

6 March 2006

Mr Ian Primrose
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Dear Mr Primrose

Prepayment Meter System Code – Issues Paper

Thank you for your letter of 3 February enclosing a copy of the above Issues Paper.

Community groups, including Care, have made a number of comments previously in relation to proposals to allow the introduction of prepayment meters in the ACT. The Issues Paper makes passing reference to the concerns that have been expressed, particularly at the forum convened by the ESCC in November 2005.

We are surprised that the Issues Paper does not attempt to provide or elicit more detail on the pros and cons of the product. By not doing so, the critically important step of assessing the social policy implications of embracing prepayment meters is ignored. In responding to the Issues Paper, we therefore feel compelled to restate our objections and to set out in greater detail the reasons for those objections

Fuel Poverty & Prepayment Meters

In a letter dated 14 November 2005 and at the earlier meeting on 8 November 2005, Care asserted its opposition to prepayment meters. The reasons for that opposition included the lack of information available on how any benefits could be delivered via prepayment meters given comparatively high consumption rates in the ACT and existing consumer protections, particularly via the operations of the Essential Services Consumer Council. We put forward a suggestion on how the ICRC could better inform itself about the purported benefits of prepayment meters by way of market testing:

Targeted research need not be large scale or expensive and natural partners exist for undertakings of that type. For example, Housing ACT as the key

provider of rental accommodation for lower income consumers in the ACT could be an ideal partner to conduct research into the effects, or lack thereof, of changing metering technology on the usage and spending patterns of public housing tenants.

The ICRC has not sought comment on market testing. Instead, the Issues Paper indicates that the decision to allow prepayment meters has been made;

In light of:

- *Representations made by Aurora;*
- *Experience with using PPM's in Tasmania; and*
- *Consumer protection ensured by the developing of the Draft Industry Code in accordance with the Utilities Act 2000.*

The Commission considers it is appropriate for PPM's to be made available to ACT consumers as part of the process of increasing competition in the ACT and giving consumers the widest possible range of choice. (at page 3)

In our experience, competition alone does not deliver outcomes to lower income consumers equally or sometimes at all. The notion of choice is often not available to lower income consumers, or in ways that are safe, fair and reasonable. For example, the Energy Action Group pointed out in its submission to the Victorian Government on prepayment meters, that in Tasmania Aurora:

“...provides customers moving into a dwelling with a pre-existing PPM considerable inducement to keep the PPM, as they pay only half the regular connection fee. For many low-income households immediate needs tend to take priority over future expenditures. This strategy of Aurora's is also of concern as it will ensure the rapid spread of PPM into low-income private rental. In Victoria, low-income households are likely to be persuaded by market contract PPM because the current deemed and standing offer tariffs are the most expensive tariffs on offer – and deliberately so to encourage customers to move into the market.¹”

There are several reasons why comments such as these should be of concern in the ACT market. The relatively high proportion of public housing rental accommodation is one such reason. The ACT's unenviable position as the most expensive private rental market in the country is another. Factors such as these may make prepayment meters more likely to appear in lower income households and ensures they are not only targeted at current residents with a particular demographic profile, in housing of a particular type, but that the product is more likely to survive changes in tenancy arrangements.

There are a number of other preconceptions about prepayment meters that in Care's view are better described as myths:

¹ Andrea Sharam, 2003 *Second Class Customers: Pre-Payment Meters, the Fuel Poor and Discrimination*, Energy Action Group, Submission to the Victorian Government at 11.

Myth #1: Prepayment meters are pay as you go.

In reality the meters are pay in advance. This means vulnerable and low income consumers will make choices about keeping power on each day or limiting food intake or cutting back on other essentials.

Myth #2: Prepayment meters are a budgeting tool.

In reality the meters do not allow consumers to save up especially in preparation for larger seasonal based consumption. According to Klinger;

“The threat of disconnection works to prioritise utility payment over other essential household expenditures. Disconnection itself is the ultimate sanction; but in relation to the fuel poor, its purpose is punitive and unhelpful. There are typically two groups of fuel poor who struggle with debt. The first are those who have an outright incapacity to pay. The second are those who have an inability to pay within the specified period. Therefore, customers who experience fuel poverty require flexible payment arrangements in order to juggle competing demands for their scarce financial resources, and in some cases recourse to debt forgiveness if disconnection is to be avoided.”²

In Care’s submission to the ICRC in relation to retail pricing (2 December 2005) the limits of competition benefiting low-income consumers were noted. The submission also warned that prepayment meters seem to be the only product contemplated for the fuel poor and that “consumers who take up these offers are likely to pay more for their usage.” On the information presented by Aurora at the ESCC forum it is clear that forecast was correct. The poor will pay more for their energy through prepayment meters.

Myth #3: Prepayment meters will not be used as a debt collection tool.

In reality, debt recovery is prioritised over current consumption with prepayment meters, because emergency credit must be repaid first. As a consequence consumers are more likely to fall into arrears and self-disconnect.

We note that in Tasmania, Aurora began from a position of not collecting debts through prepayment meters. We understand this situation has changed and Aurora now collects debts through its prepayment meters. We also note that in the UK, it is estimated that some households have over 30% of household expenses on energy being put towards arrears owed on prepayment meters.

² Klinger B 1998 *Unfair Deal* Stegley Foundation, South Yarra.

Myth #4: Prepayment meters are an energy management tool.

Low income householders, in particular public housing tenants, have limited or no control over the energy efficiency of their dwelling and their appliances. Further there is no evidence presented by Aurora that consumers using prepayment meters use less energy.

Myth #5: Prepayment meters will be adopted on a purely voluntary basis &**Myth #6: Retailers and customers will negotiate contracts.**

There may be occasions where choice to adopt a prepayment meter will not be real for low income consumers. Even if there is genuine choice consumers will have little or no ability to negotiate the terms of prepayment contracts. We note the Australian Consumers Association has disputed:

“that contracts with small consumers will be individually negotiated in any meaningful sense. Even if they were, there is a significant power asymmetry between large corporations and small consumers. The end result is that consumers are always at risk of contracts skewed against their interest. This is a consistent finding of the consumer movement in investigating mass-market contracts.”³

We agree with this assessment by the ACA and it aligns with the experiences described to us by our clients.

Myth #7: Consumers will have the right to revert to interval or accumulation meters if they choose.

The right to revert will not be capable of exercise in circumstances where the costs of removal are borne by the customer.

Comments on the Draft Code

The ICRC has presented the Issues Paper and Draft Code in a manner that suggests prepayment meters will be made available in the ACT. Our understanding of the rationale for that decision is one of pragmatism in the developing national market process. If the arrival of prepayment meters is inevitable, then the ICRC’s role may be better focused on the development of a Code that ensures safe and fair delivery, in so far as that is possible.

A preferable approach in our view would be for the ACT to develop a fuel poverty strategy, rather than relying entirely on Consumer Protection Codes, either by amendment to existing Codes or the creation of new Codes to suit new products. At least then the process of amendment, or Code creation, would have a framework that states the principles guiding the development.

³ Australian Consumers Association 2003 Submission to the NSW Ministry of Energy and Utilities on Proposed Market Operation Rule on Prepayment Metering.

In this regard we agree with the Energy Action Group in its submission to the Victorian Government:

“It is the obligation of government to articulate the rights and responsibilities of customers and utilities, and it is these that will inform the objectives of “consumer protection”. Does government support or not support the delivery of sufficient energy to households to ensure their essential needs for heating, cooking, hygiene and security? If it does believe that households should have these essential needs met, then it cannot support policies that require disconnection for inability to pay...PPMs do not address fuel poverty and affordability issues and are therefore inappropriate in the management of customers who face an inability to pay. PPMs are predicated on self-disconnection that is removed from public scrutiny and social policy measures. As a more expensive payment method, this technology is detrimental to the interests to those customers who experience fuel poverty.”⁴

Notwithstanding our firm opposition to the introduction of prepayment meters, we offer the following brief comments on the draft code. At a general level, the protections afforded in the current draft are inadequate.

Consent

The draft deals with consent under paragraph 4.2. Obtaining “explicit informed consent” will also require compliance with the terms of the Fair Trading Act and the Door to Door Sales Act. Paragraph 4.3 details the minimum information requirements that must appear in contracts. In Care’s view reliance on disclosure as a vehicle to overcome poor market conduct is misplaced. It is absolutely no solution to poor product or service design. To the extent however that consumers are being asked to provide informed consent, we would suggest this section should be recast to ensure greater precision and utility. In particular:

- We recommend the prescription of format (including minimum font size and prominence – a process that has had some success in the credit market); and
- Given the product type and likely market segment to which it will be targeted - basic information for customers experiencing financial hardship should be prioritised.

We note there is no reference to information being provided to landlords. Similarly the issue of landlords withholding installation requests, or requiring removal of meters is not dealt with. In our submission, the Code should address these matters.

⁴ Sharam at 18.

Minimum terms

There is considerable seasonal variation in ACT electricity accounts. We therefore support a minimum term of 6 months for termination without penalty and not the 3 months proposed.

The provisions in relation to “life support equipment” are too narrow. They should be replaced with provisions that more flexibly and adequately respond to dramatic changes in circumstances for consumers – particularly those suffering from disabilities, illness or injury.

Customers experiencing financial difficulties

Self disconnection

In our opinion, the ACT currently has the best system for responding to the impacts of financial difficulty in Australia. If changes are made which fail to ensure access to the safety net that prevents disconnection, such changes will be a significant erosion of consumer protection in the ACT currently afforded through the ESCC.

Our system for dealing with hardship via the ESCC rather than disconnection should be prioritised. If that presents a challenge for industry in the delivery of prepayment metering technology, in our view that is where the challenge should lie. Self-disconnection is a comfortable euphemism for an event that should simply not be permitted under the Code.

Emergency credit

We agree that “the provision of emergency credit (i.e. debt facility) only delays the evitable disconnection if affordability is the issue.⁵” Furthermore, the proposed emergency credit of \$10 appears inadequate given the high costs of energy in the ACT and the considerable seasonal variation in usage. Consumers should be referred to the ESCC for assistance after drawing on emergency credit on three occasions.

System testing

The requirement for consumers to pay for testing in advance is unacceptable and unfair. There is no scale for reasonable charge and in any event, shifting costs to low income consumers in advance appears to be a mechanism for ensuring such requests are not made or pursued.

Testing should occur on a prescribed rotation and incidents of system failure should be publicly reported no less than 6 monthly. The manner of reporting should ensure the information is of use to the public and not buried in technical or other compliance information.

⁵ Sharam at 13.

Summary

We are concerned that the approach to prepayment meters in the Issues Paper is based on myths surrounding the product itself and misconceptions regarding the reality of fuel poverty and the effectiveness of ‘choice’ and competition. In summary, Care and the Consumer Law Centre’s views are as follows:

- The case for allowing prepayment meters in the ACT has not been established;
- Prepayment meters will target lower income consumers;
- Prepayment meters will in the medium to long term be used as a “debt management” tool;
- The ACT should develop and adopt a fuel poverty strategy to inform the consideration of issues of this type; and
- If prepayment meters are to be allowed in the ACT they should not in any way be seen as a substitute for the hardship jurisdiction of the ESCC.

We look forward to receiving the final report in due course.

Yours sincerely,

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