

Fixed benefit periods - notification obligations for energy retailers

Final Decision

21 December 2017

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Summary

On 7 November 2017, the Australian Energy Market Commission (AEMC) determined a change to the National Energy Retail Rules (NERR). The determination related to obligations on energy retailers to notify customers in jurisdictions that have adopted the National Energy Customer Framework (NECF) about changes to the benefits they receive as part of their energy contract.

The AEMC made the change via its expedited rule change process on the basis that the proposal met the criteria for a non-controversial rule change. This approach was not opposed by stakeholders.

The new rules were made because of concerns that customers may remain on contracts, either unknowingly or due to inaction, after the benefit period has ended. This was seen to potentially undermine competitiveness in electricity and gas retail markets because customers in this circumstance would not be active in seeking out better deals. This was also seen to erode confidence in the market.

We note the AEMC expects the new requirements to prompt customers to review their energy deal and promote engagement with the energy market as customers seek to identify whether they are on the best available offer. As a result, the new rules are expected to cause a reduction in the number of customers who remain on a contract after the benefits have expired.

The AEMC's new requirements will apply in circumstances where a customer receives benefits – such as discounts on their energy bill – which end, or change, before their contract expires. Under the new AEMC rules, retailers will be required to notify a customer when these changes occur. The new obligations will be implemented in two phases:

- Phase one – from 1 February 2018 retailers will be required to provide a simple set of information to customers.
- Phase two – from 1 October 2018, retailers will be required to provide more detailed information, pursuant to a guideline from the Australian Energy Regulator (AER).¹

Over the past three years in our pricing reports and Victorian Energy Market Reports, we have highlighted the additional costs that customers may face if they do not meet conditions attached to discounted offers. Customers may face similar costs if they remain on a contract once a benefit period has ended.

¹ The guideline will be available from 1 July 2018.

After having regard to our objectives, in particular to promote protections for consumers, including customers facing payment difficulty, we have reached the conclusion that amendments to the Energy Retail Code (Code), consistent with the phase one changes determined by the AEMC, are in the long term interests of Victorian consumers. We also consider that implementing such amendments would promote retail competition and be in the interests of national consistency in regulation.²

We have therefore amended the Code to ensure that customers are made aware that their fixed benefit period has ended and are given an opportunity to seek out the lowest cost offer available at that time.

We sought feedback from stakeholders on our draft decision on the amendments, which we published on 17 November 2017. We received 11 submissions. Six submissions were from retailers, two came from consumer advocates, and one each was from an industry body, a private citizen, and the Energy and Water Ombudsman Victoria (EWOV).

All stakeholders supported our proposal to make the amendments to the Code. Several retailers also encouraged the commission to mirror subsequent requirements that are imposed on retailers through the publication of the AER guideline, including through the development of clearer definitions of key terms related to the rule change. A number of other stakeholders, including one retailer, suggested the commission could go further than the AEMC and introduce additional requirements. Others, while supportive, cautioned the commission to be mindful of unintended consequences that might arise, including through the interaction between the Code change and reforms that may emerge as a result of the Government's response to the Review of Electricity and Gas Markets in Victoria (the 'Thwaites Review').

Having considered stakeholder feedback, we have decided to proceed on the basis of our original proposal, meaning the Code amendments set out in our draft decision are unchanged in this final decision. We respond to the additional matters stakeholders raised in chapter 2.

Consequently, our final decision mirrors the phase one retailer obligations set out in the NERR rule change. As per the intention we expressed in our draft decision, we will consider the merits of the phase two obligations in due course, in light of the Victorian Government's response to the recent Victorian *Review of Electricity and Gas Retail Markets*.³

² The NERR do not apply in Victoria. The NERR apply in Queensland, New South Wales, the Australian Capital Territory, Tasmania and South Australia.

³ *Independent Review into the Electricity and Gas Retail Markets in Victoria Final Report*, August 2017 (<https://engage.vic.gov.au/review-electricity-and-gas-retail-markets-victoria>),

New requirements

The amended Code mirrors the changes made by the AEMC in relation to the first phase of the new obligations, and would create the following obligations.

Obligations

Retailers will be required to send notices with simple information to relevant customers 20-40 business days before the benefits cease or change. The information includes:

- the customer's metering identifier
- a statement that the customer's benefit will change and the date on which this will happen
- reference to the Victorian Government's price comparator website Victorian Energy Compare
- reference to a customer's ability to request historical billing data, which can be useful when using Victorian Energy Compare⁴
- any early termination charges payable under the contract.

Coverage

The retailer obligations apply to small customers on market retail contracts for gas and electricity, where those contracts provide a benefit for a minimum period or a fixed benefit period that does not continue for the life of the contract.

Commencement

The obligations apply from 1 February 2018.

⁴ The ability to request historical billing data is established by clause 28 of the Energy Retail Code.

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1. Introduction

Purpose

This document sets out our final decision on amendments to the Energy Retail Code for the purposes of ensuring customers are notified about changes to benefits associated with their energy contracts.

Context to the draft decision

On 7 November 2017, the Australian Energy Market Commission (AEMC) determined a change to the National Energy Retail Rules (NERR). The determination related to obligations on energy retailers to notify customers in jurisdictions that have adopted the National Energy Customer Framework (NECF) about changes to the benefits they receive as part of their energy contract.

The AEMC made the change via its expedited rule change process on the basis that the proposal met the criteria for a non-controversial rule change. This approach was not opposed by stakeholders.

The new rules were made because of concerns that customers may remain on contracts, either unknowingly or due to inaction, after the benefit period has ended. This was seen to potentially undermine competitiveness in electricity and gas retail markets because customers in this circumstance would not be active in seeking out better deals. This was also seen to erode confidence in the market.

The NERR does not apply in Victoria.⁵ In Victoria, energy retailers are required to comply with the Energy Retail Code as a condition of their energy licence.⁶

This final decision sets out amendments we have made to the Code that will ensure that Victorian energy customers are made aware when a fixed benefit period has ended, and are given an opportunity to seek out the lowest cost offer available at that time.

The amendments to the Code are made under section 25 of the *Electricity Industry Act 2000* and section 31 of the *Gas Industry Act 2001*.

⁵ The NERR apply in Queensland, New South Wales, the Australian Capital Territory, Tasmania and South Australia.

⁶ The licence conditions requiring retailers to comply with the Code are made under Section 20(2) of the EIA and Section 28(2) of the GIA.

Structure of this document

After this introduction, our final decision has three main sections:

- Section 2 sets out the amendments to the Code, including their scope and date of commencement
- Section 3 explains why we consider the amendments are necessary having regard to our objectives
- Section 4 sets out the next steps.

2. Amendments to the Energy Retail Code

Amendments

This final decision sets out amendments to the Code to ensure that Victorian energy customers are notified when a fixed benefit period in their contract with their retailer ends.

The amendments are consistent with the phase one obligations on retailers to issue notifications to small customers⁷ in certain circumstances, as determined by the AEMC on 7 November 2017.⁸ In due course we will consider the merits of the phase two obligations, in light of the Victorian Government's response to the recent Victorian *Review of Electricity and Gas Retail Markets* (the retail market review).

A summary of the new obligations on retailers as a result of the amendments to the Code is set out below. The amendments to the Code are set out in Appendix C. These are identical to the equivalent amendments made by the AEMC to the NERR.

New obligations

Once the new obligations commence on 1 February 2018, retailers will be required to send notices with simple information to small customers 20-40 business days before the benefits cease or change. The information includes:

- the customer's metering identifier
- a statement that the customer's benefit will change and the date on which this will happen
- reference to the Victorian Government's price comparator website Victorian Energy Compare
- reference to a customer's ability to request historical billing data, which can be useful when using Victorian Energy Compare
- any early termination charges payable under the contract.

Coverage

The requirements apply to retailers with small customers on market retail contracts for gas and electricity, where those contracts provide a benefit for a minimum period or a fixed benefit period that does not continue for the life of the contract.

⁷ *Small customer* means a small customer within the meaning set out in clause 3 of the Energy Retail Code.

⁸ Australian Energy Market Commission, *National Energy Retail Amendment (Notification of end of fixed benefit period) Rule 2017 No.2*.

Commencement

The obligations apply from 1 February 2018.

Stakeholder feedback on the amendments

Eleven stakeholders provided submissions in response to our draft decision. Six submissions were from retailers, two came from consumer advocates, and one each was from an industry body, a private citizen, and the Energy and Water Ombudsman Victoria (EWOV). A list of all stakeholders who made submissions is provided in appendix D.

All stakeholders supported our proposal to make the amendments to the Code. The Australian Energy Council (AEC) stated

We consider that the proposed amendments will support the long term interests of Victorian consumers by ensuring that customers on market contracts will be made aware of when a benefit ceases to apply under that contract. Further, the proposed rule change will benefit customers by promoting engagement with the retail energy market.⁹

The Victorian Council of Social Services (VCOSS) and the Consumer Action Law Centre (CALC) both stated their explicit support for the changes.¹⁰

Definitions and interpretations

Several stakeholders sought clarity over the definition of 'benefit', including whether it applies to both financial benefits (such as price discounts) and non-financial benefits (such as movie tickets). Consistent with the AEMC's view of this definition, we consider the new requirements to cover both financial and non-financial benefits.

EnergyAustralia asked for clarity about circumstances in which the benefit *period* in a customer's contract has expired, but the retailer decides to roll over the benefit, such that the customer's circumstances are, in practical terms, unchanged.¹¹

We note that the AEMC made a statement in its final determination about the interpretation of this matter.

⁹ Australian Energy Council (AEC) 2017, *Submission to the ESC fixed benefit rule draft decision*, December, 1.

¹⁰ Victorian Council of Social Services (VCOSS) 2017, *Submission to the ESC fixed benefit rule draft decision*, December, 1; Consumer Action Law Centre (CALC) 2017, *Submission to the ESC fixed benefit rule draft decision*, December 1.

¹¹ EnergyAustralia 2017, *Submission to the ESC fixed benefit rule draft decision*, December.

Retailers must send notices in relation to benefit changes; if a fixed benefit period ends but the retailer continues the benefit, no notice is required.¹²

We interpret this requirement in the same manner as the AEMC.

VCOSS asked whether the obligation to notify customers of benefit period changes included informing customers about how their price changes.¹³ Going further, John Dellios explicitly called for the new rules to require retailers to notify customers of any changes to prices and charges that may occur in the course of the customer's contract.¹⁴

We consider that the new requirements apply only to changes in benefits, not price. Changes to price are presently dealt with on a commercial basis as part of contract terms and conditions. However, we note that the independent review of electricity retail and gas markets made a recommendation relating to price changes that, if implemented, would promote greater transparency for customers about when prices change.¹⁵ As stated in our draft decision, we will consider further requirements beyond those contemplated in this amendment in light of the Victorian government's response to the retail market review.

Mirroring of subsequent AER and AEMC decisions on fixed benefit periods

Several retailers also encouraged the commission to mirror subsequent requirements that are imposed on retailers through the publication of the AER guideline, including through the development of clearer definitions of key terms related to the rule change.¹⁶ As we indicated in our draft decision, we will consider the outcomes of the AER guideline development process in the context of the Victorian government's response to the retail market review.

¹² AEMC 2017, *Rule Determination - National Energy Retail Amendment (Notification of the end of a fixed benefit period) Rule 2017*, November, 9

¹³ VCOSS 2017, *Submission to the ESC fixed benefit rule draft decision*, December, 1

¹⁴ John Dellios 2017, *Submission to the ESC fixed benefit rule draft decision*, December.

¹⁵ Recommendation 4B – 'Require retailers to clearly disclose to customers the length of time any offered prices will be available without change.' Thwaites, Moulder, Faulkner 2017 *Independent review of the electricity & gas retail markets in Victoria*, August, xii.

¹⁶ Simply Energy 2017, *Submission to the ESC fixed benefit rule draft decision*, December, 1.

Additional requirements

A number of other stakeholders, including one retailer, suggested the commission could go further than the AEMC and introduce additional requirements.¹⁷ For example, Powershop suggested the new rules could require retailers to proactively chase up customers who did not respond to the notice advising them about the end of a fixed benefit period.

We recognise that this could provide additional impetus to customers' participation in the retail market. However, our primary intention with this rule change is to mirror the new rules being implemented nationally from 1 February 2018. To introduce an additional requirement would require undertaking further analysis of the likely impacts of that requirement, which would not be possible within the current timeframes. As such, we have elected not to extend the new requirements in this manner at this time.

Unintended consequences

Other retailers, while supportive, cautioned the commission to be mindful of unintended consequences that might arise, including through the interaction between the Code change and reforms that may emerge as a result of the Victorian government's response to the retail market review.¹⁸

We note this concern. We will be mindful of the potential interactions between this amendment and any subsequent changes that may arise as a result of the government's response to the retail market review.

¹⁷ For example, CALC 2017, *Submission to the ESC fixed benefit rule draft decision (appendix)*, December; Powershop 2017, *Submission to the ESC fixed benefit rule draft decision*, December.

¹⁸ For example, Red and Lumo 2017, *Submission to the ESC fixed benefit rule draft decision*, December, 1-2.

3. Analysis

Our decision-making framework

In making decisions, the Essential Services Commission is guided by its overarching objective, which is:

- to promote the long-term interests of Victorian consumers¹⁹

as well as specific objectives enshrined in the relevant industry acts, which include:

- to promote the development of full retail competition; and
- to promote protections for customers, including in relation to customers facing payment difficulty.²⁰

When making decisions, we must also have regard to certain matters to the extent they are relevant in any particular case²¹, including in particular:

- the benefits and costs of regulation... for consumers and users of products or services (including low income and vulnerable consumers) and regulated entities,²² and
- consistency in regulation between States and on a national basis.²³

Statement of reasons for the amendments

Benefits and costs to Victorian customers

We consider that the amendments will result in benefits to Victorian customers.

Customers who are made aware that their fixed benefit period is about to end, will have the opportunity to identify and accept offers, either from their existing retailer or from other retailers. All

¹⁹ Section 8(1) *Essential Services Commission Act 2001*.

²⁰ Sections 10(b) and (c) *Electricity Industry Act 2000* & Sections 18(b) and (c) *Gas Industry Act 2001*.

²¹ Section 8A *Essential Services Commission Act 2001*.

²² Section 8A(1)(e) *Essential Services Commission Act 2001*.

²³ Section 8A(1)(f) *Essential Services Commission Act 2001*.

things being equal, this is expected to result in lower energy costs than if they remained on their existing contract.

We agree with the AEMC that the amendments are likely to prompt greater consumer participation in the energy market by encouraging customers to actively seek a better offer. This increase in market activity should promote greater competition between retailers.

Benefits and costs to retailers

We recognise that these changes will result in some additional costs being incurred by energy retailers. However, in light of the fact that most retailers in Victoria also operate in the NECF jurisdictions, we consider that the incremental cost to implement phase one of the AEMC amendments in Victoria will be small. For those retailers that only operate in Victoria, we consider the AEMC's conclusion about the net benefit of the changes (outlined below) will remain relevant.

We note that the AEMC concluded that the potential benefits to consumers will outweigh the likely implementation costs that will flow through to consumers. The AEMC noted that no persuasive evidence was presented to its rule change process suggesting that the costs flowing through to consumers will outweigh the potential benefits that may be available to consumers who engage with the market.²⁴

In reaching its conclusion, the AEMC noted that retailers have a range of practices at the end of customer benefit periods, and that some of those practices are already substantially in line with the obligations established by the new rule. It also said it understood at least one retailer may incur system development costs in the millions in the dollars, and that a proportion of these costs may be passed through to consumers. However, it said that these costs are outweighed by the savings available, which may be hundreds of dollars per affected customer.²⁵

The AEMC also took account of the impact on retailers of the new rule when setting out a staged implementation. The approach was a modification to the approach proposed by the rule change proponent, who had proposed that all new obligations take effect from 1 January 2018. The AEMC noted that in making this modification to the original rule change request, it had already allowed for a more reasonable and less costly implementation work program for retailers.

²⁴ AEMC 2017, Notification of the end of a fixed benefit period, Rule Determination, 7 November 2017, Sydney, p32.

²⁵ Ibid.

Conclusion

Having particular regard to our objective to promote protections for consumers, including customers facing payment difficulty, we have reached the conclusion that amendments to the Code consistent with the phase one changes determined by the AEMC is in the long-term interests of Victorian consumers. We also consider that implementing such amendments would promote retail competition and be in the interests of national consistency.

4. Next steps

Commencement

As proposed in our draft decision, the new obligations will commence from 1 February 2018.

Publication of the amended Code

The code amendments will be published on our website at the same time as the publication of this final decision (Energy Retail Code amendment (fixed benefit periods) December 2017). A new revision of the Energy Retail Code (version 11A), incorporating these amendments, will be published when the amendments take effect on 1 February 2018.

In due course, we will also amend version 12 of the Code, which was made by the Commission in October 2017 to introduce the new payment difficulty framework. Version 12 of the Code commences on 1 January 2019.

Key dates

Date	Milestone
1 February 2018	Version 11A (fixed benefit periods) of the Code commences
Prior to 1 January 2019	Version 12 of the Code is amended to include the fixed benefits amendments

Abbreviations

Term	Definition
AEMC	Australian Energy Market Commission
ERC	Energy Retail Code (Victoria)
NERR	National Energy Retail Rules
NECF	National Energy Customer Framework

Glossary

Insert term	Definition
Small customer	As per the meaning in the Energy Retail Code.

Appendix A – Legal context

Objectives of the Commission

Essential Services Commission Act

The objective of the Commission, as stated in section 8 of the *Essential Services Commission Act 2001*, is:

- (1) In performing its functions and exercising its powers, the objective of the Commission is to promote the long term interests of Victorian consumers.

Electricity and Gas Industry Acts

The objectives of the Commission that are set out in the electricity and gas industry acts are as follows:

Section 10 of the *Electricity Industry Act 2000* (relevant subsections):

- (b) to promote the development of full retail competition, and
- (c) to promote protections for customers, including in relation to assisting customers who are facing payment difficulties.

Section 18 of the *Gas Industry Act 2001* (relevant subsections):

- (b) to promote the development of full retail competition, and
- (c) to promote protections for customers, including in relation to assisting customers who are facing payment difficulties.

Matters the Commission must have regard to

Essential Services Commission Act 2001

The matters which the Commission must have regard to, as stated in section 8A of the *Essential Services Commission Act 2001*, are:

- (1) In seeking to achieve the objective specified in section 8, the Commission must have regard to the following matters to the extent that they are relevant in any particular case –
 - (a) efficiency in the industry and incentives for long term investment;
 - (b) the financial viability of the industry;
 - (c) the degree of, and scope for, competition within the industry, including countervailing market power and information asymmetries;

- (d) the relevant health, safety, environmental and social legislation applying to the industry;
 - (e) the benefits and costs of regulation (including externalities and the gains from competition and efficiency) for –
 - (i) consumers and users of products or services (including low income and vulnerable consumers);
 - (ii) regulated entities;
 - (f) consistency in regulation between States and on a national basis;
 - (g) any matters specified in the empowering instrument.
- (2) Without derogating from section 8 or subsection (1), the Commission must also when performing its functions and exercising its power in relation to a regulated industry do so in a manner that the Commission considers best achieves any objectives specified in the empowering instrument.

Appendix B – List of references

Australian Energy Council (AEC) 2017, *Submission to the ESC fixed benefit rule draft decision*, December,

Australian Energy Market Commission (AEMC) 2017, Notification of the end of a fixed benefit period, Rule Determination, 7 November 2017, Sydney.

Australian Energy Market Commission, *National Energy Retail Amendment (Notification of end of fixed benefit period) Rule 2017 No.2*

Consumer Action Law Centre (CALC) 2017, *Submission to the ESC fixed benefit rule draft decision*, December.

Dellios, John 2017, *Submission to the ESC fixed benefit rule draft decision*, December.

EnergyAustralia 2017, *Submission to the ESC fixed benefit rule draft decision*, December.

Essential Services Commission Act 2001 (www.legislation.vic.gov.au)

Electricity Industry Act 2000 (www.legislation.vic.gov.au)

Energy Retail Code Version 11 (<https://www.esc.vic.gov.au/document/energy/27356-energy-retail-code-version-11-2/>)

Gas Industry Act 2001 (www.legislation.vic.gov.au)

Independent Review into the Electricity and Gas Retail Markets in Victoria Final Report, August 2017 (<https://engage.vic.gov.au/review-electricity-and-gas-retail-markets-victoria>),

Simply Energy 2017, *Submission to the ESC fixed benefit rule draft decision*, December.

Victorian Council of Social Services (VCOSS) 2017, *Submission to the ESC fixed benefit rule draft decision*, December.

Appendix C – Amendments to the Energy Retail Code

1 Nature and commencement of this instrument

- (1) This instrument amends the *Energy Retail Code*.
- (2) This instrument comes into operation on 1 February 2018.

2 Amendment of clause 45A (definitions)

Insert the following definitions in clause 45A in the appropriate alphabetical positions:

benefit change means a change to, or the expiry of, a benefit (such as a price discount) provided to a customer for a minimum period or a fixed benefit period under a market retail contract during the term of that contract (whether or not as a result of a variation to the contract).

benefit change date means the date on which the benefit change will take effect.

benefit change notice means a notice provided by a *retailer* to a *small customer* under clause 47A.

price comparator means a facility available on a website to assist a *small customer* to compare:

- (a) the tariffs available to a *customer* under a *standing offer*; and
- (b) the tariffs that are generally available to classes of *small customers* under *market retail contracts*,

in accordance with guidelines issued by the *Commission* under section 36A(2) of the *Electricity Industry Act* or section 43A(2) of the *Gas Industry Act*.

relevant benefit period, in respect of a benefit change notice provided to a *small customer*, means the period in which the benefit that is changing was provided to the *customer* under a *market retail contract*.”.

3 Clause 47A inserted

After clause 47 insert:

“47A Retailer notice of benefit change

- (1) If a *market retail contract* provides for a benefit change, the *retailer* must, in accordance with this clause, notify the *small customer* of each benefit change.
- (2) The benefit change notice must be given:
 - (a) in writing; and
 - (b) no earlier than 40 *business days* and no later than 20 *business days* before the benefit change date.
- (3) The benefit change notice must state:

- (a) the *small customer's metering* identifier; and
 - (b) that a benefit change will occur and the benefit change date; and
 - (c) that the *small customer* may use the price comparator to compare offers that are generally available to classes of *small customers* in their area; and
 - (d) the name and web address of the price comparator; and
 - (e) that the *customer* can request historical billing data (and, if they are being sold electricity, *energy* consumption data) from the *retailer* that will assist the *customer* to use the price comparator to compare offers that are generally available to classes of *small customers* in their area; and
 - (f) any early termination charges payable under the market retail contract.
- (4) A *retailer* is not required to comply with this clause in respect of a benefit change that has a benefit change date occurring less than 20 *business days* after 1 February 2018.”.

Appendix D - List of submissions

Table D.1 contains a list of all stakeholders who made a submission in response to our draft decision. All submissions are available on the commission website.

Table D.1 Stakeholders who made submissions in response to the draft decision

Stakeholder
Australian Energy Council (AEC)
AGL
Consumer Action Law Centre (CALC)
Energy and Water Ombudsman Victoria (EWOV)
EnergyAustralia
John Dellios
Origin Energy
Powershop/Meridian
Red/Lumo
Simply
Victorian Council of Social Services (VCOSS)