



public interest
ADVOCACY CENTRE

**PIAC submission to the AEMC Notification of
the end of a fixed benefit period rule change
consultation paper**

10 October 2017

Introduction

The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights;
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the (then) Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from NSW Trade and Investment for its work on energy and water, and from Allens for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

Energy and Water Consumers' Advocacy Program

The Energy + Water Consumers' Advocacy Program (EWCAP) represents the interests of low-income and other residential consumers of electricity, gas and water in New South Wales, developing policy and advocating in energy and water markets. PIAC receives policy input to the program from a community-based reference group whose members include:

- Council of Social Service of NSW (NCOSS);
- Combined Pensioners and Superannuants Association of NSW;
- Ethnic Communities Council NSW;
- Salvation Army;
- Physical Disability Council NSW;
- Anglicare;
- Good Shepherd Microfinance;
- Financial Rights Legal Centre;
- Affiliated Residential Park Residents Association;
- Tenants Union; and

- Mission Australia.

Notification of the end of a fixed benefit period rule

PIAC welcomes the opportunity to comment on the AEMC's consultation paper for the Notification of the end of a fixed benefit period rule.¹

PIAC supports the intent of the proposed rule and has previously raised related issues in a submission to the ACCC's electricity supply and prices inquiry, stating that "retailers should provide better deals for end-of-contract customers by retaining a discount and better information provision about contracts ending".²

In PIAC's view, for this rule change to be effective it should result in consumers being provided with better information, not just more information.

Bearing in mind that the notifications may be going to less actively engaged consumers, specific and standardised (or as least consistent) information, which assists them to compare offers between different retailers, will be key to avoid exacerbating the confusion that has already discouraged many consumers from engaging in the first place.

To this end, PIAC recommends that this rule change apply to both electricity and gas, have targeted exemptions and be implemented as quickly as possible.

Question 1: Significance of the issue

1A) 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?

In PIAC's view, the lack of understanding and awareness of the end of fixed benefit periods is one of a number of factors that has compromised the competitiveness of the energy market, contributing to the poor consumer outcome of higher than necessary costs.

Because retail energy customers are moved to less competitive offers at the end of fixed benefit periods, often without notification, consumers who do not engage in the competitive retail market are at risk of paying more than they need to for essential energy services.

The lack of information provided by some retailers is as much a symptom of an uncompetitive market as is it is a cause. Retailers invest more in on marketing, research and providing discounts to acquiring customers than to rewarding the loyalty of existing customers who have not attempted to seek out a better retail deal. These customer acquisition costs are then borne by loyal and less engaged customers through what is sometimes referred to as a 'lazy tax'.

¹ AEMC, Consultation Paper, National Energy Retail Amendment (Notification of the end of a fixed benefit period) Rule 2017, September 2017, <<http://www.aemc.gov.au/getattachment/9fb63fa3-91fe-4dcf-82fc-25ef039cb317/Consultation-Paper.aspx>>.

² PIAC, *Overpriced and underwhelming: a retail market that has failed consumers*, 5 July 2017, <<https://www.accc.gov.au/system/files/Public%20Interest%20Advocacy%20Centre.pdf>>.

Retailers themselves have identified these issues, with AGL chief executive Andy Vesey noting that “The bulk of my customers that are not disloyal never hear from me... and are totally uninformed about what’s in their own best interests.”³

This disproportionately impacts disadvantaged and vulnerable consumers. Not only do these consumers experience the greatest impact from high prices for essential energy services, they are often also the least able to engage effectively with the complexities of the competitive retail market. It requires time, resources and knowledge, and/or support, to understand billing terminology, compare offers and access to the internet.

These issues have been compounded by recent increases in retail energy bills. Increasingly, the impact of higher energy prices is not limited to low income households. In their July 2016 *Consumer Pulse* report, Choice reported that over 80% of both high and low income households are concerned about their electricity bills.⁴ As a result of price increases after July 2017, numbers of consumers who have not previously identified as ‘hardship customers’ may experience payment difficulty for the first time. These may include families on middle incomes, people experiencing mortgage stress, and self-funded retirees.

Given the increasing prevalence of payment difficulty associated with energy bills, it is vital to ensure consumers are not charged even higher prices by being pushed unknowingly on to expensive offers at the end of fixed benefit periods.

PIAC concurs that improved end of fixed benefits period notification is likely to assist consumers avoid higher retail bills.

Considering the amount of complex marketing information that consumers receive about energy, it is conceivable that many will not engage with this new communication. While the notification is an important step, more will need to be done to achieve the desired outcome of having fewer disengaged consumers on avoidably high energy deals.

To ensure that the proposed rule is effective, PIAC suggests the AEMC should review the outcome to understand if it has been sufficient to address the issue.

Recommendation 1

That the AEMC measure the impact of this rule change as part of their annual retail market reviews, to ensure it has been effective at helping consumers avoid ending up on unnecessarily expensive retail offers.

³ Andy Vesey quoted in: Ben Potter, “Big Power neglects best customers, AGL boss says”, *Australian Financial Review*, 2016, <<http://www.afr.com/news/big-power-neglects-best-customers-agl-boss-says-20160823-gqzbgq>>.

⁴ Choice, *Consumer Pulse: Australians’ Attitudes to Cost of Living 2015-2016*, 2016, pg. 8.

Question 2: Gas

2A) Should the proposed rule change apply to market retail energy contracts including gas, or only to market retail electricity contracts? Why?

PIAC contends that the proposed rule change should also apply to gas contracts. For many dual fuel consumers, the impacts described in response to Question 1 are caused by the total cost of energy, not by electricity as a separate issue to gas bills.

While gas discounts tend to be less than for electricity, there are still fixed term benefits. Therefore, the same protections should apply to both.

Further, PIAC understands that consumers who bundle electricity and gas tend to focus more on the cost of electricity than on gas, suggesting that they are less aware of their gas consumption and costs. Now that gas is no longer the cheaper option for services used by many consumers, they will need to become more engaged with their gas use if their overall household energy costs are to remain as low as possible.

Recommendation 2

That the proposed rule change apply to all market retail energy contracts, including gas.

Question 3: Exemptions

3A) Are the proposed exemptions clear, appropriate and workable?

The intentions of the proposed exemptions are clear, however the first exemption is not appropriate, and the second is not appropriate in its current form.

PIAC contends that the first exemption should be removed, and the second should be revised to apply only when a consumer's benefits have not materially changed.

3B) What potential improvements could be made? Why?

PIAC contends that the AEMC should make a preferable rule to that proposed.

The proposed rule states that the notification requirements should not apply:

- "a) in relation to a non-financial benefit available to a customer during the fixed benefit period; and
- b) if, on the expiry of the fixed benefit period, the customer would be financially no worse-off than had the period not expired."⁵

PIAC contends that the first exemption should be removed.

⁵ The Honourable Minister Josh Frydenberg MP, Minister for the Environment and Energy on behalf of the Australian Government, *Australian Government Rule Change Proposal to the Australian Energy Market Commission: Ensuring customer awareness of changes in retail market contracts, Customer notification at the end of bill periods*, 2017, 3, <<http://www.aemc.gov.au/getattachment/4cb096d8-b6e9-4402-9f6a-914e13ffb8fd/Rule-change-request.aspx>>.

While the removal of non-financial benefits may not have as great an impact on consumers, it does still represent a change to the service or products provided.

Further, the removal of some non-financial benefits may still have a financial impact on a consumer where it involves a product or service that the consumer will now have to pay for.

For these reasons, consumers should still be notified of the expiry of non-financial benefits.

PIAC supports the intent of the second exemption to avoid unnecessary notifications, but recommends the wording be modified to support the intent of the proposed rule. A customer being ‘...financially no worse-off than had the period not expired’ is too broad and may be misapplied in ways that do not reflect the intention of the rule to avoid a negative outcome for the customer.

For example, a discount may be sustained for an indefinite period after the end of the fixed benefit period, then modified at a time when the ‘end of fixed benefit period’ arrangements do not apply so the customer is never notified of the change.

Another interpretation is that changes to other terms relating to a discount (or other benefit), mean a consumer is indeed financially no worse off, but only for as long as their circumstances and the nature of their energy use remain unchanged.

Most concerningly, retailers could use this exception to make a change that does not disadvantage a consumer financially at the end of the period but does at a later date. For example, reducing the discount percentage at the same time as reducing the energy charge might leave a customer being in the same position financially at the end of a discount period, but a rate increase six months later may mean the customer is worse off (than they would have been) with a lower discount.

In any case, the notion of a consumer being ‘financially no worse off’ is unnecessarily broader than, and may be materially different to, the matter of whether or not a consumer’s benefits have materially changed.

PIAC therefore recommends that the proposed exemption b) should be revised to apply only when a consumer’s benefits have not materially changed, for clarity and to avoid misapplication.

Recommendation 3

That the AEMC make a preferable rule that:

- a. removes the first proposed exemption, and*
- b. modifies the second proposed exemption, by removing reference to a consumer being ‘financially no worse off’. Appropriate alternate wording may be, for example, “...for as long as the same benefits that were applied during the fixed benefit period remain in place”.*

Question 4: Commencement date

4A) Would a 1 January 2018 commencement date result in materially higher costs than a later commencement date?

4B) If so, what is the soonest practical date for commencement?

PIAC supports the proposed commencement date of 1 January 2018. Given the significance of the issue outlined in response to Question 1, PIAC contends that the reforms associated with the proposed rule should be implemented as soon as possible.

While PIAC acknowledges that there will be some work required by retailers to update their systems and procedures, we contend this should not be prohibitive.

Firstly, the retailers providing good practice customer service already have the required information. PIAC concurs with this statement in the rule change proposal, “[t]he rule proposed should not require adding any additional information than is presented in bills for customers under good retail practice”.⁶ Given that any retailer required by this rule to produce additional information is arguably not currently observing by good retail practice, any additional short-term compliance costs are merely a cost of doing good business.

Secondly, PIAC understands that retailers already have the communication systems in place. The proposal requires that the notice be given in writing and suggests that the written notification be consistent with section 319 of the National Energy Retail Law.⁷ This section requires that any document served on a person be served either in person, by post or electronically.⁸ Given that this law applies to retail bills, all retailers are currently required to deliver billing information to every one of their customers in one of those ways. Therefore, they already have the systems in place to directly serve written information to their customers on a regular basis and the extra information provision required by the proposed rule would not require substantial new systems.

Given the consumer detriment associated with current end of period practices, PIAC contends any costs are outweighed by the benefit of implementing the rule as soon as possible.

Considering that energy retailers routinely oppose reforms on the basis of questionable claims regarding systems costs, if they claim that costs preclude them from complying with a 1 January 2018 start date, then they should provide evidence as to why this is the case.

Recommendation 4

That the rule commence on 1 January 2018.

⁶ Ibid, 12.

⁷ Ibid, 3.

⁸ NERL, s319.

4C) 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?

As stated above, PIAC contends that the rule should commence on 1 January 2018, and does not see a valid reason for delaying or staging implementation. PIAC considers that the consumer benefits associated with implementing this rule change outweigh any burden placed on retailers.

Recommendation 5

That the AEMC does not delay implementation of any part of this rule beyond 1 January 2018.

Further engagement

PIAC would welcome the opportunity to discuss the issues considered herein in more depth. For any queries please contact Energy Team Leader, Craig Memery at cmemery@piac.asn.au or on (02) 8898 6522.