

8 April 2004

Code change process  
C/- MCE Market Reform  
Department of Industry, Tourism and Resources  
GPO box 9839  
Canberra ACT 2601

By e-mail to [MCEMarketReform@industry.gov.au](mailto:MCEMarketReform@industry.gov.au)

**RE: PROPOSED CODE CHANGE PROCESS**

Dear Sir or Madam,

The Energy Retailers Association of Australia (ERAA) is the peak body representing energy retailers in Australia. We welcome the opportunity to make a submission on the proposed new Code change process.

The Association supports the proposed Code change process to the extent that it:

- increases the opportunity for participants to comment on proposed changes
- has the potential to reduce the number of Code changes that require authorisation

We are concerned, however, that the process is:

- unlikely to be shorter than the current process for most Code changes.
- Does not remove the potential for ACCC to engage in de-facto market development
- still relies on the ACCC deciding that authorisation is not required
- does not streamline the consultation required after major reviews.

Firstly, however, the ERAA is concerned with the review process that is being undertaken for the Code change process, the MOU and the industry levy.

Releasing a number of papers on the eve of the forum and then allowing merely a fortnight for participants and interested parties to respond to all of those papers is not the full consultation that was promised to participants by the MCE. As a minimum, papers should be given 20 business days for consultation and forums should be around the middle of the consultation period. We understand the need to meet the timeframes imposed by the MCE, but rushing a series of meetings into the last week of the first quarter of 2004 is lip service not consultation.

The ERAA supports the increased consultation in the proposed Code change process. By issuing a draft report for comment the new Code change process will give participants a second look at the changes before reducing any need for further review at the ACCC level. We also support the consistency between the proposed Code change process, the existing Code consultation process and the ACCC authorisation process.

The more integrated involvement of the ACCC in the Code Change Process from the beginning in which it provides informal sign-off on 'procedural' type changes should in principle significantly streamline the consultation process. We remain concerned, however, that the process requires the ACCC to reduce its requirements for authorisation voluntarily.

Under the existing process the ACCC already has the right to decide that a Code change does not require authorisation. The ACCC has refused to do so when asked stating that the entire Code requires authorisation. It would be better for the ACCC to commit to the new process in the MOU to provide some certainty in the process.

Another key problem with the current authorisations process is that it allows the ACCC through 'conditional authorisations' to engage in de-facto 'market development', clearly exceeding its statutory role as competition regulator. It is unclear how the MCE proposed process addresses this issue unless limitations on the ACCC actions will be included in the legislative changes.

At a more fundamental level, the ERAA queries the need for any ACCC involvement in the Code change process. In our view, the TPA is simply one element of the legislative framework within which we are required to operate. If the ACCC believes that a proposed Code change will result in a contravention of the TPA then it should intervene accordingly. However, there would appear to be little justification for it to be given "pre-emptive" rights over and above those provided to other enforcement bodies.

The ERAA suggests that the MCE consider further streamlining of the Code change process after market reviews. During reviews the main issues are resolved as part of the reviews leaving the Code change process to be an essentially administrative process. Under normal conditions the changes would not qualify as minor for a shortened process, but the process could be altered to allow the Code changes to be published immediately as a draft report after a review.

The ERAA is aware that an alternative Code approach which would have a streamlined change process has been put forward by the NGF. This approach does address the concerns of the ERAA, and we think that the MCE should consider this approach for the longer term.

If you have any questions or wish to discuss any aspects of this letter please contact the Executive Officer of the ERAA, Mr Deane Russell on 0419 444 112 or by email to [drussel@eraa.com.au](mailto:drussel@eraa.com.au).

Yours sincerely,

*Unsigned electronic copy  
Original, signed copy in the post*

Deane Russell  
Executive Officer  
Energy Retailers Association of Australia