



# **Notice of Final Instrument AER Retail Pricing Information Guidelines**

August 2015

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#### Amendment record

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# Contents

<b>1</b>	<b>Overview .....</b>	<b>4</b>
	1.1 .Nature and authority .....	4
	1.2 .Version history .....	4
	1.3 .Definitions and interpretation .....	4
	1.4 .Commencement .....	4
<b>2</b>	<b>Development of the Guidelines .....</b>	<b>5</b>
	2.1 .Role of the Guidelines .....	5
	2.2 .Purpose of the amendments .....	5
	2.3 .Impact on business.....	6
	2.4 .Approach to consultation.....	6
<b>3</b>	<b>Amendments .....</b>	<b>8</b>
	3.1 .Summary of key amendments .....	8
	3.2 .Structure and clarity of the Guidelines .....	8
	3.3 .Format and presentation of Energy Price Fact Sheets .....	9
	3.4 .Promoting clear and simple language .....	10
	3.5 .Representations of discounts.....	13
<b>4</b>	<b>Appendix A.....</b>	<b>15</b>

# 1 Overview

## 1.1 Nature and authority

This Notice presents amendments to the Australian Energy Regulator's (AER) Retail Pricing Information Guidelines (Guidelines). The amendments add a number of new requirements to the current version 3.0 of the Guidelines.

The AER has published this Notice and the attached version 4.0 of the Guidelines, in accordance with the retail consultation procedure set out in r. 173 of the National Energy Retail Rules (Retail Rules).

## 1.2 Version history

Version 1.0 of the Guidelines was released in September 2011, in anticipation of the 1 July 2012 commencement of the Retail Law. Version 1.0 addressed the production and distribution of energy price fact sheets only.

Version 2.0 of the Guidelines was released in January 2012, and introduced requirements relating to Energy Made Easy for the first time.

Version 3.0 of the Guidelines was released in June 2012, and included minor amendments to address feedback on the clarity of the Guidelines from transitioning retailers through their preparation for the anticipated 1 July 2012 commencement of the Retail Law.

Version 3.0 is the current version of the Guidelines. This Notice is in relation to version 4.0 of the Guidelines.

## 1.3 Definitions and interpretation

In this Notice, key words and phrases have the meaning given to them in:

- the glossary of the Guidelines or
- if not defined in the glossary, the Retail Law and Rules.

## 1.4 Commencement

Version 4.0 of the Guidelines will commence on 1 February 2016.

## 2 Development of the Guidelines

### 2.1 Role of the Guidelines

Under the Retail Law, the AER may develop and amend Retail Pricing Information Guidelines (the Guidelines). The purpose of the Guidelines is to provide guidance to retailers in the presentation of their standing offer prices and market offer prices.

The Retail Law requires retailers to:

- Present standing and market offer prices in accordance with the Guidelines, including without limitation when publishing, advertising or notifying the AER of those prices or any variation<sup>1</sup>.
- Publish standing and market offer prices prominently on their websites, and in any other relevant material provided by the retailer, in accordance with the Guidelines<sup>2</sup>.

We consider it is important to ensure that energy consumers have access to clear and relevant information on available retail offers. This information enables customers to make informed switching decisions for the provision of electricity and gas.

By specifying the manner and form<sup>3</sup> in which information is presented by retailers, the AER aims to create a clear and consistent form of presenting important information to customers, giving them confidence in the accuracy and comparability of this information.

The Guidelines play an important role in educating consumers and empowering them to engage in the retail energy market and make more informed and efficient decisions.

### 2.2 Purpose of the amendments

The current Guidelines have been in operation since 1 July 2012, and in that time we have had feedback from customers, consumer groups, retailers and other stakeholders on the usefulness of the information retailers provide under the current Guidelines and the clarity of the Guidelines for retailers. The amendments, which we have consulted on, seek to address this feedback.

The amendments also come against the background of the Australian Energy Market Commission's (AEMC) 2014 rule change requiring retailers to improve the information they give to consumers entering market retail contracts, particularly with respect to whether prices can vary<sup>4</sup>. The rule, which commenced on 1 May 2015, requires retailers to disclose the terms and conditions that provide for variations of tariffs, charges or benefits, and information about whether they will notify consumers of changes to this information.<sup>5</sup> The AER worked closely with the AEMC throughout this process and the AEMC supported the

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<sup>1</sup> National Energy Retail Law ss24(1) & 37(1)

<sup>2</sup> National Energy Retail Law ss24(2) & 37(2)

<sup>3</sup> National Energy Retail Law s61(3)(a)

<sup>4</sup> More information is available at <http://www.aemc.gov.au/Rule-Changes/Retailer-Price-Variations-in-Market-Retail-Contract>

<sup>5</sup> National Energy Retail Amendment (Retailer Price Variations in Market Retail Contracts) Rule 2014 No. 1.

AER's proposal to undertake a review of the Guidelines noting that potential amendments could assist further improving the clarity, quality, accessibility and prioritisation of information.

The Guidelines support the operation of the AER's Energy Made Easy website by specifying the information retailers must provide to the website, and how and when they must provide it. The Guidelines have also been amended to reflect a range of improvements made to Energy Made Easy, including to the functionality of the secure portal retailers use to submit and manage their offers.

## **2.3 Impact on business**

The amendments proposed in the draft Guidelines would have required retailers to make some changes to their current business practices and systems. We considered these costs would be one-off and relatively modest. We were also of the view that the proposed amendments would potentially lessen the regulatory impact on businesses overall and result in a net benefit. The consultation process invited feedback from retailers about the impact on business.

Submissions to the draft Guidelines varied considerably in estimations of the costs of the proposed changes. Where raised, most concerns related to the proposed approach to guaranteed discounts, and were based on the assumption that retailers would need to update billing and other systems to avoid inconsistency across documents. We note, however, that the draft Guidelines did not require such a change to billing systems.

While some amendments in the final Guidelines extend the requirements set out in the draft Guidelines (specifically in relation to language requirements), the final Guidelines also lessen the extent of the some proposed requirements (particularly in relation to presentation of guaranteed discounts). The 1 February 2016 commencement of the Guidelines provide retailers with five months to prepare for compliance.

To this end, we consider we have achieved an effective balance between increasing comparability of offers and improving the presentation of key information for consumers and limiting the costs of implementation for business.

## **2.4 Approach to consultation**

We commenced consultation on the review of the Guidelines with a public forum on 12 February 2015, informed by a range of informal engagement opportunities with key stakeholders.

On 15 April 2015, we released draft Guidelines (draft Guidelines) and an accompanying Notice of Draft Instrument (draft Notice) for public consultation. We received 19 submissions and these were generally supportive of the goals of clarity and consistency of language that the revised Guidelines proposed to achieve. A number of submissions raised concerns that, even with the proposed changes to the Guidelines, some confusion may continue due to inconsistency across different documents provided to consumers.

To inform our finalisation of the Guidelines, we extended our consultation process to enable us to invite feedback from stakeholders on three further amendments t aimed at addressing

these concerns. On 17 July, we released a document explaining these amendments (referred to in this Notice as 'additional amendments for feedback'). Nine stakeholders provided feedback on these amendments.

The draft Guidelines, draft Notice documents and submissions are published on our website.<sup>6</sup> Appendix A lists the organisations that responded to our public consultation process.

The final Guideline has been informed by submissions and feedback provided to us during the consultation process. Our considerations of key issues raised in most recent submissions and feedback are discussed in Section 3.

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<sup>6</sup> <http://www.aer.gov.au/node/29505>

## 3 Amendments

### 3.1 Summary of key amendments

This Notice discusses key amendments to the final Guidelines that are substantially different from a consulted position and/or where significant feedback was submitted by stakeholders. The earlier draft Notice and additional amendments for feedback documents also provide context for the development of the final Guidelines.

In summary, the key amendments discussed in this Notice include:

- improvements to the **structure and clarity of the Guidelines** [section 3.2]
- requirements relating to **Energy Price Fact Sheets**, including a more standardised format and prioritisation of certain offer information [section 3.3]
- requirements relating to the use of **clearer and simpler language** in Energy Price Fact Sheets and in advertising and/or marketing [section 3.4]
- requirements relating to the **representation of discounts**, including guaranteed and conditional discounts [section 3.5].

### 3.2 Structure and clarity of the Guidelines

An important and underlying goal of the review has been to improve the clarity of the Guidelines, including by simplifying language, addressing potential or unintended ambiguities and removing redundant information. We received positive feedback from retailers regarding this objective, and we have continued to work on structure as we have resolved positions and developed final Guidelines.

The final Guidelines reflect structural changes which do not go to the substance of the requirements. These changes are intended to improve the logical flow of information and improve readability.

The document is now set out as follows:

- Section 1 - Overview
- Section 2 - Requirement to create an Energy Price Fact Sheet
- Section 3 - Content of an Energy Price Fact (including language requirements that also apply to advertising and/or marketing).
- Section 4 - Publication and distribution of Energy Price Fact Sheets
- Section 5 - Submission of information to the AER for Energy Made Easy

The former Attachment A, which was a model Energy Price Fact Sheet, has been removed. Fact sheets produced through Energy Made Easy will instead serve as the model fact sheet.

Table 1 contains a summary of the changes of key section references between the draft Guidelines and the final Guidelines.



**Table 1. Corresponding section references**

<b>Section title</b>	<b>Draft Guidelines reference</b>	<b>Final Guidelines reference</b>
Requirement to produce an Energy Price Fact Sheet	2.1	2
Format of an Energy Price Fact Sheet	2.5	2.1
Prioritisation of information	2.4.7	2.2
Language requirements	2.3	3.1
Price information	2.2	3.2
Discounts	2.4.2	3.3
Incentives	2.4.2	3.4
Fees	2.4.1	3.5
Additional information to be provided	2.4.3	3.6
Solar, GreenPower and other options	2.4.4	3.7
Metering configuration and tariff types	2.4.5	3.8
Dual fuel offers	2.4.6	3.9
Energy Made Easy statement	2.4.3	3.10
Publication and distribution of an Energy Price Fact Sheet	Section 3	Section 4
Submitting information to the AER for Energy Made Easy	Section 4	Section 5

### **3.3 Format and presentation of Energy Price Fact Sheets**

The draft Guidelines proposed a number of amendments to Energy Price Fact Sheets. These included

- standardising the layout to allow easier comparison of energy offers,
- prioritising certain information, and
- formatting the documents in an accessible way.

### **3.3.1 Feedback from stakeholders**

Consumer representative groups supported amendments aimed at increasing the comparability of energy offers and prioritising key information, particularly amendments designed to standardise Energy Price Fact Sheets.

Although industry feedback was generally supportive of standardising Energy Price Fact Sheets to increase comparability, some concerns were raised about the viability of some of the proposed formatting requirements and whether the format and information requirements could be achieved with the proposed limitation of a two page per offer Energy Price Fact Sheet. There were also some minor concerns such as whether left justification in tables was necessary and whether the limitation on table columns was necessary.

### **3.3.2 Response to feedback**

When considered against the background of submissions and further progress on the redevelopment of Energy Made Easy, we recognise some practical difficulties in implementing some of the formatting requirements proposed in the draft Guidelines.

The final Guidelines allow more flexibility around font size and presentation of tables, while seeking to maintain comparability and consistency across Energy Price Fact Sheets. We have also more clearly set out the information required on an Energy Price Fact Sheet by expanding the prioritisation table.

We consider that the presentation and content requirements of Energy Price Fact Sheets set out in the final Guidelines strike a good balance between the sometimes competing goals of practicality, accessibility and comparability.

## **3.4 Promoting clear and simple language**

The draft Guidelines included a new section, titled 'Language requirements'. This section specified language requirements for Energy Price Fact Sheets, including terms that must, and must not, be used by retailers (for example 'exit fee' must now be used in place of 'termination fee').

### **3.4.1 Feedback from stakeholders**

Consumer groups welcomed the introduction of language requirements, both in respect to Energy Price Fact Sheets and the later proposed extension to advertising and/or marketing. They agreed this initiative would support informed decision making by improving and simplifying the comparability of key information. Some consumer groups suggested the AER consider expanding the language requirements even further, by including more terms or to more aspects of business practices.

Retailers generally accepted the introduction of some language standardisation on Energy Price Fact Sheets, acknowledging the widely held view that terminology in the energy industry can be difficult and confusing for consumers. Some retailers also expressed concern that the terms proposed in the draft Guidelines would not be as meaningful or understandable to customers as other language the retailer may choose to use.

A number of stakeholders (including retailers), however, raised concern that inconsistencies between key terminology on an Energy Price Fact Sheet compared to a retailer's own collateral material may perpetuate consumer confusion. For example, the draft Guidelines would have required a retailer to use the term 'guaranteed discount' on an Energy Price Fact Sheet, but the retailer could have referred to this concept however it chose in advertising and/or marketing materials, meaning the consumer may not have recognised it as the same piece of key information.

We considered these concerns were valid and, if not addressed, may become a genuine source of consumer detriment. To inform our finalisation of the Guidelines, we invited public feedback on further amendments that expanded the set of language requirements to apply not only to Energy Price Fact Sheets, but also equally to advertising and/or marketing more generally. We also proposed a delayed commencement of the application of language requirements to allow additional time for retailers to comply.

As noted above, feedback from consumer stakeholders in response to this extension to advertising and/or marketing was universally positive. Some retailers raised concern that the amendments were not in keeping with the purpose of the Guidelines, even questioning whether the AER had a role to implement such requirements through the Guidelines, questioning whether the AER could implement such requirements and whether the changes merely duplicated the Australian Consumer Law.

### **3.4.2 Response to feedback**

The final Guidelines provide for some small variations to the positions discussed and consulted on in the additional amendments for feedback document.

#### **Limited the application of required terms to advertising and/or marketing**

The final Guidelines set out a small range of terms that retailers must not use on Energy Price Fact Sheets or in advertising and/or marketing. These terms are widely regarded by consumer stakeholders as problematic and confusing for consumers and where we consider there to be an obvious alternative that is clearer and more widely understood (for example, 'exit fee' must be used to describe a 'termination fee').

The final Guidelines set out a number of terms that must be used on Energy Price Fact Sheets in place of the prohibited terms. However, the final Guidelines now only require *some* of these alternate terms to also be used in advertising and/or marketing. For other prohibited terms (for example, 'benefit period'), retailers may continue to choose their own language to communicate these concepts meaningfully to consumers in advertising and/or marketing material.

Concerns raised by retailers about the proposal to extend all language requirements to advertising and/or marketing were two fold. Firstly, some retailers were concerned that it would stifle innovation and/or the ability of retailers to choose 'better' terms than the specified required terms that they argued would make it easier for consumers to understand. In response to this feedback, we have only applied the required language to concepts where we considered that a single, more easily understood alternative could be identified.

Some retailers questioned whether the Guidelines applied to advertising and/or marketing material. The Retail Law provides that without limitation, the Guidelines may specify the manner and form in which details of standing offer prices and market offer prices are to be presented when publishing, advertising or notifying the AER of those prices or any variation<sup>7</sup>.

Further, the Retail Law provides that the Guidelines may specify any additional matters that the AER considers necessary or convenient to assist customers to consider and compare standing offer prices and market offer prices offered by retailers<sup>8</sup>.

Therefore, we consider that the Guidelines are not restricted to the presentation of prices alone and include requirements in relation to other aspects of retail offers.

We consider that the language to which this section applies is limited, and deals only with a small part of how retailers will engage with customers. We do not consider that this will significantly affect a retailer's ability to communicate and market to potential customers.

### **Removed 'fixed' from 'fixed benefit period'**

Our draft Guidelines required use of the term 'fixed benefit period' where the concept, as described in the National Energy Retail Rules, was being used. Our preference for this term was based on it being used in the Retail Rules and the lack of a widely accepted alternative.

Whilst our draft Guidelines required the word 'fixed' to be used in the context of 'fixed benefit period', we were cognisant of public discussions in the context of the AEMC 2014 rule change process, where consumer stakeholders were concerned that 'fixed' was a term invariably associated with consumer confusion and should only be used to describe offers where price is also fixed for the duration of the contract term.<sup>9</sup> Market research commissioned by the AEMC to support its considerations confirmed the prevalence of consumer confusion about what is actually 'fixed' in a contract.<sup>10</sup>

Consistent with these discussions and research, some consumer stakeholders suggested that the prohibition of the word 'fixed' in the context of contract term should also extend to the concept of a 'fixed benefit period'. We have considered this feedback, and in light of the fact that a clearly superior alternative term was not put forward during consultation, our preferred term is now 'benefit period' (or, where used to refer to a specific offer or offers, [x] month benefit period). For example, the contract term field of an offer may say "Ongoing contract with 12, 24 or 36 month benefit period".

### **Commencement date 1 February 2016**

To assist with implementation of the extension of language requirements to advertising and/or marketing, the additional amendments for feedback document proposed a staggered commencement, with the Guidelines coming into effect on 1 January 2016 but with an

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<sup>7</sup> National Energy Retail Laws.61(3)(a.)

<sup>8</sup> National Energy Retail Law s 61(3)(c).

<sup>9</sup> More information is available at <http://www.aemc.gov.au/Rule-Changes/Retailer-Price-Variations-in-Market-Retail-Contract>

<sup>10</sup> AEMC (June 2014) Consumer Research on Retailer Price Variations in Market Retail Contracts Final Qualitative and Quantitative Research Report.

additional period to comply with advertising and/or marketing requirements. We note feedback, including from industry, that this will exacerbate confusion.

We also recognise typical industry price cycles will result in many offers changing during January 2016. Given the concerns above and broader changes to Energy Price Fact Sheets proposed by the final Guidelines, we have moved to provide a new single commencement date of 1 February 2016.

This will present a meaningful efficiency for retailers by not requiring them to update the presentation of existing offers prior to 1 January (the originally proposed commencement date), rather, as new offers are presented to the market during January in readiness for a 1 February commencement of the Guidelines.

### **3.5 Representations of discounts**

The draft Guidelines contained two sections relating to discounts: 'unconditional discounts' and 'guaranteed discounts'. As part of the restructuring of the document, aspects of these sections have been combined into a single section titled 'Discounts', with obligations specific to guaranteed and conditional discounts in their own sections.

The draft Guidelines included new sections:

- 'Guaranteed discounts' - which required retailers to show a tariff rate, inclusive of any guaranteed discount, alongside any guaranteed discount statement. The intention was to make it easier for a consumer to see the actual tariff rate they would pay.
- 'Conditional discounts' - which specified a number of disclosure obligations when retailers use 'Conditional discounts' on Energy Price Fact Sheets. Retailers were required to disclose the amount or percentage of the discount, how the customer qualifies for the discount and, for dual fuel offers, which fuel(s) the discount applies to.

In response to feedback received as part of the draft Guideline consultation the additional amendments for feedback:

- Extended the application of the discount requirements to advertising and/or marketing;
- Changed the post-discount displaying of tariff rates to pre-discount tariff rates;
- Sought to clarify the circumstances in which a retailer should display a tariff rate alongside a guaranteed discount representation.

#### **3.5.1 Feedback from stakeholders**

A number of submissions expressed concern that the draft Guidelines may increase confusion as the customer would see discount-inclusive tariff rates on Energy Price Fact Sheets and marketing material; but see the discount-exclusive rate on bills. We also identified a number of other potential unintended consequences of introducing the requirement. We considered both of these issues in the initial draft Guidelines, and tested the position through the consultation process.

There were also suggestions that the information requirements that applied to discounts under the draft Guidelines should be applied equally across both guaranteed and conditional discounts.

Feedback received in response to our additional amendments supported the proposal to change tariff rates to their pre-discount rate. However some feedback still expressed concerns about the requirement on retailers to display tariff rates in advertising and/or marketing in certain circumstances.

Consumer groups were generally supportive of our amendments around guaranteed discounts, although some expressed disappointment that we did not prohibit guaranteed discounts altogether.

### **3.5.2 Response to feedback**

The final Guidelines have removed the requirement for retailers to display (actual) tariff rates, except on Energy Price Fact Sheets, when making representations about guaranteed discounts. We consider that, in most circumstances in which a retailer has engaged with an individual customer sufficiently to be able to identify their tariff rate, it would be more appropriate to provide the customer with an Energy Price Fact Sheet.

The final Guidelines have maintained the position contained in the amendments for feedback document, which require retailers to display tariff rates pre-discount. This is for the reasons discussed in that document.

The final Guidelines have also been updated to ensure greater consistency in the compliance requirements of guaranteed and conditional discounts. We consider these requirements are largely already followed by retailers and will not have a substantial impact on current business practices.

We have also used clearer language to describe the discount information retailers must provide. For example, in the additional amendments for feedback retailers were required to show 'what the discount applied to'. The final Guidelines now clarify the intended meaning; that retailers are required to disclose what portion of the bill the discount applies to (usage, supply charge or both) and the base level that the discount applies to.

## 4 Appendix A

### **Submissions to draft Guidelines (15 April - 24 May 2015)**

AGL Energy

Blue NRG Pty Ltd

Consumer Action Law Centre

Consumer Utilities Advocacy Centre

Energy and Water Ombudsman of NSW

EnergyAustralia

Energy Networks Association

Energy Retailers Association of Australia

Ergon Energy Queensland

ERM Power Retail Pty Ltd

Lumo Energy

M2 Energy

Momentum Energy

Origin Energy

Queensland Consumer Association

Red Energy

Simply Energy

St Vincent de Paul Society Victoria

Victorian Council of Social Service

### **Feedback on additional amendments to draft Guidelines (17 July - 3 August 2015)**

AGL Energy

Consumer Action Law Centre

Consumer Utilities Advocacy Centre

Energy and Water Ombudsman of NSW

Energy Retailers Association of Australia

EnergyAustralia

Origin Energy

Queensland Consumers Association

Red Energy