prior written notice of any price changes. It is proposed that this requirement be added to the existing list of minimum terms and conditions of retail contracts contained in Chapter 4 of the Electricity Industry Code.

Written submissions should be sent to the address below. While the Authority does not necessarily require submissions in any particular format, it would be appreciated if a printed copy and an electronic version in Microsoft Word format are provided. Submissions, comments or inquiries regarding this paper should be directed to:

Queensland Competition Authority  
GPO Box 2257  
Brisbane QLD 4001  
Telephone: (07) 3222 0555  
Fax: (07) 3222 0599  
Email: electricity@qca.org.au

The **closing date** for submissions is **COB 22 January 2010**.

### Confidentiality

In the interests of transparency and to promote informed discussion, the Authority would prefer submissions to be made publicly available wherever this is reasonable. However, if a person making a submission does not want that submission to be public, that person should claim confidentiality in respect of the document (or any part of the document). Claims for confidentiality should be clearly noted on the front page of the submission and the relevant sections of the submission should be marked as confidential, so that the remainder of the document can be made publicly available. It would also be appreciated if two copies of each version of these submissions (i.e. the complete version and another excising confidential information) could be provided. Again, it would be appreciated if each version could be provided on disk. Where it is unclear why a submission has been marked “confidential”, the status of the submission will be discussed with the person making the submission.

While the Authority will endeavour to identify and protect material claimed as confidential as well as exempt information and information disclosure of which would be contrary to the public interest (within the meaning of the *Right to Information Act 2009* (RTI)), it cannot guarantee that submissions will not be made publicly available. As stated in s187 of the *Queensland Competition Authority Act 1997* (the QCA Act), the Authority must take all reasonable steps to ensure the information is not disclosed without the person’s consent, provided the Authority is satisfied that the person’s belief is justified and that the disclosure of the information would not be in the public interest. Notwithstanding this, there is a possibility that the Authority may be required to reveal confidential information as a result of a RTI request.

### Public access to submissions

Subject to any confidentiality constraints, submissions will be available for public inspection at the Brisbane office of the Authority, or on its website at [www.qca.org.au](http://www.qca.org.au). If you experience any difficulty gaining access to documents please contact the office (07) 3222 0555.

Information about the role and current activities of the Authority, including copies of reports, papers and submissions can also be found on the Authority’s website.

---

<b>TABLE OF CONTENTS</b>		PAGE
<b>GLOSSARY</b>		<b>III</b>
<b>1. INTRODUCTION</b>		<b>1</b>
1.1	Minimum terms and conditions in retail contracts	1
1.2	Scope and timing of review	1
1.3	Draft Decision	2
<b>2. PROPOSAL TO AMEND THE MINIMUM TERMS AND CONDITIONS</b>		<b>3</b>
2.1	Objective of the Code	3
2.2	Existing requirements regarding price changes	3
2.3	Standard (Regulated) Retail Contracts	3
<b>3. OTHER JURISDICTIONS</b>		<b>5</b>
3.1	New South Wales	5
3.2	Victoria	6
3.3	South Australia	6
3.4	National Framework	7
<b>4. SUBMISSIONS</b>		<b>9</b>
4.1	Consumer protection versus price	9
4.2	Inter-jurisdictional Consistency	11
4.3	Notification	11
<b>5. DRAFT DECISION</b>		<b>13</b>
5.1	Draft Decision	14
<b>6. REFERENCES</b>		<b>16</b>
<b>ANNEXURE 1 – PROPOSED AMENDMENTS TO THE CODE</b>		<b>17</b>
<b>ANNEXURE 2 – CODE CHANGE REQUEST</b>		<b>19</b>

**GLOSSARY**

ACL	Australian Consumer Law
Authority	Queensland Competition Authority
Code	Electricity Industry Code
DME	Mines and Energy; Department of Employment, Economic Development and Innovation
ESCOSA	Essential Services Commission of South Australia
ESCV	Essential Services Commission (Victoria)
IPART	Independent Pricing and Regulatory Tribunal (NSW)
MCE	Ministerial Council on Energy
NECF	National Energy Customer Framework
PC	Productivity Commission

## 1. INTRODUCTION

*The Electricity Industry Code (the Code) provides a list of minimum terms and conditions required to be included in retail contracts in Queensland. Following a recent case where a retailer retrospectively increased its prices, the Authority has reviewed whether the list should include a minimum term or condition that would require electricity retailers to give their small customers written notice of any price changes, prior to enacting those changes.*

### 1.1 Minimum terms and conditions in retail contracts

Chapter 4 of the Code sets out the minimum terms and conditions for retail contracts entered into by retail entities and small customers in Queensland. Small customers are defined in section 300 of the *Electricity Regulation 2006* (the Electricity Regulation) as those who consume less than 100 MWh of electricity per year<sup>1</sup>.

Customers who do not negotiate a contract with an electricity retailer (non-market customers) remain on the standard retail contract set out in Annexure B to the Code. The terms of the standard retail contract are consistent with the terms of Chapter 4 of the Code.

For small market customers, their contract must also be consistent with the terms set out in Chapter 4 of the Code, except to the extent that clauses 4.2.3(a) and (d) together provide that some specified provisions of Chapter 4 may be varied in a negotiated retail contract.

Clause 4.2.3(c) of the Code also provides that, if requested by a retail entity to do so, the Authority can approve terms and conditions for a negotiated retail contract that do not conform with all, or any, of the provisions of Chapter 4.

Other than the exceptions noted above, the provisions of Chapter 4 of the Code must be included in all retail contracts in Queensland. To the extent that any market contract is inconsistent with these terms and conditions, it would be unenforceable.

Currently, there is no requirement in the Code for electricity retailers to provide written notice to small customers *prior* to changing their prices. Therefore, retailers are currently able to retrospectively change the price charged to their small electricity customers on market contracts (prices for customers on the standard retail contract are regulated and must be applied by a retailer as set out in the gazetted tariff schedule).

### 1.2 Scope and timing of review

On 29 April 2009, the Associate Director-General of Mines and Energy (DME) wrote to the Authority, requesting that the Authority commence a process to amend the Code to require retailers to give customers prior written notice of any price increase (**Annexure 2**).

The letter expressed concerns that individual customers may be denied an opportunity to choose between alternative retailers if they are not informed of price changes in advance. The Authority shares those concerns.

This review is to assess proposed changes to the minimum terms and conditions contained in Chapter 4 of the Code which would require a retailer to provide written notice of price changes to small customers prior to the changes taking effect.

---

<sup>1</sup> The average household electricity consumption (tariff 11) is 5.91 MWh per year, or around 16 KWh per day.

An indicative timetable to finalise the matters raised in this Draft Decision is provided below:

<b>Action</b>	<b>Date</b>
Release Draft Decision	10 December 2009
Submissions on Draft Decision close	22 January 2010
Release Final Decision	February 2010

Under the *Electricity Act 1994*, the Authority must seek Ministerial approval of any proposed Code amendments and, if granted, publish the amendments in the Queensland Government Gazette.

### **1.3 Draft Decision**

This Draft Decision outlines the Authority's proposed decision on this matter and invites comments from stakeholders.

**Annexure 1** to this Draft Decision contains the draft Code amendments that the Authority is proposing to make to give effect to the proposals outlined in this Draft Decision.

## **2. PROPOSAL TO AMEND THE MINIMUM TERMS AND CONDITIONS**

*Chapter 4 of the Code establishes the minimum terms and conditions for retail contracts in Queensland. The minimum terms and conditions do not currently require a retailer to provide prior notice to a small market customer of impending price changes.*

*The ability to change prices retrospectively would be limited to no more than the duration of one billing cycle (usually three months) because an issued bill identifies the tariff rate charged by the retailer and subsequently paid by the customer.*

### **2.1 Objective of the Code**

The objective of the Code is to promote efficient investment in, and efficient use of, electricity services for the long term interests of Queensland customers, about:

- (a) the price, quality, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the Queensland electricity system.

### **2.2 Existing requirements regarding price changes**

Chapter 4 of the Code sets out the minimum terms and conditions to be included in negotiated retail contracts with small customers in Queensland. These minimum terms and conditions presently do not include any requirement for an electricity retailer to provide notice to their small customers prior to changing their prices.

Clause 4.12.1 of the Code provides that, if a small customer changes from one type of tariff to another, the retailer must obtain a meter read and calculate the small customer's bill on a pro rata basis.

Clause 4.12.2 provides that if the tariff rate or charge applying to a small customer changes during a billing cycle, the retailer must calculate the bill on a pro rata basis using:

- (a) the old tariff rate or charge up to but not including the date of change; and
- (b) the new tariff rate or charge from and including the date of the change to the end of the billing cycle.

Neither of these clauses would appear to prevent a retailer from making a retrospective change to prices. Rather, there is merely a requirement for bills to be calculated on a pro rata basis using the old tariff up to the "date of change", whenever that is determined to be.

However, the Authority is of the view that a retailer is currently restricted from backdating a price change by more than the duration of one billing cycle (usually three months). Clause 4.9.1 of the Code requires a retailer to use its best endeavours to issue bills to small customers at least quarterly. This is a minimum term that is able to be varied in a negotiated retail contract, so a billing period will not always be exactly three months. Clause 4.9.6 of the Code requires that a retailer include certain particulars on each bill, including the relevant fees, charges and tariffs applicable to the small customer. A retailer would potentially contravene the Code if it changed its prices in such a way that resulted in bills it had previously issued to customers containing the incorrect fees, charges or tariffs.

### **2.3 Standard (Regulated) Retail Contracts**

The issue of retrospective price changes does not arise for non-market customers on the standard retail contract. Under the standard retail contract contained in Schedule B of the Code,

---

a retailer is obliged to charge the notified tariff applying at any point in time. The notified tariffs can and do change, but not by any decision of the retailer. Therefore, the standard retail contract simply provides at clause 8.3 that, when notified prices change, the details of the change will be included in the first bill issued after that change occurs. Clause 8.5 of the standard retail contract then restates the contractual term required under clause 4.12.2 of the Code (as above). Clause 8.6 of the standard retail contract restates the contractual term required under clause 4.12.1 of the Code, regarding changes to the tariff type.

### 3. OTHER JURISDICTIONS

*In assessing whether a code change is reasonable or necessary for Queensland, some guidance can be found in the approaches adopted in other jurisdictions. A brief summary of the arrangements in New South Wales (NSW), Victoria and South Australia is provided below.*

#### 3.1 New South Wales

Clauses 22 and 23 of the *Electricity Supply (General) Regulation 2001* (NSW), as set out below, expressly prohibit retailers in NSW making retrospective changes to the prices they charge market customers.

##### **22 - Variation of charges under a negotiated customer contract**

- (1) *A variation in the rates of charges for connection services provided or electricity supplied by a licence holder under a negotiated customer contract with a small retail customer has no effect, and may not be imposed, unless a written notice setting out particulars of the variation is served on the customer.*
- (2) *The particulars to be set out in such a notice must:*
- (a) *specify the date on or after which the variation is to take effect being a date that is later than the date the notice is served, and*
  - (b) *include a statement of the new rates or the amount of the variation.*

##### **23 - Variation may not operate retrospectively**

*A variation in the rates of charges for connection services provided or electricity supplied under a customer contract for which notice is required to be given under this Division operates from the date specified in the relevant notice of the variation and does not operate retrospectively.*

The intent of these provisions is to prevent retailers from retrospectively changing the prices they charge their small customers. Clause 22(2)(a) above specifically states that the date on which the variation is to take place must be later than the date the customer is notified of the price change. Clause 23 further states that variations in the rates and charges retailers apply to their customers cannot change retrospectively.

The Independent Pricing and Regulatory Tribunal (IPART) recently reviewed its enforcement of these requirements, informing retailers as follows:

*IPART has recently reviewed the price notification requirements set out in clause 22 of the Electricity Supply (General) Regulation 2001 and the Gas Supply (natural Gas Retail Competition) Regulation 2001. In an attempt to address issues of inconsistencies with other jurisdictions and reduce regulatory costs that are ultimately borne by consumers, IPART has decided to adopt the following compliance policy in respect to this clause.*

*IPART will not strictly enforce the requirements of Clause 22, provided that, as a minimum, retailers:*

- *Notify customers of the date of an impending price rise in a bill message prior to the rise, and where possible up to three months prior to the price rise, stating when (date) and where (e.g. website and press notification) further details on the rates or variations in rates will be available,*
- *Within 10 business days after the date of the price rise, publish the new rates or the amount of the average variation in rates for each customer class supplied in:*
  - *A newspaper or newspaper circulating throughout NSW or in a daily newspaper circulating in the area in which the variation is to take effect; and*

On the retailer's website:

- Provide full details of the price increase impacting a customer in the customer's next bill after the variation.
- IPART will not take enforcement action for non-compliance with clause 22 notification provisions if the minimum approach for price notification outlined above is followed. However, while no enforcement action will be taken by IPART, retailers adopting this alternative approach should still report this matter as a breach in their Annual Compliance Report which is submitted at the end of August each year. In this report, retailers should confirm that the minimum notifications requirements stated above have been followed in lieu of full compliance with clause 22 requirements. (Issued via e-mail to Energy Regulatory Managers on 19 March 2009, IPART)

### 3.2 Victoria

Retailers in Victoria are able to change their prices retrospectively, if they do so in accordance with an express term or condition in the contract and they obtained *explicit informed consent* from the customer in relation to that term or condition.

The Victorian Energy Retail Code (Version 5 – January 2009) sets out the minimum terms and conditions required in retail contracts in Victoria. Part 6 of that Code relates to Market Contracts and variations to these market contracts. Specifically, clause 20 states that:

#### **20. Variations Require Customer's Agreement**

- (a) *The tariff and any terms and conditions of an energy contract between a customer and a retailer may only be varied by agreement in writing between the customer and the retailer.*
- (b) *If the amount of the tariff changes in accordance with a term or condition of an energy contract previously agreed between the customer and the retailer, no further agreement is required between the retailer and the customer to effect such tariff change, provided that, where the contract is a market contract, the customer had given its explicit informed consent to the inclusion of the relevant term or condition in the energy contract.*
- (c) *Also for the avoidance of doubt, if the tariff and terms and conditions of a dual fuel contract vary on disconnection by a retailer of a domestic customer's gas in accordance with and as contemplated by a disconnection warning, no further agreement is required.*

Clause 20(b) effectively allows a retailer to change the price only in accordance with a formula or on a basis that was already explained, and agreed to, by the customer. Any other type of price change requires a new, written agreement between the customer and the retailer, according to section 20(a).

### 3.3 South Australia

Retailers in South Australia are able to retrospectively change prices so long as the change is made in accordance with a written disclosure statement outlining the manner in which the price change will occur, agreed to by the customer at the time the contract was entered into.

The South Australian Energy Retail Code (March 2004) sets out the obligations that retailers must comply with in dealing with small customers. Clause 6.7.2 of that Code states:

#### **6.7.2. Change of tariff within a billing cycle**

*Where during a billing cycle the tariff rate or charge applying to a small customer changes, the retailer must calculate the bill on a pro rata basis using:*

- (a) *the old tariff rate or charge up to and including the date of change; and*

(b) the new tariff rate or charge from the date of the change to the end of the billing cycle.

Clause 9.3 of that Code also contains the following condition included in the standard offer contract used in South Australia:

**9.3. Variations to the customer's tariffs and charges**

*We may only vary our tariffs and charges in accordance with the requirements of the Electricity Act or other applicable regulatory instruments and any variation will be published on our website and in the South Australian Government Gazette.*

*If the conditions applying to our tariffs and charges change so that your previous tariff and charges no longer apply to you at your supply address, we can decide which tariffs and charges will apply.*

Clause 14.1(e) of the Energy Marketing Code (March 2004) states that:

**14. WRITTEN DISCLOSURE STATEMENT**

*14.1 When a marketing contact results, or is intended to result, in a small customer entering into a customer sale contract, or when a small customer contacts a marketer for the purposes of entering into a customer sale contract, the following information must be provided in writing to the small customer by the marketer in a written disclosure statement at the time the customer sale contract is entered into:*

*(e) if the prices, charges, tariffs or service levels are able to be changed by the retailer under the customer sale contract, the manner in which any such change may be effected;*

**3.4 National Framework**

The Ministerial Council on Energy (MCE) has agreed to create a National Energy Customer Framework (NECF) for regulating the sale and supply of energy (both electricity and gas) to retail customers.

The legislative package for the NECF is expected to be introduced into the South Australian Parliament<sup>2</sup>, in 2010. All jurisdictions have committed to adopt the NECF as soon as practicable thereafter.

The First Exposure Draft on the NECF included a requirement for retailers to notify standard (non-market) customers of price changes a minimum of 10 business days prior to a price change coming into effect.

On 24 June 2009, the *Trade Practices Amendment (Australian Consumer Law) Bill 2009* was put before the House of Representatives. The Australian Consumer Law (ACL) is expected to commence on 1 January 2010 and be fully implemented by all of the states by 1 January 2011.

Section 4 (a-n) of the Bill describes 14 examples of the kinds of terms of a consumer contract that may be unfair. Two of these terms ((e) and (f)) are relevant to this review:

*(e) a term that permits, or has the effect of permitting, one party (but not another party) to vary the terms of the contract; and*

*(f) a term that permits, or has the effect of permitting, one party to vary the upfront price payable under the contract without the right of another party to terminate the contract.*

<sup>2</sup> The South Australian Parliament is the designated lead legislature for the AEMO reforms.

However, the ACL will not come into effect until 1 July 2010 and even then will not apply to existing contracts until they are varied, and then only in so far as they are varied, which will provide no protection for existing customer contracts.

## 4. SUBMISSIONS

*The Authority received seven submissions in response to its Interim Consultation Notice. While consumer groups supported the proposed code change, some retailers argued that it should be left to consumer choice in the competitive market to weigh the trade-offs in terms of increased cost for increased consumer protection.*

*Three key issues were raised in the majority of submissions:*

- (a) the trade-off between consumer protection and price;*
- (b) consistency with other jurisdictions; and*
- (c) if retrospective price changes were to be prohibited, the appropriate notification process for retail price changes.*

### 4.1 Consumer protection versus price

Most submissions identified that there is a trade-off between providing more consumer protection and the potentially increased cost of supplying electricity to customers.

In general, retailers did not support restricting their contractual freedom or price setting ability. However, some retailers suggested that the retrospective notification system currently adopted by Victoria, South Australia and Queensland (whereby consumers are notified of price changes on the bill *after* they have occurred) offered a cost effective and proven process for notifying customers of price changes.

Conversely, consumer groups argued for tighter restrictions on contracts to protect those customers with, for example, lower levels of financial literacy or with limited time to deal with contractual complexity.

Origin Energy, Australian Power and Gas (APG), Integral Energy (Integral) and TRUenergy suggested that the introduction of additional communication requirements – such as mass distribution of letters – would be costly, and that these costs would, in turn, be passed on to consumers.

AGL argued that maintaining the current minimum terms and conditions in retail market contracts enables retailers to compete for customers on grounds other than price and provides consumers with a greater level of choice. AGL suggested retailers should be able to set the terms and conditions which they think will attract customers. If minimising unexpected price variation is sufficiently important to a customer, then they would be free to choose a retailer, like AGL, that promises to notify them in advance of price changes.

While lower costs and increased choice undoubtedly benefit electricity consumers, the Queensland Council of Social Services (QCOSS) and the Financial Counsellors' Associations of Queensland (FCAQ) argued that this type of contractual flexibility may disadvantage retail electricity customers because customers will have been unaware of the cost of the energy that they are consuming at the time of use.

QCOSS stated that:

*Being able to know the rate at which electricity consumption will be charged at the time of consumption is an essential pre-condition to both managing costs and ensuring that consumers can find the most suitable retail contract for their needs. The current situation, permitting retrospective price changes to be applied to customers on negotiated retail contracts, denies consumers these crucial opportunities.*

*The appropriate level of consumer protection and contractual flexibility*

TRUenergy and Origin also asserted the importance of ensuring that customers are aware of the way in which a retailer can change its prices, but that this could be done without altering the minimum terms and conditions of the standard retail contract. TRUenergy suggested that the written disclosure statement currently required (by Clause 7.6 (e) of the Code) to be provided to all customers wishing to enter into a market contract currently provides customers with appropriate protection from unexpected price variation. The written disclosure statement must include the manner in which prices, charges, tariffs and service levels are able to be changed by a retailer.

Origin Energy suggested that, if any change needed to be made to the Code, it should be to require explicit informed consent (at the time of a customer entering a market contract) with respect to the process by which retailers will change prices.

While AGL (2009), APG (2009) and Integral (2009) do not allow for retrospective price changes in their negotiated retail contracts, each was in favour of continuing to allow this contractual flexibility.

Integral (2009) suggested that the current level of contractual flexibility is satisfactory, but that a few additional steps could be used to bolster the notification system. Integral believed that the combination of the current notification requirements under the Code and the media activity surrounding price changes makes it likely that most Queensland consumers would be aware of any price changes. However, Integral suggested that this system could be bolstered by a notification requirement similar to that currently used in NSW (outlined in Section 4.3 below) to ensure that Queensland consumers are notified of any price changes. Integral's suggested process would marginally reduce contractual flexibility, but allow for planned price changes to be passed through to consumers in a timely and cost effective manner.

QCOSS (2009) and FCAQ (2009) suggested that stronger minimum terms and conditions are necessary to reduce the risks faced by consumers. Both groups suggested that the Code should be amended to make prior written notice of price changes part of the minimum terms and conditions of retail contracts. In particular:

- (a) QCOSS (2009) believed that consumers should be given 'sufficient notice' to compare other retail contracts and consider possible changes to their energy usage or budget to allow them to manage increased energy costs. Furthermore, QCOSS suggested that increasing prices retrospectively entails a breach of trust by the retailer which 'undermines consumer confidence in electricity retail competition'; and
- (b) FCAQ (2009) suggested that prior written notice before any price changes will allow customers to have some warning and better manage their finances. Moreover, FCAQ suggested that 'it is not a customer's fault or problem if a retailer decides it has not set the price at a level of sufficient profit' and that customers should not be expected to make up this shortfall.

*Retrospective price changes and early termination fees*

QCOSS and FCAQ were particularly concerned about the impacts on consumers of retrospective price changes in concert with early termination fees if a consumer decided to terminate its contract in response to the retrospective price change. In particular, QCOSS was concerned about the ability of retailers to transfer consumers onto market contracts with rates lower than the regulated tariff but subsequently increase the tariff to higher than the regulated tariff. If this were to happen and if early termination fees were restrictively high, consumers could see themselves locked into the higher rate.

QCOSS suggested that an alternate solution to this problem would be to prohibit early termination fees beyond the reasonable administrative costs associated with ending a contract. FCAQ suggested that, where a retailer has a fixed term contract (to which an early termination fee is connected), they should not be allowed to alter fees or charges upwards during the contract period without penalty.

## 4.2 Inter-jurisdictional Consistency

All submissions made suggestions that linked the current minimum terms and conditions in the Code with the requirements in other jurisdictions.

Retailers were concerned that any changes be as consistent as possible with requirements in other jurisdictions. APG noted that failure to do so would add to the cost of servicing Queensland energy consumers, costs that are ultimately borne by those consumers.

Origin, TRUenergy and Integral all noted that IPART had provided retailers with the option of meeting a number of minimum price notification requirements. Integral suggested that a similar approach may be suitable for Queensland.

FCAQ suggested that Queensland should follow the literal NSW model of prohibiting retrospective price changes. FCAQ suggested that this would ensure that no customer would be in a position of having to subsequently pay a bill which backdates fees or charges.

APG suggested that the Authority should also consider the impending move to the national framework for non-price regulation and ensure that any proposed revisions are consistent with the outcomes of the NECF.

QCOSS noted that the NECF legislation will require retailers to publish changes to notified prices at least 10 business days prior to those variations taking place.

AGL suggested that inserting a clause dealing with prior notification into the Code would unnecessarily duplicate the effect of the proposed ACL noting that, when enacted, the ACL will explicitly prohibit contracts that are 'unfair' to consumers. AGL suggested that it is likely that a contract clause that allowed variation, particularly of prices, without prior notification would cause a significant imbalance to the detriment of the consumer and, therefore, would be considered unfair.

## 4.3 Notification

Of the seven submissions received, four made suggestions in relation to the process of price change notification, including:

- (a) the notification period;
- (b) the format of the notification; and
- (c) the content of the notification.

### *Notification Period*

FCAQ requested that retailers be required to notify customers on market contracts in writing 28 business days prior to any price change. For customers on regulated tariffs, FCAQ proposed a minimum notification period of 14 days. In addition, FCAQ proposed that retailers be obliged to inform the regulator 14 business days prior to customers being notified. Currently, the Code requires retailers to notify the Authority of any price changes within 24 hours of them taking effect.

Integral raised the issue of the interaction of changes in the regulated tariff and market offers. Currently, regulated prices are set via a notice in the Queensland Government Gazette. The revised prices take effect either on the day of the gazette notice, or on the date specified in the gazette notice. Integral's current market offer pricing is based on a percentage discount to the regulated tariff, meaning that changes in its market offers directly reflect movements in the regulated tariff. As such, Integral was concerned that it would require notification of the changes in regulated prices in advance of any notification period required prior to changing market offer prices in order to comply.

QCOSS considered that prior notification of price changes was an essential pre-condition for consumers to be able to manage costs and find the most suitable contract. QCOSS noted that the proposed NECF requires changes to standing contract prices be notified a minimum of 10 business days in advance of the new prices coming into effect. QCOSS suggested that this time period is not sufficient and that at least 20 business days notice be adopted for small market customers in Queensland.

#### *Notification Format*

Integral stated that requiring written notice to be mailed out to all customers advising of a future price change would add to retailer costs, placing upward pressure on the overall cost to deliver electricity to Queensland consumers. Integral indicated that it costs around \$150,000 to send an individual notification to 100,000 customers.

To avoid these costs, Integral suggested Queensland adopt a similar approach to that adopted by IPART for NSW consumers (see section 3.1).

Origin claimed that there was no evidence that its current practice, whereby consumers are notified of price variations on their next bill, is inadequate in managing the market effectively. TRUenergy agreed with Origin and suggested that this practice balances regulatory and systems costs against the need to provide market contract customers with appropriately timed price variation information.

#### *Notification Content*

The FCAQ and QCOSS suggested that the presentation of the effects of price changes in a dollar format as well as in percentage terms would more effectively communicate the effect of price changes to consumers with limited financial literacy. FCAQ believed it would be appropriate to require a table of price changes in dollars to be published in newspapers and that such notices should be required to be expressed in plain English.

## 5. DRAFT DECISION

*The Authority proposes to make changes to the Code requiring retailers to notify customers of impending price changes at least 10 days in advance of the new prices taking effect.*

Allowing sufficient contractual flexibility for retailers is important in promoting a competitive electricity market in Queensland. Contractual flexibility increases the avenues and scope available for retailers to offer consumers a wider range of services at (potentially) lower average prices. Contractual flexibility also provides retailers with the ability to mitigate risks by allowing them to pass on increased costs.

By lowering risk, contractual flexibility allows a retailer to accept a lower risk premium in its retail margin, which may lead to a lower overall cost to the consumer. However, too much contractual flexibility may allow retailers to transfer risks onto consumers who may not be in a position to manage those risks.

The current requirements under the Code effectively allow retailers to transfer the risk of price change to consumers. While retailers are able to use hedging strategies to minimise their pricing risk, consumers do not realistically have access to risk management strategies for electricity pricing. This imbalance would suggest that retailers are in a better position to manage pricing risk than consumers. Ideally, an efficient market will allocate risks to those parties best able to manage those risks.

Retrospective price changes have the potential to impact upon the fairness (both actual and perceived) in the electricity market and it is the Authority's view that such a situation is unlikely to produce an efficient market outcome over the long-term.

While several retailers have developed their own terms and conditions which do not currently allow retrospective price changes, there is nothing to stop that approach changing in future and clearly some other retailers have made retrospective price changes, hence the reason for this review. The extent of consumer complaint and concern expressed following the incident which gave rise to the request from DME suggests that many affected small customers were not aware that retrospective price changes were likely or possible under the contract they had entered into. For these customers at least, the general disclosure statement required by the Code had not elicited informed consent or adequately informed them of the likelihood of retrospective price changes.

For those retailers who have themselves ruled out making retrospective price changes, any change the Authority might make to the Code to include such a requirement should not impose any additional burden. For those retailers who intend to or wish to retain the option to make retrospective price changes, there will be some cost if that option is removed or they are required to undertake certain administrative steps before being able to implement a retrospective price change. The extent of the cost will depend on the nature of the changes made.

Consumer groups drew attention to the link between retrospective price change and early termination fees. One option they suggested to solve this problem was to limit early termination fees to some minor administrative charge. However, early termination fees are not solely directed towards the issue of retrospective pricing. Nevertheless, in this instance there does appear to be an imbalance between the rights of the retailer and the rights of the customer.

On balance, the Authority is therefore inclined to make changes to the Code to limit the capacity of retailers to make retrospective price changes. The question is the form these changes should take.

In principle, maintaining inter-jurisdictional consistency will minimise the regulatory burden on retailers operating in more than one jurisdiction and should lead to lower electricity costs for consumers.

However, there is no consistent approach to this issue across jurisdictions.

The Authority considers that the process currently being enforced in NSW is a pragmatic and reasonable approach and that a similar process would suit Queensland. The approach enables retailers to pass through planned price changes with minimal notification costs but allows for consumers to be informed of price changes in a timely manner. By adopting a similar approach in Queensland, inter-jurisdictional consistency will not be made worse as most retailers currently operating in Queensland also operate in NSW.

This approach is not inconsistent with the NECF, which does not provide minimum terms and conditions for market contracts. Rather, it allows state-based regulators the flexibility to set these requirements individually. Nor is it inconsistent with the proposed ACL. The unfair terms provisions of the ACL do not specifically prevent retrospective price changes in contracts, although there would be circumstances where such a provision would be unfair. However, the unfair terms provisions will not apply before mid 2010 and then only to new contracts or existing contracts to the extent they are varied after that date.

The Authority considers that, to make informed decisions, consumers should have access to price information at the time of consumption and should be given a reasonable amount of notice of pending price changes. One objective of the Code is to promote the efficient use of electricity. If consumers are to consume electricity in an efficient manner, they need to be aware of the price of the electricity they consume.

While timeframes in the order of one month were proposed by QCOSS and FCAQ, the Authority considers these timeframes may at times be unreasonable given the commercial realities of the electricity market. In normal circumstances, the Code requires notified prices to be gazetted one month prior to coming into effect. As noted by Integral, current retail offers are often based on a percentage discount to the notified price. The NECF will require any changes to notified prices to be published ten business days prior to changes coming into effect. The Authority considers 10 days notice of any price changes is the minimum.

The Authority considers it is important that the changes to the Code enable a low cost pass through of planned price increases, as well as the freedom for retailers to respond to short term price shocks in the market. An approach similar to that in NSW, but requiring prior notice of the actual price changes, would be an appropriate minimum standard for price change notifications.

In order to provide an immediate and similar level of protection to all small customers, the Authority proposes to introduce these changes so that they apply equally to existing and future contracts.

## **5.1 Draft Decision**

The objective of the Code is to promote efficient investment in, and use of, electricity services for the long term interests of customers in relation to price, quality, reliability and security of supply (clause 1.1.1 of the Code).

On balance, the Authority considers that the benefits of requiring advance notice of price variations, which would provide greater pricing certainty for consumers, outweigh the potential costs to retailers. Pricing certainty allows consumers to make informed choices about their electricity consumption.

The Authority proposes a notification process whereby customers are notified in writing a minimum of 10 business days prior to any change in electricity prices. Notification can be via:

- (a) individual written communication including the date of the price change, details of the new prices and details of how the increase will specifically affect the customer; or
- (b) a newspaper advertisement, provided that:
  - (i) customers are notified of the date of an impending price change in a bill message prior to the change, stating when (date) and where (e.g. website and press notification) further details on the rates or variations in rates will be available;
  - (ii) no less than 10 business days prior to the date of the price change, the new rates are published in a newspaper/s circulating throughout Queensland;
  - (iii) no less than 10 business days prior to the date of the price change, the new rates are published on the retailer's website; and
  - (iv) full details of how the price change has affected the customer appear on the next bill received by the customer.

Specific amendments proposed by the Authority to implement this Draft Decision are contained in **Annexure 1**.

**6. REFERENCES**

AGL. (2009). Melbourne. *AGL submission*.

APG. (2009). Sydney. *Australian Power and Gas submission*.

Australian Department of the Treasury. (2009). *An Australian Consumer Law, Fair Markets - Confident Consumers*. Canberra.

FCAQ. (2009). Brisbane. *Financial Counsellors Association of Queensland submission*.

Integral. (2009). Melbourne. *Integral submission*.

Origin Energy. (2009). Melbourne. *Origin Energy submission*.

Parliament of Australia. (2009). *Trade Practices Amendment (Australian Consumer Law) Bill 2009*. Canberra.

Productivity Commission. (2008). *Review of Australia's Consumer Policy Framework*. Canberra.

QCA. (2009). *Final Report on Stage 1: Review of Electricity Pricing and Tariff Structures*. Brisbane.

QCOSS. (2009). Brisbane. *Queensland Council of Social Service submission*.

TRUenergy. (2009). Melbourne. *TRUenergy submission*.

## ANNEXURE 1 – PROPOSED AMENDMENTS TO THE CODE

This Annexure contains the amendments that the Authority is proposing to make to the Electricity Industry Code (the Code) to give effect to the process that will apply when a retailer makes a change to its energy tariffs under Section 4.12 of the Code.

The following paragraphs contain the amendments to the Code proposed by the Authority (marked in **bold**):

### 4.1.1 Application of this Chapter

(a) This chapter applies to:

(i) all retail entities

(ii) in respect of clause 4.2.10(b), all distribution entities;

(iii) subject to paragraph (b) in relation to retail contracts with all small customers; **and**

**(iv) in respect of clauses 4.12.6 and 4.12.7, retail contracts with all small customers made before or after the date this cod takes effect.**

### 4.12 Tariff changes and options

#### 4.12.1 Obligations on retail entities

**Subject to clause 4.12.6 and 4.12.7, where during a billing cycle a small customer changes from one type of tariff to another type of tariff for customer retail services, the retail entity must (if it is necessary to do so due to the change in the type of tariff applying to that small customer):**

(a) obtain a meter reading (or metering data) at the time the type of tariff changes; and

(b) calculate the small customer's bill using the type of tariff applying:

(i) the old type of tariff up to but not including the date of the meter reading; and

(ii) the new type of tariff from and including the date of the meter reading.

#### 4.12.2 Change of tariff within a billing cycle

**Subject to clause 4.12.6 and 4.12.7, where during a billing cycle the tariff rate or charge applying to a small customer changes, the retail entity must calculate the bill on a pro rata basis using:**

(a) the old tariff rate or charge up to but not including the date of change; and

(b) the new tariff rate or charge from and including the date of the change to the end of the billing cycle.

### **Insert additional clauses 4.12.6 and 4.12.7 as follows:**

#### 4.12.6 No retrospective tariff changes

**If a tariff rate or charge or type of tariff applying to a small customer under a negotiated retail contract is to change (“price change”), the retail entity must provide a notice to the small customer stating:**

(a) the new tariff rate or charge; and

(b) the date from which the tariff rate or charge is changing, which must be a date that is at least 10 business days later than the date the notice is received by the customer.

**4.12.7 Notification of tariff changes**

**Retailers must notify customers of the tariff changes by:**

- (a) Individual written communication including the date of the price change, details of the new prices and details of how the increase will specifically affect the customer; or**
- (b) Newspaper article, provided that:**
  - (i) Customers are notified of the date of an impending price change in a bill message prior to the change, stating when (date) and where (eg website and press notification) further details on the rates or variations in rates will be available;**
  - (ii) No less than 10 business days prior to the date of the price change, publish the new rates in a newspaper/s circulating throughout Queensland;**
  - (iii) No less than 10 business days prior to the date of the price change, publish the new rates on the retailer's website; and**
  - (iv) Full details of how the price change has affected the customer appears on the next bill received by the customer.**

## ANNEXURE 2 – CODE CHANGE REQUEST

QLD COMPETITION AUTHORITY

- 5 MAY 2009

DATE RECEIVED



Your Ref:  
Our Ref: ADG12

29 APR 2009

Mr John Hall  
Chief Executive  
Queensland Competition Authority  
GPO Box 2257  
BRISBANE QLD 4001

Dear Mr Hall

I am writing to you requesting that the Queensland Competition Authority (QCA) commence a process, under Division 5 Part 1A of Chapter 5 of the *Electricity Act 1994*, to amend the Electricity Industry Code (the Code).

The proposed amendment is to Chapter 4 of the Code (Customer Retail Services), to include in the minimum terms and conditions of a negotiated retail contract with a small customer a requirement that a retail entity must give the customer prior written notice of any price increase.

The proposed amendment is in response to concerns arising from recent action by Queensland Electricity Pty Ltd (QE) to increase its prices for customers on market contracts retrospectively. Specifically, on 13 January 2009, QE advised the former Department of Mines and Energy of its decision to increase prices to all its market contract customers by 13.63 percent, effective from 1 January 2009. QE wrote to all its affected customers in mid-January 2009, informing them of the price increase. These price increases were applied to QE's market customers and backdated to 1 January 2009.

At the request of the former Minister for Mines and Energy, the Energy Ombudsman Queensland has investigated whether the retrospective price increase was allowable under the market contracts. The Department has been provided with a copy of EOQ's report, which concluded that QE's retrospective price rise was in accordance with the terms of its market contracts with customers.

Associate Director-General  
Mines and Energy  
Department of Employment, Economic  
Development and Innovation  
PO Box 15216  
City East  
Queensland 4002 Australia  
Telephone +61 7 3898 0375  
Facsimile +61 7 3238 3088  
Website [www.dme.qld.gov.au](http://www.dme.qld.gov.au)  
ABN 98 628 485 885

Specifically, clause 3.6 of the QE Negotiated Contract Terms and Conditions states that QE "may amend your energy charges but will provide you with notice of any change. The notice will be given to you as soon as practicable, and in any event no later than your next bill."

The EOQ report advises that Clause 3.6 would seem unambiguous in giving QE the right to vary its charges to the customer. By providing customers with a letter advising them of the price increase, QE appears to have met its obligation under that clause. EOQ has not found any evidence of misleading conduct by QE in terms of customers being incorrectly advised that prices would not change during the term of the contract. Further, EOQ does not consider that QE's response and explanation regarding the increase in network costs over time to be unreasonable or misleading.

I am concerned that whilst QE appears to have met its obligations under its contracts and the Code, the application of retrospective price increases does not align with the intent of the Code, particularly in relation to providing adequate consumer protection for small customers in a competitive retail market.

I am particularly concerned that, while in this case QE's retrospective application was for two or three weeks before notice was given to customers, there appears to be nothing to prevent market contracts which allow retrospective price increases to be applied for a much longer period.

Further, by ensuring customers are informed in advance of any price increases, customers have an opportunity to exercise their rights to look for an alternative contract with another retailer, if they so choose.

I would appreciate QCA progressing its consideration of the proposed amendment to the Code as a matter of high priority.

Should you have any further enquiries, please contact Mr Darren Schneider, Director, Industry and Client Services of Mines and Energy on telephone 3237 1131.

Yours sincerely



**DAN HUNT**  
Associate Director-General