

Electricity Division – Wholesale and Retail Markets
Department of Industry, Science, Energy and Resources
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02 February 2022

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

The Australian Energy Council ('AEC') welcomes the opportunity to make a submission to the Department of Industry, Science, Energy and Resources (the 'Department') on the *Electricity Industry Code Post Implementation Review Directions Paper* (the 'Directions Paper').

The AEC is the industry body representing 20 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.

The AEC is broadly comfortable with the direction the Department is taking in seeking to ensure the Default Market Offer (DMO) and reference price remains fit for purpose in the 2022 energy market. However, there are a number of concerns with the specific changes proposed which are detailed further below.

Direction 1: The department proposes that "Comparison price set by government" be used when advertising offers instead of "Reference Price".

The AEC agrees that the name "Comparison Price set by the Government" appears to be slightly more instructive to consumers than "reference price". However, this increase is likely to be minimal, and does not appear to be backed up by any behavioural or consumer research. There will also be costs in making the change in retailer systems which will be passed through to consumers. These system costs are driven by the ACCC's interpretation of the Code that states that retailers must include the reference price information on all communications where a price is presented, including customer collateral, and not only for new customer advertisements.

The AEC would be more comfortable supporting this name change if it was accompanied by a broader simplification of retailer obligations when advertising price-based offers. As noted in the AEC submission to the Consultation Paper, the obligation for retailers to provide five separate pieces of information¹ in price-based advertisements is leading to retailers prioritising brand based advertising over price. As such, price sensitive customers are less likely to be encouraged to switch to a cheaper deal, likely resulting in more

¹ Currently retailers are required to publish the following detail in all price based advertising: the difference between the unconditional price and the reference price, stated as a percentage of the reference price (comparison percentage), for each proportional conditional discount, the difference between the conditional price and unconditional price, stated as a percentage of the relevant reference price, the lowest possible price of the offer (inclusive of all conditional discounts mentioned in the communication), conditions for all conditional discounts, the distribution region and type of small customer, a conditional discount should not be stated as the main element of the advertisement, publication or offer.

customers remaining on higher priced offers. The AEC remains of the view that it is in customers' interests to remove as many of these additional obligations as possible to incentivise retailers to return to price-based advertising to increase engagement.

Given most retailers are avoiding publicly presenting the reference price in their advertisements, the primary function of the reference price is to assist customers who are already engaging with a retailer – either on their website or when speaking to a contact centre. These customers are less likely to benefit from a name that is more instructive than a customer who is seeing the information presented in a newspaper or radio advertisement.

As such, the AEC recommends the Department reconsider whether there are other changes that could be made to simplify the way retailers present price-based offers in conjunction with this direction. An example of simplified wording might see a retailer only required to advertise a “discount off the comparison price set by Government”, without the need to also advise the customer of the lowest possible price of the offer, the distribution region and type of customer.

Implementation of this direction

The AEC considers that making this change in all customer communication before 1 July 2022 is not achievable. Once the scope of the change is better understood, the AEC would welcome the opportunity to work with the department to identify a reasonable implementation approach that would minimise costs.

Direction 2: The department proposes that, in conjunction with the ACCC, it will consult with stakeholders on how the reference price operates across the range of offers provided by retailers, particularly more complex offers. This will inform a consideration on whether changes to the reference price requirements within the Code are needed to accommodate more complex offers, and how best these changes might be implemented.

The AEC supports this direction. As noted in our submission to the consultation paper, the reference price is not well suited to assisting customers in choosing between more complex energy offers. As such, the scope of the reference price should be limited to those offers that are relatively simple, and able to be reasonably estimated for most customers. More complex tariffs, including demand tariffs, require an assessment of a customer's individual consumption patterns. Generic assessments such as those undertaken in presenting a reference price do not add any value in these circumstances.

Direction 3: The department proposes to move the DMO Determination date from 1 May to 21 May.

The AEC maintains that it is important that the DMO is set on actual network prices, however does not consider moving the DMO determination date to 21 May sets a good balance between the benefits to retailers for accuracy, and the time pressure on retailers to implement the new DMO prices.

The AEC encourages the Department to move the determination date to 14 May. 14 May would give the AER two additional weeks to make its determination, and would see retailers lose two weeks from the timeframe allowed to implement the prices. While this would place some pressure on the AER to finalise proposed network prices in time, similarly, retailers would be under significant pressure to ensure they can notify customers of price changes in advance of them occurring. A 21 day delay would see no additional pressure

placed on the AER, who have advised they can meet 21 days under their current processes. This does not reflect a reasonable balance between each party.

The AEC maintains that in the longer term, a review of the regulatory timeframes is required to minimise the impact on all parties. This would likely result in a number of rule changes to amend the timeframes for network businesses to propose prices to the AER, and changes in the time allowed for the AER to consider these prices. These rules were developed prior to the introduction of the DMO, and as such are no longer fit for purpose.

Direction 4: The department proposes that, in conjunction with the AER and ACCC, it will consult on how best to extend price cap protection provided by the DMO to customers in embedded networks. This consultation will include examining compliance issues and costs. It is not proposed that current requirements regarding the Reference Price be extended to embedded networks.

The AEC supports this direction.

Direction 5: The department proposes to conduct another review of the Code two years after the implementation of the CDR for Energy for initial retailers.

The AEC supports this direction. In addition, the AEC considers the scope of this review should include consideration of whether the DMO and reference price remain beneficial in the energy market.

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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