

Queensland Competition Authority

Interim Consultation Notice

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

November 2013

We wish to acknowledge the contribution of the following staff to this consultation notice:

Adam Liddy

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SUBMISSIONS

Closing date for submissions: 4 January 2014

Public involvement is an important element of the decision-making processes of the Queensland Competition Authority (QCA). Therefore submissions are invited from interested parties concerning the requested amendments to customer notification and consent provisions in the Queensland Electricity Industry Code. The QCA will take account of all submissions received.

Written submissions should be sent to the address below. While the QCA does not necessarily require submissions in any particular format, it would be appreciated if two printed copies are provided together with an electronic version on disk (Microsoft Word format) or by email. Submissions, comments or inquiries regarding this paper should be directed to:

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Confidentiality

In the interests of transparency and to promote informed discussion, the QCA would prefer submissions to be made publicly available wherever this is reasonable. However, if a person making a submission does not want that submission to be public, that person should claim confidentiality in respect of the document (or any part of the document). Claims for confidentiality should be clearly noted on the front page of the submission and the relevant sections of the submission should be marked as confidential, so that the remainder of the document can be made publicly available. It would also be appreciated if two copies of each version of these submissions (i.e. the complete version and another excising confidential information) could be provided. Again, it would be appreciated if each version could be provided on disk. Where it is unclear why a submission has been marked 'confidential', the status of the submission will be discussed with the person making the submission.

While the QCA will endeavour to identify and protect material claimed as confidential as well as exempt information and information disclosure of which would be contrary to the public interest (within the meaning of the *Right to Information Act 2009* (RTI)), it cannot guarantee that submissions will not be made publicly available.

Public access to submissions

Subject to any confidentiality constraints, submissions will be available for public inspection at the Brisbane office, or on the website at www.qca.org.au. If you experience any difficulty gaining access to documents please contact us on (07) 3222 0555.

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EXECUTIVE SUMMARY

On 17 October 2013, the QCA received a request to amend the Electricity Industry Code (the Electricity Code) from the Minister for Energy and Water Supply, the Honourable Mark McArdle MP. The Minister requested amendments in response to an issue raised by the Energy and Water Ombudsman Queensland (EWOQ). EWOQ had received complaints from electricity customers on evergreen contracts that had been notified their discount period had expired in a note on a bill received after it expired.

The Minister requested that the Electricity Code be amended so that:

- retailers are required to remind customers that their fixed-term benefits are going to expire before they do
- retailers are required to obtain explicit informed consent from customers for any benefits that apply for a fixed period.

This consultation notice outlines the Minister's request, provides information about the regulatory environment, and invites submissions from stakeholders on the proposed amendments.

While the Minister's request was in relation to the Electricity Code, we are interested in whether stakeholders consider that the issues raised apply equally to the supply of reticulated natural gas, and whether similar amendments proposed by the Minister for the Electricity Code should be made to the Gas Industry Code.

Submissions close on 4 January 2014.

1 INTRODUCTION

On 17 October 2013, the QCA received a request to amend the Electricity Industry Code (the Electricity Code) from the Minister for Energy and Water Supply, the Honourable Mark McArdle MP (see **Appendix A**). The Minister requested the Electricity Code be amended so that retailers are obliged to advise customers receiving a fixed term benefit of the imminent expiry of that benefit, similar to the requirements of clause 4.4.4 of the Electricity Code, which applies to fixed-term contracts. The Minister also requested the Electricity Code be amended to require retailers to obtain explicit informed consent with respect to fixed term benefits.

1.1 Industry code change process

The proposed amendments to the Electricity Code would require changes to retailers' processes and billing systems. In addition, they exceed requirements in other states. For these reasons, we consider that the requested amendments are potentially of a significant nature and may materially affect stakeholder interests. As a result, we are obliged under the *Electricity Act 1994* and the *Electricity Regulation 2006* to undertake a formal public consultation process, the minimum requirements of which are to:

- publish an interim consultation notice and accept submissions
- publish a draft decision and accept submissions
- publish a final decision proposing amendments to the industry code
- have the amended Electricity Code approved by the Minister
- publish a notice in the government gazette.

1.2 Relevant documents

The following references provide important information we are required to consider when proposing to amend the Electricity Code:

- the Minister for Energy and Water Supply's request to amend the Electricity Code, which is at **Appendix A**
- the *Electricity Act 1994* and the *Electricity Regulation 2006*, which can be accessed from the website of the Office of the Queensland Parliamentary Counsel at www.legislation.qld.gov.au
- the current version of the Electricity Code, which can be accessed from our website at www.qca.org.au.

2 REQUESTED AMENDMENTS TO THE ELECTRICITY CODE

2.1 Background

In south-east Queensland, over 70% of customers are supplied energy under a market contract, where certain terms and conditions are negotiated between the customer and their retailer. Market contracts frequently provide a percentage discount on all or part of the energy bill.

The types of market contracts have broadened as competition has matured in Queensland. Most retailers offered fixed-term market contracts of 1-3 years duration when full retail competition commenced in 2007. In recent years, customers have increasingly preferred contracts that do not lock them in to a particular contract period. Retailers have responded by offering a range of contracts without a termination date, also known as 'evergreen' contracts.

Benefits offered under these evergreen contracts can be ongoing, or set for a predetermined fixed period. When a fixed period benefit ends, the customer can pay the regular contract price (less any ongoing discounts), negotiate with the retailer for a further discount, or accept an offer from another retailer.

Regulatory context

The Electricity Code requires a retailer to disclose all terms and conditions to a customer when signing a contract. The Electricity Code also requires a retailer to notify a customer in advance when a fixed-term contract is due to expire. However, when a fixed benefit period ends, this is treated under the Electricity Code as a price change, and retailers must inform the customer no later than their next electricity bill.

The Interdepartmental Committee on Energy Sector Reform recommended the Queensland Government implement the National Energy Customer Framework (NECF) in Queensland in early to mid-2014. The Queensland Government accepted this recommendation and we understand it is working towards implementing the NECF.

The National Energy Customer Framework was introduced as part of a range of energy market reforms agreed to in 2006. After extensive consultation with governments, consumer groups, distributors and retailers, the final legislation was passed in 2011. The NECF has been adopted in the ACT, New South Wales, South Australia and Tasmania. In Queensland the Government has accepted the recommendation of the Interdepartmental Committee on Energy Sector Reform to adopt the NECF in early to mid-2014, after consideration of options that will ensure that protections for customers in regional Queensland are delivered.

If implemented, the NECF will regulate the retail energy industry in Queensland and supersede the Electricity Code. As a result, it is possible that any amendment of the Electricity Code would cease to have effect once the NECF is implemented. For this reason, we have included the requirements under the NECF in the discussion of the proposed amendments to the Electricity Code. However, it is possible for the Queensland Government to legislate an exception to the NECF for Queensland customers (called a derogation) to ensure these provisions stay in force if and when the NECF is adopted.

2.2 Amendments requested by the Minister for Energy and Water Supply

The Minister requested amendments to the Electricity Code in response to an issue raised by the Energy and Water Ombudsman Queensland (EWOQ). EWOQ had received complaints from

customers on evergreen contracts that had been notified their discount period had expired on a bill received after it expired.

EWOQ investigated one case and established that the retailer in question:

- advertised the discounts on its website as being for a limited period
- included the limited discount period in the terms and conditions of the customer's supply contract
- specified in the contract that customers would be notified of price changes no later than their next bill

After examining the Electricity Code, EWOQ concluded that retailers were not required to notify customers in advance that benefits under their agreement were due to expire, and that their actions appeared in accordance with the Electricity Code. However, EWOQ considered this a gap in customer protections under the Electricity Code, and wrote to the Minister to inform him of the issue.

The Minister requested that the Electricity Code be amended so that:

- retailers are required to remind customers that their fixed-term benefits are going to expire, in a similar way that they are told of a fixed-term contract expiring
- retailers are required to obtain explicit informed consent from customers for any benefits that apply for a fixed period.

2.2.1 Notification of a fixed-term benefit expiring

The Minister did not provide proposed wording for the Electricity Code that would require retailers to advise customers when a fixed term discount is about to expire. However, he suggested that clause 4.4.4, which requires retailers to inform customers when a fixed-term contract is expiring, would be a useful starting point.

Clause 4.4.4 of the Electricity Code states:

4.4.4 Expiry of fixed-term contracts

No earlier than 40 business days and at least 20 business days prior to the expiry of a fixed-term contract, a retail entity must advise a small customer of the:

- (a) date on which the fixed-term contract will expire;*
- (b) terms and conditions for the provision of customer retail services to the small customer by the retail entity which will come into effect after the expiry date if the small customer does not elect before that date to enter into a new retail contract with the retail entity or another retail entity for the small customer's premises;*
- (c) existence of the other contractual options that may be available for the purchase of customer retail services by that small customer at that premises and a general description of each; and*
- (d) ability of the small customer to choose the retail entity from whom it wishes to purchase customer retail services.*

This clause only applies where a retail contract is ending. It appears the intent of the Minister's request is to amend the Electricity Code to require retailers to remind customers:

- of the end of their fixed benefit periods 20-40 business days before they expire
- of the terms and conditions that will apply after the benefit periods expire
- that they are able to choose their retailer.

While retailers are not obliged to remind customers prior to the end of a fixed discount period, any change to a discount constitutes a change in the price paid under the contract. Clause 4.12.6 of the Electricity Code does require retailers to inform customers of any change in the price paid under their contract no later than their next bill.

The NECF specifically addresses fixed benefit periods and allows for retailers to apply early termination fees where a customer cancels a contract before a fixed benefit period expires. However, retailers are not required to remind customers before a fixed benefit period expires. Retailers face the same obligations with respect to notification of price changes and the ending of contracts under the NECF as they face under the Electricity Code.

Obligations under the Electricity Code would exceed those under the NECF if the Electricity Code is amended in accordance with the Minister's request.

2.2.2 Explicit informed consent

The Minister also requested the Electricity Code be amended to require retailers to obtain explicit informed consent with respect to fixed term benefits. The Electricity Code requires retailers (including their marketing representatives) to gain explicit informed consent of a small customer when they sign a negotiated retail contract. Retailers are also required to provide small customers with a written disclosure statement which specifies, among other things, "the prices, charges, tariffs and service levels" under the negotiated contract, as well as how these may be changed during the term of the contract¹.

The requirements of the written disclosure statement do not specifically mention fixed benefit periods. However, the benefits received during the fixed period would ultimately determine the prices paid by customers. While the provisions are possibly ambiguous, they could be interpreted as requiring fixed benefits to be outlined in the written disclosure statement. The NECF has similar requirements to the Electricity Code, and also does not specifically mention fixed benefit periods in the list of information a marketer is required to provide a customer.

2.2.3 Application to the Gas Industry Code

Queensland reticulated natural gas customers are supplied under similar terms and conditions to electricity customers. Like the Electricity Code, the Gas Industry Code does not oblige retailers to remind customers in advance of a fixed benefit period expiring. Similarly, the written disclosure clauses do not specifically mention fixed benefit periods.

2.3 Stakeholder feedback

The QCA invites stakeholders' views on the merits of the amendments requested by the Minister and, where stakeholders feel they are warranted, how the additional obligations can be best implemented.

We are also interested in whether stakeholders consider that similar amendments to the Gas Code are warranted and the reasons why or why not.

¹ The Electricity Industry Code clause 7.6.

GLOSSARY OF ACRONYMS, TERMS AND CONDITIONS

C

The Codes The Electricity Industry Code and Gas Industry Code

E

Electricity Code The Electricity Industry Code

EWOQ The Energy and Water Ombudsman Queensland

G

Gas Code The Gas Industry Code

M

the Minister The Minister for Energy and Water Supply, the Hon. Mark McArdle MP

N

NECF The National Energy Customer Framework

APPENDIX A: ELECTRICITY CODE AMENDMENT REQUEST



Office of the Minister for Energy and Water Supply

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CTS No. 24924/13

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17 October 2013

Dr Malcolm Roberts
Chairman
Queensland Competition Authority
GPO Box 2257
BRISBANE QLD 4001

Dear Dr Roberts

I am writing to ask the Queensland Competition Authority (QCA) to amend the Electricity Industry Code (the Code) to address an issue brought to my notice by Mr Forbes Smith, the Energy and Water Ombudsman Queensland.

Mr Smith wrote to me on 11 September 2013 regarding a potential gap in consumer protections under the Code. The issue he raised is that retailers are offering 'energy plans' providing a benefit such as a discount for a fixed period to customers who are on negotiated retail contracts with no fixed period. (A copy of Mr Smith's letter, its annexures and legal advice is enclosed).

Because the relevant obligation in the Code (clause 4.4.4) applies only to the expiry of the negotiated retail contract itself rather than of a fixed term benefit under the contract, retailers are not required to advise customers of the imminent expiry their fixed term benefit, prior to the benefit expiring. As a result, customers may not discover their discount has expired until they receive their next bill, which may be some months after expiry.

I am proposing that the Code be amended so that retailers are obliged to advise customers receiving a fixed term benefit of the imminent expiry of that benefit. The existing drafting of clause 4.4.4 of the Code regarding 'Expiry of *fixed term contracts*' would seem to be a useful starting point. In particular the timing of the obligation to provide advice no earlier than 40 business days and at least 20 business days prior to the expiry of a fixed term contract seems appropriate.

A new clause should not, in my opinion, be limited only to negotiated retail contracts that have no fixed period, since the same issue can arise where a negotiated retail contract has an expiry date that differs from the expiry date of a fixed term benefit.

I would also ask the QCA to consider an amendment addressing an associated matter.

The Code currently requires retailers to obtain the explicit informed consent of a small customer as a precondition to, amongst other things, entering into a negotiated retail contract with that customer.

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With the increased prevalence of negotiated retail contracts with no set expiry date (evergreen contracts), the situation arises where a retailer might offer a new or substantially different fixed term benefit to a small customer who has been contracted with that retailer for a considerable period of time.

Given fixed term benefits typically include tariff pricing and discounts and may include optional tariff types, requiring retailers to obtain customers' explicit informed consent in that respect seems reasonable from a customer protection perspective and not unduly onerous for retailers.

Your consideration of these matters is greatly appreciated.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Mark McArdle', written over a printed name and title.

Mark McArdle MP
Minister for Energy and Water Supply

Enc: Letter from Mr Forbes Smith, annexures and legal advice, dated 11 October 2013