



22 May 2020

Electricity Monitoring Team
Australian Competition and Consumer Commission
By Email: ElectricityMonitoring@accc.gov.au

Dear Electricity Monitoring Team

2020 Consultation on ACCC Guide to the Electricity Retail Code

Thank you for the opportunity to comment on revised Guide to the Electricity Retail Code.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. EWON receives and responds to complaints from customers on metering work and electricity supply interruption issues relating to retailer and distributor activities. Our comments are informed by our investigations into these complaints, and through our community outreach and stakeholder engagement activities.

We note that the ACCC welcomes feedback on the guide as well as any other issues related to the Code. We would like to take this opportunity to comment on an issue that relates to the Code, and aligns with issues customers raise with EWON.

The relationship between the AER's Retail Pricing Information Guidelines and the Electricity Retail Code

The Electricity Retail Code is established by the Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019. The Code is binding on all electricity retailers that supply electricity to small customers in the applicable distribution regions. The purpose of the Code is to:

- limit the standing offer prices that are charged to residential and small business customers
- allow consumers to more easily compare market offers, and
- prohibit conditional headline discounting.

The Electricity Retail Code appears not to be binding on third parties, such as agents, brokers and commercial comparison sites.

The AER is required to publish the Retail Pricing Information Guidelines (RPIG) by the National Energy Retail Law (NERL). The RPIG has a much wider application than the Electricity Retail 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 RPIG, such as:

- key fees applicable to a plan such as connection/move-in fees, late payment fees and disconnection fees

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- 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 AER introduced important reforms in version 5 of the RPIG, with new requirements on retailers and their sales agents to explain and provide the Basic Plan Information Document (BPID) in phone and in-person marketing situations¹. The AER amendments to the RPIG 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)².

In June 2019, the AER issued a draft of version 6 of the RPIG. The intention of version 6 of the RPIG was align that document with the operation of the Electricity Retail Code which came into force on 1 July 2019.

The draft amendments to the RPIG were also intended to remove the requirement for third party price comparison websites, sales websites or sales agents to provide customers with a link to the BPID on online offers, or a hard copy of the BPID or Detailed Plan Information Document (DPID) through in-person marketing. At the same time, other amendments set the expectation that retailers make arrangements so that third parties and agents acting on their behalf also comply with the Code.

The AER has since suspended its review of the RPIG. EWON notes that many third party comparison sites currently provide customers with information on retailer offers using the reference price. However, if the express requirement for third parties and agents to comply with the RPIG is removed, 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 importance of clarifying how the Code applies to third parties

The current version of the Guide states that it does not expressly apply to agents or third party comparator sites. The Guideline 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 retailers³.

The current Guideline also expresses the expectation that energy comparison sites will present offers in a way that is easy for consumers to compare prices and make an informed decision about the best deal for their circumstances⁴.

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

² AER, Notice of Final Instrument: AER Retail Pricing Information Guidelines, Version 5, April 2018,, p22

³ ACCC, Guide to the Electricity Retail Code, June 2019, 5.10

⁴ ACCC, Guide to the Electricity Retail Code, June 2019, 5.10.1

We note that all reference to third parties and price comparator sites have been removed from Version 2 of the Guide.

We believe this is a critical issue which needs to be addressed.

The ACCC has previously pointed out that consumers are more aware of commercial comparators than government-run comparator websites⁵. The ACCC's *2018 Retail Electricity Pricing Inquiry (REPI) final report* also 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 comparisons⁶. 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 options⁷.

We strongly recommend that the ACCC includes clarification on how the Code applies to third parties and comparator sites in version 2 of the Guide.

If the Electricity Retail Code does not cover third parties, such as agents and commercial price comparator sites, we also recommend that the ACCC consider further amendments to the regulations to align the Code with the operation of the AER's RPIG.

The applicability of the Code to customers within embedded networks

Neither the Electricity Retail Code nor the AER's Default Market Offer Prices for 2020-2021 cover customers within embedded networks. Indeed, section 6(3)(c) of the Code explicitly excludes these customers.

Under the AER's Retail Exempt Selling Guideline, exempt sellers must not charge an embedded network customer a tariff higher than the standing offer price of the local area retailer, so some of these customers gain some measure of price protection, although they typically pay more for their energy than customers of authorised retailers due to the lack of retail competition within embedded networks.

However, EWON has received an increased number of complaints from customers who are on-sold electricity with an embedded network by an authorised retailer. The prices offered to these customers are entirely uncapped, because the Retail Electricity Code, the conditions contained in the AER (Retail) Exempt Selling Guideline, and the provisions of the National Energy Retail Law (NERL) and the National Energy Retail Rules (NERR) relating to standing offers do not operate in this situation.

We strongly recommend a further amendment to the the Competition and Consumer (Industry Code - Electricity Retail) Regulations 2019 so that the protections therein apply to all embedded network customers.

⁵ ACCC, Restoring electricity Affordability and Australia's competitive advantage, Retail Electricity Pricing Inquiry—Final Report, June 2018, p281

⁶ ACCC, Retail Electricity Pricing Inquiry—Final Report, p281; CPRC, Five preconditions of effective consumer engagement – a conceptual framework, p53

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



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

A handwritten signature in black ink that reads "Janine Young". The signature is written in a cursive, flowing style.

Janine Young
Ombudsman
Energy & Water Ombudsman NSW