

EXPLANATORY STATEMENT

Competition and Consumer Act 2010

Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019

Competition and Consumer (Industry Code – Electricity Retail) (Model Annual Usage and Total Annual Prices) Determination 2019

Issued by authority of the Australian Energy Regulator

Purpose and operation

The Australian Competition and Consumer Commission (ACCC) recommended the Australian Energy Regulator (AER) be given power to set maximum standing offer prices for electricity supplied to small customers. It also recommended electricity retailers be required to discount all their offers from a reference price set by the AER. The *Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019* (the Regulations) give effect to these recommendations.

Part 2 of the Regulations prescribes a mandatory industry code for the purposes of Part IVB of the *Competition and Consumer Act 2010*. Under the code:

- standing offer prices for small customers must not exceed a price determined by the AER
- small customers must be told how a retailer's prices compare with the AER-determined annual price
- the most prominent price-related feature in an advertisement must not be a conditional discount, and any conditions on other discounts must be clearly displayed.

Part 3 of the Regulations confer price setting functions to the AER. Specifically, the AER is required to determine:

- how much electricity a broadly-representative small customer of a particular type in a particular distribution region would consume in a year and the pattern of that consumption (the model annual usage)
- a reasonable total annual price for supplying electricity (in accordance with the model annual usage) to small customers of that type in that region (the DMO price).

This Legislative Instrument sets out the AER's determinations under Part 3 of the Regulations:

- Clause 5 sets out the AER determined per-customer amount of electricity supplied in specified distribution regions to small customers.
- Clause 6 sets out the AER determined timing or pattern of the supply of electricity in specified distribution regions to small customers.

- Clause 7 sets out the AER determined reasonable per-customer annual price for supplying electricity in specified distribution regions to small customers.

The determinations made by the AER under the Legislative Instrument commence on 1 July 2019.

Background

In the final report of its Retail Electricity Pricing Inquiry (REPI), the ACCC noted that standing offers, which were originally intended as a default protection for customers who were not engaged in the market, were unjustifiably high and have been used by retailers as a high priced benchmark from which their advertised market offers are derived. The ACCC found that the standing offer is no longer working as it was intended and is causing financial harm to customers.

The ACCC recommended that, in non-price regulated jurisdictions, the standing offer and standard retail contract should be abolished and replaced with a default offer. Designated retailers, as defined in the National Energy Retail Law (NERL), should be required to supply electricity to customers under a default offer on request, or in circumstances where the customer otherwise does not take up a market offer.

The ACCC further recommended that the AER be given the power to set the maximum price for the default offer in each jurisdiction.

The ACCC noted that the default offer price will have two benefits:

- It will act as a cap on the price of default offers to limit the 'loyalty tax' that is levied on disengaged customers.
- It will be used to set a reference bill amount, which all discounts must be calculated from.

On 22 October 2018, the Commonwealth Treasurer and Minister for Energy wrote to the AER requesting it to develop a mechanism for default market offer (DMO) prices and a reference bill by 30 April 2019, for implementation by 1 July 2019.

Consultation

In making this this Legislative Instrument, the AER has undertaken a number of steps in consulting with affected stakeholders.

As the first step, the AER published a Position Paper in November 2018. This Position Paper outlined preliminary positions for how the AER would determine DMO prices and included a number of questions for stakeholder input. The AER received 31 submissions from industry stakeholders including retailers, consumer representatives, ombudsmen and members of the public.

The AER also held a public forum in Sydney in December 2018 to discuss the issues raised in the Position Paper, with around 50 stakeholders attending, including retailers, consumer representatives, consultants and ombudsmen.

As a next step, the AER released a Draft Determination for consultation in February 2019. The AER received 24 submissions, from industry stakeholders including retailers, consumer representatives, consultants, ombudsmen and network distribution businesses.

The consultation documents and all public submissions to this process are available on the AER's website at <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/retail-electricity-prices-review-determination-of-default-market-offer-prices>

Statement of Compatibility with Human Rights

This Legislative Instrument has been prepared in accordance with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*: see Appendix A.

Appendix A

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Competition and Consumer (Industry Code – Electricity Retail) (Model Annual Usage and Total Annual Prices) Determination 2019

The Determination is compatible with the human rights and freedom recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of legislative instrument

This Legislative Instrument sets out the AER's determinations under Part 3 of the *Competition and Consumer (Industry Code – Electricity Retail Regulations 2019* (the Regulations). Specifically:

- Clause 5 sets out the AER determined per-customer amount of electricity supplied in specified distribution regions to small customers.
- Clause 6 sets out the AER determined timing or pattern of the supply of electricity in specified distribution regions to small customers.
- Clause 7 sets out the AER determined reasonable per-customer annual price for supplying electricity in specified distribution regions to small customers.

The determinations made by the AER under the Legislative Instrument commence on 1 July 2019.

The Regulations confer price setting functions on the AER.

Human rights implications

The Legislative Instrument is prepared under the Regulations. The Regulations regulate business conduct and do not engage any of the applicable rights or freedoms.

Conclusion

The Legislative Instrument is compatible with human rights as it does not raise any human rights issues.