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## Editorial - Energy Marketing regulations gone awry

The idea of self-regulation in an industry reliant on sales commissions and high-pressure selling tactics would strike most people as a little far-fetched. But that's exactly what consumers face after the ACCC authorised electricity and gas retailers to establish their own code of practice.

Energy Assured Limited (EAL), made up of a coalition of energy retailers, will self regulate its marketing activity for the next three years.

Consumer Action considers that there is an inherent conflict of interest which renders a self-regulatory approach ineffective, for each time a salesperson pressures someone into buying their product the energy retailer and the salesperson reaps a financial benefit, so it's counter intuitive for them to restrict their salespeople in any way.

We're concerned that things are highly likely to continue as they always have; salespeople will apply pressure, consumers will complain, and the industry will give their salesperson a rap over the knuckles while taking little



responsibility themselves.

Consumer Action has seen it all before. The energy companies blame a rogue salesperson rather than addressing systemic issues which exist within their industry.

We note also that in a worrying sign for the quality and robustness of the new scheme,

the ACCC has already flagged a number of areas that EAL will need to consider further should it wish to have the scheme re-authorised after three years. We query why these areas aren't being addressed now rather than in three years time. We will, however, monitor the operation of the scheme over time.

Consumer Action will also continue to advocate for stronger enforcement of the existing regulations around energy marketing and, in the interim, we encourage consumers to close the door and not engage with marketers if their presence is unwelcome. We do this by distributing 'do not knock' stickers which can be obtained [here](http://www.donotknock.org.au).

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](http://www.consumeradvocacypanel.org.au). To subscribe to *On the Wire*, please email [info@consumeraction.org.au](mailto:info@consumeraction.org.au) with the words "Subscribe to On the Wire" in the subject line. The next edition of *On the Wire* is scheduled for release at the end of September 2011.

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### **1. Regulatory developments**

#### **1.1 Ministerial Council on Energy (now known as SCER!)**

The Ministerial Council on Energy (MCE) met jointly with the Ministerial Council on Mineral and Petroleum Resources (MCMPR) in Perth on Friday 10 June 2011. Following an Australian Government decision to merge the two, this newly formed group are now the Standing Council on Energy and Resources (SCER).

Discussion in the meeting focused on:

- the impact of the introduction of a carbon price on Australia's electricity generation sector and the importance of maintaining energy security as this reform is pursued;
- investment in Australia's energy and resources sectors;
- recent increases in electricity prices, and the drivers of electricity price movements in coming years;
- petroleum regulatory reform, particularly the plan to introduce a national offshore petroleum regulator; and
- employment and skills in the resources sector.

In addition, the Australian Energy Market Commission and the Australian Energy Regulator provided updates to the SCER as did the National Offshore Petroleum Safety Authority (NOPSA).

The SCER meeting communiqué can be found [here](#).

#### ***Energy regulatory framework: leading edge or not?***

Professor Garnaut released his [update](#) to the 2008 Garnaut Review in March 2011, which, among other things, highlighted that recent electricity price increases have mainly been driven by increases in the costs of transmission and distribution. Professor Garnaut stated that "there is a prima facie case that weaknesses in the regulatory framework have led to overinvestment in networks and unnecessarily high prices for consumers", and further that "the upcoming review of regulatory arrangements by the Australian Energy Regulator presents an opportunity to correct distortions in current regulations".

The Australian Energy Market Commission (AEMC) then followed this by preparing a [brief](#) for MCE/SCER with its own considerations of the Garnaut content, in which it appeared to acknowledge that "inefficiencies in the domestic energy markets or regulatory regimes warrant early analysis and correction", though noted that not enough recognition was given for work undertaken to date. In a [speech](#) that opened discussions for the AEMC's Strategic Priorities for Market Development launch, Minister Ferguson, Chair of the MCE, stated that "while Professor Garnaut has a role to play in advising the Multi Party Climate Change Committee, he does not speak for the Government, nor for the Ministerial Council on Energy." He also stated that "the regulatory framework for Australia's energy sector is leading edge, and as such the Ministerial Council on Energy and the energy market bodies often review different aspects of our regulatory environment to ensure it delivers optimal outcomes for the community."

An upcoming report on aspects of distribution pricing determinations by the [Consumer Action Law Centre](#) and the [Consumer Utilities Advocacy Centre](#) highlights that there are indeed significant flaws in both the legislative and regulatory frameworks resulting in perverse outcomes for consumers. Problems with the regulatory framework have also been flagged recently by both the [Australian Energy Regulator](#) and the [Independent Pricing and Regulatory Tribunal of NSW](#). That regulators themselves are dissatisfied with the regulatory framework suggests that it is indeed not 'leading edge' and that reform is warranted.

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## **1.2 Energy White Paper**

Go, stop, go, stop, go! We are on again! Following the extensive process undertaken in 2008 to develop an Energy White Paper, (and the production of an Energy Green Paper - never made public), the Department of Resources, Energy and Tourism (DRET) has once again been tasked with developing an Energy White Paper on the future of Australia's energy sector.

Targeted consultation commences in July 2011, with a draft White Paper due for release, consultation and a final white paper eventually completed next year.

The key objective of the Energy White Paper is to develop a policy framework to "maintain energy security and prosperity, ensuring that Australia continues to have a secure, competitive, efficient and sustainable energy sector to 2030 and beyond. It will also seek to ensure that Australia's prosperity and economic growth continues, while also ensuring that the development of Australia's energy resources continues in a manner that optimises the return to the Australian community."

Consumer Action's preliminary concerns about the revised White Paper process reflect those raised by Consumer Action and others in the earlier round of Energy White Paper development. As is common in energy policy development, previous White Paper deliberations failed to adequately consider the demand side of energy market, and particularly the essential nature of electricity services for Australian households.

It is essential that the process addresses economic, social and environmental goals in the interests of the Australian community as a whole, not just specific 'industry' segments.

More information on the Energy White Paper can be found [here](#).

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## **1.3 Smart meters**

### ***Victorian Smart Meter Rollout***

The new Victorian Coalition Government has commissioned the Department of Treasury and Finance to undertake an "independent review of the Advanced Metering Infrastructure (AMI) Program, to address issues raised in the 2009 Victorian Auditor-General's Office Report on the AMI program".

The review includes an additional cost benefit analysis, with a focus on bringing the realisation of benefits forward.

Submissions to the review closed 21 June 2011. Only submissions from organisations have been put on the DTF website, and over 300 submissions were received from members of the public.

Themes from submissions from [members of the public](#) indicate:

- concerns that smart meters were imposing an additional cost on households without any apparent benefit;
- concerns that time of use tariffs would impose additional costs on households;
- that some individuals, including the elderly, the disabled and other disadvantaged groups, would be unable to change their energy consumption if time of use tariffs were implemented;
- concerns about health issues associated with smart meters, including radiation;
- concerns about the accuracy of smart meters and the inability of households to check energy consumption levels;
- concerns that installers of smart meters were not appropriately qualified;
- individuals making it known that they did not want a smart meter installed at their property, or wanted their meter removed; and
- where people had heard about potential benefits, they had insufficient information about when those benefits could be realised and how they could use their Smart Meter to access those benefits.

For more information about the review, including submissions from industry and stakeholders, please click [here](#).

The Government is due to make a decision about the future of the AMI rollout in the coming months. In particular, the decision will assess the viability of ceasing the rollout or whether the rollout will proceed and if so, under what conditions.

### ***Realising smart meter benefits***

Origin Energy has [recently announced](#) it will trial American software by [Tendril](#) in 5,000 Victorian homes this year. The software will be focused on providing consumers access to information on their energy use and costs, in real time.

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

The Joint Implementation Group continues to work towards implementation of the NECF into participating jurisdictions for a 1 July 2012 start. The NECF harmonises the State-based

regulatory frameworks (excluding retail price regulation and community service obligations) for the retail energy market and energy distribution sector into a single set of national rules.

Progress towards this is date, while not entirely certain, is further evidenced by varying levels of work being undertaken in a number of jurisdictions.

For example, the Victorian Government has recently released [papers for consultation](#) in relation to surviving Victorian regulatory requirements and the jurisdiction of the Energy and Water Ombudsman as it relates to the NECF. The New South Wales Government released a [consultation paper](#) in September 2010 and the Queensland Government released a [Discussion Paper](#) in June 2010 about the implementation of the NECF in those states. Further public information on the progress and readiness of each jurisdiction is difficult to find.

## **Energy Marketing**

On the 23rd of June 2011 the Australian Competition and Consumers Commission [authorised the Energy Assured Limited self industry code](#) for a period of three years.

The Code was developed by Energy Assured Limited which comprises electricity and gas retailers, as well as marketing companies. The code deals with the registration, accreditation, recruitment, training and monitoring of sales agents.

For more Consumer Action views on the EAL scheme, refer to the editorial [above](#).

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

### **Announcement of rule change.**

The AER has recently [announced](#) that it will seek a change to the National Electricity Rules. Anyone can seek a rule change by putting a submission, with certain minimum information, to the Australian Energy Market Commission (AEMC). AER's rule change will deal with the energy distribution pricing rules (Chapter 6 of the National Electricity Rules) and focus on how the AER can ensure that the allowances for distribution business are no more than necessary and that businesses are not rewarded for unnecessary and excessive overspends. Such a rule change has the potential to limit increases in distribution energy prices, resulting in real benefit for consumers.

Andrew Reeves, Chair of the AER, noted that that "current rules limit the ability of the regulator to determine efficient costs, putting upward pressure on energy prices for consumers."

### **Tasmanian Electricity Distribution Price Review**

Tasmania's Aurora Energy submitted its regulatory proposal and response to the AER's Regulatory Information Notice in May 2011, followed by an addendum to the regulatory proposal in June.

The AER is now seeking submissions on Aurora's regulatory proposal by 12 August 2011 to contribute to its considerations around the draft decision.

More information on the AER's Tasmanian Distribution Pricing Review can be found [here](#).

### **AER Retail functions**

The AER continues to consult on a range of its upcoming retail functions, including:

- [Retail Pricing Information Guidelines](#) - a draft guideline was released for consultation in May 2011, with deadlines for submissions - now closed - 1 July 2011.
- [Retailer Authorisation Guidelines](#) - following a final round of consultation on the draft guidelines, the AER will be finalising and publishing it in its final form late 2011.
- [Hardship Program Indicators](#) - hardship program indicators have been consolidated into the Retail Performance Report.
- [Approach to Compliance](#) - following consultation on a draft guideline in March 2011, a final guideline will be due for release late 2011.
- [Retail Market Performance Reporting](#) - following the release of, and subsequent consultation on the draft guideline in April 2011, the final guideline is due for release late 2011.
- [Approach to Retail Exemptions](#) - the AER is conducting its final round of consultation on the draft guidelines prior to releasing the final guidelines later this year. Submissions are due by 12 August 2011, with a forum being held 27 July 2011.
- [National Retailer of Last Resort Scheme](#) - just released, the draft guidelines are open for consultation until 19 August 2011..
- [Guidance on AER approval of customer hardship policies](#) - the AER published its [final guidance on hardship policies](#) in May 2011.

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## **1.6 Australian Energy Market Commission**

### **Power of Choice - Stage 3 DSP Review**

In March 2011, the MCE directed the AEMC to undertake a further review into Demand Side Participation (DSP) in the National Electricity Market (Stage 3 DSP Review). The review seeks to identify further market and regulatory arrangements that may enable participation of both the supply side and demand side, to achieve an economically efficient demand/supply balance in the electricity market. In particular, the review is considering the following key areas:

- market frameworks to maximise value to consumers from services enabled by new technologies, such as smart grids;
- effectiveness of regulatory arrangements for energy efficiency; and
- efficient operation of price signals.

A [stakeholder reference group](#) has been established and the [first meeting](#) was held 8 June 2011. At the meeting, members of the stakeholder reference group noted that the review should focus not only on consumer choice, but also on the role of incentives on the behaviour of market intermediaries (e.g. network operators, energy services providers). It was also suggested that there is a need to recognise that consumer choices should be structured in a way that is useful and not does not add to complexity of decision making.

The review is to continue throughout 2011, with a final report to be completed by September 2012.

### **Strategic Priorities for Energy Market Development**

Following the release of the AEMC's Strategic Priorities Issues Paper in April 2011, submissions have been received from a number of stakeholders and can be found [here](#). The AEMC states that it is undertaking this review to "develop a well-informed debate on what really matters in terms of priorities for market design and the delivery of affordable, reliable and secure energy for the whole community".

In Consumer Action's [submission](#) to the Issues Paper, we raised our concerns that the Strategic Priorities fail to recognise the essential role of consumers within the national energy market, and their role in competition. A focus on economically efficient energy markets does not sufficiently acknowledge the role of consumers in driving market outcomes, and further highlights the inadequacies of the National Electricity and Gas Objectives when framing the work plan of bodies such as the AEMC.

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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 Concentration in Australian Electricity Markets, Mark Henley, Uniting Care Australia Energy Project**

Despite having relatively large numbers of retailers registered in jurisdictions as retailers for energy, particularly electricity, the practice may be that energy markets are concentrated to the extent that economic theory would suggest they are 'concentrated markets', best described as oligopoly markets, and consequently more prone to exhibit some elements of monopoly type behaviour, which is very unlikely to yield good consumer outcomes, without high-quality and vigilant regulation.

The HHI (Herfindahl – Hirschman Index) is generally regarded as one of the better indicators of market concentration, calculated by summing the square of the market share of each business operating in the market.

$$HHI = \sum_{i=1}^i X_i^2$$

So a score of 1000 (100% squared) represents a pure monopoly market, while a score of less than 1000 indicates a market with low concentration, and hence likely to be effectively competitive. A score of between 1000 and 1800 is regarded as a moderately concentrated market, while a score of 1800 points or above is regarded as a highly concentrated market.

Given reviews of effectiveness of competition in energy markets, particularly electricity markets in Victoria, South Australia and more recently ACT, it is worth considering the degree of concentration in this markets. Victoria was the first jurisdiction to move to competition in the electricity market and is regularly quoted as the most competitive electricity market in the world, based largely on churn as the measure of competition. Calculation for the HHI index for Victoria in 2009/10 yields a market concentration score of 1865 points - in the 'highly concentrated' market range.

The second Australian jurisdiction to move to full retail contestability for electricity markets was South Australia, which is also ranked as one of the most competitive electricity markets in the world. My calculation of the HHI score for SA gives a score of 3714 for 2009/10 - an even more highly concentrated energy retail market.

By way of comparison, the December 2010 HHI index for the Australian banking industry was calculated as being 1448 points by the SA Centre of Economic Studies.<sup>1</sup> The Australian banking industry is characterised by four dominant players whose price movements invariably follow each other. I suggest that the Australian public would not regard the banking industry to be 'effectively competitive.'

Another application of the HHI is to consider the degree of concentration of a market over time. I suggest that the general trend is for markets to tend to greater concentration over time, and in an internationally small and relatively isolated market like Australia, this really should be regarded as the norm. Our grocery retail market, for example, is dominated by a duopoly, banking by four major players, and insurance and financial services, petrol and many other national markets are also highly concentrated markets.

The trend to greater concentration over time can be indicated by the HHI for banking in Australia over recent years, despite policies intent on greater competition, the market place is slowly and surely becoming more concentrated, as demonstrated by the table below showing the HHI for banking in Australia, over time.

<b>Australian Banking Industry, end June</b>	<b>Herfindahl – Hirschman Index)</b>
<b>2006</b>	<b>1207</b>
<b>2007</b>	<b>1130</b>
<b>2008</b>	<b>1104</b>
<b>2009</b>	<b>1195</b>
<b>2010</b>	<b>1453</b>
<b>2010 (December)</b>	<b>1448</b>

Source, SA Centre of Economic Studies, Economic Issues paper 32

I suggest that energy markets, having experienced the major reforms of the past decade, will follow the same path of sure and steady movement towards greater concentration, with ever greater numbers of structural barriers (for example access to supply hedge contracts) reducing consumer choice, for example, by squeezing out second-tier retailers and raising greater barriers to entry for potential new entrants to the marketplace.

The facts are that, despite stated objectives of effectively competitive markets, all energy markets in Australia are highly concentrated, the only variation is the degree of concentration. This means that current and future energy market rules and regulations must be developed in

<sup>1</sup> Neal, Penny; Banking Competition: The Rhetoric and the reality; SA Centre of Economic Studies issues paper 32, May 2011.

a framework of oligopolistic rather than effectively competitive markets, with close scrutiny in particular being paid to informal price manipulation, practices evident in many oligopoly markets.

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## **2.2 National Bulk Debt Project, Legal Aid NSW, Victoria Legal Aid and West Heidelberg Community Legal Service**

The National Bulk Debt Project is an innovative new project that helps Australians on very low (or no) incomes by ensuring their money is used for the things that should come first - food, shelter and household bills.

The project does this by collecting debts owed by many low income people to certain debt collectors, credit providers and utilities, and negotiating bulk waivers of those debts.

The project builds on West Heidelberg Community Legal Service's success in 2010 in conducting the first "bulk debt negotiation" project on behalf of 425 clients, who were referred by legal aid offices, community legal centres and financial counselling agencies. These clients' debts were bundled up and negotiations over the bundled debts resulted in \$3.75 million in unsustainable debts written off by major creditors.

Building on this success, the project has expanded nationally and a new [National Bulk Debt website](#) now allows financial counsellors, legal aid lawyers and community legal centre lawyers helping eligible clients with debt to provide their clients' details directly to the project, permitting the project to conduct bulk negotiations with a creditor to waive debts on their behalf.

Three project partners have joined together to enable the project to expand, with the project a collaboration between Legal Aid NSW, Victoria Legal Aid and West Heidelberg Community Legal Service.

The first round of bulk negotiations is now open for collection of client details. Details must be lodged on the website between 30 June 2011 and **30 July 2011**. This first round is focussed on six major creditors, including **AGL**.

The other five creditors included in this round are Credit Corp, Baycorp, ACMS, Telstra and GE.

These creditors were identified after consultation with financial counsellors about which debts their clients present with most often. Additional collections aimed at more debt collectors, finance providers and other creditors (possibly including more utilities) will be added later in the year.

The rationale for the Bulk Debt Project lies within section 60 of the Commonwealth *Social Security (Administration) Act*, which provides that Centrelink income is protected and cannot be garnished to pay debts to creditors (other than the Commonwealth).

This fundamental protection of basic income applies equally to debts owed to energy retailers as to other creditors. While energy retail laws in various Australian jurisdictions (and the new National Energy Retail Law) provide for various important obligations when dealing with energy customers in financial hardship, a basic bottom line when dealing with energy customers who rely on Centrelink income is that this income cannot be garnished to repay past energy debts.

Through the project, we aim to achieve write-offs of unsustainable debts for the clients referred, in a negotiation process that is efficient and saves time and costs for the creditors involved and for client caseworkers.

We are also aiming for long-lasting changes in market behaviour and in regulators' approaches to long-term financial hardship, and expect that the project may lead to more innovative processes for advocacy on behalf of the most disadvantaged and vulnerable in our communities.

Individuals must generally be the client of a financial counsellor or a legal aid or legal centre lawyer in order to be referred to this project at this stage.

For more information visit [www.bulkdebt.org](http://www.bulkdebt.org) or contact:  
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