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Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019

The Australian Energy Council ('AEC') welcomes the opportunity to make a submission to the Department of the Environment and Energy (the '**Department**') on the *Electricity Industry Code Public Consultation Paper* (the '**Consultation Paper**') and the attached *Exposure Draft Regulations* (the '**Exposure Draft**') 2019.

The AEC is the industry body representing 23 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.

As the Department is aware, the AEC strongly supports the development and implementation of tools to make it easier for consumers to engage in the energy market and seek out a better deal. We have undertaken significant development work in recent months to understand both the technical requirements and the consumer drivers necessary to encourage motivation and increase comprehension when switching.

To that end, we have recently undertaken a qualitative behavioural economics research project to better understand how customers might react to the presence of a reference bill, such as that which the Australian Energy Regulator (the '**AER**') has recently determined, and what might need to be changed to improve its value. Our research highlighted the critical need to ensure the wording and presentation of any comparison tool are clear and consistent. We consider that the current drafting of the Electricity Retail Code (the '**Electricity Code**') requires significant amendment to achieve this outcome.

We are particularly concerned by the decision to impose price regulation on the sector via an Electricity Code developed under s51AE of the *Competition and Consumer Act 2010* (the '**CCA**'). The industry accepts the Government's decision to regulate electricity prices, but the Electricity Code as drafted is not fit for this purpose and its deficiencies are compounded by the compressed timeframe in which the Government seeks to settle it.

The AEC also notes that the electricity sector already operates within a detailed and heavily regulated framework. Retailers must comply with many layers of regulation imposed by different rule makers, multiple regulators and both state and federal governments. We are concerned that the Government has set aside the existing frameworks and prefers to impose price regulation by an untested and unorthodox route – a mandatory industry code, which presents a significant risk of inconsistency with the market's existing frameworks and the National Energy Retail Law.

Further, it is apparent that a significant number of customers will not be regulated at all because the AER will not be in a position to prepare a Default Market Offer (DMO) for them in time for the proposed start date of 1 July 2019—for example, customers with solar systems and prepayment meters, and customers on demand tariffs and in embedded networks.

We strongly encourage the Government to reconsider implementing price regulation by a mandatory industry code. Rushing to implement such an impactful economic reform on the electricity retail sector by way of an unsuitable mechanism can only result in negative outcomes and confusion for energy consumers.

Appropriate Development of an Industry Code

Guidelines for Introducing an Industry Code

The CCA does not prescribe any legal procedure for introducing an industry code. It simply provides that a Government may prescribe an industry code as a mandatory code by making regulations. There may be a question of whether the bare terms of the industry code provisions enable regulations imposing price controls, given these are relatively extreme measures not found elsewhere in the CCA (other than section 95X, which is in materially different terms).

Leaving that question aside, in the absence of guidance in the CCA, it is necessary to turn to existing guidelines to ensure the process is fair and transparent. The two most important guidelines that outline this process are the *Australian Government Guide to Regulation* (the ‘**Government Guideline**’) and *Industry Codes of Conduct Policy Framework* (the ‘**Treasury Guideline**’). In addition to these two guidelines, the ACCC’s recent *Dairy Inquiry*¹, which recommended a mandatory code in the dairy industry, provides some useful commentary on what is proper procedure for a government looking to create an industry code. The AEC has used these sources to evaluate whether the proposed Electricity Code satisfies best practice standards.

The Need for Public Consultation

The Government released its Exposure Draft of the Electricity Code on 23 February 2019, with consultation open until just 12 March. This is the first opportunity for public consultation on the Electricity Code and the Consultation Paper was released on the same day that the Government announced its intention to implement it. Since the Government has already committed to implementing the Code by 1 July 2019, this consultation appears to be targeted towards the contents of the code rather than the merits of the code itself. This is inconsistent with the *Treasury Guideline*, which states it is necessary for government to ‘initiate a public consultation process to assess the merits of prescribing a code’.² Likewise, the *Government Guideline* makes clear that ‘presenting one *fait accompli* option is not acceptable’ and instead there ‘must always be’ a public consideration of the no regulation or status quo option.³ In other words, public consultation about the merits of proposed regulation should always take place prior to the development of any Exposure Draft.

Assessing the merits of a code is particularly important in this situation since the Electricity Code is being led by government rather than industry. The *Treasury Guideline* acknowledges that industry-led initiatives are the ‘preferred method of addressing specific problems in an industry’ presumably because of better technical knowledge.⁴ It is for this reason that some previous mandatory codes, like the Franchising and Unit Pricing

¹ ACCC, *Dairy Inquiry – Interim Report*, November 2017

² Treasury, *Industry Codes of Conduct – Policy Framework*, November 2017, p14.

³ Australian Government, *Australian Government Guide to Regulation*, March 2014, p26.

⁴ Treasury, *Industry Codes of Conduct – Policy Framework*, November 2017, p2.

Code, emerged out of industry attempts at self-regulation. These circumstances then only increase the need for better public consultation to ensure the regulation does not stymie innovation or competition. Mitigating these unintended consequences is especially important since this Code greatly empowers a third party, the AER, in a way that no previous code has before. To illustrate the shortcomings in public consultation relating to this code, the AEC considers it useful to compare the process leading up to the Electricity Code with that of the Dairy Code, which similarly was not industry-led.

The ACCC commenced investigation into the dairy industry on 27 October 2016 and opened up consultation immediately to gain an understanding of the issues with the industry. It then published a 226-page interim report on 30 November 2017 where it first asked for ‘feedback on the concept and scope of a mandatory industry code’.⁵ It accepted submissions on this until 31 January 2018 and then used this feedback to guide its recommendation for a Dairy Code as part of a 240-page final report published on 30 April 2018. It has now asked the Government to consider this proposal. If the Government accepts, it must produce a Regulatory Impact Statement (RIS) and run ‘extensive public consultation’ on this as per the *Treasury Guideline* before producing an Exposure Draft.⁶

In contrast, the proposed Electricity Code has avoided both stakeholder and RIS consultation to produce an Exposure Draft as its first (and apparently only) stage of public consultation. While there was a recent ACCC report into the energy sector, it did not even consider, let alone recommend, an industry code for retailers. The AEC therefore strongly rejects any suggestion it forms part of the consultation process.

Appendix A highlights the discrepancies in consultation between the two proposed codes.

No Regulatory Impact Statement

The absence of a RIS, as mentioned above, demands further elaboration. The *Treasury Guideline* dictates that ‘a RIS must accompany every policy proposal to introduce regulation, including regulation to prescribe industry codes’.⁷ This is consistent with the *Government Guideline*, which makes clear that ‘every substantive regulatory policy change must be the subject of a Regulation Impact Statement’.⁸ Since the Government has described the Code as a ‘landmark reform’ and a ‘major package of measures’,⁹ it is clearly a substantive regulatory policy change. This makes the absence of a RIS alarming, particularly given there are well-grounded concerns from the Government’s own rule maker, the Australian Energy Market Commission (the ‘AEMC’), that the effect of this Code – to introduce a Default Market Offer (‘DMO’) – will not benefit consumers and will significantly harm smaller retailers. These concerns are explained further in this submission.

Not a Last Resort Mechanism

The need for extensive public consultation is recognition of the fact that industry codes should only be implemented when all other policy options have been exhausted. The *Government Guideline* and *Treasury Guideline* make clear respectively that an industry code is a ‘means of last resort’ and that all ‘other options

⁵ ACCC, *Dairy Inquiry – Interim Report*, November 2017, p193.

⁶ Treasury, *Industry Codes of Conduct – Policy Framework*, November 2017, p12.

⁷ Ibid

⁸ Australian Government, *Australian Government Guide to Regulation*, March 2014, p2.

⁹ Australian Government Letter to AER Chair:

<https://www.aer.gov.au/system/files/Letter%20to%20the%20AER%20Chair%20-%20default%20pricing.pdf>

Hon. Angus Taylor MP and Hon. John Frydenberg MP joint media release:

http://www.environment.gov.au/minister/taylor/media-releases/mr20190223.html?utm_source=mins&utm_medium=rss&utm_campaign=feed

must be fully explored'.¹⁰ Here, alternative policy options have not even been considered let alone exhausted. As alluded to, it is common practice for industries to first attempt self-regulation via a voluntary code before transitioning to a mandatory code.

Furthermore, the AEC questions the appropriateness of an Electricity Code as a last resort mechanism given its limited reach. As it stands, the proposed Code will only apply in New South Wales, South Australia and South-East Queensland. This again deviates from standard practice as mandatory codes usually apply nationwide, necessary for uniformity, but also importantly so businesses can manage costs across jurisdictions. It is questionable that this Code is in the 'national public interest', as the *Treasury Guideline* specifies it should be, when it does not apply nationwide.

Such an irregularity might reflect the fact that electricity regulation has historically been a state rather than a federal issue. We note that the Government is not seeking to apply the Code in Victoria (which has recently proposed an alternative price regulation framework), in what appears to be an acknowledgement that state legislation is a more suitable mechanism for price regulation.

It is the AEC's position that giving each state the opportunity to regulate energy prices is a fair and reasonable option that should be exhausted before an industry code is considered as a last resort. If the Victorian example is any guide, it appears that should any of the impacted states not wish to be captured by the Code, it would simply need to enact a price regulation requirement into its own statute book, and the Government would then make way for that regime.

No Review Process Specified

The *Government Guideline* lists ten principles policymakers must follow when making new regulations to uphold best practice. Principle nine states that 'all regulation must be periodically reviewed to test its continuing relevance'.¹¹ Each and every existing industry code adheres to this principle and has a review mechanism in place to evaluate ongoing relevance. That is with the exception of the proposed Electricity Code, which has given no indication in either the Consultation Paper or Exposure Draft of what its review process will look like.

The lack of any review mechanism is particularly unsatisfactory given the circumstances surrounding the development of the Electricity Code. The absence of proper consultation, and the haste with which the Electricity Code was drafted, has heightened the potential for unintended consequences and makes the review period critically important. We would therefore like to see a public outline of the review process as soon as possible to give all affected stakeholders greater clarity. We provide further comments regarding code review and developing appropriate measures of success below.

Disregard of COAG Energy Council

The AEC finally wishes to reiterate the importance of respecting the procedures of the COAG Energy Council. The Council has served as an important mechanism for bringing federal and state governments together to discuss energy policy. The AEC is deeply concerned about reports that this Code was introduced in clear disregard of previous agreements made by the Council. The COAG Communique released following the

¹⁰ Australian Government, *Australian Government Guide to Regulation*, March 2014; Treasury, *Industry Codes of Conduct – Policy Framework*, November 2017.

¹¹ Australian Government, *Australian Government Guide to Regulation*, March 2014, p2.

December 2018 meeting of the Council reiterates this agreement.¹² The Government has made no attempt to explain why it is necessary to circumvent the well embedded principles of the Australian Energy Market Agreement and jeopardise future collaboration between members of the Council.

Practical Consequences of the Electricity Retail Code

The Scope and Basis of the Electricity Industry Code

The Consultation Paper states that the Electricity Code is being used to implement a number of recommendations of the ACCC's Retail Electricity Pricing Inquiry ('the REPI') Final Report. This is not entirely true. The Code is being utilised to implement reforms similar to those recommended by the ACCC, albeit with no information provided as to why a variation to the recommendations is necessary or the impacts these variations will have on the costs and benefits of their implementation. This is critically important given the Consultation Paper suggests that the merits of this reform is based on comprehensive policy analysis undertaken by the ACCC, as informed by over 200 submissions. Given these deviations, a consultation RIS is imperative in order to ensure this reform will benefit consumers.

Recommendations 30 and 49 state that the standing offer should be abolished and replaced with a simplified Default Market Offer. The Electricity Code does not abolish the standing offer, but rather requires retailers to price their existing standing offers at or below the AER determined DMO. The Electricity Code does not impact the standing offer nor amend the mandatory additional consumer protections the ACCC considered unnecessary.

There are consequences to this approach. The effect is that market offers to small customers (as defined for the purposes of the National Energy Retail Rules) in regions subject to the DMO cannot include a base price (before discounts) higher than the applicable DMO (see National Energy Retail Rules rule 46B).

Recommendations 32 and 50 state that if a retailer chooses to advertise a headline discount it must calculate this discount based on the reference bill amount published by the AER. It further states that advertised discounts must be guaranteed. The Code significantly expands this intention, requiring retailers which advertise prices, publish prices or offer to supply electricity to publish alongside their offer:

- The distribution region;
- The type of small customer;
- The total amount the customer would be charged for the offer based on the relevant AER model annual usage; and
- The difference between the AER determined total annual price (the reference bill) and the total cost of the offer.

This expansion is a fundamental change to the ACCC's recommendation and renders it impractical. While the ACCC merely intended that retailers advertising discounts in marketing would be required to use a standardised calculation methodology, the Code requires all retailers, irrespective of their offer type to publish their offers alongside a discount rate. Retailers which do not offer discounts often make a particular point of offering simple, low cost products as a means of differentiating their business. The Code will require

¹² A full copy of the Communique can be found here:

<http://www.coagenergycouncil.gov.au/sites/prod.energycouncil/files/publications/documents/21st%20COAG%20Energy%20Council%20Communique.pdf>

them to change all their collateral and campaigns, discouraging innovation and entrenching practices the ACCC considered confusing.

Of additional concern is that the Code will now require retailers to include the information in s11(3) when they publish or make offers to customers, not merely when offers are advertised. Retailers have a regulatory obligation to publish offers in accordance with the AER's Retail Electricity Pricing Guidelines. They also have an obligation to provide the prices to the customer at the time of making an offer. The Code appears to require retailers to provide customers the information in s11(3) at these times. In addition, retailers must provide a range of disclosure materials to consumers under the National Electricity Retail Rules (rule 64). The sheer volume of material being provided to consumers is unlikely to reduce consumer confusion.

Aside from being administratively burdensome, it is concerning that retailers will be forced to give generic information to customers with whom they are actively engaging. For example, during a sales conversation a retailer which discusses a customer's usage patterns as part of identifying their most suitable offer would be required to provide information relevant to the AER's generic annual usage determination rather than information specific to the customer. Discussions with customers already require considerable compulsory disclosure, making those discussions last for considerable periods of time and creating a material disincentive for customers to engage with retailers. This is clearly undesirable.

The AEC considers these deviations from the ACCC report to be substantial and strongly encourages the Government to align the obligations in the Code to the ACCC's recommendations. Given the extremely limited consultation the Government is undertaking on the true impacts of the Code, it is critical that unintended consequences are mitigated to the maximum extent possible.

The Impact of the DMO on the Future Market

The ACCC suggested in the REPI that the DMO should operate as a price cap into perpetuity. This is not how price regulation has historically operated in competitive markets. The DMO disregards the principle that price regulation is a means to an end, intended to be in operation for a period until adequate competition is present to protect consumers from paying too much.

The DMO instead assumes that competition in energy can never be adequate to protect consumers given that there will always be a proportion who are unwilling or unable to engage. If the Government considers that disengaged customers must be protected, then the DMO will be a feature of the market into perpetuity.

Given the significance of implementing a permanent price cap in the energy market, untested in any competitive market, we are very concerned that an inadequate consultation process such as this could result in serious detrimental impacts for consumers.

Further, not all consumers will be subject to the DMO. The Consultation Paper states that 'demand tariffs, prepayment meters, embedded networks, and solar customers are not currently included in the definition of small customers', but also that "innovation in the retail electricity sector and distributed energy services necessitate the inclusion of these supply arrangements as soon as the data and market information permits the AER to make a reasonable determination" (pp8–9). Given that the data necessary to fully implement the DMO is not yet available, this is another reason not to rush its implementation.

Similarly, the DMO was suggested by the ACCC as part of a suite of 56 reforms that together should result in significant savings for consumers. We agree with this sentiment, however note that as is often the case when

intending to implement a broad suite of reforms, overlap and inconsistencies can arise. When undertaking an impact assessment, the benefits of the DMO cannot be assumed to be severable from the other recommendations. The full impact must be understood.

Periodical Review and Key Performance Indicators

Whatever the implementation path chosen, the AEC is committed to ensuring customers are more empowered and achieving greater economic benefits after the implementation of this reform than they were before it.

The AEC and other energy experts consider the DMO itself will diminish competition and could increase the average prices paid by all energy users. This notwithstanding, if the Government is committed to imposing the DMO through the Electricity Code then it must be expanded to include review obligations and indicators measuring success.

As highlighted above, all mandatory codes currently in operation include periodical review requirements to ensure the intended benefits are being achieved. An annual review must be codified in the Electricity Code to ensure that the benefits claimed by the Government are continuing.

As part of this review, the AEC strongly considers that a number of key performance indicators should be developed prior to any implementation to ensure that when the time comes for review there will be a robust evidence base to compare against.

We expect that the Government is keen to focus on using the reduction in standing offer prices paid as the sole performance indicator, however this merely paints one part of the picture.

The anticipated impacts were highlighted by the AEMC¹³ and Oakley Greenwood¹⁴ in reports released in December 2018. Evidence of the actual impacts can be seen in the UK where price controls were initially imposed for prepayment meter customers in April 2017, before being expanded to vulnerable customers on 2 February 2018 and then all customers on 1 January 2019.

Given these expectations, we consider there is value in the Government undertaking further consultation with stakeholders to develop an agreed set of key indicators prior to the implementation of the Electricity Code. We consider these indicators might include:

- The average energy prices paid by small consumers on both the DMO and market offers
- The median market offer on 30 June 2019, 30 June 2020, and so on
- Participation rates in the market
 - Churn
 - Engagement and confidence ratings (utilising the ECA's Consumer Sentiment Survey)
- Spread of discounts/offers in the market

¹³ AEMC, Customer and competition impacts of a default offer, Final report, 20 December 2018

¹⁴ Oakley Greenwood, Advantages of a Reference Bill as Compared to a Default Market Offer, December 2018

Communicating and Educating Customers

The Electricity Code as drafted will create significant customer confusion as there is insufficient time to properly educate customers about what the changes mean for them. This is unhelpful to the shared objective of both the Government and industry - to make the energy market more transparent and easier for customers to navigate. It is incumbent on the Government to implement a comprehensive communication and education campaign as a matter of urgency.

From a consumer's perspective, there are two messages they will receive. The first, as highlighted by Oakley Greenwood, is that customers on existing standing offers will be told that the Government is ensuring that they do not get ripped off – that the DMO is a fair price.¹⁵ This will actively dissuade a group of customers, who by definition are reticent to engage and switch, from choosing a market offer. There is a risk the majority of standing offer customers who the AEMC predicts would switch to a market offer in the coming years might opt to stick with the DMO. These customers would see a significant financial benefit lost. The DMO is a higher priced offer relative to the rest of the market, and customers should not be encouraged to assume that it is the best deal that they can access.

The second issue relates to customers who have already engaged in the market and selected a market offer. The Electricity Code is silent on transitional arrangements for existing customers and how their offers will be presented to them. There are two alternative approaches the Government could mandate:

1. Existing offers remain unchanged
2. Existing offers are re-calibrated to ensure the base rate does not exceed the DMO

Both options have different but important impacts on consumers and will require tailored education approaches.

Option 1 will mean customers are not notified of the 'real' value of their offer relative to the reference bill. If their offer has a high base rate, any discounts will appear higher than those advertised in line with the requirements in the Electricity Code. This is highly likely to discourage customers from shopping around, as their existing discount will be higher than the discounts they can obtain from shopping around. As was highlighted in the ACCC Report, we know customers focus on the size of the discount rather than the value of the offer. Without education, these customers are likely to disengage from the market, considering that their existing offer is more beneficial to them.

Option 2 presents a different concern, but one of which the Government should be cognisant. If retailers are required to notify customers prior to 1 July 2019 of a change in regulations, these customers will likely blame the Government for their discount being reduced. Even if the total cost of their bill remains the same, given the weight consumers place on discounts, they will consider their energy bills are increasing at the behest of the Government. This is clearly undesirable.

These issues were highlighted by the AEMC, which noted:

“Without sufficient lead time and transitional arrangements the risk is that engaged consumers, despite not being directly impacted by the default offer, will be detrimentally affected and may

¹⁵ Oakley Greenwood, Advantages of a Reference Bill as Compared to a Default Market Offer, page 2

therefore be inclined to become disengaged. This may be exacerbated in the current environment of low trust in the sector.”¹⁶

The AEC would welcome the opportunity to discuss this matter further to ensure customers are not negatively impacted.

Unintended consequences

In addition to reducing customer engagement, and increasing customer confusion, the DMO also risks reducing price competition. This is because the DMO will become a clear signal to retailers about market prices. If consumers believe the DMO represents a fair price, then there is materially less incentive for retailers to offer deeper discounts against that price.

It also provides an opportunity for very different price outcomes for consumers depending on how individual retailers structure their offers. As the AER proposes producing an annual total price target, retailers are able to structure tariffs in a way to achieve that objective. It would be entirely possible for individual retailers to, for example, structure tariffs in a way that meets the total annual price target, but charges proportionately more for lower usage compared to higher usage (or vice-versa). This will be entirely opaque to consumers, who may wrongly assume that their individual bills will be "cheaper" if they choose the retailer offering the largest discount against the reference price when in fact that retailer may charge more for different levels of consumption compared to another retailer.

Code Mechanics – Setting the DMO

The AEC is concerned that the Government has determined to implement the DMO in a manner which relies entirely on the political support of both houses of the Parliament. Each year, the AER will publish the final DMO prices on 30 April. They will in turn be provided to the Treasurer and Energy Minister, who will table them in both chambers of Parliament on a future sitting day. These tabled prices are then disallowable for 15 sitting days.

Given the timing of the final decision, the regulation will always be disallowable until well after the date they are applicable to customers. For example, in 2018, if the prices had been tabled on the Senate’s first sitting day on 8 May 2018, they would be disallowable until mid-August. If disallowed, the retailer would be required to retrospectively change a small customer’s price back to 1 July. This is obviously unacceptable for both market participants and consumers.

This makes it very easy for electricity prices to become politicised. This risk is particularly pertinent if the AER proposes a price increase in the future on the back of an increase in retail costs. If either Chamber is unwilling to allow this price increase, retailers would then be unable to recover their increased costs from consumers. The safeguard mechanism contained in s16 provides retailers with no ability to mitigate their own risks and highlights the fundamental flaws with this arrangement.

Code Mechanics – Implementing the Reference Bill to Aid Comparison

An important element of the Electricity Code is the development of rules to implement the reference bills. The reference bills are described in the Consultation Paper as equivalent to the DMO for each network area, and are designed to provide the basis for discounts, both conditional and unconditional, to be calculated.

¹⁶ AEMC, Customer and competition impacts of a default offer, Final report, 20 December 2018, Page vii

The AEC supports the development of reference bills to simplify comparison between energy offers, however is confused by the manner in which the Electricity Code sets out this obligation.

The Electricity Code requires retailers to compare all prices advertised, published, or offered to small customers. As noted above, this is a higher obligation than the ACCC recommended.

Of particular concern to the AEC is the Government's intention to create a new set of requirements for retailers with conditional discounts.¹⁷ In the current market, retailers are allowed to offer both conditional and unconditional discounts. On the recommendation of the ACCC, however, the Government has recently made a rule change request to the AEMC to amend the requirements for retailers offering conditional discounts.¹⁸ This rule change request has yet to be commenced but appears to be at odds with the Code.

The rule change would allow retailers to continue to offer conditional discounts, provided they were reflective of the benefits they receive from the customer fulfilling the conditionality, whereas the Code prohibits retailers from offering products to consumers with conditional discounts unless there is a more prominent unconditional discount. This does not make sense.

The Consultation Paper also sets out how the obligation is intended to work in practice. The example provided is impractical, disregarding the operation of the energy market. In the example provided, two alternative offers are discussed:

Retailer A's offer contains a 2% conditional discount, which they are required to advertise alongside their 23% guaranteed discount. This is permitted, as the guaranteed discount is more prominent. But, when calculated, the advertisement of a 2% conditional discount is clearly misleading.

The 2% conditional discount is only accurate for the AER determined usage pattern. For any other customer, the conditional discount is incorrect (and in fact, impossible to calculate). This highlights a fundamental error in the development of the Code. Conditional discounts cannot be treated differently to guaranteed discounts in any comparison between an average bill and a reference bill. The AEC recommends the Code be amended to require retailers to either publish all discounts in comparison to the reference bill (that is, assume any conditional discounts are met) or to require retailers publish only the guaranteed discount in headline claims with any conditional discounts discussed with the customer directly.

The Mechanics of an Effective Comparison Rate

Technical Design

Given the shared support across industry, government, and the consumer sector for an effective tool that customers can use to compare energy offers, the AEC has been working with members to develop a methodology for an industry-led comparison rate. This work has enabled the industry to gain a better understanding of what is necessary to develop and implement a successful comparison tool with a desire to fast track the benefits for customers concerned that engaging with the energy market is too confusing.

¹⁷ AEMC, *Preventing discounts on inflated energy rates*, 20 March 2018, <https://www.aemc.gov.au/rule-changes/preventing-discounts-on-inflated-energy-rates> (initiated by the Hon. Josh Frydenberg MP); AEMC, *Regulating conditional discounting*, 18 February 2019, <https://www.aemc.gov.au/rule-changes/regulating-conditional-discounting> (initiated by the Hon. Angus Taylor MP).

¹⁸ AEMC, *Regulating conditional discounting*, 18 February 2019, <https://www.aemc.gov.au/rule-changes/regulating-conditional-discounting> (initiated by the Hon. Angus Taylor MP).

Our work in recent months has been twofold. First, the AEC developed a technical design that would enable industry to transparently implement and present a comparison rate when marketing their discounted energy offers. This technical design was developed considering a number of key principles:

1. Customers need to be able to quickly and easily rank the value of an energy offer
2. Customers should not be led to believe the comparison rate could in any way predict the size of the bill
3. A comparison rate must be simple enough to understand at a glance
4. A comparison rate is just one tool in a suite of tools that customers can use to engage in the market
5. A comparison rate should be iterative, but consistent. In the long term, its value should increase

The AEC is concerned that the drafting of the Electricity Code is insufficiently detailed to enable consistent implementation across the sector. This can only be to the detriment of consumers. A more adequate consultation process to identify consumer needs and practical implementation requirements prior to announcing the Electricity Code, might have avoided this outcome. It now appears likely that the Government will table the Code in Parliament in early April having only had the benefit of written submissions. No agreement or discussion between key stakeholders has taken place.

It is our expectation that if the Government wishes to proceed with implementing this policy through the Electricity Code, it is critical that a complementary guidance framework is developed to ensure continuing customer benefit. It is not sufficient for Government to merely announce that it will be easier to compare offers. It is absolutely critical that this Code delivers genuine benefits to consumers in the long term and a comprehensive framework is required to enable this. There is too much at stake for this reform to fail.

Consumer Testing

The second element of our recent work was to ensure the industry led comparison methodology and presentation approach met the needs of consumers. To that end, we commissioned a behavioural insights project to gain a better understanding of how customers engaged in the market; whether or not the presence of a comparison rate would increase their motivation to engage and comprehension of offers; and what consumers would change to make the comparison rate more useful. A copy of the final report is included in *Appendix B*.

The testing highlighted the importance of clear and simple comparisons, relatable to consumers. We do not consider the framework proposed by the Electricity Code would achieve this outcome. The Code requires retailers to display the distribution region, the type of small customer, the value of the retailer offer, and the difference between the AER determined reference price and the retailer offer. The Code does not stipulate presentation, wording or even a statement indicating that the comparison is indicative only based on comparing the usage of a two to three person household. Our testing highlighted this is critical to gain the trust of consumers, and in fact, our testers recommend that future iterations of the comparison rate should enable more accurate calculations for different household sizes.

Ensuring Consumers can compare with Confidence

The Consultation Paper notes that the Code is not intended to cover time varying offers, solar offers or gas offers. While we agree that this is a prudent initial approach, some thought needs to be given to the impacts this will have on consumers and how these issues can be mitigated. Of key concern to the AEC is the obligation to provide the comparison to the reference bill more broadly than in advertising. This will mean that

customers at the time of signup will see flat tariff discounts off the reference bill, being compared to time varying tariff discounts off a retailer set base rate. This may encourage customers to make choices detrimental to their needs.

Gas also presents a consumer expectation risk. While consumers will be told the comparison rate for electricity can be relied upon, at the same time the gas rate cannot. There is a risk consumers will incorrectly treat gas discounts as objective when they are not. The Government must ensure any complementary education or media campaigns clearly highlight these differences.

The Consultation Paper also discusses whether in future, a reference bill for solar customers should be developed to enable simpler comparison. The AEC does not consider this is workable through an average consumption, annual cost approach as described in s14(1)(b). The suitability of solar offers is particularly reliant on actual customer data given the variations in usage and solar output. While it is possible to estimate the usage of a two to three person households with relative accuracy, this is not the case for solar given the variations in system size and consumption patterns.

Next steps

The AEC considers the reference bill and the requirements for retailers to compare their offers against it to be the most important reform in the Electricity Code. But without significant additional detail and testing, it will fail to achieve the benefits critical to assisting consumers to get the most out of the energy market.

We would welcome the opportunity to work with the Government and other key stakeholders in the energy sector to ensure that this reform is implemented in the long term interests of consumers. In the meantime, we encourage the Government to pause the implementation timetable to enable that critical work to occur.

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

Yours sincerely,



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