



9 October 2017

**SUBMISSION ON AEMC CONSULTATION PAPER:
NATIONAL ENERGY RETAIL AMENDMENT (NOTIFICATION OF END
OF FIXED BENEFIT PERIOD) RULE 2017**

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 especially 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
- Energex's Customer Council.

The Association is also a member of the Queensland Council of Social Service's Essential Services Consultative Group and the Queensland Energy Minister's Consumer and Industry Reference Group, and was a member of Origin Energy's National Consumer Consultative Council.

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 has a strong interest in policies and practices likely to improve the effectiveness of markets and especially in the need for effective consumer protections and ongoing effective consumer demand created by many engaged consumers making well-informed choices.

The Association's achievements regarding informed consumer choice include:

- Leading the national campaign for greater price transparency in the food and grocery market that in 2009, following a recommendation from the 2008 ACCC inquiry into the competitiveness of retail prices for standard groceries, resulted in large bricks and mortar supermarkets, and online sellers of food and grocery products being required to provide consumers with the unit price (price per unit of measure) of many pre-packaged products.
- With other consumer bodies, making submissions that resulted in the final report of the Harper Review of Competition published in 2015 emphasising the importance of informed choice and in Recommendation 21¹ — Informed choice – stating that *governments both in their own dealings with consumers and in any regulation of the information that businesses must provide to*

¹ Accepted by the Commonwealth government.

consumers, should draw on lessons from behavioural economics to present information and choices in ways that allow consumers to access, assess and act on them.

Therefore, the Association welcomes the opportunity to make this submission. The contact person is Ian Jarratt, email ijarratt@australiainmail.com

GENERAL COMMENTS

As indicated above, the Association has a strong interest in policies and practices likely to improve the effectiveness of markets, and especially in the need for effective consumer protections and ongoing effective consumer demand created by many engaged consumers making well informed choices.

Providing consumers with information can facilitate informed consumer choice. Accordingly, the Association supports in principle the proposal to require retailers to provide prior notification of the end of fixed term benefits.

However, the Association emphasises that a rule change will only be beneficial if the information provided is useful to consumers and is well provided, presented and publicised.

In this regard the Association emphasises the need to:

1. Include in decision-making on a proposed rule change:
 - relevant concepts and research results on consumers' information needs and usage from behavioural economics and other relevant disciplines
 - the results of consumer testing of proposed information provision requirements.
2. Recognise and take into account that other information a retailer may include with a notification may influence consumer awareness and use of any information required by a rule.
3. Consider including in a rule change specific minimum requirements designed to achieve high levels and consistency of wording/layout, prominence, legibility and location of the required information.
4. Monitor the effectiveness of the information provided, and where necessary make changes to improve its effectiveness.

Prior notification of fixed term benefits

On several occasions in recent years the Association has advocated in submissions etc. to various national and other inquiries that energy retailers should be required to give prior individual notification to market contract consumers of the end of fixed term benefits.

Since July 2014 in Queensland this has been required via the Queensland Code or, since 2015, has via the Queensland derogation Rule 48A of the NERR.

The Association was, and remains a strong supporter of the introduction of this Queensland requirement, which in practice currently is only relevant to consumers in the Energex distribution area in south east Queensland.

Therefore, the Association welcomes this long overdue proposal to provide energy customers in other jurisdictions with prior notification of, and information about, changes in fixed period benefits.

However, as outlined later in this submission, the Association **recommends** that the proposal be considerably modified to increase its effectiveness.

The Association also **recommends** that if the current proposal is not suitably modified, the current Rule 48A be retained and continue to apply to Queensland and that another Rule be created for other jurisdictions covered by the NERR.

Prior notification of increases in tariff and charges

In Queensland since 2015 under Queensland's derogation Rule 46A of the NERR (see below) energy retailers have been required to notify consumers at least 10 business days prior to any increase in tariffs or charges applying to market contracts and standing offers with unregulated prices.

8 Rule 46

Rule 46(4)—

omit, insert—

(4) The notice must be given—

Schedule 5 National Energy Retail Law (Queensland) Regulation 2014 Page 104 2014 SL No. 339

- (a) if the variation results in an increase in the tariffs and charges applying to the customer—at least 10 business days before the variation to the tariffs or charges are to apply to the customer; or
- (b) if the variation results in a decrease in the tariffs and charges applying to the customer—as soon as practicable, and in any event, no later than the customer's next bill.

The Association was, and remains a strong supporter of the introduction of this Queensland requirement, which in practice currently is only relevant to consumers in the Energex distribution area in south east Queensland.

Therefore, the Association notes and regrets that the present proposal does not also require prior notification of changes in tariffs or charges.

This is because:

- All the arguments in the proposal for providing prior notification of the end of fixed period benefits also apply to changes in tariffs and charges, especially to tariffs/prices.
- The proposal says “The proposed rule is designed to ensure customers are made aware of changes that impact the price of their electricity and gas bills” and that it is “in line with best practice regulation principles ensuring transparency in contractual requirements which have a significant financial impact”.
- Page 7 of the proposal states that a problem is that consumers “feel “hoodwinked” by their provider for changing the price without notice”.
- Market contracts usually give the retailer the right to change tariffs/charges at any time.
- Changes in tariffs/charges, especially tariffs, can have large impacts on bills.

The Association also regrets that the only discussion of tariff changes in the proposal is in relation to the CUAC and CALC rule change request in 2013 (not implemented) “to prohibit retailers from including terms in contracts that allow them to change their price during the fixed term or fixed benefit period of market retail contracts”.

The Association considers that provision of prior information about changes in tariffs/charges is a completely different issue to prohibiting price changes in certain situations.

Therefore, the Association **recommends** that the proposal be modified to include prior notification of changes in tariffs and charges, and unlike the Queensland derogation that this should apply to **any**² change, not just to increases.

The Association also **recommends** that if the current proposal cannot be suitably modified, the Australian government should within 2 months propose a new rule change designed to address the need for prior notification of changes to tariffs/charges.

² The reasons for this are as indicated in our response to Question 3.

In further support of the above recommendations, the Association also notes that requiring retailers to give prior notification for the end of fixed period benefits, but not for price changes, could result in greater use by retailers of price changes to achieve their commercial objectives.

Monitoring and enforcement of compliance

The Association emphasises the need for compliance with the existing Queensland derogations, and with any rule changes that require prior notification to consumers of changes to benefits/tariffs/charges, to be regularly and effectively monitored and compliance enforced by regulators. This should also include the accuracy of information about the notification requirements provided, or available, to consumers, including in/on contracts, websites, Energy Price Fact Sheets, and advertisements.

And, since most consumers are now not aware of prior notification requirements, and likely to remain so, regulators should themselves actively monitor what is occurring and **not** use consumer complaints to indicate levels of compliance.

SPECIFIC COMMENTS

Question 1 Significance of Issue

To what extent do you consider that lack of information regarding the end of a fixed benefit period has led, or will lead, to a negative effect on the overall competitiveness of the market?

As indicated earlier, since July 2014 energy retailers in Queensland have been required to provide consumers with prior notification of the end of a fixed benefit period for all market contracts.

But, we are unaware of any quantitative in depth investigations into the impacts of the Queensland requirements. However, the Queensland government and parliament consulted with stakeholders prior to Queensland adopting the NECF and obtaining the derogation in Rule 48A. Furthermore, and importantly, any assessment of its impact should recognise that all retailers may not have complied fully with the requirements since 2014.³

Nevertheless, the Association considers that the requirement will have had a positive impact on consumer engagement and participation in the market and on competition.

This is because the previous situation when retailers only advised consumers of benefit expiry via hard-to-notice information on a bill received after the event, which is the situation in other jurisdictions, is ineffective for many consumers.

Also, if a benefit change and a price increase are shown on the same bill, many consumers may be aware, from media coverage, of a general increase in prices and will wrongly assume that all the changes in the bill are due to a price increase.

To facilitate informed choice (which is a key influence on competition) consumers need, and are entitled, to information about the expiry of fixed term benefits prior to their expiry.

Question 2 Gas

Should the proposed rule change apply to market retail energy contracts including gas, or only to market retail electricity contracts? Why?

Yes, because the problems are similar to those with electricity.

Question 3 Exemptions

a) Are the proposed exemptions clear, appropriate and workable?

No.

³ These situations highlight the need for effective monitoring and enforcement by regulators of compliance with legislation and for in depth evaluation of its impacts.

1. Non-financial benefits should not be exempt. They are of value to consumers and influence consumer choice.

2. As with the Queensland derogation that currently is rule 48A, there should be no exemption if the consumer would not be financially worse off or not incur any “detriment”.

This is because the objective is to encourage consumers to look at alternatives to their current situation and other changes in the market, either within the existing retailer’s offers or the offers of other retailers, are highly relevant to consumers irrespective of whether a change in their benefit does not result in them being worse off. For example, even if the “do nothing” option with the current contract results in no change in the amount paid, it is highly likely that other offers from the existing or other retailers will be more beneficial for the consumer.

b) What potential improvements could be made? Why?

See above.

Question 4 Commencement Date

a) Would a 1 January 2018 commencement date result in materially higher costs than a later commencement date?

No comment.

b) If so, what is the soonest practical date for commencement?

No comment.

c) Should commencement be staged? For example, if full implementation on 1 January 2018 is not practical should retailers still be required to send out a standard notice with basic information from that date?

If full implementation on 1 January 2018 is not practical we support retailers being required to send out a standard notice with basic information from that date.

Question 5 Assessment Criteria

a) Are there any other matters that the Commission should consider in assessing the proposed rule change against the NERO test?

We are not aware of any given that the NERO test is very specific.

b) Are there any particular factors that the Commission should consider in assessing the proposed rule change against the consumer protection test?

Misleading/deceptive conduct.

Question 6 Information disclosure

a) Has the proponent identified the right notice period and set of information likely to be required by consumers?

Period of notice

The period of prior notice can have an important influence on consumer use of the information to be provided.

The proposed requirement (no more the 40 and no less than 20 business days) is the same as that for the end of contracts and the requirements of the Queensland derogations on prior notification of the end of fixed term benefits. However, we are unaware of any evidence to suggest that these are better than alternatives.

Before final decisions are made on these periods we **recommend** that evidence to support them be obtained from existing research or knowledge of consumer behaviour. If such information is not available, we recommend that research to obtain it be commissioned.

Information required by consumers

We have major concerns about this aspect of the proposal.

1. “Benefit” should be clearly defined.
2. The proposal should be capable of covering a wide range of existing and possible future “benefits”. For example, a contract with no fixed term but which provides for a fixed price or a specified price change that ends after a specific period of time is as much a benefit as a pay on time % discount that ends after a specific period.
3. In addition to “the nature of the benefit that is available during the fixed benefit period” the notice should also clearly state the nature of the benefit that will apply after the fixed benefit period if this is specified in the contract and the consumer does not make other arrangements i.e. the “do nothing option”. For example, if the contract provides for a % discount that at the end of the specified period will be lost, reduced or increased, this should be indicated clearly to the consumer. This is a basic consumer right.
4. Any information required to be provided about what will happen at the end of a benefit period should refer only to what is in the contract i.e. the “do nothing” option, not what other offers are available from the retailer. Any information the retailer chooses to provide about other options should be provided quite separate to that required by the rule.

b) Are the additional quantifications of dollar amounts for past and future benefits as set out in section 5 and 6 of the draft rule clear, appropriate, workable and cost effective to produce?

No. We strongly support the provision of information that it easy for consumers to notice, see, understand and use. However, we have major concerns about the usefulness, etc. of the current proposal for providing information about the past value of a benefit and impact on the consumer of doing nothing at the end of the benefit period.

Our concerns include:

- It may not take account of, or be relevant to, all types of benefits and benefit changes.
- It only indicates potential not actual realised or realisable benefit value. This is major concern because, if the consumer did not comply with associated terms and conditions and is likely to do so in future, the information provided may be misleading and not result in well informed choices.
- If the consumption estimate used for the calculations is based on only one or two bills and/or consumption estimates, the resultant \$ benefit figures may deviate markedly from the consumer’s actual situation.
- The use of annual \$ figures may lead to confusion with estimated annual cost information obtained from comparison websites such as Energy Made Easy.
- It is much more beneficial for consumers to be provided with the \$ value of the benefit or change in benefit, rather than the annual figures from which the actual values then have to be calculated.
- No minimum or specific requirements on how the retailer is to provide this information. We believe that there should be minimum requirements for the wording to be used and for prominence and legibility (taking account of the needs of consumers with vision disabilities), or that a specific format be required. This will help ensure that any information provided is easy for individual consumers to notice, read and understand and, (because of the resultant greater consistency in how the information is displayed) facilitate the work of the many community sector workers/volunteers who help many consumers, especially vulnerable and disadvantaged, to make decisions about energy contracts.
- Lack of specification regarding whether values are be provided inclusive or exclusive of GST, or both. We believe that any values provided should only be inclusive of GST.

Therefore, we believe much more research and testing with consumers should to be done on the best information to provide to consumers about benefit values before any final decisions are made about this.

However, if the required research and testing cannot be completed within a reasonable period, the proposed rule change should still go ahead but only require the retailer to describe what the benefit was

(not in \$) and describe what will change (not in \$) if the consumer does nothing i.e. does not contact their current retailer or change retailer.

If research and testing shows clearly that the provision of \$ value information about benefits and benefit changes would be beneficial, the rule can then be appropriately modified.

Question 7 Barriers to competition

Would the proposed rule materially increase the likelihood of consumers seeking and obtaining better deals in retail energy markets?

Yes, but only if modified as suggested above.

Question 8 Costs and Benefits

Will the long term benefits to consumers of the proposed rule change exceed the additional costs that would pass through to them?

Yes.

And, the costs should be low, especially since many retailers should already have in place the systems and procedures required to comply with the Queensland's existing requirements.

Question 9 Form of rule

Are there amendments that could be made to the proposed rule to better achieve the intent of the rule change request?

Yes. The proposed rule change should be expanded, or a new rule changed proposed, to include prior notification of any change in tariffs/charges.