



19 September 2019

SUBMISSION ON AEMC CONSULTATION PAPER ON PROPOSED RULE CHANGE TO REGULATE CONDITIONAL DISCOUNTING

BACKGROUND

The Queensland Consumers' Association (the Association) is a non-profit organisation established over 40 years ago and which exists to advance the interests of Queensland consumers. The Association's members work in a voluntary capacity and specialise in particular policy areas.

The Association is a member of the Consumers' Federation of Australia, the peak body for Australian consumer groups, and works closely with many other consumer and community groups.

The Association has been particularly active for many years on energy issues in Queensland and nationally and is currently represented on the:

- Queensland Competition Authority's Consumer Consultative Committee
- Energy and Water Queensland Ombudsman's Advisory Council.

The Association is also a member of the Queensland Council of Social Service's Essential Services Consultative Group.

The Association has participated in, and made numerous submissions to inquiries etc. on energy issues conducted at national level, in Queensland, and in other states.

The Association also welcomes the opportunity to make this brief submission on the proposed rule change.

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GENERAL COMMENTS

For many years and in many places the Association has indicated its great concern about the high levels, relative to retailer cost, of many pay on time discounts and that in addition some late-paying consumers may also have to pay late payment fees. For example, the Association's submission on the 2016 interim report of the ACCC's Retail Electricity Pricing Inquiry said:

"Regarding conditional discounts etc., the Association considers that these should only reflect the actual costs incurred by the retailer by customer non-compliance with terms and conditions. This would increase transparency and comparability, is fairer, and will result in greater competition based on prices and costs. It is also an extension of the provision of the recent federal legislation on surcharging for use electronic payment methods (credit and debit cards, etc.) that the charge should reflect only the actual cost."

Therefore, the Association welcomed Recommendation 33 in the ACCC's final report viz:

“Conditional discounts should be no higher than the reasonable savings that a retailer expects that it will make if a consumer satisfies the conditions attached to the discount. Retailers should bear the onus of substantiating that the conditional discount is reasonable.”

and welcomes the Australian Government's subsequent request, and the subject of this consultation, to the AEMC for a rule change that will give effect to the ACCC's recommendation.

SPECIFIC COMMENTS

The Association considers that a long-term perspective is needed on this issue and the need for new regulation. Decisions should not be based only on current practices and conditions and recognise that the consumer detriment caused by penalties that exceed the cost to the retailer of customer non-compliance with terms and conditions is much greater than just that incurred by customers in retailer hardship programs.

As indicated above, the Association is very supportive of measures that result in any conditional discounts being no higher than the actual costs incurred by the retailer by customer non-compliance with terms and conditions.

Therefore, the Association supports the aims of the proposed rule change.

However, it is essential that any new rule should:

- Cover any type of penalty (including loss of a benefit) for non-compliance with the terms and conditions of an energy contract and prohibit any that exceed the reasonable cost to the retailer of the customer's non-compliance.
- Apply to all small customer market contracts for electricity, gas and dual fuel in all relevant jurisdictions.

This approach will provide consumers with much more effective protection against such penalties, many of which currently can only be enforced by consumers via litigation based on common law.

A new rule adopting the above approach would therefore potentially cover not only late payment discounts but also other financial penalties associated with late payment (for example loss of a fixed amount of money) and other financial penalties incurred due to non-compliance with a term or condition.

Therefore, it is essential that there be clarity in any new rule (or in associated guidelines) about the types of discounts, fees, charges, etc. and the situations which may result in them being considered being due to non-compliance with contract terms and conditions. However, it must be possible for these to be easily changed and others added as required.

The Association presumes that the following are likely to be within scope: forgone pay on time discounts or other financial benefits, cheque dishonour fees, and fees for failure of direct debit payments. However, there may be many others.

The Association also presumes that fees/charges for: account establishment, administration, certain types of payment such as credit card or cheque, paper bills, payment in person, early termination of contract, and disconnection/reconnection fees, are unlikely to be within scope¹.

¹ The size of some of these is currently regulated.

Any new rule should take account of situations in which energy is part of a contract which also includes other goods/services.

Because of the large number of retailers, contracts and possible penalties, a principles approach to what is a reasonable cost is appropriate for a new rule. However, it is essential that this be also accompanied by effective monitoring by the AER of compliance and that early action is taken in relation to non-compliance. Without this consumers will not have confidence in a principles based new rule.

If required, the Association can provide examples of failure to sufficiently and proactively monitor compliance, and deal effectively with non-compliance, has been very detrimental to consumers and reduced their confidence in principles based regulation. It is not sufficient, or acceptable to consumers, for regulators to rely only on the number of complaints received as an indicator of the possible extent of, and detriment caused by, non-compliance.

Also, a new rule should:

- Require the AER to issue guidelines to assist retailer compliance.
- Allow the AER to determine reasonable costs, if, after appropriate justification and consultation, this is considered necessary.

Consideration should also be given to whether certain types of consumers, for example those in retailer hardship programs, should be exempt from some or all penalties for non-compliance with a contract term or condition.

Regarding the form of penalties for late payment, the Association's submission on the 2016 interim report of the ACCC's Retail Electricity Pricing Inquiry said:

"The Association also considers that any energy retailer wishing to impose additional costs (or loss of benefit, etc.) on customers for late payments should do so primarily by charging a fair interest rate applied to the amount unpaid and the time the bill remains unpaid. Where appropriate in conjunction with a fixed actual cost related fee, this is the fairest way to charge for late payments. It is widely used by businesses, including by telcos (some of which also have minimum amounts before any charges apply)."

The Association requests that this approach to charging customers for late payment be taken into consideration in relation to any new rule and to any guidelines issues by the AER.