

14 January 2025

Economic Regulation Authority
4th Floor Albert Facey House
469 Wellington Street
Perth 6000

Dear Mr Lee,

Re: Expert Consumer Panel submission on the Draft decision – Amendments to the code of conduct for gas marketing

The WA Expert Consumer Panel (ECP) appreciates the opportunity to provide feedback on the Amendments to the Code of Conduct for Gas Marketing - Draft decision. As a panel supported by the State Government's Western Australian Advocacy for Consumers of Energy (WA ACE) program, we are committed to improving consumer outcomes in the energy sector.

As we outlined in our previous submission as part of the 2024/25 Gas Marketing Code review, gas provides an essential service for over 764,000 Western Australian households who use it to cook, heat their homes to comfortable temperatures, and heat water for bathing and cleaning. Strong and consistent consumer protections across electricity and gas sectors ensure that Western Australian households can access these essential services on fair terms.

We commend the ERA for accepting all recommendations made by the Gas Marketing Code Consultative Committee (GMCCC). The proposed changes outlined in the Draft Decision will strengthen consumer protections, empowering households and small businesses to make informed choices about space heating, cooking, water heating, as well as their health and the environment.

In this submission (see Appendix) we make some further suggestions to enhance the effectiveness of the updated Code.

Thank you for considering this submission, and please do not hesitate to contact us to discuss it further.

Sincerely,

Western Australian Expert Consumer Panel

APPENDIX

Ensuring meaningful comparability

ECP members support new requirements requiring marketing claims about gas heating, cooking and water heating to also include information about more energy-efficient, electrical alternatives, such as reverse cycle air conditioners, induction cooktops and heat-pump hot water systems. As the GMCCC Report notes, electric heat pump hot water systems can transfer three or more units of heat, for every unit of electricity - an efficiency of 300% or more, and more than three times as efficient as a tankless gas hot water system, translating into significant energy bill savings for consumers.¹

The ERA also proposes that where comparisons are made between gas and electric appliances, that the type, brand name and efficiency are also included - critical information given the energy efficiency of electrical appliances, while superior to gas alternatives, does vary.

A question for the ERA is whether, in addition to specifying the appliance being compared by consumers, the Code also set a minimum Energy Star Rating (or in the case of hot water heat pumps a minimum coefficient of performance until the star rating system that is currently under development is introduced) for comparisons. Appliance technology has advanced significantly in recent years, so much so that the maximum Energy Star Rating has been increased from five up to a maximum rating of ten stars for some appliance types.²

ECP members therefore propose that in relation to comparisons for space heating and hot water heating (when the star rating for heat pump hot water systems is introduced), that the electric appliance used in the comparison have a rating of at least 3-stars (using the 'average' zone that covers the Perth region³).

Additionally, it will be important for the Code to ensure that the comparison considers the size of the appliance. In relation to space heating for example, appliances should be comparable in relation to the room volume (m³) they are expected to heat, so that a heater that is designed to heat a small room, is not compared to an air-conditioner system for a large house. Similarly, when comparing gas storage water heaters to heat pump appliances, systems with similar sized storage tanks (20% tolerance of tank capacity) should be used.

We recognise that the star rating system is amended from time to time, and it would be unfair for retailers and their marketers to be in breach of the Code when changes to the star rating system are made and the gas marketing material that has been developed has yet to be updated. To account for this, the ECP proposes that the Code includes a six-month grace period for whenever the space or water heating energy ratings are altered.

¹ <https://www.erawa.com.au/cproot/24315/2/GMCCC-2024-Final-review-report.PDF> page 11

² <https://www.energyrating.gov.au/consumer-information/understand-energy-rating-label>

³ https://www.energyrating.gov.au/sites/default/files/2022-12/AC%20ZERL%20FS_FINAL.pdf

Cooking and Health Claims

ECP members strongly support the new requirement that marketing claims include information about pollutants associated with gas cooking. However, we recommend that the Code goes further to ensure customers are informed by retailers about the link between these pollutants and their health impacts, enabling fully informed decisions by Western Australia customers about future gas usage.

Requiring information about pollutants associated with gas to be provided is timely. As the Draft Decision notes, the ERA has relied on a growing body of peer-reviewed evidence linking gas cooktop use with respiratory conditions like asthma - a connection now recognised both in Australia⁴ and internationally by respected medical bodies, including the American Medical Association.⁵ How this information is presented to consumers will be critical. Many customers lack the specialised knowledge to understand the implications of specific toxins or chemicals in their homes. Research on effective health warnings, particularly in the tobacco industry, outlines that warnings should:

1. Use clear, simple language that is easily understood by a wide audience
2. Directly state the health risk, rather than using obscure or vague warnings
3. Include graphic pictorials
4. Provide enough information for consumers to fully understand all material issues relevant to the risks, including potential impacts on longevity and quality of life
5. Be short and to the point, increasing the likelihood of being read and remembered⁶

While we are not requesting the use of graphics, it is clear that only listing pollutants will have limited impact on consumers' understanding of the risks associated with gas cooking. Therefore, we recommend that when cooking with gas is mentioned in marketing materials, a concise yet factual statement be included, such as:

'WARNING: Cooking with gas releases nitrogen dioxide, which can cause or worsen asthma and other respiratory problems, especially in children.'

This warning is concise, clear, and directly states the primary health risk associated with gas stove cooking. It emphasises immediate health effects (including with children), which is likely to increase the warning's effectiveness and enable consumers to make truly informed decisions about their cooking methods.

Basic Plan Information Document

ECP members welcome the addition of standardised documentation on gas offers being included in Code, bringing it into line with established practice in the National Electricity Market

⁴ <https://www1.racgp.org.au/ajgp/2022/december/health-risks-from-indoor-gas-appliances>

⁵ [D-135.964 Informing Physicians, Health Care Providers, and the | AMA](#)

⁶ [12A.4 What makes an effective health warning? - Tobacco in Australia](#)

(NEM) and other sectors. We offer the following suggestions around design and implementation to maximise the effectiveness of the Basic Plan Information Document (BPID).

Final prices for model household examples:

As the Behavioral Economics Team of the Australian Government (BETA) has demonstrated in its foreign exchange rate research, how information is displayed impacts customer comprehension.⁷ For example, only when the final amount of funds that the recipient was going to receive after a foreign currency exchange was finalised, did the participants in the user testing consistently pick the best foreign exchange rate offered. Therefore, we recommend including a requirement for a comparison pricing table with standardised examples for small, medium and large household, be presented within these documents. The end annual price (including any non-usage fees and charges) for each household category should be prominently displayed, similar to the format adopted by the Australian Energy Regulator's (AER) BPID template (see snippet from Energy Made Easy below).⁸

Pricing Summary*		Low	Medium	High
		1 person 26.9 MJ/day	2-3 people 48.6 MJ/day	4-5+ people 70.7 MJ/day
		\$870	\$1,240	\$1,590
		Estimated prices are based on typical usage in your postcode. Prices are not personal estimates and your household's usage may vary. Prices exclude solar payments, concessions and bonuses.		
		Plan ID: ENG871558MRG1		
		Prepare to switch		

Similar to the AER's approach, household profiles for the average gas use for single, three and five-and-above person houses could be used.⁹

The AER guidelines also require the final estimated annual cost to be prominently displayed. Only if the final costs for a number of example households are included, which consumers can

⁷ [Subtracting fees to subtract confusion](#)

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www.energymadeeasy.gov.au/plan?id=ENG871558MRG&utm_source=ENGIE&utm_campaign=bpi-retailer&utm_medium=retailer&postcode=2000&withDiscounts=false

⁹ If no usage profile data exists for Western Australia (based on household occupancy), then it is suggested the 'Simple gas benchmarks' for New South Wales, from the Residential energy consumption benchmarks report be used, given Sydney (where the bulk of the respondents to the survey is likely to be based) is the closest out of the climate zones in the benchmark report to Perth (which covers the bulk of WA gas retail customers). This would result in 2,732 units/year (7.5 units/day) as the basis for a single person household, 5,550 units/year (15.2 units/day) for a three person household and 8,000 units/year (21.9/day) for the five plus household [Residential energy consumption benchmarks - 9 December 2020 0.pdf](#). Figures obtained by going to the NSW [gas usage sheet](#), then summing the seasonal usage and dividing it by 3.6 to convert it from MJ to kWh. Figures rounded to the nearest whole number.

use to reference their own circumstances, will the document be effective. To help consumers understand this point, it is recommended that a statement such as the below be included:

'You can look at your last bill to see your average daily use, but please note that your usage may vary over the course of the year, especially if you are using gas for heating.'

Statement alerting the reader to other factsheets be included:

The document should include an introductory statement explaining its purpose and mandatory nature. A short statement like the below will inform the reader that there are other factsheets out there which they can use to determine which plan is best for them, which the reader might not have otherwise been aware of:

"This factsheet is a mandatory requirement for WA licenced retailers offering retail gas offers. You can use this standardised factsheet to compare all of the offers from [retailer name] and all of the other licensed gas retailers, to find the offer that is best for you.'

Consider reducing the information being required to be presented in the BPID and replacing Schedule 1 with a standard template:

The intent of the BPID is not to replicate the contract, but rather to summarise important information, and to make it easy for customers to compare which offer is best for them. It is unclear to ECP members if the information included in Schedule 1 will overwhelm consumers. The information requirements may need to be revisited in a subsequent (and perhaps interim) review if the information is found to be excessive.

Alternatively, we suggest the ERA mock-up a BPID and consult with consumers' and consumer advocates to inform the design of a template to be used by retailers and marketers. The use of a standard template would support consistency (in style and presentation) and comprehensibility between the retailers' BPIDs. Note that in the NEM, BPIDs are generated by the independent Energy Made Easy website administered by the Australian Energy Regulator (AER), resulting in consistent BPIDs regardless of which retailer plan(s) are displayed.

Ensure BPIDs are provided to customers before signing a contract, rather than on request:

While the draft decision requires that the BPID be accessible or advertised in most instances (which ECP members support), where a customer is engaged by a marketing agent, Clause 8b appears to require the customer to request a BPID, rather than it being provided automatically. It is unclear why this exception is needed, as it would simply be a matter of the marketing agent carrying a small number of additional BPIDs when engaging with potential customers (if engaging with customers face to face), or for the retailer or marketing agent to attach the BPID if the marketing is occurring via electronic means. The vast majority of WA gas (or potential gas) customers would be unaware that these documents exist, and customers cannot request something that they are unaware of.

ECP members therefore recommend that Clause 8(1)(b)(iii) 'a link to, or a paper copy of, a basic plan information document about any of the retailer's generally available plans' be moved to 8(1)(a)(iii) to make it a mandatory requirement.

Remove the five-day exemption for retailers publishing BPIDs for new (or altered) plans:

Clause 9G requires retailers to publish BPIDs for generally available plans within five days of the plan becoming available or, if the plan is an existing plan, within five days of any changes to the information in Schedule 1. The first stated rationale is to allow retailers to focus on core work within their business (when launching a new plan or amending an existing plan). ECP members are of the opinion that the BPID framework for transparency and comprehensibility should be integral to retailer's product design and marketing plans for new offers, or amending existing offers.

The second rationale is to minimise "inconsistency with requirements in AER jurisdictions". While we support national consistency when there is a direct customer benefit, we believe that the proposed approach will result in more inconsistencies between jurisdictions.¹⁰

ECP members note that the five day grace period could also complicate Ombudsman dispute resolution processes and the ERA's compliance reporting, as the ERA and Ombudsman office will need to note when new plans are being offered, and then when a Code breach occurs and/or customer makes a complaint, these agencies will need to determine if the retailer five day BPID exemption was in force.

ECP members therefore recommend that the five-day grace period be removed to address these risks.

Compliance and Penalties:

It is our understanding that penalties for non-compliance with the Code have not increased since 2017, undermining the effectiveness of the compliance and enforcement of the framework. The ERA may consider revising the penalty amounts within Division 4, particularly to increase the amount that corporations may be penalised, as the \$20,000 penalty for retailers contravening the Code appears to be far too low.

We note three tiers of civil penalties within the NEM available for the AER. Tier 1 provisions now carry maximum penalties for corporations of \$10 million or, if greater, three times the benefit obtained from the breach if this can be determined or, if not, 10% of annual turnover. While Tier 2 maximum penalties are up to \$1,435,000 (plus \$71,800 per day for continuing breaches) and Tier 3 are up to \$170,000 (plus \$14,400 per day for continuing breaches), these amounts will

¹⁰ The AER's Retail Pricing Information Guidelines do not actually provide a five day grace period for the plans to be produced and made available, rather there is a five day period for the information to be made available to a customer by post or email if a customer requests the BPID (paragraph 97(b)), which is not related to the development and hosting of the BPID in general, which is covered from paragraph 79 to 103 of the AER's Guidelines. see <https://www.aer.gov.au/system/files/AER%20Retail%20Pricing%20Information%20Guidelines%20-%20Version%205.0%20-%20April%202018.pdf>

also be indexed every three years to ensure their deterrent value is maintained. Infringement notice penalties have also increased; up to \$67,800 for alleged Tier 1 and 2 breaches.¹¹

The ERA may wish to consider these amounts when considering what is an acceptable penalty for retailers and their marketing agents (in some cases deliberately) not complying with the Gas Marketing Code requirements, either in this or a subsequent review.

Cost comparison tool

The lack of an independent price comparison tool Western Australia households and small businesses can use to evaluate gas and electricity offers and tariffs based on their own usage and payment data - as is available in the NEM - is a major gap in the consumer protection framework.¹²

Successive reviews of retail energy markets by the Australian Competition and Consumer Commission (ACCC), and extensive behavioral insights research, has identified the difficulty customers face with comparing offers as a contributor to customers not taking steps to choose the best deal for them, and inertia and stickiness in energy retail markets more generally. Supported by behavioral insights research, Energy Made Easy has been upgraded in recent years to make it much easier for customers to compare different offers, including the ability to upload a photo of their bill to import their historical consumption data and generate more relevant and accurate comparisons.

While outside the remit of the Gas Marketing Code, ECP members recommend that the ERA partner with the AER to enable Western Australian gas customers to compare gas offers on the Energy Made Easy website, or alternatively that the ERA or another trusted entity develop a comparator tool.

If a tool requires changes to the various instruments that govern gas retailers in Western Australia, then ECP members ask that the ERA consider what changes would be required to the Gas Marketing Code, Compendium of Gas Customer Licence Obligations, retail licences and/or any other instrument for this to occur and to start implementing changes to these instruments during subsequent reviews so that the tool can be introduced. If the ERA is of the opinion that legislative change is required, then we ask that the ERA advocate for such changes with the relevant agencies.

¹¹ www.aer.gov.au/news/articles/news-releases/stronger-penalties-demand-energy-businesses-prioritise-compliance-law

¹² See ECP members submission to the Gas Compendium Review 2023 which discussed this matter further - www.erawa.com.au/cproot/23650/2/Gas-Compendium-Review-2023---Draft-Decision---Public-submission---Expert-Consumer-Panel.PDF