Electricity (Early Termination) Amendment Bill 2012

Explanatory Notes

Short Title of the Bill

The short title of the Bill is the *Electricity (Early Termination) Amendment Bill 2012*.

Policy objectives and the reasons for them

The policy objective of the Bill is to prohibit early termination or exit fees for small and residential customers where they are notified of an increase in charges during the course of their market contract and the increased charges exceed notified electricity prices.

The prohibition has been developed in response to action taken by some energy retailers to increase their electricity tariffs for customers on market contracts considerably above notified (regulated) tariffs. The prohibition will enable customers that are adversely affected by the increased charges, to terminate their market contracts without being penalised by early termination fees.

It is important to note that the amendments to the *Electricity Act 1994* are not designed to up-end negotiated contracts which already contain charges and mechanisms (such as CPI rises) for increases to charges over the term of the contract. In addition, it would not apply to contracts that customers agree to that may contain higher charges overall, but which are guaranteed to remain the same for the entire term of the contract; thereby providing price certainty to customers.

Achievement of policy objectives

This will be achieved through an amendment to the Electricity Act, to prohibit the charging of early termination fees for the cancellation of a negotiated contract by a small or residential customer where the customer's charges have increased above notified prices.

The Bill also includes amendments that will require retail entities to notify affected customers if the increased charges are more than the notified prices. The retail entity must also inform customers they are entitled to exit the contract without penalty. Customers will then have 20 days from this notification, to notify the retailer of their decision to terminate the contract without incurring early termination fees. A notice period of 20 days is a current feature of many market contracts. The termination notice will take effect within 10 business days of the advice from the customer.

The Bill also includes a transitional provision that enables the prohibition on exit fees to apply to customers with market contracts that have been notified of price increases between 1 June 2012 and the date of commencement of the Bill. These customers will have 20 business day's notice to terminate their contract with their current retailer.

Alternative ways of achieving policy objectives

No alternative methods of achieving the policy objectives have been identified.

Estimated costs for government implementation

There are no costs to government for the implementation of the Bill.

Consistency with fundamental legislative principles

<u>Legislation should not adversely affect rights or liberties, or impose obligations retrospectively (s4(3)(g) of the Legislative Standards Act)</u>

The prohibition on exit fees will apply retrospectively to existing market contracts between retail entities and electricity consumers. It is noted that the rights and liberties of electricity consumers are strengthened by the amendment and not adversely affected. Where consumers on a market contract are subject to charges above notified prices, they will be able to opt out of the contract without penalty. Some market contracts currently provide an equivalent option to consumers. The amendment will ensure that all existing and future market contracts provide this option to consumers.

Existing contracts that impose early termination fees will be subject to the prohibition amendment. This means that if a customer with an existing contract, that imposes exit fees, is advised of increased charges above the notified price, they are able to terminate the contract without penalty.

While retrospective application is not something that is done lightly, the Government is taking this step to ensure that all existing market contract customers benefit from this protection. It is also noted that the amendment to prohibit exit fees does not exceed existing voluntary practice by some retail entities that include an equivalent provisions in their market contracts. It is also noted that retail entities can take steps to avoid the amendment having application on existing market contracts. Retailers can decide that any increase to charges under market contracts do not exceed notified prices.

Consultation

Consultation has occurred with key agencies.

Consistency with legislation of other jurisdictions

This provision is similar to a provision in place in Tasmania for customers on prepayment meter market contracts. However, no other jurisdiction in the national electricity market has a similar legislative prohibition in place.

Notes on Provisions

Part 1 Preliminary

Short Title

Clause 1 establishes the short title of the Act as the *Electricity (Early Termination) Amendment Act 2012.*

Act Amended

Clause 2 provides that the Act amends the *Electricity Act 1994*.

Amendment of s 55A (Negotiation of retail contract)

Clause 3 amends section 55A to provide that the negotiation of a retail contract is subject to new section 55CA.

Insertion of new s 55CA Early termination of negotiated retail contracts in particular circumstances

Clause 4 inserts new section 55CA, comprising new subsections (1) to (8).

New subsection (1) establishes the circumstances in which new section 55CA applies: namely, when a retail entity (electricity retailer) and relevant customer (residential customer or other small customer) enter into a negotiated (market) retail contract and the retailer notifies the customer of an increase in charges under the contract.

New subsection (2) obliges a retailer to notify a customer if the increased charges will be more than notified prices (regulated prices). The retailer must also notify the customer of their right, set out in new subsection (3), to terminate the contract. A breach of this subsection will not attract a specified maximum penalty (in the way that a breach of new subsection (6) may). Instead it will be subject to chapter 5 part 4 — Disciplinary action against electricity entities.

New subsection (3) provides that the customer may terminate the contract by giving the retail written notice within 20 business days after receiving notification under subsection (2).

New subsection (4) makes clear the termination provision in subsection (3) does not limit any other rights, under law or the contract, a customer has to terminate the contract.

New subsection (5) provides that the termination takes effect 10 days after the customer gives the retailer written notice.

New subsection (6) prohibits a retailer from charging a customer a fee, directly or indirectly, where a customer terminates a contract under subsection (3). A breach of this provision will attract a maximum penalty of 500 penalty units.

New subsection (7) clarifies that new section 55CA applies, notwithstanding that something contrary may be contained in the existing contract with the customer.

New subsection (8) defines 'relevant customer' as a residential customer, or a small customer who is not a residential customer (i.e. a business customer consuming no more than 100 megawatt hours per year).

Amendment of s.55GA (Additional condition about inclusion of carbon and renewable energy target cost estimates in residential customer accounts)

Clause 5 simply relocates the definition of "residential customer" into Schedule 5 of the *Electricity Act 1994*.

Insertion of new ch 14 pt 13

Part 13 Transitional provision for Electricity Amendment Act 2012

Negotiated retail contracts – early termination

Clause 6 inserts new part 13 and new section 334 to provide the same protection as that offered in the new s.55CA (clause 4); only it applies to customers that have been issued with a notification between the period 1 June 2012 and the date of commencement of the Act. These customers will have 20 business days from the date of commencement to issue a termination notice to the retail entity should they decided to exercise this option. Customers exercising this option will not be required to pay any termination fee. A breach of this provision by a retailer will attract a maximum penalty of 500 penalty units.