QCOSS Queensland Council of Social Service

Response to Queensland Competition Authority Draft Decision on proposed amendments to customer notification and consent provisions in the Electricity and Gas Industry Codes

About us

The Queensland Council of Social Service (QCOSS) is Queensland's leading force for social change, working to eliminate poverty and disadvantage. With more than 600 members, QCOSS undertakes informed advocacy and supports a strong community service sector.

QCOSS's key activities focus on providing effective policy advice, working to strengthen responsive community services and having productive partnerships with government, private sector, the media and the sector. This work is done with a Queensland free of poverty and disadvantage front of mind.

QCOSS is funded by the Department of Energy and Water Supply and Department of Justice and the Attorney-General to undertake an energy consumer advocacy project in Queensland. The purpose of this project is to advocate on behalf of Queensland consumers and particularly vulnerable and low-income households in relation to energy matters. This work is supported by an advisory group involving other key consumer groups in Queensland.

Introduction

QCOSS welcomes the opportunity to comment on the Queensland Competition Authority (QCA) Draft Decision on proposed amendments to the customer notification and consent provisions in the Electricity and Gas Industry Codes.

We note that this consultation was initiated by a request from the Minister for Energy and Water Supply in response to customer complaints to the Energy and Water Ombudsman Queensland. In this case, the complaints were made by customers on 'evergreen' contracts (open-ended contracts with no fixed term) who had not been notified that their discount period had ended until after it had already expired.

QCOSS is pleased with the QCA's decision to amend the Codes to require retailers to remind customers on evergreen contracts when their fixed-term benefits are to expire. However, we are concerned that the QCA has not proposed to amend the Code to require retailers to obtain explicit informed consent from customers before applying new and different benefits following the expiry of a fixed-term benefit. While we agree with the QCA's concerns about the potential for negative outcomes for customers who do not provide their explicit informed consent when requested, we believe that the long-term interests of consumers would be better served by requiring explicit informed consent in line with the Minister for Energy and Water Supply's request. We also consider that greater clarification of the information on which explicit informed consent is given is required at the commencement of evergreen contracts with fixed-benefit periods. Our views are outlined in further detail in this submission.

To discuss any aspect of this submission in further detail, please contact Carly Allen, Team Leader, Low Income Consumer Advocacy by phone on 07 3004 6900 or by email at carlya@qcoss.org.au.

Notification of a fixed-term benefit expiring

QCOSS supports the QCA's decision to add new clauses to the Electricity and Gas Industry Codes requiring that retailers advise customers on evergreen contracts of the impending expiry of a fixed-benefit period. As outlined in our submission to the Interim Consultation Paper, we believe that this amendment will enable customers to have a better understanding of their contract arrangements at the end of a fixed-benefit period. Advance notification is particularly important for low-income consumers who may closely manage their costs from bill to bill. It will also stimulate competition by providing a prompt to customers to compare market offers. However, we believe the proposed amendments could be further enhanced to ensure customers are fully informed about the status of their contract through this notification process. We suggest that the proposed clause also require retailers to advise customers of:

- The tariffs and charges that will apply if the customer does not take any action to alter their contract arrangements.
- The length of any new fixed-benefit period and the new terms and conditions that apply if the benefit is to be rolled over for a further period.

Explicit informed consent

QCOSS agrees it is not practical to require explicit informed consent for a benefit to be rolled over at the end of a fixed-benefit period, if the benefit is not altered. In this situation, customers would have already been informed at the time they entered the contract that benefits would be rolled over and would have provided their explicit informed consent for this to occur. To require explicit informed consent for a further fixed-benefit period would disrupt contract arrangements for which consent has already been given. At a minimum this would cause inconvenience to customers, and as the QCA has identified, could potentially result in these customers paying more than would otherwise be the case.

However, QCOSS does not agree that it is in the long term interests of consumers for retailers to be able to apply a new and different benefit for a further fixed period without obtaining explicit informed consent. While reviewing information about market offers available in Queensland we have observed that some retailers have evergreen contracts or 'plans' under which the discount for new customers may vary from time to time, and some assert the right to vary discounts for contracts already in effect.[1] Therefore it cannot be assumed that a new fixed-term benefit applied at the end of the first benefit period will always be the same as the expired benefit. It is understood that many consumers understand market offers primarily in terms of discounts. Therefore, a reduction in the discount provided to them represents a significant change to the terms of their contract, and making these kinds of changes without obtaining explicit informed consent is likely to generate customer confusion and complaints. If a different fixed-term benefit is applied this may also result in some customers forming a perception that they have been placed on a new contract. This confusion may deter customers from taking up more competitive offers from other retailers for fear of incurring an exit fee.

[1] For example, at the time of writing this submission, the QCA price comparator listed the EnergyAustralia Flexi Saver – Home (Online) offer as providing a discount of 11 per cent, effective at 16 August 2013, while the EnergyAustralia website at 11 April 2014 advertised the same offer as providing a 4 per cent discount. EnergyAustralia price fact sheets also state that promotional discounts may be reviewed after 12 months. The Click Energy Elite price fact sheet states that the discount is subject to change.

QCOSS acknowledges that requiring explicit informed consent to apply a different benefit after the expiry of a fixed-benefit period may result in disengaged customers paying a default price (which is likely to be a higher price) if they do not respond to retailers' requests for explicit informed consent. However, the current electricity market reform is based on the premise that customers engaging in the market drives competition, which in turn results in lower prices and improved products and service for customers. This is the basis for the Queensland Government proposal to remove retail electricity price regulation from 1 July 2015 (subject to certain preconditions being met). If customers are able to continue receiving a discount (albeit a lesser one than they originally agreed to) by doing nothing, there is less incentive for them to engage in the market. Where some customers may not respond to the initial request for explicit informed consent, they may be prompted to seek other offers when faced with the bill after the fixed-term benefit has expired. Allowing retailers to provide customers with a lesser benefit without requiring explicit informed consent may offset the cost and inconvenience of shopping around to the extent that it deters these customers from engaging in the market. Fewer customers engaging in the market reduces the incentive for retailers to make competitive offers. Therefore while disengaged customers may benefit from not having to give explicit informed consent for a new fixed-term benefit, the long term outcome for all consumers is higher prices, which is not in the long-term interests of consumers.

QCOSS recognises that low-income and vulnerable consumers are more likely to be disengaged from the energy market and is therefore concerned that this group of customers might be likely to pay higher prices if explicit informed consent is required to apply new fixed-term benefits. However, it is not only in relation to fixed-term benefits that customers being disengaged from the market can have adverse outcomes. Unless more is done to help low-income and vulnerable customers understand the market and actively engage in retail competition, they will always be disadvantaged in the market. QCOSS considers that this customer group is likely to be better served by mechanisms that support them to engage in the market, rather than by maintaining a regulatory framework that expects customers to be disengaged and allows retailers to benefit from this disengagement.

For clarity, QCOSS believes there are two ways explicit informed consent for new fixed-term benefits to apply at the end of a fixed-benefit period could be obtained by retailers:

- This could be achieved by clearly specifying, when obtaining explicit informed consent at the commencement of the contract, what benefit will be applied after the first fixed-benefit period expires. This would provide transparency to consumers and allow them to make more informed decisions upon entering into a new contract.
- If consent is not obtained at the commencement of the contract, then it would be necessary for the retailer to obtain explicit informed consent from the customer before applying a new benefit that is different from the customer's current fixed-term benefit.

Information to support explicit informed consent

QCOSS reiterates the concerns expressed in our previous submission about the quality of information provided to consumers about fixed-benefit periods when they first enter into a contract of this type. Price factsheets for offers with a fixed-benefit period typically state that the contract has no fixed term and/or that the contract will continue until terminated by the customer or retailer, and then also go on to state the length of the fixed-term benefit period in the same paragraph. The various terms used to describe the fixed-benefit period are not clearly defined in these factsheets, and these statements can appear contradictory to customers. This is likely to contribute to customers not fully realising they have a fixed-term benefit, or forgetting that their benefits will expire. We believe strengthening the clarity and consistency of this information from the outset would improve the understanding of customers when they are notified that their fixed-term benefits are due to expire.

QCOSS notes that the definitions of explicit informed consent in the Electricity and Gas Codes specify that information must be provided in plain English. We believe the statements included in many price factsheets about fixed-benefit periods (as described above) frequently do not meet this expectation. We would therefore suggest strengthening the requirements about how this information is communicated.

While we recognise the existing Electricity and Gas Code provisions make it difficult for the QCA to address information provided in price factsheets, both Codes contain a separate requirement for retailers to provide written disclosure statements at the commencement of market contracts. QCOSS proposes that these provisions could be amended requiring that written disclosure statements include information about:

- the length of time that the benefits offered under the contract will be provided
- the definitions of any special terms used to describe the benefit period
- the period during which an early termination fee may apply
- a statement about whether the contract will continue past the end of the fixed-term benefit period, and if so for how long.

While some of this information is already included in price factsheets, we believe the communication used is currently unclear, and likely to result in confusion about the contract arrangements. Presenting the information in a different way is likely to make it easier to understand for consumers, resulting in consumers who are better informed about the prospective contract arrangements and at what time it is advantageous to them to review other offers. Since this amendment would only require a change to the content of materials retailers are already required to provide to new customers (rather than imposing an entirely new obligation), we do not believe it would incur significant costs for retailers.

Early termination fees

We also recommend that clause 7.6(i) of the Electricity Code and clause 4.6(i) of the Gas Code be amended to require retailers to disclose the early termination fee payable during a fixed-benefit period under an evergreen contract. The current wording of these clauses refers only to fixed-term contracts. Retailers often charge early termination fees during fixed-term benefits under evergreen contracts, and as such these clauses no longer cover all types of contracts where an early termination fee may apply. This is a minor amendment to reflect developments in the retail market.