

24 July 2019

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Dear Angela

### **Draft AER Retail Information Pricing Information Guidelines (version 6)**

Thank you for the opportunity to comment on the Draft AER Retail Information Pricing Information Guidelines.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. Our comments are informed by the complaints made to our office and also from our community outreach and stakeholder engagement activities.

## **Third parties, agents and door-to-door marketing**

We recognise that the intent of the draft amendments to version 6 of the Retail Information Pricing Information Guidelines (“the Guidelines”) is to provide retailers with guidance on the operation of the Electricity Code which came into force on 1 July 2019.

The Electricity Code is established by the *Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019*. However, the AER is required to publish the Guidelines by the *National Energy Retail Law* (NERL). The Guidelines have a much wider application than the Electricity Code and provides consistency and transparency to consumers in more ways than simply the inclusion of the reference price. Additional information is required by the Guidelines, such as:

- key fees applicable to a plan such as connection/move-in fees, late payment fees, disconnection fees
- additional information like the length of the contract or benefit period, payment options or flexible billing options
- any specific eligibility criteria for a plan
- solar, Green Power and other options
- metering configurations and tariff type.

The draft amendments to the Guidelines contained in clauses 168, 178, 180-181, 186 are intended to remove the requirement for third party price comparison websites, sales websites or sales agents

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to provide customers with a link to the Basic Plan Information Document (BPID) on online offers, or a hard copy of the BPID or Detailed Plan Information Document (DPID) through in-person marketing. However, in clauses 18 and 189 the AER sets the expectation that retailers make arrangements so that third parties and agents acting on their behalf also comply with the obligations in Part B of the Guidelines. We understand that these amendments are to align Part B of the Guidelines with the wording of the Electricity Code.

The AER introduced important reforms in version 5 of the Guidelines, with new requirements on retailers and their sales agents to explain and provide the BPID in phone and in-person marketing situations<sup>1</sup>. The AER amendments also extended the requirement that retailers provide links to the BPID wherever they promote plans online to third parties marketing plans on their behalf (including commercial energy comparator sites and 'move-in' services)<sup>2</sup>. The AER argued that this change was warranted and necessary to provide a more meaningful point of reference for customers to compare plans and in particular pricing information<sup>3</sup>. The AER also noted that retailers did not object to the new requirement that third parties be covered by the Guidelines' BPID requirements<sup>4</sup>.

At that time the AER recognised that around one in five customers use comparison websites as part of their search for new energy plans<sup>5</sup>. The ACCC has also previously pointed out that consumers are more aware of commercial comparators than government-run comparator websites<sup>6</sup>. This coincides with often quoted research commissioned by the AEMC in 2017, which found that general internet searches remained the most commonly cited method of consumers investigating their energy options<sup>7</sup>.

The AER was not alone in recognising the importance of extending the regulation of energy marketing to third parties, which may include comparator services, connection services, brokers, and automated switching services, or any other business model that makes recommendations to consumers. The ACCC final report for the Electricity supply & prices inquiry noted that any policy intervention designed to improve the comparison of products and services should apply to all tools that a consumer uses to make product comparisons<sup>8</sup>.

We understand that the Electricity Code does not expressly apply to agents or third party comparator sites. The ACCC notes instead that, to the extent that retailers are advertising, publishing or making offers through agents or on a third party comparison site, then the Code requirements apply to those retailers<sup>9</sup>.

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<sup>1</sup> AER, Notice of Final Instrument: AER Retail Pricing Information Guidelines, Version 5, April 2018, p24

<sup>2</sup> Ibid, p22

<sup>3</sup> Ibid, p23

<sup>4</sup> Ibid, p22

<sup>5</sup> AER, Notice of Final Instrument: AER Retail Pricing Information Guidelines, Version 5, April 2018, p22; AEMC, 2017 Retail Energy Competition Review, 25 July 2017, p. 82

<sup>6</sup> ACCC, Restoring electricity Affordability and Australia's competitive advantage, Retail Electricity Pricing Inquiry—Final Report, June 2018, p281

<sup>7</sup> Newgate Research, Consumer research for the Australian Energy Market Commission's 2017 Retail Energy Competition Review, April 2017, p6

<sup>8</sup> ACCC, Retail Electricity Pricing Inquiry—Final Report, p281; CPRC, Five preconditions of effective consumer engagement – a conceptual framework, p53

<sup>9</sup> ACCC, Guide to the Electricity Retail Code, June 2019, p22

If the express requirement for third parties and agents to comply with the Guidelines is removed from Part B, it creates the potential for consumers using comparison sites, brokers or other sales agents to have access to less relevant information than consumers who contacted the retailer directly or those who use Energy Made Easy.

The amendments to Part B of the Guidelines also result in an inconsistency with Part A of the Guidelines (which primarily relates to retail gas offers). This outcome could lead to a customer seeking offers through a third party comparison site being provided with links to the BPID for their retail gas offer, but not their retail electricity offer.

Considering that the retailer obligation to comply with the Guidelines, and the AER's responsibility to develop the Guidelines, is established through the NERL, and the Electricity Code is a regulation of the *Competition and Consumer Act 2010*, narrowing the application of the Guidelines by removing the requirement of third parties and agents to comply with Part B of the Guidelines, appears to unnecessarily weaken the regulatory framework that supports customers in comparing their energy options.

EWON strongly recommends retaining, not deleting, the wording in clauses 168, 178, 180-181, 186 of the draft Guidelines relating to agents and third parties. EWON also recommends:

- amending clause 189 of the draft Guidelines with wording similar to that contained in clause 99 of version 5 of the Guidelines
- amending clause 17 of the draft Guidelines to include third parties and agents marketing or advertising on behalf of retailers
- removing clause 18 of the draft Guidelines as it would no longer be required.

If you would like to discuss this matter further, please contact me or Rory Campbell, Manager Policy and Research, on (02) 8218 5266.

Yours sincerely

**Helen Ford**  
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