QCOSS Queensland Council of Social Service

Requested amendments to customer notification and consent provisions in the Queensland Electricity Industry Code – QCOSS submission

About QCOSS

The Queensland Council of Social Service (QCOSS) is Queensland's peak representative body for the community services industry. For more than 50 years QCOSS has been a leading force for social change to eliminate poverty and disadvantage. With more than 600 members, QCOSS supports a strong community service sector.

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. An overview of the consultation undertaken in regards to this submission is provided at Appendix A.

Introduction

QCOSS welcomes the opportunity to comment on the proposed changes to the Electricity Industry Code (the Code). We appreciate the prompt action by the Minister for Energy and Water Supply to address this issue for consumers, notwithstanding the anticipated introduction of the National Energy Customer Framework (NECF) in Queensland in the near future. We support amendments to the Code as required to improve consumer confidence and engagement in the energy market. Although the Code is likely to be superseded by the NECF, we presume that the Minister will want to retain the requested consumer protections regardless of the framework in place. Therefore we do not believe changes to the Code should be delayed in anticipation of NECF implementation. We strongly recommend that the Queensland Government ensure any recommended changes to the Code are also reflected in any future derogations to the NECF once it is introduced.

Customer issue to be addressed by Code amendments

QCOSS suggests that the starting point for considering the merits of the amendments requested by the Minister for Energy and Water Supply, and how they can best be implemented, should be identification of the customer issue to be addressed by the requested amendments.

In the letter reprinted in Appendix A of the Interim Consultation Notice, the Minister for Energy and Water Supply states that as a result of the identified gap in the consumer protection framework, consumers may not learn that their discount has expired until some months afterwards, when they receive their next bill. A media statement announcing the Minister's request to the QCA goes on to identify the customer impacts of such situations as higher costs and distrust in retailers.[1]

[1] http://statements.qld.gov.au/Statement/2013/10/19/minister-to-stamp-out-sneaky-power-pricing-tactics

QCOSS agrees that any reduction or removal of discounts without the customer's prior awareness will have negative outcomes for consumers. The belief that they are still receiving a discount may lead customers to make poor decisions about their consumption or energy plan, or deter customers from seeking a better offer. The resulting unnecessary costs are not only a source of irritation to customers, leading to loss of confidence in the market, but may also increase the risk of bill shock and payment difficulties for vulnerable customers. Any of these outcomes can impact on the efficiency of the retail market as a whole. Therefore, we would argue that there is strong merit in amending the Code to address this issue.

The Minister's request to the QCA also notes that retailers may offer new or substantially different benefits, including tariff prices and discounts, to customers who have been purchasing energy under an evergreen contract for some time, and requests that retailers be required to obtain explicit informed consent in this case. For clarity, the associated ministerial media statement describes this as a request to:

> *'ensure retailers obtain the explicit informed consent of customers when any changes are made to their contracts, including extending or adding new fixed benefits or plans, be they for discounts or price variations.'*

The Interim Consultation Notice issued by the QCA has interpreted this request as relating to explicit informed consent obtained at the commencement of a retail contract. However, reading the Minister's letter in conjunction with the media statement suggests that the intention is for explicit informed consent to be obtained at the time changes are made, not simply at the start of the initial contract, to ensure customers are made aware when discounts and benefits are due to finish. Further, the Minister's letter defines benefits as including tariff pricing as well as discounts. QCOSS therefore suggests that the issue appears broader than what is presented in the QCA's Interim Consultation Paper. QCOSS suggests the consumer problem the Minister is seeking to address in this instance is the uncertainty faced by customers when retailers are able to unilaterally vary prices or discounts. We strongly support the Minister's actions to resolve this issue.

QCOSS considers that the ability of retailers to unilaterally vary prices or discounts is a problem for consumers, which has two facets. The first is that current regulatory arrangements allow prices and discounts to be varied without prior notice to customers. This results in impacts similar to those described above in relation to the unanticipated expiry of fixed term benefits. We believe that there is merit in amending the Code to address this issue, and note that the QCA took a similar position in 2010 when it amended the Code to require advance notice of price changes.[2] At the time, the QCA found that Code provisions allowing retailers to retrospectively increase prices shifted risk on to customers and was not conducive to promoting a competitive market for either consumers or retailers. Unfortunately, subsequent amendments to align the Code with the NECF resulted in a reversion back to the original provisions. We believe that reintroducing this protection for consumers is important to ensure a strong and effective competitive market.

[2] Queensland Competition Authority (2010). *Final Decision – Amendments to the Electricity Industry Code requiring prior notice for price changes*. Available at: http://www.qca.org.au/files/ER-EIC-QCA-FinalDeconEIC-0312.pdf.

The second facet to this issue is the ability of retailers to vary prices during a fixed term contract, while still applying early termination fees if customers choose to respond to those price increases by switching retailers. This issue has been investigated by other consumer organisations, who are currently advocating for an amendment to the National Energy Retail Rules to prevent price increases during fixed term contracts. Research conducted by the Consumer Utilities Advocacy Centre (CUAC) found that 86 per cent of Victorian consumers thought it was unfair that retailers can change prices during a fixed term contract and more than 90 per cent supported regulatory change to prevent this from occurring. These results came from a survey sample that was fairly knowledgeable about the electricity market, with 80 per cent of respondents familiar with the terms and conditions of their contract and more than half aware that that regulations allowed price changes at the time that they entered their fixed term contracts.[3] The imbalance between the rights of retailers and consumers in this case generates cynicism, which can reduce consumers' willingness to engage in the retail market and lead to inefficient market outcomes. QCOSS believes there is merit in amending the Code to prevent changes to prices and other benefits during a fixed term contract or fixed benefit period, and that doing so is likely to improve the retail market in Queensland.

Regulatory context

The QCA has noted that the Queensland Government intends to implement the NECF in 2014, and suggested that any amendment to the Code would cease to have effect at this time unless the Government chooses to derogate from the NECF. QCOSS believes that this consideration should not deter the QCA from amending the Code. Public statements made by the Minister and comments made in documents published by the Department of Energy and Water Supply indicate that it is the government's intention to legislate derogations that will enhance consumer protections in the NECF. Therefore it can be expected that any amendment the Minister sees merit in making now will be retained following implementation of the NECF.

Electricity Code amendments

Notification of a fixed term benefit expiring

QCOSS agrees there is value in amending clause 4.4.4 of the Code to extend it to fixed benefit periods as well as fixed term contracts. If the fixed term benefits are offered under an evergreen contract, the requirements set out in this clause are equally as relevant as if it was a fixed term contract that was approaching expiry. Providing customers with a reminder that their benefit is about to expire and that other options are available may stimulate competition by prompting customers to investigate other offers.

Where fixed term benefits are offered under a fixed term contract, but expire before the contract does, the advantages of reminding customers that their benefit is ending are in avoiding bill shock and enabling customers to make more efficient consumption decisions. In this case amendments to clause 4.4.4 should include a requirement to advise customers of the date the benefit will expire,

[3] Consumer Utilities Advocacy Centre (2012). *Fixing up fixed term contracts: What are consumers saying?* Available at: http://www.cuac.org.au/index.php?option=com_docman&task=doc_download&gid=272&Itemid=30.

the amount of time remaining in the contract, early termination fees that would apply if they choose to end the contract, and the existence (if any) of other contractual options the retailer is prepared to offer without imposing an early termination fee.

While QCOSS supports amendments to clause 4.4.4, we believe other Code amendments are required to fully address the problem of unanticipated changes to contract benefits for consumers. These are discussed further below.

Explicit informed consent

QCOSS supports Code amendments to improve the information provided to customers prior to and upon entering into a market contract. Descriptions of contract and fixed benefit terms on price fact sheets may confuse customers and contribute to the problem of customers not realising when their benefit has or is about to expire. Two examples of information from price fact sheets about fixed benefit periods are provided below:

> '*This Energy Plan has no fixed term. At the end of the 2 year Fixed Benefit Period this Energy Plan, including all applicable discounts and account credits, will continue for a further 2 year Fixed Benefit Period, unless we contact you or the Energy Plan is otherwise terminated. An Early Termination Fee only applies for the first 2 year fixed benefit period*.'[4]

> '*The agreement continues until terminated by you or us. The Energy Plan period (fixed term benefit period) is 12 months. At the end of your Energy Plan period the benefits of your plan will end*.'[5]

Neither of these price fact sheets include information about what a fixed benefit period is, or specify in the description of the discounts that they apply for a limited period. Requiring changes to the way this information is presented, for example by separating information about the fixed benefit period from that about the contract term or requiring information about fixed benefit periods to be included with the details of the benefit, could enable customers to make better informed decisions when entering into market contracts.

Lack of transparency around the value of benefits is a broader issue, with the ACCC recently initiating action against AGL South Australia over what it considers to be misleading representations in relation to discounts.[6] QCOSS suggests that there is a general need to strengthen requirements about how information about benefits is presented on energy price fact sheets, to provide greater transparency around the value of benefits and the potential for them to change during the course of the contract.

It is also worth noting that the two price fact sheets quoted above present tariff information differently, with one providing annual costs at various consumption levels and the other unit prices. This is a consequence of changes made to the Code in July 2012 to align it with NECF that

4 http://www.agl.com.au/~/media/AGLData/DistributorData/PDFs/Q_PFS_R_E_2SEL5_g3p2f0a0b0bt0dd2.pdf
5 http://www.originenergy.com.au/files/necf/QLD_Electricity_Residential_Energex_DailySaverPlus.PDF
6 http://www.accc.gov.au/media-release/accc-takes-action-against-agl-south-australia-for-alleged-false-or-misleading-representations

effectively removed requirements that price fact sheets follow a standardised format, with clause 8.2.2 stating only that price fact sheets *may* take the form set out in the AER Retail Pricing Information Guideline. This makes it very difficult to effectively compare offers. Amending the Code to require a standardised price fact sheet format would be beneficial for consumers. However, as the AER Retail Price Information Guideline does not refer to fixed term benefits, making such an amendment in conjunction with changes to clarify information about fixed benefit periods would also require a change to the AER Guideline.

Price changes

QCOSS suggests the intent of the second part of the Minister's Code amendment request is broader than simply obtaining explicit informed consent upon entering into to a new fixed term contract. The Minister's letter and media release suggests that the requested amendments are to apply to changes made under pre-existing contracts. As noted previously, the Minister's media release clearly states that the request to the QCA aims to "*ensure retailers obtain the explicit informed consent of customers when any changes are made to their contracts, including extending or adding new fixed benefits or plans, be they for discounts or price variations*". Taking into account the context in which the Minister made the request, QCOSS infers that the consumer issue to be addressed by the requested Code amendments is unexpected changes to prices or discounts. If so, then this issue could be addressed by amendments to the provisions relating to price changes.

Based on the Minister's letter and the associated media statement, QCOSS believes that the intention of the Minister's request to require explicit informed consent is to provide customers with more certainty around changes to prices and discounts under existing market contracts. We strongly support this intention and suggest that it may be achieved by:

- Amending clause 4.12.6 to require that retailers notify customers of changes to any tariffs, charges or discounts that apply to their account, by individual written notice, at least 20 business days before they come into effect.
- Inserting a clause in the Code prohibiting changes to tariffs, charges or discounts during the period of a fixed term contract (or in the case of evergreen contracts with fixed term benefits, during the benefit period).

These amendments would directly address the problem of customers facing unexpected increases in bills due to changes to prices and discounts, including expiry of fixed term benefits, and the resulting perceptions of unfairness and disengagement with the market. Consequently QCOSS believes that these amendments are needed in order to meet the intent of the Minister's request to the QCA.

Other proposed amendments

QCOSS has consulted with the Queensland Consumers Association in developing this submission and is aware of their proposal that retailers should be required to provide information about the availability of standard retail contracts in a range of circumstances, such as when advising them of the impending expiry of a fixed term contract or fixed benefit period. We support this proposed amendment, with a requirement that retailers also advise customers where to find more information about contract types and a copy of the standard retail contract. The AER's Energy

Made Easy website includes an information hub for consumers which may be a useful reference point in this regard, although separate links to the standard retail contract may also be provided. Such a requirement may assist in improving consumers' energy literacy, and therefore their capacity to engage in the market.

Application to the Gas Industry Code

QCOSS believes that similar amendments to the Gas Industry Code are warranted. A brief review of offers listed on the QCA price comparator and retailer websites indicates that retailers are offering similar discount models for gas, and therefore it can be expected that the same issues are likely to occur. Anticipated increases in gas prices in the next few years increases the likelihood that such pricing tactics will become a source of dissatisfaction for consumers, as has been the case in the electricity sector. Applying the same amendments to the Gas Code at this time may avert future complaints as well as providing similar benefits for the efficiency of the market.

Conclusion

In summary, QCOSS recommends that the following amendments be made to the Code:

- Extend clause 4.4.4 to fixed benefit periods
- Insert additional sub-clauses in clause 4.4.4 clarifying the information to be provided to customers with a fixed term contract where the benefit expires earlier than the contract
- Amend clause 4.12.6 to require that retailers notify customers of changes to any tariffs, charges or discounts that apply to their account, by individual written notice, at least 20 business days before they come into effect
- Insert a clause in Chapter 4 of the Code prohibiting changes to tariffs, charges or discounts during the period of a fixed term contract (or in the case of evergreen contracts with fixed term benefits, during the benefit period)
- Amend clause 8.2.2 of the Code to standardise the information required in energy price fact sheets and improve the transparency of information provided about fixed term or other benefits

We also recommend that similar changes are made to the Gas Industry Code.

QCOSS is pleased to have this opportunity to comment on proposed amendments to the Electricity and Gas Industry Codes. We are encouraged by the Minister's commitment to developing a consumer protection framework that ensures Queensland customers are able to enjoy the benefits of a fair and competitive market. QCOSS looks forward to working further with the QCA and Queensland Government to progress this goal.

For more information, or to discuss this submission, please contact Nadine Lester, Energy Policy Officer, on 3004 6900 or nadinel@qcoss.org.au.

Appendix A – Engagement process

Engagement undertaken to develop this submission includes:

Organisation or person engaged with	Engagement outcome
Queensland Consumers Association	Discussed recommendations prior to drafting submission and provided verbal comments on draft submission.
Members of QCOSS Energy Reference Group	Opportunity to provide comment and input into development of draft submission.