

Energy Division – Electricity Retail Code
Department of the Environment and Energy
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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 Competition and Consumer Legislation Amendment (Electricity Retail) Regulations 2019 *Public Consultation Paper* (the '**Consultation Paper**') and the attached *Exposure Draft of the Amendment Regulations* (the '**Exposure Draft**').

The AEC is the industry body representing 22 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 remains opposed to the use of the Electricity Retail Code (the '**Code**') as a mechanism to intervene in the retail market. We strongly believe the existing regulatory and legislative change process agreed by all jurisdictions in the Australian Energy Market Agreement to be robust, transparent, and fit for purpose. To that extent, we do not support further amending the existing Code, and would prefer the regulations contained within be gradually implemented into the National Energy Retail Laws where they are found to be in line with the National Energy Retail Objective.

Notwithstanding, the AEC accepts that the Government has chosen to implement the Default Market Offer (**DMO**) and reference price through the Code. The use of the Code must remain the exception to the existing rule change process, rather than the norm, and the AEC would be concerned if its application was further expanded in future iterations. To date, the Government's approach to implementing and amending the Code has not provided industry any confidence that robust consultation will be conducted into the future. A two week consultation period is inadequate to properly assess and understand the impacts of this regulatory change, particularly in the absence of any consumer testing to ensure that the interventions will be beneficial in achieving the Government's objective.

Key changes

1. Expansion of the Code to include solar offers

The AEC supports the Government's proposed approach to expand the application of the Code to cover solar offers. As noted in the Consultation Paper, these offers are primarily aligned to non-solar offers, albeit with the inclusion of a feed in tariff. As such, retailers will often already be complying with the obligations proposed in the exposure draft.

The AEC considers the approach proposed in the consultation paper is the only workable approach to include solar offers in the DMO and reference price. Consumption profiles for customers with solar, particularly when

export rates are considered, vary greatly. The AEC would oppose any suggestion for an ‘assumed’ solar customer profile that attempts to combine the rate of consumption and export.

The AEC considers the solar amendment largely only impacts the operation of the reference price, given the very low numbers of solar customers on standing offers. To that end, we are most concerned about simplicity in presentation of the offer, and how customers will be able to understand the information presented ‘at a glance’. The AEC considers that aligning methodologies for presenting the reference price with non-solar offers will best achieve this objective.

2. Expansion of the Code to include flexible tariffs

The AEC is generally comfortable with the Government’s proposed approach to expand the code to include flexible tariffs. We strongly support the decision to exclude demand tariffs, and small business customers from the definition of flexible tariffs. The inclusion of these tariffs would greatly diminish the ability of the reference price and DMO to present a reasonable prediction of costs and enable comparison. Bill outcomes for customers with demand tariffs, and small businesses on flexible tariffs vary greatly, and any attempt to include them in the Code would likely lead to detrimental outcomes.

The AEC is concerned that the exposure of retailers to network and energy costs differs depending on the customer’s tariff, given the proposal to set the same DMO for both flat and flexible tariffs. We consider the AER should be directed as part of its DMO determination process to assess the cost impacts of setting the DMO at the flat tariff level for non-flat tariffs, at the DMO consumption level. Whilst network tariffs should theoretically be balanced this is often not practically the case, with the discrepancy at the DMO consumption level resulting in vastly different network cost outcomes for customers on flat and flexible tariffs. Any variation in network costs between the tariffs should not be borne by retailers, and the DMO should be adjusted accordingly where discrepancies are identified.

3. Expansion of the Code to include price communications

The AEC strongly opposes the proposal in the consultation paper to expand the requirement to publish the reference price to include any price related communications.

While couched in the consultation paper as a ‘clarification’ to the current Code, the AEC considers including the term ‘price related communications’ without definition to be a clear expansion of the Code’s application, and results in it impacting the existing energy regulations.

As noted above, the Code must not be used as a mechanism to change the existing energy regulations. It must be strictly limited to implementing the DMO and reference price. Any further interventions must be made in the NERR through its existing rule change process.

The ACCC’s decision to include a requirement in its compliance guide to publish the reference price when changing an existing market offer was in contrast to the requirements in the current version of the Code.

It appears this proposal to redraft this obligation in the Code is a means to retrospectively regulate the ACCC’s compliance approach. This is clearly inappropriate, but given retailers have already been required to implement the ACCC’s derived approach, the AEC considers any change to the Code at this time must be expressly limited to the scenario the ACCC has stated in its current Guide. The term “price communication”

is extremely broad, and will likely result in the ACCC needing to change its existing Guide to re-clarify the types of communications captured by this expanded regulation. This creates a circularity problem. The Government amends its Code to 'clarify' an interpretation, which subsequently results in a changed interpretation that again needs to be 'clarified' in future years.

The expanded application must be expressly limited to a scenario where a retailer notifies a customer of a change to an existing market offer. This is a much narrower definition than 'price related communication', and appropriately captures current retailer practice. The AEC suggests the term price related communication in the Exposure Draft be clearly defined in Section 5 as including 'advertisements, publications, offers, or a notice given in accordance with Rule 46(3) of the National Energy Retail Rules'.

As a general principle, the AEC only supports amending regulatory obligations regarding customer communications where testing has identified that the changes will be beneficial, improving understanding. Strictly limiting the application of the Code to price change notifications and advertisements will avoid any further unintended consequences.

4. Amending of the Code to clarify obligations when rounding

The AEC supports the Government's proposed amendment to remove the requirement to round up discounts in certain circumstances.

5. Record keeping

The AEC is comfortable with the Government's proposed amendments to record keeping.

General comments

As noted in previous submissions, the AEC considers work to assess the operation of the Code, in particular the ability for customers to utilise and benefit from the reference price, should commence as soon as possible. The scope of this assessment should be broad, including the ability to transition the regulatory mechanisms contained in the Code to the National Energy Retail Laws and Rules. The operation of a supplementary regulatory mechanism does not deliver consumers any value, and creates significant risks for retailers.

In the interim, the AEC expects the Government to undertake best practice consultation, with appropriate timeframes and opportunity for stakeholder participation, if any further changes to the Code are proposed.

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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