



Issues Paper

---

**Electricity Conduct Rules**

---

***February 2000***

## SUBMISSIONS

The Queensland Competition Authority (the QCA or Authority) considers public involvement to be an important element of its decision making processes. It therefore invites submissions from interested parties concerning the need for, and most appropriate form of, conduct rules and associated compliance system for application to the Queensland electricity market.

To facilitate the publication of submissions on the QCA's website, it is preferred if submissions could be made electronically by disk or by email. However, if this is not possible, submissions can be made in writing. **Submissions, comments or inquiries regarding this paper should be directed to:**

Queensland Competition Authority  
GPO Box 2257  
Brisbane QLD 4001

Attention: Jennifer Hocking

Telephone: (07) 3222 0555  
Fax: (07) 3222 0599  
Email: [electricity@qca.org.au](mailto:electricity@qca.org.au)

The **closing date** for submissions is **Friday 7 April 2000**.

### 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 their 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. Again, it would be appreciated if each version (ie. the complete version and another excising confidential information) could be provided electronically (whether or not with a printed copy). 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 documents (within the meaning of the *Freedom of Information (FOI) Act 1989*), it cannot guarantee that submissions will not be made publicly available. As stated in s187 of the *Queensland Competition Authority Act 1997*, 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.

### Public access to submissions

Subject to the above, submissions will normally be made 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).

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.

Queensland Competition Authority  
Level 19, 12 Creek Street  
GPO Box 2257  
Brisbane QLD 4001

Tel: (07) 3222 0555  
Fax: (07) 3222 0599  
Internet: [www.qca.org.au](http://www.qca.org.au)

## TABLE OF CONTENTS

	PAGE
<b>GLOSSARY</b>	
<b>1. INTRODUCTION</b>	<b>2</b>
1.1 The broad framework	2
1.2 Objectives of this paper	2
<b>2. THE QUEENSLAND ELECTRICITY MARKET</b>	<b>3</b>
2.1 Background	3
2.2 The effects of changing industry structure	3
<b>3. CURRENT REGULATORY AND LEGISLATIVE FRAMEWORK FOR THE ELECTRICITY MARKET</b>	<b>5</b>
3.1 Framework for conduct rules	5
3.2 Existing regulatory mechanisms	6
<b>4. DOES THE EXISTING FRAMEWORK ADDRESS CONDUCT RULE ISSUES?</b>	<b>9</b>
4.1 Changing retail entities	9
4.2 Assigning responsibility	9
4.3 Monitoring/regulating charges	9
4.4 Provision of accurate advice	10
4.5 Assignment of costs	11
<b>5. APPROACHES TO CONDUCT RULES</b>	<b>12</b>
5.1 Framework versus specific rules	12
5.2 Voluntary versus compulsory	13
<b>6. COMPLIANCE ISSUES</b>	<b>14</b>
6.1 Compliance monitoring and reporting	14
6.2 Complaints handling and dispute resolution	14

*Attachment A: Experiences in other jurisdictions*

*Attachment B: Summary of conduct rule issues with existing framework*

---

**GLOSSARY**

ACCC	Australian Competition and Consumer Commission
The Code	The National Electricity Code
DME	Department of Mines and Energy, Queensland
DNSPs	Distribution Network Service Providers
EANSW	Electricity Association of New South Wales
The Gas Code	The National Third Party Access Code for Natural Gas Pipeline Systems
IPART	Independent Pricing and Regulatory Tribunal, NSW
NCP	National Competition Policy
NECA	National Electricity Code Administrator
NEM	National Electricity Market
NEMMCO	National Electricity Market Management Company
ORG	Office of the Regulator General, Victoria
QCA	Queensland Competition Authority
QETC	Queensland Electricity Transmission Corporation
QTSC	Queensland Transmission and Supply Corporation
TNSPs	Transmission Network Service Providers
TPA	<i>The Trade Practices Act 1974</i>

## 1. INTRODUCTION

### 1.1 The broad framework

The Queensland Competition Authority (the QCA or the Authority) is a statutory body established under the *Queensland Competition Authority Act 1997* (the Act). The Act gives the Authority certain responsibilities and functions with respect to National Competition Policy (NCP). Broadly, these include:

- subject to reference or declaration by the Ministers (the Premier and the Treasurer), undertaking prices oversight of monopoly or near monopoly Government business activities;
- receiving and investigating competitive neutrality complaints against significant Government and local government business activities;
- accrediting significant Government and local government business activities as complying with the principle of competitive neutrality;
- overseeing and arbitrating third party access to infrastructure; and
- undertaking such other activities relating to NCP as the Ministers may direct.

The Authority's responsibilities with respect to electricity include:

- assuming the role of jurisdictional regulator for distribution entities from 19 December 2000, including establishing network prices, preparing ring-fencing guidelines and undertaking several other roles eg. with respect to network connection, as outlined in the National Electricity Code (the Code); and
- regulating market conduct of electricity entities, developing conduct rules and monitoring service quality standards, as set out in the *Queensland Competition Authority Act 1997* and the *Electricity Act 1994*.

### 1.2 Objectives of this paper

As noted above, the *Electricity Act 1994* (Chapter 5, Part 1A) gives the QCA the power to prepare and enforce conduct rules for electricity entities. In assessing the need for conduct rules in the context of the Queensland electricity market, the QCA is aware of a range of regulatory mechanisms intended to control the conduct of electricity entities that are already in place or proposed.

The aim of this paper is to present a range of issues considered relevant to ascertaining the need for conduct rules within the Queensland electricity market with a view to seeking submissions from interested parties as to:

- the need for specific conduct rules;
- the form of such rules (if any); and
- the most appropriate means of ensuring compliance.

## 2. THE QUEENSLAND ELECTRICITY MARKET

### 2.1 Background

Since January 1995, the Queensland electricity supply industry has witnessed a period of major restructuring under the *Electricity Act 1994* and the *Government Owned Corporations Act 1993*. This restructuring has involved the separation of electricity assets into generation, transmission, distribution and retailing corporations. The restructuring has facilitated the introduction of competition into the generation and retailing segments of the market, while the monopoly transmission and distribution functions remain regulated.

- In generation, three Government owned corporations (Stanwell, Tarong and CS Energy) were created, and licensing arrangements have now been introduced to allow private generating capacity while ensuring that basic conditions (eg. safety) are met. A number of private sector generators are now operating in the Queensland market, notably the Gladstone Power Station.
- In transmission and distribution, one entity, Powerlink, now operates the high voltage transmission network in Queensland, while two distribution entities, Energex and Ergon Energy, operate the local distribution networks. These entities undertake the physical task of transmitting electricity from the generator to the end consumer. In accordance with the Code, prices for access to these networks remain subject to regulation. Currently, regulation is undertaken by the Minister for Mines and Energy, with this responsibility to be transferred to the ACCC (in the case of transmission) in 2002 and the QCA (in the case of distribution) from December 2000.
- In retailing, both existing distribution entities have legally separate but subsidiary retailing operations. The role of retailers in the market is to undertake financial or risk management functions such as trading in the wholesale market and offering different price/service packages to consumers. The retailing subsidiaries of Energex and Ergon Energy were initially given exclusive franchises to retail in specified geographic areas. However, licences for retailing have now been opened up to allow new retailers into the market, while at the same time franchises granting exclusive retailing rights to incumbent retailers have been progressively phased out through the introduction of customer contestability.

As of 1 July 1999, 6400 customers, with a average consumption of more than 0.2 gigawatts a year, became eligible to enter the competitive electricity market. This followed the initial introduction of contestability on 29 March 1998 (for the State's 43 largest customers) and a further tranche on 1 October 1998 (for 430 large electricity customers). The final tranche of contestability, for all remaining consumers, is scheduled for 1 January 2001, subject to the completion of a Government review.

### 2.2 The effects of changing industry structure

The introduction of contestability to the retail segment of the electricity market has altered many of the incentives faced by the incumbent retail entities. In a now commercial and competitive environment, retail firms will respond to a range of different key strategic business drivers. These may include factors such as short term profitability, long term market share and product positioning. Clearly, such goals can potentially lead industry incumbents to compete aggressively. In pursuing such objectives, incumbents can potentially engage in anti-competitive practices, and in particular may seek to exploit their relationship with an affiliated distribution network.

As electricity retailing is a relatively low margin business, anti-competitive practices which create even a small competitive advantage for a retailer can have a significant negative effect on the competitiveness of the retail market.

For effective competition in this new market, profitable entry must be feasible and competition should not be hindered by anti-competitive practices. Accordingly, if entry into the market is, or is expected to be, effectively limited by the incumbent/s, new entrants are less likely to attempt to enter the market. In the case of the electricity industry market reforms, such an outcome could significantly retard the benefits expected from retail contestability. Potentially, incumbent retailers could extract the benefit from the process instead of the intended recipients – the customers.

Consequently, the QCA has been given the power to introduce rules to regulate conduct regarding a range of matters relating to the retail side of the market, to promote the efficient and equitable operation of the electricity market.

### 3. CURRENT REGULATORY AND LEGISLATIVE FRAMEWORK FOR THE ELECTRICITY MARKET

#### 3.1 Framework for conduct rules

Conduct rules are essentially a set of rules that govern the manner in which electricity market participants may undertake their business in the newly restructured and deregulated market. Under section 120C of the *Electricity Act 1994* (as amended), the QCA may prepare conduct rules for electricity entities for purposes including:

- curtailing interference with customers seeking to change retail entities;
- assigning responsibility amongst distribution entities, retail entities and customers, so that customers can change retailers quickly and at minimum cost;
- monitoring/regulating the charges that may be levied by a distribution or retail entity on customers changing retailer;
- ensuring the advice distribution or retail entities give to customers regarding a change of retailer is accurate; and
- ensuring a retail entity with contestable and non-contestable customers does not assign costs from one to the other to the detriment of non-contestable customers.

Under the *Electricity Act 1994*, proposed conduct rules may state:

- the electricity entities or types or classes of entity to which the proposed rules are to apply; and
- the way market conduct is to be regulated to promote the efficient and equitable operation of the electricity market.

All electricity entities (that is, generation, transmission, distribution and retail entities) must comply with conduct rules made by the Authority as must holders of relevant special approvals under Chapter 2, Part 7 of the *Electricity Act 1994*.

However, a number of the issues identified in the legislation as potentially being addressed through conduct rules may be already addressed through the existing regulatory and legislative framework. In assessing the potential benefits of introducing conduct rules, the Authority intends to initially assess which conduct related issues can be dealt with within the existing regulatory framework, and which may require the introduction of conduct rules.

There are a number of Acts and regulations currently in place to facilitate the development of a National Electricity Market (NEM). In addition, the Authority is currently in the process of developing Distribution Ring-Fencing Guidelines to provide for the separation of prescribed distribution services from other services which are provided by Distribution Network Service Providers (DNSPs). Also, the Department of Mines and Energy has recently released a Draft Standard Customer Sale Contract which sets out the conditions under which the retailer will sell electricity and provide for the connection and supply of electricity to non-contestable customers.

## 3.2 Existing regulatory mechanisms

### *The National Electricity Code*

The Code sets out the objectives for the NEM and specifies the terms and conditions for market participants, including generators, transmission and distribution network owners. The Code also specifies the rules that the National Electricity Market Management Company (NEMMCO) must follow in managing the operation of the wholesale power market and ensuring security of the power system.

The Code is supervised, administered and enforced by the National Electricity Code Administrator (NECA) who is also responsible for establishing procedures for dispute resolution and managing changes to the Code.

The Code provides for the QCA to become the jurisdictional regulator for distribution prices from 19 December 2000, prepare Distribution Ring-Fencing Guidelines and undertake several other roles eg. with respect to network connection.

### *The Electricity – National Scheme (Queensland) Act 1997*

The *Electricity – National Scheme (Queensland) Act 1997* gives effect to the National Electricity Code and affirms Queensland as a participating jurisdiction in the National Electricity Market (NEM).

### *The Electricity Act 1994*

The *Electricity Act 1994* establishes the framework within which all electricity entities in Queensland participate. It sets out licensing conditions for generation, transmission, distribution and retail entities as well as defining protocols, standards and codes for each of the entities. The Act also provides for the establishment of a retailer of last resort, and contains rules governing restrictions and rationing as well as safety and technical issues.

The *Electricity Act 1994* gives the QCA the authority to prepare and enforce conduct rules, and requires the QCA to monitor standards of service quality if issued by the Minister for Mines and Energy.

### *The Electricity Regulation 1994*

The *Electricity Regulation 1994* sets out the minimum safety standards necessary to ensure the safe supply of electricity to customers on fair and reasonable terms, and to ensure the safety of workers, customers and the general public. The Regulation outlines the obligations placed on distribution and retail entities with respect to the provision of customer connection and retail services.

### *The Trade Practices Act 1974*

The *Trade Practices Act 1974* (TPA) provides protection against anti-competitive, misleading, deceptive and unconscionable conduct in all industries, including the electricity industry. This form of conduct is addressed in Parts IV, IVA and V of the TPA as discussed below.

## Part IV

Part IV prohibits certain anti-competitive practices, broadly:

- contracts, arrangements or understandings that restrict dealings or affect competition (ss.45-45D). That is, a corporation shall not make a contract or arrangement, or arrive at an understanding, if it contains an exclusionary provision, or it would have (or be likely to have) the effect of substantially lessening competition;
- misuse of market power (s.46). For example, a corporation that has a substantial degree of power in a market shall not take advantage of that power for the purpose of:
  - eliminating or substantially damaging a competitor of the corporation or of a body corporate that is related to the corporation in that or any other market;
  - preventing the entry of a person into that or any other market; or
  - deterring or preventing a person from engaging in competitive conduct in that or any other market; and
- anti-competitive exclusive dealing (s.47). In simple terms a corporation is said to engage in exclusive dealing if the corporation supplies, or offers to supply, goods or services on the condition that the person to whom the corporation supplies, or offers to supply the goods or services will not acquire goods and services directly or indirectly from a competitor<sup>1</sup>.

## Part IVA

Unconscionable conduct in consumer transactions (s.51AB) and business transactions (s.51AC) is prohibited under the TPA. Although no exact definition is provided, unconscionable conduct is generally seen as any behaviour which has the effect of unlawfully placing the other party to the transaction at a serious disadvantage.

S51AD prohibits a corporation from contravening industry codes of conduct.

## Part V

Part V of the TPA contains various provisions primarily aimed at protecting consumers but which, in many cases, also provide an avenue of redress for business. Within Part V are provisions relating to unfair practices, product safety and information, liability for unsafe goods, and conditions and warranties in consumer transactions.

The TPA also contains provisions dealing with misleading or deceptive conduct (s.52) and false or misleading representations (s.53). Section 52(1) prohibits conduct by a corporation that is misleading or deceptive, or is likely to mislead or deceive in trade or commerce. Section 53 prohibits a corporation from falsely representing a good or service with respect to a particular price, standard, quality, value, grade, composition, style, model, history or previous use.

---

<sup>1</sup> A corporation also engages in the practice of exclusive dealing if the corporation refuses to supply goods or services to a person for the reason that the person has acquired, or has not agreed not to acquire, goods or services directly or indirectly from a competitor of the corporation.

### *Draft Standard Customer Sale Contract*

Under s.50 of the *Electricity Act 1994*, a retail entity must prepare a standard customer sale contract to establish the terms on which it is to provide customer retail services to non-contestable customers and which will form the basis for dealings with contestable customers where the parties have not agreed to alternative terms.

In June 1999 the Department for Mines and Energy released a Draft Standard Customer Sale Contract setting out the conditions under which the retailer will sell electricity and provide for the connection and supply of electricity to customers<sup>2</sup>.

In particular, the Draft Standard Customer Sale Contract notes that:

- the retailer is to provide detailed information to the customer including general information concerning the contract, information about reducing energy costs, and information regarding energy consumption patterns; and
- the retailer must send to the customer free of charge, information to enable the customer to determine the most cost effective tariffs for the customer's usage within 10 business days of receiving a request from the customer.

### *Draft Distribution Ring-Fencing Guidelines*

The Authority has recently released draft Distribution Ring-Fencing Guidelines. In developing these Guidelines, the Authority's objective is to create an environment where the vertical integration of distribution and other businesses does not adversely bias the economic provision of retail and distribution services.

The Authority has adopted an approach to ring-fencing which:

- encompasses the major aspects of ring-fencing as identified in section 6.20.2c of the Code;
- uses the National Third Party Access Code for Natural Gas Pipeline Systems (the Gas Code) as a template;
- is largely consistent with the ACCC's approach to ring-fencing in electricity transmission networks; and
- is expected to be generally consistent with the approach to ring-fencing adopted by other jurisdictional regulators.

In particular, the Guidelines require costs to be allocated between retailers and distributors in a manner that ensures there is no cross subsidy and according to a methodology that is approved by the QCA.

---

<sup>2</sup> Although the obligation to connect and supply electricity to the supply address is placed on the retailer under this contract, the actual task will be carried out by the local distributor. However if these obligations are not complied with, the retailer is liable.

## **4. DOES THE EXISTING FRAMEWORK ADDRESS CONDUCT RULE ISSUES?**

While the *Electricity Act 1994* provides the QCA with the right to introduce conduct rules, as noted above, the existing regulatory framework potentially already addresses a number of conduct related issues as identified in the legislation. The Authority is mindful of the costs associated with introducing such rules, and wishes to avoid the introduction of conduct rules where conduct issues can be satisfactorily dealt with within the existing framework. This section assesses conduct related issues against the existing regulatory framework (summarised in Attachment B).

### **4.1 Changing retail entities**

The legislation refers to “curtailing interference with customers seeking to change retail entities” as a conduct related issue.

In order to retain market share, incumbents may unnecessarily complicate the process by which customers switch between retailers. It is also possible that retailers may indulge in behaviour that is not intended to hinder switching, but has this effect. The TPA prohibits entities from engaging in contracts, arrangements or understandings that are likely to restrict dealings or substantially lessen competition. Consequently, any provision in a contract that is likely to restrict dealings with other retailers or substantially lessen competition by creating unnecessary delays may be unenforceable.

As such, it appears that the TPA may provide protection for consumers in relation to this issue. However, it may not be specific enough to the circumstances of the retail electricity market to ensure that all potential anti-competitive behaviour is covered.

### **4.2 Assigning responsibility**

The legislation refers to “assigning responsibility amongst distribution entities, retail entities and customers, so that customers can change retailers quickly and at minimum cost” as a conduct related issue.

When customers switch retailers, issues such as which retailer pays the distributor, how metering and billing is affected for a switch that occurs in the middle of a billing period, and how switching is dealt with where retailers have different metering and billing cycles, may be put forward by retailers as reasons to delay switching.

In Queensland, the Draft Standard Customer Sale Contract deals with some of these issues. For example, the contract specifies many of the responsibilities of the retail entity and the customer. However, as the contract relates to non-contestable customers, there are no provisions specifically dealing with the transfer of customers between retailers and such arrangements may need to be put in place.

The Draft Distribution Ring-Fencing Guidelines seek to restrict the distribution networks’ monopoly power from extending to other, contestable parts of the market. In particular, the Guidelines place restrictions on the flow of information between commonly owned distribution and retailing entities in order to prevent them from collaborating in a manner which may provide the incumbent retailer with the ability to exercise a competitive advantage over new entrants in the retail market.

### **4.3 Monitoring/regulating charges**

The legislation refers to “monitoring/regulating the charges that may be levied by a distribution or retail entity on customers changing retailer” as a conduct related issue.

There are a number of legitimate expenses that a retailer may incur as a result of customers switching. Such costs could include those associated with obtaining information or reading meters outside of set cycles.

However, there may be a temptation for retailers to raise the switching costs in order to induce customers to remain with their current supplier. In the case of an incumbent retailer, increasing switching costs could be one mechanism used to raise barriers to entry for new retailers.

Under the provisions of the Draft Standard Customer Sale Contract, a customer may ask a retailer to be billed at specific points in time. However, the retailer does not have to bill the customer more than once a month unless the customer pays any additional costs incurred by the retailer in billing the customer at the times requested by the customer. These additional charges are to be outlined in the Approved Statement of Charges<sup>3</sup> which is currently being developed by the Department of Mines and Energy.

#### 4.4 Provision of accurate advice

The legislation refers to “ensuring the advice distribution or retail entities give to customers regarding a change of retailer is accurate” as a conduct related issue.

The electricity supply industry reform process, and the technological and financial changes underpinning it, is complicated and not always well understood, particularly by smaller customers. In such an environment, retailers, and in particular incumbent retailers, will have an information advantage over customers. Given that the costs (in terms of both time and money) of customers educating themselves can often be prohibitive, retailers can exploit their information advantage in both legitimate and questionable ways. For example:

- franchise discounting – where retailers offer discounts to existing franchise customers in order to retain their business once they become contestable. While offering of discounts to capture contestable customers is an expected part of the market reforms, the possible offering of selective discounts to franchise customers to encourage them to remain non-contestable is of concern. It is possible that this might lead to the situation where incumbent retailers seek to recover this cost through CSO arrangements with the Government; and
- contractual foreclosure – this involves incumbent retailers negotiating long term agreements with non-contestable customers prior to them becoming contestable. This is currently prohibited by the *Electricity Act 1994* in order to prevent incumbent retailers pre-empting the threshold reduction strategy. However, it is still possible for retailers to sell products, other than electricity, which may also have the effect of enticing customers to continue with the incumbent retailer, eg. connection, natural gas or telecommunications, etc. This can also be achieved through offering large discounts for the bundling of the different services.

While many business practices to retain existing customers may be legitimate (eg. offering discounts that are reflective of cost savings), it is possible that retailers may mislead customers as to the consequences of switching to another retailer, eg. by indicating that switching from them will lead to falls in service quality. In particular, it may be suggested that switching from the retailer that has a close (ownership) connection with the distributor may have a detrimental effect on service.

---

<sup>3</sup> The Approved Statement of Charges is a statement of the retailer’s maximum charges for providing goods or services which are related to the sale, connection and supply of electricity, but which do not have to be provided in accordance with the tariffs set out by the Minister for Mines and Energy under the *Electricity Act 1994*.

In the Queensland market, both distribution entities and retail subsidiaries operate under a common name. The use of this common name (often referred to as “common branding”) may potentially create fears that quality of service will be reduced if an alternative retailer is selected. The issue of common branding with respect to cost allocation is addressed in the Authority’s draft Distribution Ring-Fencing Guidelines. However, the more general issue of accuracy of information provided regarding changing retailer is not addressed.

Part V of the TPA is also relevant in restricting the potential ability of retailers to mislead customers regarding changing retailers. This section aims to prevent misleading or deceptive conduct, and prohibits a corporation from falsely representing a good or service with respect to price, standard, quality, etc.

#### **4.5 Assignment of costs**

The legislation refers to “ensuring a retail entity with contestable and non-contestable customers does not assign costs from one to the other to the detriment of non-contestable customers” as a conduct related issue.

The incumbent retailer may attempt to shift costs (and possibly profits) between their contestable and regulated business in order to maximise profits for the group as a whole, but at the expense of potential competitors. With retail margins normally in the range of 0.5 per cent to 1.5 per cent, it will only take a small shifting of costs to distort the competitive balance, possibly creating an unfair advantage for the incumbent retail business. Of specific importance are:

- the allocation of costs between the distributor and retail business unit;
- the allocation of costs between different customers or customer classes;
- the amount allocated to capital expenditure (network expansion); and
- the amount allocated to operation and maintenance expenditures.

In the Authority’s Draft Distribution Ring-Fencing Guidelines there is a provision that prohibits cross subsidisation between prescribed distribution services and any other activity, including any activity performed by another entity. Further, the Authority may require a DNSP to establish and maintain appropriate internal procedures to ensure it complies with its obligations under the Distribution Ring-Fencing Guidelines. Cost allocation issues are therefore covered in some detail in these Guidelines.

In addition, final retail prices for non-contestable customers are currently regulated by the Minister for Mines and Energy. This inhibits the ability of retailers to switch costs for these customers.

—o0o—

**The Authority invites comment on whether or not the current legislative and regulatory arrangements are sufficient to regulate the conduct of electricity entities, and:**

- **if sufficient, whether there is a need to consolidate and simplify the requirements of the current legislative and regulatory regime in a conduct related document; and**
- **if not sufficient, the areas in which additional conduct related regulation may be required.**

## 5. APPROACHES TO CONDUCT RULES

If the Authority determines that the existing regulatory framework is insufficient to address the conduct issues raised in the *Electricity Act 1994*, and that consequently there is a need to prepare conduct rules for electricity entities, there are a number of approaches that could be adopted, each with associated costs and benefits. Possible approaches range from an overarching framework consisting of general principles to an explicit set of rules detailing exact requirements.

### 5.1 Framework versus specific rules

#### *Overarching framework*

The preparation of conduct rules through an overarching framework involves establishing a set of general principles which the electricity entity must comply with. This framework could be similar to Section 120C of the *Electricity Act 1994* and might include principles aimed at ensuring that:

- there is no interference with customers seeking to change retail entities;
- customers are able to change retailers quickly and at minimum cost;
- the advice given to customers regarding changing retailers is accurate; and
- retailers with both contestable and non-contestable customers do not assign costs from one to the other to the detriment of non-contestable customers.

Given that no one set of explicit rules would apply, the electricity entity would generally be free to decide on the means (and often the degree) of compliance.

Potential benefits of an overarching framework include:

- greater flexibility for the electricity entity in meeting the requirements of customers while adhering to any conduct rules set by the Authority;
- lower compliance costs as electricity entities are free to meet conduct rules in the manner that best suits the individual entity; and
- simplicity in preparation.

Possible drawbacks of this approach include:

- the increased difficulty of detecting any breach of conduct rules as, by definition, such principles allow for a range of behaviour and are open to interpretation. For example, determining whether a retailer has assisted in the transfer of a customer quickly and at minimum costs would primarily hinge on the definitions of "quickly" and "minimum cost". Also, in certain circumstances there may be a need to identify the *degree* of breach, rather than a definitive breach; and
- the possible difficulty for consumers in interpreting and understanding conduct rules that are non-specific or very general, especially for consumers from non-English speaking and disadvantaged backgrounds.

### *Prescriptive conduct rules*

The preparation of prescriptive conduct rules involves setting specific, mandatory and detailed requirements to be met by electricity entities. Among other things, these conduct rules may explicitly state how electricity entities are to adhere to the conduct rules and any processes that must be followed in adhering to the rules.

Possible benefits of preparing prescriptive rules include:

- increased certainty for consumers and electricity entities as they are aware of the exact requirements that must be met. This increased certainty should lead to increased consumer confidence; and
- breaches of conduct rules will become more definitive and easier to detect.

Drawbacks of this approach include:

- the potential for higher compliance costs on the part of electricity entities due to the explicit nature of the conduct rules and associated limitation on the ability of entities to respond in a flexible manner with the aim of reducing total costs; and
- the reduction of flexibility and scope for the electricity entity in meeting existing customer requirements and responding to changes in such requirements.

### *Hybrid approach*

Clearly, it is possible, and may be desirable, to combine the general principles approach and the prescriptive approach into a hybrid form that attempts to capture the benefits of both. A combined approach could take the form of a set of guiding principles with a limited set of more prescriptive rules covering critical issues.

**The Authority invites comment on the appropriate form for preparation of conduct rules for electricity entities, should such conduct rules be deemed necessary.**

## **5.2 Voluntary versus compulsory**

A further issue to be considered is whether to develop conduct rules through voluntary industry codes, similar to the approaches adopted in New South Wales (see Attachment A) and Victoria, or whether to impose conduct rules as a mandated requirement. In Victoria, for example, the Victorian Statement of Government Policy under section 10 of the *Office of the Regulator-General Act 1994*, states that it is the Office's policy to monitor, and report on, compliance by the distribution companies with their standards, policies, practices and procedures and intervene in the setting of standards only where:

- there is a demonstrated failure by a distribution company to comply with its standards, policies, practices or procedures; or
- there is a clear need for an additional standard or procedure to prevent the abuse of monopoly power.

**The Authority invites comment on whether, if conduct rules are to be introduced, they should be in the form of voluntary industry codes or through formal regulatory requirements.**

## 6. COMPLIANCE ISSUES

### 6.1 Compliance monitoring and reporting

Should conduct rules be deemed necessary, the issue of how to ensure compliance arises. One means of ensuring compliance is through the development of a compliance program.

A compliance program will normally require a monitoring program and reporting system to verify compliance with conduct rules. This might include the option of independent auditing.

Reporting requirements may include a requirement on the part of electricity entities to publish:

- their own guaranteed and overall performance standards, which will be at least equal to the standards set out in the conduct rules;
- complaint handling and resolution policies, practices and procedures; and
- change of retailer policies, practices and procedures which will be at least equal to those set out in the conduct rules.

The Authority may also require performance reporting against the standards, policies and procedures set out in the conduct rules.

### 6.2 Complaints handling and dispute resolution

The introduction of conduct rules will also require that consumers who feel the rules may have been breached are able to lodge a complaint with the Authority.

Guidance with respect to the development of complaints handling and dispute resolution policies, practices and procedures, is given in the *Australian Standard on Complaints Handling – AS 4269*. The Standard notes that a comprehensive complaints system should:

- increase the level of consumer satisfaction with the delivery of products and services and enhance the consumer/provider relationship;
- recognise, promote and protect consumers' rights, including the right to comment and complain;
- provide an efficient, fair and accessible mechanism for resolving consumer complaints;
- provide information to consumers on the complaints handling process for the services and products of the organisation; and
- monitor complaints in an endeavour to improve the quality of products and services.

The customer should, in the first instance, raise the issue with the company by telephoning the enquiries number shown on the bill. Where the customer is not satisfied with the company's response to a complaint, the customer may raise the complaint to a higher level with the company's management structure.

Where, after raising the complaint to a higher level, the customer is still not satisfied with the company's response, the customer may refer the issue in writing or by phone to the Authority who will investigate and, where appropriate, seek enforcement of conduct rules as provided under the *Electricity Act 1994*.

Under section 120H of the *Electricity Act 1994*, an entity must not contravene a provision of the conduct rules that apply to that entity. If the Authority is satisfied that an electricity entity has contravened a conduct rule, it may make a conduct notice stating that the entity has contravened, or is contravening, the conduct rule. The issue of a conduct notice provides a warning to the electricity entity, but is not a pre-condition to the Authority or any other person taking action for a breach of the conduct rules.

The Act provides for two courses of action.

- The QCA may make an application to the Supreme Court under section 120T to order a penalty for a breach of the conduct rules. If the Supreme Court is satisfied a person has contravened, attempted to contravene, or been involved in a contravention of the conduct rules, the court may order the person to pay an amount to the State as a penalty of not more than \$100,000 for an individual or \$500,000 for a corporation.
- The QCA, or any other person, may apply to the Supreme Court for an injunction under section 120V. The court may grant an injunction if satisfied a person has engaged or is proposing to engage, in conduct that constitutes, or would constitute the following:
  - a contravention, or attempted contravention of the conduct rules;
  - aiding, abetting, counselling or procuring a person to contravene the conduct rules;
  - inducing, or attempting to induce a person to contravene the conduct rules;
  - being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of the conduct rules; and
  - conspiring with others to contravene the conduct rules.

The Court may also grant an injunction on conditions, or grant an injunction by consent of all parties to the application, whether or not the court is satisfied a person has engaged, or is proposing to engage, in conduct of the kind mentioned above.

If the Supreme Court decides that an electricity entity has contravened the conduct rules, the QCA must refer the contravention to the Minister for Mines and Energy. The Minister can then take disciplinary action under section 133(1) of the *Electricity Act* which includes cancelling, suspending or amending the entity's authority to operate in the Queensland electricity market.

The complaints mechanism may also be used as an alternative to formal compliance reporting, with the Authority investigating whether rules have been breached only where a dispute arises. The benefit of such an approach is that compliance costs are lowered, which should benefit both customers and the affected electricity entities. However, if consumers are unaware of the complaint resolution processes available, it is possible that breaches of conduct rules may not be brought to the attention of the Authority.

**The Authority invites comment on the most appropriate form for a compliance system, including the establishment of a complaints resolution process.**

**ATTACHMENT A****EXPERIENCES OF OTHER JURISDICTIONS****Victoria – the Office of the Regulator General (ORG)**

At present there is no formal set of conduct rules that regulates market conduct in Victoria. However, there are a number of other regulatory instruments that cover several of the issues outlined in this paper.

The Victorian Distribution Code addresses a number of issues that could be considered conduct related. Specifically, this Code:

- sets out the minimum terms and conditions under which the distributor will provide distribution services; and
- states that a customer, embedded generator or retailer must, upon request from a distributor, provide a minimum set of details concerning the loads connected or planned to be connected to the distribution system which are required for the purpose of planning its distribution system.

The Electricity Industry Supply and Sale Code (which was amended in 1997 to reflect the fact that customers have rights under the *Trade Practices Act 1974*) sets out the minimum conditions under which a supplier may supply and sell electricity to a franchise customer. Furthermore, it sets out the rights and obligations of both customers and the distribution businesses in respect of the supply and sale of electricity. This Code parallels the Queensland Draft Standard Customer of Sale Contract, and includes:

- information provisions;
- guaranteed service levels;
- connection to supply;
- complaints handling;
- privacy and confidentiality; and
- reliability and quality of supply.

The Supply and Sale Code provides that a distribution business must send a Customer Charter to each of its customers. The Customer Charter is a summary of customer and distribution business rights and obligations under the Supply and Sale Code and other key codes and rules. In order to ensure that Customer Charters contain a minimum common level of key information, the ORG has developed a Benchmark Electricity Customer Charter.

Moreover, in response to allegations that some retailers were seeking to compete or recontract by making false or misleading claims, the ORG wrote to all retailers advising that they will be taking a number of actions to prevent such behaviour. These included taking action through the courts where evidence of misleading or anti-competitive behaviour was available, circulating a booklet titled 'Choice of Electricity Retailer' to all newly contestable customers and presenting a number of seminars to contestable customers through industry associations.

## **New South Wales – the Ministry of Energy and Utilities**

In New South Wales, the Ministry of Energy and Utilities (formerly the Department of Energy) is responsible for retail contestability issues.

In order to address some of the issues which may be dealt with by conduct rules, the Electricity Association of New South Wales (EANSW) has developed a number of Codes of Practice.

In particular there are five Codes of Practices that contain provisions relating to conduct rules:

### *Model Use of System Agreement*

This Code aims to provide a ‘model’ for contracts relating to the provision of network access and network use of system services between distributors, wholesalers and retailers. With respect to conduct related issues, the purpose of this Code is to:

- set out the components that a ‘network use of system’ agreement between distributors and retailers should contain; and
- ensure that fair trading laws, particularly in respect of possible unfair discrimination by distributors against non-associated wholesale traders, are complied with.

The EANSW advises that this Code has recently been published in its draft form requesting submissions from interested parties.

### *Last Resort Supply*

This Code specifies arrangements under which customers have access to supply of electricity in the event that the supplier of choice is no longer available to provide supply. Given that the *Electricity Supply Act 1995* places general last resort supply obligations on electricity distributors, it is desirable that appropriate commercial instruments, procedures and protections are in place for the benefit of both customers and distributors, and to ensure that unreasonable expectations (which could lead to dissatisfaction in the event of last resort supply obligations being called upon) are not created.

The Code became effective on 29 November 1999, with the Acting Director advising the EANSW that the approval was until 1 July 2000.

### *Customer Transfer to Retailer of Choice*

The objective of this Code is to outline principles to facilitate a timely and orderly transfer of customers between retailers, thus ensuring that customer choice with respect to electricity retailer is maximised at each stage of contestability. This Code is intended to apply under normal market conditions as well as in circumstances where the *Code of Practice – Last Resort Supply* has been invoked and customers are seeking to terminate last resort supply arrangements and transfer to a Retailer of Choice.

The Code intends to promote customer choice of retailer in a manner which provides safeguards to protect the interests of contestable customers by setting clear standards for information provision and retailer transfer and requiring information to be provided in a manner that allows the ready comparison of the products and services of competing retailers.

The Code became effective on 29 November 1999, with the Acting Director advising the EANSW that the approval was until 1 July 2000.

### *Service Standards Code*

This Code provides a framework for supplying defined distribution and retail services to customers in a deregulated electricity market. In particular, it specifies a minimum set of standard measures against which the features of electricity connection and supply services can be judged by customers. The Code became effective on 17 April 1998.

### *Customer Charter Code*

This Code is being developed by the Department of Fair Trading, with the purpose of specifying the standards and related procedures that distributors and retailers will adopt to govern their relationships with their customers. In particular this Code is to deal with new connection and reconnection times, routine meter reading services and those associated with final bills or disconnection, meter accuracy, options for electricity accounts and dispute resolution.

This Code is currently in abeyance due to the development of Guaranteed Standards of Service in the Service Standards Code.

### **Australian Competition and Consumer Commission (ACCC)**

The ACCC has developed a *Statement of Regulatory Intent* which has incorporated ring-fencing arrangements which relate to conduct issues in terms of their cost allocation provisions. It is understood that the ACCC is not currently considering developing anything further in terms of conduct rules.

---

**SUMMARY OF CONDUCT RULE ISSUES WITH EXISTING FRAMEWORK**

Identified Conduct Related Issue	Existing Regulatory Coverage	Comments
Curtailling interference with customers seeking to change retailers	TPA ss.45-45D	TPA may provide but may not be specific in certain circumstances in the market
Assigning responsibility amongst distribution entities, retail entities and customers to facilitate customers changing retailers quickly and at minimum cost	Draft Standard Customer Sales Contract Draft Distribution Ring-Fencing Guidelines	Contract only relevant to contestable customers must be used as a template for non-contestable customers Draft Guideline on designation of distribution entities for contestable activities
Monitoring/regulating charges that may be levied by a distribution or retail entity on customers changing retailer	Draft Standard Customer Sales Contract	May also be covered by the proposed State developed by the Competition and Energy
Ensuring the advice distribution or retail entities give to customers regarding a change of retailer is accurate	Draft Distribution Ring-Fencing Guidelines TPA Part V	Guidelines address this issue at a very high level
Ensuring a retail entity with contestable and non-contestable customers does not assign costs from one to the other to the detriment of non-contestable customers	Draft Distribution Ring-Fencing Guidelines	Covered in some Guidelines

---