

Mr Paul Baxter
Senior Commissioner
Independent Competition and Regulatory Commission
PO Box 975
Civic Square ACT **2602**

Your reference:
09 May 2006

Dear Mr Baxter

Re: Prepayment Meters – Draft Industry Code - Draft Decision April 2006

The Australian Council of Social Service (ACOSS), on behalf of its members and constituents, wishes to comment on the Commission determination regarding customer coercion in the abovementioned draft decision.

ACOSS is the peak council of the community services and welfare sector. Established in 1956, ACOSS is the national voice for the needs of people affected by poverty and inequality.

ACOSS is firmly of the view that energy utilities are essential services and that continuity of access to these services is critical for low income consumers. We seek to ensure protection of access to electricity and gas supplies in all but extreme situations. Our understanding is that outcomes from the deployment of prepayment meters elsewhere have been, for low income consumers, inconsistent at best and detrimental at worst.

Alongside our concern about the provision of essential services is the question of whether broad-spectrum consumer protection instruments are geared to adequately address the particularities of energy utilities. We are considering our position on this question. However, we will note that the National Electricity Market is in its infancy, is developing rapidly and that the impacts of interrelated changes (often unanticipated) will not be clear for some time.

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These changes, including the introduction of private profit as a motivator in the supply of this essential service, will necessarily affect all consumers. We are concerned to ensure that the effects on low income consumers are neither unfair nor disproportionate. Some careful and particular regime designed to apply to energy market participants, even if as a short-term brace, will likely have positive long term effects for all consumers.

At page 16 of the decision the Commission has indicated an intention to abandon a previous proposal “to impose a licence condition upon retailers and to make it a breach of a licence condition to coerce a customer into switching to a prepayment meter”.

Instead, the Commission has indicated a preference to rely upon the general prohibitions against coercion in Section 26 of the Fair Trading Act of the ACT and Section 60 of the Commonwealth Trade Practices Act to discourage such conduct.

ACOSS urges the Commission to reconsider this position for the following reasons:

- The draft decision refers to the desire to avoid additional regulatory burdens upon retailers arising out of industry specific customer protections. This reasoning fails to recognise that general consumer protections may not be applicable or adequate to deal with, or deter, specific unfair practices arising within particular industries.
- The Commission has asserted that the general prohibitions against coercion will be sufficient to deter the practice of requiring a consumer to switch to a prepayment meter. However, the Commission has not provided any supporting evidence by way of a statement from either consumer protection agency or a reference to a successful prosecution relating to this practice.
- ACOSS is concerned that the relevant consumer protection agencies and/or the courts may not support this legal interpretation leaving vulnerable consumers unprotected against a practice identified as unacceptable by the Commission.
- At the very least, ACOSS believes it is incumbent upon the Commission to obtain and publish a written opinion from the ACT Office of Fair Trading and/or the ACCC supporting the view set out in the draft decision. In the absence of such an opinion, ACOSS would urge the Commission to abandon the preference for reliance on general consumer protection legislation in favour of the adoption of industry specific consumer protection to ensure adequate customer protection.
- ACOSS is also concerned that the vulnerable customers threatened by this practice are unlikely to complain to consumer protection agencies. Financial poverty is of itself a disempowering condition and many of these customers also live with some combination of illiteracy, physical illness or disability or mental illness.

ACOSS supports submissions by CARE/Consumer Law Centre and the ESCC which call for the imposition of a licence condition and an additional clause in the Industry PPM Code that states as follows: “A utility must not require a customer to install or maintain the installation of a PPM system”.

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In conclusion, ACOSS urges the Commission to acknowledge that vulnerable customers will be threatened by the practice of coercion, and for that reason there will be a need for energy industry consumer protections such as the proposed licence condition.

Yours sincerely
Australian Council of Social Service

Andrew Johnson
Director

More about ACOSS:

Our vision is a fair, inclusive and sustainable Australia where all individuals and communities have the resources they need to participate in and benefit from social and economic life.

Our aims are to reduce poverty and inequality by developing and promoting socially, economically and environmentally responsible public policy and action by government, community and business while supporting non-government organisations which provide assistance to vulnerable Australians.

Through its network of National Members, ACOSS links community and welfare services in every corner of Australia by bringing together: eight state and territory Councils of Social Service which represent thousands of front-line community agencies; national peak organisations of consumers and service providers; national religious and secular welfare agencies (including the Salvation Army, UnitingCare, Anglicare, Catholic Welfare and the Smith Family); and low income consumer groups such as the National Council for Single Mothers and their Children and the Australian Pensioners and Superannuants' Federation. Many state and local organisations and individuals also support the work of ACOSS by being Associate Members.