



Australian Energy Market Commission

RULE DETERMINATION

National Energy Retail Amendment (Notification of the end of a fixed benefit period) Rule 2017

Rule Proponent(s)

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

7 November 2017

**RULE
CHANGE**

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Reference: RRC0010

Citation

AEMC 2017, Notification of the end of a fixed benefit period, Rule Determination, 7
November 2017 , Sydney

About the AEMC

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

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Summary

The Australian Energy Market Commission (Commission) has made a final rule under the National Energy Retail Rules (NERR) requiring electricity and gas retailers to notify small customers when benefits (such as price discounts) provided to them for a minimum or fixed period in their retail contracts are ending or changing. The NERR apply in Queensland, New South Wales, the Australian Capital Territory, Tasmania and South Australia. The NERR do not apply in Victoria and therefore this rule will not apply in Victoria.

By prompting customers to research energy offers and giving them the information they need to do so, this rule is expected to increase consumer engagement with the energy market and reduce the number of consumers remaining on contracts with expired benefit periods.

The rule change request was submitted by the Australian Government following its meetings with retailers in August 2017. It was assessed on an expedited basis as the Commission considered the rule change request to be for a non-controversial rule, and no stakeholders objected to this process.

Taking into account comments from stakeholders including consumer representatives, retailers and the Australian Energy Regulator (AER), the Commission's final rule differs from the rule proposed in the rule change request in some respects. That is, it is a more preferable rule. These changes were made for practicality and to better achieve the overall purpose of the rule.

Obligations under the rule

The rule's key requirements apply only to retailers with small customers on market retail contracts for electricity or gas where the contract provides a benefit to the customer (such as a price discount) for a minimum period or fixed benefit period that does not continue for the life of the contract. The rule requires retailers to send a notice to customers on such contracts 20-40 business days before their benefit changes.

The obligations under the rule will be implemented in stages.

Commencing on 1 February 2018, retailers will be obliged to send notices with simple information to relevant customers. This information includes:

- the customer's metering identifier
- a statement that the customer's benefit will change and the date on which this will happen
- reference to the AER's price comparator website Energy Made Easy
- reference to the customer's ability to request historical billing data (under existing rules) to assist in using Energy Made Easy
- any early termination charges payable under the contract.

By 1 July 2018, the AER will publish guidelines on more detailed information. Retailers must commence including this detailed information in notices to relevant customers no later than 1 October 2018.

The guidelines will specify the information a customer needs to use Energy Made Easy to compare available offers, and to compare the customer's current contract with those offers. The AER may also include certain other information in the guidelines. For example, information to allow a customer to compare the amount they were billed during the benefit period with amounts they would be billed under available offers.

The Commission considers that a guideline by the AER will help to achieve a consistent approach as between different retailers, and as between the retailers and Energy Made Easy, in relation to the calculation and presentation of these amounts. This will assist with consumer engagement with the market.

The Commission proposes to recommend that the requirement to notify customers be made a civil penalty provision.

Differences in coverage between the proposed rule and the final rule

While the text of the proposed rule referred to electricity contracts only, the rule change request included some references to gas contracts as well as electricity. The Commission considers that the issue giving rise to the rule change request - that customers remain on contracts with expired benefits as they receive no reminder of the end of the benefits - applies to gas as well as electricity. Given this, and the general position under the NERR that consumer protections apply equally to gas and electricity, it is appropriate that the final rule applies to contracts for either or both fuels. The majority of stakeholder submissions supported this approach.

The proposed rule did not require a retailer to send a notice in relation to the end of a "non-financial benefit". The Commission has determined not to include this exemption in the final rule. Benefits that are not financial in nature may have value to customers, and may have been a factor when customers decided to enter into the contract. Therefore customers should be notified when those benefits are changing or ending.

The proposed rule required notices to be sent at the end of a fixed benefit period, with an exemption if, on the expiry of this period, the customer would be "financially no worse off" than before this period expired. This exemption was unclear, but it may have applied if, for example, the retailer continued to give the customer the same benefit after the end of a fixed benefit period as it received during the period. The Commission has determined that it would be preferable to require retailers to send notices when a benefit changes or ends, rather than merely when a fixed benefit period ends. This provides appropriate flexibility and means that notices are not required if a fixed benefit period ends but the benefit provided during that period continues unchanged.

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1 Australian Government's rule change request

1.1 The rule change request

On 22 August 2017, the Honourable Josh Frydenberg MP, Minister for the Environment and Energy on behalf of the Australian Government (proponent) requested the Australian Energy Market Commission (Commission) to make a rule under the National Energy Retail Law (NERL) to increase consumer awareness of changes in retail market contracts by requiring retailers to give customers notice of the end of benefit periods under those contracts (rule change request).

The Commission considered the rule change met the criteria for a non-controversial rule change request, and as a result, assessed it using an expedited rule change process.¹

1.2 Current arrangements

The National Energy Retail Rules (NERR) set out requirements for retailers to notify customers at the end of fixed term retail contracts (contracts for the supply of energy to small customers that run only for a fixed period of time, such as two years). Under rule 48 of the NERR retailers are required to notify customers before a fixed term retail contract ends, provide details of the prices, terms and conditions that will apply under a deemed customer retail arrangement if the customer does not establish a new contract, and state the customer's options for establishing a new contract.

Retail contracts may provide benefits that do not extend for the life of the contract (whether the contract is a fixed term contract or an ongoing contract).² While such benefits are part of the terms and conditions of the contract that must be explained to customers on entry into the contract,³ in the NERR as applied in New South Wales, the Australian Capital Territory, Tasmania and South Australia there is currently no requirement to notify customers that such a benefit is ending.

However, the NERR as applied in Queensland contains a derogation relating to notice of the expiry of fixed benefit periods (referred to here as the "Queensland notice rule").⁴ The Queensland notice rule requires retailers in Queensland to send notices to customers before the end of their fixed benefit periods.

A fixed benefit period is currently defined as:⁵

“a period of a market retail contract (where the end date of that period is specified or ascertainable at the beginning of that period) during which a benefit to the customer (such as a price discount) is available.”

1 Section 252 of the NERL.

2 For example, a discount of 20 per cent off energy usage charges may be offered for the first 12 months of the contract.

3 NERR rule 46A.

4 Rule 48A in the Queensland NERR. This provision is set out on page 9 of the rule change request.

5 NERR rule 45A. Note that the final rule amends this definition.

1.3 Rationale for the rule change request

The proponent argues that because retailers are not required to notify customers of changes to benefits that occur during the course of their market retail contract, there is a risk that customers may:

- not notice or understand the change and complacently remain on the contract, even though they are no longer receiving discounts or benefits; or
- not actively seek out potentially better offers in the market.⁶

The proponent argues that this could negatively impact the competitiveness of retail electricity and gas markets and could erode consumer confidence in the retail energy markets. Consumers may also be unaware of competing offers and unwilling to invest time in research, not realising that a retail offer comparator service (Energy Made Easy) exists.

1.4 Solution proposed in the rule change request

The proponent sought to resolve the issues discussed above by proposing a rule (the proposed rule) that seeks to increase customer awareness of changes in their retail market contracts by requiring retailers to give customers notice of the end of benefit periods under those contracts and by providing customers with information to assist them in locating the best value for money retail market offer.⁷

The proposed rule is set out below.

Box 1.1 Proposed rule

48A Retailer notice of end of fixed benefit period

1. If a market retail contract for the sale of electricity between a retailer and a small customer includes a fixed benefit period that expires before the end of the contract, the retailer must in accordance with this rule, provide notice to the small customer that the fixed benefit period is due to end.
2. Subrule (1) does not apply:
 - (a) in relation to a non-financial benefit available to a customer during the fixed benefit period; and
 - (b) if, on the expiry of the fixed benefit period, the customer would be financially no worse-off than had the period not expired:
 - (i) For the purposes of paragraph b), the relative position of the customer is to be determined having regard to the benefit available immediately before the expiry of the fixed benefit period.

Example: the notice is not required if the benefit is rolled-over on the same terms and

⁶ Rule change request p. 3, p. 7.

⁷ The proposed rule is similar in many respects to the Queensland notice rule discussed in section 1.2.

conditions.

3. The notice must be given -
 - (a) in writing;
 - (b) no earlier than 40 business days before the expiry of the fixed benefit period; and
 - (c) no later than 20 business days before the expiry of the fixed benefit period.
4. The notice must clearly state -
 - (a) that the fixed benefit period is due to expire;
 - (b) the date on which the fixed benefit period is due to expire;
 - (c) the nature of the benefit that is available during the fixed benefit period;
 - (d) that the customer may view all the generally available offers in their area through the AER's energy retail price comparison website (including the name and current web address of that website); and
 - (e) any early termination charge the customer would be required to pay if the customer terminated the market retail contract as at the date of the notice.
5. In addition to providing the information specified in subrule (4), the notice must clearly state and compare -
 - (a) the amount in dollars that was payable by the customer under the contract;
 - (b) the amount in dollars that would have been payable by the customer under the contract but for receiving the financial benefit during the fixed benefit period; and
 - (c) the retailer's reasonable estimate of the amount that will be payable under the contract as a result of the expiry of the fixed benefit period.
6. For the purposes of subrule (5), the amounts must be:
 - (a) calculated by reference to the date on which the customer was last invoiced;
 - (b) based on the average energy usage of the customer over:
 - (i) the 12 months preceding the date on which the customer was last invoiced; or
 - (ii) such lesser period the customer has been a customer of the retailer; and
 - (c) expressed as annualised amounts.

1.5 Relevant background

On 9 August 2017 the Prime Minister announced that the Australian Government had secured agreement from a number of large retailers on a range of measures including, among other things:⁸

- contacting all the customers now who are on expired discounts and telling them how much they can save on a better deal
- developing simple, plain English fact sheets with understandable comparison rates
- supporting a change to the rules requiring companies to inform customers when their discount benefits end, setting out the dollar impact of doing nothing.

The rule change request was developed pursuant to this agreement.

As a further consequence of the above agreement the Australian Energy Regulator (AER) is conducting a review into how customers get the information they need to prompt them to investigate the energy market, help them compare plans and providers and choose the best deal. The AER's issues paper states that this review will inform a range of work being undertaken by the AER in relation to its Retail Pricing Information Guideline and potential future enhancements to its Energy Made Easy price comparator website. Consultation on this review closed on 31 October 2017.⁹

1.6 The rule making process

On 12 September 2017, the Commission published a notice advising of its commencement of the rule making process and consultation in respect of the rule change request.¹⁰ A consultation paper identifying specific issues for consultation was also published. Submissions closed on 10 October 2017.

The Commission considered that the rule change request was a request for a non-controversial rule under section 252 of the NERL. A non-controversial rule is defined as:¹¹

“a Rule that is unlikely to have a significant effect on a market for energy or the regulation of customer connection services.”

Accordingly, the Commission commenced an expedited rule change process, subject to any written requests not to do so. The closing date for receipt of written requests was 26 September 2017. The Commission did not receive any requests not to use an expedited rule change process. The rule change request was therefore considered under an expedited process. This process involves one round of consultation followed by

⁸ Prime Minister, Treasurer and Minister for Energy media release "A better deal for Australian families", 9 August 2017.

⁹ AER, Customer price information Issues Paper, September 2017.

¹⁰ This notice was published under s. 251 of the NERL.

¹¹ Section 235 of the NERL.

publication of a final rule and final determination, with no requirement to publish a draft rule and invite submissions on the draft rule.¹²

The Commission received 18 written submissions: eight from consumer bodies, nine from retailers and one from a retailer representative body. Issues raised by stakeholders in written submissions that are not discussed in the body of this document have been summarised and responded to in Appendix A.

¹² Section 252 of the NERL.

2 Final rule determination

This chapter outlines:

- the Commission's final rule determination
- the rule making test for changes to the NERR
- the assessment framework for considering the rule change request
- the Commission's consideration of the more preferable final rule against the national energy retail objective (NERO).

2.1 The Commission's final rule determination

The Commission's final rule determination is to make a more preferable final rule. The obligations contained in the more preferable final rule are summarised below.

Entity	Obligation	Timing
Retailers	<p><i>Subrules 48A(1) and (3):</i> Provide notices to small customers before a benefit provided under the contract changes or ends. The notice must set out simple details including:</p> <ul style="list-style-type: none"> • the customer's metering identifier • that the benefit is changing, and the date on which it will do so • a reference to the price comparator website • a reference to the customer's ability to request their billing data and electricity consumption data from the retailer • any early termination charges payable under the contract.¹³ 	Applies from 1 February 2018
AER	<p><i>Rule 48B:</i> Develop, using the retail consultation procedure, guidelines regarding the form and content of additional information retailers must provide in their notices, including information to enable the customer to:</p> <ul style="list-style-type: none"> • use the price comparator website to compare offers that are generally available to small customers in their area • compare amounts the customer would pay under their existing contract after the end of the relevant benefit period with the offers referred to above. <p>The guidelines will also specify how a retailer is to calculate any amounts required to be included in the notice.</p> <p>Among other things, the guidelines may also require the notices to include information:</p> <ul style="list-style-type: none"> • to enable the customer to compare the amount paid during the relevant benefit period with the amounts referred to above • on the nature of the benefits provided during the relevant benefit period and how they will change on the benefit change date. <p>The guidelines may specify the types of changes that constitute</p>	Publish guidelines by 1 July 2018

¹³ This will only apply to customers under a fixed term retail contract as early termination charges are not valid in contracts that are not fixed term retail contracts. NERR rule 49A(3).

Entity	Obligation	Timing
	(and do not constitute) a "benefit change" in relation to which a notice must be sent.	
Retailers	<i>Subrule 48A(4)</i> : Provide notices to small customers before the end of their benefit periods that contain the information noted above and comply with the AER's guidelines.	No later than 1 October 2018

The Commission's reasons for making this final rule determination are set out in section 2.4.

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

2.2 Rule making test

2.2.1 Achieving the national energy retail objective

The Commission may only make a rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the NERO.¹⁴ This is the decision making framework that the Commission must apply.

The NERO is:¹⁵

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

The Commission must also, where relevant, satisfy itself that the rule passes the consumer protections test. This test is whether the rule is:¹⁶

“compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers.”

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.¹⁷ 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 section 244 of the NERL, the Commission may make a rule that is different (including materially different) to a proposed rule (a more preferable rule) if it is

¹⁴ Section 236(1) of the NERL.

¹⁵ Section 13 of the NERL.

¹⁶ Section 236(2)(b) of the NERL.

¹⁷ That is, the legal tests set out in sections 236(1) and (2)(b) of the NERL.

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.

2.3 Assessment framework

2.3.1 Assessment against the NERO

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

- the extent to which the rule is likely to improve consumer engagement and participation in the energy market
- the extent to which the rule is likely to improve competition between retailers, by increasing the likelihood of consumers seeking and obtaining better deals in retail energy markets
- whether the long term benefits to consumers of the rule exceed the additional costs that would be passed through to them.

2.3.2 Assessment against the consumer protections test

If the Commission is satisfied that the proposed changes to the NERR will, or are likely to, contribute to the achievement of the NERO, after considering the criteria noted in section 2.3.1 above, the next step is to consider whether the rule also meets the consumer protections test. In simple terms, this test can be interpreted as:

Can the proposed rule be made without causing problems for, or conflicting with, the development and application of consumer protections for small customers?

The "application" of consumer protections relates to consumer protections as they currently exist and as they are presently applied, both within and outside the energy rules. More specifically, would the proposed changes requiring retailers to provide small customers with notice prior to the end of their benefit periods impede currently applicable consumer protections or are they consistent with such protections?

Considering the "development" of consumer protections requires a forward-looking assessment. Is the proposed rule likely to be compatible with the future legislative development of consumer protections, and with consumer protections that may be developed through other regulatory avenues, such as judicial decisions?

The Commission must consider whether the rule is compatible with the development and application of relevant consumer protections, including those:

- within the NERL and NERR
- under the general law, including the Australian Consumer Law
- under laws and regulations of jurisdictions participating in the National Energy Customer Framework.

The Commission considers that the most relevant consumer protection is the Queensland notice rule, relating to notice of the expiry of fixed benefit periods (see section 1.2).

2.4 Summary of reasons

2.4.1 Key differences between proposed rule and more preferable final rule

The more preferable final rule made by the Commission is attached to and published with this final rule determination. The key features of the more preferable final rule are outlined in the table in section 2.1 and further details are discussed in chapter 3. The final rule differs from the proposed rule (see section 1.4) in the following ways:

Proposed rule	Final rule
Detailed rules on the calculation of annualised amounts (r. 48A(5), (6))	The AER is to prepare guidelines on these matters (r. 48B)
A single implementation date for all notice requirements	Notice requirements are staged: notices containing simple information are to be provided from 1 February 2018; by 1 October 2018, notices must contain additional information pursuant to the guidelines (schedule 3 of amending rule)
No notices required in relation to non-financial benefits (r. 48A(2)(a))	Retailers must send notices in relation to benefit changes, whether financial or non-financial (r. 48A(1))
Notices to be sent at the end of fixed benefit periods, with exemption for cases where the customer would be financially no worse off than during the fixed benefit period (r. 48A(1), (2)(b))	Retailers must send notices in relation to benefit changes; if a fixed benefit period ends but the retailer continues the benefit, no notice is required (r. 48A(1), (2)(b))
Notice requirement applies to market retail contracts for the sale of electricity (r. 48A(1))	Notice requirement applies to market retail contracts for the sale of gas as well as electricity (r. 48A(1)) Additional information is required: the customer's metering identifier, a reference to the customer's ability to request their energy data, and information a customer would need to generate comparison offers using the price comparator website (r. 48A(3)(a), (e); r. 48B(2)(c)(i))

2.4.2 Contributing to the achievement of the NERO

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 for the reasons set out below.

Factor	Assessment
Consumer engagement and participation	<p>The rule is likely to lead to greater consumer engagement and participation in the retail energy markets as customers will be given clear and timely information both on why they should review current market offers (as their current benefits are ending) and on how to do so. Most submissions supported this finding, as discussed in section 3.5.3.</p> <p>The more preferable rule is likely to contribute more positively than the proposed rule in this regard because the more preferable rule provides for</p>

Factor	Assessment
	<p>the AER to publish guidelines so that the information provided by retailers is consistent across retailers and is comparable to the information on current offers provided through the price comparator website.</p> <p>Under the more preferable rule the notices will also reach more customers, as notices will also be sent to gas customers, to customers with non-financial benefits, and to customers with contracts whose benefits are due to end. (Stakeholder comments on the benefits of extending the notice to gas customers are noted in section 3.1.3. The treatment of exemptions is discussed in section 3.2.)</p>
<p>Competition in the retail market</p>	<p>The more preferable final rule should lead to greater competition in the retail market as customers will have greater awareness of changes to the amounts they will pay as well as greater awareness of the comparator website. Most submissions supported this finding, as discussed in section 3.5.3.</p> <p>The more preferable rule is likely to contribute more positively than the proposed rule in this regard because the additional information required by the more preferable rule will make it easier for customers to use the comparator website to compare current offers. Therefore, customers who receive the notice are expected to be more likely to shop around for a new energy offer that meets their needs, increasing the incentives for retailers to compete for consumers.</p>
<p>Cost/benefit assessment</p>	<p>The more preferable final rule is likely to lead to long term benefits to consumers that exceed retailers' costs of generating the notices that would be passed on to consumers in a competitive market. Most submissions supported this finding, as discussed in section 3.5.3.</p> <p>While retailers that offer contracts with benefit periods will incur some initial system change costs, the initial and ongoing costs are expected to be smaller than the benefits flowing to consumers. Each customer who, prompted by the notice, moves from an expired benefit contract (which may revert to the high standing offer rates) to a new market offer may save hundreds of dollars each year. The prospect of competition also acts to deter retailers from providing unfavourable terms at the end of the relevant benefit period.</p>

2.4.3 Consumer protections test

The Commission is satisfied that the more preferable final rule passes the consumer protections test as it is generally consistent with current consumer protections and is likely to be compatible with the future development of consumer protections for small customers.

This rule is consistent with the Queensland notice rule in its general approach to the issue of customers being unaware of the end of their benefit periods. As with the Queensland notice rule, this rule requires retailers to send customers a notice with information on when their benefits will end, the ability to choose other retailers, and any early termination fees (among other things).

However, as the details of the content of the notices differ (particularly in relation to the matters that will be included in the AER's guidelines under the final rule), the Queensland Government may consider changing its National Energy Retail Law

(Queensland) Regulation 2014 to allow the more preferable final rule to apply in place of the Queensland notice rule.

3 Coverage, content and implementation of rule

This chapter discusses the key issues the Commission considered in making its determination. It sets out the proponent's views, stakeholder views and the Commission's analysis in relation to:

- whether notices should be sent to gas customers as well as electricity customers
- whether the exemptions in the proposed rule are appropriate
- the content of notices, including content to be prescribed in AER guidelines
- the dates on which obligations under the rule should commence
- costs and benefits of the rule.

3.1 Coverage of gas

3.1.1 Issue

The NERL and NERR apply to both electricity and gas retailers, but the proposed rule as written applied only to market retail contracts for the sale of electricity.¹⁸ The Commission sought stakeholder views on whether the rule should also apply to market retail contracts for the sale of gas.

3.1.2 Proponent's view

While the proposed rule applied only to electricity, the rule change request also cited benefits to gas customers, including:¹⁹

“The proposed rule is designed to ensure customers are made aware of changes that impact the price of their electricity and gas bills.

The proposed rule is expected to enhance the competitiveness of retail electricity and gas markets by encouraging greater consumer engagement with the market therefore promoting greater competition and more efficient pricing.”

3.1.3 Stakeholder views

All consumer advocates supported the proposed rule change applying to gas. PIAC said that:²⁰

“The proposed rule change should also apply to gas contracts. For many dual fuel consumers, the impacts described in response to Question 1 are caused by the total cost of energy, not by electricity as a separate issue to gas bills...Now that gas is no longer the cheaper option for services used by many consumers, they will need to become more engaged with their gas use if their overall household energy costs are to remain as low as possible.”

18 See proposed subrule (1), set out in the box in section 1.4.

19 Rule change request, pp.7-9.

20 PIAC submission, p.4

Other consumer groups agreed:

Consumer Action Law Centre	"The omission of gas from the wording of the proposed Rule Change makes little sense". ²¹
Energy and Water Ombudsman of South Australia (EWOSA)	"Most importantly, the benefits to energy customers of the proposed rule change will be greater by applying it to market retail gas contracts." ²²
Energy Consumers Australia	"There is no reason why this proposed rule 48A should not apply to retail gas market contracts." ²³
Queensland Consumers Association	"The problems are similar to those with electricity." ²⁴
South Australian Council of Social Service (SACOSS)	"SACOSS believes that the proposed rule change should apply to market retail energy contracts including gas, as competition in gas retail is in the long term interests of consumers." ²⁵

Some retailers agreed. Meridian/Powershop (MEA Group) said that "The issue of lack of information, or "useful" information applies to both electricity and gas, and so MEA Group believes the proposed rule should apply to both."²⁶ Simply Energy said "There is no reason why this arrangements should not also apply to gas given that customers often look to bundle these fuel sources when seeking a new retail energy contract."²⁷

AGL opposed the inclusion of gas, although for reasons unrelated to the achievement of the NERO. AGL said "The Prime Minister's 16 commitments with energy retailers' CEOs apply to electricity retail market. Therefore, for consistency of application across these commitments, it is AGL's view the proposed Rule apply to electricity market retail contracts".²⁸ The Australian Energy Council posited that "the implementation cost of applying the rule change to retail gas markets may not outweigh the benefits that may flow from the rule change. The Energy Council supports limiting the scope of the proposed rule to retail electricity markets."²⁹

3.1.4 Analysis

The Commission accepts that gas customers would benefit from the proposed rule in a similar manner to electricity customers. The Commission sees little merit in applying

21 Consumer Action Law Centre submission, p.3.

22 EWOSA submission, p.2.

23 Energy Consumers Australia submission, p.3.

24 Queensland Consumers Association submission, p.3.

25 SACOSS submission, p.1.

26 MEA Group submission, p.1.

27 Simply Energy submission, p. 1.

28 AGL submission, p.3.

29 Australian Energy Council submission, p.4.

different requirements to gas and electricity retailers in this respect. The consumer protections in the NERL and NERR generally apply across both gas and electricity and the Commission does not consider there is a strong rationale to apply a different framework for gas in this case.

The Commission is satisfied that, having implemented the relevant system changes for electricity customers, the marginal cost of the changes for gas customers will be lower. While the Australian Energy Council stated that costs of including gas customers may not outweigh benefits, this statement was not supported with evidence or by submissions from the retailers themselves.

3.2 Exemptions

3.2.1 Issue

The proposed rule includes exemptions to the requirement to provide a notice. Under the proposed rule, a retailer is not required to send a notice in relation to a "non-financial benefit" and if the customer would be "financially no worse-off" on the expiry of the fixed benefit period (proposed subrule 2, set out in full in Box 1.1 in section 1.4).

The consultation paper asked stakeholders whether the proposed exemptions were clear, appropriate and workable, and what potential improvements could be made.

3.2.2 Proponent's view

Although it included the exemptions in the proposed rule, the proponent asked the Commission to consider alternatives to them.³⁰

The proponent notes, in relation to the proposed exemption where the customer is "financially no worse-off", that:³¹

“The purpose of this subrule is to dispense with disclosure requirements if the customer will suffer no practical detriment as a result of the fixed benefit period ending. Such a scenario might arise if, following the end of the fixed benefit period, the terms of the contract are varied to 'roll-over' the existing benefit - that is, the customer continues to receive the same discount applied against the same base rate.”

The proponent goes on to clarify that:³²

“The financial position of the customer is to be determined by reference to the change resulting from the expiry of the benefit. It is not intended the retailer be required to engage in a general evaluation of the consumer's financial position.”

30 Rule change request p. 3, footnote 2.

31 Rule change request p. 3, footnote 2.

32 Rule change request p. 3, footnote 3.

3.2.3 Stakeholder views

Stakeholders had mixed views on the proposed exemptions. Two stakeholders provided general comments in support.³³ Other stakeholders who commented on this issue expressed concerns about the clarity of the exemptions or suggested that one or both exemptions be removed.

Comments opposing "non-financial benefit" exemption

PIAC	This exemption should be removed, as a benefit considered to be "non-financial" may still have a financial impact on a consumer where it involves a product or service the consumer will now have to pay for. ³⁴
Queensland Consumers Association	"Non-financial benefits should not be exempt. They are of value to consumers and influence consumer choice." ³⁵
MEA Group	The danger with such an exemption is that a proliferation of non-financial benefit offers will occur in the market. This would not be good for consumer confidence in the electricity industry. ³⁶
COTA Australia	This exemption should be removed. Many customers would consider benefits such as magazine subscriptions to be of financial value. In the interests of market transparency, all expiring benefits should be reported to consumers. ³⁷
Energy Consumers Australia	This exemption should not apply. Non-financial benefits may have value for a customer, and therefore a customer is entitled to know when any benefits provided to them, including non-financial ones, are due to expire. ³⁸

Comments on "financially no worse off" exemption

Several submissions noted the ambiguity regarding when a customer may be considered to be "financially no worse-off".

Some stakeholders considered that the exemption should be removed.

Energy Consumers Australia	Even if they are not necessarily worse off financially at the end of the benefit period under the relevant contract, the customer may have greater risks in relation to their benefits (e.g. a retailer could continue giving a discount but change it from an unconditional one to a pay-on-time discount) or could be worse off compared to the market more generally. ³⁹
Queensland Consumers Association	This exemption was not included in the Queensland notice rule and should not be included in this rule. The objective is to encourage consumers to look at alternatives to their current situation. Changes in the market, e.g. changes in the offers of other retailers, are relevant to consumers even if a

³³ Consumer Action Law Centre, submission p. 3; EWOSA, submission p. 2.

³⁴ PIAC submission, pp. 4-5.

³⁵ Queensland Consumers Association submission, p. 5.

³⁶ MEA Group submission, p. 2.

³⁷ COTA Australia submission, p. 2.

³⁸ Energy Consumers Australia submission, p. 3.

³⁹ Energy Consumers Australia submission, p. 4.

change in their benefit does not result in them being worse off, as other more beneficial offers may now be available.⁴⁰

SACOSS	Does not support the exemption as it believes customers should have choice in all situations. ⁴¹
MEA Group	This exemption should not be included. Consumers, rather than retailers, are in the best position to determine whether they are "no worse off" after the benefit period ends. ⁴²
Alinta Energy	<p>The exemptions are complex and unclear, and would result in certain customers not receiving notification, affecting their level of awareness and level of engagement in the market.⁴³</p> <p>All customers should receive notice of the expiry of their fixed benefit period, but the information in the notice should vary depending on whether the benefit is being rolled over or materially changed.⁴⁴</p>

Some stakeholders considered that the exemption should be retained, but clarified.

PIAC	Supported the intent of this exemption to avoid unnecessary notifications, but considered the wording is too broad and may be misapplied in ways that have negative outcomes for customers. This exemption should apply only when a consumer's benefits have not materially changed. ⁴⁵
Australian Energy Council	This exemption is unclear. The notice requirement should only arise if the end of the fixed benefit period would result in (or cause) a reduction in the financial benefit enjoyed by the customer. ⁴⁶
AGL	Would like to be able to move customers to somewhat lower benefits without notifying them, on the grounds that the search costs associated with exploring the market (prompted by a notification) may outweigh the reduction in the benefit. ⁴⁷
Red Energy and Lumo Energy	Supported the exemption, considering it mitigates unnecessary costs. The exemption should apply if the benefits provided during the fixed benefit period are continued but there is a price change. In this case, no notice would be required under rule 48A but the retailer would be required to take action under rule 46. ⁴⁸

40 Queensland Consumers Association submission, p. 5.

41 SACOSS submission, p. 1.

42 MEA Group submission, p. 2.

43 Alinta Energy submission, p. 3.

44 Alinta Energy submission, pp. 1-2.

45 PIAC submission, p. 5.

46 Australian Energy Council submission, p. 2.

47 AGL submission, p. 3.

48 Red Energy and Lumo Energy submission, p. 1. NERR rule 46(4) requires retailers to notify customers of variations in tariffs and charges "as soon as practicable, and in any event no later than the customer's next bill."

Simply Energy This exemption is ambiguous. A less ambiguous exemption would be 'financially no worse off due to the end of the benefit period.'⁴⁹

3.2.4 Analysis - non-financial benefits

After considering the issues raised by stakeholders, the Commission's view is that the "non-financial benefit" exemption should not be included in the final rule.

The Commission agrees with the stakeholders who noted that non-financial benefits may have value for customers. Non-financial benefits may have played a role in the customer's decision to enter into the contract initially, and therefore customers should be notified when they are ending or changing. The Commission also agrees that this exemption (if it were included in the rule) might create an incentive for retailers to provide a greater proportion of offers with non-financial benefits simply to circumvent the notice requirements. Such a development would not necessarily be in the long term interests of customers with respect to the price of energy.

3.2.5 Analysis - "financially no worse off"

The Commission considers that the "financially no worse off" exemption is unworkably vague in the form set out in the proposed rule. However, the Commission notes that some retailers currently extend the benefits offered under a contract beyond the date on which the contract specified that the benefit would (or could) end, and that it appears that the exemption in the proposed rule was intended to allow this practice to continue without a notice being required.⁵⁰

In considering this issue it became apparent to the Commission that retailers' contracts could easily circumvent the requirement to send a notice in relation to the end of a fixed benefit period (as per the proposed rule), even if this exemption is not included. A contract has a "fixed benefit period" only if it provides a benefit during a period which has a specified end date, or has an end date which can be ascertained at the beginning of the period.⁵¹

Some current market contracts provide benefits for minimum periods, at the end of which the retailer may:

- extend the benefit on the same terms
- offer a different benefit, or
- move the customer to standing offer rates.

These contracts would not be considered to have fixed benefit periods, and so under the proposed rule the retailer would not be required to send a notice to the customer when the benefit changes or ends.

The Commission considers that retailers should be required to notify customers when their benefits that are provided for a minimum or fixed term under the contract change

⁴⁹ Simply Energy submission, p. 2.

⁵⁰ See proponent's view in section 3.2.2.

⁵¹ NERR rule 45A. Note that the final rule amends the definition of "fixed benefit period" slightly.

or end, regardless of whether this happens at the end of the minimum or a fixed benefit period or at some other time. This approach avoids the circumvention risk discussed above, as a notice will be required whenever a benefit that is provided only for a fixed or minimum term changes. It does not matter whether the contract has a fixed benefit period. This approach also means that retailers will not be required to send a notice if they are continuing to give customers the same benefits after the end of a fixed benefit period (as there will be no change to the benefit) - the intent of the "financially no worse off" exemption.

The question then becomes: what constitutes a change in a benefit? The final rule includes a definition of "benefit change" and also gives the AER the ability to specify, in its guidelines on benefit change notices (see section 3.3.4), what constitutes and what does not constitute a benefit change (r. 48B(3)(a) and (b)).

Unless otherwise specified by the AER the Commission considers that the following examples would represent a benefit change:

- where there is a change in the nature of benefits – for example an unconditional discount is changed to a pay on time discount
- where an introductory discount or gift period ends.

Conversely, unless otherwise specified by the AER, the Commission considers that the following examples would not represent a benefit change:

- where a one off physical gift is provided to the customer on entry into the contract
- where a retailer waives its right to receive a payment under the contract
- where a standing offer on which a percentage discount is based changes (noting that NERR rule 46, which requires notice of tariff changes, would continue to apply in this case).

Some stakeholders would prefer customers to receive a notice prompting them to research other market offers even if their benefit is "rolled over" after the end of a fixed period without change (or the minimum period for the benefit is extended). The main concern is that retailers would tend to roll over benefits only when the customer could access a better offer in the market. While there is some merit in this view, the Commission considers that this relates to the general benefits of frequently checking for better offers in the market, rather than to the issue at the heart of this rule change request of customers not being aware that the benefits offered to encourage them to enter into the contract have ended. The question of whether retailers should regularly prompt all customers to consider whether better offers are available is beyond the scope of this rule change request.

In conclusion, the more preferable final rule requires retailers to send notices to all small customers before their benefits provided for a minimum or fixed period change, but does not contain any exemption provisions. The fact that the notice requirement will only be triggered when benefits change will however effectively provide an exemption in cases where customers' existing benefits are rolled over on the same terms and conditions.

3.3 Content of notices

3.3.1 Issue

Proposed subrule 4 (see the box in section 1.4) sets out basic information that must be provided in the notice (“basic information”). Basic information can be broken down into generic information, where the same information will be provided in all notices (“generic information”), set out in subsections 4(a) and 4(d), and bespoke information. Proposed subrule 5 sets out dollar comparison amounts that must be provided (“complex information”). Proposed subrule 6 provides further guidance on the calculation of comparison amounts.

The Commission has considered what would be the set of information likely to be required by consumers, and whether the dollar comparison amounts for past and future benefits proposed were clear, appropriate, workable and cost effective to produce.

3.3.2 Proponent's view

In the rule change request the proponent stated that:⁵²

“The proposed rule contains four key components which are aimed at encouraging consumers to actively consider whether to remain on their existing contract after the financial benefit ends within the existing term of the contract. The key components to achieve this outcome are:

- Timely advice to the consumer that a financial benefit (such as a time-limited discount) is coming to an end before the end of their contract;
- Advice to the consumer of the real financial value of that benefit – comparing the cost of energy with and without the fixed benefit period discount;
- Advice to the consumer on how to compare their existing contract with other available offers in the market; and
- Advice on the potential costs the consumer may bear in switching to a new contract before their existing contract expires.”

In respect of comparing existing contracts with other available offers in the market, the proponent stated that:⁵³

“In ensuring the consumer is equipped with sufficient knowledge about the true cost of staying on their existing contract versus the potential benefit of moving to a new contract, customer switching rates should improve. In turn, this rule should encourage competition within the market and result in benefits consistent with the National Energy Retail Objective.”

The ability to compare the true costs of existing contracts with the potential benefit of moving to a new contract is critical to improving competition and requires a degree of

52 Rule change request p.5.

53 Rule change request p.6.

precision. In particular, it requires comparative costs to be produced on the same basis. The ability to achieve this outcome is discussed further in the analysis section below.

3.3.3 Stakeholder views

Generic information

No stakeholders were opposed to the presentation of generic information.

COTA Australia noted that:⁵⁴

“para 4(d) of the proposed rule must also include telephone contact details for the AER’s price comparator service for those consumers who do not have access to online facilities. Older Australians make up the majority of people who do not have access the internet. [sic]”

Other basic information

Proposed subrule 4 also required certain information that is bespoke to the customer to be provided as part of the notification. The information was:

- the date on which the fixed benefit period is due to expire
- the nature of the benefit that is available during the fixed benefit period
- any early termination charge the customer would be required to pay if the customer terminated the market retail contract as at the date of the notice.

There were no objections to providing the date on which the fixed benefit period is due to expire.

Some stakeholders commented on the information to be provided on the nature of the benefit that is available during the fixed benefit period. The Queensland Consumers' Association said that:⁵⁵

“In addition to “the nature of the benefit that is available during the fixed benefit period” the notice should also clearly state the nature of the benefit that will apply after the fixed benefit period if this is specified in the contract and the consumer does not make other arrangements i.e. the “do nothing option”. For example, if the contract provides for a % discount that at the end of the specified period will be lost, reduced or increased, this should be indicated clearly to the consumer.”

Alinta said:⁵⁶

“The form of notification to be provided to customers would vary based on the retailer’s offer being made to the customer. For example;

1. Where the retailer is offering to “roll-over” the customer’s benefits for another period, the notification provided to the customer would set this out, including details of the offer,

54 COTA Australia submission, p.3.

55 Queensland Consumers' Association submission, p. 6.

56 Alinta Energy submission, pp. 3-4.

2. Where there was a material change to the offer being made to the customer e.g. a change in, or the removal of, a benefit (discount), the notification to the customer would include an assessment of the financial difference (customer being financially worse off) as a result of the change. ”

No stakeholders were opposed to the presentation of termination charges. EWOSA explicitly supported provision of this information while COTA Australia said that “The rule needs to identify any changes in the termination fee over the residual life of the contract.”⁵⁷

Historic and projected charges

While submissions generally supported the provision of historic and projected charges, there was widespread concern about the formulation. There were particular concerns about the comparability of projected charges with offers available from Energy Made Easy.

Simply Energy said:⁵⁸

“If the proposed rule change is to provide an objective reference point for customers to evaluate alternative offers, then a consistent calculation method would be required across the wider industry. For this reason, there may be a need to confer the Australian Energy Regulator with the power to publish guidelines around the calculation approach that must be undertaken by retailers based on a high-level set of criteria under the National Energy Retail Rules.”

The Australian Energy Council stated:⁵⁹

“To the extent possible, we would encourage that the notice requirements adopted in implementing this rule change align with the approach to pricing information which is adopted by the AER (for example, by prescribing that the notice contain information as required by the AER). In our view, an aligned approach will remove the risk of information asymmetry and ensure that customers can compare the information they are receive [sic] from their current retailer at the end of the fixed benefit period with other offers available on the market.”

The Queensland Consumers' Association said that:⁶⁰

“The use of annual \$ figures may lead to confusion with estimated annual cost information obtained from comparison websites such as Energy Made Easy.”

There was also concern about an overload of information confusing customers.

Australian "There is a risk of information overload if there is too much information

57 EWOSA submission, p. 1; COTA Australia submission, p. 3.

58 Simply Energy submission, p. 2.

59 Australian Energy Council submission, p. 3.

60 Queensland Consumers Association submission to the consultation paper, p.6.

Energy Council	contained in the written notice to customers." ⁶¹
Red Energy and Lumo Energy	"We are concerned that these three pieces of information will likely confuse customers, and may not provide a genuine illustration as to the change in outcome if they do nothing." ⁶²
Queensland Consumers Association	"We strongly support the provision of information that it easy [sic] for consumers to notice, see, understand and use. However, we have major concerns about the usefulness, etc. of the current proposal for providing information about the past value of a benefit and impact on the consumer of doing nothing at the end of the benefit period." ⁶³
Consumer Action Law Centre	"We encourage the Commission to analyse insights from behavioural economists to inform the best arrangement. This may reveal that more or less information would get results. We are also aware that the AER is in the process of developing fact sheets to assist consumers in finding the best deal. The Commission should consider whether this work should be extended to the development of standardised notices designed by the AER that retailers be required to send out to notify small customers of the end of fixed benefit periods." ⁶⁴

3.3.4 Analysis

Generic information

The provision of the generic information set out in proposed subrules 4(a) (that the fixed benefit is due to expire) and 4(c) (that the customer may view all the generally available offers in their area through the AER's energy retail price comparison website) would be useful to customers and not onerous to provide. The Commission expects that because the information will be the same on all notices the cost of providing such information will be very low.

The Commission agrees with COTA Australia that the provision of a phone number for the Energy Made Easy comparison service for those unable or unwilling to access the internet service could be helpful. The proponent also noted that research undertaken for the Commission "indicates that some vulnerable customers are not seeking out offers due to limited access to or poor confidence/comfort with online tools".⁶⁵ Indeed, this research found that the low income retired segment:⁶⁶

- is skewed towards risk aversion
- is less comfortable with technology adoption
- has relatively low internet literacy.

⁶¹ Australian Energy Council submission, p. 3.

⁶² Red Energy and Lumo Energy submission, p. 2.

⁶³ Queensland Consumer Association submission, p. 6.

⁶⁴ Consumer Action Law Centre submission, pp. 5-6.

⁶⁵ Rule change request, p.8.

⁶⁶ Newgate Research, AEMC 2016 retail competition review: understanding vulnerable customer experiences and needs, Consumer research report, June 2016 p.25.

A phone based service is already offered by the AER. However, the Commission understands that while the service has capacity to accommodate current usage rates, it is not capable of dealing with a significant increase in volume. The Commission also appreciates that if a free phone service is promoted to all customers then it may be preferred even by internet savvy users. The Commission is not convinced that the benefits of promoting a phone number to those customers who can readily access and use the internet would outweigh the additional servicing costs.

The Commission has therefore decided to provide the AER with discretion in relation to how non-internet-based methods of accessing Energy Made Easy are promoted and who they are promoted to.

Other basic information

The date on which the relevant benefit period is due to end is information a customer would require in deciding when to move to another retailer or to commence new arrangements with the same retailer.

The Commission has considered whether the benefit change notice should include "the nature of the benefit that is available during the fixed benefit period" (proposed subrule 4(c)) and is of the view that a requirement of this kind would be ambiguous and therefore subject to interpretation. It is also related to the information proposed for disclosure under proposed subrule 5. The Commission has therefore decided not to require that this information be provided in the notice. Instead the more preferable rule will give the AER discretion as to whether to require notices to include information on the nature of the benefits and on how those benefits will change.

It is important for consumers who are shopping around to know what early termination charges they may face. The Commission also agrees with COTA Australia that the rule needs to identify any changes in the termination fee over the residual life of the contract, not just as at the date of the notice.

Accordingly, the more preferable rule provides for full visibility of termination charges up until the expiry of the contract. Such information could be presented in a bespoke form with actual dates or in a generic form, either relative to the date of contract commencement or relative to the benefit change date.

The Commission has also considered what other basic information a customer may require when seeking competitive offers. Customers would benefit from being provided with their metering identifier to assist them in discussions with competing retailers and in getting access to better information from retailers when choosing between them.

Historic and projected charges

This section looks first at the projected pricing information in proposed subrule 5(c). As stated in the consultation paper, the Commission's reviews of competition in retail energy markets have consistently found that consumers' ability to change to the most cost effective offer is limited by their awareness of alternative offers and their understanding of the differences between offers. The Commission therefore agrees with

submissions supporting projected charges in the notice being comparable to other market retail offers.

In order to maximise competitive benefits it is critical that the projected charges provided to customers in the notice are directly comparable to projected charges for competing offers available from the Energy Made Easy website. This minimises the effort customers would have to expend to determine whether they are on the best offer available to them and so increases the likelihood of their engagement with the market.

The Commission considers that proposed subrule 5(c) needs to be modified to achieve this outcome. A failure to provide projected energy costs on a like for like basis with Energy Made Easy outputs would also potentially undermine confidence in the notices and in the Energy Made Easy website.

The Commission has decided that the preferred approach is the one suggested by Simply Energy of conferring on the AER the obligation to publish guidelines. The rules will require the AER to prepare guidelines that set out how the amount that will be payable under the customer's existing contract going forward will be calculated and presented.⁶⁷ The advantages of this approach include the ability for the AER to:

- prescribe a methodology that will produce cost projections that are directly comparable to the output of the Energy Made Easy website
- update the methodology as the Energy Made Easy website evolves over time
- provide consistency in content, look and feel with other guidelines, such as the Retail Pricing Information Guideline
- allow for incorporation of current and future learnings, including from behavioural economists, as suggested by the Consumer Action Law Centre.

While the proposed rule provides for amounts to be expressed as annualised amounts, the more preferable final rule gives the AER discretion as to the period over which the amounts are to be calculated, as well as how a retailer is to estimate the consumption of energy at the customer's premises over the relevant period.⁶⁸ This will enable consistency with the Energy Made Easy outputs to be maintained over time.

In relation to historical information, there may be benefit in customers seeing how much their bill will change on expiry of the relevant benefit period, as this may spur them into engaging with the market. The Commission also notes the concerns expressed in submissions about the methodology for calculating and presenting backward looking cost information.

Information about what customers have paid is already available to them on their bills and that, pursuant to NERR rule 28(2), customers can receive copies of historical bills on request and at no charge. The Commission has also considered the concerns expressed in some submissions about potential overloading of customers with too much

⁶⁷ These guidelines may, if the AER considers it appropriate, be included in or published with the Retail Pricing Information Guideline.

⁶⁸ This discretion operates in relation to the general requirement in subrule 48B(2)(d) of the final rule for the guidelines to specify how a retailer must calculate the amounts required to be included in a benefit change notice.

information; and understands that the AER is now applying behavioural economics insights to its guideline work.

The Commission has therefore decided to provide the AER with discretion over whether historical billing and payment information must be provided in the notices sent to customers and, if so, the form and presentation of that information. This will maximise the likelihood of customers receiving the information that is most valuable to them and of engaging with the market. Providing the AER with discretion over presentation and content also allows updating to reflect best practice in behavioural economics as this area of knowledge evolves.

Further the NERR already provide, in respect of electricity only, that a retailer must on the request of a small customer or their authorised representative provide information about that customer's energy consumption for the previous two years in the manner and form required by procedures made by the Australian Energy Market Operator (the metering data provision procedures). Subject to some specific exceptions the information must be provided without charge.⁶⁹ Therefore the final rule will require, as from 1 February 2018, the notices sent by retailers to alert customers to their existing right to receive historical billing data and, if they are being sold electricity, energy consumption data on request. Historical bills provide the information required in order to use the existing Energy Made Easy website.

The more preferable final rule gives the AER the ability to revise its guidelines from time to time (subrule 48B(4)). For example, if the ways in which offers are displayed in the price comparator website changes, the guidelines may need to change, after undertaking public consultation.

The timing for commencement of the various elements of the more preferable final rule is discussed in detail in the next section.

3.4 Commencement dates

3.4.1 Issue and proponent's view

The proponent would like the rule to take effect on 1 January 2018, as it considers the rule to be an important step in empowering consumers. However, the proponent recognises that retailers require a reasonable period of transition to update their systems and procedures. The proponent requested the Commission to consider an appropriate commencement date having regard to the impact of different commencement dates on the costs to retailers of complying with the rule.⁷⁰

The consultation paper asked stakeholders to consider:⁷¹

- whether commencement of the rule on 1 January 2018 would result in materially higher costs than a later commencement date
- what the soonest practical date for commencement would be

⁶⁹ NERR rule 56A.

⁷⁰ Rule change request p. 5.

⁷¹ Consultation paper p. 5.

- whether commencement should be staged, for example with an obligation to provide a notice with basic information commencing earlier than other, more complex requirements.

3.4.2 Stakeholder views

Commencement dates generally

Stakeholder views on commencement dates were split:

- consumer representatives and EWOSA wanted the rule to commence as soon as possible, ideally with all obligations commencing on 1 January 2018; MEA Group also agreed with this date⁷²
- most retailers and the Australian Energy Council wanted the rule to commence some time later, with proposed dates ranging from 1 April 2018 to 1 January 2019 (many suggested 1 July 2018), to allow time for retailers to change their systems to comply with the rule, and in light of the other changes that are already in progress (such as implementing the Competition in Metering rule change).⁷³

Staged commencement

The concept of staged commencement received mixed support from both consumer groups and retailers.

The following submissions supported staged commencement:

Queensland Consumers Association	If full implementation on 1 January 2018 is not practical, the association supported retailers being required to send out a standard notice with basic information from that date. ⁷⁴
SACOSS	Supports the proposed commencement date for the requirement to send notices of the end of a financial benefit. It considers though that more complex information such as advice to the customer of the real financial value of the benefit should be the subject of an AER review, with time for more extensive consideration. ⁷⁵
Alinta Energy	“In order to provide customers benefit at the earliest opportunity a staged approach may be preferable, where notifications without tailored information commence to be provided by 1 January 2018 with more detailed notifications to be provided to customers by 1 July 2018.” ⁷⁶
Red Energy and Lumo Energy	Staged implementation may be a compromise position. It is appropriate to require retailers to send a notice complying with proposed subrules 1-4 from 1 January 2018, as these provisions are less technically onerous on

⁷² Submissions from EWOSA, p. 2; PIAC, p. 6; Energy Consumers Australia, p. 4; SACOSS, p. 1; COTA Australia, p. 2; MEA Group, p. 2.

⁷³ Submissions from Australian Energy Council, pp. 3-4; Alinta Energy, pp. 4-5; Sumo, p. 2; AGL, p. 4; Origin, p. 3; Simply Energy, p. 2; ActewAGL, p. 1.

⁷⁴ Queensland Consumers Association submission, p. 5.

⁷⁵ SACOSS submission, p. 1.

⁷⁶ Alinta Energy submission, p. 5.

retailer systems than the tailored requirements in proposed subrule 5.⁷⁷

Simply Energy “A 1 January 2019 commencement date with a transitional phase-in period over 2018 is likely to be more workable from an industry standpoint. The phase-in process could involve requiring retailers to send basic information to customers advising them that their fixed-term benefits period has expired.”⁷⁸

Three submissions opposed staged commencement:

EWOSA Staged commencement would likely cause confusion for retailers and customers. Retailers would also face higher costs if they need to update their systems and processes more than once.⁷⁹

PIAC Does not see a valid reason for delaying or staging commencement.⁸⁰

AGL While a staged implementation, with basic notices commencing from January 2018, will make implementation more feasible, this is a second-best approach. Staged implementation will increase industry costs as retailers will need to undertake two implementation processes, first for basic information and second for the full proposed obligations.⁸¹

3.4.3 Analysis

Having considered the differing viewpoints expressed in submissions, the Commission has decided that staged implementation of the requirements under the rule is appropriate and will provide the greatest benefits to consumers. This will:

- allow the basic notice obligation to commence at an early date
- provide time for the AER to consult on and publish guidelines on the more complex information requirements
- provide time for retailers to change their systems to comply with the guidelines.

The implementation stages in the more preferable final rule are set out in section 2.1.

Time for basic notices

The requirement for retailers to send notices with simple, generic information should commence on 1 February 2018. This is slightly less than three months after publication of the rule on 7 November 2017. This short period is appropriate given that:

- many retailers have been aware of the intention to require them to send such notices since the roundtable meeting with the Prime Minister in August 2017, and some retailers already send similar notices

⁷⁷ Red Energy and Lumo Energy submission, p. 2.

⁷⁸ Simply Energy submission, p. 2.

⁷⁹ EWOSA submission, p. 2.

⁸⁰ PIAC submission, p. 7.

⁸¹ AGL submission, p. 5.

- the information the notices must include is either the same in all notices (the references to the price comparator website and to the customer's ability to request historical billing data), or is customer-specific but can be easily determined by the retailer (the customer's metering identifier, the date on which the benefit will change, and any early termination charges).

Time for guideline development

As discussed in section 3.3.4 above, the AER guidelines will play a valuable role in relation to this rule. The AER is currently reviewing pricing information provided to customers, as noted in section 1.5, and it may be possible for the consultation on the guidelines to be included as part of this process. After discussion with the AER, the final rule includes provisions under which the AER will consult on the guidelines using the retail consultation procedure, and will publish the guidelines by no later than 1 July 2018.⁸² The AER may publish the guidelines at an earlier date.

Time for system changes to comply with guidelines

The Commission appreciates that retailers need some time to change their systems to provide more complex information such as forecasts of amounts payable by customers if they remain on their current contracts after the benefit changes. This process will be more straightforward under the more preferable final rule (compared to the proposed rule), as retailers will have the benefit of detailed guidance from the AER and will have the opportunity to discuss specific issues in the course of consultation on the guidelines. Under the retail consultation procedure, the AER will provide draft guidelines for consultation before final guidelines are issued.

The need to allow the AER time to develop the guidelines also moves retailer implementation work away from the December 2017/ January 2018 period, when retailers noted they will be engaged with implementing other market reforms.

Bearing these factors in mind, it is reasonable to require retailers to comply with the guidelines as soon as practicable, but no later than 1 October 2018. This deadline is a minimum of three months after publication of the final guidelines. In practice the period between publication of the final guidelines and the deadline for complying with them may be considerably longer than three months, if the AER publishes the guidelines before 1 July 2018. Further, the Commission considers that given the AER consultation process with retailers on the guidelines, it is likely retailers would have strong guidance as to what the more detailed requirements are, up to six months prior to the 1 October 2018 deadline.

3.5 Benefits and costs

3.5.1 Issue

As noted in section 2.3, in assessing the rule change request against the NERO the Commission considered the following factors:

⁸² The retail consultation procedure is set out in NERR rule 173, and provides for one round of comments on the draft instrument, followed by publication of the final instrument.

- the extent to which the rule is likely to improve consumer engagement and participation in the energy market
- the extent to which the rule is likely to improve competition between retailers, by increasing the likelihood of consumers seeking and obtaining better deals in retail energy markets
- whether the long term benefits to consumers of the rule exceed the additional costs that would be passed through to them.

3.5.2 Proponent's view

The proponent considered the rule to be “an important step in empowering consumers.”⁸³ The proponent cited a number of references including from the Commission's retail competition review, Dr Ron Ben-David, St. Vincent de Paul, the Grattan Institute and the Consumer Action Law Centre in support of its contention that “timely, simple and clear information around changes to benefit periods would help support greater customer engagement and ultimately more competitive market outcomes.”⁸⁴

The proponent stated that:⁸⁵

“It is predicted the beneficial impacts of effective and simple notices (ideally separate to the bill) would prompt positive behavioural responses by consumers. CSIRO found similar likely responses in a similar study it conducted around tariff reform. Key behavioural benefits of the rule are that it will:

- build consumer trust in the market and limit the risk of bad consumer experiences
- reduce consumers fear of making the wrong choice by setting out simple and clear options
- help support consumer choice by framing and normalising features of the retail market contract (like time limited discounts).”

3.5.3 Stakeholder views

Engagement, participation and competition

Most submissions agreed, to a greater or lesser extent, that the proposed rule would increase the likelihood of consumers seeking and obtaining better deals in retail energy markets. At one end EWOSA said that:⁸⁶

“We believe the proposed rule change will substantially increase the number of customers seeking and obtaining better deals in retail energy markets. Not only will customers be made aware of the increase in their bills

83 Rule change request, p.5

84 Rule change request, pp. 7-8.

85 Rule change request, p.12.

86 EWOSA, submission p. 3.

resulting from the end of a fixed benefit period, they will know where to go to explore obtaining a better deal.”

EWOSA supported this statement with references to Commission research.

At the other end, the Consumer Action Law Centre said that:⁸⁷

“Research suggests that encouraging consumers to switch by providing information of potential cost savings is insufficient to change consumer behaviour...However, the inclusion of the notice put forward in the proposed Rule Change may increase other variables that impact consumers seeking and obtaining better retail energy deals.”

Some submissions, such as the Queensland Consumers Association and Energy Consumers Australia, suggested benefits may be greater if further research was undertaken on the best information to provide to consumers. As discussed in section 3.3, this should now be possible through the AER's guideline development process.

AGL contended that it is a combination of initiatives that will encourage consumers to be more active in their energy plan choice. AGL also contended that:⁸⁸

“the competitive market has already responded to end of benefits periods. For example, and as mentioned previously, AGL already notifies its customers about the end of a benefit period and offers customers to continue to receive financial benefits. Hence, the AEMC must ensure in conducting its analysis it considers how the market is already managing end of benefit periods.”

However, the Commission understands that when benefit periods cease the default discount is often less than the discount provided previously by the retailers, and that this lower discount may be applied to higher rates. Further, even if the retailer was to provide its most favourable offer, it may not be as good as competitor offers. This means that customers may not be getting the full competition benefits that could otherwise be available to them.

The Commission noted in its 2017 retail competition review that "Differences exist between the average tenure of customers with a retailer and the average benefit period of market offers. The retailers commented that as there is often a reduction in the discount available to the consumer at the expiry of the market offer or fixed benefit period, consumers may not be receiving the full benefit of the discount for the majority of their tenure with the retailer."⁸⁹

Only ActewAGL suggested that there may not be any benefits to the proposed rule change, saying:⁹⁰

“ActewAGL does not consider that the proposed change would materially increase the likelihood of consumers seeking and obtaining better deals in retail energy markets. Customers have existing channels, such as the Energy

87 Consumer Action Law Centre (Vic) submission, p. 6.

88 AGL submission, p. 6.

89 AEMC, Retail energy competition review 2017, pp.108-109.

90 ActewAGL submission, p.2.

Made Easy website, to review and compare current offers available in the market.”

However, ActewAGL did not provide evidence in support of its position or explain why the proposed rule would not assist customers to make use of existing channels.

Benefits and costs

Some consumer advocates pointed out the potential benefits available to consumers by pursuing competitive offers.

EWOSA said that:⁹¹

“We believe the long terms benefits to consumers of the proposed rule change will comfortably exceed the costs to retailers that will be passed through to them.

According to the Essential Services Commission of South Australia Fact Sheet "Saving on Your Energy Bills", by switching retailers or energy retail offers, a representative small customer might have been able to save up to \$575 for electricity and \$151 for gas in 2016-17. While this was the maximum saving possible and reflects switching to the lowest-priced market offer available in the market, the data does show that small energy customers are likely to yield significant benefits as a result of the proposed rule change.

In addition, data in the 2017 AEMC Retail Energy Competition Review shows the range of bill outcomes for representative small energy customers in South Australia was \$1429-\$3026 for electricity and \$869-\$1019 for gas. This again indicates that substantial benefits can be obtained by customers from switching energy plans or retailers, a practice that would certainly increase following implementation of the proposed rule change.”

The Energy Consumers Association similarly noted the hundreds of dollars worth of savings available to customers, which it believed would outweigh any costs that the retailers might incur.⁹²

While there was substantial discussion of timing there was little information provided by retailers about any additional costs that might pass through to consumers. This may have been because, as AGL notes, some retailers already have a form of notification in place.

Simply Energy did suggest that a cost benefit analysis of certain aspects of the rule may add value:⁹³

“Consistent with our in-principle support for the proposed rule change, we consider that a cost-benefits analysis of certain aspects of the proposed rule will add value by assisting development of final rules that maximise net benefits. For example, there is a risk that aspects of the requirement to provide financial information to customers could be overcomplicating the

91 EWOSA, submission p. 4.

92 Energy Consumers Association submission, p. 5.

93 Simply Energy submission, p. 1.

intent of this proposal. The requirement to give notice of the amount in dollars that would be [sic] payable by a customer under a contract if the customer had not received the financial benefit in preceding period will require significant thought and investment. For example, implementing the system changes to meet this requirement is likely to cost industry participants several million dollars and could potentially lead to further confusion around energy prices.”

The adoption of Simply Energy's suggestion, as discussed earlier, to confer the AER with the power to publish guidelines around the calculation approach that must be undertaken should provide a process in which these issues can be addressed.

3.5.4 Analysis

The potential benefits to consumers of the more preferable rule as made will outweigh the likely implementation costs that will flow through to consumers. No persuasive evidence has been presented suggesting that the costs flowing through to consumers will outweigh the potential benefits that may be available to consumers who engage with the market.

The Commission understands that for one retailer the cost of sending a letter is around \$6.50 and that system development costs may be in the millions of dollars. The Commission accepts that these costs may be material and that a proportion of these costs may pass through to consumers. However the costs are outweighed by the hundreds of dollars per affected customer in benefits that are potentially available.

As discussed in section 3.4 the Commission has also had regard to system implementation costs and risks and has set a staggered timetable. The timetable has been staggered allowing greater time for developing and testing the more complex system changes and allowing for a more reasonable and economical work program.

The Commission also understands that some retailers currently roll over existing benefits under the same terms and conditions when periods initially set for those benefits expire. The final rule avoids the need to notify consumers where these benefits are rolled over.

The Commission's conclusions are also consistent with its findings in the 2017 retail competition review which were as follows:⁹⁴

“Market offer benefit periods typically apply for around 12 months from when consumers sign up with a retailer, whereas most consumers generally stay with their retailer for longer periods.

The level of information provided to consumers may be adding to consumer inertia in accessing the benefits available in the retail market. For example, while retailers are required to contact consumers ahead of the end of a fixed term retail market contract to advise them of the arrangements that will apply if they do not act to enter into a new market contract, the same requirement does not apply to the end of a fixed benefit period within an ongoing market contract. Consumers who are not actively monitoring their

⁹⁴ AEMC, Retail energy competition review 2017, pp. 17-18.

energy contract may not realise the benefit period has ended until the time when they experience a higher bill than expected.

We consider the minimum information that retailers should provide to customers on contracts with fixed benefit periods includes:

- the pricing rates that will apply to a consumers offer once its fixed benefit period expires, and
- clearer information on the benefits that will or will not be available upon sign up of a new offer.

As well as this information being given to consumers when they sign up to new contracts with fixed benefit periods, there would be benefit in providing it before the end of the fixed benefit period.”

The more preferable final rule is likely to significantly improve the levels of engagement, participation and competition in the market. The Commission acknowledges that there are a range of views on how great the impact will be. However, on balance the Commission concludes that the likely benefit will be material for customers reaching the end of their benefits period. Consumers will be reminded that their benefits are changing and will be provided with a low effort method of making comparisons to and between market offers.

In the Commission's opinion AGL's contention that the market has already responded by notifying customers of the end of benefits period ignores the additional benefits that may be available to customers who shop around. Customers should be encouraged to compare any offer made by their retailer to others that are available in the market, and this process should be made as easy as reasonably practicable.

Abbreviations

AER	Australian Energy Regulator
Commission	Australian Energy Market Commission
COTA	Council on the Ageing
EWOSA	Energy and Water Ombudsman of South Australia
MCE	Ministerial Council on Energy
NERL	National Energy Retail Law
NERO	National energy retail objective
NERR	National Energy Retail Rules
SACOSS	South Australian Council of Social Service

A Summary of other issues raised in submissions

This appendix sets out the issues raised in consultation on this rule change request and the Commission's response to each issue. If an issue raised in a submission has been discussed in the main body of this document, it has not been included in this table.

Stakeholder	Issue	Commission response
AGL	The Commission should also consider market innovation as a criterion to assess the effectiveness of the proposed rule. ⁹⁵	The nexus between innovation and the NERO is too indirect. Innovation of itself is of value only to the extent it benefits consumers. The Commission considers that the consumer benefits that would flow from innovation are largely captured in the existing assessment criteria.
EWOSA, Energy Consumers Australia	The proposed rule could be enhanced by requiring retailers to provide their customers with options of the best deals they can offer. ⁹⁶	The suggestion of mandating the offers that retailers are allowed to make is beyond the scope of this non-controversial rule change, particularly when it could not be flagged prior to consultation. However, by facilitating easy comparison with the best generally available market offers on the Energy Made Easy website the Commission considers customers will be better able to access the best generally available deals including the best generally available deals from their current retailer.
Consumer Action Law Centre (Vic)	"The Commission should consider if prohibiting benefit periods altogether would be a better way to make improvements" ⁹⁷	The suggestion is beyond the scope of the current rule change proposal. The Commission notes that a final determination on a previous rule change request proposing, for market retail contracts with a fixed period, all tariffs and charges payable by the customer are not to change for the duration of the fixed term, was published on 23 October 2014. ⁹⁸
Consumer	"In meetings with the Prime Minister on 9 August 2017, the	These commitments are beyond the scope of this rule change request.

⁹⁵ AGL submission to the consultation paper, p.2

⁹⁶ EWOSA submission, p.3; Energy Consumers Australia submission, p.6.

⁹⁷ Consumer Action Law Centre (Vic) submission, p.4.

⁹⁸ AEMC Rule determination, National Energy Retail Amendment (Retailer price variations in market retail contracts) Rule 2014, Reference RRC0001, 23 October 2014.

Stakeholder	Issue	Commission response
Action Law Centre (Vic)	Chief Executive Officers of multiple energy retailers made commitments that consumers in hardship programs will not lose any benefit or discount for late payment. The Commission should request information about these commitments and consider how the end of benefit periods impact this group of customers." ⁹⁹	
Energy Consumers Australia, Queensland Consumers Australia, AGL	Potential to breach Australian Consumer Law, and particularly misleading and deceptive conduct provisions, when providing forward looking estimates of charges consumers may receive. ¹⁰⁰	Forward looking estimates will not be required until after the AER guidelines are available. The form of notice will need to be considered in the development of the AER guidelines.
Consumer Action Law Centre	Seek advice from behavioural economists when determining the best way to set out information and what to include. ¹⁰¹	The more preferable rule being implemented allows for best practice to be incorporated through the guideline development process and for updates over time without the need for additional rule changes.
Consumer Action Law Centre	Extending the notice period, possibly to three months, would align with the timeframe that many customers receive their bills ¹⁰²	The 40-20 business day notice period was widely supported. The Commission accepts that extending the notice period may reduce notification costs, but believes that 90 days is remote from the date benefits expire and therefore may not provide a strong prompt for action. Further, competing market offers may vary over such a long period.
Sumo Power	"The content requirements should mirror those in existing rule 48. Additional content would not enhance the benefit to	The rule change request was assessed on its individual merits. Rule 48 was outside the scope of the rule change request and deals with matters relating to the end of fixed term contracts and the consequences of having

⁹⁹ Consumer Action Law Centre (Vic) submission, p.5.

¹⁰⁰ AGL submission, pp.3-4; Energy Consumers Australia submission, p.4; Queensland Consumers' Association submission, p.5.

¹⁰¹ Consumer Action Law Centre submission, p.5.

¹⁰² Consumer Action Law Centre submission, p.5.

Stakeholder	Issue	Commission response
	consumers." ¹⁰³	no contract in place. Harmonising rules 48 and 48A would be a significant broadening of the scope of the rule change request.
Energy Consumers Australia	"We encourage the Australian Energy Regulator to monitor the effectiveness of rule 48A." ¹⁰⁴	This is not a matter for the rules. However, the Commission notes that the AER has commenced collecting data on the number of customers on contracts with expired benefit periods.
Sumo Power	"The proposed rule change does nothing for those customers who remain on standing offers or who have not shopped around for a long time." ¹⁰⁵	The rule change proposal relates specifically to benefit periods in market retail contracts. Customers on standing offers are not within scope for this rule change proposal.
COTA Australia	"Consumer co-design and rigorous, segmented user testing of the notification to consumers is essential to ensure the necessary information is presented in the most appropriate way." ¹⁰⁶	The more preferable rule being implemented allows for best practice to be incorporated through the guideline development process and for updates over time without the need for additional rule changes.
Queensland Consumers' Association	The rule should be modified to include prior notification of changes in tariffs, and unlike the Queensland derogation this should apply to any change, not just to increases. ¹⁰⁷	A general change in notification requirements regarding tariff changes is not within the scope of this rule change request.
Consumer Action Law Centre	"The proposed Rule Change should also be assessed in light of the Victorian Essential Services Commission's (ESC) upcoming final decision on Victoria's Payment Difficulty Framework. We believe this framework will include	An obligation to place customers on the best offer is not within the scope of this non-controversial rule change request.

¹⁰³ Sumo Power submission, p.1.

¹⁰⁴ Energy Consumers Australia submission, p.5.

¹⁰⁵ Sumo Power submission, p.1.

¹⁰⁶ COTA Australia submission, p.2.

¹⁰⁷ Queensland Consumers' Association submission, p.3.

Stakeholder	Issue	Commission response
	a requirement for retailers to place some customers in payment difficulty on the best service offer." ¹⁰⁸	

¹⁰⁸ Consumer Action Law Centre submission, p.5.

B Legal requirements under the NERL

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

B.1 Final rule determination

In accordance with section 259 of the NERL the Commission has made this final rule determination in relation to the rule proposed by the Honourable Josh Frydenberg MP, Minister for the Environment and Energy on behalf of the Australian Government.

The Commission's reasons for making this final rule determination are set out in section 2.4.

In accordance with section 261 of the NERL, the Commission has made a more preferable final rule, which is attached to and published with this final rule determination. Its key features are described in section 2.1.

B.2 Power to make the rule

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

- regulating the activities of persons (retailers) involved in the sale and supply of energy to customers (s. 237(1)(a)(ii))
- imposing obligations on retailers (s. 237(3)(e))
- conferring a function on the AER to develop and issue guidelines (s. 237(3)(f)).

B.3 Commission's considerations

In assessing the rule change request, the Commission considered:

- its powers under the NERL to make the rule
- the rule change request
- submissions received during consultation
- the Commission's analysis as to the ways in which the proposed rule will, or is likely to, contribute to the NERO
- the extent to which the proposed rule is compatible with the development and application of consumer protections.

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.¹⁰⁹

¹⁰⁹ Under s. 225 of the NERL the Commission must have regard to any relevant MCE statement of policy principles in making a rule. The MCE is referenced in the Commission's governing legislation and is a legally enduring body comprising the Federal, State and Territory Ministers responsible for Energy. On 1 July 2011 the MCE was amalgamated with the Ministerial Council on Mineral and Petroleum Resources. The amalgamated council is now called the COAG Energy Council.

B.4 New civil penalty provision

The Commission cannot create new civil penalty provisions. However, it may recommend to the COAG Energy Council that new or existing provisions of the NERR be classified as civil penalty provisions. Subject to consultation with the AER, the Commission proposes to recommend to the COAG Energy Council that rule 48A(1) be classified as a civil penalty provision (as requested by the proponent):¹¹⁰

“If a market retail contract provides for a benefit change, the retailer must, in accordance with this rule, notify the small customer of each benefit change.”

The Commission considers that this new provision should be classified as a civil penalty provision for consistency with existing subrule 48(2), which provides that a retailer must, in accordance with rule 48, notify a small customer with a fixed term retail contract that the contract is due to end. Subrule 48(2) is a civil penalty provision. The Commission further considers that detriment to consumers (relating to remaining on less favourable contracts due to unawareness of changes to benefits) could occur if this new provision is not complied with, and that classifying this provision as a civil penalty provision will assist in avoiding this detriment by increasing compliance with the notice requirement.

¹¹⁰ Rule change request p. 4.