



11 October 2021

Electricity Division – Wholesale and Retail Markets
Department of Industry, Science, Energy and Resources
GPO 2013
Canberra ACT 2601

Email: electricitycode@industry.gov.au

Dear Wholesale and Retail Markets Team

Post-Implementation Review – Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019

Thank you for the opportunity to comment on this consultation paper.

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 our investigations into these complaints, and through our community outreach and stakeholder engagement activities.

We have only responded to those questions in the consultation paper that align with issues customers raise with EWON, or with our organisation's operations as they relate to the operation of the Electricity Retail Code.

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".

Janine Young
Ombudsman
Energy & Water Ombudsman NSW

2.3 Operation of the Code

2.3.1 Application of the Code

16. Has the Code appropriately covered all customer types that should be able to access the protections provided by the Default Market Offer?

EWON recommends that the operation of *Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019* (“the Code”) be extended to embedded network customers that are on-sold electricity by authorised retailers.

Most embedded network customers were historically supplied energy by exempt networks and exempt sellers. These entities were exempt from the requirement to obtain an authorisation from the Australian Energy Regulator (AER) or register with Australian Energy Market Operator. Exempt entities do not have to follow the National Energy Retail Law or National Energy Retail Rules but are required to follow the conditions set out in the AER’s and exempt network guideline and exempt selling guideline.

The AER’s exempt selling guideline provides embedded network customers with a cap on electricity pricing through core exemption condition 7:

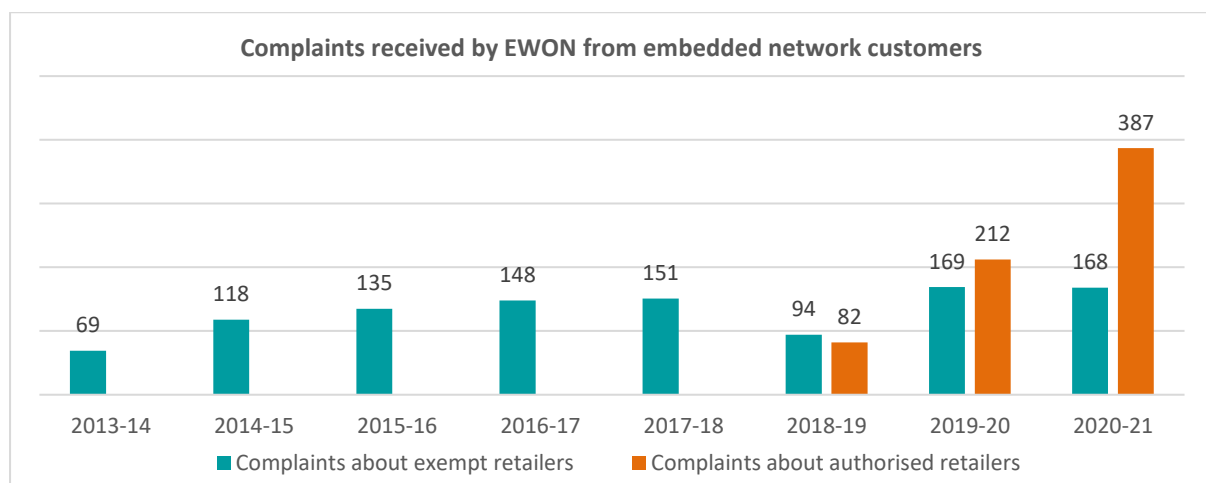
Condition 7 – Pricing

- 1 An exempt person must not charge the exempt customer tariffs higher than the standing offer price that would be charged by the relevant local area retailer for new connections, if the local area retailer were to supply that quantity, or estimated quantity, of energy directly to the premises of the exempt customer.

This condition means the maximum price an exempt entity could charge an embedded network customer was capped at the standing offer of the local area retailer.

Since its introduction in July 2019, the Default Market Offer (DMO) has been a price limit on standing offers, capping prices exempt entities can charge in embedded networks. However, there is now a growing group of embedded network customers that do not benefit from this indirect protection.

Most embedded network customers in NSW are now on-sold electricity by authorised retailers rather than exempt entities. This is reflected in EWON’s complaint data. The following graph shows how complaints from embedded network customers are changing with respect to the entity their complaint is about:



This change in the embedded network sector has resulted in three distinct groups of customers emerging – two groups that are directly or indirectly protected by the DMO, and one group that does not receive protection by the DMO:

Customer group	Exempt seller	Authorised retailer	
	Off-market embedded network electricity customers	On-market electricity customers	Off-market embedded network electricity customers
Protected by the DMO?	✓	✓	✗

Importantly, the two embedded network customer groups still have no practical access to retail competition. This makes extending the operation of the DMO even more critical.

Extending the operation of the Code to embedded networks would ensure that all three customer groups receive the same level of price protection.

2.3.2 Reference Price

19. Are the current requirements regarding communicating retail offers appropriate?

EWON recommends DISER review the use of sign-up credits by retailers for calculating the discount off the reference price when advertising market offers.

The use of sign-up credits in the calculation of the reference price is confusing and can be misleading, particularly when the actual electricity consumption of individual customers will vary over the life of the energy contract.

Currently, the Australian Competition and Consumer Commission’s Guide to the Electricity Retail Code notes that:

Sign-up credits should be included in the calculation of the unconditional price. This refers to credits for signing up with a retailer in a particular way; for example, a \$75 credit for signing up online or for signing up through a particular website.¹

Complaints to EWON indicate that customers find:

- the use of sign-up credits when calculating the discount off the reference price can result in a significant difference between the advertised discount, and the discount that is applied to the customer’s billing
- it misleading when they discover that the advertised discount off the reference price is not the actual ongoing discount applied to their electricity bills.

In 2021, EWON received multiple complaints about the marketing of energy offers by one retailer where the central issue was the calculation of the customer's electricity bills compared to the advertised discount off the reference price. The issue involved the use of sign-up credits used to calculate the headline reference price discount in the online marketing material.

¹ ACCC, Guide to the Electricity Retail Code, Version 3, 1 July 2021, p5

These complaints had the following common elements:

- Each customer accepted an online energy offer from the retailer that advertised a 21% discount off the reference price. Customers complained when the calculations on their energy bills showed that they were only receiving an 18% discount off the reference price.
- In response to complaints, the retailer advised customers that only an 18% discount could be applied to the bills.
- One customer provided EWON with a copy of the retailer's response to their complaint, which states: *"In reality the discount is actually 18% for the whole period of the energy plan while the additional \$50 credit is the additional 3% calculated against the reference price hence, when added it becomes 21%"*.
- Customers found it misleading that the headline discount of the reference price included a one-off sign-up credit.

The retailer was confident that it correctly followed the ACCC's guide for calculating the reference price, but the use of sign-up credits as part of these calculations has still resulted in customer confusion and complaints.

2.1 Consumer outcomes

2.1.3 Consumers recognise the Reference Price should make it easier to compare offers

5. Would expanding the use of the Reference Price be useful? For example, should it be included in electricity bills, or on price comparator websites?

There is an inconsistency between the operation of the AER's Retail Pricing Information Guidelines (RPIG), and the application of the Code regarding the obligations of third-party comparator websites.

EWON strongly recommends expanding the application of the reference price to third parties, such as price comparator sites. This would align the two instruments.

The Retail Electricity Code does not apply to price comparator sites

The ACCC Guide to the Code notes the Code does not expressly apply to comparator websites. However, the guide does set an expectation on retailers using comparator websites to present their offers in a way that ensures that their offers are accurately presented in accordance with the Code.

The Guide also notes that comparator websites should also follow standards set out by the ACCC in its guide for comparator website operators and suppliers. The intention is that these websites will present offers in a way that is easy for consumers to compare prices and make informed decisions about the best deal for their circumstances. This is not currently the case.

The AER's Retail Pricing Information Guidelines (RPIG) does apply to comparator sites

The RPIG does apply to third parties involved in marketing, publishing, or advertising energy plans. The AER has argued this application of the guideline is warranted and necessary to provide a more meaningful point of reference for customers to compare plans and in particular pricing information².

The AER is required to publish the Retail Pricing Information Guidelines (RPIG) by the National Energy Retail Law. The RPIG currently has a wider application than the Code, providing consistency

² AER, Notice of Final Instrument: AER Retail Pricing Information Guidelines, Version 5, April 2018, p23

and transparency to consumers in more ways than simply the inclusion of the reference price. The RPIG requires additional information, such as:

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

In June 2019, the AER published draft amendments to the RPIG for consultation. The draft changes were intended to reflect the operation of the Code. The AER's objectives included:

- removing any areas of potential inconsistency or confusion (with the Code), and
- ensuring that www.energymadeeasy.gov.au continued to meet both the requirements of the Guidelines and the Code.

The AER proposed amending the guideline by separating it into three sections:

- Part A: non-Electricity Code distribution regions
- Part B: Electricity Code affected distribution regions
- Part C: all retailers.

The draft AER amendments meant Part A of the new RPIG would not apply to third-party comparator sites. This also meant the overall protections for consumers comparing energy offers would be wound back, so the RPIG could be aligned to the Code.

However, in 2019 the AER announced that due to a range of external developments and policy issues, it would not be practicable to proceed with amending the RPIG.

The importance of regulating the pricing information on price comparator sites

In 2018, the RPIG was extended to third-party comparator sites. At the time, the AER recognised around one in five customers use comparison websites as part of their search for new energy plans³. The ACCC also noted that consumers are more aware of commercial comparators than government-run comparator websites⁴. This coincides with research the AEMC commissioned in 2017, which found that general internet searches were the most commonly cited method of consumers investigating their energy options⁵.

The AER is not alone in recognising the importance of extending the regulation of energy marketing to third parties such as comparator services, connection services, brokers, automated switching services, or any other business model that makes recommendations to consumers. The ACCC final report for the Retail Electricity Pricing Inquiry noted that any policy intervention designed to

³ 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

⁴ ACCC, Restoring electricity Affordability and Australia's competitive advantage, Retail Electricity Pricing Inquiry—Final Report, June 2018, p281

⁵ Newgate Research, Consumer research for the Australian Energy Market Commission's 2017 Retail Energy Competition Review, April 2017, p6

improve the comparison of products and services should apply to all tools that a consumer uses to make product comparisons⁶.

If the operation of the Code is not extended to third party comparator sites, and the AER RPIG is instead amended to align with the application of the Code, energy consumers using the highly advertised / internet promoted comparator services et al will be left with less protections when comparing electricity offers. Lack of consumer equity with respect to consumer protections impacts trust in the overall energy sector.

Enquiries

Enquiries about this submission should be directed to Janine Young, Ombudsman on (02) 8218 5256 or Rory Campbell, Manager Policy and Research, on (02) 8218 5266.

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