Submission to the “Preventing Discounts on Inflated Prices” consultation paper

April 2018

National Seniors Australia

About National Seniors Australia

National Seniors Australia is a not-for-profit organisation that gives voice to issues that affect Australians aged 50 years and over. It is the largest membership organisation of its type in Australia with more than 200,000 members and is the fourth largest in the world.

We give our members a voice – we listen and represent our members' views to governments, business and the community on the issues of concern to the over 50s.

We keep our members informed – by providing news and information to our members through our Australia-wide branch network, comprehensive website, forums and meetings, quarterly lifestyle magazine and weekly e-newsletter.

We provide a world of opportunity – we offer members the chance to use their expertise, skills and life experience to make a difference by volunteering and making a difference to the lives of others.

We help our members save – we offer member rewards with discounts from thousands of businesses across Australia. We also offer exclusive travel discounts and more tours designed for the over 50s and provide our members with affordable, quality insurance to suit their needs.

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Introduction

National Seniors welcomes the opportunity to make a submission to the Australian Energy Market Commission (AEMC) regarding the proposed rule change to prevent discounts on inflated energy rates.

Energy is an essential service. People rely on energy for everyday conveniences. More importantly, the supply of reasonably priced energy is essential to support a basic standard of living. People on low-fixed incomes, such as those reliant on the full aged pension, are more susceptible to increasing energy prices because these costs often use up a larger proportion of their income.

The supply of energy has long been heavily regulated by government to ensure a reliable, safe and cheap supply. With the ongoing deregulation of prices, consumers now face the task of navigating a plethora of market offers to achieve the best price.

The shift away from direct price regulation by government has created a significantly changed landscape for energy consumers.

National Seniors believes that retail competition can only benefit consumers when adequate regulation exists to protect the interest of consumers. We do not agree that retail energy markets are always better than regulatory measures which restrict offers to consumers.

Consumers are not homogenous and have differing capacities to engage in deregulated retail energy markets. Levels of digital literacy, for example, are inadequately addressed within the current regulatory approach because there is an assumption that consumers have access to and competency using digital technologies to navigate retail markets.

In this regard, it is important that opportunities exist to improve consumer protections and the operation of retail markets, as the current proposal seeks to achieve.

The introduction of price deregulation, competition and choice should not create an opportunity for profiteering. However, this appears to be one of the unintended consequences. Despite efforts to regulate retailer behaviour through the NERR and RPIG, consumers face markets with a range of complicated and incomparable offers.

Discounting has been one of the key practices that has contributed to consumer confusion. National Seniors has been concerned about the use of discounting for some time.

While National Seniors welcomes the Commission's proposal to prohibit the use of discounts on inflated prices, we are concerned the proposal as it stands limits its ability to prevent discounting on inflated prices.

National Seniors believes that the Minister's original proposal would adequately restrict the practice of discounting on inflated prices and make it easier for consumers to exercise choice.

We feel that this more restrictive approach is more in keeping with the long-term interests of consumers as it would provide a clearer and decisive approach.

This submission addresses questions 1 – 9 and 15 outlined in the AEMC's consultation paper.

Questions and issues for consultation

Question 1 Prevalence of the issue raised in the rule change request

How prevalent is this practice of discounting in market offers where any (or all) of the demand, usage or daily supply rates are above these rates in the equivalent standing offer in the same distribution supply area? How prevalent has this practice been historically?

Analysis by the AEMC has noted that there is a low prevalence among retailers engaging in this behaviour. While only two per cent of offers would have been affected by the proposed rule change, the practice should be outlawed as this will set a precedent for the kind of behaviour that is acceptable in the retail energy market.

Question 2 Standing offers

Do stakeholders agree that retailers applying discounts in market offers to rates above that retailer's standing offer rates is inherently confusing?

Yes.

National Seniors agrees that retailers applying discounts in market offers to rates above what the retailer's standing offer rates is inherently confusing and misleading and should be prohibited.

However, National Seniors believes that this specific practice is not the only factor that causes confusion. Consumers struggle to select suitable offers in the retail energy market because offers are not clearly comparable.

Even though energy is a homogenous product, retail energy market offers are abundant. Even a simplified search on the Energy Made Easy website for the South East Queensland suburb of Annerley yielded 74 different standing and market offers from which to choose[1].

Choosing between different retail offers is also complex because there are a plethora of price related variables, of which discounts are but one. There are a range of variables with different pricing mechanisms which are not directly comparable.

While a consumer will not have regard for each of these variables, they will nonetheless be required to weigh up a considerable number of these when determining what offer provides them with the best price.

While the Commission's proposed rule change is limited to one discounting behaviour, there is a fundamental question about whether discounts in the retail energy market are in the long-term interests of consumers.

In this regard, National Seniors believes that the practice of discounting, more generally, requires greater scrutiny and potentially greater regulation.

[1] This is based on a search on the Energy Made Easy website on 17 April 2018 by selecting electricity only, single rate tariff, no controlled load and no pool as the parameters.

Question 3 Standing offers as a “base rate”

Should standing offer rates be considered base rates, or effectively a “cap”, for the purpose of applying discounts to market offers?

Yes.

The standing offer should be considered as a “cap” from which discounts on market offers are calculated. A market offer advertising a discount should clearly communicate to the consumer:

- the standing offer rates
- the market offer rates
- the level of discount applied to the market offer
- the part of the bill that the discount applies

Question 4 Appropriateness of ACL and RPIG

Are the ACL and the RPIG generally the appropriate mechanisms to govern retailers making and advertising market offers to consumers?

Generally, yes.

However, as is the current case, there is a need to ensure that other regulations, such as the NERL, are used to prohibit certain practices.

Question 5 Civil penalty recommendation

Should a civil penalty provision be added to sections 25 and 37 of the NERL, in respect of the requirement to present standing and market offers in accordance with the RPIG? What would be the benefits of doing so? What would be the costs?

Yes.

National Seniors supports the proposal to include a civil penalty provision under the NERL.

It is vital that the penalty is adequate to ensure that it is effective as a deterrent.

Question 6 Direct prohibition within the NERR

Should some specific types of market retail contracts be expressly prohibited under the NERR?

Yes.

National Seniors supports the proposal to prohibit specific types of market retail contracts under the NERR. This will avoid the legal costs associated with having to pursue action under the ACL.

Question 7 Market retail contracts to be directly prohibited

Do you agree with the Commission’s initial discount prohibition as applied to the market retail contracts as set out in section 4.2.2?

No.

The Commission’s proposed rule change does not adequately address the practice of discounting on inflated prices.

The point of this rule change is to reduce consumer confusion caused by retailers applying inflated discounts on market offers where the base rates are not equivalent to those in a standing offer.

Consumers face many difficulties in their decision making because retail energy markets involve a large number of offers and variables that are not readily comparable.

Retailers can use this complexity to make comparison of energy offers more difficult, as has been the case with regards to discounting on inflated prices. While most retailers are not “gaming the system” in this way, it is clear that some retailers are willing to do so if given the opportunity.

To understand the implications of the proposed rule, Table 2 provides a comparison of some example retail offers. The table shows which example offers would be prohibited from discounting under three alternative models: the Commissions preferred model, the Minister’s original proposal and a hybrid proposal. The hybrid model includes energy payments with the Minister’s original proposal.

As can be noted the three proposals vary in the way they seek to prohibit discounts on inflated base prices, which ultimately impacts on what offers are prohibited.

- The Commission’s proposal is the least restrictive because a prohibition occurs only if <u>all</u> energy rates are higher and <u>all</u> energy payments are lower.
- The Minister’s proposal is more restrictive because a prohibition occurs if <u>any</u> energy rates are higher.
- The hybrid proposal is the most restrictive because a prohibition occurs if <u>any</u> energy rates are higher and <u>any</u> energy payments are lower.

While the Commission is attempting to ensure a level of flexibility to ensure greater variation in retail marketing to better accommodate the interests of consumers, National Seniors questions if this undermines the intent of the rule change.

The Commission’s proposal addresses one very specific aspect of discounting, it does so in a way that is quite limited. As such, we question if this will have its intended impact.

Because the Commission’s rule change seeks only to prohibit discounts on market offers under limited conditions it leaves open the possibility that retailers may simply recalibrate their market offers in ways that perpetuate the original problem.

Under the Commission’s proposal, for example, if one energy rate is higher and another is lower then a retailer will not be prohibited from offering a discount (see Example B). Under such a regime, a discount could apply to a market offer that is “overall” more detrimental for the consumer.

Under the Minister’s proposal, this same offer (example B) would be prohibited from offering a discount. This, we would argue, is more in keeping with the intent of the original rule change request as it stops a retailer from offering a discount on a potentially inflated offer.

While we acknowledge that some offers that may be “overall” more beneficial to a consumer may be prohibited, it should be noted that a retailer will not be prohibited from providing this offer, they will only be prohibited from offering a discount on this offer.

National Seniors sees merit in retaining the Minister’s original proposal because it is more restrictive and therefore is less open to exploitation.

National Seniors also sees merit in the Commission’s proposal to include energy payments in considerations of whether discounting should be prohibited for an energy offer. Energy payments are likely to have a significant impact on consumer decision making so it makes sense to include these when considering the equivalence of a market offer.

Table 2: Comparison of rule change proposals

	Equivalent standing offer	**A**	**B**	**C**	**D**	**E**	**F**	**G**	**H**
Daily charge	70 c/day	75↑	70	70	70	65↓	70	70	75↑
usage charge	50 c/kWh	50	55↑	50	50	50	45↓	50	55↑
Feed-in tariff	10 c/kWh	10	10	6↓	6↓	10	10	12↑	6↓
Bill credit	$50	-	-	40↓	80↑	-	-	40↓	60↑
Discounting prohibited?	Commission's Proposal	No	No	No	No	No	No	No	No
	Minister's Proposal	Yes	Yes	No	No	No	No	No	Yes
	Hybrid Proposal	Yes	Yes	Yes	Yes	No	No	Yes	Yes

Commission's proposal: Discounts prohibited if all energy rates are above rates in an equivalent standing offer and all energy payments are equal to or lower than an equivalent standing offer
Minister's proposal: Discounts prohibited when any energy rates are above the rates in an equivalent standing offer
Hybrid proposal: Discounts prohibited if any energy rates are more than an equivalent standing offer and if any energy payments are less than the equivalent standing offer

However, as the table below shows, when energy payments are combined with the Minister's original approach this further restricts the number of offers prohibited from applying a discount. While this would depend on whether all or any energy payments triggered prohibition this is likely to be immaterial as most offers are likely to only provide one type of payment. We feel that this may be too restrictive and would diminish the interests of consumers more broadly.

As such, National Seniors believes that the Minister's original proposal provides the appropriate balance. It adequately restricts the practice of discounting on inflated prices while still enabling retailers to provide a diversity of market offers in the interests of consumers ensuring that consumer choice is maintained.

Question 8 Exclusion of fees and penalties

Do you agree with the exclusion of fees and penalties from consideration of whether there is an equivalent standing offer in the Commission's initial position?

In principal, no.

Fees and penalties make up part of the total consideration of a retail offer. Consumers do not, or at the least, should not exclude these from considerations of whether an offer is in their best interests.

Fees and penalties should not vary between a discounted market offer and an equivalent standing offer.

Further to this, National Seniors would argue that fees and charges should not be calibrated as a means of profiteering but should be reasonable reflections of the cost of providing a service.

For example, a late payment fee should reflect the reasonable cost to the retailers of a consumer's late payment as is common practice in other sectors. Late payment fees should not be arbitrary amounts that bear no resemblance to the costs on the business of the late payment.

Question 9 Materiality and discretion for the AER

Do you think the concept of materiality for differences between tariff structures and benefits and services in standing offers and market retail contracts is appropriate?

No.

National Seniors does not support creating a rule that perpetuates confusion among consumers as the proposed rule does.

Under the current proposal, there would be instances where the AER would have to determine equivalence. This is not ideal. It would create problems for consumers when comparing between offers, make enforcement of the rule difficult and open up the possibility that retailers would seek to contest the AER's decisions.

Question 15 Likely response to a rule reflecting the indicative drafting

What would be the expected response of retailers to a rule implementing the indicative drafting?

Regardless of which approach is taken, National Seniors is concerned that retailers may seek to significantly increase their standing offers if discounting is prohibited.

There is a risk that retailers will increase standing offers in order to create the opportunity to market larger discounts to consumers for the purpose of encouraging switching.

This is concerning as it will disadvantage those people who have chosen to stay on a standing offer, for whatever reason that may be.