



Notice of Final Instrument:

AER Retail Pricing Information Guidelines

Version 5

April 2018



Commonwealth of Australia 2018

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1 Overview

1.1 Introduction

This Notice of Final Instrument (Notice) accompanies the Australian Energy Regulator's (AER) revised Retail Pricing Information Guidelines (Guidelines). The amendments add new requirements to version 4.0 of the Guidelines and remove a number of other obligations.

Under the National Energy Retail Law (Retail Law), the AER may develop and amend 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.

By specifying the manner and form¹ in which information is presented by retailers, the AER aims to create a clear and consistent way of presenting important information to customers, giving them confidence in the accuracy and comparability of this information.

The revised Guidelines address the complexity of energy market information being a barrier to customer engagement. We have introduced new documents through which retailers will provide clear and important information about plans to customers. We have also amended the Guidelines to improve consistency in how retailers present energy information to customers.

A range of work and processes has informed the changes to the Guidelines, including:

- submissions to our September 2017 Customer Price Information Issues Paper²
- findings from consumer testing conducted by the Behavioural Economics Team of the Australian Government (BETA) and separate consumer testing by an energy retailer
- feedback from our AER Stakeholder Reference Group
- additional consumer research by Deloitte Access Economics (Deloitte)
- findings from research conducted by a second behavioural economics consultancy, the Behavioural Insights Team (BIT). BIT researched the impact of different document formats on customer confidence and comprehension.
- stakeholder submissions in response to the draft Guidelines.³

This Notice provides details of the changes to the Guidelines and the effects of the proposed changes.⁴ The Guidelines and this Notice have been prepared in accordance with the retail consultation procedure in rule 173 of the Retail Rules.

1.2 Role of the Guidelines

The purpose of the Guidelines is to provide guidance to retailers in the presentation of standing offer plan prices and market offer plan prices, and thereby assist small customers

¹ National Energy Retail Law s61(3)(a)

² <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/customer-price-information-review>

³ <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/draft-retail-pricing-information-guidelines-2018/draft-decision>

⁴ National Energy Retail Rules s 173(2)(b)(ii).

assess and compare energy plans to make an informed decision on the plan that is best for them⁵.

The Guidelines may also specify any additional matters we consider necessary or convenient to assist small customers consider and compare standing offer plan prices and market offer plan prices.⁶ While the Retail Law refers to energy 'offers', this documents uses 'plans' to refer to the same thing. Consumer research we conducted in early 2017 found consumers more readily understood this language.

The Guidelines also support the operation of our Energy Made Easy (EME) price comparator website by specifying the information retailers must provide, and how and when they must provide it, for publication on EME.

The Retail Law requires retailers to:

- present standing and market plan prices in accordance with the Guidelines, including without limitation when publishing, advertising or notifying the AER of those prices or any variation⁷
- publish standing and market plan prices prominently on their websites, and in any other relevant material provided by the retailer in accordance with the Guidelines⁸.

Energy customers must have access to clear and relevant information on available retail energy plans in order to make informed switching decisions for the provision of electricity and gas.

The Guidelines play an important role in ensuring customers receive information that is easy to understand and can assist them to assess energy market offerings, enabling them to confidently participate in the market.

1.3 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 (EPFS) only.

Version 2.0 of the Guidelines was released in January 2012, and contained requirements relating to EME for the first time.

Version 3.0 of the Guidelines was released in June 2012. It included minor amendments to address feedback on the clarity of the Guidelines from retailers preparing for the anticipated 1 July 2012 commencement of the Retail Law.

Version 4.0 of the Guidelines was released in August 2015, following 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.⁹

⁵ National Energy Retail Law s61(2)

⁶ National Energy Retail Law s61(3)(c)

⁷ National Energy Retail Law ss24(1) & 37(1)

⁸ National Energy Retail Law ss24(2) & 37(2)

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

This notice is in relation to version 5.0 of the Guidelines.

1.4 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.

2 Purpose of the Notice

This Notice explains the proposed changes to the Guidelines.

Version 4 of the Guidelines has been in effect since February 2016. Since then, there has been a growing focus on the importance of clear customer information about energy plans and customers' ability to meaningfully understand and compare different plans. In particular, there are concerns that the problems of energy affordability are exacerbated where customers do not or cannot engage in the market.

Energy affordability is a significant issue for a growing number of Australian households. Yet despite struggling to pay their energy bills, many customers are not shopping around for lower priced plans.

A number of reviews of the industry have emphasised that excessive complexity of energy market information acts as a barrier to customer engagement. These include the Independent Review into the Future Security of the National Electricity Market (the Finkel Review),¹⁰ the ACCC's Retail Electricity Pricing Inquiry interim report,¹¹ and the Independent Review into the Electricity and Gas Retail Markets in Victoria (the Thwaites Review).¹²

Additionally, in August 2017 the Prime Minister, Treasurer and Energy Minister convened two roundtable meetings with the CEOs of eight energy retailers to address mounting community concerns about energy affordability and the retail energy market more generally.

In these meetings, the retailers agreed to work with the government and the AER make it easier for customers to find the best plan for them. This includes improving access to information about the key terms of individual plans, developing easy ways of comparing plans including through displaying the cost of energy plans in overall 'dollar figure' terms, rather than discounts.

These processes provide the broad policy context for the review of the Guidelines with the changes reducing the complexity of the energy plan information presented to customers and simplifying energy plan comparison.

2.1 Overview of consultation and research

2.1.1 Issues paper

We commenced consultation on the issues covered in the Guidelines in September 2017 with the release of a Customer Price Information issues paper. We sought stakeholder views on four key issues related to the retailers' commitments to the Government made in the August meetings:

- Energy Price Fact Sheets, including their usefulness to customers, their format and content
- Comparison pricing models and options

¹⁰ Independent Review into the Future Security of the National Electricity Market: Blueprint for the Future, June 2017

¹¹ ACCC Retail Electricity Pricing Inquiry: Preliminary report, 22 September 2017

¹² Independent Review into the electricity & gas Retail Markets in Victoria, August 2017

- Technological options to facilitate comparison of energy plans and
- Options to facilitate comparison of energy plans and switching for non-digitally engaged customers.

We received 30 submissions, 26 of which were public, from a range of consumer, retailer, ombudsman schemes and other stakeholders. We have published the public submissions on the AER website.¹³

2.1.2 Consumer research

We have undertaken a range additional work to inform our approach to the review of the Guidelines, including:

- working with the BETA to investigate customer preferences to alternative fact sheet concepts.¹⁴ This was part of the commitments to the Commonwealth Government in the August roundtable meetings.
- working with a retailer to conduct qualitative research into customers' attitudes and preferences for a range of fact sheet concepts.
- engaging Deloitte to develop a comparison pricing model that can be integrated as part of a longer-term redevelopment of EME. Insights from Deloitte's consumer research have informed our understanding of customer preferences.¹⁵

Since publication of the draft Guidelines, we have commissioned additional research:

- Engaging BIT to conduct an online field experiment to further test different versions of the proposed Basic Plan Information Document (BPID) to understand how different BPID formats influenced customer confidence in their ability to switch.¹⁶

2.1.3 Stakeholder reference group

In September 2017, we convened a reference group of energy retailer and customer representatives¹⁷ to further inform our views on customer information and engagement issues.

The group met fortnightly throughout the last part of 2017 and has continued to meet monthly during 2018. Key work and discussion included informing BETA's design of potential fact sheet concepts and member presentations on fact sheet content, non-digitally engaged customers and comparison pricing.

¹³ <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/customer-price-information-review/initiation>

¹⁴ Behavioural Economics Team of the Australian Government, Saying more with less, March 2018, <https://pmc.gov.au/resource-centre/domestic-policy/report-saying-more-less>

¹⁵ Deloitte Access Economics, AER Comparison Pricing Approach, Stage 1 final report, March 2018

¹⁶ The Behavioural Insights Team, Review of Basic Plan Information Document, April 2018

¹⁷ <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/reference-group-customer-information-and-engagement>

2.2 Impact of the amendments to the Guidelines on industry

A number of the changes to the Guidelines will have a substantial impact on retailers and any third parties marketing and promoting plans on their behalf.

We have been mindful to balance regulatory obligations with the need to improve outcomes for customers. In revising the Guidelines, we have sought where possible to limit costs and administrative burden on retailers. For example, we have taken on the cost of redeveloping EME to enable retailers to create energy plan documents through the site. This limits the costs retailers will incur in order to meet their new obligations and assists in promoting consistency of information presentation to customers.

We are also implementing functionality to enable retailers to search for EME plan ID numbers on the user interface of EME, meaning retailers will not need to develop individual systems to comply with this requirement, or search in the retailer portal of EME in order to comply.

We propose implementing the Guidelines in a staged manner to assist retailers and their agents to manage compliance with various obligations that we recognise may take time to implement.

We have also been mindful to ensure the amendments do not negatively impact retailers' capacity to offer innovative products and services.

We have considered retailer information and evidence about the impact of proposed changes. In some cases, where retailers have demonstrated an impact or cost, we have revised our position from that proposed in the draft Guidelines.

2.3 Implementation of obligations under the Guidelines

The draft Guidelines did not provide a specific implementation date or timeframe.

A number of retailers submitted they would need to make internal process and system changes to comply with the new obligations under the Guidelines and would have difficulty making these changes in a timeframe of any less than three to six months.

We have considered the feedback on this issue in setting out a staged implementation approach to the Guidelines. This will enable retailers to manage the resourcing impacts of complying with the new obligations.

The implementation timeline will require retailers to meet BPID obligations for plans currently in EME by the end of August 2018, with obligations relating to plans falling within the expanded definition of generally available commencing on 1 October 2018.

Obligations relating to third parties will commence on 1 January 2019.

We have undertaken to develop a system that enables retailers and customers to search for EME plan ID numbers on the EME website. This will avoid retailers needing to develop internal systems to meet their obligation to comply with the new requirement that they be able to identify any plan from its EME generated plan ID number. To facilitate development of this functionality as part of the broader EME redevelopment, we propose delaying retailer compliance with this obligation until 1 January 2019.

Table 1 below sets out the stages and key dates.

Table 1 – Staged implementation timelines

Compliance obligation	Relevant clauses	Which plans?	Commencement date
BPID and DPID obligations – (including providing a link to the BPID generated by EME) retailer website and call centres only.	19, 21, 22, 24, 25, 30, 32-33, 36, 38-45, 47, 50, 53-59, 63, 70, 73, 78, 80, 82-88, 90-91, 95-101	Current plans in EME – existing definition of generally available	31 August 2018
BPID and DPID obligation – retailer website and call centres only	19, 21, 22, 24, 25, 30, 32-33, 36, 38-45, 47, 50, 53-59, 63, 70, 73, 78, 80, 82-88, 90-91, 95-101	Plans that meet new definition of generally available	1 October 2018
BPID and DPID obligations - third parties' call centres and websites	90-92, 95-102	All generally available plans	1 January 2019
Obligation to use EME ID number – retailers and third parties	29, 103-104	All generally available plans	1 January 2019

3 Amendments to the Guidelines

3.1 Summary of key amendments

We have made significant changes in this version of the Guidelines. New requirements relate to how retailers display and provide plan information, how they describe elements of their plans, how they market their energy plans and manage plan information on their websites.

The key amendments discussed in this Notice include:

- replacing the requirement for retailers to provide an **Energy Price Fact Sheet** with a requirement that each energy plan have two separate documents – the **Basic Plan Information document** and the **Detailed Plan Information document** (described as the Contract Summary in the draft Guidelines)
- changes relating to **display of plan information** on websites, in advertising and marketing material
- new requirements for the use of **clearer and simpler language** and
- clarifying the definition of **generally available** plans.

3.2 Energy plan documents

3.2.1 Basic Plan Information and Detailed Plan Information document

Draft Guidelines

Our 2017 consultations highlighted a number of issues in relation to the requirement under version 4 of the Guidelines that retailers produce an Energy Price Fact Sheet (EPFS) for each plan. In summary:

- there was widespread agreement that current EPFS contain too much information and were difficult to understand;
- the current EPFS attempted to achieve two incompatible purposes: to provide a comprehensive contract summary and provide a tool to facilitate switching;
- stakeholders identified the need to test different versions of factsheets with customers; and
- customers appeared to consider detailed tariff information important to have on a fact sheet about their energy plans.

Based on this feedback, in the Draft Guidelines we proposed replacing the requirement to develop an EPFS for each plan with a requirement that retailers provide two separate documents to achieve the two purposes:

1. A **Basic Plan Information Document (BPID)** – a concise document that includes key plan information relevant to a customer's assessing a plan's suitability and comparing it against other plans.

2. A **Contract Summary** document (now the **Detailed Plan Information document**) – providing more detailed information about the fees, prices, contract details and eligibility criteria for an energy plan.

Stakeholder feedback

There was general support for the two document approach. Stakeholders welcomed the proposal to introduce a concise document, the BPID, with a clear purpose of assisting customers compare different plans at a high level. Submissions indicated this change will help customers engage in the market by highlighting points of difference between retailers and their plans.¹⁸

There was more qualified support for the retailer obligation to make available a second document: the Detailed Plan Information document (DPID). Retailers and some consumer stakeholders considered requiring customers to look at a second document would potentially overwhelm and confuse them.¹⁹

Several retailers were concerned the DPID would duplicate information already provided on the BPID – with the potential to confuse customers – and should either be removed altogether, or redesigned to avoid duplication with the DPID.

COTA Australia and Queensland Council of Social Services noted the reference to ‘contract’ in the document title had strong legal connotations that would generate anxiety for many customers. They recommended we adopt a more generic description.

Most retailers were supportive of the two-document approach (at least as an interim measure). None provided evidence that the requirement to provide two documents in itself would impose unreasonable costs or administrative burden on them.

Final AER position

We remain of the view the two-document approach is the most appropriate way to provide simple, clear information to allow for easy comparison of plans while also making more detailed information available to those customers who want it..

The BPID provides the key details a customer needs to form a view about the suitability, cost and other elements of a plan and will be an important tool to help customers compare different options. Our research indicates most customers consider the BPID provides an adequate amount of information to assess the suitability of a plan.

The DPID is a more detailed document. It will assist those customers who need extra detail about prices, fees, terms and conditions, before they feel confident enough to consider switching.

We note concerns about duplication and information overload, but consider these can be addressed through the placement of the DPID link on the BPID and the accompanying text that explains what the DPID is and its purpose.

¹⁸ For example, Australian Energy Council, AGL, and Red Energy/Lumo Energy

¹⁹ For example, Dr Martin Gill (p2) submitted: “The majority of consumers find reading one document daunting. Forcing consumers to read two documents appears to complicate, rather than simplify, the comparison of retail electricity plans.”

We do not propose any change to our draft Guidelines position other than renaming the Contract Summary to Detailed Plan Information document.

3.2.2 Information to be displayed on the *BPID*

a. Annual vs quarterly bill estimates

Draft Guidelines

The comparison pricing table in the BPID in the draft Guidelines displayed the estimated price as quarterly for electricity plans and two-monthly for gas plans. Our view in the draft Guidelines was that a quarterly estimate was more likely to encourage engagement than an annual estimate as it reflected consumer preferences for the subject time period.

Stakeholder feedback

A number of stakeholder reference group members held strong views on what time period for a comparison price estimate would be most meaningful for customers. They considered an annual figure preferable, highlighting quarterly estimates could vary between seasons. This could potentially affect customers' ability to meaningfully compare the estimates with their own bills and lead to disengagement or a lack of confidence in the information. These members suggested an annual estimate would be a more straightforward approach that avoided these complexities.

On the other hand, research findings and other inputs during the consultation period suggested the quarterly/two-monthly approach would resonate more with customers. Specifically, Deloitte's research, as well as the qualitative research undertaken by a retailer, indicated most customers found estimates that covered the same time period as their bills to be more intuitive than annual estimates.²⁰

Consumer Action Law Centre (CALC) was among a small number of stakeholders that considered estimates based on bill periods, as proposed in the draft Guidelines, were an intuitive approach that would resonate with customers.²¹

However, most other stakeholders did not support our proposed approach, primarily due to the risks of these shorter estimate periods not accurately reflecting seasonal differences.

Queensland Consumers Association noted the variation in the size of quarterly bills due to seasonal factors made quarterly billing problematic, but also considered the larger figure of an annual estimate was of more utility to customers as it emphasised the cost difference between different plans.²²

Australian Energy Council (AEC) echoed a number of retailer stakeholders in stating an annual figure was the most fit-for-purpose option due to factoring in seasonality, but also

²⁰ Deloitte found nearly half of participants considered a quarterly estimate the most useful period, followed by daily (22 per cent). Only 1.5 per cent considered an annual figure would be most useful.

²¹ Consumer Action Law Centre, p2

²² Queensland Consumers Association, p2

because the policy push towards monthly billing and the smart meter rollout across the Retail Law jurisdictions would mean quarterly bills were “increasingly irrelevant”.²³

Several retailers said an annual figure would align with the requirements under the AER’s pending Benefit Change Notice Guidelines²⁴ for retailers to provide an annual cost projection at the expiry of a customer’s benefit period.

Final AER position

In reaching a final position, we considered all the information provided by stakeholders.

We recognise the industry is moving away from quarterly billing and this is likely to accelerate with the rollout of smart meters and increasing take-up of online account management options.

While Deloitte’s testing showed customers prefer estimates based on their bill period (which is currently quarterly for many customers), we consider that requiring quarterly estimates on the BPID risks locking in an approach that would not be useful for a growing number of customers in the future.

We were also persuaded by stakeholder arguments about the greater benefits of an annual estimate approach, including by more effectively highlighting the differences between plans and avoiding the complexities associated with seasonal differences.

On this basis, the comparison price estimate on the BPID will be an annual estimate.

In this context, we note Deloitte is developing a future approach to comparison pricing that will include options for online interactivity providing customers with options to tailor comparison estimates to a time period that is most useful to them. We anticipate incorporating this functionality into EME through the longer-term EME functionality upgrades.

b. Comparison pricing table – design

Draft Guidelines

The design of the BPID in the draft Guidelines included four icons to assist a customer assess whether they were a high, medium or low energy user. These were included to give customers a range options to identify an appropriate profile. They were:

- household size (number of people)
- number of bedrooms
- a heating, washing and cooling ‘profile’ for electricity; a heating profile for gas
- average daily usage in kilowatt hours – information included on customer bills

²³ AEC, p3

²⁴ See <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/benefit-change-notice-guidelines>

Stakeholder feedback

A number of stakeholders considered this approach had the potential to confuse customers whose usage profile had elements of two types – for example, a one-person household that used 'lots of heating and cooling'.

Queensland Consumers Association recommended we make the factors in the table more generic because differences may cause confusion for customers and risked undermining their confidence in the estimates and the other information on the BPID.²⁵

Deloitte's and BIT's research provided insights into customer preferences that were relevant to our consideration of this issue. Deloitte's user testing found most people preferred the icons over a simpler design based on a generic high/medium/low indicator, as the greater number of factors apparently gave more confidence the estimate was appropriate to them. Somewhat in contrast, BIT recommended we reduce the number of icons in the table to reduce the cognitive burden on customers of identifying which profile was most appropriate for them.²⁶

AER Final position

We have adopted a final position of removing a number of icons while retaining others. The comparison table will include three pieces of information for each profile, presented in graphical form:

- Low use household, one-person, kWh per day
- Medium use household, 2-3 people, kWh per day
- High use household, 4-5+ people, kWh per day

This approach addresses Deloitte's finding that including multiple factors appears to assist customers identify which profile is appropriate to them while also reducing the cognitive burden on customers in trying to place themselves in a particular profile.

Our view is this approach provides enough information for customers to readily identify a profile that fits them. At the same time, removing the heating/cooling/washing profile information simplifies the task of choosing a profile by removing the factor most likely to require a customer to subjectively assess their appliance usage. This addresses BIT's recommendation to reduce cognitive 'frictions' for customers by simplifying the table.

c. Inclusion of price table

Draft Guidelines

Our early feedback indicated different stakeholder views about the value of including detailed pricing information on the BPID.

Retailers and some consumer stakeholders considered this information was critical to properly inform customers. However, some consumer stakeholders provided feedback that

²⁵ Queensland Consumers Association, p2

²⁶ BIT review of Basic Plan Information Document, April 2018

few customers would use this information and it may contribute to information overload and disengagement.

Our consumer testing with BETA and a retailer suggested customers expected and wanted detailed price information.

Based on this preliminary input, the BPID in the draft Guidelines included a table of detailed tariff pricing information. We chose a moderately complex TOU tariff to illustrate that for many plans, a significant amount of information might need to be included.

In the Notice of Draft Instrument, we undertook to conduct further research to understand the impact on customer confidence of including detailed pricing information on the BPID.

Stakeholder feedback

Retailers welcomed our inclusion of the pricing information. AEC submitted that while the comparison price was useful, rates were often a defining feature of a plan that customers wanted to know about.²⁷ Consumer stakeholders did not specifically address this issue.

As noted previously, BIT specifically tested whether the presence of the pricing table had an impact on customers' confidence and ability to understand the information presented to them. Through randomised control trials of five different BPID designs, BIT found participants were significantly less confident in their readiness to switch based on the version of the BPID that did not include the pricing information, compared to versions that did include it.²⁸

However, BIT also found this preference did not equate to participants understanding the pricing information – only one in 10 respondents could correctly calculate energy costs based on the pricing information.

Based on these findings, BIT recommended we include the pricing table on the BPID but consider making changes to the display. To reduce the potential for the complexity of information to put consumers off, BIT recommended the information be presented in a graphical format rather than a table. It also recommended the pricing information be on a second page.

Final AER position

BIT's findings show customers feel less confident switching in the absence of pricing information.

Based on the research findings and the submissions from stakeholders we have included the pricing information table in the final BPID design.

We are conscious of BIT's related findings that the pricing information is not well understood, and may contribute to a perception of complexity. In this context, we have also taken up BIT's recommendation to include the information on a second page. While the implementation of the BPID into EME will impact the display of this information, we note BIT's findings on display format to assist in customer comprehension, as well as confidence.

²⁷ AEC, p3

²⁸ BIT report

d. GST

Draft Guidelines

The draft BPID showed tariff information in price table as GST-exclusive. This was to facilitate comparison with customers' bills, which do not show unit prices inclusive of GST.

Stakeholder feedback

Some stakeholders submitted it was more intuitive for customers to see tariff rates GST-inclusive and suggested retailers change their billing practices to show rates in this format.

For example, the Independent Pricing and Regulatory Tribunal New South Wales (IPART) submitted this would simplify bills and assist customers compare plans.²⁹

Final AER position

Section 48 of the Australian Consumer Law requires that where a single price is displayed for goods and services, the price must include GST. As a consequence the BPID must include the GST-inclusive amount.

On this basis we have determined to display the prices in the prices table as GST-inclusive only, rather than both inclusive and exclusive. This will minimise information overload while still complying with the law. GST inclusive and exclusive rates will be displayed on the DPID.

e. Comparison pricing for time of use, small business and demand charge plans

Draft Guidelines

In the draft Notice, we recognised difficulties in providing meaningful comparison prices for:

- plans with demand charges, due to the variability of factors that could influence customer demand and lack of modelling that would enable comparison price estimates to be calculated
- plans for small business customers, due to the wide variation in usage profiles and a lack of benchmark data for small business customers.

Stakeholder feedback

There was general support for this position among stakeholders. However, a number submitted the BPID for residential time of use (TOU) plans should also exclude a comparison pricing estimate. The key concern for these stakeholders was that a comparison price estimate based on a typical consumption profile could mislead customers whose profile did not match.

IPART noted if the usage assumptions in the estimated quarterly estimate were substantially different from a customers' actual usage patterns, choosing a plan based on the estimated

²⁹ IPART, p2

price could make these customers worse off, potentially making the estimated bills misleading.³⁰

Red Energy/Lumo Energy submitted customers would have high expectations about the accuracy of the EME price comparison estimate, which if not met could further erode customer confidence in retailers. Red Energy/Lumo Energy's preferred position was a delay to introducing time of use comparison price estimates until a dynamic online approach is available.³¹

Final AER position

While anecdotally we understand fewer customers are on TOU plans than those on single rate plans, TOU plans account for nearly half of all plans in EME.³² We anticipate more customers will be on these types of plans as smart meters progressively replace accumulation meters in Retail Law jurisdictions in the coming years.

The price comparison estimate for both single rate and time of use plans is intended to provide a tool to customers to compare plans using a dollar figure and is based on an average consumption profile. It is not intended to be a personalised estimate.

The estimates for the time of use and single rate plans are based on typical consumption profiles developed from Energy Consumption Benchmarks project data.³³ During the recent 2017 project we collected and analysed a significant amount of consumption data, including TOU consumption data. This data has enabled us to develop more detailed and robust profiles that will be used for the BPID comparison price estimates.

We consider the concerns raised by stakeholders about consumer expectations and the accuracy of the estimates can be addressed through messaging and information that accompanies the price comparison table on the BPID.

Accordingly, we maintain our position in the draft Guidelines to require comparison pricing estimates for residential TOU plans. To address stakeholder concerns we will emphasise on the BPID that the figure is an estimate for comparison purposes, based on typical consumption in that area and (for TOU plans) highlight this means a profile with most consumption in evening peak.

f. Accommodating new and innovative products

Draft Guidelines

While the draft Guidelines did not specifically consider the issue of the BPIDs compatibility with different plan types, some retailer submissions raised this issue.

³⁰ IPART p1

³¹ Red Energy/Lumo Energy – appendix p2

³² As of April 2018, around 1600 plans out of all 3600 published on EME were TOU plans

³³ See <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/electricity-and-gas-bill-benchmarks-for-residential-customers-2017>

Stakeholder feedback

AEC, Alinta Energy, Origin Energy and Simply Energy were among retailer stakeholders who were concerned the BPID may not be adaptable to plans with a non-standard structure. They were concerned this might restrict retailers from offering new types of plans in the future.

Simply Energy submitted the strict requirements around the input and output of information for the BPID may have the unintended consequence of stifling the creation of innovative plans.

Pooled Energy highlighted the BPID could not adequately capture the value-add components of its market plans, where the most value for customers lay in the bundled services associated with the plan rather than the electricity components.³⁴

Final AER position

EME has been designed to estimate bills for a wide range of plan structures, but will require enhancements to enable it to keep up with market developments. We agree flexibility is important and EME should not be a barrier to future innovation. We will further consider these issues as part of the EME redevelopment project currently underway.

We also encourage retailers who have questions about how EME can accommodate a specific plan structure to contact us.

In relation to Pooled Energy's position, the BPID for each plan will display brief information including eligibility criteria, incentives and other key features. However, the more detailed plan information available on the DPID will be important for more complex plans such as Pooled Energy's.

While EME's flexibility to accommodate new plan structures will increase, there will always be challenges providing an annual price estimate for plans where the price is determined by a customer's personal profile, rather than a set of underlying rates. To address this issue, our final position is to add a new clause to the Guidelines,³⁵ excluding plans where customer usage data is required to price the plan from displaying a comparison pricing table, noting plans of this type will most likely be restricted plans.³⁶

g. Jurisdictions with limited competition

Draft Guidelines

The draft Guidelines did not propose any special provisions for jurisdictions where the Retail Law has commenced, but where there is little or no competition.

While we recognise not all jurisdictions have fully competitive energy markets, the draft Guidelines did not provide exemptions or carve out provisions for these jurisdictions on the basis that receiving clear information about energy plans, even from a single provider, would assist customers choose which was likely to be the most suitable.

³⁴ Pooled Energy, p1

³⁵ Guidelines, Cl 114 (c)

³⁶ See section 3.6

Stakeholder views

Aurora Energy, the only residential electricity retailer in Tasmania, submitted the Guideline's proposed requirements to facilitate comparison of different plans were irrelevant in the state, would cause confusion, and impose unjustified costs.³⁷

Final AER position

In reaching a final position on this issue we have weighed Aurora's concerns against the benefits for Tasmanian customers of receiving clearer information about their energy plans.

While we accept in the Tasmanian context the BPID and other information requirements have no role in comparing retailers, as they do in other jurisdictions, we consider they will assist Tasmanian customers compare the key elements of Aurora's different plans, helping them assess which is likely to be the most suitable. We also consider that on the commencement of any new market entrants in Tasmania, it would be particularly important that customers be in a position to easily compare plans.

On this basis, we propose no change to our initial position.

3.2.3 Information to be displayed in the Detailed Plan Information document

Draft Guidelines

The draft Guidelines proposed the information included in and format of the Detailed Plan Information document would be similar to the current EPFS.

Stakeholder feedback

A number of stakeholders considered it was not useful for customers to have repetition of information between the two key documents.

Origin Energy noted tariff pricing, discount information, fees and price change statements would appear on both documents, and submitted the documents should be streamlined to ensure the volume of information did not confuse customers.³⁸

Momentum Energy considered we should not simply re-badge the dense and complex EPFS as the Detailed Plan Information document, but engage an accessibility expert to redesign the document to increase its usefulness to customers.³⁹

Final AER position

We note stakeholder views about the DPID format. We acknowledge the current EPFS is an information dense document that is off-putting for many customers, and agree it could be clearer and more visually appealing.

³⁷ Aurora Energy, p1

³⁸ Origin Energy, p14

³⁹ Momentum Energy, p4

Along with the BPID and EME homepage, search and results pages redesign, we are working with user experience experts to re-design the DPID to increase its usefulness and comprehensibility. However, we note the purpose of the document is to provide more detail than the BPID, and this will necessarily include more information. However, we will work with the UX web designers to reduce information overload and optimise presentation of the information that we need to include.

3.3 Marketing and display of energy plan information

3.3.1 Requirement to link to Basic Plan Information Document – websites

a. Application to retailer websites

Draft Guidelines

The draft Guidelines proposed retailers have a prominent hyperlink to the BPID for a plan wherever they promoted the plan online. The draft Guidelines prescribed the hyperlink must be to the BPID hosted on EME. This replaced the requirement for retailers to publish an EPFS for each plan on their website.

This proposed approach had two objectives:

- To increase the likelihood customers would encounter the BPID for a plan when scanning the market
- To address long-standing concerns about retailers' compliance with the Guidelines' existing obligations to publish a current EPFS for each plan in a timely way. We have found widespread problems with retailer sites, including: redundant EPFS remaining published; inconsistency between EPFS on EME and retailer sites; and EPFS being difficult to locate.

Stakeholder feedback

Retailers had different views about the requirement they provide a HTML link to a BPID hosted on EME. For example, Powershop supported the approach⁴⁰ while others were concerned that complying with this requirement would result in a poor customer experience.

While supporting the requirement for prominent links to BPIDs, Red Energy/Lumo Energy strongly opposed the approach of linking to BPIDs hosted on EME, submitting it was poor digital design practice and would raise security concerns for customers.⁴¹

Momentum Energy submitted requiring visitors to its website to go to a Government website to see plan details could create a perception retailers cannot be trusted and noted its preference to self-generate the BPID using formatting standards outlined [in the Guidelines]⁴²

Momentum and AGL considered poor user experiences would result from retailers having to establish a customers' location and metering configuration to direct them to the correct

⁴⁰ Powershop, p3

⁴¹ Red Energy/Lumo Energy, p6

⁴² Momentum Energy, p2

BPID. They were concerned customers could be overwhelmed⁴³ and system changes would be needed to accommodate the requirement, preferring instead that retailers have flexibility to use different approaches.⁴⁴

Final AER position

We note retailers' concerns about requiring them to link to a BPID on EME, but do not consider these warrant a change from our position in the draft Guidelines.

We are mindful of not creating additional barriers or steps in customer search pathways, as we are aware these increase the chances of customers abandoning a search. This is a key consideration in our current work to enhance users' interaction with EME.

We do not consider clicking on a link to an EME-hosted BPID will be a materially different experience from a customer clicking on any other link on a retailer's website. While we are working through design details with UX experts, relevant points to note are:

- the BPID will open in a new tab without closing the retailer web page
- the retailers' logo will appear prominently at the top of the BPID
- EME branding will not be prominent on the BPID.

We acknowledge many customers have justifiable customer concerns about online security, and some may be wary of clicking a link to an external site. Retailers who were concerned about this issue can display a message highlighting the customer is being directed to a trusted government website.

On this basis, our final position is to retain the requirement that retailers provide a link to a current HTML version of the plan documents, generated by EME.

b. Application to third parties

Draft Guidelines

Around one in five customers use comparison websites as part of their search.⁴⁵

To increase the likelihood customers will encounter the BPID when using these channels, the draft Guidelines proposed extending the requirement that retailers provide BPID links wherever they promote plans online to third parties marketing plans on their behalf. This would include commercial energy comparator sites and 'move-in' services.

Stakeholder feedback

In principle, retailers did not object to the new requirement that third parties be covered by the Guidelines' BPID requirements. However, a number raised concerns about retailer compliance and the risk of being liable for the actions of third parties they had little control

⁴³ Momentum Energy, p1

⁴⁴ AGL, p5

⁴⁵ AEMC, 2017 Retail Energy Competition Review, 25 July 2017, p. 82

over, as well as lack of clarity about retailer compliance obligations in the event of a third-party experiencing a system failure.⁴⁶

Retailers also sought clarification on their obligations in relation to websites with whom retailers did not have commercial relations or non-commercial entities that displayed information about plans, such as St Vincent de Paul.⁴⁷

We did not receive any submissions from operators of comparator websites themselves. We have written to comparator websites informing them of the changes to the Guidelines and encouraging them to discuss implementation arrangements with retailers.

Final AER position

We recognise that meeting the requirements relating to the BPID will require business and system changes for third parties. Given the prevalence of third parties in customer searches, we consider this change is warranted and necessary to provide a more meaningful point of reference for customers to compare plans and in particular pricing information.

Our view remains that the impacts of this requirement will not be unduly onerous, and are proportionate and in line with regulatory interventions in other industries where complex information creates risks of consumer detriment.⁴⁸

Compliance with this obligation, and any risks associated with it, is a matter for retailers to manage through the contractual arrangements they have with their third party providers and other agents.

To provide time for third parties to adapt their systems and allow retailers to comply, we have set out a staged implementation process, under which the obligations in the Guidelines relevant to third parties do not take effect until 1 January 2019.

We consider this will allow retailers and these businesses sufficient time to manage impacts associated with the changes.

c. Publishing offers

Draft Guidelines

The draft Guidelines did not propose any changes to the current requirement that retailers publish plans on EME within two business days of them becoming available on the market.

Some retailers had feedback on this issue.

Stakeholder feedback

A number of retailers submitted that two days was not enough time for retailers to publish plans given:

- the proposed increase in the number of plans under the broader definition of generally available

⁴⁶ Powershop, p2

⁴⁷ Powershop, p2

⁴⁸ Eg the Telecommunications Consumer Protection Code (s 4.2) and the National Credit Code (part 10)

- the additional communications and steps that would be required to ensure third parties published plans in a timely way.

Retailers submitted they needed between four days and 10 days to publish plans.

Final AER position

We have not changed our view that two business days remains a reasonable timeframe for retailers to publish plans on EME after they become available.

In our view, the staged implementation approach for the Guidelines' obligations allows sufficient time for retailers to develop systems to manage the greater number of plans they are publishing, as well as systems to managing how third parties implement these requirements. Once these systems are in place, we consider two days will be sufficient time to publish offers.

3.3.2 Providing Basic Plan Information – other marketing channels

Draft Guidelines

As noted in the Notice of Draft Instrument, the BPID needs to feature prominently in any situation where a customer is considering switching if it is to operate as an effective comparison tool. This includes situations where retailers or third parties market to customers over the phone or in person. To achieve this, the draft Guidelines proposed new requirements on retailers and their sales agents to explain and provide the BPID in phone and in-person marketing situations.

For in-person marketing, such as door-to-door sales, we proposed requiring a salesperson to provide a BPID and a hard copy of the DPID on request.

Stakeholder feedback

Origin Energy said requiring hard copies at the point of contact would be onerous, due to the number of potential offers, while getting paper documents to sales agents could potentially slow down the process of bringing products to market. It recommended that an emailed BPID link should be sufficient to satisfy this obligation.⁴⁹

Red Energy/Lumo Energy also considered the proposed requirement to provide hard copies of both documents was impractical. "Requiring retail sales agent to carry a hard copy of each version of the DPID, in case it might be requested, appears operationally cumbersome."⁵⁰

Final AER position

The objective of our draft proposal was that a customer's opportunity to access the Detailed Plan Information document in an in-person marketing situation be similar to how they might access it in an online environment. In our view, this means having immediate access to the more detailed plan information if desired.

⁴⁹ Origin Energy, p16

⁵⁰ Red/Lumo, p6

While we acknowledge there may be some practical impacts for sales agents of carrying additional documentation, we consider it is not excessively onerous. Further, we consider it reasonable that sales agents be able to provide additional information on request, given the context of many in-person sales scenarios, where customers are pushed to assess a plan 'cold' without preparation or context.

On this basis, we have made no change to our initial position.

3.4 Providing Plan Summaries

Draft Guidelines

The draft Guidelines set out new requirements for retailers to provide the DPID, including in the post sign-up information sent to customers (known as the 'welcome pack').

Stakeholder feedback

A number of retailer stakeholders submitted the proposed requirement to include the DPID in the welcome pack, along with the BPID, duplicated existing information already provided to customers under retailers' disclosure obligations under the Retail Rules.

In addition to potentially creating confusion, some retailers highlighted a financial impact of complying with this requirement. For example, AGL stated it did not provide an EPFS as part of the welcome pack and requiring it addition to current documentation would require significant system changes and result in extra distribution and system costs.⁵¹

Final AER position

We have taken into account stakeholders' submissions on duplication of information and cost of complying with the requirement in the draft Guidelines to include the plan documents in customer welcome packs. The Retail Rules already provide for information retailers need to include in their welcome packs to customers.

In reaching our final position under the Guidelines, we have balanced the costs and impacts of the new requirements and in relation to this proposed obligation consider the benefits to customers do not outweigh the costs of moving away from current practice. Accordingly, we have not included this requirement in the final Guidelines.

We note retailers are not prevented from providing these documents if desired, but the removal of this obligation means it will not be a requirement under the Guidelines.

3.5 Language and terminology

In the draft Guidelines, we proposed a number of new requirements for terminology that retailers could use to describe elements of their plans. These requirements aimed to address a persistent theme in our consumer testing and through stakeholder feedback – that the variety of terminology and jargon used to describe energy plans contributes to customers confusion and disengagement with the retail energy market.

⁵¹ AGL, p2

Stakeholders identified the terms 'Peak/off-peak' to describe a variety of plan elements for non-time of use plans, 'Controlled load' and 'benefit period' as particularly problematic.

The proposed requirements in the draft Guidelines aimed to improve consistency by prescribing terminology for some basic tariff components.

Stakeholder feedback

There was strong support among some stakeholders for the proposed language requirements. CALC, for instance, stated it was important to move to simpler language because “industry-specific jargon is intimidating for consumers who are already grappling with an over-complicated product in an over-complicated market.”⁵²

Others, although supporting the principle of clearer, more consistent terminology, had concerns about specific changes put forward in the draft Guidelines.

Controlled load/separately metered usage

Several stakeholders, including retailers and consumer representatives, raised concerns with the proposed change of terminology from controlled load to ‘separately metered usage’. Red Energy/Lumo Energy, for example, said the change would confuse customers who already had controlled load understood what it meant.⁵³

Similarly, Energy and Water Ombudsman New South Wales submitted: “While standardisation of terminology is highly desirable, the introduction of completely new terms to replace current ones may be problematic”.⁵⁴

Simply Energy also noted that separately metered usage itself was not an accurate descriptor for some controlled load metering configurations, which could run off a single meter.⁵⁵

Semi-peak/shoulder

As with the proposed replacement for controlled load, some stakeholders submitted that using ‘shoulder’ to describe the intermediate rate of a TOU plan, while not particularly helpful, had an established meaning, and changing it would cause confusion.⁵⁶

Peak, off-peak and general usage

There was general support for restricting the use of ‘peak’ and ‘off-peak’ to TOU plans, and for general usage to describe the main element of a single rate plan.

Demand

Some submissions, including those from the Public Interest Advocacy Centre (PIAC) and Dr Gill, considered it necessary for the term ‘demand’ to be prescribed in the language requirements table to prevent other terminology being used (such as ‘capacity’ or ‘peak’).

⁵² CALC, p4

⁵³ Red/Lumo, p4

⁵⁴ EWON, p3

⁵⁵ Simply Energy, p3

⁵⁶ Red/Lumo, p4

PIAC submitted there was already confusion in the industry as to what language to use, with kW-based charges variously referred to as 'demand', 'capacity' or 'peak' charges. It considered the Guidelines should require consistent definition of these charges and reduce confusion for customers as retailers began to offer more cost-reflective pricing options.⁵⁷

Other language issues

A number of submissions highlighted language issues we had not considered in the draft Guidelines

Connection-related fees

Red Energy/Lumo Energy highlighted inconsistency in the way some retailers referred to fees, in particular disconnection and reconnection fees. We agree this is confusing, and have clarified the accepted meaning of these terms.

Cap or capped plans

While not in the context of language and terminology, a number of retailers raised the issue of 'capped plans', with a fixed monthly payment amount similar to a mobile phone plan, as one likely plan type that will emerge.

Final AER position

In the draft Notice, we highlighted that more work is needed to achieve consistent and customer-focused language across all retailers and their products. We noted this would need to extend to bills and other retailer communications to ensure consistency.

We proposed to undertake, in collaboration with industry, a more comprehensive review of language in the energy sector in future, with a view to consulting on a common glossary of terms for application across the sector. We remain of the view this is the mechanism most likely to achieve consistency and bring about change to the use of widely divergent and complex terminology with support across the industry.

In reaching a final position, we recognise imposing new terminology for 'controlled load' and 'shoulder' may not achieve our intended outcome. As stakeholders noted, customers who have these types of tariff have a level of existing understanding of the meaning of these terms, and introduction of different terminology could confuse the issue without solving the problem. We have therefore not included these changes to these terms in the Guidelines.

In relation to the proposed requirements for 'General usage', 'peak' and 'off-peak', we consider consistency across these terms will increase customer understanding and aid in reducing confusion about when these terms do and do not apply. As a consequence, we have maintained our position in the draft Guidelines on this point.

While the Guidelines do not extend to requiring retailers to use particular language on customer bills, the variation between descriptions on plan documents, websites and bills has the potential to confuse customers. We encourage retailers to consider this and make

⁵⁷ PIAC, p2

changes to the language used on their bills to ensure language is consistent across all customer communications.

Table 2 – Changes to Guidelines terminology from draft

Term	Draft Guidelines	Final Guidelines
General usage	The usage component of a single rate electricity or gas plan will be called 'General usage'	No change from draft Guidelines
Controlled Load	For tariffs with Controlled Load, the controlled load component will be called 'separately metered usage'	Remove the proposed requirement that controlled load be replaced with separately metered usage (SMU)
Peak and off-peak	A plan with two times of use rates, the rates will be called <i>peak</i> and <i>off-peak</i>	Peak and off-peak must only be used for TOU plans.
Shoulder	The intermediate rate(s) of TOU plans be called 'semi-peak'	Remove the proposed requirement that 'shoulder' be replaced with 'semi-peak'
Demand	Not included	Require only 'demand' be used to describe the demand component of a plan. Acceptable units are kW, kVA or kVAR as applicable.
Cap	Not included	While we are not aware of any current plans that follow this structure, we have included this term in the prescribed terms and a definition in the glossary. The term refers to a plan where the cost for the customer is set and capped at the amount the retailer sets under the plan. Use of the term therefore avoids confusing or misleading customers about the nature of the amount payable per billing period.
Disconnection, re-connection & connection fees	Not included	We recognise the terminology can be confusing and have clarified how these are to be used and their meaning.

3.6 Generally available plans

Draft Guidelines

The Retail Law requires retailers to publish plans that are generally available on EME. Version 4 of the Guidelines distinguishes between plans that are 'generally available' and 'non-generally available' and provide some broad guidance about how retailers should interpret these for the purposes of the Guidelines.

In practice, our observation is that retailers have interpreted the term 'non-generally available' in a very broad way, including in some instances to mean offers with any eligibility criteria. They have similarly interpreted 'generally available' in a relatively narrow sense.

This is clearly not the intention behind the inclusion of the term in the Retail Law when prescribing market offers that retailers must include in EME. The intention of EME is to assist customers to compare plans that are available to them. It cannot do so if plans that are available to a significant number of people are not published on EME.

To capture this broader group of plans, we proposed a new definition in the draft Guidelines of 'generally available' to clarify that plans available to any small customers in the appropriate distribution zone, with the appropriate metering configuration, are generally available unless classified as a *restricted plan*. The draft Guidelines specified what would constitute a restricted plan.

While not explicitly stated in the draft Guidelines we intended to capture plans known as retention and win-back plans, given broader stakeholder concerns about the lack of transparency of these plans. We understand these plans can include some of the most attractive terms in the market, but note many customers are unaware their current retailer may have a better deal available if they threaten or take steps to switch. Our view in the draft Guidelines was that requiring retailers to publish these plans on EME would increase transparency to the market and benefit customers.

Stakeholder views

Clarification of restricted plans

Several retailers raised concerns about the narrow criteria for restricted plans under the draft Guidelines. Origin stated the definition of a restricted plan: "is limited to only four examples; the consequence is that a number of special offers will be considered generally available despite... only applying to a limited class of customer."⁵⁸

Examples of plans retailers currently considered restricted included:

- Residential embedded network plans, such as plans offered to customers in a private network in apartment complexes
- Multi-site plans negotiated with individual business or residential customers
- Capped plans
- Plans available through group buying schemes

⁵⁸ Origin Energy, p 2

- Fixed price plans where, for example, a yearly amount is determined according to a customer's usage history and particular circumstances
- Plans only offered to customers in retailer hardship programs
- Plans only available to concession customers
- Exclusive member-only plans
- Plans offered to customers as part of a pilot program
- Retention plans and 'win-back' plans offered to customers who have initiated a switch to another retailer

A number of larger retailers noted the wider definition of generally available could result significant increase in the number of plans on EME, in the order of four to five times as many, if they published all their exclusive and restricted plans.

In light of this, a number of retailers submitted we should expand the scope of what the Guidelines considered restricted plans. Simply Energy, which has an auto-club member offer in each jurisdiction, said the exclusive nature of club membership meant its plans were not generally available.⁵⁹

Some retailers suggested alternative criteria for defining a restricted plan, which they considered took into account exclusivity and individual circumstances. For example, EnergyAustralia stated plans that included eligibility criteria that any member of the broader public could not meet should be a restricted plan.⁶⁰

Retailers highlighted a number of other classes of plans they considered should be excluded from the definition of generally available, arguing these classes should be restricted. One category was plans where the outcome or price paid was negotiated and/or dependent on the customer's unique set of circumstances.

This would include:

- Origin's predictable plan, where an annual price is calculated based on a customer's usage history
- Circumstances where a customer could negotiate terms and prices that would not be available to ordinary residential or business customers, such as where a customer owned multiple residential premises, or a combination of residential and business premises.

EnergyAustralia proposed we amend the Guidelines to define as restricted plans targeted to an exclusive group or individual (or) tailored to the specific circumstances of the customer(s) and their needs."⁶¹

⁵⁹ Simply Energy, p2

⁶⁰ EnergyAustralia, p2

⁶¹ EnergyAustralia, p2

Retention and win-back plans

Some retailers submitted eligibility criteria for these win-back and retention plans were highly discretionary and could include multiple considerations such as a customer's length of time with the retailer, payment history, number of accounts, and other factors.

A number of retailers submitted requiring them to publish these plans on EME would achieve the opposite of our goal of simplifying choice for customers. For instance, Simply Energy submitted that including restricted plans on EME "...runs the risk of consumer disappointment, complaints, and potentially distrust in the usefulness of EME, when customers seek these [plans] and are informed they are not eligible for them."⁶²

Retailers also highlighted potential negative impacts on competition and innovation if they were required to publish these offers. EnergyAustralia submitted that requiring retailers to disclose these and other plans they have treated as non-generally available would discourage retailers from developing innovative (plans) that were highly-tailored to particular customer groups, resulting in a trend towards 'middle of the road' plans that "attempt to be suitable to all people but instead only meet the needs of the few".⁶³

Origin Energy submitted: "It is possible that retailers will simply withdraw these (plans) to avoid customer confusion and a negative experience. (Retention plans) are usually at a lower price because they only apply to limited number of customers. For commercial reasons it is not viable for retailers to make these offers available to all customers."⁶⁴

In contrast, some stakeholders considered the Guidelines did not go far enough, and should prohibit exclusive retailer plans available through commercial comparison websites, as these did not promote competition and were a barrier to customers exploring other plans in the market.⁶⁵

Final AER position

In relation to broadening the scope of what constitutes a 'generally available' plan, we consider our position in the draft Guidelines achieves the purpose of providing customers with transparency about the plans in the market and ensures they can find the best offer for their circumstances.

However, we recognise there is a potential risk that, unless properly managed, an increase in the number of plans on EME and in particular plans that have eligibility criteria could result in sub-optimal user experience. A search that required a customer to scan a long list of plans, some of which may not be available to them, would be unsatisfactory and contrary to the goal of simplifying plan comparisons.

We are actively working to manage this risk by engaging a user experience (UX) expert to improve EME's user interface, search pathway and results page. Key considerations for this work are reducing the number of plans customers are required to process, and managing

⁶² Simply Energy, p2

⁶³ EnergyAustralia, p2

⁶⁴ Origin Energy, p2

⁶⁵ Powershop, p5

customer expectations for plans with eligibility restrictions through the design of EME’s search and results function.

In our view, it would be inconsistent with the purpose of EME and the obligation for retailers to publish generally available market plans on EME to restrict plans based on ‘exclusivity’ as a criteria. We acknowledge this practice developed under version 4 of the Guidelines and it does not align with the intention of the Retail Law or providing customers with a tool that helps them find the best plan for them.

In relation to the threshold for eligibility, we adopted EnergyAustralia’s submission that criteria for whether a plan is generally available includes a plan having “characteristics or traits that can be easily acquired by general members of the public.” While we have refined this slightly, we consider it a helpful articulation of one of the principles to guide whether a plan is restricted or not.

Under this principle, a plan would be restricted if a customer could not easily acquire the characteristics or traits needed to be eligible. This would include:

- plans available to embedded network customers within a particular network
- plans only available to customers receiving assistance under a retailer’s hardship policy
- concession customers
- prices and terms negotiated with customers who had multiple sites or accounts
- plans tailored to a customer’s specific circumstances, such as Origin’s predictable plan.

In contrast, a plan that was advertised or promoted would meet the definition of generally available.

To assist retailers we have set out a number of principles that guide our consideration of whether a plan is or is not generally available. However, we note retailers should err on the side of including plans given the policy intent behind EME and the position in the Guidelines.

Table 3 – Principles and examples of restricted and generally available plans

	Generally available	Restricted
Principles	<p>A plan is Generally Available if:</p> <ul style="list-style-type: none"> • it is advertised or promoted in any media, including on a retailer or third party website • It has eligibility criteria that relate to characteristics or traits that general members of the public can acquire 	<p>A plan is likely to be restricted if:</p> <ul style="list-style-type: none"> • it is negotiated/tailored to an individual or business’ particular circumstances. <p>In reviewing compliance with this obligation, we would expect to see evidence of what criteria a retailer has applied to tailor the plan to the customer.</p> <ul style="list-style-type: none"> • It has eligibility criteria that relate to characteristics or traits that a member of

the general public cannot easily acquire.

Examples	Exclusive member-only plans that are promoted or advertised	Residential embedded networks ⁶⁶
	Marketing/partner promotional plans	Origin's predictable plans
	Plans available only via particular sign-up channels	Plans available to customers in a pilot program
	Plans available through group buying schemes;	Plans available only to hardship customers
	Capped plans	Plans negotiated with the owner of multiple sites
	Plans where eligibility is dependent on purchasing particular equipment (from the retailer or other party)	Staff and family & friends plans
	Plans where eligibility is dependent on a customer having existing equipment	Standing offer plans that exist to satisfy a retailer's FRMP obligations, which would not be offered to a customer who requested it.
		Plans available to all of a class of concession customers

Win-back and retention offers

In light of retailer submissions and further clarification about how retention and win-back plans operate, we have revised our position in the Guidelines to exclude these from being 'generally available' and therefore requiring publication on EME. Even though capturing these plans would help increase transparency in the market, we consider customers would likely have sub-optimal experiences if they tried to switch to a plan that was not available to them. It is likely, given the win-back or retention criteria applied by the retailer (which we understand to be highly discretionary and fluid) this could be an experience for many.

Even if it were possible to record all the eligibility criteria for these plans, the Retail Law does not compel retailers to make available a market plans to a customer. It remains a business decision for the retailer about whether they offer a customer a particular market plan.

We also note the Guidelines still require retailers to upload these types of plans as well as other restricted plans to EME (but not publish them) so they can provide BPIDs to customers.

We are aware of ongoing concerns about the market impacts of win-back and retention offers. The ACCC's REPI interim report, for instance, suggested around a quarter of switches to smaller retailers did not go ahead due to the original retailer offering the customer a more attractive deal.⁶⁷

The practice clearly rewards high-value customers, and such targeted market segmentation of high-value customers raises equity concerns. We remain of the view increased consumer visibility of these 'under the counter' plans will assist customers understand their options.

⁶⁶ We may reconsider our position in this in future as more energy-only plans come into the market, but will consult separately on this issue before making any changes to the Guidelines as required under the Retail Law.

⁶⁷ REPI ACCC Retail Electricity Pricing Inquiry: Preliminary report, 22 September 2017; p106

We will continue to develop our understanding of how retailers are using these plans, potentially through use of our audit powers, and will consider what future interventions may be effective.

3.7 Accuracy of plan information and Energy Made Easy requirements

3.7.1 Using EME plan ID

EME currently automatically generates a unique identification number for each plan published on the website.

The current Guidelines do not require retailers to refer to or identify these plan IDs in their call centres or other customer contact points. While some retailers do use this number, others do not, and we regularly hear from customers who are frustrated because a retailer was not able to locate a plan they found on EME. These experiences undermine customer confidence and trust.

To address this issue, the draft Guidelines proposed that any retailer staff member (or staff member of a third party acting on behalf of a retailer) be able to identify any of its plans from the EME ID number.

Stakeholder views

While some retailers noted their systems already allow their staff to identify plans by their EME ID number, a number of retailers raised concerns about the impact on their systems because of this obligation.

AGL said it would have to develop new systems to implement the proposed requirement. Doing so would involve manual steps to ensure the system information remained up to date. It noted its third party providers would also need access this information.

It recommended an alternative approach to managing offer identification through the introduction of an ID number search function on the EME site. AGL submitted this system would be more efficient and less prone to human error.⁶⁸

Final AER position

We recognise the obligation in the Guidelines to require retailers to refer to plans by their EME identification number will have potential impact on retailer systems and the requires a change in culture in how retailers and their third party providers use and refer to plans on EME.

We consider it is important that customers are able to search and locate a plan on EME and then contact a retailer and be able to refer to that plan by the EME ID number. Moreover, we recognise there may be a number of ways of giving effect to this requirement. We are open to a system change to EME to allow retailers to search a plan ID while communicating with a

⁶⁸ AGL, p5

customer to locate the plan and doing so on the front-end of the website so that third party providers can also use this functionality.

Introducing this functionality, while feasible, would not occur prior to the commencement date of the Guidelines of 30 August 2018 due to our existing development commitments for EME. We will work towards introducing this later in 2018 with retailers required to comply from 1 January 2019. This will be subject to other EME development priorities.

The obligation to use the EME ID will not have effect until the functionality has been implemented on EME. We note retailers who currently use the plan ID are not prevented from continuing to do so, and we encourage them to do so.

Attachment A: Summary of submissions to draft Guidelines and AER responses

Stakeholder	Stakeholder feedback	AER response
Energy plan documents/Requirement for two plan documents		
Various	Strong support for the BPID as a separate comparison-focused tool, showing only key plan details.	We welcome stakeholder support for the position.
Dr Gill, Momentum, SACOSS, Red/Lumo	Qualified support for the DPID with concerns DPID could overwhelm customers with information. DPID should not be a re-badged EPFS, or simply contain information not in BPID. Consider whether DPID could be an appendix.	the two-document approach is the most appropriate way to provide simple, clear information to allow for easy comparison of plans while also making more detailed information available to those customers who want We are working with UX experts to design DPID to increase its usefulness to customers and integrate the two documents.
QCOSS, COTA	The name 'Contract Summary' is legalistic and may cause anxiety for some customers.	Agree. Final Guidelines replace the name 'Contract Summary' with 'Detailed Plan Information document'.
ECA	The BPID should have a clearer link to EME and the DPID.	Noted. We working with UX experts to design DPID to increase its usefulness to customers and integrate the documents.
BPID content and format		
AEC, Origin, QCOSS, EWON	Considered pricing was information necessary on BPID, including metering costs.	Agree. We note BIT research showed people were more confident when pricing information was present and have not changed our position from the draft Guidelines. We are considering BIT's recommendations regarding placement on BPID and design.
Origin, IPART, QCOSS	Pricing information on BPID should be GST-inclusive to assist customer comprehension.	Pricing will be displayed GST-inclusive only on BPID. GST inclusive and exclusive prices will be shown on DPID.

Stakeholder	Stakeholder feedback	AER response
	<p>Concern GST-exclusive pricing may not comply with relevant legislation.</p> <p>Retailers should be required to have GST-inclusive rates on customer bills.</p>	
AEC, ERM, AEC	<p>There was general support for not displaying comparison pricing on BPID for plans with demand charges and small business plans.</p> <p>AER should consider how comparison pricing may be developed for SMEs in future.</p>	Noted. We will consider increased small business functionality as part of ongoing EME redevelopment work.
IPART, Red/Lumo, AEC	Comparison pricing should not be displayed on BPIDs for residential TOU plans due to potential for estimates not being accurate for customers with a different profile.	We note concerns, but consider they can be addressed through clearer BPID wording highlighting: the figure is an estimate for comparison purposes, not a personal estimate; and that it is based on benchmark typical usage for that area.
AEC	BPID not necessary for plans where no comparison price displayed – DPID would achieve same purpose.	Disagree. A BPID without comparison pricing will still highlight key features and provide pricing information presented in a consistent way.
Marketing and display of energy plan information		
AGL, Red/Lumo, AEC, Alinta	Requiring BPID and DPID be included in Welcome Packs would create information duplication and extra costs for retailers.	<p>We note concerns and have removed the relevant clause.</p> <p>Retailers still free to provide DPID in welcome pack, but not a requirement.</p>
Red/Lumo, Momentum, Ergon	<p>Concerns the requirement to link to a BPID HTML file hosted on EME would lead to a poor user experience and raise e-security concerns for customers.</p> <p>Requiring retailers link to a government website would erode customer trust in retailers.</p>	<p>Disagree. Retailer-branded BPID opening in a new tab will not be materially different from clicking on any other link.</p> <p>Retailers free to address security concerns by highlighting customers are being directed to trusted government website.</p>

Stakeholder	Stakeholder feedback	AER response
CPRC	AER should consider how it would monitor compliance with the requirement that agents tell customers about the BPID.	We will monitor compliance with Guidelines obligations. Where necessary, AER will consider appropriate compliance tools – such as information requests and compliance audits.
Aurora	BPID and other Guidelines requirements redundant in Tasmanian context as there is no retailer market competition. Will add costs without commensurate customer benefits.	Disagree. Plan documents will facilitate Tasmanian customers being able to compare the key points of different plans from Aurora.
AEC, Alinta, Simply, Pooled	Concern BPID could not accommodate non-traditional plan types – such as ‘capped’ plans and bundled-service plans – impacting innovation.	EME can accommodate a range of plan structures. AER mindful of not being a barrier to innovation and will continue to consider the issue as part of ongoing redevelopment.
Origin, Red/Lumo	Concerns requirement for in-person sales agent to carry both plan documents inefficient and onerous.	Concerns noted. Disagree obligation is onerous and we do not propose a change to our position from the draft Guidelines.
Language and terminology		
Red/Lumo, EWON, Ergon, Momentum	Concern changing ‘controlled load’ to ‘separately metered usage (SMU)’ would confuse customers who already understood this term.	Agree. Final Guidelines do not prescribe SMU.
Red/Lumo, Momentum	Concern changing ‘shoulder’ to ‘semi-peak’ would confuse customers who already understood this term.	Agree. Final Guidelines do not prescribe semi-peak.
PIAC, Dr Gill	‘Demand’ should be a prescribed term to prevent alternative terms being used.	Agree. ‘Demand’ added to list of prescribed terms.
Red/Lumo	Inconsistency in how some retailers apply terms for ‘disconnection’, ‘reconnection’ and ‘connection’ fees.	Agree. Have clarified the use of these terms in the Guidelines.

Stakeholder	Stakeholder feedback	AER response
CALC, AEC, Simply	<p>Important to move to simpler and more consistent language across the industry to reduce complexity for customers.</p> <p>Any changes should be tested for comprehensibility.</p>	<p>Feedback noted.</p> <p>We will review energy language with the aim of developing, in collaboration with industry, a glossary of agreed, consistent terminology across the sector.</p>
EWOQ	<p>Services should be more accessible to culturally and linguistically diverse customers, Aboriginal and Torres Strait Islander communities, older Australians, people with a disability and those who are not digitally engaged.</p>	<p>Noted. We are considering these issues in a range of contexts external to the Guidelines, including:</p> <ul style="list-style-type: none"> • Developing resources and promoting EME to CALD audiences • Ensuring EME is accessible for users with different literacy levels and abilities • Considering resourcing requirements to expand our capacity to assist customers over the phone, and other non-digital information strategies.
SACOSS	<p>Language requirements should extend to both the contract and energy bills; otherwise, it would be difficult for consumers to compare current plans with EME.</p>	<p>Agree. However, billing requirements are set out in the Retail Law and fall outside the scope of the Guidelines.</p> <p>The proposed language review (mentioned above) would aim to achieve consensus on billing language.</p> <p>We encourage retailers to use consistent language across all channels where they communicate with customers.</p>
<p>Generally available plans and restricted offers</p>		
AGL, EA, Simply, Origin, AEC	<p>More guidance needed for definition of 'restricted' and 'generally available'.</p>	<p>Concerns noted.</p> <p>We have included in Guidelines:</p> <ul style="list-style-type: none"> • principles that would assist retailers determine whether a plan was generally available or restricted • an expanded list of examples of each.

Stakeholder	Stakeholder feedback	AER response
Simply, EA, Origin	Feedback on what would constitute a restricted plan included: <ul style="list-style-type: none"> • Exclusivity • Plans where a member of the general public could not easily require the traits needed to be eligible for the plan • Plans that were tailored to a customer's specific circumstances 	Suggestions and feedback noted. We consider exclusivity does not make a plan restricted, as this would apply to plans with any eligibility criteria. We agree that personal circumstances and whether a member of the public could not acquire the traits/characteristics is relevant to consider. We have adopted these principles in the Final Guidelines.
Simply, Origin, EA, AGL	The new generally available criteria would see an influx of offers many customers would not be eligible. This was not in the interests of customers, and would create confusion, complaints and dissatisfaction.	Concerns noted. We are working with UX experts to redesign the user search and results display of EME to ensure customers are not overwhelmed by irrelevant plans.
EA, Origin	Requiring publication of retention and win-back plans would lead to customers removing these from the market, and stop retailers developing products that were tailored to customers.	Concerns noted. Guidelines clarify that retention and win-back offers are restricted.
Accuracy of plan information and Energy Made Easy requirements/Use of EME ID number		
AGL, Origin, Red/Lumo	Two-day timeframe to upload a plan to EME after it becomes available would no longer be feasible, given the increased number of offers and need to communicate with third parties. 4-10 days needed.	Concerns noted, but disagree. Proposed staged implementation will allow businesses to manage the impact of the changes.
Origin, AGL	Retailers would have to develop new systems to meet requirement to identify all plans by their ID number.	Concerns noted. We have undertaken to develop a system enabling retailers search for offers on EME, using the EME ID number. Compliance with this obligation will commence on 1 January 2019.

Stakeholder Stakeholder feedback

AER response

Comparison pricing

Various	<p>Overwhelming agreement that BPID should display annual comparison pricing estimates. Major reasons included:</p> <ul style="list-style-type: none">• emphasising price difference between plans• avoided accuracy issues related to seasonal bill differences• quarterly/two-monthly bills not consistent with the move towards monthly billing.	<p>Stakeholder feedback noted. BPID will display comparison pricing as annual figure.</p>
Qld Consumers Association, CPRC	<p>Comparison pricing table should use more generic criteria for the different usage profiles.</p>	<p>Agree. We have removed some icons and retained others.</p> <p>We consider this approach will provide sufficient information to assist customers identify their profile, while reducing the risk of confusion.</p>

Application to third parties

Powershop, Momentum, Origin	<p>Sought clarification on how obligations would work where a retailer does not have a contractual relationship with a third party, or due to an outage of a third party website.</p> <p>Concern about being liable for third party actions that extend beyond provision of the BPID and DPID.</p> <p>Concerns about how retailers could ensure energy plan documents obligations could be met when customers sign up through third party websites.</p>	<p>Compliance with the Guidelines is retailers' responsibility.</p> <p>It is for retailers to manage the Guidelines obligations as they apply to third parties.</p>
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Stakeholder	Stakeholder feedback	AER response
Implementation timeframes		
AEC, Origin, Red/Lumo	<p>Concerns that the scope of the new requirements and the necessary system and process changes would make implementation before July unlikely.</p> <p>Recommend we adopt a staged approach to implementing various obligations over time.</p>	<p>Concerns noted. To enable retailers to manage the impact on their businesses, we have proposed a staged implementation timeframe.</p> <p>This would see obligations in regard to current plans in EME commence on 31 August 2018, followed by the expanded generally available plans by 1 October 2018. Requirements applying to third parties would commence by 1 January 2019.</p>