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## ##STOP PRESS##

The Ministerial Council on Energy (MCE) has 'requested' the Consumer Advocacy Panel to [implement a process](#), that will require any reports and submissions produced by Consumer Advocacy Panel funded organisations to be reviewed by the MCE "prior to its public release in any form".

Whilst the review is cast as being confined "to technical and factual data and does not enable any editorial changes to the reports or submissions," consumer advocates fear that in practice this distinction will be difficult to draw and that therefore the new process will stifle advocacy. Certainly it will severely hamper advocates' ability to effectively and independently scrutinise government policy in the Australian energy market. We ask, will business submissions be submitted to a similar accuracy test?

Further, with existing consultation periods averaging 4 - 6 weeks, allocating two of those weeks to obtaining MCE approval (as required by the new process) will do nothing but overburden an already time and resource poor advocacy sector while adding little or no value to the process.

Interests representing Australian energy consumers are already dwarfed by the resources available to represent industry interests. Many of these consumer representatives are funded by the Consumer Advocacy Panel and this new approach by the MCE will only serve to further tilt an already imbalanced playing field and ultimately undermine advocates' ability to protect consumer interests in the sector.

## Not entirely consumer friendly (NECF)

The high level policy principles of the new National Energy Customer Framework (NECF) legislation were decided by a meeting of the Ministerial Council on Energy in mid June, with the bill expected to finally be introduced into South Australia's Parliament during the Spring 2010 sitting.

At a time of rapidly escalating energy prices, the significance of this legislation was not lost on consumer representatives, who braved the Melbourne winter in an appeal to Ministers for more robust and meaningful consumer protections to be included in the bill. Their protest highlighted the importance of the NECF to consumers and presented Ministers with ten key consumer protections that currently exist in at least one State or Territory but are not included in the proposed national laws. Consumer representatives argued that if these protections are omitted from the new national law, large groups of consumers will be worse off as a result. Some of the ten issues included requests for Ministers to:

- Ban late payment fees;
- Commit to a consumer-focused objective;
- Scrap shortened collection cycles;
- Ban disconnections during a heatwave;
- Limit back-bills for undercharging to 6 months; and
- Introduce a Wrongful Disconnection Payment.



*Fig 1: Consumer representatives from across Australia as part of a 'sad socket' campaign, outside the Ministerial Council on Energy meeting in Melbourne on Friday 11 June, appealing to Ministers to aspire to "protect and empower consumers" by maintaining an appropriate level of consumer protections in the NECF.*

Hours later, the Ministers' emergence from the meeting was announced by a communiqué committing to high level policy principles, but also tasking Senior officials to resolve a small number of outstanding issues.

While we agree that the overall national consumer law and policy framework, including the new economy-wide Australian Consumer Law, will provide robust protections for all consumers, the NECF was developed specifically to "protect and empower energy consumers" because of the unique and essential nature of that service.

The Productivity Commission report into Australia's consumer policy framework, which recommended that a generic Australian Consumer Law be the first port of call for consumer protections nationally, also highlighted the crucial importance of additional industry-specific protections for energy consumers due to the potentially harmful effects of disconnection, the increasing risk of financial stress for low income households subjected to 'lumpy billing', and the increasingly complex pricing and product bundling arrangements.

It is essential that the NECF delivers these protections to all Australians, and Federal and State Ministers must provide sufficient guidance to ensure the new law achieves this, as representatives set about resolving the final outstanding issues this week.

We welcome feedback on the information provided in *On the Wire*. Further, we encourage you to forward the newsletter throughout your networks. Production of *On the Wire* is funded by the [Consumer Advocacy Panel](#). To subscribe to *On the Wire*, please email <mailto:info@consumeraction.org.au> with "On the Wire" in the subject line. The next edition of *On the Wire* is scheduled for release at the end of August 2010.

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## **1. Regulatory developments**

### **1.1 Ministerial Council on Energy**

The [Ministerial Council on Energy \(MCE\)](#) met for the 23rd time on Friday 11 June 2010, in Melbourne. A copy of the meeting communiqué can be found [here](#).

Significantly, at the MCE meeting the Ministers endorsed a set of policy positions for the [National Energy Customer Framework](#) legislation which they stated "will provide strong protections for consumers on a national basis". These principles, when combined with the

resolution of some outstanding issues and implementation arrangements by Departmental officials, are intended to ensure that a strong package is delivered. The Ministers will finalise the legal instruments over the following months, with the goal of introducing the package into the South Australian Parliament in the Spring 2010 sitting.

The Communiqué also included an [attachment](#) discussing further details on the framework, such as the retail market objective, the process for transition to the framework, and the intended benefits of the regime for consumers and energy businesses. The attachment also highlighted certain customer protections in the NECF.

Ministers also agreed to a comprehensive review of [enforcement regimes](#) across the national energy legislation (namely the National Electricity Law, the National Gas Law and the new National Energy Customer Framework legislation once enacted) with the goal of ensuring the interests of customers continue to be protected and the integrity of the energy markets is maintained. The decision to undertake this review follows work by consumer groups highlighting that the current enforcement regime proposed in the NECF is inadequate, especially when compared to the best-practice enforcement regime reforms made in the recent Australian Consumer Law. We have also previously highlighted that the civil penalty provisions proposed in the NECF are [significantly lower](#) than those in other comparable consumer laws, including the Australian Consumer Law, the Financial Services Regime laws, the Spam and Do Not Call Register Acts and the new national consumer credit laws, and thus will do little to deter businesses from non-compliance with their new obligations.

On other matters, the Ministers discussed concerns that have been raised over the process for jurisdictions to respond to the [AEMC reviews](#) of retail energy market competition, asking the Standing Committee of Officials (**SCO**) for further advice, and they agreed a policy response to the AEMC's Review of Demand Side Participation in the National Electricity Market, noting there is work underway to address some of the recommendations. Ministers have also supported the AEMC undertaking further work to consider the implication of 'smart' technologies on electricity market frameworks and develop actions to address remaining electricity market barriers that "limit the uptake of economic energy efficiency opportunities".

In addition, the ministers discussed matters including smart meters, the gas Short Term Trading Market, the AEMC Strategic Energy Market Outlook initiative and their forward work program. Further information on these can be found [here](#).

The MCE has also released a couple of other [Energy Market Reform Bulletins](#) since our last edition, including:

*Minimum Energy Performance Standards for Air Conditioners – Consultation Regulation Impact Statement (RIS) (Bulletin No. 180)*

This consultation RIS proposes a further revision in the stringency of minimum energy performance standards applying to air conditioners. Public consultation meetings will be held across the country during July 2010 and submissions on the RIS are due Friday 6 August 2010. More information can be found [here](#).

*Release for consultation of Costs and Benefits of Smart Metering in Off-Grid and Remote Areas (Bulleting No. 178)*

The MCE SCO has released a draft report on the *Costs and Benefits of Smart Metering in Off-Grid and Remote Areas* to complement the national cost benefit analysis completed in 2008 by extending analysis to off-grid areas not previously considered. Submissions are due 14 July 2010. More information can be found [here](#).

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## 1.2 Smart meters

### National Smart Meter Program

Under the National Smart Meter Program (NSMP), smart meter vendors and smart meter communications network vendors were invited to provide information in relation to the most recent [functional specification](#) for smart metering infrastructure developed by the Business Requirements Working Group under the National Stakeholder Steering Committee. The key objectives of releasing the Request for Information (RFI) were:

- to ensure that the functional requirements as defined are clearly understood and unambiguously stated;
- for the NSMP to determine cost implications to the smart meter and smart meter communications hardware and software that may be identified due to new requirements over and above the current Victorian Advanced Metering Infrastructure Functionality Specification; and
- for the NSMP to consider the relative merits of potential performance levels.

RFI submissions closed recently (25 June). More information on the NSMP can be found [here](#).

#### Victorian Smart Meter consumer protections

In the recent MCE Communiqué (see [section 1.1](#) above), Ministers reaffirmed the importance of ensuring consumer protection and safety arrangements are appropriate wherever a smart meter roll-out is progressed. They noted that any new protections required at a national level would be established through additions to the NECF, and noted the work being done in Victoria with the review of its regulatory framework to determine the need for any smart meter customer protections in that State.

The Victorian Essential Services Commission (ESC) is due to release its Draft Decision on any necessary regulatory changes in light of smart meters in mid-July. Consumer representatives believe that the Victorian consumer protection regime does require some amendments to ensure that protections for consumers remain robust in the face of new smart meter functionalities. Headline issues still under consideration include:

- Index reads on bills
- Estimated and substituted data on bills
- Monthly billing for customers on standing offers
- Assisting customers in shopping around for a better offer
- Regulating load control functionality

More information on the ESC Smart Meter review can be found [here](#).

The Victorian Government introduced a Bill into Parliament last week that would give them the ability to make Orders in Council specifying that energy businesses must meet certain obligations in relation to the ongoing rollout of smart meters (Advanced Metering Infrastructure, or AMI). The obligations that could be made under these Orders include:

- setting out criteria that a distributor and a retailer must satisfy before they introduce AMI time of use tariffs; and
- ensuring customers have access to sufficient information to enable them to determine whether switching to an AMI time of use tariff is likely to benefit them.

The Bill can be found [here](#).

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### **1.3 National Energy Customer Framework (NECF)**

The release of the MCE Communiqué (as discussed in [section 1.1](#)) confirmed that the MCE had reached agreement on key policy positions for the NECF. The Ministers have positioned the law as part of a total package of consumer laws, including privacy laws and the new Australian Consumer Law, which "compared to those currently available in separate jurisdictions' laws,

will provide equivalent or enhanced levels of energy consumer protections while streamlining the regulatory environment".

The communiqué had an attachment specifically on the NECF which highlighted certain specific customer protections. These were:

- Guaranteed access to an offer of supply;
- An accessible framework for customers to arrange new connections to networks;
- Mandatory minimum terms and conditions for retail contracts;
- Limitations on disconnection;
- A customer hardship regime requiring retailers to develop policies that must be approved by the AER to assist residential customers experiencing longer-term payment difficulties;
- Energy marketing rules;
- A small claims compensation regime, where jurisdictions choose to opt in;
- A price comparator service to be developed and administered by the Australian Energy Regulator which facilitates the comparison of market offers by customers, where jurisdictions choose to opt in to replace State-based services; and
- A compliance and performance monitoring regime.

The communiqué also states that the objective of the National Energy Retail Law will mirror the objective in the National Electricity Law and the National Gas Law. Additional changes will include further guidance to the Australian Energy Regulator and the Australian Energy Market Commission when performing their functions, specifically, ensuring they act in a way that "is compatible with the provision of consumer protections for small customers, including customers experiencing hardship". This will represent a significant change to the second exposure draft of the NECF legislation, which had included a second clause further defining the objective of the law to include a focus on small customers and customers experiencing hardship. It appears that this focus will be retained in a description of how the regulators should perform their functions but will not be part of the overall objective of the regulatory framework, which is disappointing for consumers.

Briefing sessions are continuing to be conducted by officials with stakeholders on the package and implementation issues. The Communiqué also noted that officials are developing a detailed response to stakeholder comments which will be released prior to the introduction of the legislative package into the South Australian Parliament.

The legislation is due to be introduced into the South Australian Parliament in Spring 2010.

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#### **1.4 Australian Energy Regulator (AER)**

##### Victorian Electricity Distribution Price Review

The AER released its Draft Decision on the Victorian Electricity Distribution Price Review for 2011-15 on 4 June. It proposes that nominal distribution prices from 1 January 2011 would range from a decrease of 17.5% to an increase of 1.1% (depending on the distributor), followed by an average annual increase ranging from 2.6% and 3.0%.

The landmark draft decision equates to the following price changes:

	<b>Citipower</b>	<b>Powercor</b>	<b>Jemena</b>	<b>United Energy</b>	<b>SP AusNet</b>
<b>DNBP Proposals</b>					
<b>2011</b>	13.0	25.4	43.2	19.8	50.0
<b>Average 2012-15</b>	10.8	7.7	5.7	6.7	8.2
<b>AER decision</b>					

<b>2011</b>	-4.9	-5.8	1.1	-17.5	-2.0
<b>Average 2012 - 15</b>	3.6	2.6	0.3	5.1	2.6

Fig 2: Change in network prices (percent, nominal)

The companies forecast that their capital expenditure would have to rise by 66% or \$5.4 billion (in 2010 prices) to meet supply objectives. The AER Draft Decision would mean total capital expenditure over the period would be \$3.4 billion, an increase only around 38%. However, decisions by the Victorian Government relating to further bushfire mitigation measures may lead to greater capital expenditure.

Victorian distributors proposed an increase in operational expenditure of 38% to meet supply objectives but the AER draft decision proposes an increase of only 2% for a total operational expenditure allowance of \$2.2 billion, resulting in an overall reduction from \$293m to \$44m.

Consumer Action's submission on the distributors' regulatory proposals to the AER had argued strongly that the AER would be justified in heavily scrutinising the distributors' claims for increased revenue and thus prices, based on a comparison of their proposals in previous regulatory periods to eventual outcomes.

The full 1500 pages of the AER's Victorian draft decision can be found [here](#).

*Australian Competition Tribunal - Review of AER determinations for Queensland and South Australian electricity distribution network pricing*

The AER made final determinations on the pricing for the Queensland and South Australian electricity distribution networks for Energex, Ergon Energy and ETSA Utilities in May 2010. More information on the final decisions for South Australia and Queensland can be found [here](#).

All three network businesses are now contesting the AER's decision through the Australian Competition Tribunal, focusing on the value of imputation credits (gamma). In addition, Queensland's Ergon Energy is seeking a review of its capital expenditure allowance, forecast customer service costs, demand forecasts, alternative control services (quoted services), the classification of street lighting services, the service target performance incentive scheme, and labour cost escalators. South Australia's ETSA Utilities is seeking a review of the value of its opening regulatory asset base. More information on the tribunal process can be found [here](#).

The precedence established by the NSW businesses appealing the AER decision on the NSW distribution price review is clearly proving problematic.

Under the current regulatory system, the worst outcome for a business that appeals a decision to the Tribunal is that the AER's decision is maintained. By contrast, the worst case scenario for the AER (and in the most part, for consumers) is a reversal of the decision and an increase in approved revenue. With nothing to lose for the network businesses (other than their legal costs), we are very concerned that the contesting of AER decisions is set to increase, particularly in light of the Victorian draft decision (and likely final decision).

We consider that the regulatory framework needs to be reviewed to determine the efficiency and appropriateness of the appeal process. While other stakeholders, particularly consumers, have some ability to participate in the regulatory decision-making process, it is much harder and more costly to intervene in the legal appeal process to the Tribunal, effectively shutting other interests out of the process. There is also potentially a need to alter the Tribunal process to enable the Tribunal to make decisions both ways, namely, to increase or reduce prices to be charged by the appealing party, where relevant.

## **1.5 Australian Energy Market Commission (AEMC)**

On 18 June 2010, the AEMC published its Draft Report on the [Request for Advice on Cost Recovery for Mandated Smart Metering Infrastructure](#) (SMI), following the MCE directed review. The draft report sets out draft advice on whether Chapter 6 of the National Electricity Rules most efficiently accommodates cost recovery for smart metering infrastructure as mandated by a Ministerial determination.

The AEMC's assessment found that existing processes for cost recovery are adequate and can accommodate the recovery of efficient costs and that no fundamental changes are necessary. The AEMC did, however, recommend some incremental amendments to the Rules "to better accommodate the nature of expenditure relating to SMI in this context".

Some of the recommended amendments include:

- a revenue adjustment mechanism to remove any gain or loss from a distribution network;
- providing the AER with the option to adapt the expenditure incentives on distributors to better balance the risks between customers and distributors;
- requiring distributors to report annually on the actual costs and operational benefits associated with SMI;
- deferring consideration of the efficiency of SMI expenditure until the next distribution determination process where a Ministerial roll-out determination has triggered costs to be incurred within a regulatory control period, which were not anticipated at the previous distribution determination;
- including additional pricing principles for smart metering services to promote the efficient allocation of costs and the unbundling of smart metering tariffs from network tariffs; and
- providing the AER with the ability to change depreciation schedules to smooth the tariff impact of mandated SMI over the economic life of these assets.

Submissions close on 23 July 2010. The Final Report is due by 31 August 2010, for more information click [here](#).

Additional information on the AEMC and other reviews and rule changes can be found [here](#).

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## **2. Consumer advocacy**

Every issue, *On the Wire* includes articles by other consumer and community organisations. We welcome contributions. If you would like to submit an article for the next edition of *On the Wire*, please contact us at [info@consumeraction.org.au](mailto:info@consumeraction.org.au) with "On the Wire" in the subject line.

The following articles are produced by organisations other than Consumer Action Law Centre and do not necessarily represent the views of Consumer Action.

### **2.1 Renewable energy target, Damien Moyse, Alternative Technology Association (ATA)**

RECs and Australia's Renewable Energy Target have been an integral part of Australia's electricity industry now for more than a decade, with the scheme changing and expanding significantly in the past 12 to 18 months.

RECs stands for 'Renewable Energy Certificates', with these certificates being the trading currency for renewable energy in the renewable energy market.

The value of one REC is equal to one megawatt-hour of renewable electricity generation (or in the case of some energy efficiency technologies such as solar hot water or heat pumps, one megawatt-hour of avoided electricity consumption).

Renewable electricity generators such as large wind farms, hydro-electric power stations or small-scale solar photovoltaic (PV) or wind installations, are able to create these RECs and sell them to the renewable energy market, thereby receiving a financial return.

The majority of RECs are purchased by electricity retailers, in line with their mandatory requirements set by the Federal Government under the Renewable Energy Target (RET). This cost to the electricity retailer is passed on to all electricity consumers (apart from a few large industrial users) in the form of a slightly higher charge per kilowatt hour on your electricity bill.

The Federal Government has recently expanded the RET so that 20% of Australia's electricity supply (equivalent to 60,000 gigawatt-hours) comes from renewable energy sources by 2020.

#### What's a REC worth?

Whether you're a householder or a large-scale renewable energy developer, one of the key aspects of the market for any renewable energy investor is the variable price of RECs. The renewable energy market fixes demand, however supply is variable, depending on the amount of RECs created by an accredited renewable electricity generator in any given year. As such, we have seen the price of RECs vary over the past 18 months from \$28 to \$54.

#### GreenPower and RECs

RECs can also be traded through the 'GreenPower' mechanism. GreenPower is a voluntary renewable energy product that can be purchased by residential and business consumers to ensure that their electricity is tied to generation from renewable sources.

When a householder or a business purchases GreenPower through their electricity retailer, the retailer in turn purchases additional RECs from the renewable energy market. These RECs are purchased 'in addition' to the retailers mandatory requirements under the RET, meaning that the consumer has achieved investment and an environmental benefit on top of that mandated by the Federal Government's target.

#### Recent RECs oversupply

Recently, the RET has suffered from an oversupply of RECs in the market. Whilst historically, the renewable energy market has always operated with a small margin of oversupply, this has increased significantly in recent times with more renewable electricity generation coming on-line, and with additional Federal Government financial incentives being directed towards householders who install solar hot water, heat pump and solar PV systems.

This oversupply has seen a dramatic drop in the REC price, meaning that large-scale renewable project developers (such as wind farm and bio-gas operators) cannot obtain a high enough price to obtain long-term finance for their projects.

On 24th June, the Australian Parliament finally passed amendments to the RET legislation to ensure the separation of the large and small scale RET markets. The small scale market will see greater certainty for investors in small scale technologies by the introduction of a fixed price for RECs, whilst the large market, uninhibited by investment in small scale technologies, should see a REC price rise and therefore greater opportunity to bring forward investment in large scale technologies such as wind farms, bio-gas plants, wave technology and other large scale renewable generation projects.

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