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Draft Benefit Change Notice Guidelines

Energy Consumers Australia is the national voice for residential and small business energy consumers. Established by the Council of Australian Governments Energy Council (Energy Council) in 2015, our objective is to promote the long-term interests of energy consumers with respect to price, quality, reliability, safety and security of supply.

We welcome the opportunity to comment on the Draft Benefit Change Notice Guidelines (the Guidelines). This letter sets out our general comments on the Guidelines. Our responses to the conclusions reached in the Notice of Draft Instrument (the Notice) are included in the **Appendix**.

Energy Consumers Australia supported the Rule Change that inserted rule 48B in the National Energy Retail Rules (NERR). This requires retailers to notify a small customer via a benefit change notice when a benefit provided to them through their market retail contract is expiring or changing.

Of course, in addition to that Rule Change and more recent Rule Change proposals¹ there remains a need for a bigger, systematic package of market reforms as we have proposed in our submissions to the Australian Competition and Consumer Commission (ACCC) Retail Electricity Price Inquiry (the ACCC Inquiry).²

After a 10-year period where electricity prices have doubled, households and small businesses are doing everything they can to bring their bills down. These small consumers are telling us they want better information and tools and advice to get control over their costs.³

These Guidelines form an important part of a package of retail market reforms being driven by the Prime Minister following his intervention in August 2017, and through the ACCC Inquiry. Energy Consumers Australia is deeply engaged in this work to refocus the retail energy market on much better outcomes for consumers: to bring prices down as quickly as possible and to drive genuine innovation in services.

Australian households and small businesses have a right to expect that their retailers will be transparent about their pricing, will work with them proactively to ensure they're on the right deal, and will help them manage their energy use. The fact that the current market is in many ways defined by the converse – by complexity and a lack of clarity about offers and prices or 'noise' – is driving recent interventions. We are convinced that it will take significant, very concrete improvements in the way electricity and gas services are structured and priced to give consumers confidence that the market is working in their interest and enable governments to step back from further intervention.

¹ Such as the National Energy Retail Amendment (Preventing discounts on inflated energy rates) Rule 2018 (Ref. RRC0012).

² <http://energyconsumersaustralia.com.au/publication/accc-electricity-supply-pricing-inquiry-preliminary-report-response-submission/>

³ <http://energyconsumersaustralia.com.au/publication/energy-consumer-sentiment-survey-findings-december-2017/>

The essence of the Australian Prudential Regulator Authority's report into the Commonwealth Bank of Australia (CBA) applies equally to energy retail companies:⁴

CBA's focus on financial risks was not matched by a strong 'risk champion' for operational, compliance and conduct risks. Risk management in these areas was dominated by a 'tick the box', process-driven mentality, which meant that potentially serious non-financial risk issues were not identified early and addressed. CBA's compliance function was under-developed, as was its framework to manage conduct risk.

The treatment of customers is critical for CBA's reputation and public standing. CBA's focus on aggregate customer satisfaction survey results reinforced a 'good news' story that the Board and management were predisposed to hear. Alarm bells from the treatment of aggrieved customers, which should have alerted CBA to serious shortcomings in customer outcomes, did not sound loudly.

These various failings have culminated in a dilution of the 'voice of risk' and the 'customer voice', which did not provide a sufficient counterweight to a strong and mature 'voice of finance' in ensuring sound risk and compliance outcomes.

We appreciate the AER's use of behavioural insights research conducted by the Behavioural Insights Team (BIT) to inform the development of the Guidelines. The simulation of real life responses to test consumer reactions to a number of scenarios is critical to understanding how consumers will engage with notices from retailers on benefit change notices. We encourage the continued use of such insights to test the efficacy of the Guidelines once they are implemented in the market. Monitoring and analysing actual outcomes experienced by consumers needs to be a part of regulatory process from this point on.

As an overall point, we are of the view that the Guidelines should not be overly prescriptive in terms of the construct of the benefit change notices themselves. Given the culture of minimum standards of compliance, focus should be placed on the objectives of the guidelines and the question for CEO and Boards is whether they have achieved the objective of better outcomes for consumers, not whether the minimum standard of compliance has been achieved. The risk to reputation should be the paramount concern for retail companies and the focus should be on actually achieving better outcomes for consumers. In an effectively competitive market, that would be the focus.

The Guidelines need to provide the objective and general guiderails for the manner and form of the benefit change notices.

A prescriptive Guideline with a high level of compliance by retailers but little consumer behaviour change is less valuable than Guidelines with a degree of flexibility so that retailers can achieve optimal customer outcomes. The outcome sought is not just that consumers comprehend that their benefits are coming to an end, the financial or other implications of that, and the steps that they could take to get a better energy deal. The outcome we want is that consumers take one of the steps identified.

Therefore, retailers should also have a responsibility to monitor the effectiveness of the benefit change notices by measuring the extent to which consumers receiving the notice then act. If there is a low level of observed response, the retailers must refine their approaches to the manner and form of the notices in an iterative way in line with an understanding of consumer behaviour informed by behavioural insights. The results should be reported to the regulator and made public.

⁴ http://www.apra.gov.au/AboutAPRA/Documents/CBA-Prudential-Inquiry_Final-Report_30042018.pdf.

If you have any questions regarding our submission please contact Energy Consumers Australia on 02 9220 5500 or sabiene.heindl@energyconsumersaustralia.com.au.

Yours sincerely,

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Appendix

Issues Raised

The Notice discusses the conclusions reached following consideration of submissions to the AER on the development of the Guidelines. In this Appendix we provide our response to these considerations.

1. When is a benefit change notice required?

We agree that both financial and non-financial benefits changes should be notified to the consumer, whether or not these are detrimental or beneficial to the customer. Exceptions are currently where:

- the benefit is an up-front benefit within the first 40 days of the contract (e.g. first month free)
- the underlying plan to which the benefit relates (e.g. market offer plan base rates) changes
- there is a one-off incentive or gift
- roll-over of the same benefits
- the change is immaterial
- the retailer is already required to notify the customer under Retail Rules 46(3).

In our view this is appropriate and reasonable.

We are concerned, however, about the wording of paragraph 27 in the Guidelines. It is unclear what the advantage is in suggesting that there may be other cases which are not a benefit change. We suggest the statement “A benefit change does not include, but is not limited to, the following examples:” be changed to “For the avoidance of doubt, the following are examples do not involve a benefit change:”

2. Manner and form of the benefit change notice?

We appreciate that the AER has sought to consider how best the manner and form of the benefit change notice will prompt customers to engage with the notice. From a behavioural insights perspective, the manner and the form of the benefit change notice are critical in terms of achieving consumer outcomes.

In our view, the focus of the Guidelines needs to be upon the consumer outcomes rather than specifying in a prescriptive manner the form of the notice itself. In this regard it is preferable that the Guidelines include first the ‘non-negotiable’ elements as guide rails; this includes clear headline statement, simple one-page document and reference to Energy Made Easy.

It is also appropriate to include a more detailed specification of manner and form that would constitute compliance with the Guidelines, however there should be flexibility for retailers to use a different manner and form if that can be demonstrated to better achieve the objective.

We suggest that retailers should be required to measure (from their own systems) the effectiveness of the notice (number of customers either renewing their benefit or churning away). There could then be an additional section 3.7 that enables the retailer to use an alternative manner and form (a) for the purpose of trialling an alternative approach as a properly structured trial and (b) following a trial, that demonstrates better outcomes than the prescribed approach.

Two specific drafting changes are recommended:

- In paragraph 38 all the words after “the retailer” be deleted and instead insert the words “is to use the method by which bills are sent to the customer.”
- In paragraph 42 add “If the notice is provided by mail (not electronically) in an envelope containing more than one piece of paper the multiple pieces of paper must be collated, folded and stuffed in such a way that the benefit change notice is the first item seen by a person opening that mail.”

3. Content of the benefit change notice

We agree with the AER’s approach of specifying the benefit change notice contain:

- A headline statement about the benefit change
- A call out box with steps to follow to compare plans on Energy Made Easy
- Personalised information to compare plans in Energy Made Easy

In terms of the headline statement, in line with the behavioural insights research, we think that the optimal approach would be to not only describe the benefit that is being lost e.g. 15% guaranteed discount off usage rates, but the *financial impact or value of that loss* where this is possible. This is more likely to have the desired consumer outcome of ensuring that the consumer comprehends the impact of the benefit change.

We note that the second paragraph under Zone B of the template in Appendix A of the Guidelines specifies how much the “Do nothing” amount exceeds how much the customer paid in the preceding 12 months. However, we cannot find in the Guideline anything requiring this information in the benefit change notice.

4. Generating the ‘do nothing’ amounts for the notice

We have no substantive comments on the calculation of the ‘do nothing’ amount. One question is whether the right comparison to the ‘do nothing’ amount is the total paid over the last 12 months or could instead be the ‘best current comparable offer’ of the retailer. The former suffers from the noise of underlying price changes, while the latter may bias the consumer to stay with their retailer rather than make further market inquiries.

Ideally, this could be tested. The AER could consider the possibility of providing this as a choice for the retailers and see what the effect of each is.