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Consultation Paper: Changes to the NSW Social Programs for Energy Code v6.0

The Australian Energy Council (the Energy Council) welcomes the opportunity to comment on the draft version 6 of the NSW Social Programs for Energy Code (the draft code).

The Energy Council is the industry body representing 21 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

This submission will make high level comments regarding the implications of the draft code, and focus on the new obligations in section A6. Our members will provide specific comments to the proposed administrative changes individually.

Timing

The Energy Council supports the Minister making appropriate and timely amendments to the code where there is evidence to suggest that the drafting of the code is unclear or resulting in unintended outcomes for energy consumers in NSW. These ad hoc changes must be limited to administrative issues only. When the code was raised at the NSW Retailer Working Group on 5 June 2018, the amendments discussed were limited to:

- Specifying the application of discounts (to maximise the benefit to the rebate customer)
- Clearer requirements for retailers to respond to audits
- More consistent provision of invoices

These changes were administrative in nature and broadly supported by industry. They were highlighted by the Department as “necessary amendments”. The Energy Council does not oppose making these amendments in the draft code at this time.

However the new amendments represent significant changes impacting the policy intent of the social programs. Significant changes such as these must be undertaken in a more coordinated manner. We are particularly concerned that v5.0 of the Code (a substantive update) was implemented in December 2017, and v6.0 (another substantive update) is being considered only 8 months later. Retailers have only just finalised the implementation of v5.0 and are now required to amend them to implement v6. Regulatory cost imposts tend to be passed on to NSW consumers and must be considered by the Minister when suggesting non-administrative changes.

We encourage the Minister to limit changes to the draft code to incorporate only the administrative changes that could not have been known when v5.0 was finalised. Other changes should be implemented at a later date when due process and time allows the benefits and costs of the regulation and implementation efficiency to be properly considered.

Transitional provisions

Previous versions of the Code have been gazetted for immediate effect. This makes it extremely difficult for retailers to maintain compliance with the code, often to the detriment of NSW consumers. We strongly recommend the Minister specifies any amendments take place at a date after the code is gazetted to allow retailers a reasonable period to deliver compliance. We suggest a minimum implementation window of 3 months from the date of gazetting the final version of the code.

The standing of the Social Programs for Energy Code

The Energy Council and its members continue to support the drive of the NSW Government to deliver meaningful programs and assistance to support energy consumers. At a high level, the Social Programs for Energy Code is an administrative code, enacted to clearly set out procedures for retailers acting on behalf of the Government to deliver the assistance packages. It is subordinate to s21 of the Electricity Supply (General) Regulation 2014 that states that the code is for the purpose of facilitating the delivery of any aspect of the Government's social programs for electricity.[1] Historically, this code was utilised in this manner, however v5.0, and the draft v6.0 being consulted upon here appear to be deviating away from enabling facilitation of the delivery of the social programs, to implementing policies that may have some correlation to the social programs.

The Energy Council is concerned that the code is not the appropriate instrument for enacting policy change. The Energy Council agrees with the recent ACCC Retail Pricing Inquiry Final Report[2] that found jurisdictional derogations from the National Energy Customer Framework (NECF) are not in the best interests of energy consumers, unless there is a specific geographical reason for implementing them.

In particular, the new obligation suggested in clause A6 of the draft code does not appear to arise from any state specific requirement. We do not agree that simply because a policy change applies to eligible customers as defined in the Social Programs for Energy Code that it should be implemented in this manner. Fundamental changes to the obligations of retailers that impact significant portions of the NSW customer base must be subject to the appropriate regulatory rigour that comes with a change to the NECF or amendment to NSW law.

A6.1 Assistance to customers

Notwithstanding the above issues, the Energy Council does not consider the introduction of A6.1 at this time is in the long term interests of consumers. We recognise the issue the Department is trying to resolve, however we consider this is part of a bigger program of works currently underway nationally. Implementing an obligation in this manner would be costly, and likely superseded in the coming years.

This obligation appears to stem from an amendment implemented in the previous version of the Code. In v5.0, an obligation to notify customers on standing offers every 6 months that better offers were available was introduced. In v6.0, this requirement was deleted, and replaced with an obligation to undertake an assessment of all eligible customers to determine if they are on the 'most appropriate' offer, and if not, to use all reasonable endeavours to assist the customer to make the change. This is a dramatic change in obligation.

[1] There is a corresponding clause in the Gas Supply (Natural Gas Retail) Regulation 2014
[2] ACCC 2018, Retail Electricity Pricing Inquiry—Final Report, Restoring electricity affordability and Australia's competitive advantage, June 2018

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Practical impacts of the amended rule

Practically, given all standing offer customers would have had a more appropriate offer available to them, the previous obligation merely required retailers to attempt to notify all standing offer customers who received an energy rebate. If the customer responded to the notification attempt, the retailer was required to discuss better offers that might be available, including the quantum of the benefits for entering into a market contract. This is vastly different from the amended obligation in A6.1.

The ACCC found that the number of customers on standing offers was declining rapidly, with only 21% of NSW consumers on standing offers as at 30 June 2017. Given approximately 30% of all customers receive rebates, we considered contacting approximately 5% of the NSW customer base was manageable and represented a cost effective mechanism to encourage consumers onto better deals. In addition, retailers were incentivised to work to lower their standing offer numbers, as those with fewer standing offer customers had a lesser obligation under the rule.

The amended rule has a different practical implication. Retailers must first undertake a calculation on each of its eligible customers to determine if they were on the most appropriate offer for their circumstances. If a more appropriate offer is identified, all reasonable attempts must be made to try and contact the customer to offer them the new product. If the customer failed to respond, the previous analysis undertaken would be wasted. This will result in a significant cost impact that will need to be recovered from NSW energy consumers, for what might be very little benefit.

Definition of most appropriate offer

The Department may be aware that the Essential Services Commission (ESC) in Victoria has recently released a draft decision to amend the Energy Retail Code to include obligations that will require retailers to include information about their best offer on energy bills.[3]

This decision highlights the complexities facing the department when determining what the 'most appropriate' offer might be. After extensive engagement with stakeholders and consumer testing, the ESC considered there were five methodologies that could be used to determine the best offer, all with pros and cons. This is relevant in this context because the new obligations suggested by the Department do not contain any of this detail or guidance as to what they consider the 'most appropriate' offer to be. Retailers will need to develop objective mechanisms to undertake this assessment in a cost effective manner, and if done incorrectly, will result in substantial costs that will inevitably be recovered from NSW consumers. Regulatory change must be done in a considered manner that takes into account these costs and compares them against the intended benefits. The Energy Council has not been made aware of any assessment of this nature taking place prior to the Department proposing these changes.

Complementary national processes

The Energy Council notes the ACCC report contained a number of recommendations to amend rules of the retail market nationally to improve transparency. These changes, in addition to a number of changes to the NECF currently in train or recently implemented, are designed in a manner that will make it easier for customers to shop around and choose an offer that best suits their needs. We are concerned that the changes in A6 will become obsolete if changes discussed in the ACCC report are implemented. While we understand the NSW Government cannot wait for other processes that may or may not go ahead, we strongly consider a more long term approach needs to be taken for what is a substantial change. We suggest a more fulsome consultation is undertaken on this provision to ensure it is necessary and valuable in the long term for NSW consumers. We would welcome an opportunity to work with the Department and other stakeholders to determine an appropriate mechanism that solves the problems identified in the most effective manner. Other alternative options, such as expanding on any rule developed in the NECF from the proposed long term standing offer notice rule change, might

[3] Essential Services Commission 2018, Building trust through new customer entitlements in the retail energy market: Draft Decision, 7 September

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deliver more cost effective outcomes. This rule change, if made, would require retailers to notify all standing offer customers annually that better offers might be available.

Technical and drafting comments on A6

Should the Department proceed with this obligation in this version of the Code, a number of amendments must be made to ensure the benefits are delivered to customers in the least cost manner.

We consider that A6.1.1(a) is onerous, with little benefit for consumers. Customers will have recently engaged in the market, and retailers will have signed that customer up based on that interaction. In general, this offer will already be tailored to meet whatever needs the customer presented during the interaction. We suggest the 12 month obligation is sufficient to achieve the intent of the obligation.

A.6.1.2 should be amended to clarify that these obligations only apply where retailers already hold historical data for the customer. Retailers should not be expected to gain new information from customers in order to fulfil the requirement.

In A6.1.1, Most appropriate offer must be defined. In addition, further information must be provided to retailers as to how to systematically compare energy products for all energy customers.

A6.1.3 requires retailers to assist the retailer to change contracts before paying any rebate to the customer. This does not appear to be in the customer's interests. If a bill is due to be issued around the same time as a retailer intends to conduct its assessment of most appropriate offers, the bill would need to either be delayed, or the rebate would not be able to be applied to the bill. Neither of these options appears useful. In any event, a customer entering into a new contract will result in prospective changes to the bill rather than retrospective. As such, issuing the bill is irrelevant to the implications of this provision.

Any questions about our submission should be addressed to me at ben.barnes@energycouncil.com.au by telephone on (03) 9205 3115.

Yours sincerely,

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