



Queensland University of Technology

Faculty of Law

2 George Street GPO Box 2434

Brisbane Qld 4001 Australia

Phone +61 7 3138 2707 Fax +61 7 3138 1519

Email [law\\_enquiries@qut.edu.au](mailto:law_enquiries@qut.edu.au)

[www.law.qut.edu.au](http://www.law.qut.edu.au)

22 January 2010

Mr Gary Henry  
Queensland Competition Authority  
GPO Box 2257  
BRISBANE QLD 4001

*electricity@qca.org.au*

Dear Mr Henry

**QUEENSLAND COMPETITION AUTHORITY  
DRAFT DECISION  
PROPOSED AMENDMENTS TO THE ELECTRICITY INDUSTRY CODE REQUIRING PRIOR  
NOTICE FOR PRICE CHANGES  
DECEMBER 2009**

The Authority proposes to make changes to the Code requiring retailers to notify customers of impending price changes at least 10 days in advance of the new prices taking effect.

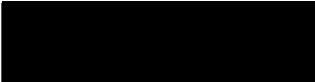
The CCCL supports the Authority's proposal and in particular the Authority's recognition that retrospective price changes have the potential to damage consumer confidence and perceptions of fairness in the energy market.

Aspects where the CCCL has some concerns relate to the process of ensuring advance notice of a price change is effectively communicated to consumers. The CCCL has addressed its concerns in more detail in the response below. The CCCL will look forward to hearing more from the Authority on these matters.

Thank you for the opportunity to provide comment on the proposal.

For further questions in relation to this submission, please contact me on 07 31381230 or 0407 648 389, or email [kathryn.mellick@qut.edu.au](mailto:kathryn.mellick@qut.edu.au).

Yours sincerely,

  
Kathryn Mellick  
Consumer Advocate, Electricity

## **INTRODUCTION**

### **1. About the Credit Commercial and Consumer Law Program (CCCL)**

The Credit Commercial and Consumer Law Program (CCCL) is a component of the Law and Justice Research Centre at the Faculty of Law at the Queensland University of Technology. The CCCL was established in March 2004 to be a source of expertise on consumer law issues with the objective of promoting a fair, safe and efficient marketplace for consumers.

The CCCL aims to promote a high standard of public debate about the law and regulation of consumer protection generally, as well as to inform decision-makers in government, business and the broader community.

The CCCL's work on consumer issues in the national energy market is led by the Consumer Advocate, Electricity, one of the specialist projects within the CCCL. The Consumer Advocate represents the CCCL's work to build a deeper level of insight and knowledge about issues concerning residential, business, rural and remote small-end consumers of electricity.

## **REQUIREMENT FOR ADVANCE NOTICE**

### **2. General comments**

The CCCL supports the decision to require retailers to give all electricity consumers advance notice of price variations. Advance notice avoids confusing consumers and facilitates a range of positive benefits in the way consumers interact with the market. Advance notice also allows customers the opportunity to budget for the extra costs or adopt strategies to decrease their use of electricity. Importantly, advance notice affords consumers the opportunity to explore their options in the market to switch and substitute lower priced electricity sourced from a cheaper provider. These resulting benefits are consistent with the objective of the Code and substantially outweigh the small costs of the proposal in promoting competition in the Queensland electricity market.

## **PROCESS FOR PROVIDING ADVANCE NOTICE**

### **3. Notification Period**

The Authority proposes that notice should be provided to consumers of price variations within a minimum of 10 business days prior to any change in electricity prices. The CCCL does not support the proposed notification period.

The notification period should be fair and reasonable. It should also be perceived as fair and reasonable by consumers. These standards can be assessed against a number of criteria. For instance, consumers should not be disadvantaged in receiving communication of a price change prior to the change taking effect. Consumers should also have sufficient time in which to make the necessary adjustments to adjust their budget and usage patterns to compensate for the change in price.

Anecdotal evidence indicates the proposed period is inadequate to accommodate reasonably foreseeable delays in consumers receiving notification of the price variation. This causes some consumer segments to be unfairly disadvantaged. Delays in receiving mail, for example, can be caused by a number of factors. These include delays in mail delivery often reportedly experienced by consumers. Other delays can also occur when customers fail to collect their mail either because of an absence or illness. In real terms, these delays present a high risk that no notice is received by these consumers. This outcome reduces the net benefits of providing advance notice of a price change to consumers.

The proposed notification period also fails to facilitate the capacity of consumers to absorb changes in electricity prices. Household budgets are coming under increasing strain. A growing number of Queensland energy consumers are reportedly experiencing difficulty in maintaining access to the supply of essential services. Many consumers are experiencing energy hardship. The costs of basic essential services such as water and electricity are also increasing dramatically. General media and other reports indicate that the general cost of living and business is rising while the elasticity of the wallets of Queensland energy consumers continues to contract rapidly. Longer notification periods afford consumers the opportunity to make enquiries and have sufficient time to take steps to either switch providers or to make changes in their household budget and usage patterns to manage the impact of the proposed price variation.

While the Financial Counsellors Association of Queensland has proposed a period of 14 business days, the CCCL considers that a notification period of at least 20 business days in advance of a price change (as proposed by the Queensland Council of Social Services) would adequately address these issues and realise some of the benefits of a competitive market to consumers.

In making this recommendation, the CCCL notes the concern expressed by Integral about the interaction of changes in the regulated tariff and market offers. The CCCL suggests that alternative approaches should be explored by the Authority, in consultation with retailers, to meet this concern. Alternative approaches should facilitate the capacity of retailers to provide longer notification periods to consumers of impending price changes.

#### **Recommendation**

The CCCL recommends that the Authority adopt a notification period of at least 20 business days in advance of a price change. The CCCL suggests the Authority explore, in consultation with retailers, options for facilitating the capacity of retailers to provide longer notification periods of impending price changes.

#### 4. Notification Format

The CCCL does not support the proposal to allow retailers to give notice of price variations to consumers via a newspaper advertisement. The CCCL recommends that the minimum term and condition requiring written notice of a price change should be satisfied by way of written communication which:

- is addressed to a specific consumer, and
- provides a clear message about a price change, details about the variation and a detailed explanation of the implications of the change for a consumer.

Notice about price variations in the form of newspaper advertisements and websites relies on the capacity of time and financially challenged consumers to seek out the information they require to be aware of and to understand the impending variations. In effect, this option shifts the costs of receiving notice to consumers, which the CCCL considers to be unfair and unreasonable. The options proposed by the Authority present a highly unreliable process for ensuring all energy consumers (including culturally and linguistically diverse consumers, as well as consumers who are financially challenged) are adequately informed of impending changes in electricity prices.

Contemporary communications literature indicates that direct mail in the form of individual written communication offers substantial benefits. This form of communication enjoys high rates of success over more traditional media such as newspapers advertisements. It also enjoys a high success percentage in both delivery and opening rates. It provides an effective vehicle for communicating information to consumers in a way that is meaningful and has the high chance of actually bringing the impending changes in price to the direct attention of consumers.

Bills and statements also generally enjoy a high delivery and opening success rate. However, communication uncertainties arise when these vehicles are used to include a message prompting consumers to take further steps to find out more about a pending price change. Messages of this nature must compete with other information on the bill. This competition crowds the communication and dilutes the message about the steps the consumer needs to take to know more about the price increase.

This proposed process also creates the potential for confusion about the price variation by consumers, particularly vulnerable consumers such as the elderly, or culturally and linguistically diverse consumers. Consumers have long been recognised as having a finite capacity and tolerance to absorb certain volumes of information delivered via any one means of communication. Crowding bills and statements with further information about future advertisements on price variations presents a high risk that the notice will be overlooked or misunderstood by consumers.

Success factors in communicating with consumers are also enhanced when the message is refreshed on a regular basis. However, the options proposed by the Authority largely rely on consumers to remember to buy a newspaper or to take steps to get access to the relevant information on a website. No mechanism is included to ensure consumers clearly understand

and remember to act to find out more about the price variation. Most notably, the process does not include a mechanism to ensure that consumers without access to a website are identified and are not unfairly disadvantaged in the process.

The CCCL agrees with observation made by the Queensland Council of Social Service that the approach proposed by the Authority would mean that consumers who are most vulnerable to increases in electricity prices are less likely to actually receive information about the changes. Experience in consumer behaviour tends to suggest that the alternative process proposed by the Authority is a highly unreliable form of communication. It is also a highly unreliable means for prompting action and understanding by consumers about price variations.

The CCCL also notes that the success rate of direct mail is further increased when used in conjunction with other tools which combine to deliver a consistent, timely and clear message. Communication initiatives using direct mail addressed to specific household members in addition to digital and traditional media and education initiatives have proven to be highly effective.

The CCCL considers that the true value of the notice requirement will only be realised if retailers adopt communication vehicles and strategies that have a well demonstrated success rate in delivering messages that are read and understood by consumers. This issue is particularly relevant in an environment where the general media is becoming more cluttered and consumers have finite and scarce amounts of time and financial resources, and capacity to absorb information.

The CCCL believes that written notice in the form of direct mail should be adopted as the compulsory minimum standard for communicating price variations to consumers. In light of current experience, retailers should also be entitled to go beyond the minimum standard and use additional media to communicate price changes to consumers. These could include newspaper advertisements as well as other forms of digital media and education initiatives designed to help consumers to understand their bills and to become more informed about strategies to reduce their energy consumption.

Given the increasing diversity in the energy consumer profile, the Authority may also like to consider allowing consumers to choose the direct mail vehicles through which they receive notice. For instance, some consumers may prefer to receive notices via email, which would reduce regulatory costs for retailers. Others may prefer notices to be delivered via Australia Post, while some may prefer notifications via mobile text messaging services which direct consumers to a website providing detailed information about the price variation. The CCCL suggests that the Authority might allow retailers to ask consumers to nominate their preferred means for receiving written notices about price changes.

### **Recommendation**

The CCCL recommends that written notice in the form of direct mail (addressed to a specific consumer) should be established as the compulsory minimum standard for retailers to communicate price changes to consumers.

The CCCL recommends that retailers should be allowed to ask consumers to nominate the form of direct mail via which they wish to receive notices from the retailer about price variations. These choices should include: notice provided via Australia Post, email or mobile text messaging services which direct consumers to a website that provide details about the proposed changes. This approach offers consumers a choice in the notification process, accommodates the diverse communication needs of various consumer segments and potentially minimises regulatory compliance costs for retailers in providing advance notice to consumers of price variations.

## **5. Notification content**

The public benefit is best served by ensuring clarity in regulation. The Authority proposes the written communication should include the date of the price change, details of the new price and details of how the increase will specifically affect the customer. The Authority also proposes that full details of how the price changes have affected the customer should appear on the next bill received by the customer. However, ambiguity arises on what constitutes "full details" for the purposes of compliance with the requirement. This raises the issue on whether the proposal will fully achieve the desired market outcomes sought to be produced through the amendment. The CCCL also questions why "full details" predicting how the price change will affect the customers cannot be provided on the notice.

The CCCL recommends that further criteria should be provided to clarify the standard on what constitutes the provision of "full details" in the notice. Greater clarity on the standard expected of retailers by the Authority facilitates a consistent approach in compliance by retailers and delivers a range of benefits for both consumers and retailers. Importantly, clear criteria work to minimise confusion for consumers, minimise the potential for unfairness to emerge in industry practices, reduce unnecessary compliance costs for retailers and the Authority, and strengthen public and industry confidence in the market. Clear criteria about the content of the notice should also lead to desired compliance attitudes and behaviours, and enhance the capacity of the Authority to effectively monitor industry compliance and act, if and when necessary.

Additional criteria that might be considered by the Authority for the purposes of retailers providing "full details" about the affect of the price change on customers should include information about:

- the current tariff rate per kilowatt hour

- the expected rate after the price change
- the percentage by which the tariff will change
- the date the price change will take effect
- a 'dollar figures' guesstimate showing the impact of the price change on the consumer's future bills, which is based on their average quarterly usage patterns
- information on how customers can obtain information to reduce their energy usage
- information to inform customers that they have the right to switch energy providers, as well as details on whether any penalty will apply to early termination of an existing contract and, if so, the amount of the penalty that will apply.

The suggested criteria would address information asymmetries in the market. Most notably, the suggested details would assist consumers to understand the impact of the impending price variation and strengthen their capacity to make informed decisions about the options they wish to pursue to manage their energy costs. The CCCL also considers that these details should be provided by the notice, and not later in the next bill received by the customer.

#### **Recommendation**

The CCCL recommends the Code should provide clear criteria to guide retailers on giving "full details" about the affect of the price change on customers. The criteria for "full details" should include information about:

- the current tariff rate per kilowatt hour
- the expected rate after the price change
- the percentage by which the tariff will change
- the date the price change will take effect
- a 'dollar figures' guesstimate showing the impact of the price change on the consumer's future bills, which is based on their average quarterly usage patterns
- how customers can obtain information to reduce their energy usage
- the rights of consumers to switch energy providers, as well as details on whether any penalty will apply to early termination of an existing contract and, if so, the amount of the penalty that will apply.

These details would assist consumers to understand the impact of the impending price variation and strengthen their capacity to make informed decisions about the options they wish to pursue for managing their energy costs. The CCCL also considers that these details should be provided in the notice, and not later in the next bill received by the customer

## OTHER MATTERS

### 6. Effect of non-compliance with the advance notice requirement

The CCCL appreciates that non-compliance with the advance notice requirement will constitute a breach of the Code. However, the proposal fails to clarify the status of the proposed price change in terms of its validity in circumstances of non-compliance. The proposal also fails to clarify the rights of consumers in circumstances of non-compliance, as well as setting out their obligations in relation to whether the new price will be payable to the retailer. The CCCL recommends that the proposal should include a clause which clarifies that:

- a variation in the price of the electricity to be charged to a consumer must not be imposed unless advance notice of the price variation is provided to the consumer in accordance with the Code.
- a failure by a retailer to provide advance notice of a price variation in accordance with the Code constitutes a breach of the Code and the proposed price change will be invalid.
- retailers will not be entitled to demand payment by consumers of any resulting difference purported to be charged by the retailer for electricity costs flowing from the proposed price variation unless prior notice of the variation has been given to the consumer in accordance with the Code.

#### Recommendation

The CCCL recommends the Authority should clarify the consequences of non-compliance with the advance notice requirement. The CCCL recommends that the proposal should include a clause which clarifies that:

- a variation in the price of the electricity to be charged to a consumer must not be imposed unless advance notice of the price variation is provided to the consumer in accordance with the Code.
- a failure by a retailer to provide advance notice of a price variation in accordance with the Code constitutes a breach of the Code and the proposed price change will be invalid.
- retailers will not be entitled to demand payment by consumers of any resulting difference purported to be charged by the retailer for electricity costs flowing from the proposed price variation unless prior notice of the variation has been given to the consumer in accordance with the Code.

## 7. Requirement to report proposed price variations

The CCCL supports the proposal by the Financial Counsellors Association of Queensland that the Authority should require retailers to notify the Authority of proposed price variations prior to notifying consumers of the variation. Notice of this nature would support effective reporting and monitoring of the industry by the Authority, and enable it to identify trends and act in response to emerging issues as and when they arise.

### **Recommendation**

The CCCL recommends the Authority should require retailers to notify the Authority of proposed price variations prior to notifying consumers of the variation. The timeframe for notification should be determined in consultation with retailers.