

Draft Decision

Proposed amendments to the *Code of Conduct for the Supply of Electricity to Small Use Customers*

6 February 2014

Economic Regulation Authority

WESTERN AUSTRALIA

This document is available from the Economic Regulation Authority's website at www.erawa.com.au. For further information, contact:

Economic Regulation Authority
Perth, Western Australia
Phone: (08) 6557 7900

© Economic Regulation Authority 2014

The copying of this document in whole or part for non-commercial purposes is permitted provided that appropriate acknowledgment is made of the Economic Regulation Authority and the State of Western Australia. Any other copying of this document is not permitted without the express written consent of the Authority.

Disclaimer

This document has been compiled in good faith by the Economic Regulation Authority (Authority). The document contains information supplied to the Authority from third parties. The Authority makes no representation or warranty, express or implied, as to the accuracy, completeness, reasonableness or reliability of the information supplied by those third parties.

This document is not a substitute for legal or technical advice. No person or organisation should act on the basis of any matter contained in this document without obtaining appropriate professional advice. The Authority and its staff members make no representation or warranty, expressed or implied, as to the accuracy, completeness, reasonableness or reliability of the information contained in this document, and accept no liability, jointly or severally, for any loss or expense of any nature whatsoever (including consequential loss) arising directly or indirectly from any making available of this document, or the inclusion in it or omission from it of any material, or anything done or not done in reliance on it, including in all cases, without limitation, loss due in whole or part to the negligence of the Authority and its employees.

This notice has effect subject to the Competition & Consumer Act 2010 (Cwlth), the Fair Trading Act 1987 (WA) and the Fair Trading Act 2010 (WA), if applicable, and to the fullest extent permitted by law.

Any summaries of the legislation, regulations or licence provisions in this document do not contain all material terms of those laws or obligations. No attempt has been made in the summaries, definitions or other material to exhaustively identify and describe the rights, obligations and liabilities of any person under those laws or licence provisions.

Contents

| | |
|---|-----------|
| Draft Decision | 1 |
| Background | 1 |
| Response to the ECCC's Final Report | 2 |
| Additional recommendation | 7 |
| Proposed amendments to the Code | 7 |
| APPENDICES | 8 |
| Appendix 1 Proposed new Code (with tracked changes) | 9 |
| Appendix 2 Proposed new Code (without tracked changes) | 10 |

Draft Decision

1. Following consideration of the Electricity Code Consultative Committee's 2013 Final Review Report, the Economic Regulation Authority (**Authority**) has decided to exercise its power under the *Electricity Industry Act 2004 (Act)* to make amendments to the *Code of Conduct for the Supply of Electricity to Small Use Customers (Code)*.
2. A copy of the proposed new Code, both with tracked changes (**Appendix 1**) and without tracked changes (**Appendix 2**), is attached to this Draft Decision.

Background

3. Under section 81 of the Act, the Authority is required to establish a committee to advise it on matters relating to the Code. The committee is known as the Electricity Code Consultative Committee or ECCC.
4. Under section 79 of the Act, the Authority may, in consultation with the ECCC, approve a code of conduct to
 - ...regulate and control the conduct of electricity retail, distribution and integrated regional licensees and electricity marketing agents, with the object of defining standards of conduct in the supply and marketing of electricity to customers and providing for compensation payments to be made to customers when standards of conduct are not met; and protecting customers from undesirable marketing conduct..
5. Under section 88 of the Act, the ECCC must carry out a review of the Code as soon as practicable after the first anniversary of its commencement and after the expiry of each 2 yearly interval after that anniversary. The object of a review is to re-assess the suitability of the provisions of the Code for the purposes of section 79(2).
6. The ECCC commenced its 2013 review of the Code in August 2013.
7. The Act requires that the ECCC undertake consultation with interested parties before it provides its advice to the Authority. The ECCC published its Draft Review Report (**draft report**) on 4 October 2013 and promoted the public consultation period via an email to those registered with the Authority as interested parties and an advertisement in *The West Australian*. The closing date for submissions on the draft report was 1 November 2013.
8. Submissions were received from the following:
 - Alinta Energy
 - Community Electricity
 - Energy Assured
 - Energy Retailers Association of Australia
 - Horizon Power
 - Public Utilities Office
 - Rio Tinto
 - Synergy
 - Western Australian Council of Social Service (WACOSS)
 - Western Power

9. The submissions form appendices 5 – 14 of the ECCC's 2013 Final Review Report (**final report**), which is available on the Authority's website.
10. Following receipt of the submissions, the ECCC met to consider the issues raised and subsequently approved the final report to the Authority. The final report was provided to the Authority on 24 January 2014.

Response to the ECCC's Final Report

11. The ECCC made 68 recommendations to the Authority. Each recommendation is contained below:

Recommendation 1 – Delete clause 1.6(a).

Recommendation 2 – Amend clause 9.4(3) as follows to remove the obligation on pre-payment meter customers:

(3) Where the *pre-payment meter customer* requests reversion of a *pre-payment meter* under subclause (1) after the date calculated in accordance with subclause (2), the *retailer may charge the pre-payment meter customer* ~~must pay the retailer's a~~ reasonable charge for reversion to a standard *meter (if any)*. ~~However, the~~ *The retailer's* obligations under subclause (1) –

- (a) if the *customer* is a *residential pre-payment meter customer*, are not conditional on the *customer* paying the *retailer's* reasonable charge for reversion to a standard meter (if any); and
- (b) if the *customer* is not a *residential pre-payment meter customer*, may be made conditional on the *customer* paying the *retailer's* reasonable charge for reversion to a standard meter (if any).

Recommendation 3 – Amend the definition of 'instalment plan' as set out [in the Final Review Report].

Recommendation 4 – Amend the reference to 'their' in clause 10.11(2)(a) to 'its'.

Recommendation 5 – Amend the definitions of "billing/credit complaints" and "other complaints" by inserting the words "complaints related to" after the word "includes".

Recommendation 6 – Amend the definitions of "marketing complaints" and "transfer complaints" by inserting the words "complaints related to" after the word "includes".

Recommendation 7 – Replace the reference to 'the holder of a retail licence or an integrated regional licence' with 'a retailer' in the definition of 'electricity marketing agent'.

Recommendation 8 – Delete subclause (d) of the definition of 'electricity marketing agent' and add the words "but does not include a person who is a customer representative" to the end of the definition.

Recommendation 9 – Amend the definition of 'cooling-off period' in clause 1.5 to read as follows:

"cooling-off period" means the period specified in the *contract* as the cooling-off period.

Recommendation 10 – Insert the following new clause into the Code:

No canvassing or advertising signs

A retailer or electricity marketing agent who visits a person's premises for the purposes of marketing must comply with any clearly visible signs at a person's premises indicating –

- (a) canvassing is not permitted at the premises; or

(b) [no advertising or similar material is to be left at the premises or in a letterbox or other receptacle at, or associated with, the premises.](#)

Recommendation 11 – Amend the note at the beginning of Part 2 to include the full titles of legislation and to change the reference from Australian Consumer Law (WA) to the Fair Trading Act 2010 (WA).

Recommendation 12 – Amend clauses 2.2, 2.3 and 2.4 to rationalise the requirements for standard form contracts and non-standard contracts to create:

- a new clause 2.2 (entering into a standard form contract), which includes all the requirements for entering into a standard form contract; and
- a new clause 2.3 (entering into a non-standard contract), includes all the requirements for entering into a non-standard contract.

Recommendation 13 – Amend the code to require a retailer or electricity marketing agent to provide a customer with the complaints telephone number of the Energy Ombudsman when requested or when meeting with the customer face-to-face for the purposes of marketing.

Recommendation 14 – Delete clause 2.6(2)(a) from the Code.

Recommendation 15 – Delete clauses 2.6(3) and (4) from the Code.

Recommendation 16 – Amend clause 2.9(2) to become a stand-alone clause to clarify the general nature of the record-keeping obligation.

Recommendation 17 – Replace references to ‘retailers’ and references to ‘electricity marketing agents’ with ‘retailers and electricity marketing agents’ as appropriate throughout the Code..

Recommendation 18 – Delete all instances of ‘other party’ from the Code.

Recommendation 19 – Amend 4.5(1) so that the account period only needs to be included on the bill if the account period is different from the supply period.

Recommendation 20 – Create a definition of ‘collective customer’ and amend clause 4.5(1) so that bills for collective customers are not required to show the average daily cost of consumption, average daily consumption or a graph of consumption or amount due.

Recommendation 21 – In clause 4.5(1)(h), amend “relevant tariffs” to “applicable tariffs”.

Recommendation 22 – Amend clause 4.5(1)(b) to require the bill for a customer with a Type 7 connection point to show the calculation of tariffs in accordance with the procedures in clause 4.6(1)(c).

Recommendation 23 – Amend clause 4.5(1)(m) as follows:

the average daily cost of **electricity consumption** [including charges ancillary to the consumption of electricity.](#)

Recommendation 24 – Amend clause 4.6 as follows:

- (1) Subject to clause 4.8, a **retailer** must base a **customer’s** bill on –
 - (a) the **distributor’s** or **metering agent’s** reading of the **meter** at the **customer’s supply address**;

- (b) the *customer's* reading of the *meter* at the *customer's supply address*, provided the *customer distributor* has agreed expressly or impliedly consented with the *retailer* to that the *customer* will reading the *meter* for the purpose of determining the amount due; or
- (c) where the connection point is a *Type 7* connection point, the procedure as set out in the *metrology procedure* or *Metering Code*.

~~(2) Prior to a *customer* reading a *meter* under subclause (1)(b), the *retailer* must give the *customer* information that explains in clear, simple and concise language how to read a *meter* correctly.~~

Recommendation 25 – Introduce a 12 business day time limit regarding the refund of credit after a final bill.

Recommendation 26 – Amend clause 4.14(2) to allow a retailer to transfer a credit to another account if requested by a customer.

Recommendation 27 – Amend clause 4.17(2)(c) as follows:

notify the *customer* list of the amount to be recovered ~~as a separate item in a special bill or in no later than~~ the next bill, together with an explanation of that amount;

Recommendation 28 – Include off-set provisions within clauses 4.14, 4.18 and 4.19.

Recommendation 29 – Amend the '20 business days' in clauses 4.18(4) and 4.19(4) to '5 business days' and delete the comma in clause 4.19(4) that appears after the words "under subclause (2)" as it could be interpreted as requiring the credit adjustment within 5 working days.

Recommendation 30 – Amend clause 5.3 as follows:

If a *retailer* offers the option of payment by a *direct debit facility* to a *customer*, the *retailer* must, prior to the *direct debit facility* commencing, obtain the *customer's verifiable consent*, and agree with the *customer* the date of commencement of the *direct debit facility* and the frequency of the direct debits. –

~~(a) wherever possible, the amount to be debited; and
(b) the date and frequency of the direct debit.~~

Recommendation 31 – Insert a definition for 'direct debit facility' in the Code as follows:

"direct debit facility" means an arrangement offered by a *retailer* to automatically deduct a payment from a *customer's* nominated account and entered into with a *customer* in accordance with clause 5.3.

Recommendation 32 – Amend clause 5.6(3) as follows:

A retailer must not charge a residential customer more than 2 late payment fees in relation to the same bill ~~and~~ or more than 12 late payment fees in a year.

Recommendation 33 – Amend clause 5.7(1)(d) by changing '3 business days' to '5 days'.

Recommendation 34 – Delete clause 5.8(1) from the Code.

Recommendation 35 – Amend the Code to clarify the process where a retailer is unable to perform an assessment under clause 6.1 within 3 business days.

Recommendation 36 – Amend the Code to allow a retailer to use an independent financial counsellor's or relevant consumer representative organisation's assessment of a customer for the purposes of 6.1 in the situation where a customer has approached one of these prior to approaching the retailer.

Recommendation 37 – Separate out the requirements in 6.4(1) so that customers in payment difficulties are offered additional time to pay and, if requested by the customer, a payment plan.

Recommendation 38 – Replace the list of requirements in 6.4(2) with less specific wording and amend the definition of an instalment plan.

Recommendation 39 – Insert the words “and/or tariffs (as applicable)” in clause 6.8(d).

Recommendation 40 – Delete clauses 6.8(e) and 10.4(b) to reflect the fact that free energy efficiency audits are no longer available as the Hardship Efficiency Program has been closed.

Recommendation 41 – Amend clause 6.10 so that there are separate requirements for a financial hardship policy and for internal hardship procedures.

Recommendation 42 – Amend clause 6.10 to specify that information regarding TTY and multi-lingual services are to be included in a financial hardship policy.

Recommendation 43 – Amend clause 7.5(a) to specify that the requirement does not apply to calls from mobile phones.

Recommendation 44 – Amend clause 7.6 so that a retailer and distributor would be precluded from disconnecting a customer’s supply address only if they have prior knowledge that the customer had made a complaint to the retailer or distributor (as applicable) or the Energy Ombudsman.

Recommendation 45 – Delete ‘life support equipment from clause 7.7(1)(c).

Recommendation 46 – Insert the words “by no later than” at the commencement of clause 7.7(1)(c)(ii) and 7.7(2)(b)(ii).

Recommendation 47 – Amend the life support clauses so that a distributor’s obligations commence as soon as notification is received.

Recommendation 48 – Amend the Code to allow customers to be able to provide the acknowledgement required under clause 7.7(3)(d) by electronic means such as text and email.

Recommendation 49 – Amend the Code to allow customers to ‘opt out’ of having to provide the confirmation under clause 7.7(3)(d), but only if the distributor has received an express written request from the customer.

Recommendation 50 – Insert the words “*or someone residing at the supply address*” into clause 7.7(4).

Recommendation 51 – Amend clause 7.7(5)(a)(ii) as follows:

if the *customer* has not provided [the initial certification or re-certification](#) from an *appropriately qualified medical practitioner* within the last 3 years, request that the *customer* provide that *recertification*.

Recommendation 52 – Amend the Code so that all pre-payment meters that are installed up until 1 July 2014 will be grandfathered.

Recommendation 53 – Amend clause 9.3(2) to allow the information listed in the subclauses to be provided within 10 business days (instead of at the time of entering into a PPM contract).

Recommendation 54 – Delete clause 9.3(3)(e) (requirement to include details of recharge facilities on or directly adjacent to the PPM), insert a requirement in clause 9.3(2) that details of initial recharge facilities will be given to the customer within 10 business days of entering into the contract and insert a new clause requiring the retailer to write to the customer if the recharge facilities change.

Recommendation 55 – Delete clauses 9.4(5) and (6) and replace them with an obligation on a retailer to notify the customer of the no charge meter reversion period at the time the customer requests a PPM service.

Recommendation 56 – Amend clause 9.5(1) as follows:

- (1) If a **pre-payment meter customer** provides a **retailer** with confirmation from an **appropriately qualified medical practitioner** that a person residing at the **customer's supply address** requires **life support equipment**, the **A retailer** must not provide a **pre-payment meter service** at the **customer's supply address** and of a **residential customer** if the **residential customer**, or a person residing at the **residential customer's supply address**, requires **life support equipment**.
 (2) If a **pre-payment meter customer** notifies a **retailer** that a person residing at the **supply address** depends on **life support equipment**, the **retailer** must, or must immediately arrange to –
 [...]

Recommendation 57 – Amend the timeframes in subclauses 9.5(3)(b) from 5 and 6 business days to 9 and 10 business days respectively.

Recommendation 58 – Delete clause 9.6(c)(ii).

Recommendation 59 – Replace the wording in clause 9.6(a) with the following:

Pre-payment meter customers will have access to emergency credit of \$20 at any time. Once the emergency credit is used the **pre-payment meter service** will be **de-energised**.

Recommendation 60 – Delete clause 9.11.

Recommendation 61 – Amend the amount in clause 9.7(d) from \$10 to \$20.

Recommendation 62 – Amend clause 12.1(2)(c) to include complaints about electricity marketing agents.

Recommendation 63 – Delete the reporting indicators from Part 13 and amend the clauses in Division 4 of Part 13 by removing reference to due dates.

The Authority proposes that Part 13 be further amended to make the process regarding the annual reports by retailers and distributors clearer. To this end the Authority proposes for the clause regarding the provision of the report to appear as its own clause, rather than falling under the publication clause (as set out in **Appendices 1 and 2**).

Recommendation 64 – Insert a definition of 'resolved' as follows:

'Resolved' means the decision or determination made by the licensee with respect to the complaint, where the licensee, having regard to the nature and particular circumstances of the complaint, has used all reasonable steps to ensure the best possible approach to addressing the complaint.

Recommendation 65 – Amend clauses 5.6 and 7.6 to allow for the situation where a complaint has been made to the Ombudsman or external dispute resolution body.

Recommendation 66 – Delete the reference to ‘query’ in clauses 14.3 and 14.4.

Recommendation 67 – Create a new subclause 12.1(4) as follows:

- (4) For the purpose of subclause (2)(b)(iii), a **retailer** or **distributor** must, on receipt of a written **complaint** by a **customer** –
- (a) acknowledge the **complaint** within 10 **business days**; and
 - (b) respond to the **complaint** by addressing the matters in the **complaint** within 20 **business days**

Recommendation 68 – Delete subclauses 14.3(1) and 14.4(1) and amend 14.3(2) and 14.4(2) as follows:

~~14.3 (1) Upon receipt of a written query or **complaint** by a **customer**, a **retailer** must acknowledge the query or **complaint** within 10 **business days**; and respond to the query or **complaint** by addressing the matters in the query or **complaint** within 20 **business days**.~~

~~(1)(2)~~ Subject to clause 14.6, if a **retailer** fails to acknowledge or respond to a ~~query or **complaint**~~ within the time frames prescribed ~~in~~ under subclause (1) ~~12.1(4)~~, the **retailer** must pay to the **customer** \$20.

~~(2)(3)~~ The **retailer** will only be liable to make 1 payment of \$20, pursuant to subclause (1) ~~(2)~~, for each written ~~query or **complaint**~~.

And:

~~14.4 (1) Upon receipt of a written query or **complaint** by a **customer**, a **distributor** must acknowledge the query or **complaint** within 10 **business days**; and respond to the query or **complaint** by addressing the matters in the query or **complaint** within 20 **business days**.~~

~~(1)(2)~~ Subject to clause 14.6, if a **distributor** fails to acknowledge or respond to a ~~query or **complaint**~~ within the time frames prescribed ~~under~~ in subclause (1) ~~12.1(4)~~, the **distributor** must pay to the **customer** \$20.

~~(2)(3)~~ The **distributor** will only be liable to make 1 payment of \$20, pursuant to subclause (1) ~~(2)~~, for each written ~~query or **complaint**~~.

Additional recommendation by the Authority

“Additional Recommendation A (Part 13) – Delete the requirement for the retailer and distributor to provide a copy of their annual report to the Minister (clause 13.17(3)).”

12. In addition to accepting all of the ECCC’s recommendations, the Authority further proposes to amend the Code so that the responsibility to provide a copy of an annual report to the Minister under Part 13 is shifted from the retailer and distributor to the Authority. The Authority considers that removing this requirement allows the Authority to ensure the provision of accurate, complete and current data to the Minister, which is a more practical approach.

Proposed amendments to the Code

13. The Authority is required, under section 87 of the Act, to refer the proposed amendments to the ECCC for advice.
14. The Authority will send a letter to the ECCC requesting that this advice be provided.
15. The Act requires that the ECCC provide interested parties with an opportunity to comment before providing its advice to the Authority.
16. Following receipt of the ECCC advice, the Authority will consider the advice and make a final decision regarding the amendments.

APPENDICES

Appendix 1 Proposed new Code (with tracked changes)

Appendix 2 Proposed new Code (without tracked changes)