



**Notice of draft
instrument:
Amendments to AER
Retail Pricing Information
Guidelines**

April 2015

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Amendment Record

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Nature and authority

Introduction

This Notice, and the accompanying consultation draft, present amendments to version 3.0 of the Australian Energy Regulator's (AER) Retail Pricing Information Guidelines (Guidelines).

The consultation draft adds a number of new requirements to version 3.0 of the Guidelines. These reflect feedback from small customers, consumer groups, retailers and other stakeholders on the usefulness of the information retailers provide under the current Guidelines. It also adds requirements to reflect new obligations imposed on retailers by the Australian Energy Market Commission (AEMC) rule change (see Section 1.2 of this Notice).

The rule will commence on 1 May 2015, and requires retailers to disclose the terms and conditions that provide for variations of tariffs, charges or benefits, and provide information about when they will notify customers of changes to this information.

In addition, the consultation draft addresses early feedback from a range of energy industry stakeholders to improve the clarity of the current Guidelines. The nature and purpose of the amendments, and their possible effects, are explained in this notice.

Authority

The National Energy Retail Law (Retail Law) allows us to make and amend the Guidelines in accordance with the retail consultation procedure.¹

The current Guidelines were made prior to commencement of the Retail Law in the ACT and Tasmania on 1 July 2012. They have been operational in the ACT and Tasmania since that date, since 1 February 2013 in South Australia and since 1 July 2013 in New South Wales. Uniform transitional provisions in each jurisdiction's adopting legislation have given effect to the Guidelines in a jurisdiction from the date of commencement of the Retail Law. The same provisions will be included in adopting legislation for remaining jurisdictions, and will give effect to the Guidelines as amended from time to time. (See also Version history and effective date below).

The Guidelines (and information on their development) are available on the AER website: <http://www.aer.gov.au/node/16091>.

Role of the Guidelines

The Guidelines aim to help small customers compare energy offers and make an informed decision on the offer that is best for them.

The purpose of the Guidelines is to provide guidance to retailers in the presentation of standing offer prices and market offer prices, and thereby assist consumers to consider and compare the standing offer prices and market offer prices available to them.

¹ National Energy Retail Law s 61; National Energy Retail Rules r 173.

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.
- 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.

The Retail Law also requires us to develop and make available a price comparator website. The purpose of this website, Energy Made Easy (www.energymadeeasy.gov.au) is to assist small customers to compare the standing offer prices and market offer prices that are generally available to them. In addition to prices, Energy Made Easy can include any other information the AER considers will achieve this purpose. A redeveloped version of Energy Made Easy will be launched in July 2015.

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.

Version history and effective date

This Notice has been prepared for consultation purposes only.

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 dealt with the production and distribution of energy price fact sheets only: it did not contain requirements relating to Energy Made Easy, which was in the early stages of development at that time.

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.

We are currently consulting on a draft version 4.0 of the Guidelines.

1 Overview

1.1 Application of the Guidelines

The Guidelines currently apply in the states and territories in which the Retail Law has commenced, being New South Wales, South Australia, the Australian Capital Territory and Tasmania. The Retail Law will commence in Queensland in July 2015, and the Guidelines will apply in Queensland from that date.

The 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 efficacy and operation of the Guidelines in the retail energy market.

The amendments, which we have consulted on, seek to address that feedback. In summary, the amendments:

- clarify retailers' obligations under the Guidelines, as well as the operation of the Guidelines more broadly
- change some requirements for Energy Price Fact Sheets, including a more standardised layout, format and prioritisation of certain offer information
- indicate when a variation to an offer requires a separate Energy Price Fact Sheet
- require retailers to increase prominence of Energy Price Fact Sheets on retailers' websites
- require the use of clearer and simpler language that is more widely understood by consumers and
- limit how retailers can make representations of 'unconditional discounting' to small customers.

We expect the final draft Guidelines will be released in July 2015; to take effect in October 2015. This will give retailers adequate time to amend their Energy Price Fact Sheets, and ensure they comply with all obligations under the revised Guidelines.

1.2 Australian Energy Market Commission Rule Change

On 23 October 2014, the Australian Energy Market Commission (AEMC) made a rule requiring retailers to improve the information they give to consumers when entering market retail contracts, particularly with respect to whether prices can vary during a fixed term or a fixed benefit period.

The rule, which will commence 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 any changes to this information.

The AER worked closely with the AEMC and other stakeholders throughout this rule change process. In our submission, we proposed consulting on further changes to Energy Made Easy and Energy Price Fact Sheets (via the Guidelines) in 2015 at the conclusion of the AEMC's process to improve consumer understanding of the options available to them.

Stakeholders supported the AER's proposal to undertake a review of the Guidelines noting that the potential amendments could assist in improving the clarity, quality, accessibility and prioritisation of information on retail energy offers. The AEMC noted that the measures proposed by the AER in our submission could work alongside the rule to support informed decision making by energy consumers.

The AEMC's final rule responds to a rule change request submitted by Consumer Action Law Centre (CALC) and Consumer Utilities Advocacy Centre (CUAC) which sought to prohibit retailers from changing prices during fixed term contracts.

Consumer research undertaken by the AEMC as part of its considerations also indicated that energy literacy is low and that consumers want access to clear and easy to understand information from trusted sources.² Across jurisdictions only 39 per cent of residential customers surveyed were 'quite confident' or 'very confident' that they understood the offers that were available to them.³ The research indicated some consumers are unaware that price variations will occur during their contract, and there is confusion about what elements of an energy contract are subject to variation.⁴

1.3 Energy Made Easy

We are currently undertaking a series of improvements to Energy Made Easy to make it simpler for customers to compare offers and to improve the functionality of the secure portal that retailers use to submit and manage their offers. In parts, the draft revised Guidelines have been amended to reflect the changes that will be made (primarily to reflect the change from an embedded form to a document upload model).

The Guidelines support the operation of Energy Made Easy by specifying what information retailers must provide to the website, and how and when they must provide it. The amendments to the Guidelines clarify these requirements. For example, the requirement on retailers to remove out of date offers from Energy Made Easy within two business days.

The outcome of this review to the Guidelines will inform some of the changes to Energy Made Easy, with the new Energy Made Easy website expected to launch in mid-2015.

The Energy Price Fact Sheet design functionality in the redeveloped Energy Made Easy website is still being finalised as part of the website redevelopment project. To ensure consistency between the review and the redevelopment project we propose to publish a design model Energy Price Fact Sheet(s) once available (likely in May) as a delayed component of the consultation on the draft Guidelines. Stakeholders will have an opportunity to comment on the design during the consultation process, if slightly delayed, while ensuring consistency with the Energy Made Easy design functionality which will ultimately be used for Energy Price Fact Sheets.

2 Australian Energy Market Commission, Consumer Research for Nationwide Review of Competition in Retail Energy Markets, Qualitative and Quantitative Research Report, June 2014.

3 Ibid p 30.

4 Ibid.

1.4 Impact on business

We consider that the proposed changes largely clarify existing obligations under the current version of the Guidelines, rather than impose additional obligations. The amendments to the Guidelines will require retailers to make some changes to their current business practices, including redesigning their Energy Price Fact Sheets and placement of these on their websites. We anticipate that this will involve some costs for design staff (both graphic and web-team), as well as in-house legal staff to ensure compliance with the revised Guidelines, but any additional costs should be relatively small and are likely to be one-off rather than on-going. Our initial estimate is that the additional regulatory burden for a retailer will be less than \$10,000-\$20,000 in the first year, and negligible thereafter.

We welcome retailers' views on the likely cost to their business from these changes and whether the potential business costs are greater than we have estimated. Where retailers submit that these costs are greater, retailers should provide costings for their calculations.

We consider the overall benefit to consumers of the changes will be significant as they will have increased access to clear and simple energy information that will increase their ability to understand and compare available energy offers. This will also benefit retailers providing innovative energy offers as consumers will have greater knowledge about the products retailers are offering and will be able to more readily identify the points of difference among retailers.

2 How to make submissions

This notice and the accompanying consultation draft of the AER Retail Pricing Information Guidelines have been prepared in accordance with the retail consultation procedure in rule 173 of the National Energy Retail Rules.

Interested parties are invited to make written submissions regarding the draft Guidelines by close of business, **24 May 2015**.

Submissions should be sent electronically to: AERInquiry@aer.gov.au with the subject line 'AER Retail Pricing Information Guidelines'. We ask that all submissions sent in an electronic format are in Microsoft Word or other text readable document form.

Alternatively, submissions can be sent to:

Ms Sarah Proudfoot
General Manager—Retail Markets Branch
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

We prefer that all submissions be publicly available to facilitate an informed and transparent consultative process. Submissions will be treated as public documents unless otherwise requested. Parties wishing to submit confidential information are requested to:

- clearly identify the information that is the subject of the confidentiality claim
- provide a non-confidential version of the submission in a form suitable for publication.

We will place all non-confidential submissions on our website at www.aer.gov.au. For further information regarding the AER's use and disclosure of information provided to it, see the ACCC/AER Information Policy, June 2014, available on the AER website.

Please direct enquiries about this notice and the draft Guidelines, or about lodging a submission, to AERInquiry@aer.gov.au.

3 Purpose of consultation

Under the retail consultation procedure the AER must prepare a draft Guidelines for consultation alongside a Notice of Draft Instrument.⁵ These instruments must give details about the context in which the draft Guidelines have been prepared, the issues involved, and the possible effects of the draft Guidelines.⁶

In addition to meeting these formal consultation requirements, we have conducted two stakeholder forums. The first stakeholder forum, which was held on 15 January 2015, was attended by consumer group representatives. The second stakeholder forum, which was held on 12 February 2015, was attended by retailers, community group representatives, state and territory energy ombudsman representatives and other interested stakeholders. A transcript of the 12 February forum is available on the AER's website at: <https://www.aer.gov.au/node/29505>. The two forums enabled the AER to explain and generate feedback on the proposed amendments to the Guidelines. We may hold a further stakeholder forum in May 2015.

We have also engaged in additional extensive consultation with retailers and other interested parties about the proposed scope of the revisions to these Guidelines, and the impact the proposed changes will have on retailers and consumers.

⁵ National Energy Retail Rules s 173(2)(b).

⁶ National Energy Retail Rules s 173(2)(b)(ii).

4 Amendments

This section provides a discussion of the amendments to the Guidelines.

4.1 Clarifying the Guidelines and retailers' obligations

Retailers must comply with the obligations imposed on them by the Guidelines under the Retail Law.⁷ The Guidelines are enforced by a civil penalty provision under the Retail Law.⁸

Retailers must submit to the AER information and data relating to the presentation of standing and market offer prices that are generally available to classes of small customers in a jurisdiction, including any variation of prices, and for the purposes of Energy Made Easy. The information and data must be in the manner and form prescribed the Guidelines.⁹

The purpose of the Guidelines is to help consumers consider and compare standing and market offer prices offered by retailers. We are concerned that under the current Guidelines, there is a potential lack of clarity for retailers around some obligations. This may lead to situations where retailers could interpret the Guidelines in a manner that is not consistent with the intent and objectives of the Guidelines.

For example, some retailers have presented solar offers as an add-on to an existing offer, when the daily supply charge¹⁰ is actually different for the solar offer. The current Guidelines do not prohibit this. However, this means consumers with solar panels are not charged the daily supply charge most prominently stated on the Energy Price Fact Sheet, rather they are charged the specific daily supply charge for the solar offer, which is listed in the less prominent fee section on the Energy Price Fact Sheet. Presentation of information in this manner could result in consumer confusion and limit consumers from easily comparing offer features, like daily supply charges, across retailers.

Clarifying the Guidelines' requirements and retailers' obligations is therefore important to achieving the purpose of the Guidelines.

4.1.1 Early stakeholder feedback

At the AER consumer stakeholder forum on 15 January, consumer groups supported the clarification of retailers' obligations under the Guidelines.

Similarly at the AER stakeholder forum on 12 February 2015 retailers were broadly supportive of proposals to improve clarity.

⁷ National Energy Retail Law s 63.

⁸ National Energy Retail Law s 63.

⁹ National Energy Retail Law s 63(a)-(b).

¹⁰ See section 2.2 of the Guidelines

4.1.2 Amendments to the Guidelines

The following amendments clarify retailers' obligations and promote compliance with the Guidelines and therefore the Retail Law and Retail Rules. These clarifying amendments are in addition to more substantive amendments discussed in Sections 4.2 to 4.7 of this Notice.

We have amended Section 1 of the Guidelines to clarify the AER's role in enforcing the Retail Law. A new paragraph has been inserted to explain that the AER will work with the Australian Competition and Consumer Commission (ACCC) to address misconduct in the energy market, and that the national energy laws will operate alongside the Australian Consumer Law to provide the framework in which energy retailers must operate.

Section 2.2 now requires retailers to use the word 'usage' instead of 'consumption' when describing the unit price for energy. We understand that the term 'usage' is common industry terminology. The consultant engaged by the AER to provide expert consumer communication advice recommended using the term 'usage' rather than 'consumption' to reduce language complexity. The term 'consumption' is used to capture this concept in the Retail Law. However the AER considers that the amendment will bring the terminology used in the Guidelines into alignment with current industry usage.

A new section, Section 2.3 titled "Language requirements" has been inserted which specifies the language requirements for Energy Price Fact Sheets. This section identifies terms that must not be used by retailers. These terms include 'evergreen', 'evergreen with fixed benefit period', 'fixed' or 'fixed term' except where the price is also fixed, 'early termination fee' and 'termination fee'. We provide alternative terms that retailers must use on Energy Price Fact Sheets. These include 'no contract term', '[number] month contract', 'contract term' or 'contract length'. We also require retailers to use the term 'guaranteed discount' rather than 'unconditional discount', a term discussed separately in Section 4.2 of this Notice.

We have amended Section 2.4.2 to clarify retailers' obligations around representations of discounting. Specifically this section requires retailers to provide information on the availability and eligibility of conditional discounts. We have further amended the Guidelines to prevent retailers from making representations of 'unconditional' or guaranteed discounts (that is, discounts to which no conditions for eligibility apply) unless they clearly state the base level from which the discount is being applied.

We have also amended Section 2.4.3 to clarify the additional information that must be included on an Energy Price Fact Sheet. In particular, retailers are required to include on Energy Price Fact Sheets the Energy Made Easy logo and the following statement: 'Energy Made Easy is an independent Australian Government website that allows you to compare all generally available energy offers in your area.'

Section 2.4.4 has been amended to clarify that if add-on options on Energy Price Fact Sheets will affect the key elements of the offer, for example the daily supply charge, then a retailer must produce a separate Energy Price Fact Sheet.

We have inserted a new section, Section 2.4.8, titled 'Prioritisation of information' which requires retailers to set out energy information in a particular order on Energy Price Fact Sheets to improve consistency and comparability for customers. This section prioritises information so that retailer name and key offer information, pricing information, guaranteed

discounts and conditional discounts must appear first on an Energy Price Fact Sheet. Guaranteed discounts must be displayed directly below pricing information. Fees and contract terms must then appear, followed by add-on options and Energy Made Easy information.

We have amended section 3.1 to strengthen the current distinction between generally available offers and non-generally available offers.

We have amended Section 3.2 to clarify the requirements for retailers to publish an Energy Price Fact Sheet. The Guidelines now require Energy Price Fact Sheets to be placed in a reasonably prominent position on a retailers' website, and require the term 'Energy Price Fact Sheet' to be used to describe fact sheets on retailers' websites as well as on the actual fact sheets. The link to Energy Price Fact Sheets must also clearly appear and be available to consumers before they are able to sign up for an offer. The amendments prevent retailers from requiring customers to enter personal information such as their name, address or date of birth in order to access Energy Price Fact Sheets.

We have amended Section 3.4 so that advertisements on social media, in addition to mass media, must include a statement about the availability of Energy Price Fact Sheets. This ensures retailer marketing through developing applications and platforms complies with minimum requirements in terms of internet marketing. Research conducted on behalf of the AER suggests that consumers see internet searches as the most useful source of information when switching energy plans, which reinforces the need to extend the current obligation in section 3.4 to social media.

We have amended Section 4.2 to require retailers to remove obsolete offers from publication on Energy Made Easy within two days of the offer ceasing to be available to customers. This clarifies existing expectations by articulating the requirement as a time limited obligation. Section 4.3 requires retailers to regularly review the offer information they upload on Energy Made Easy to ensure all offers listed are up to date.

We are continuing to consider how to make existing obligations clearer and more concise. During the consultation process we will consider how we strengthen the language in the Guidelines, without increasing the requirements on retailers. This will improve the Guidelines by clarifying the limits of these obligations without substantively changing these obligations on retailers.

4.2 Representations of 'unconditional discounts'

'Unconditional discounts' are discounts that are applied or automatically guaranteed to the consumer when they sign up to the offer.¹¹ Unlike conditional discounts, consumers do not have to do anything to receive the discount, for example by meeting certain requirements like paying bills on time. In effect, unconditional discounts mean a customer will never pay the base price from which the discount is applied.

Traditionally unconditional discounts were offered as a discount off the regulated standing offer, which encouraged consumers to move from standing offers to market offers. However,

¹¹ Please note some retailers refer to unconditional discounts as non-conditional, or guaranteed discounts.

now that prices are deregulated in most jurisdictions, retailers' use of 'unconditional discounts' as headline information in marketing their energy offers has become potentially misleading and confusing to consumers as there is no common understanding of what tariff the discounts apply to.

We are concerned that because headline discount figures can be attractive to customers, consumers may compare retail offers based on the headline discount rather than the actual prices that the consumer would pay under a contract. This confusion was highlighted in the recent ACCC 'Discounts off what' campaign which resulted in findings by the Federal Court that this type of conduct can be misleading and confusing to consumers.¹²

In addition to impeding effective competition by perpetuating information asymmetries that discourage consumers from participating fully in the market, there is also a risk that representations of unconditional discounts may adversely affect competition, by disadvantaging retailers who choose not to use unconditional discounts as a marketing strategy.¹³

The current Guidelines do not contain any obligations or guidance for retailers with respect to representations of 'unconditional discounting' beyond the information requirements for discounts and rebates in Section 2.3.2 of the current Guidelines. This section in the current version of the Guidelines requires retailers to provide information on any discounts that apply to a contract offer, and appropriately name and describe each discount.

4.2.1 Early stakeholder feedback

In preliminary consultation with stakeholders, we canvassed options including a proposal to prohibit representations of 'unconditional discounts'. The amendments do not seek to prohibit the practice of retailers offering unconditional discounts, but the amendments limit the use of the term 'unconditional' through retailer language requirement obligations.

Industry feedback

Industry suggested the initial proposal put forward by the AER to prohibit representations of unconditional discounts would require retailers to stop offering discounts off standing offers, which in turn would require system changes as prices would have to be set for each offer. At the 12 February stakeholder forum, retailers submitted that unconditional discounting is used to describe the value of a product, and prohibiting unconditional discounting would limit innovation. Retailers also noted that unconditional discounting is used to indicate to customers that they are making a saving and consequently many sign up to the offer. It can be an effective form of marketing to consumers.

Consumer group stakeholder feedback

At the 12 February forum consumer groups expressed the view that unconditional discounting can be a meaningless basis of comparison, particularly when the base price

¹² Australian Competition and Consumer Commission v AGL South Australia Pty Ltd [2014] FCA 1369, Australian Competition and Consumer Commission v Origin Energy Limited [2014] FCA 55.

¹³ Australian Competition and Consumer Commission v Origin Energy Limited [2014] FCA 55 [52].

from which the discount is being taken could be any price. They further noted that retailers should be required to provide more meaningful information for consumers, rather than a percentage discount off what is often an unstated and rarely applied base price. They submitted that businesses often use unconditional discounting for marketing purposes but this does not provide a genuine basis of comparison for consumers.

At the 15 January forum consumer groups noted that unconditional discounting can be seen as a market design issue. For example the lack of competition in the base rates is passed on through discounts. They also noted that issues with this terminology are exacerbated when discounts and charges are altered by solar or renewable energy feed-in tariffs and supply charges.

4.2.2 Amendments to the Guidelines

To ensure that discounts are clear, simple and widely understood by consumers we have amended the Guidelines to limit how retailers make representations of 'unconditional discounts' in retailer marketing and Energy Price Fact Sheets. We are not proposing to amend the Guidelines to prohibit the practice of offering discounts that are not conditional, as was originally suggested as one potential way of dealing with the issue.

We have inserted Section 2.4.2.2 to detail how retailers present what we are now terming 'guaranteed' discounts. This section states that retailers must not make representations using the term 'unconditional' and where they make representations of guaranteed discounts to small customers they must state the tariff to which the discount is being applied. This obligation covers representations made on Energy Price Fact Sheets and the marketing and advertising of offers more broadly. Under this section retailers are required to display rates that include any unconditional discounts, rather than rates exclusive of unconditional discounts, which is the current practice.

Requiring retailers to display the actual rate that already includes the unconditional discounts is likely to remove the confusion around what is being discounted. This change will result in prices that are meaningful in relation to what is comparably available to consumers in the market place.

4.3 Standardising the layout of Energy Price Fact Sheets

Unlike the Energy Price Fact Sheets developed by Energy Made Easy, the Energy Price Fact Sheets produced by retailers vary considerably in terms of the design and layout. This impacts consumers' ability to easily understand and compare offers from different retailers when using the fact sheets. Research has found that consistency across a range of retailers is more important to enhancing consumers' understanding than consistency within a single retailer's presentation of offer information.¹⁴

Section 2.1 of the current Guidelines states that a retailer can either generate Energy Price Fact Sheets on Energy Made Easy or, "Alternatively, a retailer may also produce its own Energy Price Fact Sheet for marketing purposes and for publishing on its website. Those

¹⁴ Ofgem, Retail Market Review: Energy bills, annual statements and price rise notifications; advice on layout and the use of language, Lawes Consulting, November 2011.

Energy Price Fact Sheets must contain the required information and be in the format set out below."

We consider that the current framing of Section 2.1 has led to vastly different approaches by retailers in marketing offer information. While this can lead to positive impacts on competition and allow for retailers to differentiate their offerings, we consider the information requirements currently do not promote or achieve a level of standardisation that enables consumers to easily understand and compare offer information.

4.3.1 Early stakeholder feedback

Consumer groups have submitted that standardised Energy Price Fact Sheets would assist consumers by establishing a consistent location for each type of information, which would enable easier comparison of offers. In turn, this would allow consumers to make more informed choices, promoting consumer market participation and potentially increasing competition and the effective functioning of the energy retail market.

Industry has raised concerns that standardisation would increase retailers' compliance obligations by requiring changes to their internal systems. While a change may be required to implement new design requirements, we consider this is a relatively small one-off cost that also could be avoided by any retailer that opted to use Energy Made Easy to generate a standardised fact sheet.

Retailers have also raised the possibility that standardisation of Energy Price Fact Sheets potentially limits their ability to creatively market their offers. However, we consider standardisation will in fact assist retailers to better demonstrate the areas of difference in their offers to customers. We also understand that many retailers rely on other marketing tools and channels to creatively market their offers. Our consultation to date supports the view that the consumer benefits of standardising the format and layout of Energy Price Fact Sheets will outweigh the difficulties this change will pose to retailers' systems and creative marketing.

During consultation a submission was made that another way to address the issue would be to give the AER an approval role, whereby a retailer would submit to the AER their proposed Energy Price Fact Sheet format and it would be approved or declined based on particular pre-defined standards for clarity and usability. We consider that clarifying the format and layout requirements in the Guidelines would be of greater benefit to retailers than this proposal. This is because it will direct retailers to follow a clear, structured and consistent approach, which they know will be compliant.

4.3.2 Amendments to the Guidelines

We have amended Section 2 of the Guidelines to require retailers, that choose to produce their own Energy Price Fact Sheets, to make these Energy Price Fact Sheets consistent with the format, language and information requirements outlined in section 2 of the Guidelines (which has also been amended - see Section 4.5 of this Notice).

Research conducted on behalf of the AER has also illustrated that a significant amount of people used an Energy Price Fact Sheet to understand offer information and switch plans. This suggests that Energy Price Fact Sheets are a valuable tool for consumers. Increasing

the consistency and readability of Energy Price Fact Sheets could therefore assist consumers and result in Energy Price Fact Sheets becoming even more relevant.

We have also engaged a consultant to provide expert advice in relation to language simplification and layout of Energy Price Fact Sheets. In response to this advice, we have amended the Guidelines to require retailers to use a minimum font size of 12 in Energy Price Fact Sheets. We have also clarified the requirements around the use of tables. Retailers must not use more than three columns in tables on Energy Price Fact Sheets. Tables must be centred and have visible row and column borders. Retailers may use shading, but shading must meet the accessibility standard for colour contrast. Attachment A of the revised Guidelines provides further clarification on which information must be provided in table format by coding those sections with a dotted green border.

The changes to Section 2 and Attachment A, which reflect the expert's advice, ensure that the Guidelines provide a framework that reduces confusion but allows retailers to continue to market competitively and innovatively. These changes also reflect feedback from consumers with whom our expert tested current retailer Energy Price Fact Sheets and template Energy Price Fact Sheets, which informed the new structure at Attachment A.

4.4 Accessibility and prominence of Energy Price Fact Sheets

For Energy Price Fact Sheets to achieve their intended purpose, consumers should be able to easily locate and access them. We are concerned it is currently difficult to find Energy Price Fact Sheets on many retailers' websites. As a result, many consumers are either not finding fact sheets, or are not even aware that they exist. This represents a significant barrier to consumers accessing the information they need to understand and compare offers.

Under Section 3.1 of the current Guidelines retailers are required to publish an Energy Price Fact Sheet on their websites for all generally available contract offers available to small customers on or from 1 July 2012. These Fact Sheets must be 'easily accessible on the website'. Additionally retailers are obliged to include a clear and obvious link to the relevant Energy Price Fact Sheet, when a webpage includes information or marketing materials about a contract offer. No link is required where the webpage contains the information and required format stipulated by the Guidelines. On the sign up page, retailers must refer to and provide a clear link to the relevant Energy Price Fact Sheet.

Generally small customers are not required to provide technical or personal information to obtain Energy Price Fact Sheets. While customers may be required to provide location information, only a 'minimum level of information' should be necessary to access the Energy Price Fact Sheets. For example, customers should not be required to enter their name or other household indicators. And if required to enter metering information, retailers must provide plain English explanations about how to obtain and enter this information.

Under the current Guidelines, retailers are not required to publish Energy Price Fact Sheets for non-generally available contract offers on their websites.

4.4.1 Early stakeholder feedback

To support our early consultation on this issue, we asked retailers to provide statistics on website traffic and Energy Price Fact Sheet access data, in order to determine how many consumers are currently able to find and use Energy Price Fact Sheets. To date we have had a limited response from retailers in providing this data.

The responses we have received have indicated that more consumers than we expected are accessing Energy Price Fact Sheets from retailers' websites. This is important to note, especially in light of comments made by retailers at the February 12 forum that suggested there is no evidence that consumers rely on Energy Price Fact Sheets so they should not be focused on ahead of other issues.

The data illustrates a relatively significant number of consumers are able to access the Energy Price Fact Sheets on these retailers' websites.

Consumer groups submitted that Energy Price Fact Sheets are too difficult for consumers to find on retailers' websites. In testing this point, consumer groups noted that they had trouble finding Energy Price Fact Sheets for certain retailers despite searching on both retailers' websites, and in search engines. We have encountered similar difficulties in either finding Energy Price Fact Sheets on retailers' websites, or accessing them. For example, one retailer required users to enter their license number, address and date of birth before being able to access the document.

This feedback suggests that while some customers are able to find and use Energy Price Fact Sheets, customer access would be enhanced if the Energy Price Fact Sheets were located more prominently on websites, with fewer barriers to finding them.

4.4.2 Amendments to the Guidelines

As noted above, research conducted on behalf of the AER has illustrated that a significant amount of people used an Energy Price Fact Sheet to understand offer information and switch plans. This research also suggests that consumers see internet searches as the most useful source of information when switching energy plans. This suggests that Energy Price Fact Sheets are a valuable tool for consumers and reinforces that they should be placed prominently on retailers' websites, thus increasing accessibility through search engine inquiries.

We have amended the Guidelines to make Energy Price Fact Sheets easier for consumers to find and use. This will assist in a greater number of consumers being able to access Energy Price Fact Sheets more frequently. It will prevent the consumer disengagement that occurs when consumers are unable to locate Energy Price Fact Sheets or are dissuaded by the onerous information requirements for access currently required by several retailers in the market. We consider this change will also lead to increased awareness about the availability of Energy Price Fact Sheets, which will result in Energy Price Fact Sheets becoming a more valuable tool for customers to use in order to understand and compare the energy offers available to them.

Specifically, we have amended the former Section 3.1, which is now Section 3.2 in the revised draft Guidelines to provide that 'easily accessible' means Energy Price Fact Sheets

must be placed in a reasonably prominent position on the website and be clearly identified as Energy Price Fact Sheets in the document itself and other pages or section titles linking to these documents on the retailers' websites. The Guidelines stipulate that customers must be able to access the Energy Price Fact Sheet before beginning an online sign up process. The Guidelines also prevent retailers from requiring customers to enter their name, personal information including address or date of birth, or household indicators in order to access Energy Price Fact Sheets.

The current version of the Guidelines permits retailers not to include a link to a downloadable Energy Price Fact Sheet, provided the retailers' webpage itself contains all the required information in the required format. To promote ease of access for consumers, we have removed this option for retailers; instead requiring a downloadable Energy Price Fact Sheet for all offers.

4.5 Prioritising offer information on Energy Price Fact Sheets

Currently there is a large amount of information on Energy Price Fact Sheets. Often the most important information for consumers can be difficult to find and is located in different places on each retailer's Energy Price Fact Sheets. This prevents consumers from easily being able to find and compare key information, such as tariff rates and discounts, across retailers. This can impact consumers' ability to make an informed decision.

Research conducted on behalf of the AER suggests that consumers consider the total estimated bill amount, the discounts offered and the price per unit of energy the most important factors when considering switching. Contract duration, exit fees, renewable options, and price variations were also considered important, but to a lesser degree. This confirms that the prioritisation of information in Energy Price Fact Sheets is important, as it will enable consumers to easily locate the information they find most helpful in understanding and comparing offers.

Prioritising offer information will mean the key information appears upfront and in a prominent position. This allows consumers to quickly and easily identify the information that is most relevant to them, and allows them to compare offers more readily.

Readers typically read a page of information from left to right and top to bottom, so the most important information should be prominent, placed at the top of the page in an eye catching position, and written in clear and familiar language.¹⁵ It is also more important for there to be consistency between retailers, rather than consistency within a sole retailer's publications. Further, consistent use of language and methods of presenting information were found to improve consumer understanding. The terms and conditions of an offer should also be in the one place, rather than scattered across a page.

While Section 2 of the current Guidelines outlines what information must be included in Energy Price Fact Sheets, and Section 2.2 specifies that this information must appear in a

¹⁵ Ofgem, Use of Language and Layout Report, 2011.

table format, the Guidelines do not stipulate the order in which the information should appear.

4.5.1 Early stakeholder feedback

Consumer group research indicates that priority information is rarely given upfront or in an understandable format for the average consumer. Consumer groups support a standard layout that involves key priority headings in plain language that will guide consumers.

Consumer groups conducted community education sessions to identify the following information as critical to promoting consumer understanding and the ability to compare offers. These terms include tariff type, eligibility, rates, contract length, discounts, fees payment options, billing options and price changes. Retailers have suggested the following are relevant to consumers' ability to compare the overall value of offers; tariff rates, price changes, early termination fees, discounts, incentives, contract length, eligibility, where a consumer can find additional information about the product and retailer contact information.

At the 12 February stakeholder forum several retailers offered to share their research into prioritising information to the AER. We requested that retailers share these research findings, with the option of the research remaining confidential, but have not yet received any material.

4.5.2 Amendments to the Guidelines

We have consulted widely on this issue and have sought advice from consumer communication experts to develop Energy Price Fact Sheets for consultation that have clear, easily accessible information for consumers. The Guidelines and structure for Energy Price Fact Sheets at Attachment A reflect this work.

We have inserted a new Section 2.4.7, 'Prioritisation of Information' in the Guidelines that requires retailers to place certain categories of information upfront, and prioritise this information by placing it above other information on Energy Price Fact Sheets.

'First priority' information includes the retailer's name, key offer information, pricing information, guaranteed discounts and conditional discounts, and should be listed first on an Energy Price Fact Sheet. Guaranteed discounts must be displayed directly below pricing information. This is to be followed by 'second priority' information, which includes fees and contract terms such as contract length and how price changes will be communicated to customers. This is to be followed by 'third priority' information which contains Energy Made Easy information and the various add-on options available to consumers, subject to the Section 2.4.4 requirements contained in the draft Guidelines and discussed in Section 4.6 of this Notice. The AER would like to emphasise that while these categories of information have been ranked, all offer information is considered critical to consumer understanding and must be provided on an Energy Price Fact Sheet.

Attachment A now sets out how retailers must prioritise key information on Energy Price Fact Sheets. We will consult on the design for Energy Price Fact Sheets once the Energy Made Easy redevelopment design functionality has been finalised.

4.6 Offer variations and Energy Price Fact Sheets

Currently retailers typically produce Energy Price Fact Sheets that contain more than one tariff type, or variation of an offer, such as charges for a range of metering configurations. This means Energy Price Fact Sheets contain significant blocks of information which can be overwhelming to consumers. We are concerned this practice can result in consumers having difficulty identifying relevant information and becoming confused about which offer applies to them.

The current Guidelines do not contain any express requirements around producing separate Energy Price Fact Sheets for each tariff type. Current Section 2.3.4 also allows retailers to include additional options, such as GreenPower options, on Energy Price Fact Sheets so long as the overall clarity of the Fact Sheet is maintained.

4.6.1 Early stakeholder feedback

During the 12 February forum we suggested that one option to address this issue would be to require retailers to generate a separate Energy Price Fact Sheet for each offer or variation of an offer. The discussion that followed this proposal illustrated that there is a different understanding between retailers and consumer groups as to what constitutes an 'offer' for the purposes of information on an Energy Price Fact Sheet. Feedback from industry indicated that retailers consider a single offer applies to every possible metering configuration, whereas consumer groups see each separate metering configuration as comprising a single offer. Industry was concerned the suggested proposal for separate Energy Price Fact Sheets for each tariff type would split an offer across multiple Energy Price Fact Sheets.

Industry submitted that such a change would result in retailers being required to produce a greater number of Energy Price Fact Sheets, with the result that consumers would have to navigate an increased number of Energy Price Fact Sheets. Industry noted the benefit of having an increased number of Energy Price Fact Sheets would need to be traded off against the cost of consumers having to find the Energy Price Fact Sheets, and the cost to retailers of developing and providing access to an increased number of Energy Price Fact Sheets.

Consumer groups considered there may be merit in the proposal for separate Energy Price Fact Sheets as consumers are currently confused by having multiple offers listed on each Energy Price Fact Sheet.

4.6.2 Amendments to the Guidelines

We have considered concerns raised by retailers about the suggestion to produce separate Energy Price Fact Sheets for each variation of an offer and the difficulties this would pose. Instead of requiring this, we have amended the Guidelines to clarify the circumstances in which a single Energy Price Fact Sheet must be generated. Where an add-on option changes any of the items in the base offer, for example, if a higher daily supply charge will apply under the solar option, a separate Energy Price Fact Sheet must be produced. Where optional "add-ons" are available but do not affect the base offer, we do not consider it necessary to create separate Energy Price Fact Sheets.

We have amended Section 2.4.4 of the Guidelines to provide that if add-on options on Energy Price Fact Sheets will affect the standard elements of the offer, retailers must produce a separate Energy Price Fact Sheet.

We intend this change to balance efficiency for retailers and the need for consumers to understand and compare offers.

4.7 Promoting clear and simple language

We share widely held concerns among consumer groups that the use of complex language in the description and marketing of energy offers is confusing for consumers and limits their ability to understand the important elements of an offer. In addition, there are differences in terms used by industry to describe essentially the same thing and this can lead to consumer confusion when comparing offer information.

Particular terms such as 'Evergreen with fixed benefit period' are problematic as there is no common understanding of what this term describes. This limits consumers' ability to actively compare energy offers across retailers and we are concerned this is contributing to lack of engagement with the retail energy market. This could potentially have a negative effect on competition, which is problematic as many jurisdictions are unregulated in terms of prices.

Some language requirements are listed in the current Section 2 of the Guidelines, which outlines the requirements to produce Energy Price Fact Sheets. Section 2.2 now states that retailers must present the unit price charge using the word 'usage' and provide sufficient details about how the charge applies. The fixed or standing charge must be described as 'daily supply charge'. Under Section 2.2 all prices on an Energy Price Fact Sheet must also be expressed with both the GST inclusive and exclusive rates. There is a further requirement for retailers to define 'daily supply charge', 'kWh' and 'MJ' as stipulated in the Guidelines.

Under Section 2.3.1 the terms for key fees are set out and any fees relating to the disconnection or reconnection of small customers must be titled by retailers as 'disconnection fees' and 'reconnection fees'. Examples of fees are provided in Section 2.3.1, and examples of discounts and rebates are provided in Section 2.3.2, but these sections do not stipulate these example terms must be used by retailers.

Additional information retailers must provide is outlined in the current Section 2.3.3. The only language requirement on this list is the reference to Energy Made Easy which must read 'For information to help you compare the retail offers available to you, please visit www.energymadeeasy.gov.au'.

We have amended the Guidelines to require the use of consistent terms that are more widely understood by consumers. In particular, we have limited the use of specific terms in Energy Price Fact Sheets that have been identified as confusing to consumers.

In requiring retailers to remove particular terms from Energy Price Fact Sheets, we have had regard to consumer group research and expert advice from the consumer communication specialists we engaged to assist with our review of the Guidelines.

We understand there is currently a lack of consistency in the terms that are used by retailers. Research has identified that the creative language currently describing contract terms is of

no real benefit to consumers.¹⁶ For example, 'benefit term', 'evergreen' and 'no term contract' are all used to describe the same thing. 'Evergreen' and 'fixed benefit term' have been identified as particularly confusing because consumers may think rates will be fixed during the period of the contract, when in fact this is generally not the case.¹⁷ Consequently, a recommendation has been made for the AER to streamline and standardise Energy Price Fact Sheets.¹⁸

4.7.1 Early stakeholder feedback

Consumer Group feedback

Consumer group stakeholders have expressed concern about the widespread use of terms that are confusing and do not provide meaning to consumers. They have indicated that consumers do not understand much of the language that is currently used, and that for consumer engagement to occur, consumers need to be able to understand the energy information that is being provided to them by retailers. Similarly, it was submitted that simplifying language to make Energy Price Fact Sheets more understandable is essential to consumer engagement.

Consumer groups have submitted that the variation of terms, and inconsistent use of terms, is particularly problematic to consumer understanding. For example, there is currently consumer confusion around the inconsistent use of 'consumption' versus 'usage' across retailers. Some consumer groups also submitted that comparable information should be provided by retailers, particularly for price terms, peak/off peak periods and ancillary and other charges. It was submitted that this lack of consistency, and perhaps more importantly the lack of a clear explanation from retailers, prevents consumers from understanding and comparing offers. This confusion extends to the variation in terminology that can appear on a single bill, making it difficult for consumers to understand how they are reading bills.

Consumer groups have also identified a need to standardise the language used by retailers. In particular, they propose prohibiting the term 'fixed benefit period' because it is difficult to understand. It was submitted that 'fixed benefit period' is often used as a tool by retailers to avoid the requirement to notify consumers that their contract or benefit is going to end, which discourages people from shopping around. Consumer groups considered that the term 'fixed' should not be used by retailers unless 'fixed' is being used in a context where the prices are genuinely fixed for the complete duration of the contract.

Retailer feedback

In contrast to consumer groups, industry has noted that adopting standard terms could be problematic because retailers use certain terms as part of their branding. Industry was concerned standardising the language on Energy Price Fact Sheets would result in these

16 The National Energy Market—Wrong way, Go back?, Observations from the Vinnies' Tariff-Tracking Project, September 2014.

17 Ibid p 25.

18 Ibid p 31.

documents being inconsistent with other forms of communication produced by retailers for customers.

Some industry stakeholders suggested the option of an industry glossary, agreed upon by retailers, which could be developed and made available on retailers' websites. But this idea did not have complete industry or consumer group support as concerns were raised that a glossary may prevent innovation. There were also concerns it could be hard to access for customers, especially if the glossary was located on retailers' websites or another central position.

Industry identified a number of other potential issues with standardised terms, including the difficulty of regulating network terminology and gas distribution terms, where jurisdictional specific requirements mean retailers have to use certain terminology or even where consumers in particular jurisdictions have become familiar with certain terms and use of a different term may alienate these consumers.

Several retailers also said that their own research showed their terminology and use of language was preferable and understood by consumers. These retailers said they would be willing to provide this research to the AER, however, to date we have not received this research despite numerous requests.

During the 12 February forum, the AEMC explained that it had held a range of forums, and conducted a survey of over 2200 consumers.¹⁹ One of the most compelling findings from this was that currently consumers are unable to 'compare apples with apples' which is leading to consumers refusing to engage in the energy market.

4.7.2 Amendments to the Guidelines

We consider that promoting clear and simple language that is more widely understood by consumers will increase the clarity of energy information for consumers. In particular, consumers will not be confused by choosing contracts or offers with benefits that are not actually fixed. There will also be greater consistency of terms used by industry, which will improve consumers' energy literacy and ability to understand and compare offers.

Our expert's consumer testing of Energy Price Fact Sheets supports the proposed changes to the Guidelines. The consumers tested indicated the importance of clear and simple language in being able to compare offers through Energy Price Fact Sheets.

A new Section 2.3, 'Language requirements' has been inserted into the Guidelines which specifies language requirements for Energy Price Fact Sheets and the marketing and advertising of offers more broadly. This section requires retailers to use simple and accessible language. It also identifies specific terms which cannot be used by retailers. These problematic terms include 'evergreen', 'evergreen with fixed benefit period', 'fixed' or 'fixed term' except where the price is also fixed and 'termination fee'. We identify alternatives to these terms in the section. These terms include 'no contract term', '[number] month

¹⁹ Australian Energy Regulator, Retail Pricing Information Guidelines Review Stakeholder forum transcript - 12 February 2015, p 17.

contract', 'contract term' or 'contract length'. As discussed above we require retailers to use the term 'guaranteed discount' rather than 'unconditional discount' where relevant.

We initially considered limiting a wider range of terms, including various 'off-peak' terms used by retailers and the wide range of 'green' terms. However, in light of industry submissions, we have revised the scope of this change. We accept that much of the use of 'off-peak' terminology is in response to metering configuration and distribution terms. We also accept that retailers should be able to creatively name renewable options, as most consumers understand the various 'green' choices as referring to renewable energy. However, retailers are still obliged to use clear language that consumers will understand and the changes seek to ensure this objective is met.

5 Other issues for consultation

5.1 Timing of offer submission to Energy Made Easy

Following on from its November 2014 report on the comparator website industry in Australia,²⁰ the ACCC is currently preparing Guidelines to assist comparator website operators and businesses to comply with Australia's competition and consumer protection laws. The Guidelines will be released by mid-2015. One of the issues being considered in the Guidelines is the timeliness of offer information being available to consumers.

In the case of Energy Made Easy, retailers are required to provide offer information to Energy Made Easy within two business days of that offer becoming generally available (and similarly, to remove outdated offers within two business days of no longer being available). The AER will then publish the offer information as soon as practicable. This often means that there is a period in which outdated offer information is shown to consumers and current offer information is not.

The redevelopment of Energy Made Easy provides substantial efficiency benefits to retailers, in that offers can be uploaded to the website in bulk. This new efficiency may address the concerns that retailers may previously have held about their ability to provide offer information within the time required.

Subject to the release of the ACCC's Guidelines, we are inviting stakeholders' views on a proposal to bring forward the requirement to submit pricing information to Energy Made Easy in advance of the offer becoming available (for example at least two business days). This would offer consumers more current information about the offers that retailers have in the market, and provide retailers with the benefit of quicker visibility of new offers.

5.2 Displaying unit prices with respect to GST

As discussed in Section 4.7 of this Notice, we have concerns about the complexity of the information provided to small energy customers. A range of stakeholders have suggested that the use of both GST exclusive and GST inclusive unit prices is an example of unnecessary complexity. We note that other elements of the offer are not presented as both GST exclusive and GST inclusive (fees, for example, are only shown including GST).

In the case of residential customers, the GST inclusive price is the price that the customer will pay. Arguably, therefore, the GST exclusive price does not need to be displayed. On the other hand, some retailers display only the GST exclusive prices on their bills, and the inclusion of these figures on the Energy Price Fact Sheet may be necessary to enable an easy comparison between the offer a customer is currently on and new offers they are considering signing up to. We are also aware that small business customers may prefer to see GST exclusive figures. If changes are made to the current approach, this may necessitate a different approach to residential and small business offers.

²⁰ The comparator website industry in Australia: An Australian Competition and Consumer Commission report, November 2014, available at <https://www.accc.gov.au/publications/the-comparator-website-industry-in-australia>

We welcome stakeholder comments on whether any changes should be made to the Guidelines to address this issue.