Productivity Commission
Draft Report – Review of Australia's Consumer Policy Framework

Joint submission from participants in the National Consumers' Roundtable on Energy

1. Introduction

Participants of the National Consumers' Roundtable on Energy (the **Roundtable**) are pleased to comment on the Productivity Commission's (the **Commission's**) *Draft Report – Review of Australia's Consumer Policy Framework* (the **Draft Report**). Participants who have supported this submission are:

- ACT Council of Social Service;
- Australian Council of Social Service;
- Centre for Credit and Consumer Law, Griffith University;
- Consumer Action Law Centre;
- Consumer Utilities Advocacy Centre;
- Public Interest Advocacy Centre;
- Queensland Consumers' Association;
- Tasmanian Council of Social Service;
- Victorian Council of Social Service;
- Western Australian Council of Social Service; and
- UnitingCare Wesley;

We strongly welcome the Commission's acknowledgment that energy is an essential service (p 408-9). We agree, and note that electricity and gas support fundamental human needs including safe food (storage, preparation) and safe shelter (hygiene, lighting, temperature control). Electricity also supports equipment that is critical to wellbeing and independence (health, communication). Beyond these fundamentals, electricity supports community engagement and family life (social interactions, employment, education). Except in rare and exceptional circumstances, a regular connection to electricity supply is not discretionary or optional.

The Roundtable has developed a *Charter of Principles for Energy Supply*. A copy of the Charter is attached. We believe that the delivery of energy services in Australia must accord with the principles articulated in the Charter.

2. About the Roundtable

The National Consumers Roundtable on Energy (the **Roundtable**) comprises consumer organisations, social welfare organisations and environmental organisations with a collective and active interest in providing consumer advocacy in the National Energy Market (**NEM**) reform process.

The Roundtable is comprised of a wide range of organisations representing small end-user interests in national energy policy and regulation. Members of the Roundtable regularly contribute to decision-making processes of Commonwealth and jurisdictional governments, the Ministerial Council on Energy (**MCE**), the Australian Energy Market Commission (**AEMC**) and the Australian Energy Regulator (**AER**).

Noting the Commission's recommendation relating to additional support for consumer advocacy organisations, we believe that the Roundtable is an effective model for supporting and enhancing community advocacy. As such, we have provided more detailed information about the operation and benefits of the Roundtable for consideration by the Commission.

The Roundtable's objectives are to share information and develop collaborative advocacy strategies to ensure the interests of small end-users of energy, particularly low-income and disadvantaged consumers, are incorporated in the development of policy and regulation for the national energy markets. The Roundtable usually meets face-to-face three times each year and by teleconference at least six times each year. A typical member of the Roundtable will be a sole specialist policy/research officer working on energy/water issues in an organisation with a broader, often state-focused, mandate. The Roundtable offers those staff – and so their organisations – the opportunity to more quickly acquire expertise in what are complex, multifaceted, inter-related, aspects of a truly national energy regulatory regime. Experience has shown that the Roundtable is an effective mechanism through which advocates share information, identify areas of consensus, identify information gaps and research needs, and develop joint strategies to enable both individual and collaborative representations to governments, market institutions, industry and others.

Regular face-to-face meetings have developed trust and confidence between advocates who represent, at times, quite different jurisdictional and sectoral interests. They have also enabled skill-sharing, so that expertise is shared amongst advocates. Between meetings, the Roundtable holds regular telephone hook-ups and utilises an email group to facilitate regular discussion of consumer energy issues as they arise. The regular contact also consolidates relationships as well as supporting effective advocacy.

National and jurisdictional regulators and government representatives are regularly invited to address the Roundtable. As such, the Roundtable has operated as a consultative mechanism through which governments and regulators can consult directly with consumer representatives. Experience has shown the efficiencies of this approach, especially considering the competing priorities of many advocates and the ongoing need for governments and regulators to consult with consumer representatives in making regulatory or policy decisions. The Roundtable has received very positive feedback from regulators that they value this consultative function of the Roundtable.

The Commission should be aware that the Roundtable would not be as successful without the financial support of the National Consumers' Electricity Advocacy Panel (the **Panel**), a body established in 2001 to support advocates for domestic and business electricity customers with funding from industry fees collected by the National Electricity Market Management Company. Panel funding pays for travel and related costs of Roundtable meetings, as well as teleconferences, the email forum and some administrative costs. Without Panel support, face-to-face meetings would be much more difficult to arrange.

The Commission should also note that many of the organisations represented at the Roundtable are financially supported by state governments (especially in Victoria, NSW and WA) specifically to undertake research and advocacy on energy and other utility issues on behalf of small consumers.

3. The state of the national energy markets

The Commission's Draft Report acknowledges that national markets for electricity and gas remain distinct and at different stages of development towards national regulatory regimes. The Commission notes that Western Australia and the Northern Territory remain outside the NEM; both jurisdictions remain outside the National Gas Market also. However, the Commission is silent on critical aspects of both markets. Taking electricity as the better example, the Commission does not mention that full retail contestability (**FRC**) has not yet been introduced in Tasmania, a jurisdiction that participates in the NEM, nor in Western Australia or the Northern Territory. FRC was introduced in New South Wales and Victoria in 2002, South Australia and the Australian Capital Territory in 2003 and Queensland only in July of 2007 (and then only in the south-eastern corner).

Six years after the introduction of FRC in Victoria and New South Wales the markets in these jurisdictions are significantly different in character. The nature of the ownership of businesses – public or private – remains a distinguishing feature of these markets. In Victoria, where businesses were privatised in the mid 1990's the AEMC has recently reviewed the effectiveness of competition and found that for, the most part, it is effective. Consumer advocates have contested the AEMC methodology and analysis and are concerned that scant attention has been paid to the actual outcomes for consumers resulting from their choices, particularly whether they realise promised savings. In New South Wales the businesses remain in public ownership. An AEMC review of the effectiveness of competition in New South Wales will not be undertaken until 2009 at the earliest.

The transition from jurisdictionally bounded, publicly owned, monopoly supply with regulated tariffs to national, privatised, deregulated and competitive markets for these products is very much a work in progress; the markets must be regarded as immature. As consumer advocates we would argue that regulation has facilitated the introduction of competition while affording consumers a reasonable level of protection during a time of significant change. We would argue that further significant change is in the offing and that protections should be maintained.

The Commission's assessment that "the case for a national [energy-related consumer protection] regime is clear and no further investigation is warranted" has been prefigured by the Council of Australian Governments (**COAG**) and the architecture of such a regime is set out in the Australian Energy Market Agreement (**AEMA**). Work by COAG and the MCE has resulted in national regulatory frameworks for significant elements of both the electricity and gas markets and for a high level of consistency between the frameworks.

Consumer protection is a significant component of work currently in train to develop national legislative and regulatory frameworks for retail (non-price) and distribution (non-economic). The MCE has indicated that this regime should become effective in January 2010. A Retail Policy Working Group (**RPWG**) comprised of representatives of the Commonwealth, state and territory governments is leading this project.

Work towards this national framework has involved a rigorous review of regulation current in all jurisdictions, ably assisted by independent consultants and with involvement of

stakeholders including the various jurisdictions, businesses, market institutions and consumers. The aim of this project is to design a new regulatory framework based on sound policy and good practice, with a view to experience over recent years but anticipating the realisation of national consistency. The Commission suggests that "a lack of policy responsiveness arising from the involvement of up to nine governments" could be a factor in support of a national regime. We suggest that the keen involvement of nine governments and a host of other interested parties with active (if contested) interests in policy should lead to the creation of a modern regime that meets the test of net public benefit.

An important feature of the process to develop national policy and resulting regulation has been iterative testing of options for national energy specific regulation against generic regimes for consumer protection. Ideally the result will be a framework that complements generic regulation, avoids complication and duplication, and is as light handed as practicable.

However, in the transition to a national regulatory framework a critical concern of advocates for small end users is that the result should not be built on 'lowest common denominator' policy. While acknowledging that the plethora of regulation is not helpful for businesses operating across state and territory borders, it derives from developments over time in eight jurisdictions. These developments have reflected local circumstances and conditions and relationships with other regulation.

The Commission suggests that "COAG should oversee a review and reform program which would... identify and repeal unnecessary specific regulation, with a particular focus on requirements applying in one or two jurisdictions". We suggest that the requirements applying in one or two jurisdictions may represent best practice and result from the experience of markets over time that may be replicated at the national level. The fact of some regulation being particular to one or two jurisdictions should not be sufficient recommendation for its repeal.

Complexity in product offerings

Most residential customers will have known energy as a service supplied by state-owned monopoly businesses. The products they offered were simple and undifferentiated. In most instances there would have been two regulated tariffs; peak and off-peak. Choice was not an issue and for the most part trust was absolute. The introduction of competition, the arrival of new retailers (or newly branded old retailers), a profusion of market offers with both price and non-price attributes and intensive marketing have replaced simplicity with complexity. And while there is evidence of 'competition' such as customer churn, there is less evidence to confirm customer benefit.

For most of the twentieth century electricity was regarded as featureless, except perhaps with regard to reliability; when it was off people noticed. Market reform has encouraged new features such as variations in price (often expressed with regard to a benchmark – the regulated, standing or standard offer). The inclusion of non-price incentives, though not unique to energy supply contracts, may confuse some consumers and certainly makes a 'value' comparison of offers for energy more difficult. There is currently work in train to allow retailers to introduce so-called cost reflective pricing that will rely on time-of-use data

collected by new meters that record consumption at more frequent intervals than currently is the case. This data will allow charges to be based on the time of consumption. The introduction of time-of-use tariffs and critical peak pricing, whether regulated or not, will further complicate product offerings.

A real if invisible characteristic of electricity that allows retailers to offer differentiated products is the source of supply. Green power (from renewable sources) is usually sold at a premium above the regulated price and standard product offerings. Apart from continuing concerns about the veracity of retailers' claims that electricity is actually green, this feature compounds the complexity of choice.

The practice of bundling products and services further complicates the range of options available to residential consumers. Many retailers of energy sell both electricity and gas and offer incentives to customers for buying both under a dual fuel arrangement. Other current and likely bundling components include water, telecommunications and internet services. While there may be real benefits to consumers from dealing with fewer suppliers or discounted prices, there are potential detriments also. Experience shows that making a comparison of like with like on any one of these products can be challenging if not impossible. Each additional bundled product further hampers comparison. When essential services are bundled with non-essential services problems may arise as a result of billing complexity and payment difficulties.

The Commission notes that "industry-specific regulation is particularly effective where the risk of consumer detriment is high and the product is technical in nature". We wholeheartedly agree with this insight and are of the view that energy offers an especially fine illustration. Energy is an essential service and disconnection brings immediate disadvantage. As a range of products offered by competing retailers, energy offerings have become almost as complex as those offered by telecommunications retailers.

Energy and the environment

One of the distinguishing features of energy as a product is that there is now a society-wide imperative to consume less. Commercial enterprises that would ordinarily seek to sell more of their product with a view to increasing profit are now confronted by government initiatives that encourage (or in some instances mandate) reduced consumption. In the context of climate change and pollution, finite fuel sources and drought, and with regard to both electricity and gas, everyone with an interest in energy from generators to networks, retailers and users is minded to become more efficient at least and to decrease use where possible. The imperative for businesses to maintain revenues and profit has obvious implications for end users.

The impending introduction of an emissions trading system has brought another policy dimension to energy markets. Although currently characterised by uncertainty and speculation, the design of any emissions trading system will be directed to placing an impost on energy production and consumption and this 'carbon price' will inevitably be passed through to consumers. In a recent publication the AER noted that as a result of market reform "[o]verall electricity prices have reduced, although with rebalancing between business and households". As a factor that will certainly affect prices paid by consumers, we will

watch carefully the development and implementation of such a scheme and hope to ensure that the costs of greenhouse gas abatement are not borne disproportionately by small end users.

4. Industry-specific energy consumer protections

We welcome the Commission's acknowledgment of the need for energy-specific consumer protections. We agree that a national energy-specific consumer protection framework can contribute to the efficient operation of a competitive energy market that is in the long-term interests of consumers.

A primary reason for energy-specific consumer protection, which is only articulated in Appendix F of the Draft Report, is that electricity and gas are essential services. As the Commission recognises, households require access to utility services to achieve even a basic living standard (p. 408). In relation to essential services, generalist consumer protections are inadequate to protect consumers. Generalist consumer protections, for example, do not provide regulation with respect to:

- standard contract terms and conditions, for example, in relation to billing and statements of account; payment and collection; and dispute-resolution;
- ensuring access to supply, protection against disconnection and retailer obligations in relation to dealing with utility debts and the financial hardship of energy consumers; and
- matters particular to the marketing of essential services, including information provision and appropriate contractual consent protections.

Energy consumer protections in the above areas are needed to ensure that consumers have continued access to energy supply and are not disconnected on the basis of an incapacity to pay, and so that consumers can effectively participate in energy markets to ensure that competitive and efficient outcomes ensue.

Noting the increasingly national regulatory framework for energy and the cross-border operations of retailers, organisations involved in the Roundtable have actively participated in the national reform process, including the work of the MCE Retail Policy Working Group which is developing a national framework for energy consumer protections. However, a particular concern for participants in the Roundtable has been to ensure consumer protections are not diminished in the transfer to a national framework and that the resulting framework is one that represents best practice with regard to overall net public benefit,

The Commission has noted that there are costs resulting from energy-specific consumer protections, as well as benefits. This point is illustrated in the submission the Commission cites from Tru Energy. Tru Energy states that:

> Victoria is universally acknowledged as imposing the most onerous and costly regulatory framework in Australia. … Victoria has three times the number of pages of regulation as Queensland, the most recent and efficient regulatory framework established. As an example, credit management obligations are imposed in other

> jurisdictions through a single regulatory instrument, such as the Retail Code. By contrast, credit management obligations in Victoria are detailed in the Retail Code, as well as in Guideline 14 – Credit Assessment, Wrongful Disconnection Operating Procedures, and Guideline 21 - Energy Retailers' Financial Hardship Policies. … Assuming Queensland represents best practice, the additional cost of the Victorian regime is $6.84 per account, based on a total cost-to-serve estimate of $95 per customer. Across 4 million customer accounts (gas & electricity) the additional cost in Victoria is $27 million per annum. (TruEnergy 2007, p. 5)

We believe, however, that there needs to be a balanced assessment of the evidence relating to actual cost-benefits of regulation. The argument that Queensland represents best practice seems to come from an overall cost standpoint, not a balanced cost-benefit standpoint. The retailers' charge that Victoria has the most onerous and costly frameworks needs to be placed firmly in a consumer context to be analysed fairly.

It is vital that the unique nature of essential services be addressed in achieving the right balance in regulation. Although there may be aspects of the Victorian regime that could be streamlined and improved, developments in Victoria should also be viewed historically. Victoria's retail energy markets were the first to be opened to competition in Australia and regulation has developed in response to market failings. For example, in response to increasing disconnection rates and inconsistent dealings with energy hardship, Victoria mandated hardship policies for retailers under the *Energy Legislation (Hardship, Metering and Other Matters Act) 2006,* which has served to strengthen the obligation to supply. As the Commission rightly points out, Victoria, which has the strictest hardship regime, has the lowest disconnection rates due to inability to pay.

The figure of $6.84 additional per account based on a total cost-to-serve estimate in the Tru Energy submission is not insignificant. However, this cost has to be measured against consumer benefit in the delivery of an essential service, such as lower disconnection rates and the cost benefits to retailers in having robust hardship programs which enable them to recoup payments and apply preventative measures to address customer debt.

The Commission has recognised that current detailed consumer protection regimes are operating reasonably well (p 96) but has endorsed the transition to a national regulatory regime to harmonise existing arrangements. Recommendation 5.3 suggests that an end should be brought to jurisdictional control of energy-related consumer protection arrangements, citing service performance standards as an example.

While we would support this recommendation in principle, the reality is that service performance standards are crucial to ensuring vital economic and social infrastructure is developed in the public interest.

This is particularly true for rural and regional communities that too often face substantial difficulty in securing improvements to their energy supply. These communities have insufficient load to make such upgrades commercially viable, and usually lack the resources to negotiate network augmentations with a distributor. Indeed these communities face a number of problems in securing network augmentation including: a lack of effective competition in process; information asymmetries; lack of bargaining power; lack of access to

effective dispute resolution; and the configuration of consumer protections and rights on the basis of an individual consumer, rather than being able to present the interests of the community as a whole.

Poor quality energy supply in these communities places real and immediate constraints on their capacity to expand local business or attract new investment.

Jurisdictional governments tend to be more attuned and more responsive to the needs of rural and regional communities. To support a move to a national framework, we would need considerably more reassurance that the national regulators, the AEMC and AER, had the mandate and authority to drive investment in distribution networks that was in the broader public interest.

Hardship programs

The Roundtable takes the view that no residential customer should be disconnected from supply as a result of inability to pay. We believe that all retailers of energy should offer hardship programs that meet certain standards and are directed to maintain continuity of the relationship and continuity of supply. We support the principle of mutual obligation ie that as long as an arrangement is appropriate for the customer and the customer meets their commitments regarding payment, then supply should be maintained. We acknowledge that some energy retailers have played a leading role in developing responses to financial hardship. However, it should be noted that over time these programs have proved to be beneficial to the businesses (the benefits outweigh the costs); that not all retailers have independently or willingly established such programs and that the legislative backing for these programs in Victoria has led to more consistent arrangements. A requirement to offer hardship programs need not be a disincentive to competition; the adoption of standards for such programs should 'level the playing field'.

Improving competition in the market

We strongly support efforts to improve competition and competitive outcomes in energy markets. Indeed, we welcome the Commission's comments that arrangements that 'lock-in' consumers, such as high termination penalties, can lead to diminishing competition (p 421). We would agree, and note that a recent investigation into early termination fees by the Victorian Essential Services Commission, and subsequent intervention in the market, actually improved competitive outcomes for Victorian consumers by limiting such fees to that which reasonably reflects retailer costs. This demonstrates that not all industry-specific regulatory interventions necessarily increase costs for consumers, but can actually improve the operation of competition.

Similarly, we note the Commission's support for web-based price tools and specialist switching firms that can act as intermediaries. We would similarly support such tools operating in the market – if they work. The problem with web-based price tools offered by regulators is their complexity of use. Intermediaries have not yet emerged in this market because, as we understand it, incumbents are unwilling to provide contract information, preferring to maintain their market share. This again indicates that some industry-specific regulatory intervention is required to enable consumers to access switching services.

5. National Ombudsman

While we have no in-principle objection to the creation of a national energy and water ombudsman, we would counsel caution in moving forward with this initiative to ensure consumers are able to access an external dispute resolution scheme that offers real assistance in the event of a dispute with an energy or water company.

Our primary concern is the administrative complexity of combining energy and water into one office. While there is a move to harmonising urban water tariffs and restrictions, no government in Australia is proposing a move to a national regulatory or pricing regime for water. The practical effect is that the national ombudsman will have to be operating within one national energy code, but separately managing each of the jurisdictional regulatory regimes for water. Similarly, the ownership of water businesses is complex: in Victoria there are 22 responsible statutory authorities and in each of NSW and Queensland there are more than 100 local government bodies.

There are synergies between energy and water – both are essential services with specific regulation around pricing, contracts and access. However, if the responsibilities were divided between a national energy ombudsman and jurisdictional water ombudsman there is a risk that the volume of work on water would not justify dedicated ombudsman. We would also not wish to see a significant diminution in service to energy consumers simply for the purposes of administrative streamlining.

It also should be noted that the jurisdictional ombudsman have been able to focus on local issues, ensuring that it is understanding and deals with issues raised by consumers particular to its jurisdiction. Although there is movement to a national market, each jurisdiction's market is actually progressing at different paces. For example, in the more mature Victorian market the Energy and Water Ombudsman Victoria (**EWOV**) has developed one of the best ADR schemes in Australia. Of particular note is its detailed and public reporting on complaints received, which has highlighted market failures and market misconduct, providing the capacity for government and the regulator to respond quickly and effectively.

We strongly believe that any national ombudsman should retain a local presence to ensure it is able to investigate market issues particular to that jurisdiction.

6. Financial counselling and legal aid

We wish to indicate our strong support for Recommendation 9.6 that proposes increased funding for legal aid and financial counselling services. The services provided by financial counsellors is crucial for low income and vulnerable consumers, especially in negotiating continued access to essential services with suppliers, and facilitating financial support from government. Legal aid services are an important addition for consumers and financial counsellors, when legal problems arise relating to the provision of essential services.

However access to these services is not available consistently to all Australians, and even in those jurisdictions where financial counsellors are funded by government, waiting lists are often prohibitively long. Recent research has demonstrated the fundamental importance of financial counselling in ensuring low-income and disadvantaged consumers maintain access to essential services (copies of which we have previously provided).[1]

The Commission should be aware that financial counsellors have been invaluable in identifying emerging market problems. In NSW financial counsellors have played an integral role both in delivering emergency assistance schemes to end-users and facilitating the NSW Government's reform of these schemes. In Victoria, they have highlighted numerous examples of marketing misconduct, and helped make clear the need for more robust regulation around hardship to ensure consumers were treated fairly and reasonably.

6. Retail price caps

The Commission has recommended that, following the establishment of national consumer protection arrangements for energy services, participating jurisdictions should remove any price caps still applying in the contestable retail energy markets. We are concerned that this recommendation is in direct contradiction to an agreed position of Australian governments under the AEMA.

Clause 14.11 of the AEMA provides that jurisdictions will phase out retail price regulation *where effective retail competition* can be demonstrated. The AEMA also establishes a process through which the AEMC undertakes an assessment of the effectiveness of competition in each jurisdiction and provides advice to jurisdictional governments about phasing out pricing regulation. The AEMC is currently undertaking such assessments in relation to Victoria and South Australia.

Consumer groups agree that if retail price regulation is to be phased out, then this should occur only if competition is dependably effective. To do so before competition is effective would risk entrenching market power of incumbents, and comprising market outcomes over the longer term. We are concerned that the removal of pricing regulation may actually impede the ability of competition to bring about positive market outcomes. We note that the Commission discussion of retail price regulation for energy proceeds on the basis that its primary aim is to address energy hardship. For example, on page 426, the report states that:

> 'their [retail price caps] role was to provide a 'safety net' for consumers, especially the disadvantaged, in the move to full retail contestability'

The Commission goes on to state that price regulation is a blunt tool for helping vulnerable and disadvantaged consumers. We generally agree that pricing is a blunt tool if its sole purpose is to protect low-income and vulnerable consumers. However, we do not believe

[1] Louis Schetzer, *Drowning in Debt: The experiences of people who seek assistance from financial counsellors*, Department of Justice, December 2007; Blue Moon, *Financial Counselling Program – Research Debrief*, September 2007.

that the safety-net tariff which has operated, for example, in Victoria constitutes such a blunt tool, both because it is not as "blunt" as is made out by the Commission and because it does more than simply protect certain groups of consumers.

The safety-net tariff is not blunt because it is not a price cap, but merely a default option, and it allows consumers who are less able to exercise informed choice to access an energy supply at a fair price. Retailers can and do price above the regulated price (for example, premiums are incurred by consumers wishing to purchase green power). In its submission to the Commission's current review of the national consumer policy framework, national consumer group CHOICE makes the following recommendation:

> Industry, consumers and government should work together to develop and implement better mechanisms, standards and contracts to enhance consumer confidence and market practices. These should include:
>
> - a better use of "default options" in markets to ensure that that consumers who are less able to exercise informed choice can still access good quality products or services at a fair price (for example default superannuation funds),
> - development of minimum standards for products in particular consumer markets (eg across the range of children's products), and
> - greater use of standard form contracts.[2]

We believe that this is one of the roles currently played by safety-net arrangements that currently operate in all jurisdictions. Rather than distorting price signals, it is our view that default arrangements ensure that consumers who are less able to exercise rational and informed choice in the competitive market can still access services at a fair and reasonable price. In this way, they have a broader role in promoting competition, by encouraging effective demand side responses through the provision of default options and does not only exist to protect low-income and vulnerable consumers.

We note that the improved use of default options, as recommended by CHOICE, is based on new understandings from behavioural economics about the systematic and predictable difficulties consumers can face in making informed and rational choices in complex markets, thus it responds to these problems to enhance the effectiveness of demand-side interaction in the market.

A consumer's ability to make informed and rational choices is particularly compromised in energy markets where complex and confusing information about market offers can hamper the identification of optimum options. Poor quality information is provided in the course of widespread mis-selling practices by direct marketers,[3] direct obfuscation by retailers' presentation of tariffs in varying, often indecipherable forms as well as the complex relationship between tariff structures, prices, consumption and the final bill. Recent research suggests that only 5% of Victorian residential consumers actually compared market offers with their current contract when switching energy contracts.[4] This figure illustrates the

[2] CHOICE, *A Principled Approach to the Review of Australia's Consumer Policy Framework*, June 2007.
[3] Consumer Action Law Centre and Financial & Consumer Rights Council, *Coercion and harassment at the door: Consumer experiences with energy direct marketers*, November 2007.
[4] Australian Energy Market Commission, *Review into the effectiveness of competition in Victorian retail electricity and gas markets – First Draft Report*, October 2007, p 99.

particularly poor demand side participation in energy markets. In our view, the removal of a standing offer may actually reduce competition by eliminating a benchmark against which consumers can judge the value of a market offer.

We additionally note that due to the retailer of last resort arrangements, there will always be some form of regulated tariff. For such arrangements to operate effectively, an independent regulator will be required to decide what a fair and reasonable price is for consumers are assigned to a new retailer.

We also contest the Commission's repeated representations that regulated contracts are necessarily higher than market contracts (pp 97 and 98). In NSW this is very rarely the case, and certainly not true for 'Green electricity' contracts which often formulate the tariff using the regulated tariff + x cents/kWh, giving consumers a reference point for the cost of the product.

7. Overarching objective

In conclusion, we would also like to make the following comments on the objectives for the consumer policy framework.

We are disappointed that the overarching objective proposed by the Commission focuses on the process, rather than the outcomes of competition. Competition is simply the process by which benefits are maximised, it is not an end in itself – indeed, when competition is configured as an outcome, the way in which costs and benefits are calculated will change.

As such, we recommend that the Commission adopt similar wording to the objective of the *Trade Practices Act 1974* (Cth) which describes competition as a tool to enhance the welfare of Australians.

We are disappointed that neither the overarching objective nor the operational objectives articulate the rights of consumers within a policy and legislative framework, and would strongly recommend that the Commission revisit the objectives to redress that omission.