

3 August 2015

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

Email: AERinquiry@aer.gov.au

Dear Ms Proudfoot,

RE: Amendments to the AER Retail Pricing Information Guidelines V4.0 – Additional Consultation Paper

The Energy Retailers Association of Australia (ERAA) welcomes the opportunity to provide comments in response to the Australian Energy Regulator's (AER) consultation paper on additional amendments to AER Retail Pricing Information Guidelines V 4.0 (the Additional Consultation Paper).

The ERAA represents the organisations providing electricity and gas to almost 10 million Australian households and businesses. Our member organisations are mostly privately owned, vary in size and operate in all areas within the National Electricity Market (NEM) and are the first point of contact for end use customers of both electricity and gas.

The ERAA supports efforts made by the AER to reduce customer confusion in relation to energy offers. Retailers strive to convey key offer concepts and messaging to consumers in a consistent manner in language that is easily understood. The *Competition and Consumer Act 2010* (Cth) (CCA), which includes the Australian Consumer Law (ACL), governs the conduct of energy retailers with respect to advertising and marketing. Additional protection is afforded to energy consumers through the National Energy Retail Law (NERL), which regulates the sale and supply of energy to retail customers.

The Additional Consultation Paper includes three additional amendments to those proposed in the draft Retail Pricing Information Guidelines (RPIG) published in April for consultation. The additional amendments propose extending the requirements of the RPIG to marketing and advertising material used by energy retailers. Section 61 of the NERL authorises the AER to develop and amend the RPIG and states the purpose of the RPIG is to:

provide guidance to retailers in the presentation of standing offer prices and market offer prices, and thereby assist small customers to consider and compare standing offer prices and market offer prices offered by retailers.¹

The ERAA does not believe that the AER has the authority to extend the application of the RPIG to marketing and advertising of offers by energy retailers that do not directly refer to standing offer and market offer prices. The additional amendments proposed do not provide further guidance for retailers but instead seek to place general restrictions on how retailers can communicate with their customers. This is not the purpose of the RPIG.

¹ *National Energy Retail Law (South Australia Act) 2011* (SA), Schedule 1, Section 61(2).



When retailers engage in advertising and marketing it centres on brand awareness and availability of particular products or services. Prices of the products or services offered are very rarely included in marketing and advertising campaigns, due to nature and brevity of such publications, and as such these materials are not covered by the RPIG. Consumers are prompted and directed by marketing and advertising publications to take action and contact the retailer to find out additional information with respect to a product or service and it is generally at this point that price and eligibility is explained.

With this in mind, the ERAA provides the following comments on the additional amendments.

Additional amendment 1 – Language requirements

As outlined above, the ERAA does not believe that the AER has the authority to extend the language requirements in the RPIG to apply to marketing and advertising materials that do not specifically mention or promote standing offer or market offer prices. Further the ERAA believes that the CCA and NERL adequately protect consumers from any potential detriment with respect to marketing and advertising engaged in by energy retailers.

The ERAA recognises that some terms are more commonly understood by consumers but sees no additional consumer benefit from prohibiting the use of terms defined in the National Energy Retail Rules (NERR). The ERAA does not believe there is any consumer benefit of excluding terms that can be referenced in the regulatory framework. The ERAA recommends that the Draft Guidelines could specify a range of acceptable or preferred terms, including terms that are defined in the NERR, available to describe certain offer characteristics rather than prohibiting specific language and terminology.

Additional amendment 2 – Conditional discounts

Additionally, the ERAA does not believe that the AER has the authority to extend the requirements applicable to conditional discounts in the RPIG to apply to marketing and advertising materials that do not specifically mention or promote standing offer prices or market offer prices. Further the ERAA believes that the CCA and NERL already ensure that consumers are advised promptly that terms and conditions and eligibility criteria apply, and material offer elements and conditions are outlined and explained to a potential customer before sale or supply commences.

The application of conditional discounts relates to a consumer's eligibility for a particular offer. Eligibility criteria can include a consumer's distribution area, meter type, solar arrangements and discount conditions. The additional amendment relating to conditional discounts requires retailers to include on Energy Price Fact Sheets (EPFS) and in advertising and marketing materials how a customer qualifies for a conditional discount. The ERAA believes this information is already disclosed in EPFS and that the CCA requirements relating to misleading and deceptive conduct are sufficient to require energy retailers to disclose this information to consumers prior to entering into a supply agreement.

Additional amendment 3 – Guaranteed discounts

The ERAA supports the removal of the previously proposed amendment mandating prices to be presented inclusive of any guaranteed discounts, whenever pricing information is made available to consumers. The ERAA understand this amendment does not prevent retailers opting to provide an additional set of prices to consumers inclusive of discounts.

The ERAA notes the AER has not commented on whether the other proposed amendments contained in the draft version of the Guidelines for consultation will be progressed. The ERAA reiterates its concerns with respect to incentives, references to Energy Made Easy, the format of EPFSs and social media.

Should you wish to discuss the details of this submission, please contact me on (02) 8241 1800 and I will be happy to facilitate such discussions with my member companies.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Alex Fraser', with a horizontal line underneath.

Alex Fraser
Interim CEO
Energy Retailers Association of Australia