



Australian Energy Market Commission

DRAFT RULE DETERMINATION

NATIONAL ENERGY RETAIL AMENDMENT (ADVANCE NOTICE OF PRICE CHANGES) RULE 2018

PROPONENTS

The Honourable Josh Frydenberg MP, Minister for the Environment and Energy
on behalf of the Australian Government

The Honourable Don Harwin MLC, Minister for Energy and Utilities on behalf of
the NSW Government

5 JULY 2018

RULE

INQUIRIES

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ABOUT THE AEMC

The AEMC reports to the Council of Australian Governments (COAG) through the COAG Energy Council. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the COAG Energy Council.

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SUMMARY

1 The Australian Energy Market Commission (AEMC or Commission) has made a draft rule that amends the National Energy Retail Rules (NERR) to require retailers to provide consumers with advance notice of price changes in relation to electricity and gas retail contracts.

2 The draft rule, which is a more preferable rule, was made in relation to a rule change request submitted by the Honourable Josh Frydenberg MP, Minister for the Environment and Energy on behalf of the Australian Government and the Honourable Don Harwin MLC, Minister for Energy and Utilities on behalf of the New South Wales (NSW) Government. The proposed rule was aimed at requiring retailers to provide advance notice of price increases on energy retail contracts. The Commission invites submissions on this draft determination including the draft rule by **16 August 2018**.

Background and rationale

3 Currently, consumers are only required to be notified of changes to their energy prices:

- for market offers: as soon as practicable, but in any event no later than their next bill pursuant to rule 46 of the National Electricity Retail Rules (NERR), and
- for standing offers: when the retailer sends the next bill pursuant to section 23 of the National Energy Retail Law (NERL).

4 As a result, the consumer may be unaware of a price increase for up to three months after a price change has taken effect.

5 The rule change request argued that consumers deserve the right to be informed of changes to their energy prices before these changes occur. Armed with prior notice of increases, consumers are prompted to shop around for a better offer. When consumers engage with the market in this way there are potential savings from switching to lower cost offers immediately when prices change rather than after their next bill, which can be up to three months after the price change. The rule change proponent indicated that consumer responses to advance notice of price increases, such as switching energy plan or retailer, are likely to drive a more efficient retail market, putting pressure on retailers and downward pressure on prices.

6 In addition to the significant benefits identified by the proponent, the Commission anticipates that advance notice may also prompt other energy saving action in addition to the consumer changing their energy contract. The consumer may choose to change their energy consumption patterns, to allow for price changes in their budget plans or to invest in energy efficiency measures and distributed generation as a means of reducing their future energy bills. Advance notice should provide an additional and timely prompt for this action, helping the consumer to save money and further enabling the effective functioning of the retail market.

7 The form and contents of the notice are, in the Commission's view, key to both meeting the consumer's right to know and allowing for this range of consumer action. Further, the form and contents of the notice should balance these benefits against the costs of developing and sending notices to large groups of consumers within relatively short time frames.

8 The AEMC published a consultation paper on the rule change request, and this draft determination is informed by stakeholder submissions on that consultation paper.

Features of the more preferable rule

9 The draft rule addresses the same issues identified by the proponents, but expands the coverage of the rule to include the same period of advance notice for standing offers as for market offers and also to encompass price decreases as well as price increases in the requirement for advance notice.

- 10 The draft rule:
- requires retailers to give consumers five business days advance notice of price changes, including notice of their existing tariffs and charges, their new tariffs and charges and the date on which the price change occurs
 - requires retailers to inform consumers on the notice that they can request their historical billing and energy usage data to assist them in assessing the impact of the price change
 - covers gas and electricity retail contracts
 - provides the same five day notice period for both standing and market offers
 - provides for the notice to be delivered by the customer's preferred form of communication where this has been indicated to the retailer.
- 11 Further, the draft rule provides a limited set of exemptions from the requirement to provide advance notice, including:
- where the price change is the direct result of a benefit change and the retailer has provided notice under rule 48A (retailer notice of benefit change - market retail contracts), then an additional notice under the proposed draft rule would not be required. (Applies to market offer customers only)
 - an exemption for consumers on regulated price contracts, or prices that are otherwise set by legislation, a government agency or regulatory authority. (Applies to regulated offer customers only, in Tasmania, regional Queensland and the Australian Capital Territory (ACT))
 - an exemption where a customer has entered into a new contract with the retailer within ten business days before the date of the price change and the retailer has informed the customer of the change prior to contract entry. (Applies to market and standing offer customers)
 - an exemption for tariffs or charges that are tied directly to the energy spot price. The exemption is limited however, such that the retailer must provide notice if the tariffs or charges under any other parts of the bill change. (Applies to market offer customers only)
 - an exemption for changes to the consumer's energy costs that are a direct result of a change to or withdrawal or expiry of, a government funded rebate, concession or relief scheme. (Applies to market and standing offer customers).

Summary of reasons

- 12 Having regard to the issues raised in the rule change request, the Commission is satisfied that the draft rule will, or is likely to, better contribute to the achievement of the National Energy Retail Objective (NERO) by:
- informing consumers of changes to their energy prices and tariffs before they occur
 - reducing the risk of bill shock for consumers
 - saving consumers money through an earlier awareness of price increases. Consumers will have more time to consider their options and take action, including by switching to alternative offers or retailers earlier, or through energy efficiency measures, budgeting and investment in distributed generation. As a result consumer confidence in the market is likely to be enhanced
 - encouraging more efficient operation of the market. Consumers will be prompted to take action and as a result drive improvements in competition, thereby improving the efficient operation of the market and putting downward pressure on retail prices
 - harmonising regulation by improving the compatibility of regulatory provisions in different states.
- 13 The benefits of the draft rule are likely to outweigh the costs. Where a large retailer has up to half their customer base on paper notification and mail out costs are in the order of \$1-\$3 per letter, the costs for a price change notice across all jurisdictions would not be insignificant at the current time. However, the

rule has been designed to keep the costs of implementation as low as possible and these costs are expected to fall over time as consumers increasingly opt for digital communication with their retailer. Where retailers have operations in the Queensland retail electricity market and hence have an existing obligation to deliver advance notice, the process of implementation should be made easier.

- 14 If consumers have more time to assess the alternatives in a rising or changing price environment, this is likely to reduce the anxiety of rising prices for consumers, as well as helping them to take more timely action in order to save money on their energy bill or budget accordingly.
- 15 Given the degree of price diversity in the retail market, providing advance notice of price changes may prompt greater, and more frequent, engagement and participation in the market with consumers more likely to take advantage of the wide range of deals available. Retailers as a result will be incentivised to keep price changes to a minimum and to communicate to all consumers that receive a price change notice the different energy saving options and alternative retail plans available.
- 16 The prescription of the draft rule allows for short and clear notices with the minimum of information to allow the consumer to access and engage with the key message and prompt the consumer to consider their best course of action in response. Shorter, simpler notices are also expected to be both more cost effective to produce and more adaptable to the different technologies now increasingly preferred by the consumer for communication with their retailer.

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1 INTRODUCTION

On 1 March 2018 the Honourable Josh Frydenberg MP, Minister for the Environment and Energy on behalf of the Australian Government; and the Honourable Don Harwin MLC, Minister for Energy and Utilities on behalf of the New South Wales (NSW) Government (the proponents) submitted a rule change request to the Australian Energy Market Commission (AEMC or Commission). The rule change request seeks to change the National Energy Retail Rules (NERR) to require retailers to provide customers¹ with advance notice of changes to energy prices.

The AEMC published a consultation paper on the rule change request, and this draft determination is informed by stakeholder submissions on that consultation paper and the Commission's analysis.

This paper provides:

- a summary of, and background to, the rule change request
- a summary of the Commission's reasons
- an assessment of the issues identified in the consultation paper.

1 For the purposes of this paper, customer is used in relation to describing the relationship between the customer and the retailer; consumer is used in relation to the relevant group under the retail law, rules and in the wider sense of all consumers in the market.

2 BACKGROUND

2.1 Retail energy contracts

Small electricity and gas consumers in Australia are generally serviced by a retailer. In the Australian Capital Territory (ACT), Tasmania, regional Queensland and the Northern Territory, the price charged to consumers is regulated. This means retail tariff charges are set by either the jurisdictional regulator or the government. In South East Queensland, New South Wales (NSW), Victoria and South Australia, retail prices have been deregulated and are set by the retailer.

Generally, retail energy offers (both electricity and gas) are classified as being either standing offers or market offers. The differences between the two types of offers are the contractual terms and conditions:

- **standing offers** are basic electricity and gas contracts with terms and conditions that are prescribed by law; retailers cannot alter them.² In some, but not all jurisdictions, standing offer prices are also regulated
- **market offers** are electricity and gas contracts determined by retailers and offered to consumers in the competitive market. These contracts must contain a minimum set of terms and conditions, prescribed under the NERR, such as consumer protection obligations.

Outside of minimum requirements, retailers have flexibility in how they design their market offers in response to consumer preferences and retail market conditions. The terms and conditions of market offers generally vary from standing offers, and could include incentives, different billing periods or additional fees and charges.

2.2 National Energy Customer Framework

The National Energy Customer Framework (NECF) is the framework that regulates the connection, supply and sale of energy (electricity and gas) to grid-connected residential and small business energy customers. This includes the provisions related to consumer protections, standing and market offer minimum terms and conditions, and how customers are to be informed of changes in their bills.

The NECF has been adopted in the ACT, Tasmania, South Australia, NSW and Queensland. Victoria has adopted Chapter 5A of the National Electricity Rules (NER) but not the remaining components of the NECF and so the proposed rule will not apply in that state. However, Victoria has completed a process to harmonise the Victorian Energy Retail Code with the NECF.

The NECF is primarily comprised of the National Energy Retail Law (NERL), the National Energy Retail Regulations and the NERR. Certain parts of the NER also form part of the NECF, including rules in relation to small customer connections (Chapter 5A of the NER) and retail markets including billing and credit support (Chapter 6B of the NER). The Australian Energy Regulator (AER) is responsible for monitoring and enforcement of the NECF.

2.3 Notice periods as currently enforced in NECF jurisdictions

Rule 46 of the NERR requires retailers, at a minimum, to notify customers on market retail contracts of any variation in their tariffs and charges as soon as practicable, and in any event no later than the customer's next bill. In addition, the retailer must set out in the market retail contract the obligations with regard to notice that the retailer must comply with where the tariffs and charges are to be varied.

This is similar to the requirement in relation to standing offers. Under s22 of the NERL, a retailer is required to make a standing offer to small customers for whom it is the designated retailer under the

² Except for certain permitted alterations. See section 25(4) of the NERL.

retailer's form of standard retail contract, the terms of which are prescribed under the NERL and the NERR. This includes a specific price change notice clause in all standing offer contracts.³ The effect of this clause is that the retailer has to provide details of a price change with the customer's next bill.

Notice periods as currently enforced in NECF jurisdictions do not currently apply in Queensland. Please refer to section 2.6 below.

2.4 Timing of retail price changes

Price changes in retail energy contracts are driven by a range of factors including variations in wholesale energy costs, network costs, environmental policy costs and retailer costs.

Generally, a price change driven by wholesale costs, environmental policy costs (generally set by state or federal governments) or retail costs can occur at any time of the year. Network costs on the other hand generally change once a year. In particular, transmission and distribution network businesses are subject to a regulatory determination process (for electricity) and an access arrangement process (for gas). Under these processes, the Australian Energy Regulator (AER) sets the network business' allowable revenue for a 5-year period.

In addition, for electricity network businesses, an annual pricing proposal is submitted to the AER by 31 March of each year (with the exception of Victorian network businesses).⁴ The pricing proposal provides the details of how the allowable revenue will be collected for that year through consumer charges. The AER must approve the annual pricing proposal within 30 business days of it being submitted.

For gas network businesses, distribution tariffs are generally subject to revision each year of the access arrangement period while transmission pipeline tariffs are comprised of a mix of regulated and commercially negotiated tariffs which may have differing escalation arrangements. The access arrangement or commercial transportation agreement stipulates the timing of any tariff revision, which can vary. Generally, most annual updates occur in time for the beginning of the financial year (1 July), but this is not always the case. Furthermore, revisions to the underlying access arrangement can result in tariff changes that are, in some cases, backdated to the beginning of the financial year.

While standing offer contract prices cannot be changed more often than once every six months,⁵ prices in market retail contracts can be changed at any time if the terms of the market contract allow for this. If a variation clause is included in a market retail contract, rule 46 does not preclude a retailer from changing those tariffs or charges at any time (provided the consumer is validly notified). In most cases,⁶ in NECF jurisdictions prices change at least on 1 July of each year. The rules under which these price changes are notified to consumers varies depending on the type of offer the consumer is on (as discussed in section 2.3).

2.5 Timing of receipt of consumer bill

Another factor influencing the timing of when a consumer receives notice of a price change under the current rules is when the customer receives their first bill after the price change.

The timing of the customer's next bill after a price change will vary between a few days and three months depending on which particular month a customer has their meter read. Generally, individual

3 Item 8.2 of Schedule 1 of the NERR (Model Terms and Conditions for Standard Retail Contracts). See also section 23(3)(c) of the NERL.

4 As the proposed rule only applies to those jurisdictions that have adopted the NECF and NECF does not apply in Victoria, the timeframes associated with regulatory determination, access arrangements, annual pricing proposals and tariff variation applications for Victoria are not set out.

5 Schedule 1, clause 8.2(b) of the NERR.

6 In Victoria prices generally change at least on 1 January of each year.

customers have their meters read and are billed every three months. Generally one third of customers in a particular distribution area have their meters read in one month, the following third in the next month and the last third in the final month of the quarter. This means for a 1 July price increase, for example, that for some customers the next bill may come relatively quickly after the price increase, but other customers may have to wait up to three months before they are notified of price changes.

This delay in the timing of notification means the customer may be subject to increases to their prices on 1 July, but will not be notified until three months later that these charges haven't taken effect and are already driving an increase in their bill. The first bill under the higher prices may be a shock for the customer that they are unable to deal with by taking action in advance.

2.6 Notice periods as currently enforced in Queensland

The extent to which the NERL applies in each state and territory depends on the legislation passed by each jurisdiction that adopts the NERL.

Queensland has adopted the NERL under section 4 of the National Energy Retail Law (Queensland) Act 2014, but with certain modifications.⁷ These modifications are set out in the schedule to that Act and are also prescribed under the National Energy Retail Law (Queensland) Regulation 2014. This means that retailers in Queensland must comply with certain additional requirements that do not apply in other NECF jurisdictions.

The Queensland rule provides for notice to market offer customers at least ten business days in advance for any increase in tariffs or charges applying to the customer, and as soon as practicable (and in any event no later than the next bill) for any decrease in tariffs or charges.

In relation to standing offers under the Queensland rule, variations in prices must be published in a newspaper and on the retailer's website. If the variation is an increase in prices, the publication must occur at least ten business days before the increase starts and the customer must be notified directly in advance of the price increase taking effect. If the price change is a decrease in prices, details of the change must, at a minimum, be included in the customer's next bill. However, the requirements to publish price variations, and to notify customers of any price increases in advance, do not apply in relation to regulated prices.

The proposed rule in the rule change request mirrors these requirements, which have been in operation in Queensland since 2014. This would, in effect, harmonise Queensland requirements in relation to advance notice across the remaining NECF jurisdictions.

⁷ Schedule 5, items 8 and item 15 of the National Energy Retail Law (Queensland) Regulation 2014.

3 THE RULE CHANGE REQUEST

The proponents submitted a rule change request that would require retailers, at a minimum, to notify market retail customers of price increases ten business days in advance of the change coming into effect.⁸ This was intended to replace the existing requirement under rule 46(4) of the NERR to notify as soon as practicable, and in any event no later than the customer's next bill.

The proposed rule required customers on standing offers to be notified in advance of any increase in the standing offer price taking effect.⁹

The proponents also tasked the AEMC with considering whether the price change notice should be enhanced to require retailers to include information for the customer to facilitate sourcing a new competitive offer, such as via the Energy Made Easy (EME) website.

Under the proposed rule, the existing requirement for standing offer price changes to be published in newspapers and on retailer websites was retained, however:¹⁰

- for increases, the publication must occur ten business days in advance of the increase taking effect (ie, retaining the existing arrangements)
- for decreases, the requirement to publish at least ten business days in advance has been removed.

3.1 Rationale for the rule change request

3.1.1 Consumer's right to be informed

The proponents maintained that consumers deserve the right to be informed of any changes to their energy prices when they occur. Armed with advance notice of a price increase, consumers are prompted to shop around and find a better offer. When consumers are better informed and able to shop around for better offers there are potential immediate savings from switching to lower cost offers when prices change rather than shortly after the first billing cycle.

The proponents argued that the current rules (rule 46 of the NERR in relation to market offers and s23 of the NERL and schedule 1, clause 8.2 of the NERR in relation to standing offers) only require notice of price increases by the customer's next bill. As a result the customer may be unaware of a price increase for up to three months after a price change.

Given existing price diversity in the market, the proponents argued that providing advance notice of price increases is likely to prompt greater, and more frequent, engagement in the market with consumers more likely to take advantage of the wide range of deals available. This will then encourage competition between retailers.

3.1.2 Manner of notice critical to success

The manner in which the price change notice is provided to the customer is critical to the effectiveness of the proposed rule. The proponents argued that the current requirements in the NERL and NERR do not specify the manner and form of the notice that retailers must provide to consumers when tariffs change. Some retailers, it has been reported,¹¹ place relatively small 'price change' notices on bills, which can be easily missed.

In addition, the proponents argued that consumers lack awareness of the AER's online comparison website EME and consider it appropriate to bolster awareness of the site through the proposed notice

⁸ See page 6 of the rule change request.

⁹ See page 7 of the rule change request.

¹⁰ *ibid.*

¹¹ Rule change request page 5.

requirements.

3.2 Proposed solution

3.2.1

Proposed rule

The rule change request included a proposed rule.¹²

The proposed rule aimed to address the issues raised by requiring energy market retailers to provide customers with:

- 10 business days' advance notice of price increases on market offer contracts
- advance notice of price increases on standing offer contracts.

For increases to standing offer prices, the rule change request also required publication in a newspaper and on the retailer's website at least 10 business days in advance of the increase taking effect.

Consistent with the requirements under the National Energy Retail Amendment (Notification of end of fixed benefit period) Rule 2017 No. 2, the rule proposal stipulated that the AEMC may consider it appropriate to enhance the price change notice requirements to, for example, clearly state:¹³

- that a price change will occur, the price change and the price change date
- that the small customer may use the price comparator to compare offers that are generally available to classes of small customers in their area
- the name and web address of the price comparator
- that the customer can request historical billing data and/or energy consumption data, from the retailer.

3.2.2

Contribution to the National Energy Retail Objective

The proponents indicated that the disconnect between the date on which a retailer increases a retail price and the date on which the customer is informed of that price increase can result in the customer paying more. Absent this information asymmetry, a customer armed with the knowledge of an impending price rise will be more likely to seek out less costly alternatives in the market. The proponents consider that as a result the rule provides for more informed customers and will lead to improved customer outcomes.

Further, this change would improve a consumer's capacity to participate in the market with confidence and support consumer choice. The proponents consider that, as a result, the economic welfare of consumers will be maximised over the long term and therefore the proposal is in the long term interests of consumers of energy.

The proposed rule was also expected to result in the more effective operation of competitive processes and an overall improvement in the efficient operation of the market, which is in the long term interests of the consumer.

The rule change request also indicated that the implementation of this proposed rule is compatible with the development and application of consumer protections for small customers. Providing greater transparency to consumers which leads to substantive savings is aimed at protecting consumers against bearing unnecessary costs.

¹² Rule change request pages 6-7.

¹³ Rule change request page 10.

3.2.3 Stated costs, benefits and potential impacts

The proponents considered that advance notice of price changes is likely to have the following costs and benefits.

Benefits

Cost savings for consumers: Consumers may save money through an earlier awareness of price increases. The proponents argued that an individual consumer in NSW, for example, could save up to \$80 by switching retailer three months earlier than they may have under existing rules.¹⁴

Enhanced consumer engagement: The proposed rule will help to engage consumers in the energy market and encourage them to shop around for the best offer. Differences between worst and best electricity retail offers can exceed \$1000 per annum in most distribution areas.¹⁵

Improved confidence in market: Consumer confidence in the market should be improved as consumers are less likely to overlook price increases and should have sufficient time to act on notices. A customer who is provided notice which is insufficient may suffer the same detriment as a customer who receives none.

Reduced risk of bill shock: Consumers will have more information thereby reducing the risk of bill shock and improving their awareness of the choices available to them.

More efficient operation of market: The proposed rule provides an opportunity for additional prompts to engage with EME, consider alternative offers and drive improvements in competition, thereby improving the efficient operation of the market.

Harmonisation of regulation: The proposed rule would also improve compatibility of regulatory provisions in different states, reducing regulatory burden and administrative cost across jurisdictions.

Costs

System changes: The proposed rule will likely require some system changes by retailers. For those retailers who are already operating in Queensland, costs to roll out nationally should be minimal.

Electronic communication: Customers are increasingly moving to receiving electronic information from retailers. This is an avenue that can also be used to provide notice of price changes, minimising the cost of implementation of the proposed rule.

Administrative costs should be low: The proponents expect that the administrative cost of implementing the change is likely to be low and can be absorbed by retailers.

3.3 The rule making process

On 26 April 2018, the Commission published a notice advising of its commencement of the rule making process and consultation in respect of the rule change request. A consultation paper identifying specific issues for consultation was also published. Submissions closed on 24 May 2018.

The Commission received 18 submissions as part of the first round of consultation. The Commission considered all issues raised by stakeholders in submissions. Issues raised in submissions are discussed and responded to throughout the draft rule determination.

Issues that are not addressed in the body of this document are set out and addressed in Appendix A.

¹⁴ See: rule change request page 5.

¹⁵ AER 2017 state of the market report pages 148-150, <https://www.aer.gov.au/publications/state-of-the-energy-market-reports/state-of-the-energy-market-may-2017>

3.4 Consultation on draft rule determination

The Commission invites submissions on this draft rule determination, which includes a draft rule, by 16 August 2018.

Any person or body may request that the Commission hold a hearing in relation to the draft rule determination. Any request for a hearing must be made in writing and must be received by the Commission no later than 12 July 2018.

Submissions and requests for a hearing should quote project number RRC0015 and may be lodged online at www.aemc.gov.au or by mail to:

Australian Energy Market Commission

PO Box A2449

SYDNEY SOUTH NSW 1235

4 DRAFT RULE DETERMINATION

4.1 The Commission's draft rule determination

The Commission's draft rule determination is to make a more preferable rule. The draft rule requires advance notice of price changes to electricity and gas retail contracts.

The Commission's reasons for making this draft determination are set out in section 4.4.

This chapter outlines:

- the rule making test for changes to the NERR
- the more preferable rule test
- the assessment framework for considering the rule change request, and
- the Commission's consideration of the more preferable draft rule against the national energy retail objective.

Further information on the legal requirements for making this draft rule determination is set out in Appendix B.

4.2 Rule making test

4.2.1 Achieving the national energy retail objective

The Commission may only make a rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the national energy retail objective (NERO) and where relevant, in a manner that is compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers.¹⁶

The NERO is:¹⁷

"To promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy".

The NERO captures the three dimensions of efficiency: productive (efficient operation), allocative (efficient use of) and dynamic efficiency (efficient investment).¹⁸

4.2.2 Making a more preferable rule

Under section 244 of NERL, the Commission may make a rule that is different (including materially different) to a proposed rule (a more preferable rule) if it is satisfied that, having regard to the issue or issues raised in the rule change request, the more preferable rule will or is likely to better contribute to the achievement of the NERO.

In this instance, this is because the draft rule, in comparison to the proposed rule, allows for the following:

- five business days advance notice
- changes to prices in standing offer contracts to be notified with the same notice period as market

¹⁶ Section 205 of the NERL

¹⁷ Section 13 of the NERL

¹⁸ Productive efficiency means goods and services should be provided at the lowest possible cost to consumers; allocative efficiency means that the prices of goods and services should reflect the cost of providing them, and that only those products and services that consumers desire should be provided; dynamic efficiency means arrangements should promote investment and innovation in the production of goods and services so that allocative and productive efficiency can be sustained over time, taking into account changes in technologies and the needs and preferences of consumers.

- offer contracts
- price reductions to be notified with the same notice period as price increases
 - requirement for the notice to clearly state that a price change will occur, including a comparison of existing and new tariffs and charges, and the date on which the change will take effect
 - an exemption where a customer has entered into a new contract with the retailer within ten business days before the date of the price change and the retailer has informed the customer of the change prior to contract entry. (Applies to market and standing offer customers)¹⁹
 - an exemption where notice has already been provided for a benefit change²⁰ under the fixed benefit rule. (Applies to market offer customers only)²¹
 - a limited exemption for spot market linked contracts. (Applies to market offer customers only)
 - an exemption for retailers with consumers on regulated prices in areas where there is no effective retail competition for small consumers. (Applies to regulated offer customers)
 - an exemption where the changes to the tariffs and charges are a direct result of a change to, or withdrawal or expiry of, a government funded rebate, concession or relief scheme. (Applies to market and standing offer customers).²²

4.3 Assessment framework

To determine whether the draft rule is likely to contribute to the achievement of the NERO, the Commission assessed the draft rule against an assessment framework:

- **Transparency of information.** Lack of appropriate transparency in the market, and in particular a lack of timely information about price changes, can lead to consumers losing confidence in, and failing to engage with, the market. The impact of any rule made on market transparency and timely information availability, as required for consumers to make informed product and supplier choices is considered.
- **Consumer engagement and participation.** Consumer participation in the market, through actions like changing retailer or offers, provides retailers with information and incentives to develop products that better meet consumer preferences, in terms of price and other terms and conditions. Any rule made will be assessed in terms of the likelihood it will increase the potential for consumers to adapt their behaviour through changing energy consumption, investing in distributed generation or changing retailer or contract.
- **Competition between retailers.** To participate in the market with confidence and in a way that sends the appropriate signals to retailers about consumer preferences, consumers need to have clear and relevant information on retail offers. Where consumers have clear and relevant information on offers, retailers will have greater incentive to provide contract terms that meet consumer preferences because they know their consumers are engaged and have sufficient information to churn to better offers where available. The degree to which advance notice and the scope, format and content of advance notice is likely to enable consumers to engage with the market and either churn to a new retailer or new offer and in so doing increase the level of competitive activity between retailers will be assessed.
- **The regulatory and administrative burden.** Requiring additional notices to be sent to consumers may create additional costs for retailers, particularly when required outside the billing

19 For market offers, the retailer must obtain the explicit informed consent of the customer pursuant to rule 46A of the NERR and section 39 of the NERL.

20 'Benefit change' is defined in rule 45A of the NERR.

21 Rule 48A was inserted into the NERR by the National Energy Retail Amendment (Notification of end of fixed benefit period) Rule 2017 No. 2

22 The exemption does not apply in the case of the end of a government subsidy scheme such as the Large-scale Renewable Energy Target (LRET) or the Small-scale Renewable Energy Scheme (SRES)

cycle. The impact on expected benefits and costs of requiring the notice in different forms is considered. The benefits of the proposed rule change versus the implementation costs that would likely pass through to consumers in a workably competitive market is considered. The degree to which consistency with the existing rule in Queensland will save retailers costs by harmonising requirements across states is also assessed in implementing any rule made.

The NER requires efficiency in the investment, operation and use of energy services in the long term interests of consumers. Where feasible, competitive markets provide the best means of promoting efficiency. Where competition is effective, retailers will have strong incentives to provide products and services that consumers value and set prices that reflect efficient costs.

The draft rule seeks to create a requirement for advance notice of price changes and to provide energy consumers with information to assist them in taking action to manage the impact of price changes on their bill, including shopping around for alternative contracts and taking action to reduce their energy consumption.

The Commission has assessed the draft rule against the counterfactual of not making the proposed change to the NER. That is, against the current situation where energy consumers are not required to receive advance notice of price changes.

4.4 Summary of reasons

The draft rule made by the Commission, is attached to and published with this draft rule determination. The key features of the rule are summarised below.

4.4.1 Key features of the rule

Notice period

Notice is required five business days in advance of any variation in the tariffs or charges that apply to the customer.

Coverage

The notice covers market offer and standing offer customers with the same notice period.²³

All price changes are covered by the notice. Five business days advance notice applies equally to price decreases as to price increases.²⁴

The notice must specify:²⁵

- that the customer's tariffs and charges are being varied
- the date on which the variation will come into effect
- the customer's existing tariffs and charges
- the customer's tariffs and charges as varied
- that the customer can request historical billing data and, if they are being sold electricity, energy consumption data, from their retailer.

The notice may be delivered by the customer's preferred form of communication where the customer has indicated this to the retailer, or otherwise by the same method as that used for delivery of the customer's bill.²⁶

²³ Draft rule: NER, Schedule 1, item 8.2

²⁴ Draft rule: NER 46(4)(a)

²⁵ Draft rule: NER 46(4A)

²⁶ Draft rule: NER 46(4)(b)

Exemptions

- where the price change is the direct result of a benefit change and the retailer has provided notice under rule 48A (retailer notice of benefit change - market retail contracts), then an additional notice under the proposed draft rule would not be required. (Applies to market offer customers only)²⁷
- an exemption for consumers on regulated price contracts, or prices that are otherwise set by legislation, a government agency or regulatory authority. (Applies to regulated offer customers only)²⁸
- an exemption where a customer has entered into a new contract with the retailer within ten business days before the date of the price change and the retailer has informed the customer of the change prior to contract entry. (Applies to market and standing offer customers)²⁹
- an exemption for tariffs or charges that are tied directly to the energy spot price. The exemption is limited however, such that the retailer must provide notice if the tariffs or charges under any other parts of the bill change. (Applies to market offer customers only)³⁰
- an exemption for changes to the consumer's energy costs that are a direct result of a change to or withdrawal or expiry of, a government funded rebate, concession or relief scheme. (Applies to market and standing offer customers).³¹

Further detail on the draft rule can be found in Chapter 5.

4.4.2

Contribution to the NERO

The Commission is satisfied that the draft rule, will, or is likely to, contribute to the achievement of the NERO by promoting efficient use of energy services for the long term interests of consumers, for the following reasons:

- The draft rule will make price information more transparent to the consumer in a timely manner. Armed with more up to date information consumers will be in a better position to make better informed product and supplier choices. These choices may involve the consumer changing energy plan with their current retailer, switching to a new energy provider or changing their consumption patterns.
- The rule is likely to increase the level of action on the part of the consumer encompassing energy efficiency measures, budgeting and distributed generation installation as well as engagement and participation with the retail market either directly via their retailer or via energy comparison websites like EME. Consumers may be more likely to act as a result of advance notice than if they received notice only with their next bill.
- The draft rule should act to increase the level of competitive activity between retailers particularly in a rising price environment and particularly around key dates in the pricing calendar. Retailers will be incentivised to provide contract offers and new products that better meet consumer preferences, where those consumers are more engaged with the market and have more up to date information.

27 Draft rule: NERR 46(4B)(b)

28 Draft rule: NERR Schedule 1, section 8.2(a3)(ii)

29 Draft rule: NERR 46(4B)(a)

30 Draft rule: NERR 46(4B)(c)

31 Draft rule: NERR 46(4B)(d)

- The draft rule provides for the flexible delivery of notices in a manner that respects the wishes of the consumer, allows for growing trends in the form of communication preferred and enables the retailer to reduce the cost of notification and hence minimise the potential for incremental costs to be passed through to consumers. The benefits of the draft rule are expected to accrue both in terms of near term cost savings for consumers and also over the long term, as increasing engagement with the market should mean less consumers are seen to remain on uncompetitive standing or market offers, where lower cost alternatives exist.

Further detail on these reasons can be found in Chapter 5.

5 ASSESSMENT OF THE DRAFT RULE

The Commission considers that the existing rules for notification of price changes to consumers can be improved by the introduction of advance notice.

This chapter summarises the key issues considered by the Commission in developing the draft rule. It outlines:

- the primary purpose of the notice and how this impacts the specification and design of the notice
- information to be included in the notice
- different options for delivery of the notice to the consumer
- coverage of the notice in relation to both gas and electricity retail contracts, standing and market offers and price decreases as well as increases
- the minimum notice period required
- exemptions from the advance notice requirement
- the costs and benefits that are likely to accrue as a result of the rule.

5.1 Primary purpose of advance notice of price changes

The primary purpose of the notice is a key consideration in determining the design, contents and coverage of notices. These considerations in turn have a bearing on the cost benefit trade-off derived as a result of implementation of the draft rule.

The primary purpose may be considered to be relatively narrow, in terms of informing consumers of a price change in advance of that change, fulfilling consumers right to know in advance and alleviating the risk of 'bill shock'. Alternatively, the primary purpose may be considered to include broader objectives including consumer engagement and participation in the market, in particular with regards to consumer action to switch between different retail plans and save money.

The purpose could be considered broader still, encompassing not only 'switch and save' activity but all consumer action in response to a notice, including changing consumption patterns, budgeting and investing in distributed generation or energy efficiency measures.

The cost benefit trade-off of advance notice becomes more challenging and uncertain where the notice is meant to achieve numerous things, such as preventing bill shock and encouraging 'switching and saving'. The more the notice is aimed at achieving the more prescriptive the notice requirements would have to be leading to greater expense and inflexibility in the notice. The likely impact on engagement of a prescriptive notice requirement is more uncertain and based on broad consultation has the potential to see consumer response to the notice fall as consumers are progressively switched off the market by an excess of information and unclear signalling.

Determining the primary purpose and prescribing a notice that is focused on this, may be more likely to achieve the primary purpose and in the process enable a greater level of consumer action than a notice designed with broader objectives.

5.1.1 Proponents view

The rule change request raised two key issues in relation to the purpose of advance notice. Firstly, the proponent argued consumers deserve the right to be informed of changes to their energy prices before they occur. Currently consumers are subject to 'bill shock' when they receive notice of price increases with their next bill.

Secondly, consumers should be provided with the opportunity to shop around for the best offer prior to new prices taking effect. This consumer engagement with the market, in particular shopping around for

alternative offers, is also likely to increase competition in the retail energy market putting pressure on retailers with the effect of driving down prices. The proponent felt the notice could be an opportunity to make consumers aware of information resources available to them, such as the AER's website Energy Made Easy.

The proponent also pointed out that the implementation of the proposed rule is compatible with consumer protections for small consumers. Providing greater transparency to consumers, in the process helping them to save money, is clearly aimed at protecting consumers from bearing unnecessary costs.

5.1.2

Stakeholder views

Stakeholders were in general of the view that the primary purpose of the notice is the consumer's right to know of price increases before they occur and the alleviation of 'bill shock'. Stakeholders were supportive of the rule change in this context. Larger retailers, however, were sceptical of the level of engagement the notice could be expected to prompt. They maintained that customers are switched off the energy market by too much information and long notices. They felt notices will be more effective if kept short and simple and aimed at the primary purpose of letting customers know their rates are changing. AGL argued that notices should not be diluted by additional messaging or information.³²

Other stakeholders, including the Independent Pricing and Regulatory Tribunal (IPART) and several consumer groups including COTA Australia, Brotherhood of St Laurence (BSL), the South Australian Council of Social Service (SACOSS) and Energy Consumers Australia (ECA) expressed the view that the primary purpose should include consumer engagement with the market including actions such as switching retailer or energy plan.³³ These stakeholders also felt references to EME and the customer's ability to access their historical billing and usage data should be included in notices as part of this broader purpose.

The Energy and Water Ombudsman (Victoria) in their submission provided case study evidence that advance notice, when communicated effectively and clearly, could reduce confusion and misunderstanding between retailers and customers.³⁴ This, in due course could reduce complaints to the ombudsman as well as providing customers with more opportunities to become engaged with the market.

5.1.3

Findings

In considering the primary purpose of advance notice, the Commission has considered the current design of advance notice in the Queensland rule and in the proposed rule. It is the Commission's view that the primary purpose is the consumers right to be informed of price increases before they occur and the avoidance of 'bill shock'.

Stakeholder feedback has emphasised the degree of uncertainty in the level of consumer engagement following notices, including the possibility that consumers are disengaged by too much information, and varying views on the additional costs of making the notice more complex.

The Commission considers that the primary purpose will be best achieved by any rule made that clearly defines the minimum requirements in the notice to meet this purpose. This will facilitate the delivery of notices that are short, to the point and allow the consumer to decide their next course of action following notification.

32 AGL Energy, consultation paper submission, p.3.

33 Consultation paper submissions: IPART, p.1; COTA Australia, p.1; BSL, p.1; SACOSS, p.1; ECA, p.4.

34 Energy and Water Ombudsman (Victoria), consultation paper submission, p.1.

5.2 Information to be included in notices

The contents of advance notice under the draft rule are driven by the primary purpose of the rule, the need for consistency across retailers as to how price changes are messaged and the optimal cost benefit trade-off for retailers and consumers. Simple and clear notices with less information are preferred.

An excess of information, in particular where the consumer is not required or able to act immediately, may desensitise the consumer to energy information in general and crowd out the key message that advance notice is looking to deliver. In addition, simple notices are likely to be more cost effective and quicker for retailers to produce.

Simple, clear notices are also more compatible with the variety of communication forms that digital consumers are increasingly choosing to receive their communication.

5.2.1 Proponents view

The proponents specified, as per the requirements of the existing derogation to the NERR in Queensland, that the retailer give notice of any variation in tariffs or charges that affects the customer. The proponents also requested that the Commission might consider enhancing the price change notice to include:

- that a price change will occur, the price change and the price change date
- that the small customer may use the price comparator to compare offers that are generally available to classes of small customers in their area
- the name and web address of the price comparator
- that the customer can request historical billing data and, if they are being sold electricity, energy consumption data, from the retailer that will assist it to use the price comparator to compare offers that are generally available to classes of small customers in their area.

The proponent also drew attention to the manner in which the notice is provided to customers, maintaining this would be critical to its effectiveness and noting that under the existing rules, the price change notices retailers put on bills are relatively small and as a result can be easily missed.

5.2.2 Stakeholder views

Stakeholders were of the view that the notice should be as concise as possible with two key reasons advanced for this:

- consumers tend to get put off by long notices, so the longer the notice the less effective it may be in engaging the consumer with the market
- the more information in the notice, particularly where customer specific, the more the notice will cost and the longer it will take to develop.

Origin contended that notices should be kept as short as possible, there is too much information going to the consumer at the current time and the retailer should have some discretion on content.³⁵

With regards to including price information specific to the customer, in particular the customer's existing rate and the new rate to apply under the change, many stakeholders, including Simply Energy, Powershop, Public Interest Advocacy Centre (PIAC) and IPART were in support of this.³⁶ Origin, however, maintained that they do not support mandatory tariff tables as including these rates is time consuming.³⁷ They pointed out that across all jurisdictions there are many different tariff products, and

³⁵ Origin Energy, consultation paper submission, p.2;

³⁶ Consultation paper submissions: Simply Energy, p.1; PIAC, p.9; IPART, p.2.

³⁷ Origin Energy, consultation paper submission, p.4.

customising the notices in this way adds to the cost and timeframe for producing the notices. AGL also indicated that the inclusion of a rates table, or personalised customer information, can add significant time and complexity to the system solution.³⁸

References to EME and the consumers ability to access historical billing and usage data was supported by most stakeholders. Larger retailers however pointed out issues with the inclusion of references to EME and the problem of timing differences between the date at which customers are notified their rates are changing under advance notice and the date at which offers must be updated on EME. AGL pointed out that under section 23 of the Retail Pricing Information Guidelines (RPIG), retailers are required to submit information on generally available plans within two business days of the plan becoming available.³⁹ As such, consumers will not be able to compare their new prices with new offers available from the market as a whole.

Origin suggested that as a result of this issue any references to the customer to review their price changes should be to the retailer's website and not EME.⁴⁰ Simply Energy similarly did not support the inclusion of a link to EME given the potential to confuse consumers.⁴¹

IPART in support of the inclusion of references to EME noted that omitting this provision in the rule would lead to an inconsistency with the fixed benefit rule and this might lead retailers to change prices or charges to customers in a way that leaves them with the least burdensome notice obligation under the two rules. They further noted that issues around the timeframe for the update of offers on EME should be addressed by the AER.⁴²

5.2.3

Findings

The Commission supports the view provided by stakeholders that notices should be as short as possible both to avoid turning consumers off the market and to avoid unnecessary costs where the benefits of longer notices are not easily quantified and the results may be counter-productive in terms of engagement.

A simple and concise prescription for the notice will mean shorter notices and notices that are more readily adapted to the consumer's preferred method of communication, including SMS.

The Commission in the draft rule has determined that the notice should provide information that prices are changing, the date on which they change, and a summary of the existing price structure and the new price structure. This price information should be included in written form on the notice, a link to the information is not sufficient. In addition the notice should require reference to the customer's ability to access their historical billing and energy usage data. A notice heading that the customer's prices are changing should be prominent and it should be clear that the primary purpose of the notice is to inform the customer of the price change.

In some instances the Commission notes retailers have been providing information on the reasons for price increases. Beyond the minimum requirements, retailers under the draft rule would be free to add explanations on the reasons for price increases and advice to the customer on how to manage or reduce their consumption or any alternative retail offers that the retailer considers may be of benefit to a particular customer.

The draft rule does not require a reference to the EME website. However, the AER may wish to consider as part of the periodic reviews into the RPIG, whether the issues identified in this draft determination

38 AGL Energy, consultation paper submission, p.8.

39 AGL Energy, consultation paper submission, p.6.

40 Origin Energy, consultation paper submission, p.3.

41 Simply Energy, consultation paper submission, p.2.

42 IPART, consultation paper submission, pp.2-3.

with the timing of the updates of offers on EME can be addressed, in future, by more closely aligning the timelines for advance notice with the timelines for the update of offers on EME.

5.3 Method of delivery of notice

Consumers vary in the form of notice and communication they prefer from their retailer. Forms of communication are evolving rapidly as more consumers opt for electronic notification and retailers look to move consumers to low cost, flexible forms of communication. In cases where consumers have opted for electronic communication, sending paper notices may not be desired by the consumer even where this information is intended to be helpful.

Retailers have also developed mobile applications for communication with their customers. The draft rule does not currently stipulate the way in which market offer customers are to be notified. This may then allow for the retailer to use the consumer's preferred method of communication.

5.3.1 Proponents view

The proponents did not suggest a preferred method of notice. However, the rule change proposal noted that current requirements in the NERR do not specify the manner and form of the notice that retailers must provide to consumers when tariffs change.

5.3.2 Stakeholder views

Stakeholders were generally in favour of a price change notice delivered separately to other notices or bills and simple notices where the notification of a price change is the headline.

Stakeholders vary considerably in the proportions of their customer base that opt for email communication versus more traditional paper methods. The costs of implementing any rule requiring advance notice were generally felt to be much lower for a customer opting for email communication versus paper communication. Stakeholders also pointed out that the preferred method of communication from the consumer was an important consideration. Some consumers do not wish to receive any paper communication and are likely to view it as unwanted mail. There was broad support for a rule in which the method of communication is the customer's preferred method.⁴³

5.3.3 Findings

Based on stakeholder consultation, trends in the retail energy industry for greater numbers of consumers over time choosing to opt for electronic communication and the much lower cost of electronic communication versus paper, the Commission in the draft rule has allowed that consumers should be notified of price changes according to their preferred method of communication. The Commission notes that where a large retailer has up to half their customer base on paper notification and mail out costs are in the order of \$1-\$3 per letter, the costs for a price change notice across all jurisdictions would not be insignificant at the current time. Allowing for the consumers preferred method of communication in the delivery of the notice is likely to provide the greatest benefit to consumers while also providing retailers with the scope to manage the costs of implementing the rule over time.

Notices should be separate to other notifications, including bills. However, as is noted in the section on exemptions, notice under the fixed benefit rule may in certain circumstances exempt the retailer from sending additional notice to the customer under this rule.

If the consumer has not specified their preferred method of communication then the retailer should use the same form of communication as is currently used for the customer's bill.

⁴³ Consultation paper submissions: AGL, p.4; Origin, p.4; Powershop, p.2; EWON, p.2.

5.4 Coverage of notice

Given the primary purpose of the notice is to satisfy the consumer's right to know of price changes before they occur, coverage of advance notice should, in the Commission's view, encompass all consumers that are impacted by changes to retail energy prices.

As a consequence issues of coverage relate to both gas and electricity contracts and standing and market offer contracts.

The application of advance notice in relation to price decreases is considered in this section. While the rule change proposal did not suggest any changes in relation to notice for price decreases, the Commission has taken two factors into consideration:

- the difficulty in determining whether a change will result in a clear decrease or increase to the customer's bill over the coming period
- whether advance notice in the event of decreasing contract prices would also be appropriate in terms of the customer's right to know and the potential for consumer action.

5.4.1 Proponents view

The rule change request made reference to energy and energy prices, rather than specifically referring to electricity and gas.

The rule change request proposed ten business days advance notice for market offer contracts and advance notice for standing offer contracts.

The rule change request proposed ten business day's advance notice for price increases but notification at a minimum in the next bill for price decreases. The treatment of price decreases in the rule change proposal reflects the rules as they currently apply.

5.4.2 Stakeholder views

Stakeholders, including Origin, Powershop, COTA Australia, PIAC, Energy and Water Ombudsman NSW (EWON) and BSL expressed broad support for the application of the draft rule to both gas and electricity.⁴⁴ No stakeholders opposed the inclusion of both gas and electricity contracts.

Stakeholders also expressed broad support for the application of the rule to standing offer customers with the same level of notice as market offer customers. Simply Energy was not supportive of this however, noting that standing offer customers in many cases may be unnamed or bad debt customers who are not active or intent on being active in the energy market.⁴⁵

Stakeholders were less supportive of applying advance notice to price decreases. Origin felt notice in relation to price decreases should be left to the retailer's discretion.⁴⁶ AGL commented that in the case of a clear price decrease advance notice should not be required.⁴⁷ IPART indicated they felt this coverage is unnecessary, the benefits are unlikely to outweigh the costs and notice of a price reduction is unlikely to provide a stimulus to engagement. In addition, they felt requiring notice in this instance might be a disincentive on retailers to lower their prices.⁴⁸

In contrast, the Queensland Consumers Association (QCA) strongly recommended that the rule apply to both price decreases and increases and COTA Australia indicated that advance notice in the case of a price decrease still prompts the customer to review their options and pick the best offer from amongst

44 Consultation paper submissions: Origin Energy, p.3; Powershop, p.2; COTA Australia, p.2; PIAC, p.2; EWON, p.1; BSL, p.2.

45 Simply Energy, consultation paper submission, p.2.

46 Origin Energy, consultation paper submission, p.3.

47 AGL Energy, Consultation paper submission, p.4.

48 IPART, consultation paper submission, p.4.

different retailers.⁴⁹ The ECA was supportive of the application of the rule to price decreases stating that this avoids any question of whether notice is required when one component increases and another component decreases.⁵⁰ PIAC indicated the Commission should conduct further work to determine whether notice should apply in circumstances of falling prices.⁵¹

5.4.3

Findings

The NERL and the NERR generally apply equally to both electricity and gas. The Commission is of the view that the rule should apply to both electricity and gas. The consumer's right to know of price changes before they occur and in the process avoid bill shock is no different whether the energy service provided is in the form of gas or electricity.

From stakeholder submissions and consideration of the processes and systems that retailers would need to put in place to meet the requirements of the draft rule, the Commission is satisfied that the period of advance notice should apply equally to standing offer customers as to market offer customers and also equally to price decreases as to price increases.

In the case of standing and market offer customers, there are benefits to consistency between the two contract types and the Commission sees no reason to differentiate between the two. The Commission also assesses that the shorter period of advance notice of five business days, provided for in the draft rule, will allow retailers with standing offer customers using paper notification more time to communicate with this customer group in addition to market offer customers.

Standing offer customers may be in a position to benefit from advance notice more than market offer customers given that they have may not have participated in the market recently. Standing offer customers who have had credit issues may benefit more from the additional time to budget for energy price increases and so avoid bill shock.

An additional factor should be taken into consideration in relation to coverage of the rule. Under section 23(3)(c) of the NERL, standing offer customers are required by law to receive notice of price increases when the retailer sends their next bill. As a result, under the draft rule, the standing offer customer would receive notice under the proposed rule five business days in advance and under the existing law, 23(3)(c), in their next billing cycle.

Consistent treatment of price increases and decreases has benefits in terms of the ease of implementing the rule due to the difficulty of affirming whether a price decrease is in fact a decrease. A customer may see fixed rate charges fall, but variable charges increase. Whether their overall bill will increase, in unit volume terms, as a result of these changes may vary depending on the consumer's existing and future consumption pattern. Making the rule consistent for price increases and decreases removes this complication and requires the retailer to issue advance notice in the event of a price change, regardless of whether it results in an increase or decrease in the customer's bill.

This requirement removes the difficulty of forecasting the likely impact on the consumer. It removes the complication for the retailer of assessing whether there has only been a change in one component and whether the change in that single component is likely to increase the customer's bill. Similarly, where consumer tariffs differ for usage at different times of the day, it removes the need for the retailer to assess whether this results in an increase or decrease in the customer's bill.

The Commission also considers that there is merit in requiring notices to be in the same format whether they notify the customer of a price increase, a change, or a clear price decrease. Consumers as a result receive consistent and clear messaging about their energy prices and their ability to access their

49 Consultation paper submissions: QCA, p.1; COTA Australia, p.2.

50 Energy Consumers Australia, consultation paper submission, p.5.

51 PIAC, consultation paper submission, p.2.

historical billing and usage data.

As price structures become more complex over time, with the potential for more cost or time reflective tariff structures to be developed, the requirement for all changes to require notice will simplify both compliance decisions for retailers and enforcement action for regulators.

5.5 Notice period

The optimal period of advance notice depends both on consideration of the consumer's needs and an appreciation of the processes that are both within and outside the retailers control.

While the proponent has put forward a period of ten business days in the rule change proposal, there are a number of considerations the Commission has taken into account in determining the most effective period of notice in the draft rule. These are as follows:

- notice should be clearly in advance of the price change taking effect. Consumers do not check or read their mail with perfect regularity and so they may need time to open communication and digest information before considering their options
- the consumer should have time to take action before the new price comes into effect. This action may include budgeting, changing consumption patterns, deciding to invest in distributed generation or energy efficiency measures as well as engaging with the market directly with their retailer or via energy comparison sites with a view to changing plan or retailer
- the notice period needs to be sufficiently flexible to allow retailers the scope to manage notifications over a time period that will allow for the efficient mail out of notices, both paper and electronic, and to manage call centre responses to notices when they come in. This has implications for the capacity of the retailer to implement any rule, and for the consumer to have a positive interaction with retailers once they have received the notice
- the timing of updates to key components of the customer's bill, such as network tariffs. The timeframe needs to allow for these deadlines as they currently stand, potential delays to network determinations and it needs to provide time for retailers to complete a number of processes on receipt of final tariffs, prior to notices being issued.

5.5.1 Proponents view

The proposed rule specified ten business days advance notice for price increases on market offer contracts and advance notice on standing offer contracts. The proponent specified that advance notice should be provided with sufficient time prior to a price change to allow the consumer to consider their options.

The proponent assessed that retailers have enough time to manage network tariff changes and provide ten business days notice. The proponent maintained distributors are required to supply proposed network tariffs by 31 March of each year, with the AER then making its decision within 30 business days of receiving tariff proposals. As a result, the proponent argued, retailers should have sufficient time to inform customers of price changes ten business days in advance.

5.5.2 Stakeholder views

IPART and consumer groups such as COTA Australia and PIAC were in favour of a ten day notice period.⁵² Retailer responses to the length of notice varied, in part, based on their size.

Smaller retailers and particularly retailers who have established a customer base dominated by digital communication were on the whole less concerned with the logistics and timing issues of a ten day

⁵² Consultation paper submissions: IPART, p.3; COTA Australia, p.2; PIAC, p.2.

advance notice period.⁵³ This is in spite of the fact that some smaller retailers may be price followers who need to observe the offers of the major retailers before they can begin to finalise their pricing strategy.

Major retailers with a substantial portion of their customer base still on paper notification generally expressed a greater level of concern with the ten day notice period than smaller retailers. This group included AGL, Origin, and Red Energy.⁵⁴ The retailers collectively argued that the Commission should allow them the flexibility to allow notification anytime before the new prices take effect. The Australian Energy Council (AEC) also supported this view.⁵⁵

Generally the retailers held a common concern that tariff update requirements for networks might cause retailers problems in meeting the ten day advance notice deadline. AGL put forward that currently network businesses are required to submit their pricing proposal to the AER no later than 31 March each year. The AER then have 30 business days to conduct an annual review of network pricing proposals prior to tariffs being finalised. New network tariffs are then effective from 1 July. AGL suggested this timeframe leaves retailers with only 24 business days to finalise new price offers for the coming year.⁵⁶ This already contracted timeframe may be reduced by any delays in the AER approval process. It was also mentioned by some retailers that electricity tariffs could be set as late as mid May and gas network tariffs as late as early June.

In addition to the work required to prepare notices, large retailers must also contract with mail houses to send out mail for the portion of their customers opting for communication in this way. There are a limited number of mail houses that can manage large mail outs according to retailers. The daily mail out capacity of retailers as agreed with their mail houses is subject to contract and confidential, however it should be assumed that the mail out for a large national retailer will need to occur over several days and possibly weeks. In addition, as AGL submitted, some time needs to be allowed for postage delivery.⁵⁷

Large retailers also raised the issue of increased call centre activity within a greatly reduced timeframe for price notification.⁵⁸ According to retailers, wait times at their call centres can increase significantly after price notices are sent out. An increase in call centre handling times, around periods where contract prices tend to change, is unhelpful in increasing consumer engagement with the market. If notice requirements can be spread out over a longer time period, retailers indicated this might help to manage call centre wait times.

AGL also pointed out that under the new RPIG requirements, retailers must take several more steps when managing new offers, including the way this information is marketed, linked on their website and linked to EME.⁵⁹ Reducing the timeframe available to do this or requiring retailers to publish offers before they are available would, according to AGL, be in contradiction to the RPIG's purpose.

IPART in its submission however, put forward that large retailers could handle all these issue in other ways.⁶⁰ IPART noted that there is no requirement for retailers to change prices on 1 July each year in step with the network price change. For some retailers it may be more cost effective to manage implementation of the rule by applying price changes after 1 July. IPART noted other strategies retailers could use in managing the mail out costs including:

53 Powershop, consultation paper submission, p.2.

54 Consultation paper submissions: AGL Energy, p.4; Origin Energy, p.1; Red Energy, p.1.

55 AEC, consultation paper submission, p.2.

56 AGL Energy, consultation paper submission, p.5.

57 AGL Energy, consultation paper submission, p.5.

58 Consultation paper submissions: AGL Energy, p.7; Origin Energy, p.1.

59 AGL Energy, consultation paper submission, p.6.

60 IPART, consultation paper submission, p.4.

- absorbing minor changes in network prices, rather than passing them through to customers immediately
- providing customers with incentives to sign up to online communication
- providing effective communication to customers in notices to reduce the number of follow-up enquiries to their call centres.

5.5.3

Findings

The Commission finds that a five day advance notice period balances the commercial and operational requirements of retailers against the length of time consumers need in order to meet the purpose of the draft rule, namely being informed prior to a price change taking effect and preventing bill shock.

In an example showing a July 2019 timeframe for reference (Table 5.1), it can be seen that five business days notice will allow large retailers sufficient time to manage the process of advance notice and small delays in network tariff finalisation, should they occur.

Allowing retailers to stagger advance notice over a slightly longer period should assist retailers with large numbers of mail out customers to keep costs to a minimum and to maintain higher service levels at their call centres without incurring additional short term costs. Nevertheless, the timeframe is still relatively short. Retailers efforts in recent years to move customers to digital communication will be further incentivised by the requirement for five business days advance notice.

It is expected that larger retailers will begin notifying customers such that some customers receive notice more than five business days in advance, and in many instances close to ten business days, as their mail out campaign ramps up to meet the minimum five day requirement. It is also expected that smaller retailers, who tend to take their pricing lead from the larger retailers, will have more time to assess their price offers in response to moves by the bigger retailers, and send these offers to their customer base with the required five business days notice.

The notice period may also help to avoid conflict across jurisdictions, in particular between the existing derogation in Queensland and the draft rule. The five day notice period should allow for compliance with both rules, with Queensland notices potentially sent out in advance of other jurisdictions.

Table 5.1: Example Timeline for 1 July 2019 Advance notice for a large retailer

WEEK BEGINNING	WEEK	KEY DATES	WEEKLY PROCESSES
29 April	Week 1	AER to finalise network tariffs	Pricing Decision, Data Preparation, Marketing, Production, Briefing, Test, Approval
6 May	Week 2		Pricing Decision, Data Preparation, Marketing, Production, Briefing, Test, Approval
13 May	Week 3		Pricing Decision, Data Preparation, Marketing, Production, Briefing, Test, Approval
20 May	Week 4		Pricing Decision, Data Preparation, Marketing, Production, Briefing, Test, Approval
27 May	Week 5		Pricing Decision, Data Preparation, Marketing, Production, Briefing, Test, Approval
3 June	Week 6	First notice mailed	Mail Out
10 June	Week 7		Mail Out, Call Centre Response
17 June	Week 8	Last notice mailed	Call Centre Response
24 June	Week 9	Notices due – Latest	Call Centre Response
1 July	Week 10	Price Change	Call Centre Response

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The Commission is of the view that while five business days notice is likely to have a beneficial impact on the commercial and operational requirements of retailers it should have little detrimental impact on consumers. In fact, it may, through the avoidance of higher retailer costs and the reduction in call centre wait times, have a beneficial impact versus a longer notice period.

The Commission considers that there is no consumer action that is dependent on ten business days advance notice rather than five. Consumer action in response to rising or changing prices is likely to take longer than ten business days or less than five.

With five business days notice the consumer can put into effect budgeting plans or changed consumption patterns. The consumer can also contact their existing retailer and negotiate a new retail plan that can be put into effect right away.

Other action, like switching retailer or investing in distributed generation, will in most cases take more than ten business days to implement. Consumers without a smart meter are likely only able to switch plan at their next scheduled meter read, which may be after the new charges have come into effect. However, where a consumer does decide to switch retailer, five business days advance notice will help to prompt this action well in advance of the customer's next bill.

5.6 Exemptions

The Exemptions under the draft rule are aimed at avoiding scenarios in which the consumer would receive multiple notices of price changes in a short space of time, providing them with the same information or information they would be aware of on entering the contract. The following exemptions to the rule are proposed:

- a time restricted exemption where a retailer has already informed the customer of an impending price change on contract entry
- an exemption where the customer has already been made aware of a price change by virtue of a notice under the fixed benefit rule
- an exemption for contract structures in which the customer has opted to take spot price risk and as a result the price is expected to vary in each month of the contract period, depending on the wholesale price of energy
- an exemption for consumers whose prices are set by the regulator for a particular region, where such regions are not subject to full retail competition
- an exemption for consumers whose tariffs or charges have changed as a direct result of a change to, or withdrawal or expiry of, a government funded rebate, concession or relief scheme.

5.6.1 Proponents view

The rule change request did not explicitly refer to any exemptions. However, the Queensland rule, which the proposed rule is in part based on, exempts retailers that are subject to notified prices set by the Minister for price regulated areas in Queensland where there is no effective retail competition.

5.6.2 Stakeholder views

Discussions with stakeholders indicated that an exemption is appropriate where a customer has recently entered a new contract for energy and has been informed of an impending price change on contract entry. Provided the retailer at the point of contract entry has informed the customer of the change, including the date and the new rates to apply, stakeholders felt an additional notice would not be required. This reinforces a point made by stakeholders that customers should not be subject to excessive notification, which is more likely to see them disengaged from the market.

Stakeholders also raised this issue in relation to the fixed benefit notice and were generally of the view

that it would be better for consumers to receive only one notice, provided the requirements of both rules are met through the provision of notice under one rule.

In relation to an exemption for regulated price customers, both Aurora Energy and the Department of State Growth (Tasmania) indicated that an exemption should apply.⁶¹ Their argument was two fold:

- regulated price customers are unable to choose between different retailers with only one retailer, Aurora, supplying small customers in Tasmania. As a result the notice provides no benefit and may even cause some confusion amongst customers
- the cost of the notice is likely to be up to \$300,000 each time a notice is sent to the 250,000 customers this would apply to. This cost would likely be passed through to consumers.

Aurora and Department of State Growth (Tasmania) also contended that the existing rules provide for adequate notice to regulated price customers, both direct to the customer and via the publishing of new rates in the public domain. Aurora's view was also supported by the Department of State Growth (Tasmania) that the proposed rule should not apply to regulated contracts in jurisdictions where effective retail competition is not yet evident, but that this exemption should then be lifted if the profile of the retail market in Tasmania changed.

Department of State Growth (Tasmania) noted that there are other jurisdictional areas in similar circumstances.⁶² As part of the progression towards a national harmonised regulatory framework, there may be a preference for including exemptions in the NERR for price regulated jurisdictions, which will reduce the need for those jurisdictions to seek derogation from the draft rule.

TasNetworks in contrast submitted in support of coverage to regulated price customers.⁶³ TasNetworks submitted that advance notice would give customers additional time to evaluate energy efficiency measures, investment in distributed generation and other options to mitigate the impact of a price increase. It may also see customers making more informed electricity pricing decisions following the roll-out of advanced metering technology. Advance notice in addition to the roll out of smart metering technology would assist in the transition to more cost reflective pricing.

5.6.3

Findings

The draft rule provides an exemption to cover newly acquired customers who have been informed of price changes on contract entry. This is to avoid consumers receiving price change notices prior to changing retail plan and then an additional notice from their new retailer in relation to price changes they have already been made aware of. In such instances there is little benefit to consumers, additional notification in a short time frame may be an irritant, while there is a cost to providing an additional notice. The exemption applies to both market and standing offer customers and is permitted for up to ten business days from the point of contract entry. The ten day period for the exemption allows for the time between when a customer may have been prompted to seek a new offer, by virtue of a published notice ten days in advance or a direct notice five days in advance, and when the customer's new offer is likely to see tariffs and charges updated.

The Commission has determined that an exemption should apply where a customer has already received notice of a change in their prices where those prices have changed as a result of the expiry of a fixed benefit. In such instances the only reason for the price change is the expiry of the fixed benefit and so the consumer should receive notice under the fixed benefit rule alone. This has both efficiency benefits to retailers and engagement benefits to consumers through the avoidance of excessive and repetitive communication. The exemption applies only to market offer customers.

61 Consultation paper submissions; Aurora Energy, p.1; Department of State Growth (Tasmania), p.1.

62 Department of State Growth (Tasmania), consultation paper submission, p.2.

63 TasNetworks, consultation paper submission, p.1.

An exemption is provided in the draft rule for retail offers tied directly to the electricity or gas spot price, in the event such products are developed in the future. In products where the consumer elects to be subject to the variable spot price, the price will change continuously and as such the notice requirement could not be satisfied. The retailer will not know what price the consumer needs to pay until after the end of the relevant pricing period. This exemption is limited however, such that the retailer must provide notice if any other part of the tariff of charges changes. The exemption applies only to market offer customers.

An exemption is provided for consumers with regulated prices where there is no effective retail competition. In such areas the cost benefit trade-off may not be positive for the consumer. Prices also change less often in areas where consumers are on price regulated standing offer contracts and not market offer contracts which can change more frequently. It should also be considered that in price regulated regions, existing notification requirements and significant coverage of price changes are likely to see consumers with a high awareness of price changes. This exemption will help to create a more cost effective rule that also harmonises requirements across jurisdictions. The exemption applies only to regulated offer customers.

The Commission has also assessed that an exemption be provided for consumers whose tariffs or charges have changed as a direct result of a change to, or withdrawal or expiry of, a government funded rebate, concession or relief scheme. In such instances, the change in cost is not attributable to any action on behalf of the retailer in changing their prices and the change would apply regardless of the retailer or energy plan the consumer had signed up to. The exemption does not apply in the case of the end of a government subsidy scheme such as the Large-scale Renewable Energy Target (LRET) or the Small-scale Renewable Energy Scheme (SRES). The exemption applies to both market and standing offer customers.

5.7 Costs and Benefits

Significant benefits are expected from the rule in the short and long term, both direct to the customer and more indirectly via the impact on the efficient operation of the market. Consumers are more likely to avoid bill shock, they have more time to switch earlier to a retail plan or new retailer that better serves their needs and they have more timely information to implement other actions that may help them to save money in the short and long term. In the process, consumers should gain greater confidence in the market and retailers should be incentivised to develop products and tariff structures that better meet consumer needs.

The costs of the draft rule are likely to be minimised by the simple and concise prescription of the draft rule and the limited amount of information required in notices. Costs are also expected to be better managed under the more flexible notice period required in the draft rule.

While the rule differs slightly from the Queensland rule, in that it requires the consumers existing and new prices to be printed clearly on the notice and a prompt to the consumer that they can access their historical data where required, other elements are consistent. There are likely to be cost synergies for those retailers who already meet the requirements of a similar rule in Queensland, and harmonisation of rules across jurisdictions should minimise ongoing costs.

As more consumers move to digital channels of communication with their retailer, the costs of implementation are likely to fall. For smaller retailers, digital customers in many cases outnumber mail out customers and the trend to digital is growing for those larger retailers who still have a significant mail out requirement.

Across all jurisdictions the benefits of the rule are expected to outweigh the costs.

5.7.1

Proponents view

The Proponents in the rule change considered that the benefits strongly outweigh the costs. The proposal was said to benefit consumers and the efficient operation of the market. The proponent argued the rule would reduce the risk of 'bill shock' by providing the consumer with more information in notices. Prompts to engage with EME and consider market offers would also drive improvements in competition. The proponents concluded consumers will be incentivised to interact with the market as the notices are an opportunity for increased knowledge of EME and other resources. It was also thought the proposed rule might improve national harmonisation of price notifications.

The proponent assessed that the costs of the rule change should be minimal. Some system changes for retailers could be expected, however this is already an obligation in Queensland and so the cost of rolling out these changes nationally is likely to be minimal for national retailers. In addition, the proponent noted the trend towards electronic communication for most retailers.

Overall the proponent expected the costs of implementing the rule change would be low and can readily be absorbed by retailers.

5.7.2

Stakeholder views

Stakeholders were almost unanimous in acknowledging the benefits of advance notice in respect of the customer's right to know and the avoidance of 'bill shock'. However, stakeholders were less convinced of the benefits with regards to engagement and consumer participation in the market.⁶⁴ Some stakeholders commented that click through rates following email notification and call up rates are relatively low. This does conflict with the view that call centres may be onerously impacted as a result of notices all being focused on a very short time period. However, where notices coincide with a period of intense press coverage of energy prices, some stakeholders have commented that the notices are more effective in these circumstances in getting consumers to engage with the market and select new offers or switch retailer.

Stakeholders views on the cost of implementation varied depending on size, state and the predominant technology of communication with the customer.

Smaller retailers with a significant digital customer base felt the costs would be manageable. However, a consistent comment from retailers related to the impact of the contents of the notice and the specification of those contents on the costs. The more detail required in the notice, and in particular the more detail required that is specific to the individual customer, then the more difficult, time consuming and costly implementation will be.⁶⁵

5.7.3

Findings

The Commission has assessed that the cost of the draft rule will be outweighed by the significant benefits in the form of the customers right to know, the avoidance of bill shock, greater consumer engagement with the market, greater consumer action in a broader sense and more competitive and efficient market operation, including the potential for pressure on retail prices. The simple and concise prescription of the draft rule has taken into account the impact of the level of detail on the cost of implementation.

The Commission has also taken into account the direction of trends in digital communication with customers in assessing the cost of the rule versus the benefits over the long term. There is already a high degree of digital communication in the market, this is only expected to grow over time as more consumers see the benefits of communicating with their retailer in this way and as retailers seek to

64 Consultation paper submissions: Origin Energy p.5; ECA p.2.

65 Consultation paper submissions: AGL Energy, p.3; Origin Energy p.4.

move customers onto a lower cost method of communication.

While costs of paper communication can be quite high, with feedback ranging from \$1-\$3 per letter, the number of customers receiving their communication in this way is falling and in addition, price changes are relatively infrequent in the market at present, being for the most part focused around 1 July and 1 January.

The costs of implementing the draft rule will vary depending on the proportion of the retailer's customer base receiving mail out communication. Where a large retailer has up to half their customer base on paper notification and mail out costs are in the order of \$1-\$3 per letter, the costs for a price change notice across all jurisdictions would not be insignificant at the current time. However, the Commission has taken these costs into account in prescribing a simple and concise rule with a flexible notice period. The Commission considers that the benefits of the draft rule should outweigh the costs and that these costs should decline over time as more consumers move to digital forms of communication.

5.8 Civil penalty provision

A civil penalty provision was not requested in the rule change request. However, the Commission considers that the new provisions should be considered as civil penalty provisions because a civil penalty will be an appropriate deterrent to any delay in issuing advance notification to customers. The Commission considers that detriment to consumers (relating to the lack of advance notice to changes in prices or tariffs before they occur and the potential for bill shock) could occur if retailers do not comply with these new provisions. Classifying this provision as a civil penalty provision will assist in avoiding this consumer detriment by deterring noncompliance.

5.9 Commencement Date

Retailers will need sufficient time to implement the rule after any final rule is made. This draft determination seeks specific comments from stakeholders on the effective date of any rule made. It is expected that it will take between 3 and 6 months to implement the reforms. As this rule change does not apply in Victoria, it is expected in either case to be in place before the next major price change that generally occurs on 1 July every year. On this basis the Commission believes a 1 February 2019 commencement date should apply.

5.10 Conclusion

The Commission considers that advance notice of price changes will help to satisfy the right of consumers to know of price changes before they occur. The draft rule is also likely to help in the alleviation of 'bill shock' in environments where energy prices are rising. It is likely to lead to increased consumer action in relation to their energy consumption and their energy bills. This action encompasses energy efficiency measures, budgeting, distributed generation installation as well as greater engagement and participation in the retail energy market. It should help to create a more competitive and effective retail market where more pressure is put on retailers, more pressure is put on retail prices and there are clearer signals for consumers to change their consumption behaviour and for retailers to develop products that meet changing consumer needs.

The Commission is of the view that the draft rule, which is a more preferable rule, appropriately enhances the expected benefits of the draft rule by expanding its coverage, while also keeping the implementation costs manageable by prescribing a simple and concise notice that is focused on the primary purpose. It is also anticipated that a clear and simple notice may be more conducive to consumer action and engagement over the long term.

The Commission has allowed exemptions in the draft rule that are likely to enhance the beneficial impact on consumers, by managing the risk of information overload to the consumer, restricting notices

to circumstances in which the consumer is not already aware of the information and in which the consumer can benefit from the notice through retail competition.

The Commission considers the draft rule in this format to be in the long term interests of consumers in relation to price and quality of energy services and as a result, it will, or is likely to, better contribute to the achievement of the NERO.

ABBREVIATIONS

AEC	Australian Energy Council
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
BSL	Brotherhood of St Laurence
COAG	Council of Australian Governments
Commission	See AEMC
ECA	Energy Consumers Australia
EME	Energy Made Easy
EWON	Energy and Water Ombudsman NSW
IPART	Independent Pricing and Regulatory Tribunal
LRET	Large-scale Renewable Energy Target
NECF	National Energy Customer Framework
NEL	National Electricity Law
NER	National Electricity Rules
NERL	National Energy Retail Law
NERO	National energy retail objective
NERR	National Energy Retail Rules
NSW	New South Wales
PIAC	Public Interest Advocacy Centre
QCA	Queensland Consumers Association
RPIG	Retail Pricing Information Guidelines
SACOSS	South Australian Council of Social Service
SRES	Small-scale Renewable Energy Scheme

A SUMMARY OF OTHER ISSUES RAISED IN SUBMISSIONS

This appendix sets out the issues raised in the first round of consultation on this rule change request and the AEMC's response to each issue.

Table A.1: Summary of other issues raised in submissions

STAKEHOLDER	ISSUE	AEMC RESPONSE
Powershop	Where a consumer is on an expired fixed benefit, notice should include the retailers alternative best offer versus the expired fixed benefit.	Where a consumer is receiving notice of an expired fixed benefit the retailer must comply with the requirement of the fixed benefit rule. Under the draft rule an exemption has been provided from advance notice.
COTA Australia	To make prompts to EME more effective, information should be provided on the notice of when offers on EME will be updated.	The primary purpose of the notice and the narrow prescription of the information required in the rule means references to EME are not required. It has been determined that the notice should be as simple and direct as possible. Inclusion of information about EME, and when offers will be updated will result in a more complex notice and may increase consumer confusion.
EWON	Notices should include information about the customers right to access a payment plan under the retailer's hardship plan.	It has been determined that the notice should be as simple as possible. Inclusion of information about the customers right to access a payment plan will result in a more complex notice.
Origin	Predictable plan products do not neatly align with the traditional use and supply charge structure of consumption tariffs. These products should be considered as an excluded category from the notice requirements. Predictable plan is where the customer receives a tailored price based on their historical energy use.	Under a predictable plan, the customer has opted to receive their bill and their tariffs and charges as a set monthly billing amount over a particular period. If this agreed monthly bill changes, then the retailer would be required to provide advance notice of the changes to the monthly amount payable.
Department of State Growth (Tasmania)	Tasmania does not apply the NERR in relation to the gas industry.	Where the NERR does not apply in a jurisdiction the draft rule will also not apply.
AGL	Under ten business days notice, the AER would need to ensure that EME could manage thousands of offers being removed and added by retailers in a 2-day period. Under	Retailers would have to update thousands of offers on these dates given they tend to update offers around 1 July anyway. This is true whether ten, five or zero business days

STAKEHOLDER	ISSUE	AEMC RESPONSE
	section 23 of the RPIG guidelines	notice is required.
QCA	Changes to other rules, for example when retailers are advised of changes to network tariffs, may be required for the rule change to be fully effective	The draft rule prescribes five business days notice rather than ten business days to take into account the timing associated with network determinations, access arrangements and annual pricing proposals.
ECA (Late submission)	Behavioural insights suggest advance notice is unlikely to change consumer behaviour. The proposed rule's implementation should therefore be informed by behavioural insights research, market research and considerations of alternative designs to establish how consumers engage with notices and the best form for notices, prior to specification of the rule. Retailers should be required to play a role in this by monitoring effectiveness.	The primary purpose of the rule is not impacted by different views around the effectiveness of notices in prompting consumer action. The Commission is of the view that the draft rule as designed achieves the primary purpose. Requiring retailers to undertake research specific to the proposed rule will only increase the costs of implementation. Further, retailers are already incentivised to find their own methods of increasing consumer engagement via marketing.

B LEGAL REQUIREMENTS UNDER THE NERL

B.1 Draft rule determination

In accordance with section 256 of the NERL the Commission has made this draft rule determination in relation to the rule proposed by the Honourable Josh Frydenberg MP, Minister for the Environment and Energy on behalf of the Australian Government and the Honourable Don Harwin MLC, Minister for Energy and Utilities on behalf of the NSW Government.

The Commission's reasons for making this draft rule determination are set out in section 4.

A copy of the more preferable draft rule is attached to and published with this draft rule determination. Its key features are described in section 3.4.

B.2 Power to make the rule

The Commission is satisfied that the more preferable draft rule falls within the subject matter about which the Commission may make rules. The more preferable draft rule falls within section 237 of the NERL as it relates to

- regulating the provision of energy services to customers, including customer retail services and customer connection services (section 237(1)(a)(i)).
- regulating the activities of persons (retailers) involved in the sale and supply of energy to customers (section 237(1)(a)(ii)).
- any matter or thing contemplated by this Law or necessary or expedient for the purposes of this Law (section 237(1)(b)).
- imposing obligations on retailers (section 237(3)(e)).

B.3 Commission's considerations

In assessing the rule change request the Commission considered:

- its powers under the NERL to make the rule
- the rule change request
- submissions received during consultation
- the Commission's analysis as to the ways in which the proposed rule will or is likely to, contribute to the NERO.

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.⁶⁶

B.4 Civil penalties

The Commission cannot create new civil penalty provisions. However, it may recommend to the COAG Energy Council that new or existing provisions of the NERL or NERL be classified as civil penalty provisions.

The new provisions that the Commission and the AER will recommend that the COAG Energy Council class as civil penalty provisions are subrules 46(4)-46(4A).

⁶⁶ Under s. 225 of the NERL the Commission must have regard to any relevant MCE statement of policy principles in making a rule. The MCE is referenced in the AEMC's governing legislation and is a legally enduring body comprising the Federal, State and Territory Ministers responsible for energy. On 1 July 2011, the MCE was amalgamated with the Ministerial Council on Mineral and Petroleum Resources. The amalgamated council is now called the COAG Energy Council.

A civil penalty provision was not requested in the rule change request.

However, the Commission considers that the new provisions should be considered as civil penalty provisions because a civil penalty will be an appropriate deterrent to any delay in issuing advance notification to customers. The Commission considers that detriment to consumers (relating to the lack of advance notice to changes in prices or tariffs before they occur and the potential for bill shock) could occur if retailers do not comply with these new provisions and that classifying this provision as a civil penalty provision will assist in avoiding this consumer detriment by deterring noncompliance.

In addition, this provides for consistency with the fixed benefit rule (subrules 48A(1), (3) and (4)) which the Commission has recommended to carry a civil penalty provision.