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Your ref: RRC00028

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Mr Conrad Guimaraes

AEMC

PO Box A2449

Sydney South NSW, 1235

Dear Mr Guimaraes

Consultation on regulating conditional discounting

Thank you for the opportunity to make a submission on the proposal to regulate conditional discounting via a rule change.

Background to the Energy and Water Ombudsman Queensland (EWOQ)

EWOQ provides a free, fair and independent dispute resolution service for small electricity and gas customers across Queensland, and water customers in South East Queensland, who are unable to resolve a dispute with their supplier.

Feedback on the proposed rule change - regulating conditional discounting

In reviewing the consultation paper on regulating conditional discounting, EWOQ has provided the following responses based on our experience as an external dispute resolution scheme handling residential and small business energy customer complaints in Queensland.

As outlined in the consultation paper, the offering and acceptance of conditional discounting terms are significantly increasing within the energy retail sector however, discounts are only realised by 56% of customers due to the customer being unable to meet the requirements to access the conditional discount.¹ EWOQ considers this trend concerning and we support the introduction of regulation to further govern conditional discounts.

The structure of conditional discounts is often placing a customer in a position that they can not realise the discount benefit and if paid late, incur a fee or additional charge... This effectively means the customer is penalised twice and can result in a significant increase in the total bill amount through an increased base rate, the addition of fees and continual accrual on a higher amount where failure to pay in full is ongoing.

It is understood that consumers are provided and agree to the specified terms and conditions of a supply contract between the retailer and customer. It is also acknowledged that all parties to a contract should be aware of what they are agreeing to and what the repercussions are where they fail to meet these obligations. However, as energy is an essential service, with a diverse demographic requiring access to the network, greater care and transparency is required. Conditional discounting is not a prevalent practice in other industries and many consumers do not have the requisite knowledge or experience to comprehend the full impact of the terms and conditions as they relate to conditional discounts. EWOQ supports initiatives that remove ambiguity of terms and offers that result in increased transparency for consumers.

¹ ACCC Retail Electricity Pricing Inquiry — Final Report June 2018

Offer Comparability

- a) Will comparability issues for conditional discount offers continue to be material with the introduction of the Code?
- b) What other factors may be present that contribute to the difficulty of offer comparability?

EWOQ considers it too pre-emptive to determine whether the introduction of the Code will remove comparability issues for conditional discount offers. However, we anticipate that compliance with the Code will ensure retailers are advertising their products and offers with the same base information provided to consumers which would allow for easier comparability. Variables, such as conditional discount offers, may still lead to consumer confusion, however, the requirements set out under section 14 of the Code should mitigate this.

Significant challenges exist within the sector, mainly due to confusion in the terms and conditions of arrangements with providers. Reasons for this include the broad demographical reach in which the information is required to be understood by, the complex nature of the different pricing structures and offerings amongst retailers and the complicated language that has been previously used in conveying contractual terms to consumers. The improvement from the introduction of legislative parameters will undoubtedly be assessed in due course, however there is scope to further improve the consumer experience through the introduction of the proposed rule change.

EWOQ has received customer complaints where a retailer offers a significant discount on electricity pricing in exchange for payment of bills on time. However, on further investigation, it was determined that the base rate was at an inflated amount. These customers believe they are receiving a good deal at a lower cost without the full understanding that the base rate is inflated and that a competitor may offer a lower discount rate and also a lower base rate. With regulation of conditional discounts and the implementation of the Electricity Retail Code of Conduct, it is likely there would be an increase in market competition, as offerings are more transparent, and customers are more able to determine best value for money. It is recommended that in the drafting of the proposed rule change, due consideration is given to enhancing rather than restricting a competitive energy sector market.

Excessive Penalties

- a) Do stakeholders agree with the characterisation of substantially higher prices paid by customers when they miss conditional discount conditions as excessive "penalties"?
- b) What customer groups are most at risk of failing to realise conditional discounts? How significant are these groups as a proportion of the energy customer base? (e.g. [i] Should payment plan customers be considered? [ii] Hardship customers make up 1.4 per cent of all customers according to AER data).
- c) Do stakeholders have views on the ability of vulnerable customers to anticipate their energy plan costs and ability to pay?
- d) What internal rules do retailers have in place to ensure customers on a hardship program do not lose any benefit or discount for late payment (in line with the commitment announced on 7 August 2017 noted above)? Are retailers still committed to this approach now that the DMO has been introduced?

The use of excessive penalties for failure to realise the benefits of a conditional discount appears to be accurate due to the nature of the increased amount that is required to be paid and the potential for the customer to be penalised twice, as outlined above.

Failure to realise conditional discounts would arguably impact a broad demographic, however, it is likely that affluent consumers have an increased opportunity to benefit from conditional discounts as they have easier access to funds to ensure payment is made in time. Essentially, this means that those customers who may be struggling to make payments or who have been identified as in financial hardship are unlikely to realise the benefits of conditional discounts. They are also more likely to be significantly impacted by the inability to receive a discount on their bill and then face the potential to be financially penalised twice. Data shows that almost 60% of customers in financial hardship are unable to meet the conditions to receive a pay on or before due date discount.² This demonstrates that a significant proportion of customers who are low income earners or are in financial hardship do not have access to the same value for money energy deals as other sectors of the population. This also disempowers that proportion of the market from getting out of their difficult financial position as they are having to spend increased funds to maintain access to energy compared to someone who has the financial ability to take advantage of a discount offering and therefore paying a lower amount overall.

Question 3: Key data needed to establish materiality

EWOQ is unable to provide the requested data. Why not can we please explain why not and what we could do in the future if we knew what was wanted?

Question 4: Energy offers not covered by the code

(a) Do stakeholders consider gas offers should be subject to conditional discount limitations, in line with electricity offers?

(b) How has the introduction of the Code impacted the prominence and magnitude of gas offers?

Complaints from gas consumers make up a small proportion of the complaints that EWOQ receives and therefore we have limited quantitative or qualitative data to determine whether conditional discount issues are prevalent in this sector. However, in the interest of alignment, EWOQ supports the introduction regulation to conditional discounts as they relate to gas consumption.

Question 6: Assessment Framework

(a) Do you agree with the assessment framework outlined by the Commission?

(b) Are there any other considerations the Commission should take into account?

EWOQ supports the assessment framework based on the information provided however, the framework should balance consumer protections with over regulation. It would be useful to further understand what the measures are around the three assessment framework criterion.

In the assessment, consideration should be given to the disproportionate burden and allocation of risk between retailer and consumer.

If you require any further information regarding our submission, please contact Miss Jonnita Gillam, Principal Policy Officer on 07 3087 9404 or jonnita.gillam@ewoq.com.au.

Yours sincerely



Jane Pires

Energy and Water Ombudsman

² ACCC Retail Electricity Pricing Inquiry — Final Report June 2018