



10 June 2022

Dear energy retailer

Retailer obligations and promotion of competition and consumer protection in the National Electricity Market

With the considerable challenges facing the east-coast energy market, it is imperative that all market participants meet their obligations to ensure Australians continue to have access to reliable and affordable energy.

As part of a collaborative response to the current volatility in the market, the Australian Competition and Consumer Commission (ACCC) and the Australian Energy Regulator (AER) will be working closely together to monitor the market and enforce relevant laws to protect consumers and the maintenance of competition at this difficult time.

We are writing to reiterate the importance of these obligations under both competition and consumer, and energy laws, and to outline our approach to monitoring market conduct.

Competition and Consumer Act obligations

As you would be aware, the ACCC is currently inquiring into the prices, profits and margins in the supply of electricity in the National Electricity Market. We have an ongoing role enforcing the economy-wide provisions of the *Competition and Consumer Act 2010* (CCA) which include the Australian Consumer Law, as well as its energy-specific provisions, being the Industry Code – Electricity Retail Regulations 2019 (the Electricity Retail Code) and Part XICA (Prohibiting Energy Market Misconduct - PEMM).

Competition and consumer issues arising from the pricing and selling of essential services, with a focus on energy and telecommunications, are an ACCC enforcement and compliance priority. The ACCC will investigate any reports of, or concerns about, anti-competitive conduct or conduct that is likely to mislead or deceive consumers or false or misleading claims or statements by retailers in the electricity market. In current circumstances, we would be particularly concerned by any conduct that attempts to take advantage of the current market conditions to mislead consumers about the need for, or extent of, any energy price increases or to achieve other financial gains.

Any arrangement to transfer customers and/or contracts or that co-ordinates market conduct, risks being a serious contravention of Part IV of the CCA. If you are contemplating any such conduct you are urged to urgently notify the ACCC and engage in the appropriate review or authorisation process.

The ACCC has the power to authorise conduct that would otherwise breach competition law prohibitions where that conduct results in public benefit. For example, the ACCC used this power on

an urgent basis to enable energy market participants to cooperate to support hardship customers during the COVID-19 pandemic. We are examining the current challenging circumstances to determine whether there are any situations that could be supported or facilitated by such a process. We will respond promptly to any authorisation application.

Electricity Retail Code

The Electricity Retail Code imposes several obligations on retailers operating in New South Wales, South Australia, and South-East Queensland. In particular, standing offer prices must not exceed the Default Market Offer (DMO) – the price determined by the AER. Retailers must also tell small customers how their offers compare to the reference price by including specific information in their communications. At a time when customers may be searching for a better offer, it is vital they are able to accurately assess the options available. We will be monitoring price representations to ensure they are consistent with the DMO price and accurately reflect how an offer compares to the reference price.

Energy Law obligations

The AER enforces the National Energy Retail Law and Rules in Queensland, New South Wales, the Australian Capital Territory, Tasmania and South Australia. These contain specific protections for energy customers, a number of which are particularly important at this time. Our recent monitoring activity has highlighted a number of areas of concern.

Pricing information

Retailers need to ensure that they are adequately informing customers of critical information relating to standing offers, which can then assist customers in making informed choices. Of particular note, retailers must ensure they present standing offers and key plan information prominently on their website and include a link to the [Energy Made Easy](#) Website. The [AER's Retail Pricing Information Guidelines](#) (Guidelines) outline a range of requirements with regard to the presentation of prices and information/data submission to the AER.

Explicit informed consent

The AER has become aware that some retailers have entered into arrangements for bulk transfer of customers to other retailers. Retailers must ensure they have systems and processes in place to ensure customers are not transferred or entered into contracts without their explicit informed consent and that the required records are kept.

These are important protections that ensure consumers fully understand their rights and obligations before agreeing to an energy plan or switching providers. The AER will continue to monitor closely any possible breaches of explicit informed consent provisions.

Hardship

With a range of cost-of-living pressures, consumers may experience difficulties in paying their energy bills. **Facilitating access to hardship programs and payment plans for customers experiencing financial difficulties is the cornerstone of retailers' hardship obligations. Retailers should ensure they:**

- are not reliant on customers self-identifying as experiencing financial difficulties;
- prioritise and regularly update staff training on how to **proactively identify hardship triggers; and**
- **ensure that internal credit and billing systems contain system indicators that flag customers who may be experiencing financial difficulties.**

Capacity to pay is a key consideration in determining an appropriate customer payment plan.

Obligation to make an offer to a small customer

Over the coming months, we recognise that customers may seek to leave their current retailer due to price changes. Where a customer is unable to enter into a contract with a retailer of their choice, they may be required to rely on the ‘designated retailer’.

Designated retailers are reminded that they cannot refuse to sell energy to a small customer on the ground that the customer owes the retailer an outstanding amount. Further information on designated retailers can be found on the AER website under [Local area retailers \(electricity\)](#).

Information to be provided to the AER and AEMO

We recognise that retailers may be financially affected by recent events, and some may no longer be in a position to meet their AEMO prudential requirements. Retailers must notify the AER and AEMO without delay of any event or circumstance of which they are aware which may affect their ability to maintain continuity of the sale of energy to their customers.

Notification of tariff changes

Retailers are permitted to vary tariffs and charges for market retail contracts as long as the price changes are made in accordance with the terms and conditions in the contract and are not inconsistent with the Retail Rules. We will be monitoring retailers over the coming months, and we encourage retailers to familiarise themselves with their obligations around contract price variations.

Monitoring and information collection

The AER and ACCC work closely together and look to minimise the regulatory burden on energy businesses where appropriate. However, we have distinct functions under the legislation we administer so may also separately seek additional information at different times.

The ACCC often uses information made available publicly or provided voluntarily to monitor compliance with the Electricity Retail Code. However, the CCA empowers the ACCC to compulsorily request information required to be kept by retailers under the Electricity Retail Code. The ACCC will use this power as required or considered appropriate given the priority and urgency of our current focus on consumer protection. We are empowered to require the provision of information related to our Inquiry function and will be undertaking this process in coming weeks to inform our next interim report. Section 155 of the CCA also enables the ACCC to require the provision of information, documents or evidence in relation to an investigation of a potential contravention of the law.

The AER is also gathering the information it needs to place itself in the best-informed position to deal with the challenges the market is facing. We may be in touch with retail market participants to seek information and insights either voluntarily or using statutory powers over the coming weeks.

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Yours sincerely

Gina Cass-Gottlieb

ACCC Chair

Clare Savage

AER Chair