Care Inc. **Financial Counselling Service**
And the
CONSUMER LAW CENTRE OF THE ACT

28 April 2006

Mr Ian Primrose
Chief Executive Officer
Independent Competition and Regulatory Commission
PO Box 975
Civic Square ACT 2608

Also by E-mail: icrc@act.gov.au

Dear Mr Primrose

Prepayment Meters – Draft Industry Code
Draft Decision April 2006

We welcome the ICRC's approach in issuing a Draft Decision, rather than proceeding straight to a concluded view as previously indicated in the consultation timeline. We sincerely hope that this is indicative of a genuine intention on the part of the Commission to consider and investigate the strongly held views of those who advocate on behalf of low income and disadvantaged consumers.

Background:

Care Inc and the Consumer Law Centre have provided a number of comments, written and oral in relation to the proposed introduction of prepayment meters (PPMs) in the ACT, including:

- Throughout the review of Metrology procedures in 2005,
- In various meetings and discussions, particularly those convened by the ESCC and the ICRC
- A written submission responding to the release of a Draft Code in March 2006.

Relevant written material in the last two years is available on Care's web-site www.carefcs.org. This letter will also be placed on the web-site.

The clear views expressed in our comments to date are summarised as follows:

a) The marketing of PPMs will inevitably target low income and disadvantaged consumers;
b) No good case has been made for the introduction of PPMs in the ACT, with any addition of "choice" in the market weighing poorly against the risks that the products will provide an unsafe and unfair alternative for low income and disadvantaged consumers;

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c) In the event that PPMs are to be allowed, their operation should be dealt with in a detailed and robust consumer protection Code that meets at least the minimum safety mechanisms already in operation in the ACT; and
d) In the view of Care and the Consumer Law Centre the Draft Code proposed by Aurora Energy Pty Ltd was not sufficiently robust and required substantial amendment to prevent an erosion of existing consumer protection safeguards for low income and vulnerable consumers.

In the Draft Decision the ICRC has acknowledged a number of the issues that Care and the Consumer Law Centre has raised over the course of the last two years. Similarly it has acknowledged the views of the Essential Services Consumer Council. Unfortunately however none of the recommendations presented by Care and the Consumer Law Centre have been accepted. In addition, it is our view that the amended Code circulated as an appendix to the Draft Decision is substantially less acceptable that the Draft circulated in March 2006.

The Failures in the Draft Decision:

The Draft Decision appears to be based on a dogged determination that any and all competition will deliver benefits to ACT energy consumers. Care and the Consumer Law Centre believe that logic to be flawed. Where products or services target lower income consumers by design or implication, the resultant competition can be unsafe and unfair. It can also remove the impetus to address structural disadvantage[1].

Unfortunately there has been no detailed investigation of alleged potential benefits of PPMs in the ACT. The Draft Determination indicates that the ICRC has no plans to conduct any such investigation. Instead the main rationale is expressed in the Draft Determination as follows:

> *The Commission considers that, to date, the experience of consumers in Australia with PPMs suggests that PPMs are an appropriate and innovative new product to introduce to ACT energy consumers.*[2]

Leaving aside the fact that this reads more like a marketing blurb than a balanced judgment, Care and the Consumer Law Centre would like to be clear about what the experience is that the ICRC is so eager to accept:
- an incomplete trial in Tasmania (a significantly different market, with comparatively and in our view unacceptably little protection of low income and disadvantaged consumers) and
- the very early stages of roll-out in South Australia.[3]

In comparison other states have shown marked reluctance, even hostility to the proposal. For example Victoria has rejected prepayment meters and NSW has taken no further action for several years. Why then has the ACT chosen to take such a

[1] In particular, our recollection of the ESCC Forum on 22 November 2005 was that Aurora confirmed the unit cost for energy using PPMs is higher. The Draft Decision makes no reference to comparative costs.
[2] ICRC, Draft Decision Prepayment Meters Draft Industry Code (Report 11 of 2006) page 13
[3] Around 100 customers at the time the Draft was being prepared. Ibid page 11

different approach, with such a scarcity of information generally and nothing specific to this jurisdiction? This is precisely the sort of discussion that might have been expected in the Draft Determination but is almost entirely lacking.

As noted in the Background section above, Care and the Consumer Law Centre consider the amended Code annexed to the Draft Decision to be substantially less acceptable than the previous version circulated in March. Some examples of wind-back are:

> Reducing the compliance incentive to not "coerce" customers into accepting PPMs:
> In its comments on the previous draft Code in February 2006[4], the ICRC proposed that any attempt by a utility to coerce a consumer to take up a PPM would be a breach of a licence condition. It has withdrawn from that position citing reliance on the Harassment and Coercion provisions of the ACT Fair Trading Act (section 26) and the Trade Practices Act (referred to in the Draft as section 75AZN, although presumably arising from section 60). Care and the Consumer Law Centre believe this reliance to be seriously misplaced.
>
> At a local level we are unaware of any formal regulatory action under section 26 of the Fair Trading Act that has produced an outcome by way of order or enforceable undertaking. The ACCC is also clear that consumer complaint/referrals under the Trade Practices Act must satisfy a significant national interest test – which would be almost impossible to meet in relation to an ACT specific industry Code. The ICRC's retraction appears to push the responsibility for scrutiny and enforcement away to other less appropriate regulators.
>
> In support of the retraction the ICRC notes that from the end of 2006 it will lose the power to impose licence conditions in any event. Care and the Consumer Law Centre do not accept that of itself absolves the ICRC from delivering on its key functions before any transfer of powers.
>
> Inclusion of "undercharging" provisions allowing customers to be billed post pre-purchase and usage:
> The ability for utilities to recoup undercharging as a result of equipment malfunction is similarly a step backwards. The nature of the contractual interaction in a prepayment scenario is different to payment in arrears. If a PPM malfunction has resulted in overcharging it is entirely appropriate that the consumer be reimbursed. The same cannot be said of undercharging and the view of Care and the Consumer Law Centre is that such instances should result in loss borne by the utility. If the utility wants the benefit of being paid in advance, the risk of undercharge is one that it should carry. That is especially so when those to whom PPMs will be marketed are more likely to rely on lower incomes.

These examples of wind-back further detract from what was already a low base. There remain significant and un-addressed problems in a variety of areas, including:

[4] ICRC Issues Paper Prepayment Meters Draft Industry Code (Report 3 of 2006) page 6

- consent and disclosure rules
- the length of the PPM trial period
- the necessary level of emergency credit
- the fundamental unfairness and potential for exclusion involved in requiring consumers to pay for equipment testing in advance
- safeguards for customers experiencing financial difficulties and so on.

Conclusion:

It will be clear from the foregoing discussion that Care and the Consumer Law Centre do not agree with:

- the decision to allow the operation of PPMs in the ACT or, in the event that PPMs are allowed
- the suggestion that the Draft Code will deliver a safe, fair market outcome.

We reject the ICRC's conclusions and the reasoning behind reaching those conclusions as either insufficient, incorrect or absent. By not recognising the potential dangers that have been identified on behalf of groups that work directly with low income and disadvantaged consumers and fully investigating and responding to those dangers, the ICRC has in our view failed:

- to meet one of its key objectives, namely to protect the interests of consumers[5] and in this instance a class of vulnerable or disadvantaged consumers and
- to meet its obligations in relation to public consultation[6].

All of the evidence available so far suggests PPMs will more likely be targeted to low income households, that those taking up PPMs will pay more per unit for their energy usage and that the safety mechanisms currently available for consumers in hardship will be undermined by a deferral to "self disconnection", or sanctioned exclusion by another name. None of these outcomes are acceptable.

Care and the Consumer Law Centre urge the ICRC to either refuse to approve the Code, or revisit the consultation to ensure the issues of concern are properly addressed. Given the already advanced stage of the process, we accept that neither of these courses is likely and expect therefore that we will be lobbying to have the Code disallowed and/or to inform our client group about the potential dangers in taking up PPMs.

Yours sincerely,

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Care Inc

Amy Kilpatrick
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Consumer Law Centre

[5] Utilities Act 2000 section 3 (f)
[6] Utilities Act 2000 section 60 (3)