

15 December 2017

Mr John Fraser
Secretary
The Treasury
Langton Crescent
PARKES ACT 2600

Att: Ms Peta Dixon, Small Business and Consumer Policy Division

Dear Mr Fraser

Consultation Regulation Impact Statement: Paper Billing

Legal Aid NSW welcomes the opportunity to contribute to the Treasury consultation about paper billing fees. We support the policy objective of ensuring that disadvantaged consumers do not pay paper billing fees at a disproportionately high rate when compared with the wider community. To achieve this outcome, we support option 2 to prohibit fees for paper bills.

About us

Legal Aid NSW provides information, community legal education, advice, minor assistance and representation with a particular focus on the needs of people who are socially and economically disadvantaged. In 2016/17, 45.8% of our clients were on Commonwealth benefits, 12.8% were Aboriginal, 11.9% were born in non-English speaking countries and 49.1% were living in a rural or regional area.

Our civil lawyers regularly advise and assist clients dealing with debt issues including not being able to pay bills for essential services. The Civil Law Service for Aboriginal Communities delivers the Money Counts program to Aboriginal people living in highly disadvantaged communities across NSW. These include Condobolin, Lake Cargelligo, Mt Druitt, Murrin Bridge, Dareton, Bourke, Brewarrina, Moree, Boggabilla, Toomelah, Baryulgil, Malabugilmah, Tabulam, Coraki, Yamba and Maclean.

The problem

As the Consultation Paper points out, disadvantaged consumers will pay fees at a disproportionate rate if the fees can only be avoided by accessing the internet. The Consultation Paper notes that a survey in 2015 found that 1.3 million households did not have access to the internet. Many of the individuals surveyed indicated that a lack of confidence or knowledge of how to access the internet, or cost, was the main reason for not accessing the internet. The Consultation Paper concludes that many

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consumers without access to the internet are likely to come from disadvantaged groups, including consumers who:

- have a low income
- have a disability, such as an intellectual, psychiatric, physical, sensory, neurological or a learning disability
- have a serious or chronic illness
- have poor reading, writing and numeracy skills
- are homeless
- are very young or old
- come from a remote area, or
- are Indigenous.

The observations of Legal Aid NSW solicitors support the Consultation Paper's conclusion that individuals from the above disadvantaged groups are overrepresented among Australians who either have no access to the internet or are comparatively digitally excluded compared with the wider population.

Differences in the level of digital inclusion among consumers may mean that those with the least capacity to pay are disproportionately bearing the cost of paper billing fees. Government intervention may be justified to prevent already disadvantaged consumers facing further detriment.

Policy options

Option one - the status quo, with an industry led consumer education campaign

Legal Aid NSW does not consider that the promotion of existing exemption programs would assist disadvantaged consumers. Exemptions are not available across all essential services and this approach requires the consumer to be proactive to seek the exemption. Our experience working with disadvantaged consumers is that due to factors such as low literacy and personal skills, disadvantaged consumers require assistance from lawyers, financial counsellors or community workers to access exemptions or financial hardship programs. It is only when they are in serious financial hardship and come into contact with Legal Aid NSW or other services that they learn about such programs.

Option two - prohibition on paper billing fees

Legal Aid NSW supports a prohibition on paper billing fees as the most effective way to minimise their impact on disadvantaged consumers. This is a simple approach that would have the broadest and most equitable impact for disadvantaged consumers.

Option three - prohibiting essential service providers from charging paper billing fees

At a minimum, essential service providers should be prohibited from charging paper billing fees. However, Legal Aid NSW suggests that for this to be effective, a definition of 'essential services' specifically designed for this purpose would need to be developed. The *Corporations Act 2001* (Cth) (**Corporations Act**) definition is particularly narrow, and the definitions in NSW and Victorian legislation included in the

Consultation Paper have been developed for a different purpose (regulating industrial action) and are not directed to the interests of consumers.

Legal Aid NSW suggests that the definition should include the services listed in section 600F of the Corporations Act; that is, electricity, gas, water and telecommunications, and also car registration, education, financial products such as banking and insurance, local council rates and strata levies notices.

Option four - limiting paper billing fees to cost recovery

Legal Aid NSW does not support this option as disadvantaged consumers will continue to pay fees for paper bills. We are also concerned about the potential for the cost recovery fee to rise significantly as only disadvantaged consumers remain in the pool of people receiving paper bills.

Option five - promoting exemptions through behavioural approaches

Legal Aid NSW supports the use of 'nudges' to influence behaviour in certain circumstances. They are being used in NSW with fines enforcement and Apprehended Domestic Violence Orders. However, if the consumer lives on a limited income and has no internet access, such initiatives will have limited impact and may only add to their sense of powerlessness.

Thank you again for the opportunity to contribute to the consultation. If you have any questions, please contact Robyn Gilbert, Law Reform Solicitor, who can be contacted on 9213 5207 or robyn.gilbert@legalaid.nsw.gov.au

Yours sincerely

Brendan Thomas
Chief Executive Officer