



Review outcomes

Post-implementation review of Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019



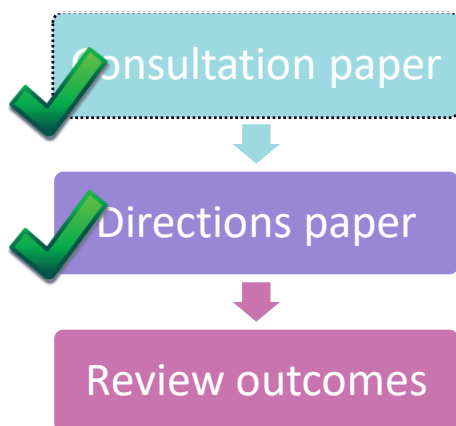
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About this paper

The purpose of this paper is to detail outcomes from the Department of Industry, Science, Energy and Resources post-implementation review of the *Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019*.

This is the final stage of the department's post-implementation review. Information on previous stages of the review can be found at <https://www.energy.gov.au/government-priorities/energy-programs/price-safety-net>.



Introduction

On 20 August 2018, the Australian Government announced the implementation of a Default Market Offer (DMO) for retail electricity standing offers, as recommended by the Australian Competition and Consumer Commission (ACCC) in its Retail Electricity Pricing Inquiry (REPI). The Government also announced it would adopt the ACCC's recommendation to use the DMO as a reference point for electricity retail market advertising.

The *Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019*¹ (the Code) came into effect on 1 July 2019. It operates in New South Wales, South Australia, and South East Queensland (DMO jurisdictions² – Figure 1) by:

- applying the DMO price cap to standing offer prices available to certain residential and small business customers;
- requiring retailers to use a common Reference Price for comparing certain electricity offers to address the confusion resulting from discounts being offered against differing base rates; and
- imposing specific requirements on the advertising of conditional discounts.

Figure 1: DMO jurisdictions



Source: AER, 2019

The Code also sets out the framework for the Australian Energy Regulator (AER) to make determinations that underpin the DMO and Reference Price requirements.

In accordance with the commitment in the explanatory statement to the Code, the department conducted a review of the Code two years after its initial implementation.

Context

The Code operates as part of the broader energy regulatory framework but sits outside energy market regulatory frameworks, specifically the National Energy Customer Framework. While the review process considered the operation of the Code in this current context, the department notes that future changes to broader energy market regulatory frameworks may have future implications for the Code. This includes the:

- AER's Strategic Plan 2020 to 2025³. This plan identifies a number of priorities, including improving consumer outcomes. This may include changes to AER initiatives including guidelines, better bills, Retail Pricing Information Guidelines, the Hardship/Sustainable Payment Plans Framework, and ongoing improvements to the Energy Made Easy website;
- ACCC's implementation of the Consumer Data Right (CDR) for energy⁴. The CDR is an important reform that will give Australians greater control over their data, empowering consumers to choose to share their data with trusted recipients for the purposes the consumer has authorised; and

¹ <https://www.legislation.gov.au/Series/F2019L00530>

² The Code was designed to apply in jurisdictions which did not otherwise regulate retail electricity prices or have less than 100,000 customers as defined in S(8) of the regulation

³ https://www.aer.gov.au/system/files/AER-Strategic-Plan_2020-2025.pdf

⁴ <https://www.accc.gov.au/focus-areas/consumer-data-right-cdr/cdr-in-the-energy-sector>

- AER’s 2022-23 DMO determination consultation process⁵. This will consider how the AER takes into account retail costs, including how they change from year-to-year, forecasting wholesale electricity costs, how to treat costs to serve different customer types, and setting ‘model annual usage’.

This paper should be read in conjunction with the directions consultation paper⁶.

Consultation undertaken

The department conducted two rounds of consultation – firstly to seek stakeholder views on the operation of the Code and then to seek input into proposed directions to improve the Code.

The initial consultation ran from 10 September to 11 October 2021, including a public information forum on 15 September and attendance at an Australian Energy Council (AEC) roundtable on 20 September.

- We received 17 submissions during the first round of consultation, representing the views of retailers, industry associations, community organisations and regulators.
- The initial consultation paper is available [here](#).

The second stage of consultation, on the directions paper, ran from 12 January to 2 February 2022 and included a public information forum on 20 January.

- We received 14 submissions during the second round of consultation, again representing the views of retailers, industry associations, community organisations and regulators.
- The directions paper is available [here](#).

Consultation was complemented by longitudinal market research into consumer attitudes towards the Code. SEC Newgate Research undertook this research on behalf of the department. The AER and the ACCC undertook behavioural insights research that also informed the consultation process.

Results of stakeholder consultation

Stakeholders were asked to consider the impact of five directions, developed by the department in response to the initial consultation process.

Direction 1: Improving the understanding of the Reference Price for consumers

The directions paper sought views on using the term “comparison price set by Government” rather than “Reference Price” to improve consumer understanding of the purpose of the Reference Price and how it could be used by consumers.

Submissions generally supported changing the term Reference Price to a term that better reflects its purpose. Many submissions supported the name change to “comparison price set by Government”,

⁵ <https://www.aer.gov.au/communication/aer-commences-consultation-on-2022-23-default-market-offer-determination>

⁶ <https://consult.industry.gov.au/review-of-dmo-and-reference-price>

however, others thought the Behavioural Insights research commissioned by the ACCC and AER could have tested other terms, or for it to be simplified, and could lead to larger improvements to consumer understanding. Retailers also noted that the increased term length, together with existing small print advertising requirements⁷, could negatively affect being able to advertise offerings and advised they would need time to implement changes to the term. The ACCC also noted that retaining some small print, such as “lowest possible price” may create confusion for consumers.

Submissions noted that while the Reference Price is well suited to comparing standard retail offers its application to more complex types of offers may be challenging. Submissions supported further work to understand how the Reference Price works for the range of more complex offers provided by retailers.

Application of the Reference Price to complex offers will be consulted on in 2022 (as part of consultation on Direction 2 outcomes). This will provide an opportunity for stakeholders to provide suggestions of different terms that will further increase consumer understanding, and on options for small print requirements.

DIRECTION 1 OUTCOME:

The Government supports amending the name of the Reference Price, if there is an alternative which will improve consumer understanding. The department will further consult on alternatives and options for the use of small print in advertising.

Direction 2: Application of the Reference Price to complex offers

All submissions supported further consultation to see how the Reference Price is applicable to complex types of offers. The complex nature of some offers do not easily lend themselves to comparison to a Reference Price as it may be difficult to define an average offering or an average user. Submissions also indicated it is important that this inability to easily compare offers should not restrict advertising of prices by retailers that would benefit consumers.

The retail market is rapidly changing with new technologies and products appearing frequently. The department will consult with stakeholders on how and if the Reference Price should be applied in advertising and comparing new and complex offers.

DIRECTION 2 OUTCOME:

The Government supports establishing a framework for advertising complex offers that encourages innovation and will enable useful comparison of complex offers for consumers. The department will consult with stakeholders on how the Reference Price will be applied to complex offers and how to ensure comparative advertising is available for those offers.

⁷ s12 of the Code provides more detail on advertising requirements

Direction 3: Changing the DMO determination date

The Code requires the AER to publish a draft determination at least six weeks before publishing a final determination and stakeholders have at least three weeks to make written submissions on the draft determination. The final determination must be made by 1 May, with the determination taking effect on 1 July.

At present, a risk exists that network prices may be changed between the draft and the final DMO determination being made and would therefore not be reflected in the determination. The directions paper proposed moving the DMO determination date from 1 May to 21 May.

All submissions commenting on this direction supported improving the timing for the DMO determination to better align with network price finalisation. While adjusting the network price finalisation dates was a proposed solution by some submissions, many retailers and the AER supported moving the determination deadline to a later time in May.

Some retailers identified that changing the determination date will increase pressure when updating pricing and advertising material but also accepted this reduced the risk of using draft network costs in the DMO determination.

The Government supports moving the determination date to the first business day after 25 May. This will allow the AER to use finalised network prices when making its determination but will place additional pressure on retailers to update materials. The change to the determination date will reduce the time available for retailers to update material from 56 days to 30 days.

DIRECTION 3 OUTCOME:

The Code will be amended to move the DMO determination date from 1 May to the first business day after 25 May.

Direction 4: Embedded network customers

Stakeholders were asked to comment on whether further consultation on price cap protections for embedded networks customers, particularly to examine compliance issues and costs, would be beneficial.

All submissions commenting on this direction supported consulting on how to best extend DMO protections to all customers of embedded networks. This need was most apparent for customers of embedded networks where the incumbent provider is outsourced to an Authorised Retailer⁸ and did not have protections afforded by the DMO. This is particularly important as Authorised Retailers are covering an increasing proportion of customers in embedded networks.

No submission recommended extending Reference Price advertising requirements to embedded network providers. This is likely because most customers in embedded networks only have a choice of a single retailer.

⁸ <https://www.aer.gov.au/retail-markets/authorisations/public-register-of-authorised-retailers-authorisation-applications>

The Government acknowledges the complexity of embedded networks, particularly the compliance issues and implementation costs of extending DMO protections to affected customers. Given that, the department will undertake further detailed consultation on this matter.

DIRECTION 4 OUTCOME:

The department will consult with stakeholders 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.

Advertising requirements regarding the Reference Price will not be extended to embedded network providers.

Consultation with stakeholders, including suppliers and customers of embedded networks, will commence in the first half of 2022. The AER will then further consult on how to implement changes in its DMO determination process, with regulatory changes implemented subsequent to consultation.

Direction 5: A further review of the operation of the DMO and Reference Price

The directions paper proposed a review of the Code two years after implementation of the Consumer Data Right (CDR) for Energy to ensure it is operating as intended and achieving its objectives, and to determine whether advertising requirements are still necessary to help consumers compare offers.

Submissions recognised the retail electricity market is experiencing a period of rapid change with product innovation a priority for retailers. The relevance of the Code in this changing market should be reviewed.

The review will provide an opportunity to consider the application of the Code in light of other expected changes within the market, including:

- new products developed by retailers reflecting technological and market change, including adoption of distributed energy resources, electric vehicles and increased demand-side participation;
- the ACCC's implementation of the Consumer Data Right for Energy; and
- the impact of other regulatory changes, particularly the AER's Better Billing Guidelines.

DIRECTION 5 OUTCOME:

The department will conduct a further review of the Code two years after implementation of the Consumer Data Right for Energy for *initial retailers*.

The CDR will be implemented in November 2022. The next review of the Code will therefore commence after November 2024.

Next Steps

Consistent with the outcomes described in this paper, the next steps in the review process are:

- regulatory change to amend the Code to move the DMO determination date from 1 May to the first business day after 25 May.
- further consultation to occur in 2022 on:
 - options to amend the name of the Reference Price to an alternative which better describes its function and improves consumer understanding
 - application of the Reference Price to complex offers, including ensuring comparative advertising is available for complex offers; and
 - how to extend price cap protection provided by the DMO to customers in embedded networks, including examination of compliance issues and costs; and
- a further review of the Code to occur two years after the implementation of the CDR for Energy.