

Economic Regulation Authority
4th Floor Albert Facey House
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17 July 2024

Via email: publicsubmissions@erawa.com.au

Expert Consumer Panel submission on the Gas Marketing Code of Conduct 2024 Draft Review Report

Dear Mr Lee,

Thank you for the opportunity to make a submission in response to the Gas Marketing Code of Conduct 2024 Draft Review Report (the Report).

The WA Expert Consumer Panel (ECP) is supported by the State Government's Western Australian Advocacy for Consumers of Energy (WA ACE) funding, to engage in consumer advocacy and contribute to major decision making in the sector.

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. ECP members appreciate the ERA engaging with the issues we raised in our earlier contribution to the Review.

Before we address the Report's main recommendations, which we support, it is important to engage with a matter that goes to the core purpose of the Gas Marketing Code - how information about the costs of gas supply offers are presented to consumers, and whether they are able to make informed choices.

Barriers to consumer choice in the gas retail market

We request the Gas Marketing Code Consultative Committee (GMCCC) to revisit the issue of the cost information provided to consumers. The Report dismisses the need for greater clarity for consumers in the way that offers are presented, referring to desktop analysis undertaken by the GMCCC, but does not include any details about the sources that were considered or the resulting analysis and insights. The Report's conclusion that there would not be a net benefit for consumers of introducing similar requirements for Western Australian gas retailers as exist in the National Electricity Market (NEM) therefore appears to be based on assumptions about the structure of the local market rather than the reality of what is being marketed to consumers.

For example, at the time of writing this submission, a prominent commercial price comparison website was listing 13 different gas offers from five providers for a metropolitan Perth postcode, with a significant price spread of \$693-\$1072, reflecting varying discount structures, contract lengths, as well fees and charges - fees and charges which are not regulated and the retailer is

free to set.¹ Without the ability to click through to a Basic Plan Information Document (BPID), or access a comparator service like Energy Made Easy, consumers either need to determine for themselves which offer is best for them, or rely on the rankings offered by commercial price comparison sites. Such sites are not good sources, as they often elevate promoted offers, and in some cases exclude retailers unwilling to enter into commercial arrangements with the comparison site operator. Research has found they are not trusted by consumers.²

It is also worth considering that advertised discounts are often tied to the customer paying their bill on time. Accordingly, it is not just the advertised prices that a household will need to consider, but also the terms and conditions in the small print, and their ability to meet those terms.

Given the majority of Western Australian gas consumers are with two retailers who are not necessarily offering the cheapest offers, it is likely that many are paying more for their gas supply than they may otherwise need to.³

In particular it is highly telling that over half the market remains with Alinta Energy, which received all of the previous customers of State government monopoly gas retailer AlintaGas when the government privatised the gas retailer in 2000. It is highly likely that hundreds of thousands of the customers who became Alinta Energy customers from that privatisation have remained with Alinta Energy (on their default tariff and supplier) to this day.

Measures to empowering consumer choice

In the context of the current cost of living pressures, it is critical that every opportunity is pursued to make it easier for consumers to shop around and get a better deal. ECP members therefore consider that there is a strong case for the GMCCC and ERA to explore contemporary measures to support easy and informed consumer choice, including standardised fact sheets, requirements for annual 'better off messages' to be included in consumer bills, and independent (that is free from commercial considerations and biases) regulator-run online comparator tools.

Standardised customer disclosure documents help customers compare and rank offers, which is vital in promoting competitive and fair market conduct.⁴ Regulators across Australia and New Zealand have mandated such documents across a range of industries, including in banking (product disclosure statements), telecommunications (Critical information summaries - CIS) and energy (energy price fact sheets/Basic plan information document).⁵ The formats developed by

¹ <https://www.canstarblue.com.au/gas/>

² <https://www.choice.com.au/shopping/shopping-for-services/utilities/articles/energy-comparison-sites>

³ See page 8, ERA WA Annual Data Report - Energy Retailers 2022/23

<https://www.erawa.com.au/energyreports>

⁴ For example, the Communications Alliance outlines that "Our members' experience is that the Critical Information Summaries are well received by customers and provide an important role in customers' purchasing decisions." See page 10 of its submission in response to the Treasury's Consumer Data Right Sectoral Assessment Telecommunications Consultation Paper -

<https://treasury.gov.au/sites/default/files/2021-11/c2021-198050-tc-communications-alliance.pdf>

⁵ The Commerce Commission New Zealand in relation to introducing a CIS approach in the New Zealand telecom sector outlines that they are of the "view that a more standardised approach to producing and providing offer summaries would improve outcomes for consumers. Evidence from Australia shows that

the AER have been extensively researched and provide a good guide for how fact sheets might be approached under the Compendium. To be effective, fact sheets will need to be tested with Western Australian gas customers and refined based on their feedback.

We question the assertion in the draft review report that producing standardised factsheets would impose additional costs on Western Australian gas consumers without providing a benefit. This is a requirement that the same retailers comply with in the NEM and is underpinned by rigorous market testing and behavioural insights.⁶ Retailers frequently argue for regulatory frameworks to be aligned as far as possible to reduce the compliance burden and we see no reason why doing so in relation to BPID-style fact sheets, which is commonplace in the energy and telecommunications sectors, should not be considered through the same lens.

Energy retailers in the NEM are also required to provide clear information to customers about their most cost-effective plan, known as the 'best offer', based on the customer's usage history. This obligation in Victoria is part of the Energy Retail Code of Practice, and in the other NEM states it comes from the Australian Energy Regulator's Better Bills requirements. The requirements see gas retailers needing to inform their customers at regular intervals whether the customer is on the retailer's best offer (e.g., every 100 days or 4 months).

ECP recommends the GMCCC consider:

- a. A requirement for gas retailers to provide customers with a standardised price disclosure document.
- b. A requirement for gas retailers to provide their customers with an annual 'better offer' message in the bills.
- c. The GMCCC explore the merits of an online comparator tool for Western Australian gas customers.

ECP members position on other matters in the draft review report:

We support the GMCCC's recommendations 1, 2 and 3 in relation to alignment with the electricity code, requirements for telemarketers, and comparative gas marketing claims respectively. We offer the following contextual comments.

Recommendation 1 - Alignment with Electricity Code

- Bringing the text of the Code into alignment with the *Code of Conduct for the Supply of Electricity to Small Use Customers 2022* reduces unnecessary differences between the regimes, and complexity for consumers benefits from consistent protections irrespective of fuel type.

over three quarters of those who had seen a Critical Information Summaries found it useful and we would expect improved summaries to be similarly beneficial for New Zealand consumers" - see paragraph 59 of their Q3 Update and Response to Submissions

https://comcom.govt.nz/_data/assets/pdf_file/0023/320693/Improving-RSQ-Product-Disclosure-Q3-Update-and-Submission-Response-30-June-2023.pdf

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<https://www.aer.gov.au/system/files/Testing%20Comprehension%20of%20the%20Reference%20Price.pdf>

- Removing references to outdated communications technologies, such as fax machines, is sensible. We note that the trend towards removing prescription around how retailers communicate with customers rests on the principle that gas retailers engage with customers through the customer's preferred channel.

Recommendation 2 - *Requirements for telemarketers*

- Simplifying the provisions relating to telemarketers appears sensible providing that the requirement for telemarketers to clearly identify themselves, and provide customers with contact details about how to make a complaint, are not undermined.

Recommendation 3 - *Comparative gas marketing claims*

- We welcome the GMCCC's analysis about comparative gas marketing in the Report and the recommendation for the Code to be strengthened to provide greater clarity for customers. Households and businesses are increasingly grappling with when and how to electrify for cost and environmental reasons. Ensuring that they are able to easily and accurately make energy and appliance choices is critical.

Other issues

We also support the GMCCC's conclusion that removing provisions that potentially overlap with the Australian Consumer Law (ACL) is unlikely to benefit consumers. While the ACL provides critical protection for consumers across different markets, it is difficult for individual consumers to pursue complaints redress under the framework. The need for energy-specific protections, which include accessible support from ombudsman services, is widely recognised.⁷

ECP members would be pleased to provide any further information to support this submission and look forward to continuing to engage with the ERA on consumer protections for retail gas services.

Yours sincerely,

Expert Consumer Panel

⁷ See for example, Chapter 11 of the AEMC Retail Energy Competition Review 2020 <https://www.aemc.gov.au/regulation/energy-rules/NECF-ACL>