



Australian Energy Market Commission

RULE DETERMINATION

BILL CONTENTS AND BILLING REQUIREMENTS

PROPONENT

Hon Angus Taylor MP, Minister for Energy and Emissions Reduction

18 MARCH 2021

RULE

INQUIRIES

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AEMC, Bill contents and billing requirements, Rule determination, 18 March 2021

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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EXECUTIVE SUMMARY

- 1 On 16 April 2020, the Honourable Angus Taylor MP, Minister for Energy and Emissions Reduction, on behalf of the Australian Government (the proponent), submitted a rule change request to the Australian Energy Market Commission (AEMC or Commission) to amend the National Energy Retail Rules (NERR). The rule change proposal sought to amend the NERR to require the AER to develop a mandatory guideline to make it easier for small customers to pay their energy bills, verify their bill conforms to their contract, query the bill, understand their usage, and navigate the retail market to seek the best offer. The proposal aimed to simplify electricity and gas bills, so households and small businesses can better understand and manage their energy usage and costs, and find a better energy deal driving improvements in competition.
- 2 In response to the rule change proposal, the Commission has made a more preferable final rule. The more preferable final rule requires retailers to comply with an AER mandatory guideline (the billing guideline) containing billing requirements. It adopts many elements of the rule change request, including setting objectives for a bill and principles that the AER must consider when developing the guideline.
- 3 The more preferable final rule made by the Commission:
 - Includes a bill objective, setting out the purpose of an energy bill (six components). For example, to enable small customers to easily understand payment amounts, dates and payment methods for their bill.
 - Requires the AER to make a billing guideline in relation to how retailers prepare and issue bills to small customers that meet the bill objective. The provisions in the billing guideline will replace the current bill information requirements in rule 25(1) of the NERR.
 - Requires the AER, in making and amending the billing guideline to:
 - take certain principles into account
 - do so in a manner that will or is likely to contribute to the achievement of the National Energy Retail Objective (NERO) and is compatible with the consumer protection test
 - follows the retail consultation procedure.
 - Allows the AER to specify in the billing guideline different types of billing information that a retailer must provide, and whether information of different types may be provided to a small customer by different delivery methods with their consent.
 - Removes the obligations on retailers regarding electricity consumption benchmarks in rule 170 of the NERR, which the AER may include in the billing guideline.

Key context

- 4 In the past, a customer's energy bill is one tool that has been used to achieve multiple purposes: pay the bill, understand energy usage and costs, seek help. Given new technology options, it is timely to consider how energy bills can be simplified without compromising its purpose, and how bills interact with other services and processes to help consumers achieve

good outcomes in the energy market.

- 5 The speed of industry change indicates that a regulatory mechanism is needed that protects consumers and also can keep pace with market developments and consumer preferences.
- 6 Technological innovation in the energy market is changing how consumers and retailers interact. On digital platforms, such as smart phone applications and web portals, customers can see their energy usage in detail and close to real time. Retailers can communicate with households and small business customers when a direct debit is due, or a price spike is expected, and vice versa. The introduction of a consumer data right in energy is likely to introduce third parties as digital retail service providers, to help consumers find the best deal.
- 7 Today's retail market is characterised by a variety of retail offers and consumer preferences. For instance, customers can access a range of technological innovation (smart meters, solar PV, batteries and electric vehicles) and new energy services (virtual power plants, green power). This suggests a one-size fits all regulatory approach for billing may not be suitable, at least for all billing functions, as it may limit retail innovation and consumer choice.

Rationale for the more preferable final rule

- 8 Having regard to the issues raised in the rule change request and during consultation, the Commission is satisfied that the more preferable final rule is likely to better contribute to the achievement of the NERO than the proposed rule. The more preferable final rule promotes the NERO as it includes principles that will:
- better promote engagement, consumer choice, innovation and market participation
 - enable retail competition
 - provide greater transparency on the guideline development process
 - lead to a proportionate and least cost outcome for consumers.
- 9 The Commission is also satisfied that the more preferable final rule is compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers, because the more preferable final rule establishes a mandatory guideline that will specify requirements that retailers must meet in preparing and issuing bills to small customers. The guideline will establish protections for small customers regarding billing, while also enabling customers to benefit from innovation in the retail market.
- 10 The Commission considers that the introduction of an AER mandatory guideline with clear billing objectives and guideline development principles is an appropriate response to the billing issues raised by the proponent and stakeholders. A guideline is likely to be more responsive and adaptable to changes in the retail market and consumer preferences, as it is likely to be informed by ongoing expertise developed through the guideline development and monitoring process (rather than via one-off rule change processes).
- 11 An organisational priority for the AER (Strategic Plan 2020-2025) is boosting consumer and behavioural insights to inform a number of its consumer related functions, including the Retail Pricing Information Guidelines (RPIG) and the hardship guideline. Developing a billing guideline is consistent with the AER's existing and developing expertise on consumer

interests. Notably this is also aligned with its priority of reducing industry cost to serve.

12 The Commission considers that the introduction of a guideline with a clear bill objective and principles which the AER must have regard to, is an appropriate response to the billing issues raised by the proponent and stakeholders.

13 The more preferable final rule seeks to achieve a number of policy goals, including:

- simplifying energy bills, for example by allowing some bill information to be delivered digitally (if a consumer so chooses) and ensuring effective, easy-to-understand information is included (for instance, to help consumers use energy efficiently)
- a regulatory framework that is adaptable over time
- a regulatory framework that protects consumers while enabling innovation and competition
- billing provisions that reflect the variety of offers and consumer preferences in the market
- promoting cost and usage information on bills that helps small customers use energy efficiently, engage in the market and consider investing in self-supply options such as solar and batteries.

Key changes between the more preferable draft rule and the more preferable final rule

14 The Commission has retained the regulatory approach in the more preferable draft rule, however, it has made the following key changes:

- The more preferable final rule includes provisions that:
 - require the AER to make and amend the billing guideline in a manner that will or is likely to contribute to the achievement of NERO and is compatible with the consumer protection test;
 - allow the AER to specify in the billing guideline different types of billing information a retailer must provide and whether information of different types may be provided to a small customer by different delivery methods, with their consent; and
 - remove the obligation on retailers regarding providing electricity consumption benchmarks in rule 170 of the NERR, but enables the AER to include such a requirement in the billing guideline.
- The Commission has determined not to amend the current bill frequency requirements in rule 24(1) as they appear to be providing sufficient protection to consumers. Under the current rule retailers can offer shorter billing periods for both standing offers (shorter than 100 days) and market offers.
- The implementation process for the more preferable final rule has also been amended so that:
 - The AER will publish the first billing guideline by 1 April 2022.
 - Retailers will be required to comply with the billing guideline from 4 August 2022, however the AER may specify different commencement dates for certain provisions in

the billing guideline after this date, provided that all provisions in the first billing guideline commence by 31 March 2023.

Commencement

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The more preferable final rule establishes the following implementation time frame:

- **Development:** a 12-month time frame for the AER to develop and publish the first billing guideline (1 April 2022).
- **Implementation:** a further four month period before retailers are required to comply with the guideline (4 August 2022), but providing the AER with discretion to specify in the guideline whether specific provisions commence at a later date, provided that all provisions commence no later than 31 March 2023.

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FIGURES

Figure 1.1: Number of active retailers for small customers

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1 THE RULE CHANGE REQUEST

This chapter discusses:

- the rule change request
- key context in the retail market
- issues raised in the rule change request
- the proposed solution
- the rule making process
- consultation leading to this final determination.

1.1 The rule change request

On 16 April 2020, the Honourable Angus Taylor MP, Minister for Energy and Emissions Reduction, on behalf of the Australian Government (the proponent), submitted a rule change request to the Australian Energy Market Commission (AEMC or Commission) to amend the National Energy Retail Rules (NERR).

The rule change proposal sought to amend the NERR to require the Australian Energy Regulator (AER) to develop a mandatory guideline, covering both electricity and gas bills. The aim was to help small customers: easily pay their bill; verify the bill calculation and that it conforms to their retail contract; understand how much energy they consume; confidently query or dispute bills; and confidently navigate the market and seek the best offer. The proposal intended to simplify energy bills so households and small business owners can better understand and manage their energy usage and costs, and find a better energy deal driving improvements in competition.

1.2 Context

Technological innovation has transformed retail energy markets around the world. This section summarises the key impacts of technological innovation on Australia's energy retail market, which have the potential to significantly affect the utility of bills and the approach to billing regulation.

1.2.1 The future role of billing

As noted in the consultation paper and supported by stakeholders in submissions to the consultation paper, energy bills currently have multiple functions.¹ Bills currently help small customers:

1. pay their bill (by several methods)
2. understand how the amount owing is calculated and whether it conforms to their retail contract

¹ AEMC, Bill contents and billing requirements, consultation paper, 24 September 2020, p. 4. Submissions to consultation paper: Alinta, pp. 1-2; Momentum, p. 1; Next Energy Business, p. 1; ERM Power, p. 2; QCOSS, pp. 4-5.

3. understand their energy consumption and costs in order to:
 - a. save money and use energy efficiently in the future
 - b. compare their customer retail contract with other energy offers
 - c. make informed decisions on self-supply options for energy generation and storage
4. identify how to query or dispute their bill, access interpreter services, seek financial assistance and report faults or emergencies.

Appendix B presents the current billing provisions arranged by billing information types. A key contextual issue is how well bills can achieve or contribute to these functions into the future.

1.2.2

A one-size fits all approach may not be suitable for all billing functions

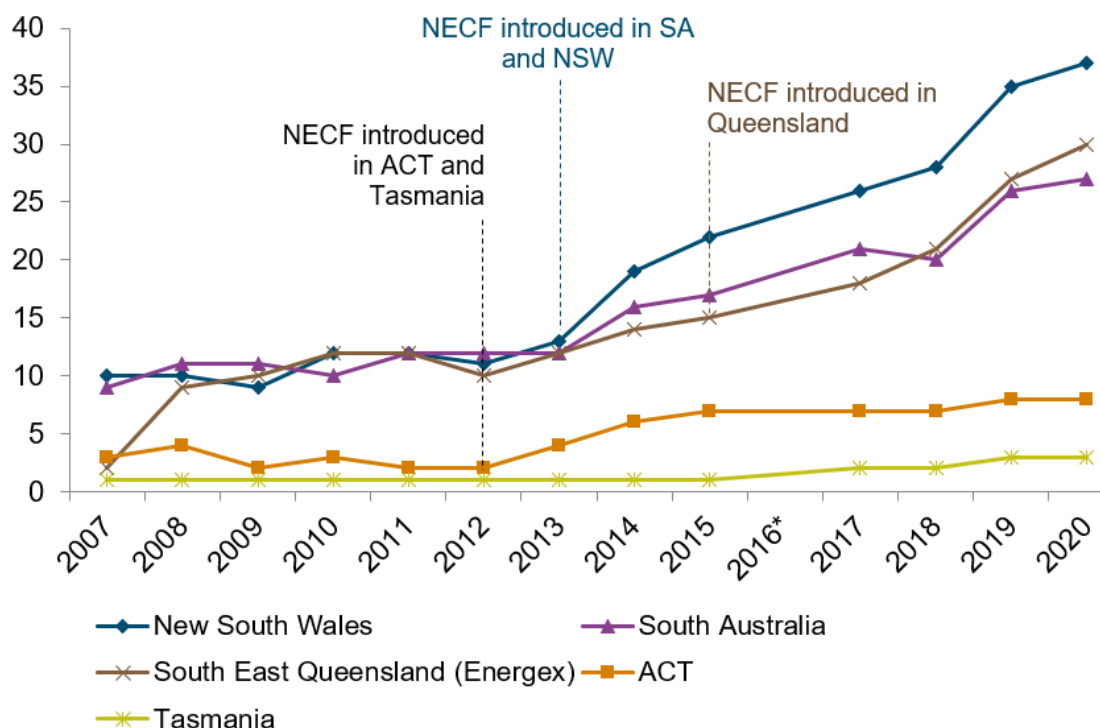
Today's retail market is characterised by a variety of retailer offers and consumer preferences. This suggests a one-size fits all approach may not be suitable for billing regulation, at least for all the billing purposes set out above, as it may limit retail innovation and consumer choice.

Variety in retail plans

Retail markets today are very different to the market in 2012, when the current billing rules were first introduced. The number of retailers in contestable jurisdictions has more than doubled (see Figure 1.1). The number of plans available to small customers has also increased significantly. To illustrate, in March 2020, a small customer with a smart meter in the Ausgrid area could choose from 353 different time-of-use and single rate offers, compared with only 143 in 2017.²

² Based on the number of time of use and single rate offers from Energy Made Easy in February 2017 and March 2020.

Figure 1.1: Number of active retailers for small customers



Source: AER State of the Energy Market 2007-2020.
Note: Data is unavailable for 2016.

The variety of retail plans has also increased, offering different benefits to customers and reflecting market innovation. Plans vary by factors including tariff type (for example, single rate, time-of-use, demand, wholesale market exposed), low-emission options (for example, GreenPower), and payment method (pre-paid and direct debit). There is also a trend towards more time-varying offers, accessible to those who own or purchase behind-the-meter technology such as solar PV or a battery,³ given the predicted increase in behind-the-meter assets (such as PV capacity which is forecast to increase by 80% over the next 10 years).⁴ The increase in solar PV to date has resulted in a doubling of offers that include feed-in tariff rates in the Ausgrid area, from 23 in 2017 to 46 in 2020.⁵

Also, 'bundled' offers that combine electricity, gas and internet services, is growing. Origin Energy, Sumo Power and Click Energy/Amaysim, for instance, offer telecommunication (mobile phone and home internet) products alongside their energy products.⁶ Currently, the

3 AEMC, 2020 Retail Energy Competition Review, p. 70.

4 AEMO 2020 ESOO, Central scenario.

5 Based on unique feed-in tariff rates from *Energy Made Easy* offers in the Ausgrid distribution area in February 2017 and March 2020.

6 AEMC, 2020 Retail Energy Competition Review, p. 42.

rules allow these services to be part of an energy bill if they are separately itemised on the bill, so consumers can understand the cost of each additional service.⁷

Variety in billing forms

Retailers are offering a variety of tariffs with different billing information and delivery methods. Customer take-up of these offers suggests they are willing to move away from traditional billing information formats and delivery modes. Energy bills are now reflecting the differences in consumer preferences: their uptake of technological innovation (smart meters, solar PV, batteries and electric vehicles) and new energy services (virtual power plants, green power). Some customers would like to know usage and costs by time of day, charging and exporting times and volumes, or the percent of green energy used, while for others this information is not important. These informational needs also have implications for the appropriate communication method.

Retailer innovation and customer choice have resulted in a range of energy bills, varying by factors including:

- Delivery mode: a material proportion of small customers now receive a PDF of a bill (e-bills) rather than paper bills delivered by post.⁸
- Frequency: monthly billing is common in some geographical areas. A 2020 Canstar survey found 20 per cent of households receive their energy bills monthly.⁹ Over 300 offers are available for monthly electricity bills in suburban Sydney and 250 offers in regional NSW. In Brisbane 230 plans are offered with monthly billing.¹⁰
- Additional information within a bill: some retailers use bills to communicate their environmental credentials, while others highlight their digital services, changes to a plan's terms and conditions, or reminders about payment assistance during COVID-19.
- Overall format: for instance the balance between graphical and text-based information.
- Additional information external to a bill: some retailers offer general educational material such as a billing guide on their website or granular historical and real-time usage via mobile applications and web portals.

The variety in energy retail offers and bills in the current market reflects differences between retailers and consumer preferences. This suggests that a one-size-fits-all approach has the potential to limit retail innovation and consumer choice.

1.2.3

Providing a safety-net while enabling innovation

Diversification in the retailer-customer interface

The frequency, means of communication and engagement between retailers and consumers is diversifying. Technological innovation — digitalisation, smart meters, data access rights, third-party service providers — is changing how retailers and consumers engage.

7 NERR, rule 25(2).

8 Confidential data provided by stakeholders to the Commission.

9 <https://www.canstarblue.com.au/electricity/energy-billing-options/>, accessed 27/11/2020.

10 Searches on Energy Made Easy and Canstar, 23/11/2020.

The 'Smart Decade' has globally transformed the interface between retailers and consumers. In 2012, when the current billing rules were introduced, only 37 per cent of Australians owned smart phones.¹¹ By 2019, smart phone penetration was 91 per cent.¹² We are now at 'peak' penetration, with "Australians aged over 55, as well as those based in Western Australia and Queensland, the last cohorts to jump on board."¹³

As in other retail sectors, energy consumers are conducting business and accessing information in the way that is most efficient and convenient for them. For example, customers are signing up to:

- direct debit arrangements for their energy bill
- notifications of upcoming payments by SMS or in mobile applications
- e-mails and e-bills highlighting the bill amount to be debited and the debit date.

New digital platforms allow two-way and instant communication between a customer and the retailer. Customers are accessing granular and recent usage data via apps or online portals. A wholesale-exposed customer can get an SMS or app-based alert of an anticipated price spike. Meridian Energy reports that consumers access apps and web portals on average three times per month, indicating multiple engagement points for customers outside the periodic billing cycles.¹⁴

How a retailer communicates and engages with customers will vary with a retailer's business model (e.g. small business focus, chiefly digital offering). Small customers also have different preferences in terms of the mode and content of bills. Already in the market there is diversity in the information customers want and need, and diversity in their means of communication with the retail market.

Authorised third party access will help consumers find the best deal

In the future, the retailer-customer interface is likely to change further. The scheduled implementation of a consumer data right (CDR) will let consumers share data with a third party service provider to do a variety of tasks, such as finding the best deal, checking bills, or advising on investments in products such as solar PV and batteries.

The Commission has also recommended that the CDR for energy enables authorised third parties to act on behalf of a consumer, for example to switch a consumer from one retailer to another (this is known as 'write' access in the CDR).¹⁵ Recently, the Inquiry into Future Directions for the Consumer Data Right recommended the adoption of "write access", now referred in this paper as "action initiation", for future iterations of the CDR.¹⁶

11 Google survey, cited in Sydney Morning Herald 8/9/2011, <https://www.smh.com.au/technology/australias-white-hot-smartphone-revolution-20110908-1jz3k.html> accessed 27/11/2020.

12 Deloitte (2019), Mobile Consumer Survey 2019, p1.

13 Ibid, p.9.

14 Correspondence from Meridian Energy to the AEMC, 24 November 2020.

15 See AEMC, Retail Competition Review 2020, Recommendation 8, p. xix and pp. 236-238. The Commission also committed to continue to engage with the Commonwealth Treasury, Australian Competition and Consumer Commission and Data61 to develop the CDR in the energy market.

16 Inquiry into Future Directions for the Consumer Data Right, recommendation 4.1, pp. xiv, 36, 23 December 2020.

1.2.4

Summary

Innovation in the energy market is changing the way consumers and retailers interact. The bill is one tool that has been used to achieve multiple functions in the past. With new technological tools available to consumers, it is relevant to consider whether the role of energy bills in achieving those functions is changing. If that is the case, billing requirements must adapt to these changes. This means it is important to consider whether the rules or a guideline is the best mechanism to keep pace with the market developments and consumer preferences. Irrespective of the mechanism, billing requirements must protect consumers.

1.3

Issues raised in the rule change request

The proponent's rule change request stated that the current rules do not deliver bills that energy consumers can easily understand, and this is leading to confusion and frustration for many consumers. The proponent also considered the current rules do not utilise the potential of bills to help customers navigate the retail market, for instance to help them compare available offers.

The proponent's rule change request identified several key drivers of consumer confusion and low retail engagement. These were: the absence of standard nomenclature and consistent bill formats across the retail sector; too much unnecessary and complex content being included on bills; and the lack of references to key support tools and services, such as Energy Made Easy (EME).

The proponent also expressed a concern that the rules do not stipulate how a bill should be delivered to small customers. The concern is that small customers should always be able to choose to have a paper bill if that is their preference.

1.4

Solution proposed in the rule change request

The rule change request proposed that the NERR be amended to replace the existing billing requirements rule (Rule 25) with provisions requiring the AER to develop a mandatory guideline. This AER guideline would apply to both gas and electricity billing, for households and small businesses.

The proponent's proposal was for the AER when developing the guideline to have regard to a Better Bills Objective and Supporting Principles, which would be set out in the NERR. The AER could specify in the guideline:

- requirements including bill form, content and delivery mode
- any other requirements the AER considered necessary to give effect to the guideline objective and principles
- variable requirements (including by customer type, energy type, or jurisdictional application, tariff types, billing timeframes, and mode of delivery).

The proposed rule would also allow the AER to publish a sample bill or an explanation of key terms in a retail bill.

The proponent proposed a civil penalty if a retailer fails to comply with the AER guideline, as a deterrent to non-compliance. The rule would apply to both standard retail and market retail contracts.

The proponent's rule change request noted that, while the rule should commence promptly, the Commission should consider the research and consumer testing required when determining transitional requirements and the timing of implementation. The proponent also advocated for industry collaboration in the development of the AER guideline.

Finally, the proponent's rule change request recommended that it may be important to consider the rule change request in the context of the broader information provision regulatory framework. For instance, amendments to requirements regarding bill frequency (rule 24 of the NERR).

The rule change request included a proposed rule, and is available on the AEMC website, www.aemc.gov.au.

1.5 The rule making process

On 24 September 2020, the Commission published a notice advising of its commencement of the rule making process and consultation in respect of the rule change request.¹⁷ A consultation paper identifying specific issues for consultation was also published. The Commission received 27 submissions as part of the first round of consultation.

On 17 December 2020, the Commission published a draft determination along with a more preferable draft rule. Submissions closed on 4 February 2021. The Commission received 18 submissions as part of the second round of consultation.

The Commission considered all issues raised by stakeholders in submissions. Issues raised in submissions are discussed and responded to throughout this final rule determination.

¹⁷ This notice was published under s. 251 of the National Energy Retail Law (NERL).

2 FINAL RULE DETERMINATION

The Commission's final rule determination is to make a more preferable final rule. The more preferable final rule requires retailers to comply with an AER mandatory guideline (the billing guideline) containing billing requirements. It adopts many elements of the rule change request, including setting objectives for a bill and principles that the AER must consider when developing the guideline.

This chapter outlines:

- the Commission's more preferable final rule
- the Commission's summary of reasons and consideration of the more preferable final rule against the National Energy Retail Objective (NERO)
- the rule making test for changes to the NERR
- the more preferable rule test
- the assessment framework for considering the rule change request.

2.1 Summary of reasons

2.1.1 Overview of the more preferable final rule

The more preferable final rule made by the Commission is attached to and published with this final rule determination. In summary, the more preferable final rule:

- Includes a bill objective, setting out the purpose of an energy bill (six components). For example, to enable small customers to easily understand payment amounts, dates and payment methods for their bill.
- Requires the AER to make a billing guideline in relation to how retailers prepare and issue bills to small customers that meet the bill objective. The provisions in the billing guideline will replace the current bill information requirements in rule 25(1) of the NERR.
- Requires the AER, in making and amending the billing guideline to:
 - take certain principles into account;
 - do so in a manner that will or is likely to contribute to the achievement of the NERO and is compatible with the consumer protection test; and
 - follows the retail consultation procedure.
- Allows the AER to specify in the billing guideline different types of billing information that a retailer must provide and whether information of different types may be provided to a small customer by different delivery methods with their consent.
- Removes the obligations on retailers regarding electricity consumption benchmarks in rule 170 of the NERR, which the AER may include in the billing guideline.
- Requires retailers to comply with the billing guideline when preparing and issuing bills to small customers.

Bill objective

The more preferable final rule defines the objective of a bill, which is to provide billing information that enables a small customer to easily understand:

1. The amount they owe, the date when the bill is due and the payment methods they can use to pay their bill.
2. How their bill is calculated (e.g. tariffs and charges, discounts) and whether it conforms to their customer retail contract.
3. How much energy was consumed and produced during the billing period, and related costs and revenue. This information will help consumers with:
 - using energy more efficiently
 - comparing their energy plan with other energy offers available to them
 - considering options for energy supply and storage, such as solar PV and batteries.
4. How to dispute their bill, make complaints or raise a query with their retailer.
5. How to access interpreter services if required or seek financial assistance.
6. How to report a fault or emergency relating to their energy service.

The AER must make the billing guideline to enable retailers to meet the bill objective, when preparing and issuing bills to small customers.

Principles

The more preferable final rule includes the following principles that the AER must consider when developing and amending the billing guideline:

1. the need for consumer protections for small customers, while also providing flexibility to enable retail market innovation, competition and consumer choice
2. the costs retailers may incur by complying with the billing guideline and the potential resulting costs for small customers
3. whether the requirements in the billing guideline are effective and proportionate to achieve the relevant part of the bill objective
4. the potential benefits of standardising language and terminology across bills, customer retail contracts and energy offers.

Key changes between the more preferable draft rule and the more preferable final rule

The Commission has retained the regulatory approach in the more preferable draft rule, however, it has made the following key changes:

- The more preferable final rule includes provisions that:
 - require the AER to make and amend the billing guideline in a manner that will or is likely to contribute to the achievement of NERO and is compatible with the consumer protection test;
 - allow the AER to specify in the billing guideline different types of billing information a retailer must provide and whether information of different types may be provided to a small customer by different delivery methods, with their consent; and

- remove the obligation on retailers regarding providing electricity consumption benchmarks in rule 170 of the NERR, but enables the AER to include such a requirement in the billing guideline.
- The Commission has determined not to amend the current bill frequency requirements in rule 24(1) of the NERR as they appear to be providing sufficient protection to consumers. Under the current rule retailers can offer shorter billing periods for both standing offers (shorter than 100 days) and market offers.
- The implementation process for the more preferable final rule has been amended so that:
 - The AER will publish the first billing guideline by 1 April 2022.
 - Retailers will be required to comply with the billing guideline from 4 August 2022, however the AER may specify different commencement dates for certain provisions in the billing guideline after this date, provided that all provisions in the first billing guideline commence by 31 March 2023.

2.1.2

Commission's rationale for the more preferable final rule

Having regard to the issues raised in the rule change request and during consultation, the Commission is satisfied that the more preferable final rule will or is likely to better contribute to the achievement of the NERO than the rule proposed by the proponent. The more preferable final rule promotes the NERO as it:

- Introduces a guideline, which will be based on consumer research, testing and behavioural insights and ongoing expertise developed through the design and monitoring process. This is likely to promote the delivery of adequate, clear and timely bill information for small customers. The research that the AER will conduct and the expertise it will gain through this process will also enable it to define billing requirements that reflect digitalisation and technological developments, giving consumers more choice and supporting market innovation.
- Includes principles that the AER must take into account in developing and amending the billing guideline, that will:
 - better promote engagement, consumer choice, innovation and market participation
 - enable retail competition
 - provide greater transparency on the guideline development process
 - lead to a proportionate and least cost outcome for consumers.

The Commission is also satisfied that the more preferable final rule is compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers, because the more preferable final rule establishes a mandatory guideline that will specify requirements that retailers must meet in preparing and issuing bills to small customers. The guideline will establish protections for small customers regarding billing, while also enabling customers to benefit from innovation in the retail market.

The Commission considers that the introduction of a guideline with a clear bill objective and principles which the AER must have regard to, is an appropriate response to the billing issues raised by the proponent and stakeholders.

The more preferable final rule seeks to achieve a number of policy goals, including:

- simplifying energy bills, for example by allowing some bill information to be delivered digitally (if a consumer so chooses) and ensuring effective, easy-to-understand information is included (for instance, to help consumers use energy efficiently)
- a regulatory framework that is adaptable over time
- a regulatory framework that protects consumers while enabling innovation and competition
- billing provisions that reflect the variety of offers and consumer preferences in the market
- promoting cost and usage information on bills that helps small customers use energy efficiently, engage in the market and consider investing in self-supply options such as solar and batteries.

2.1.3 Implementation and commencement date

The more preferable final rule requires the AER to publish the first billing guideline by 1 April 2022. Retailers will then need to comply with provisions in the guideline from 4 August 2022, however, the AER may specify different commencement dates for certain provisions in the billing guideline after this date, provided that all provisions in the first billing guideline commence by 31 March 2023.

The Commission has considered the input and evidence provided by retailers regarding processes for bill changes and past billing project duration. It also acknowledges the guideline will be developed alongside other material changes in the energy market and has therefore taken into account retailers ability to implement the billing guideline.

Further information on the legal requirements for making this final rule determination is set out in appendix A.

2.2 Rule making test

2.2.1 Achieving the NERO

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 NERO.¹⁸ This is the decision-making framework that the Commission must apply.

The NERO is:¹⁹

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.

¹⁸ Section 236(1) of the NERL.

¹⁹ Section 13 of the NERL.

The Commission must also, where relevant, satisfy itself that the rule is “compatible with the development and application of consumer protections for small customers, including, but not limited to, protections relating to hardship customers” (the “consumer protections test”).²⁰

Where the consumer protections test is relevant in the making of a rule, the Commission must be satisfied that both the NERO test and the consumer protections test have been met.²¹ If the Commission is satisfied that one test, but not the other, has been met, the rule cannot be made.

There may be some overlap in the application of the two tests. For example, a rule that provides a new protection for small customers may also, but will not necessarily, promote the NERO.

2.2.2 Making a more preferable rule

Under s. 244 of National Energy Retail Law (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, the Commission has made a more preferable rule. The reasons are summarised above.

2.3 Assessment framework

In assessing the rule change request against the NERO the Commission has considered the following principles:

- **Transparency of information** — a well functioning retail market requires customers to have adequate, clear and timely information about the service they are buying, their usage of that service, and the price they are paying for that service. The Commission has considered the extent to which the rule change is likely to improve, through better information provision, consumers’ understanding of their energy bills, which in turn may help them better manage their energy costs.
- **Consumer engagement, choice, innovation and participation** — all consumers should have the opportunity to make informed decisions and choices about electricity, gas or retail services. The Commission has considered the benefits of the rule in promoting consumer engagement, choice, innovation²² and participation in the market; immediately and into the long-term. These will include the benefits of fostering efficient investment and operational decisions over time.
- **Regulatory and administrative burden** — altering what retailers must put on energy bills, and introducing new requirements (e.g. particular delivery modes) may impose immediate and ongoing costs on retailers (e.g. changes to their billing systems and/or

²⁰ Section 236(2)(b) of the NERL.

²¹ That is, the legal tests set out in s. 236(1) and (2)(b) of the NERL.

²² The Commission has considered and supports the proposal by ERM Power, in their submission to the consultation paper, that retail market innovation should be a component of the assessment framework for this rule change request, ERM Power, p. 3.

paper bill delivery costs). Also, requiring the AER to develop, monitor and keep up to date a mandatory guideline would impose new costs on the AER. The Commission has considered the regulatory and administrative benefits and costs associated with the rule change proposal.

3 BILLING ISSUES

The draft determination set out the Commission's views on the following aspects of energy bills:

- language and terminology
- format
- content
- delivery
- frequency.

These issues related to the proponent's key concerns: the absence of standard nomenclature and consistent formats across the retail sector; too much unnecessary and complex content; and inadequate references to key support tools and services such as Energy Made Easy (EME). The proponent also raised concerns that the rules do not stipulate how a bill is issued or delivered to small customers.

The following sections set out what the Commission proposed in the draft determination for each billing issue, stakeholders' responses and the Commission's conclusion in this final determination.

3.1 Language and terminology

3.1.1 Language and terminology in the draft determination

The more preferable draft rule proposed to introduce a principle that would require the AER, in developing and amending the bill guideline, to take account of the benefits of standardising language and terminology across bills, retail contracts and energy offers.²³ The Commission considered language and terminology an issue where some standardisation would be of benefit to consumers.

3.1.2 Stakeholder views — submissions to draft determination

Many stakeholders supported standardising language and terminology across customers' key points of contact with the retail market, such as energy offers, retail contracts and energy bills.²⁴ It was highlighted that standardisation could be achieved without a billing guideline, for example by including a reference in the rules to the language requirements under Retail Pricing Information Guideline (RPIG).²⁵

3.1.3 Analysis and Commission's position

The Commission considers that standardising language and terminology across energy offers, retail contracts and bills is likely to deliver better outcomes for small customers. The

²³ More preferable draft rule: 25A(5)(a)(vi) — *In making and amending the billing guideline the AER must take into account the potential benefits of standardising language and terminology across bills, customer retail contracts and energy offers.*

²⁴ Submissions to the draft determination: ACCC, p. 2; AER, p. 3; PIAC, p. 9; EnergyAustralia, p. 2; Origin, AER, p. 3; AGL, p. 3; Origin, p. 2.

²⁵ AGL, submission to the draft determination, pp. 3, 4, 13, 15.

Commission notes the high degree of consensus amongst stakeholders that clear and consistent language and terminology will help alleviate bill confusion. In particular, the Commission notes it likely that consumers’ understanding of key bill purposes, such as how the amount owing was calculated, would be enhanced.

The Commission also considers that consistency across the key steps in customers’ retail experience would build consumers’ familiarity with energy market language, terms and concepts. Critically, it would help consumers verify that their bill conforms with their energy contract.

Additionally, the Commission considers that standardising language and terminology would contribute to retail competition and innovation. Improved consumer understanding of the market is likely to foster consumer engagement. Consumers would more able to seek better offers, armed with a sound understanding of the basics of their plan and bill.

On implementation, stakeholders considered that standardising language and terminology would be “readily implementable”.²⁶

Further, the Commission notes that the AER may need to consider the links between the language requirements on retailers currently mandated in the RPIG and any new standardised bill terminology included in the billing guideline. The RPIG language requirements apply to information provided to EME, on plan documents, and advertising or marketing information but do not apply energy bills.²⁷ A preliminary review of the RPIG language requirements found that most of the bill terms that consumers find confusing are either not included, or not included at sufficient granularity, in the RPIG (see Table 3.1). For example, terms related to how to indicate credits and debits on an energy bill are terms specific to billing and so do not appear in the RPIG and the term “usage” is specified by the RPIG but not categories of “usage”.²⁸

In developing the billing guideline, consumer research, testing and behavioural insights, combined with the stakeholder feedback provided to the Commission in this rule change process will help the AER identify the common language and terms that will most effectively help consumers understand their bills.

Table 3.1: Preliminary examination of differences in language and terminology in the RPIG and in energy bills

RETAIL PRICING INFORMATION GUIDELINE		ENERGY BILLS
PROHIBITED TERMS / REQUIRED TERMS		
Unconditional discount	Guaranteed discount	Usage discount
Non-conditional discount		Supply discount

²⁶ Origin, submission to the draft determination, p. 2.

²⁷ AER, Retail Pricing Information Guidelines, p. 13.

²⁸ For stakeholder concerns with bill terms and language, see AEMC, draft determination, pp. 9-10.

RETAIL PRICING INFORMATION GUIDELINE		ENERGY BILLS
PROHIBITED TERMS / REQUIRED TERMS		
Base discount		
Termination fee	Exit fee	
Early termination fee		
Consumption	Usage	General usage Average daily usage Peak usage Peak Peak winter usage Shoulder consumption Shoulder Off-peak consumption Off-peak Dedicated circuit consumption Solar Step 1/Step 2 Total any time Total solar Total winter
Standing charge Fixed charge	Supply charge	Solar feed-in credit Supply charge Solar FiT Solar feed-in-tariff Daily supply charge Service to property charge
Fixed Fixed terms (except where the price is fixed, in which case 'fixed' may be used in relation to price)	Contract term Contract length or [number] month contract If there is no contract term: 'no contract term'	

RETAIL PRICING INFORMATION GUIDELINE		ENERGY BILLS
PROHIBITED TERMS / REQUIRED TERMS		
Evergreen	Ongoing contract with benefit period, or Ongoing contract with [number] month(s)] benefit period	
Fixed benefit period	[number month(s)] benefit period, or Benefit period	
Off-peak to refer to controlled load usage	Controlled load	Controlled load usage
Capacity charge or other term to describe demand	Demand charge	
Any term other than 'general usage' to describe the general consumption element of a single rate tariff plan	General usage	
OTHER		
		NMI
		Read type
		Start/end reference
		kWh
		Start read
		End read
		Multiplier

Source: AEMC analysis of RPIG and samples of energy bills in the market.
Note: This table was developed by the AEMC using different energy bills.

3.2

Format

3.2.1

Format in the draft determination

The Commission noted in the draft determination that stakeholders' views differed on whether the absence of consistent billing formats across the energy sector was a material concern. The Commission did not introduce a principle in the more preferable draft rule for standard format, as it did for language and terminology.

3.2.2 Stakeholder views — submissions to draft determination

In submissions to the draft determination, several consumer representatives proposed that the final rule should require standardisation of format across bills, retailers and energy offers.²⁹ It was also suggested that basic information should be presented in a standard order.³⁰ The Australian Competition and Consumer Commission (ACCC) noted its recommendation in the *Retail Electricity Pricing Inquiry* to analyse improvements to bill format.³¹

On the other hand, retailers opposed giving the AER the discretion to prescribe bill formats in any form, on the basis that it represents a risk for their business (and ultimately consumers) in terms of costs.³² Several retailers highlighted that changes to bill format involve material costs.³³ It was also noted that:

- retailers have commercial incentives to make bills user-friendly to reduce customer complaints and misunderstandings.³⁴
- there is limited evidence that the current bill format results in significant customer detriment and that, therefore, minimal benefits would result in implementing changes to format in the first instance.³⁵
- the regulatory approach on billing requirements should promote flexibility and innovation.³⁶

3.2.3 Analysis and Commission's position

On the basis of the evidence provided in this rule change process, the Commission considers that standardising bill format:

- may require significant investment to retailers, and thereby costs to consumers
- may not materially reduce consumer confusion, especially for those consumers with retailers with well formatted bills
- is not well aligned with a competitive market
- requires further consumer research, testing and behavioural insights to assess whether any standard requirements on format are warranted.

Stakeholder views differed on the materiality of bill format as a billing issue. Many consumer representatives and the AER agreed that bill formats are making it hard for some consumers to understand their bills. There is also a view that inconsistency between retailers may hinder customers switching to more favourable tariffs. In contrast, retailers do not consider a standard bill format to be an appropriate or required response to bill confusion. Several

29 Submissions to the draft determination: PIAC, p. 9; TasCOSS, p. 2; Combined Pensioners and Superannuants Association, p. 3.

30 PIAC, submission to the draft determination, p. 9.

31 ACCC, submission to the draft determination, p. 2.

32 Submissions to the draft determination: Alinta, p. 2; Origin, p.2.

33 Alinta, p. 2; Tango, p. 1; Powershop, p. 3.

34 Origin, p. 2.

35 Simply Energy, p. 1.

36 ERM Power, p. 3.

retailers provided evidence that their customers were satisfied with their bills, often following research and customer testing of bill format and design.

The Commission is aware that changes to bill format may materially impact retailers' costs.³⁷ Prescriptive requirements on bill format, such as standardising where each piece of information should be located on a bill (e.g. logo, marketing messages) or a font size for specific information, would potentially materially impact retailers' costs and affect consumer pricing. The Commission notes that cost impacts would depend on the nature of any required changes and the billing system capabilities of a retailer, noting there is not uniform systems' capability across the industry. Obligations would also impose opportunity costs, given retailers' resources are limited and compliance with the billing guideline would be a civil penalty provision.

The final determination enables the AER to examine if changes to bill format should occur. The Commission notes the contradictory evidence provided in this process and considers further analysis is required prior to any requirements to specific changes on format. The principles in the more preferable final rule will guide the AER's considerations.

For example, in considering consumer choice, retail competition and innovation,³⁸ further analysis might examine the consumer benefits gained from retailer flexibility on bill format. The Commission has seen evidence of a positive customer experience from retailers' proactive investment and innovation on bill design, in terms of improved communication and bill presentation.

3.3

Content

3.3.1

Content in the draft determination

The Commission concluded that while the content of energy bills is generally fit-for-purpose, further research is needed to:

- find a balance between information overload and the need for additional content
- examine the use of voluntary opt-out options for certain billing information, provided it is available to consumers on another platform.

Key factors for examination include consumer needs given the rapid evolution of the market, technological change and the differences between consumers. The Commission therefore required that the AER, in developing the guideline, take into account the need for consumer protection for small customers, while also enabling retail market innovation, competition and consumer choice³⁹.

The draft determination thereby sought to address the two key issues raised in the rule change request:

³⁷ Confidential information provided in submissions by two retailers.

³⁸ An aspect of principle (i).

³⁹ More preferable draft rule, rule 24A(4)(a)(i)

- That some information in energy bills “*may lead to unnecessary complexity and be of little interest or value to customers*”, and be a “*source of frustration leading to sub-optimal outcomes for consumers in this market.*”⁴⁰
- A bill should include additional content, such as a specific reference to the Energy Made Easy website or a link to energy ombudsman schemes.⁴¹

3.3.2

Stakeholder views - submissions to draft determination

Several stakeholders argued that bill content requirements should be minimal.⁴²

Requirements on retailers should be limited to the primary function of bills — helping customers understand how much they owe, the due date for bill payment, and the options for paying the bill.⁴³ These are the functions that bills serve for many small businesses.⁴⁴

In submissions to the draft determination, concerns remained on the benefits of including bill benchmarks in a bill.⁴⁵ The South Australian Department for Energy and Mining differed from this view and stated that bill benchmarks allow customers to easily compare their consumption against similar households.⁴⁶ The AER noted that the utility of bill benchmarks will be considered as part of its research to develop the billing guideline.⁴⁷

Regarding including Ombudsman scheme details in bills, the South Australian Council of Social Service (SACOSS) stated it agreed with the ACCC view (2018) that whilst these schemes are important, consumers should contact Ombudsman schemes as a later step after first contacting their retailer⁴⁸

Other stakeholders suggested including more content in energy bills. Proposals included:

- fault enquiries and emergency contact details⁴⁹
- financial assistance — retailers’ hardship programs and contact details⁵⁰ and the government assistance programs available in that jurisdiction⁵¹
- government assistance programs for acquiring solar panels, batteries.⁵²

Stakeholders addressed what comparison information on bills could help consumers find a better deal. The AER stated that the final rule should allow it to include a ‘best offer’ requirement in the billing guideline if AER research found its inclusion was justified, having regard to the underpinning principles in the more preferable draft rule and consideration of

40 Hon. Angus Taylor MP, Minister for Energy and Emissions Reduction, Rule change request, *Bill contents and billing requirements*, 17 April 2020, p. 4.

41 Hon. Angus Taylor MP, Minister for Energy and Emissions Reduction, Rule change request, *Bill contents and billing requirements*, 17 April 2020, p. 5.

42 Submissions to the draft determination: ERM, Power; p. 2; Simply Energy, p. 3; AGL, p. 3; Origin p. 1.

43 Submissions to the draft determination: Ergon Energy, p. 1; ERM power, 2.

44 ERM Power, submission to the draft determination, pp. 2-3.

45 Powershop, p. 3. Other stakeholder concerns about bill benchmarks are discussed in AEMC draft determination, pp. 13-14.

46 South Australia Department for Energy and Mining, p. 3.

47 AER, p. 2.

48 SACOSS, submission to the draft determination, p. 3, citing the ACCC’s Retail Electricity Pricing Inquiry Report, p. 280.

49 AER, submission to the draft determination, p. 3.

50 Submissions to the draft determination: Combined Pensioners and Superannuants Association, p. 4; TasCOSS, p. 3.

51 PIAC, submission to the draft determination, p. 8.

52 PIAC, submission to draft determination, p. 8.

benefits relative to costs.⁵³ A 'best offer' approach is in place in Victoria. At least once every four months, retailers must include on a consumer's bill how much that consumer would save if they were to switch to their retailer's best energy plan.⁵⁴

There was some opposition to including a 'best offer' requirement on the basis that it is costly to implement, creates complexities for systems development and management, and the Essential Services Commission is yet to review whether the Victorian 'best offer' is delivering outcomes for consumers.⁵⁵ The ACCC supported testing the value of including comparison information and tools on an energy bill and considered further research is needed into the effectiveness of different comparison tools on an energy bill.⁵⁶ It noted emerging options including a QR code as used in the UK, and the potential of combining price comparator websites with a switching service.

The Commission also sought stakeholder views on the use of opt-out options for some bill content, predicated on consumer consent and the delivery of that information on an alternate platform. Responses to this issue are presented in the later section (section 3.4).

3.3.3

Analysis and Commission's position

The Commission has analysed the issues raised by stakeholders on bill content, and remains of the view that while existing bill content requirements are generally fit-for-purpose, further research on content changes would be beneficial. Responses from stakeholders reiterated that a balance needs to be found between providing bills that are clear and succinct, and including information that serves the needs of customers.

The Commission considers that a billing guideline is an appropriate mechanism for specifying bill content as it will be guided by the AER's ongoing consumer research, testing and behavioural insights. It is also a flexible mechanism. The AER would continue to evaluate changes in customer preferences and changes in the energy market, amending the guideline as needed.

The Commission considers the AER should analyse the minimum information needed by small customers. Some categories of billing information are essential for all small customers, such as how much must be paid and by when. Other information might be useful to customers on a periodic basis (for instance, longer term consumption or energy efficiency information). Consumer research will help ascertain the essential information to be delivered in a bill and that which could be provided by different means, such as the tiering approach outlined in the next section.

Given the increasing uptake of smart meters, solar PV and batteries, more detailed information will become available to more consumers on their energy usage. Smart meters, access to data, and third party service providers (via CDR) will help consumers understand their usage, search for better deals, decide to invest in distributed energy resources (DER),

53 AER, submission to the draft determination, p. 2.

54 Essential Services Commission, Building trust through new customer entitlements in the retail energy market, final decision, 30 October 2018.

55 AGL submission to the draft determination pp. 13-14.

56 ACCC, submission to the draft determination, pp. 2-3.

empowering them in more efficient ways than via static information on an energy bill. The Commission considers the AER should have the ability to examine if specific requirements should be in place for various billing information, or whether there are areas where innovation and technology are likely to deliver better outcomes to consumers. The Commission notes the AER has stated that it will consider how a mix of prescriptive and principles-based regulation can be used to achieve the bill's objective.⁵⁷

The Commission notes that the AER wishes to consider the use of comparison information and tools in bills, and potentially stipulate related bill information requirements. The more preferable final rule provides that an objective of a bill is to⁵⁸: "*enable customers to easily understand their energy consumption and production, and related costs and revenue, to assist with comparing their customer retail contract with other energy offers available to them.*" Under this provision, the AER has the discretion, after examination (including assessment against the principles) to require retailers to include comparison information or tools, such as 'best offer', and links to comparator websites, QR codes or a reference price.

The Commission understands that the AER intends to examine the costs and benefits of requiring retailers to include a 'best offer' in bills, as part of the development of the guideline.

3.4

Delivery of energy bills

3.4.1

Approach to bill delivery in the draft determination

The Commission has considered the regulatory framework governing the provision of paper bills, given the recent increase in the use of applications, web portals and email to provide small consumers with consumption data and billing information.⁵⁹ The rule change proponent considers the NERR do not stipulate how bills are to be issued or delivered to consumers, and this rule change request should analyse accessibility to paper bills and potential mandating of methods of bill delivery in the guideline where it is in the best interests of consumers.

The Commission's position in the draft determination was that small customers currently have access to paper bills. Specifically, the existing rules provide sufficient protection to consumers by giving them the choice of receiving a paper bill or an electronic bill from their designated retailer for standard retail contracts. Market offers can also be provided with a paper bill option and consumers can consider the suitability of a market retail contract based on the availability of a paper bill.

The Commission also considered whether retailers should have to provide a paper bill free of charge, and found that some jurisdictions already have regulations on this issue. As such, the Commission did not address this issue in the more preferable draft rule.

The draft determination also sought stakeholder feedback on the possibility of enabling (through the AER guideline) a 'tiered approach' to energy bill content. Under this arrangement, if a consumer provided their consent a retailer could provide certain types of

⁵⁷ AER, submission to the draft determination, p. 2.

⁵⁸ AEMC, Bill contents and billing requirements, more preferable final rule, 18 March 2021.

⁵⁹ Hon. Angus Taylor MP, Minister for Energy and Emissions Reduction, Rule change request, *Bill contents and billing requirements*, 17 April 2020, p. 5.

information in the periodic bill and the remaining information by other means, such as phone applications or online profiles. The Commission's interest in this approach was in response to concerns that bills are too information-dense, and recognition of consumers' differing preferences and the significant uptake of digital and electronic communication platforms.

3.4.2

Stakeholder views — submissions to draft determination

Paper bills

Stakeholders' comments on paper bills spanned a range of factors:

- Public Interest Advocacy Centre (PIAC) noted that the NERR provides the option for small customers to receive a paper bill. However, PIAC and Combined Pensioners and Superannuants Association (CPSA) are concerned that there are some instances where consumers agree to receive an electronic bill when this is not their preference as they are unaware of their options.⁶⁰
- The AER recommend amendments to the draft rule so the AER could test and, pending the outcomes, have the ability to require in the guideline that paper bills must be available for both standard and market retail contracts. The AER is concerned that no consumers should be excluded from accessing competitive market offers.⁶¹
- EnergyAustralia currently provides a paper option for all customers and supported requiring retailers to provide a paper bill if a customer requests it.⁶²
- Powershop highlighted that it has a successful business model of digital consumer communications including for billing.⁶³ It provided information that evidenced a high level of consumer satisfaction with their billing and digital experience through Powershop's digital platforms.⁶⁴

Free paper bills

The ACCC and several consumer representatives supported paper bills being free of charge (for both market offers and standing offers).⁶⁵ The ACCC considered that as vulnerable consumers can be easily disadvantaged in an electronic environment free paper bills remain important.⁶⁶ The AER noted that would like to have the option to explore and have the ability to specify in the guideline that paper bills must be available for both standard and market retailer contracts, free of charge.⁶⁷

Tiered approach

60 Submissions to the draft determination: Combined Pensioners and Superannuants Association, p. 3; PIAC, p. 6.

61 AER, submission to the draft determination, p. 3-4.

62 EnergyAustralia, submission to the draft determination, p. 1.

63 Powershop, submission to the draft determination, p. 1.

64 Confidential data on consumer satisfaction provided by correspondence between Powershop and AEMC staff.

65 Submissions to the draft determination: ACCC, p. 3; AER, p. 3; Combined Pensioners and Superannuants Association, p. 3; PIAC, p. 6; TasCOSS, pp. 1-2.

66 ACCC, submission to the draft determination, p. 3.

67 AER, submission to the draft determination, pp. 3-4.

The introduction of a tiered approach received broad stakeholder support. The ACCC supported the flexibility it could provide for delivery of some bill content.⁶⁸ Retailers and consumer representatives saw benefits in enabling innovation.⁶⁹ Ergon Energy highlighted the need for billing requirements to keep pace with market changes, such as the use of digital platforms, to enable retailers to respond to more tailored needs, particularly young energy customers.⁷⁰ Powershop also mentioned that there are customers using digital platforms that value the flexibility of accessing information at any time.⁷¹

3.4.3

Analysis and Commission's position

Paper bills

The Commission has determined to retain the current regulatory arrangements governing the delivery of paper bills. Specifically, it has determined not to provide the AER with the power to require retailers to provide paper bills for all market offers.

The Commission understands stakeholders' concerns that vulnerable consumers can be disadvantaged in a digitalised service-delivery environment. However, the Commission considers that a holistic examination of consumer vulnerability is a more appropriate way to develop regulatory responses than making a decision on the specific issue of paper bills in isolation of a broader analysis. The Commission notes that the AER has undertaken research on regulatory approaches to consumer vulnerability⁷² and will develop a consumer vulnerability strategy as part of its current Strategic Plan.⁷³ The Commission encourages the AER to examine in the development of the vulnerability strategy concerns regarding access to paper bills, including the question of cross-subsidies if bills were to be free of charge.

In addition, new research conducted by the AEMC found that consumers can currently get paper bills on the cheapest market offers:

- In both Queensland and South Australia, approximately 75 per cent of retailers offer paper bills on their cheapest market offer (either free or with a charge).⁷⁴
- In NSW, an examination of the three cheapest market offers in each distribution zone found that paper bills are available to consumers on the cheapest and third cheapest market offers in Ausgrid and Endeavour's area of operations, and on the cheapest market offer in Essential's area of operations.

This research suggests that the current regulatory arrangements do not materially disadvantage small customers who prefer a paper bill.

68 ACCC, p. 2.

69 Submissions to the draft determination: Powershop, p. 3; EnergyAustralia, p. 1; ERM Power, p. 2; SA Department for Energy and Mining, p. 3.

70 Ergon Energy, submission to the draft determination, p. 2.

71 Powershop, p. 2.

72 Consumer Policy Research Centre, Exploring regulatory approaches to consumer vulnerability. A report for the Australian Energy Regulator. February 2020.

73 AER Strategic Plan 2020-2025, p. 10.

74 Based on desktop searches of offers on Energy Made Easy in February 2021. Retailers who offer paper bills on their cheapest market offers: 1st Energy, AGL, Alinta Energy, CovaU Energy, Diamond Energy, Discover Energy, Dodo, Elysian Energy, Energy Locals, Energy Australia, Enova, Future-X Power, Globird Energy, Glow Power, LPE, Lumo, Metered Energy, Momentum Energy, Origin, People Energy, Power Direct, Power Club, Radian Energy, Red Energy, Simply Energy, Social Energy, Sumo.

The Commission also considers that any changes to the terms and conditions for market offers should be made in the context of a broader examination of all non-price terms and conditions for market offers. Market offers serve a specific purpose in the regulatory framework. They allow retailers the flexibility to respond to differences in consumer needs and foster innovation and competition, which serve the long term interests of consumers. Any move to a more regulated approach should be analysed holistically for likely impacts on innovation and retail competition and the broader regulatory framework. Additionally, retailers who do not offer paper bills generally operate on new business models with a key point of difference being digital communications, thereby expanding the retail choices available to consumers.⁷⁵

The Commission notes with concern the view that some consumers are “placed” on an energy plan unaware it involves an e-bill. This may be a compliance issue (as designated retailers are required to gain a small customers’ explicit informed consent to provide e-bills), and/or an education issue (whereby consumers do not fully understand or are not sufficiently made aware of the bill delivery arrangements). One current opportunity for raising consumer awareness of the availability of paper bills is to include on comparison websites, such as the AER’s Energy Made Easy, the ability for consumers to specifically filter a search for plans that offer paper bills.

In summary, the Commission has determined not to use this rule change as the mechanism for examining and potentially altering terms and conditions on market offers, regarding paper bill delivery. The issue is better analysed under a holistic review of customer vulnerability. Under the more preferable final rule, the Commission maintains the current billing requirements on delivery of paper bills, and encourages further research when appropriate on this issue.

Free paper bills

Similarly, the Commission considers this rule change is not the appropriate mechanism to examine the tariffs and charges applying to paper bills. The Commission notes the provision of free paper bills is currently determined by some jurisdictions. For example, since January 2018, retailers in New South Wales were prohibited from applying fees for paper bills.⁷⁶ AEMC research has found that 28 per cent of retailers provide a paper bill free of charge with a market offer.⁷⁷

Tiered approach

The Commission has determined to amend the more preferable draft rule to allow the AER to specify in the billing guideline different types of billing information and to allow retailers to provide the different information types by different delivery methods. This approach will better enable digital delivery of bill information.

75 Retailers who do not offer paper bills for market offers: Bright Spark Power, Click Energy, Electricity in a Box, Kogan Energy, Mojo, Nectr, Ovo Energy, Reamped Energy.

76 National Energy Retail Law (Adoption) Regulation 2020, Part 3 Modifications to National Energy Retail Rules, rule 35A.

77 Based on desktop searches of offers on Energy Made Easy in February 2021 for South Australia and Queensland. This may vary for each jurisdiction.

The Commission notes strong stakeholder endorsement for this initiative. Providing a customer gives their consent, the Commission supports digital delivery of bill content as it fosters innovation and aligns with many customers' preferences. By making more granular and timely data available to households and businesses, digital delivery can also help consumers better understand their usage and costs. Digital access to data will play an important role with the introduction of the CDR, allowing consumers to use third parties to find them the best energy deal. The Commission wishes to avoid unnecessary duplication of information on both a "document" and digital platform. It encourages the AER to identify types of bill information that retailers could deliver digitally, having regard to the principles in the more preferable final rule.

3.5 Frequency of energy bills

3.5.1 Frequency in the draft determination

The draft determination allowed the AER to specify in the billing guideline a frequency for bills that was different to the requirement in rule 24 of the NERR for standard retail contracts. The Commission suggested the AER should be able to require a billing cycle for standing offers that would be shorter than the 100-day maximum cycle currently specified in the NERR.⁷⁸

3.5.2 Stakeholder submissions to the draft determination

Many stakeholders opposed this proposal and asked that the current rule be maintained.⁷⁹ The view was that existing arrangements sufficiently protect consumers and provide choice. In addition, Ergon argued a shorter billing cycle would increase costs to serve across all customers as many customers across regional and remote Queensland have manually read meters.⁸⁰ There was concern that some small customers are unaware that bill frequency can be negotiated and so are on a contract that does not suit their needs. Customers on low or fixed incomes, such as pensioners, would benefit from shorter billing periods.⁸¹ The PIAC proposed that the minimum billing frequency applicable to standard retail contracts should also apply to market retail contracts.⁸²

3.5.3 Analysis and Commission's position

The Commission has determined to retain the current bill frequency requirements in rule 24 of the NERR as they appear to be providing sufficient protection to consumers. Under the current rule retailers can offer shorter billing periods for both standing offers (shorter than 100 days) and market offers.

78 NERR, rule 24.

79 Submissions to the draft determination: PIAC, p. 7; TasCOSS, p. 2; SA Department for Energy and Mining, p. 3; Ergon Energy, p. 2.

80 Ergon Energy, submission to the draft determination, p. 2.

81 Combined Pensioners and Superannuants Association, submission to the draft determination, p. 4.

82 PIAC, submission to the draft determination, p.7.

- If a small customer is on a **standard retail contract**, a retailer must issue the bill at least once every 100 days.⁸³ If a bill is issued after this period, a civil penalty may apply. Standing offer customers can request a shorter billing period at any time.
- For customers on a **market retail contract**, the frequency of bills is agreed between the relevant retailer and customer and can be modified at any time, rather than specified in the rules. However, a small customer and retailer may agree to a shorter billing cycle, and many customers currently receive bills monthly.

There is an opportunity to make consumers on low or fixed incomes more aware that they can ask for shorter billing cycles at any time, if that would better suit their needs.

⁸³ NERR, rule 24(1).

4 REGULATORY APPROACH

This chapter describes the:

- key aspects of regulatory approach proposed in the draft determination
- stakeholders' views on the draft determination
- the Commission's analysis and conclusions.

4.1 AER mandatory guideline

4.1.1 The regulatory approach proposed in the draft determination

The draft determination adopted many elements of the proponent's proposed regulatory approach. It:

- Required the AER to make a billing guideline in relation to how retailers prepare and issue bills to small customers. The billing guideline requirements would replace the current bill information requirements in rule 25(1) of the NERR, with NERR provisions becoming more principles-based.
- Required retailers to comply with the billing guideline when preparing and issuing bills to small customers.
- Contained objectives for the billing guidelines, for example, to enable small customers to easily understand payment amounts, dates and payment methods for their bill.
- Included principles that the AER must take into account when developing and amending the guideline.
- Required industry consultation in the development and review of the guideline.

The more preferable draft rule also introduces several guideline development principles intended to:

- protect all small customers while enabling retail market innovation, retail competition and consumer choice
- require consideration of the costs to retailers and consumers
- drive effective and proportional billing requirements
- provide for standard language and terminology.

4.1.2 Stakeholder views — submissions to draft determination

Stakeholders' views differed on the regulatory approach set out in the draft determination.

Support for the guideline approach

Eight stakeholders supported the introduction of an AER guideline approach, the ACCC, the AER, all consumer representatives and retailer Simply Energy.

The ACCC stated that direct and enforceable regulation is appropriate where there may not be strong commercial incentives for compliance, for example for providing prompts to switch

to a better offer.⁸⁴ The ACCC considered that ensuring that bills are clear and useful to consumers is best achieved through a mandatory AER guideline, informed by research and consumer engagement.⁸⁵ It also mentioned that this could help identify essential information for all consumers as it is clear that many would prefer less information than currently appears on bills.⁸⁶

The AER considered the benefits of a guideline include:

- for consumer research, testing and consultation to be evidence based, allowing that any reforms are effective and well targeted
- implementing both prescriptive and principles-based regulation to provide flexibility and minimise costs for market participants
- providing clear billing obligations which gives certainty to all stakeholders and facilitates monitoring and enforcement
- the ability to update the guideline reflecting on emerging issues and market developments.⁸⁷

The AER's intention is to create a guideline that "*ensures bills meet the needs of consumers, now and in the future, in an efficient way that minimises cost and enables industry innovation*".⁸⁸

All consumer representatives supported the introduction of the billing guideline.⁸⁹ SACOSS stated that retailer conduct and customer feedback has demonstrated that a prescriptive approach is required.⁹⁰ CPSA also supported the guideline approach as it is a mandatory and enforceable mechanism.⁹¹ PIAC advocated for principles in the NERR that the AER must consider in developing an enforceable billing guideline⁹²

Simply Energy broadly supported the introduction of a billing guideline and considered future-proofed, principles-based provisions in the guideline would provide the necessary consumer protections while not stifling innovation.⁹³

Opposition to the guideline approach

Many stakeholders (retailers and Australian Energy Council, AEC) opposed to the introduction of a mandatory AER Guideline.⁹⁴

84 ACCC, submission to the draft determination, p. 1.

85 ACCC, submission to the draft determination, pp. 1-2.

86 Ibid, p. 3.

87 AER, submission to the draft determination, p. 1.

88 AER, submission to the draft determination, p. 4.

89 Submissions to the draft determination: Combined Pensioners and Superannuants Association, Ombudsman schemes, PIAC, SACOSS, TasCOSS.

90 SACOSS, submission to the draft determination, pp. 1-2.

91 CPSA, submission to the draft determination, p. 3.

92 PIAC, submission to the draft determination, p. 6.

93 Simply Energy, submission to the draft determination, p. 1.

94 Submission to the draft determination: Australian Energy Council, p. 1; Powershop, p. 1; AGL, p. 1; Alinta, p. 2; EnergyAustralia, p. 2; ERM Power, p.1; Ergon Energy, p. 1; Origin, p. 1; Tango Energy, p. 3; Sout Australian Department for Energy and Mining, p. 1.

- Most retailers noted that AER guidelines have been highly prescriptive in the past.⁹⁵ As examples, stakeholders mentioned the RPIG and Hardship guidelines.⁹⁶ The AEC considered a prescriptive approach is likely given the AER's role; regulators tend to eliminate grey areas, limit interpretation and prescribe explicit obligations.⁹⁷
- Stakeholders were also concerned that the AER would unnecessarily standardise bills through the guideline and this poses a risk to competition and could limit or remove incentives for innovation.⁹⁸ Ergon was concerned that the billing guideline would have a one-size fits-all approach and ⁹⁹ noted that guidelines are often developed to meet the needs of the dis-engaged or vulnerable customers, rather than considering the different needs in the sector, such as younger people or small businesses.¹⁰⁰ ERM Power highlighted that there is information in bills that is not suitable to small businesses needs. For example, small businesses get energy efficiency information through means other than bills, which are sent directly to the accountant to be paid.¹⁰¹
- Several stakeholders also opposed the AEMC transferring its rule making powers to the AER on the basis that this blurs the separation of powers and roles between the two market bodies.¹⁰² AGL stated under the energy rules it is the role of the AEMC and not the AER to develop billing requirements and undertake the underpinning research and analysis.¹⁰³ The AEC considered that the draft determination approach did not meet the separation of power principles intended in the NERL, and stated that it is the responsibility of the AEMC to make rules that are compatible with the NERO.¹⁰⁴
- A number of retailers provided cost data to the AEMC on the impacts of changes to their billing systems, either voluntary changes or those made in response to regulatory change.¹⁰⁵ It was also mentioned by retailers that they have made investments to change their bills and that these investments would be at risk with the introduction of new billing requirements through the guideline.¹⁰⁶ Tango Energy noted that the uncertainty regarding the changes to be introduced by the guideline could potentially create higher costs for customers, including by amortisation of past investment over a shorter period, and discourage retailer investment in innovative solutions.¹⁰⁷
- The AEC stated that the AEMC must provide further evidence in the final determination to support that the billing guideline will be better able to deliver a flexible and fit for

95 Submissions to the draft determination: AGL, pp. 1, 10; Australian Energy Council, p. 3; EnergyAustralia, pp. 2-3; Ergon p. 1.

96 Submissions to the draft determination: Australian Energy Council, p. 3; EnergyAustralia, p. 3; Ergon p. 1.

97 Australian Energy Council, p. 2.

98 Submissions to the draft determination: Powershop, p. 2; AGL, p. 1; Origin, p. 2.

99 ERM Power, submission to the draft determination, p. 1.

100 ERM Power, submission to the draft determination, p. 1.

101 ERM Power, submission to the draft determination, pp. 2-3.

102 Submissions to the draft determination: AGL, p. 5; Alinta, p. 1; Australian Energy Council, p. 1, ERM Power, p. 3; Powershop, p. 1.

103 AGL, submission to the draft determination, pp. 4-5.

104 Australian Energy Council, p. 1.

105 Confidential submissions to the draft determination.

106 Submissions to draft determination: Tango Energy, p. 1; AGL, p. 1.

107 Tango Energy, submission to the draft determination, p. 1.

purpose regulatory approach than changing the rules in the NERR.¹⁰⁸ AGL stated that the AEMC did not provide a cost-benefit analysis with evidence that the guideline is the best option to achieve the NERO and a similar analysis for alternative solutions.¹⁰⁹ AGL notes that an assessment on consumer benefits and detriments against the costs to industry, is the basis of Regulatory Impact Statements across the public sector.¹¹⁰

- Retailers also mentioned that if the AER is to develop a guideline, it must undertake a cost-benefit analysis.¹¹¹ AGL noted that in general, the lack of formal, consistent cost-benefit analysis under AER guidelines can impose unnecessary regulatory burden and costs on retailers.¹¹² Alinta noted the AER must be required to clearly demonstrate the net benefits of the changes introduced as they will increase retailers' costs to serve and therefore, the affordability of energy to consumers.¹¹³
- Some retailers also noted that they are best placed to understand customer needs, and not the AER.¹¹⁴ AGL stated that the AER behavioural insights and research should not replace retailer's insights and customer research.¹¹⁵ Energy Australia noted that changes to billing requirements require a thorough understanding of the needs in the market and consumer preferences and that decisions should be subject to consumer behavioural testing. EnergyAustralia noted that it is preferable to encourage retailers to deliver better outcomes to consumers as they are best placed to understand their needs and have direct interactions with them. It was also mentioned that the ability of the AER in updating the guidelines will be limited to their knowledge of changes to consumer preferences and market developments.¹¹⁶
- In submissions to the draft determination, stakeholders also considered that the flexibility proposed for the billing guideline could have adverse impacts. For example, cost risks to retailers given the uncertainty regarding the triggers for, and the materiality, of future changes.¹¹⁷ The South Australian Department for Energy and Mining also noted that consumers will have to adapt to those changes (e.g. language, terminology, format, content) and therefore, consumer literacy could be at risk.¹¹⁸ Origin suggested that any changes to billing requirements should be a consequence of clearly identified failures in the market.¹¹⁹

Other regulatory approaches

¹⁰⁸ Australian Energy Council, submission to the draft determination, p. 1.

¹⁰⁹ AGL, submission to the draft determination, p. 4.

¹¹⁰ AGL, submission to the draft determination, p. 4.

¹¹¹ Submissions to the draft determination: AGL, p. 5; Alinta, p. 2.

¹¹² AGL, submission to the draft determination, p. 5.

¹¹³ Alinta, submission to the draft determination, p. 2.

¹¹⁴ Submissions to draft determination: EnergyAustralia, p. 3; Ergon Energy, p. 2.

¹¹⁵ AGL, submission to the draft determination, p. 5.

¹¹⁶ EnergyAustralia, submission to draft determination, pp. 2-3.

¹¹⁷ Submissions to draft determination: EnergyAustralia, p. 1; Ergon Energy, pp. 1-2.

¹¹⁸ South Australian Department for Energy and Mining, p. 1.

¹¹⁹ Origin, submission to the draft determination, p. 2.

A number of stakeholders advocated for alternatives to a billing guideline. Options included: leaving existing NERR requirements unchanged, making minor amendments to the NERR, and changing the currently prescriptive NERR requirements to a principles-based approach.

Many stakeholders supported minor amendments to the NERR.¹²⁰ EnergyAustralia stated its preference is for the NERR to be amended to ensure consumer protection and allow retailers to produce 'better bills' based on customer preferences.¹²¹ The South Australian Department for Energy and Mining stated that the current rules ensure that consumers receive the key information required to understand their energy usage, costs and how to interact with their retailer. Therefore, it proposed to amend the current rules through a rule change process instead of removing rule 25 of the NERR and introducing a guideline.¹²²

Other stakeholders supported giving retailers flexibility to determine bill contents and delivery that best meets their customers' needs, guided by principles or outcomes-based requirements in the rules.¹²³ Evidence was cited from the United Kingdom where, a principles-based approach has been used in combination with specific requirements, indicated high levels of consumer satisfaction (74 per cent).¹²⁴ One view was that the information retailers provided to the AEMC for this rule change was sufficient to amend the NERR to a principles-based approach.¹²⁵

4.1.3

Analysis and Commission's position

The Commission notes that some stakeholders oppose the introduction of a mandatory AER billing guideline. The Commission has considered these concerns and remains of the view that a mandatory AER billing guideline is the regulatory approach most likely to promote the NERO. The Commission has therefore determined to retain the regulatory approach proposed in the draft determination, with some additions, including requiring the AER to consider the NERO when developing and amending the billing guideline.

This section presents the Commission's analysis of proposed regulatory approaches against the three assessment criteria for this rule change request, focusing on stakeholder comments to the draft determination:

- transparency
- consumer engagement, choice, innovation and participation
- regulatory and administrative burden.

Transparency – providing adequate, clear and timely information

The Commission considers that a mandatory billing guideline is more likely to deliver the adequate, clear and timely bill information small customers need than solely a rules-based

120 Submissions to the draft determination: AGL, pp. 2-5; EnergyAustralia, p. 1; ERM Power, p. 2; Origin, p. 1; South Australian Department for Energy and Mining, p. 1.

121 EnergyAustralia, submission to the draft determination, p. 1.

122 South Australian Department for Energy and Mining, submission to the draft determination, p. 1.

123 Submissions to the draft determination: Ergon Energy, p. 2; AGL, pp. 2-5.

124 AGL, submission to the draft determination, pp. 2-5.

125 Ibid, p. 7.

approach, because it is likely to be informed by ongoing expertise developed through the guideline development and monitoring process rather than via one-off rule change processes.

A billing guideline would be informed by direct consumer input through consumer research, testing and behavioural insights, spanning the entire customer retail journey. Stakeholders have highlighted that consumer research and behavioural insights are key to identifying what consumers value the most in an energy bill.¹²⁶ The AER has committed in its current strategic plan to improve consumer outcomes by boosting consumer testing and behavioural insights (while also reducing costs to serve). Importantly, the AER intends to apply its research findings across AER initiatives (e.g. RPIG), EME enhancements, Hardship/Sustainable Payment Plans Framework as well as billing). This confirms that sustained consumer research and testing capability is to be built within the AER, and its findings are to be applied across the consumer retail experience including billing.

Consumer research, testing and behavioural insights would enable the AER to:

- identify the information consumers value the most in their bill, for each bill objective
- identify the most effective billing requirements to deliver this information
- identify the best regulatory approach, whether prescriptive or principle-based, for each information component
- anticipate and adapt quickly to market changes over time.

Research will shed light on several key aspects of billing. Chapter 4 in this final determination identified that further work is needed to:

- Balance calls to reduce information overload in bills against proposals to include more information.
- Identify for some bill objectives what the best, or leading, information sets might be. For instance, to help consumers use energy efficiently, and to compare their contract with other offers, and what language and terms to standardise.
- Identify what categories of information could be provided through digital means with customer consent
- Identify which information should be retained on a periodically issued document and which can be provided through other means in different timeframes.

Resolving these issues is likely to deliver adequate, clear and timely information to customers in energy bills.

In addition, consumer research, testing and behavioural insights will help identify what bill components require a prescriptive approach and which could be delivered through principles-based regulation. Regulatory frameworks need to be able to utilise different regulatory responses. In the 2020 Retail energy competition review the Commission found that the growing diversity in the market is likely to require a range of regulatory approaches to strike the right balance between enabling innovation and consumer protection. For billing, it may be appropriate to use a prescriptive approach for some issues, a principles-based approaches for

¹²⁶ Submissions to consultation paper: AER, p. 1; ACCC, p. 1; SACOSS, p. 3; ACTCOSS, p. 4; AGL, pp. 1-2; ACTCOSS, p. 4; Meridian, p. 4; Aurora, p. 3; Origin, p. 2; Energy Australia, p. 2; Ergon, p. 1.

others issues, and a 'wait and reassess' approach for others. The approach of an AER guideline underpinned by principles-based provisions in the rules is consistent with the more adaptable regulatory models described in the 2020 Retail competition review.

Stakeholder feedback indicates that a uniform regulatory approach may not be suitable for all bill functions. The Commission considers that while a prescriptive approach may be suitable for some billing issues (such as language and terminology) it presents higher risks for others (such as standardised format). Clear, mandatory requirements may be needed to protect small customers for billing aspects that do not align with retailers commercial incentives, as highlighted by the ACCC. The Commission considers that with research, and with assessment against the bill objective and principles in the more preferable final rule, the AER would develop a guideline that strikes the right balance between prescriptive and principles-based approaches.

Finally, the Commission notes the pace of change in the market (see section 1.2). The Commission considers that a guideline process may be more responsive and adaptable to changes in the market and consumer preferences than a solely rules-based process, if it is informed by ongoing expertise developed through the guideline design, stakeholder engagement and a monitoring process. A regulatory framework that caters to both aspects of flexibility — changes over time and a mix of principles-based and prescriptive approaches — is likely to promote the provision of adequate, clear and timely bill information.

Promoting engagement, choice, innovation and market participation

The Commission has analysed concerns that an AER guideline would constrain consumer choice and market innovation, and has concluded that the proposed regulatory approach sufficiently addresses them.

It is noted that some stakeholders consider there is a higher risk of standardisation through an AER guideline than via a rules-based approach, and that standardisation would pose a risk to competition and would limit or disincentivise retailer innovation. A related concern is that guidelines may be developed to meet the needs of dis-engaged or vulnerable customers, rather than considering other cohorts within the small consumer category, such as younger people or small businesses. The Commission notes this concern and considers that the "innovation, competition and consumer choice" principle seeks to guide the AER towards a flexible framework, wherever possible, to enable customisation, market change, competition and innovation. Allowing the AER to enable digital delivery of some categories of bill information is also aimed at fostering innovation and consumer choice.

Another stakeholder view is that a guideline is likely to be more prescriptive than a rules-based approach, and this may limit innovation and customer choice. The Commission is satisfied that the proportionality principle¹²⁷ will drive regulatory responses commensurate to the bill objective, and notes that the AER has stated how it would consider a mix of prescription and principles-based approaches can achieve the billing objectives. The Commission also notes that the AER Strategic Plan lists as an outcome the "effective development of open and competitive markets".¹²⁸

¹²⁷ AEMC, Bill contents and billing requirements, final rule, rule 25A(4)(a)(iii).

Fostering consumer choice is an important consideration for this rule change. The Commission's view is that a billing guideline informed by consumer research, testing and behavioural insights, would enable the AER to define billing requirements that reflect digitalisation and technological developments. Digitalisation brings new ways for consumers to interact with their retailer, data and even with the market. In the *2020 Retail energy competition review* the Commission found that there is a need to future-proof the NECF and develop consumer protections that are fit-for-purpose for a more diverse retail market characterised by digitalisation. Increased diversity will require a range of regulatory approaches to strike the right balance between enabling innovation and consumer protection.¹²⁹

While not all consumers will want or be able to interact with the market in new ways, the Commission considers that the NECF needs to be flexible enough to generally give consumers choice in how they engage.¹³⁰ The Commission noted that this is particularly relevant for billing, where new phone applications and digital technologies give consumers the choice to instantly access data and billing information. A billing guideline guided by consumer research, testing and behavioural insights, would enable the AER to define billing requirements that reflect digitalisation and the technological developments available to consumers.

Retailers consider they are better placed to understand customer needs and the market than the AER, and therefore should determine bill information. While the Commission recognises the significant investment that many retailers make in consumer testing and research, and the unique understanding they have of their customers, it does not consider this is a strong argument against a guideline approach. For instance:

- there are bill content areas where the commercial imperatives of retailers are not aligned with consumer interests (e.g. reducing energy usage)
- the AER currently monitors, reports on and manages compliance in the retail market
- the AER will have to build and maintain knowledge of customer needs and the market sufficient to discharge its obligations under the rules (including on principles spanning consumer protections, market innovation, consumer choice, competition, costs etc)
- the AER has invited retailer's to share their research findings in the guideline development process.

Finally, including principles in the rules without an AER guideline could be an approach most aligned with the provision of flexibility for industry. However, this regulatory mechanism may not address all billing components appropriately given that not all components may be of commercial imperative for retailers. Given the above, while it could provide for innovation and consumer choice, the Commission does not consider that principles alone provide appropriate consumer protections.

Regulatory and administrative burden — costs and benefits

128 AER Strategic Plan 2020-2025, p. 3.

129 AEMC, [2020 Retail energy competition review](#), p. 205.

130 AEMC, 2020 Retail energy competition review, [final report](#), 30 June 2020, p. 224.

The Commission notes concerns about the direct and indirect costs of billing requirements, and considers a billing guideline to be an appropriate regulatory approach. The Commission is cognisant that regulation can involve costly changes to billing systems, opportunity costs to consumers, and indirect costs should regulation impact materially on competition in the market. In terms of direct costs, significant costs can be incurred in managing billing inquiries, complaints, and disputes, which are borne by retailers, government, consumer support providers and, ultimately, energy consumers. There are also compliance and enforcement costs associated with any regulation. The Commission considers that these costs could occur under a guideline or a rules-based regulatory approach if unnecessary requirements are introduced.

The Commission also considers that the development of expertise reduces these risks. The AER would develop ongoing capability through the guideline development and monitoring process, and the design and analysis of consumer research, testing, and behavioural insights.

The Commission also considers that the principles requiring the AER to consider the net benefits of different requirements should deliver the lowest cost approaches. The AER must have regard to: “the costs of compliance by retailers with the billing guideline and potential resulting costs for small customers” and “whether requirements in the billing guideline are effective and proportionate to the expected benefits that result from achieving the billing objective”.

The more preferable final rule also gives the AER flexibility to allow different types of information to be delivered by different methods, and decide on the timing of implementation. These provide avenues for retailers to minimise costs. For the initial guideline, the AER will also need to consider the scale of change that can be implemented within twelve-months. As further changes can be pursued through guideline updates, prioritisation, sequencing and ‘wait and reassess’ approaches can be utilised.

One point of stakeholder concern was that the more preferable draft rule did not require the AER to undertake a formal cost-benefit analysis in the guideline development process. The Commission agrees that consideration of costs, relative to benefits, will be an important part of the guideline process, as indicated by principles concerning costs and proportionality to which the AER must have regard. As such, the Commission considers that the AER would have regard to the costs and benefits of each billing requirement in developing and amending the guideline.

It is important to recognise that changes to bill requirements can impose widely ranging costs. Costs will be specific to the proposed change, and may vary between retailers as billing system capability is not uniform across the retail sector. As costs are ultimately born by consumers, the benefits of any changes should be weighed against costs, as well as alternate, less costly (bill and non-bill based) solutions that would deliver a similar outcome. Comparing the costs of options likely to deliver a similar outcome could be helpful where quantifying the benefits, for consumers or more efficient market outcomes, is challenging. Several retailers have provided confidential cost information to the Commission for this rule change, which has aided the Commission’s deliberations. The AER could request that retailers

provide historical cost information and estimates for various potential changes to bill contents and requirements.

Other considerations — response to key stakeholder concerns

AEMC's rule making power

The Commission notes stakeholders' views that the development of the billing guideline is the AEMC's role, rather than the AER's. The Commission's view is that it is within its power to make a rule which requires the AER to develop the billing guideline and to leave matters under the billing guideline to be determined by the AER.

The AEMC is a regulatory body established by section 5 of the *Australian Energy Market Commission Establishment Act 2004* (South Australia) (AEMC Establishment Act). Section 6(a) of the AEMC Establishment Act provides that the AEMC has functions of rule making, market development and other functions conferred on the AEMC under National Energy Laws or Jurisdictional Energy Laws. National Energy Laws is defined at section 3 of the AEMC Establishment Act to include the NERL and the NERR.

The AEMC has the rule making functions and powers conferred on it under the NERL and the National Energy Retail Regulations (section 221 of the NERL). Section 243 of the NERL allows the AEMC to make a rule at the request of any person or the Ministerial Council on Energy.

The NERL sets out the subject matters that the AEMC may make rules about (section 237). Relevantly, section 237(3)(f) provides that the NERR may confer a function on the AER to make, prepare, develop or issue guidelines in accordance with the Rules, including guidelines that leave any matter or thing to be determined by the AER.

Based on the above provisions, the Commission considers that it has the power to make the more preferable final rule, which requires the AER to develop and implement the billing guideline.

Assessment of the NERO

A view was expressed that the AEMC provided insufficient cost-benefit analysis in the draft determination regarding the guideline and alternative solutions to demonstrate the NERO had been met. A NERO assessment does not require a full, formal cost-benefit analysis of a rule change against the status quo and alternate options. In many cases (including this one) it would be very difficult to put accurate dollar values on the costs and benefits of specific changes the NERR for the different regulatory approaches.

As outlined in the previous section, the more preferable final rule includes a provision that requires the AER to make and amend the billing guideline in a manner that will or is likely to contribute to the achievement of the NERO and is compatible with the consumer protection test. Under the NERL, there is no general requirement for the AER to promote or have regard to the NERO for all of its functions. However, the AER must, in performing or exercising an AER regulatory function or power, do so in a manner that will or is likely to contribute to the achievement of the NERO.¹³¹ The AER's regulatory functions or powers are defined in the

¹³¹ NERL, section 205.

NERL and include the RPIG, but would not extend to the billing guideline. Therefore, the Commission has included a provision in the more preferable final rule, which mirrors the wording in the NERL.

4.2 Billing objectives

4.2.1 The objective proposed in the Draft determination

The more preferable draft rule proposed the following objectives for the billing guideline:

The objectives of the billing guidelines are to enable small customers to easily understand:

- (a) payment amounts, dates and methods for their bills;
- (b) how their bill is calculated and whether it conforms to their customer retail contract;
- (c) their energy consumption and production, and related costs and revenue, to assist with:
 - (i) using energy efficiently;
 - (ii) comparing customer retail contract with other energy offers available to them;
 - (iii) considering options for energy supply other than through the interconnected national electricity system;
- (d) how to dispute or raise a query in relation to their bill;
- (e) how to access interpreter services and seek financial assistance.¹³²

4.2.2 Stakeholder views — submissions to the draft determination

Stakeholders raised several issues with the billing objectives. A number related to proposals to either add to or remove content from bills, summarised in the previous chapter.

Key concerns with the billing objectives were:

- **Comparison information and tools** — the AER and the ACCC considered that the billing objectives should allow the AER to examine the value of including in bills comparison information and tools, such as: links to comparison websites, QR codes, the reference price, or 'best offer'.¹³³ The AER stated that the proposed rule should empower the AER to include such a requirement on best offer (if the AER finds it justified having regards to the principles).¹³⁴
- **Risk of scope creep** — there is a concern that the billing objectives are too broad and may lead to more bill requirements on retailers than at present, raising costs and resulting in more information on bills as retailers manage compliance risk.¹³⁵ To address this, retailers requested that the guideline be more clearly linked to achieving the billing objectives and there was a proposal to include a clear billing purpose.¹³⁶

¹³² AEMC, more preferable draft rule, Bill contents and billing requirements draft determination, Rule 25A(2).

¹³³ Submissions to draft determination: ACCC, p. 3; AER, p. 2.

¹³⁴ AER, submission to the draft determination, p. 2.

¹³⁵ AGL, submission to the draft determination, p. 5 and p. 9.

¹³⁶ Submissions to draft determination: AGL, pp. 9-10; ERM Power, p. 2.

- **Differences between households and small businesses** — ERM Power highlighted that many small businesses engage with their bill very differently to residential customers. Many do not engage with their bill beyond the basic information, if at all, approximately 60 per cent use online billing channels, many use direct debit, and a bill is typically managed as a tax invoice paid by the business accountant. As many small businesses do not rely on bills for information to help manage energy efficiency, consider investments in solar panels or batteries, to find better energy plans, ERM proposed that information on consumption and production (objective (c) in the draft rule) should be removed.¹³⁷
- **Prioritisation of billing objectives** — Powershop considered some objectives to be more important than others. They classified the same information identified by ERM Power above (energy efficiency, incentives to invest in solar panels or batteries, seek better plans) as less important information.¹³⁸
- **Additional information** — Other stakeholders considered the billing objectives should be amended to allow for the inclusion of additional information in bills. The AER noted that the draft rule should reflect the obligation to include fault enquiries and emergencies phone number as it is currently required under rule 25 in the NERR.¹³⁹ Consumer representatives considered it useful to include contact details for seeking financial assistance (e.g. for government and hardship programs) and information regarding NECF consumer rights and protections (e.g. protection from disconnection).¹⁴⁰ PIAC also suggested including information on government assistance to access to solar panels and batteries programs; specific requirements on the customer's address and NMI details; and more details on the customer tariffs.¹⁴¹

4.2.3

Analysis and Commission's position

The Commission has considered feedback on the more preferable draft rule and has introduced two amendments that more clearly link the guideline to the billing objective (new provision), and reinstate a faults and emergency requirement.

For added clarity, the Commission has amended the more preferable draft rule so, rather than the objectives applying to the billing guideline, they form the objective of an energy bill. The AER is required to make a guideline for retailers to meet the bill objective. Thus, the bill objective set the outcomes that any billing requirements must seek to achieve.

The Commission notes that AER and the ACCC consider that the AER should have the ability to examine comparison information and tools, and potentially stipulate related bill information requirements. The Commission has not amended the bill objective relevant to this, which is to "enable customers to easily understand their energy consumption and production, and related costs and revenue, *to assist with comparing their customer retail contract with other*

137 ERM Power, submission to the draft determination, p. 2.

138 Powershop, submission to the draft determination, p. 2.

139 AER, submission to the draft determination, p. 3.

140 Submissions to draft determination: SACOSS, p. 2; Combined Pensioners and Superannuants Association, p. 4; TasCOSS, p. 3; PIAC, p. 8.

141 PIAC, submission to the draft determination, pp. 7-8.

energy offers available to them." The Commission understands that the AER intends to examine the costs and benefits of 'best offer' information in the development of the guideline.

Other information to be included

Several stakeholders asked for changes the billing objectives so additional information would appear on bills. The proposals were for information regarding faults and emergencies, financial assistance, and consumer rights and protections under the NECF.

The Commission agrees that fault and emergency information is important to consumers and, as is currently the case, is appropriate to be included on a bill. The more preferable final rule therefore includes an additional bill objective regarding this information.¹⁴²

The Commission's view is the more preferable draft rule already included a billing objective to enable customers to easily understand how to seek financial assistance, which has been retained in the more preferable final rule.¹⁴³ In developing the guideline, the AER will analyse what specific information is needed and a range of avenues for providing this information. AER research on regulatory approaches to consumer vulnerability, and consumer research for the billing guideline, will help identify the most effective approach.¹⁴⁴

The Commission considers that the NECF includes sufficient provisions regarding other consumer protections and rights, such as disconnection. The more preferable final rule aims to ensure that consumers easily understand how to dispute or raise a query in relation to their bill.¹⁴⁵

4.3

Principles

4.3.1

The principles proposed in the draft determination

The more preferable draft rule proposed the following principles the AER must take into account in developing and amending the billing guideline:

(4) In making and amending the billing guideline, the AER:

(a) must take into account the following

(i) the need for consumer protections for small customers, while also enabling retail market innovation, competition and consumer choice

(ii) the costs of compliance by retailers with the billing guidelines and the potential resulting costs for small customers;

(iii) whether the requirements in the billing guidelines are effective and proportionate to the expected benefits that result from achieving the relevant billing objectives; and

(iv) the potential benefits of standardising language and terminology across bills, customer retail contracts and energy offers;

¹⁴² AEMC, more preferable final rule bill contents and billing requirements, 18 March 2021, rule 25A(3)(f).

¹⁴³ AEMC, more preferable final rule bill contents and billing requirements, 18 March 2021, rule 25A(3)(e).

¹⁴⁴ CPRC, Exploring regulatory approaches to consumer vulnerability: A report for the AER, 26 February 2020.

¹⁴⁵ AEMC, more preferable final rule bill contents and billing requirements, 18 March 2021, rule 25A(3)(d).

(b) may take into account any other matters that the AER, in its reasonable opinion, considers relevant to the billing objectives.¹⁴⁶

4.3.2 Stakeholder views — submissions to the draft determination

While there was broad support for the principles that the AER must take into account when making and amending the billing guideline, stakeholders raised concerns regarding the guiding principles relating to:

- potential scope creep
- bill format
- consumer protection.

There was broad support for the inclusion of principles that the AER must take into account when making and amending the billing guideline in the regulatory approach. For instance, the ACCC considered that the first principle ensures the balance between the need to protect small customers while enabling retail market innovation, competition and consumer's choice.¹⁴⁷ The AER considered the principles reflected the need to balance consumer and retailer interests in developing the guideline.¹⁴⁸ The centrality of the principle on proportionality was also noted, on the basis that the principle assesses the risk of including additional billing requirements instead of reducing obligations and simplifying bills.¹⁴⁹ The Queensland, New South Wales, South Australian and Victorian ombudsmen considered the principles addressed the key issues relevant to the guideline.¹⁵⁰

Some stakeholders considered the principles too high level and this gave the AER too much discretion as to the scope of the guideline and its level of prescription.¹⁵¹ The AEC recommended the principles be tightened to limit the scope of the guideline.¹⁵² Alinta proposed that the final rule (if made), needs to contain specific guidance to the AER on the contents of a guideline and restrictions on the frequency and circumstances under which it can be changed.¹⁵³

There was a view that the principles should include the standardisation of bill format across retailers as was proposed for language and terminology.¹⁵⁴

A number of retailers were concerned that the 'any other matters' provision¹⁵⁵ posed a scope risk in that the requirements in the guideline could exceed the billing objectives.¹⁵⁶

146 AEMC, more preferable draft rule, Bill contents and billing requirements draft determination, Rule 25A(4).

147 ACCC, submission to the draft determination, p. 2.

148 AER, submission to the draft determination, p. 2.

149 Origin, submission to the draft determination, p. 2.

150 Submission to the draft determination, p. 1. Ombudsman schemes also raised a concern regarding the first principles, discussed below.

151 Submissions to the draft determination: AGL, pp. 7-8; Alinta, p. 1; Australian Energy Council, p. 2.

152 Australian Energy Council, submission to the draft determination, p. 2.

153 Alinta, submission to the draft determination, p. 2.

154 Submissions to the draft determination, PIAC, p. 9; TasCOSS, p. 2.

155 More preferable draft rule 25A(4)(b): "in making and amending the billing guidelines, the AER may take into account any other matters that the AER, in its reasonable opinion, considers relevant to the billing objectives."

156 Submissions to the draft determination: AGL, p. 12; Alinta, p. 2; Australian Energy Council, p. 2; Tango Energy, p. 2.

Consumer representatives considered that consumer protection should be prioritised over innovation and competition. CPSA noted that bills are essential to customers and therefore, consumer protection should be given greater consideration than innovation and competition.¹⁵⁷ PIAC also noted that retail market innovation and competition should not be ends for energy bills as these are tools for an essential service.¹⁵⁸ Ombudsman schemes considered that combining consumer protections with competition, innovation and consumer choice in one principle dilutes the importance of consumer protections as a guiding principle. Therefore, it was suggested that principle (i) in the draft rule¹⁵⁹ be separated into two principles: one regarding consumer protection and another regarding retail market innovation, competition and consumer choice.¹⁶⁰

SACOSS supported the intent of the draft rule but were concerned about the principles' focus on costs to retailers, with several principles repeating the need to balance consumer benefits and costs to retailers. SACOSS stated that efficiencies for retailers are not an objective and are only relevant if they are in the long-term interest of consumers.¹⁶¹

4.3.3

Analysis and Commission's position

The Commission has analysed stakeholder concerns and determined to leave the principles unchanged from the more preferable draft rule.

The Commission's response to concerns about the potential for 'scope creep' is that the objectives, which have been amended to now relate to a bill (rather than the guideline), adequately set out the scope of the guideline. Furthermore, the principles serve to shape the requirements to meet the bill objective, and so it is appropriate that they are relatively high level.¹⁶²

The Commission understands that the concern is that innovation, competition and consumer choice should not be to the detriment of consumer protections. The Commission's view is that the principle in rule 25A(4)(a)(i) of the more preferable final rule indicates that in developing and amending the guideline, the AER must deliver on consumer protections, but in a way that enables innovation, competition, and consumer choice.

157 Combined Pensioners and Superannuants Association, submission to the draft determination, p. 4.

158 PIAC, submission to the consultation paper, p. 9.

159 More preferable draft rule 25A(4)(i): "In making and amending the billing guidelines, the AER must take into account the need for consumer protections for small customers, while also enabling retail market innovation, competition and consumer choice."

160 Ombudsman schemes, joint submission to the draft determination between EWOQ, EWON, EWOSA and EWON, p. 1.

161 SACOSS, submission to the draft determination, pp. 2-3.

162 The clause that the AER can take 'any other matters' it considers relevant does not relate to the scope of the guideline but rather to the matters it must consider when making or amending the guideline.

5 IMPLEMENTATION

This chapter:

- summarises stakeholders' views on the approach to implementation set out in the draft determination
- presents the Commission's analysis and conclusions.

5.1 Approach to implementation in the draft determination

The more preferable draft rule provided that the AER:

- could review and amend the guideline from time to time in accordance with the retail consultation procedure.
- would have 12 months to develop the billing guideline and retailers would have a further 4 months to make changes to their systems (if required) to comply with the guideline. On this basis, the Commission proposed that:
 - the AER be required to develop and publish the guideline by 1 April 2022
 - retailers be required to comply with the guideline from 4 August 2022.

The Commission proposed to recommend to the ministerial forum of Energy Ministers that the requirement on retailers to comply with the guideline be classified as a civil penalty provision.

5.2 Stakeholder views — submissions to draft determination

Stakeholders raised five key implementation concerns in response to the more preferable draft rule. These related to the: guideline consultation process; review of the guideline; oversight of the AER; implementation time frames and; civil penalties.

5.2.1 Guideline consultation process needs to be in the rules

Several stakeholders suggested the guideline should be subject to a prescribed consultation process set out in the rules.¹⁶³ For instance, the rules should establish the minimum time frames for each stage of the consultation process for developing and amending the guideline.¹⁶⁴ Concerned about the rigour in AER consultation processes, AGL stated it intends to submit a rule change to NERR rule 173 to 'provide consistency across all AER guidelines; for instance, regarding the tests to be applied in their development and review.'¹⁶⁵

The AER considers the current statutory framework sets out an effective and transparent consultation mechanism that would apply to the guideline. Additionally, the AER stated it would consult broadly with stakeholders, actively seek contact with those stakeholders

¹⁶³ Submissions to the draft determination: AGL, p. 9; Australian Energy Council, p. 3; Energy Australia, p. 3.

¹⁶⁴ EnergyAustralia, submission to the draft determination, p. 3.

¹⁶⁵ AGL, submission to the draft determination, p. 9.

involved in this rule change request process, and utilise the information made publicly available through the AEMC's consultation for this rule change.¹⁶⁶

5.2.2 **Review of the AER guideline**

Many stakeholders commented on the guideline review process. Several advocated for a set statutory period within which to review the guideline.¹⁶⁷ The AEC, for example, suggested the guideline should not be reviewed more frequently than every two years to minimise the risk of high compliance costs.¹⁶⁸ Other stakeholders saw benefits in the guideline being responsive to changes in technology, innovation and community needs.¹⁶⁹ There was also a suggestion that the guideline should only be updated in the event of market failure and if expected benefits exceed implementation costs.¹⁷⁰

5.2.3 **Oversight of the AER**

An additional concern was the absence of a mechanism to provide recourse for industry participants in the event that the AER does not follow the rule's objectives and principles, such that "scope creep or unreasonable decisions" are made.¹⁷¹

5.2.4 **Implementation time frame is inadequate**

Several stakeholders noted that the billing requirements from a guideline would be uncertain, and the timeframe allowed for implementation may be too short if the required changes are material.¹⁷² A common view was that the AEMC should therefore allow more than the proposed four months for retailers to implement changes.¹⁷³ Several retailers also mentioned that the guideline could introduce complex changes that could be costly and require significant time to design, build, implement and test.¹⁷⁴ The materiality of the fines for breaching the guideline (\$170,000 + \$14,000/day) were also highlighted in support of a longer implementation period.¹⁷⁵ Finally, concerns were raised about the timeliness of large changes to retailer obligations and billing systems given the market is facing other material reforms.¹⁷⁶

As a solution, and to provide more flexibility both to the AER, and to retailers to comply with the final rule, the AEC suggested considering transitional measures for the implementation of the guideline.¹⁷⁷

166 AER, submission the draft determination, p. 3.

167 Submissions to the draft determination: PIAC, p. 8; Combined Pensioners and Superannuants Association, p. 4; AGL, p. 5; Alinta, p. 2; Australian Energy Council, p. 4.

168 Australian Energy Council, submission to the draft determination, p. 4.

169 Submissions to draft determination: Combined Pensioners and Superannuants Association, p. 4; PIAC, p. 8.

170 Origin, submission to the draft determination, p. 2.

171 Submissions to the draft determination: AGL, p. 5.

172 Submissions to the draft determination: Australian Energy Council, p. 4; Powershop, pp. 3-4; AGL, pp. 1-13; Alinta, p. 2; EnergyAustralia, p. 3; Origin, pp. 1-2; Simply Energy, pp.1-2; Tango Energy, p. 2.

173 Submissions to the draft determination: Powershop, p. 3; Simply Energy, p. 1.

174 Submissions to the draft determination: AGL, p. 11; Tango, p. 2.

175 AGL, submission to the draft determination, p. 11.

176 South Australian Department for Energy and Mining, submission to the draft determination, p. 2.

177 Australian Energy Council, submission to the draft determination, p. 4.

5.2.5

Civil penalties

Stakeholders raised the following key concerns regarding civil penalties for non-compliance with the guideline:

- the rule should be clear that non-compliance with the new rule is a civil penalty provision but compliance with the guideline is not.¹⁷⁸
- civil penalties should be limited to serious breaches, for instance “material or persistent” contraventions of the guideline.¹⁷⁹
- civil penalty provisions should follow the classification made by the Council of Australian Governments (COAG) Energy Council in August 2020; such that the more preferable final rule would be classified as a Tier 3 civil penalty provision.¹⁸⁰

5.3

Analysis and the Commission’s final position

The Commission has concluded the following points with regard to implementation:

- **Guideline consultation process:** The AER must follow the retail consultation procedure when developing and amending the billing guideline, which is the same process used by the AER to develop other instruments.
- **Review of the AER guideline:** The AER should have flexibility to amend the guideline in response to material market changes, to keep pace with innovation and adapt to changes in consumer preferences and needs.
- **Oversight of the AER:** The principles in the more preferable final rule serve as parameters for the AER’s development of the guideline. If in the future a stakeholder considers that the guideline does not reflect the principles, or fails to achieve the billing objective, it can submit a rule change request.
- **Implementation time frame:** The AER’s development period for the guideline is retained at 12 months, but the Commission has given the AER discretion to specify when different provisions in the guideline commence, provided that all provisions commence by 31 March 2023. This will provide retailers with a reasonable period to have certainty and comply with the billing requirements under the guideline and also provides the tools for the AER to balance any changes that may be required and are deliverable in the nearer term compared to other changes that may need to be addressed in a longer timeframe.
- **Civil penalties:** Rule 25(1) (as amended by the more preferable final rule) should continue to be classified as a Tier 3 civil penalty provision.

5.3.1

AER consultation process

The Commission considers that the consultation process for the billing guideline should be consistent with the retail consultation procedure that the AER must follow when developing

178 AGL, submission to the draft determination, p. 17.

179 Tango Energy, submission to the draft determination, p. 2.

180 AER, submission to the draft determination, p. 4.

or amending other instruments under the NERR.¹⁸¹ The retail consultation procedure requires the AER to:

- prepare a draft guideline and publish it on its website or any other way the AER considers appropriate.¹⁸²
- invite written submissions and comments on the draft within a period of at least 20 days.¹⁸³
- consider all submissions and comments made within the time allowed and make a final instrument.¹⁸⁴
- prepare a written notice stating the reason for making the final instrument, in this case the final billing guideline.¹⁸⁵

If stakeholders consider a change to the retail consultation procedure for AER instruments is required, changes can be pursued through a separate rule change request.

Finally, the Commission supports the AER's statements as to how it will approach the development of the billing guideline, including:

- engaging broadly with interested stakeholders
- actively contacting parties that contributed to the AEMC consultation
- utilising the information made publicly available through the AEMC's consultation process.

5.3.2 Review of the AER guideline

The Commission considers the AER should have the flexibility to amend the guideline in response to market changes, to keep pace with innovation and adapt to changes in consumer preferences and needs. The more preferable final rule does not specify a statutory time frame for reviewing the guideline in the rules but retains the approach in the more preferable draft rule of allowing the AER to review and amend the guideline when it considers it necessary. The Commission notes stakeholder concerns that, in the absence of a statutory review cycle, frequent updates could increase costs to retailers and consumers. The Commission considers the principles, such as requiring proportionality on the requirements introduced and the benefits from these, or considering the costs for retailers and therefore, for small customers, are mechanisms in the more preferable final rule that minimise this risk.

5.3.3 Oversight of the AER

The development of (and any amendments to) the billing guideline are functions that the AEMC has conferred on the AER under the NERL and the NERR.¹⁸⁶ Therefore, the AER is bound by the NERL to follow rule 25A of the more preferable final rule when developing and amending the billing guideline. The Commission also considers the bill objective and the

181 NERR, rule 173.

182 NERR, rule 173(2)(a).

183 NERR, rule 173(2)(b)(iii).

184 NERR, rule 173(2)(c).

185 NERR, rule 173(3).

186 NERL, section 204.

principles in rule 25A provide sufficient parameters to mitigate the risk of over-prescription. If a stakeholder considers that the billing guideline does not reflect the principles, or fails to achieve the bill objective, it can raise objections with the AER or request a rule change.

5.3.4 Implementation time frame

The more preferable final rule requires all provisions of the first billing guideline to commence by 31 March 2023, approximately two years from the publication of this final determination. The Commission has considered the input and evidence provided by retailers regarding processes for bill changes. It also acknowledges the guideline will be developed alongside other material changes in the energy market and has therefore taken into account retailers' ability to implement the billing guideline.

The Commission is also seeking timely implementation of the guideline and has therefore set a time limit on the commencement of the first guideline. This effectively limits the AER in how much change it may be able to introduce in the first guideline, noting it has the ability under the more preferable final rule to amend the guideline to introduce more change in the future.

The more preferable final rule establishes the following implementation time frame:

- **Development:** retaining a 12-month time frame for the AER to develop and publish the first billing guideline (1 April 2022). This provides certainty to stakeholders on when the provisions of the billing guideline will be known.
- **Implementation:** retaining the date on which retailers will need to comply with the guideline (4 August 2022), but providing the AER with discretion to specify in the guideline whether specific provisions commence at a later date, provided that all provisions commence no later than 31 March 2023. This enables the AER to give retailers additional time to make other changes, if needed.¹⁸⁷

This time frame provides the AER with the flexibility to make some changes in the nearer term and provide additional time for retailers if required changes are more complex.

5.3.5 Civil penalties

The Commission considers that rule 25(1), as amended by the more preferable final rule, should continue to be classified as a Tier 3 civil penalty provision in order to deter non-compliance with the billing guideline. The Commission considers there is no need to change this approach given that compliance with the guideline would be the equivalent to complying with current billing requirements under rule 25.

¹⁸⁷ Under the transitional provisions in the more preferable final rule, the AER can specify in the billing guideline different commencement dates for different provisions in the billing guideline, provided that all provisions in the billing guideline commence by 31 March 2023.

ABBREVIATIONS

Table 1: Abbreviations

ACCC	Australian Competition and Consumer Commission
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AEC	Australian Energy Council
AER	Australian Energy Regulator
CDR	Consumer data right
COAG	Council of Australian Governments
Commission	See AEMC
CPSA	Combined Pensioners and Superannuants Association
DER	Distributed energy resources
DMO	Default Market Offer
EME	Energy Made Easy
NEM	National Electricity Market
NERL	National Energy Retail Law
NERO	National energy retail objective
NERR	National Energy Retail Rules
PIAC	Public Interest Advocacy Centre
OFGEM	Office of Gas and Electricity Markets
RPIG	National Pricing Information Guidelines
SACOSS	South Australian Council of Social Service
SPPF	Sustainable Payment Plans Framework
TasCOSS	Tasmanian Council of Social Service

A LEGAL REQUIREMENTS UNDER THE NERL

This appendix sets out the relevant legal requirements under the NERL for the AEMC to make this final rule determination.

A.1 Final rule determination

In accordance with s. 259 of the NERL the Commission has made this final rule determination in relation to the rule proposed by the Honourable Angus Taylor MP, Minister for Energy and Emissions Reduction, on behalf of the Australian Government.

The Commission's reasons for making this final rule determination are set out in section 2.1.

A copy of the more preferable final rule is attached to and published with this final rule determination. Its key features are described in chapter 2.

A.2 More preferable rule

Under s. 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, the Commission has made a more preferable final rule. The Commission's reasons for making this final rule determination are summarised in chapter 2.

A.3 Power to make the rule

The Commission is satisfied that the more preferable final rule falls within the subject matter about which the Commission may make rules. The more preferable final rule falls within s. 237 of the NERL as it relates to regulating the provision of energy services to customers, and to the activities of persons involved in the sale and supply of energy to customers (s. 237(1)(a) of the NERL) and confers a function on the AER to develop and issue a guideline (s. 237(3)(f) of the NERL).

A.4 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 the first and second round of consultation
- the Commission's analysis as to the ways in which the more preferable final rule will or is likely to, contribute to the NERO (including the consumer protection test).

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.¹⁸⁸

A.5 Civil penalties

The Commission cannot create new civil penalty provisions. However, it may, jointly with the AER, recommend to the ministerial forum of Energy Ministers that new or existing provisions of the NERR be classified as civil penalty provisions.

The [NERL](#) sets out a three-tier penalty structure for the NERL and NERR.¹⁸⁹ A Decision Matrix and Concepts Table,¹⁹⁰ approved by Energy Ministers, provides a decision-making framework that the AEMC applies, in consultation with the AER, when undertaking the assessment of whether provisions of the Rules should be classified as civil penalties, and if so, under which tier.

The Commission's more preferable final rule amends rule 25(1) of the NERR by removing the current information requirements for small customer bills and replacing them with a requirement on retailers to comply with the billing guideline in preparing and issuing bills to small customers. This rule is currently classified as a Tier 3 civil penalty provision under the NERR and Schedule 1 of the National Energy Retail Regulations.

The Commission considers that this rule should continue to be classified as a Tier 3 civil penalty provision given the guideline will contain requirements relating to the content and issuing of bills, which is similar to the current provision. This will also deter non-compliance with the billing guideline, which will assist in avoiding consumer detriment.

The Commission will recommend to the ministerial forum of Energy Ministers that rule 25(1) (once amended) remain classified as a Tier 3 civil penalty provision. The AER has indicated that it supports this recommendation.

A.6 Conduct provisions

The Commission cannot create new conduct provisions. However, it may recommend to the ministerial forum of Energy Ministers that new or existing provisions of the NERR be classified as conduct provisions.

The more preferable final rule does not amend any rules that are currently classified as conduct provisions under the NERL or the National Energy Retail Regulations. The Commission does not propose to recommend to the ministerial forum of Energy Ministers that any of the amendments made by the more preferable final rule be classified as conduct provisions.

188 Under s. 225 of the NERL the AEMC 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 ministerial forum of Energy Ministers.

189 <https://www.aemc.gov.au/regulation/energy-rules/civil-penalty-tools>.

190 http://www.coagenergycouncil.gov.au/sites/prod.energycouncil/files/publications/documents/Final%20-%20Civil%20Penalties%20Decision%20Matrix%20and%20Concepts%20Table_Jan%202021.pdf.

B CURRENT BILL CONTENT REQUIREMENTS BY BILLING INFORMATION TYPES

Table B.1: Billing requirements by billing information types

FUNCTION	RULE	REQUIREMENT
Pay the bill and understand how it is calculated	25(a)	the customer's name and account number
	25(b)	the address of the customer's premises for the sale of energy and the customer's mailing address (if different)
	25(c)	the meter identifier
	25(d)	the billing period
	25(e)	the pay-by date for the bill and the bill issue date
	25(f)	the total amount payable by the customer, including amounts of any arrears or credits
	25(g)	tariffs and charges applicable to the customer
	25(h)	the basis on which tariffs and charges are calculated
	25(i)	whether the bill was issued as a result of a meter reading or an estimation and, if issued as a result of a meter reading, the date of the meter reading
	25(j)	the values of meter readings (or, if applicable, estimations) at the start and end of the billing period
	25(m)	the estimated date of the next scheduled meter reading (if applicable)
25(n)	details of consumption or estimated consumption of energy	

FUNCTION	RULE	REQUIREMENT
	25(p)	any amount deducted, credited or received under a government
	25(q)	if the customer has provided a security deposit, the amount of that deposit
	25(r)	details of the available payment methods
Understand usage	25(k)	particulars of the average daily consumption during the billing period
	25(l)	if a bill was issued by the same retailer for the corresponding billing period during the previous year, particulars of the average daily consumption during that previous billing period
	25(o)	for residential customers—energy consumption benchmarks in accordance with Part 11;
	170(1)(a) 170(2) and (3)	a comparison of the customer's electricity consumption against the electricity consumption benchmarks (AER benchmarks under rule 169). This information must be presented in a graphical or tabular form, as appropriate and in a manner which is easy for the customer to understand.
	170(1)(b)	a statement indicating the purpose of the information provided with respect to those benchmarks
	170(1)(c)	a reference to an energy efficiency website

FUNCTION	RULE	REQUIREMENT
Seek help	25(s)	a reference to the availability of government funded energy charge rebate, concession or relief schemes
	25(t)	a telephone number for account enquiries, the charge for which is no more than the cost of a local call
	25(u)	a telephone number for complaints (which may be the same as that for account enquiries), the charge for which is no more than the cost of a local call
	25(v)	a separate 24 hour telephone number for fault enquiries and emergencies, the charge for which is no more than the cost of a local call, being the telephone number for the distributor and giving the name of the distributor
	25(w)	contact details of interpreter services in community languages
	25(x)	any proportionate billing information in accordance with rule 22.

Source: NERR, rule 25.