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Retailer Energy Productivity Scheme (REPS) Code Review 2021

Draft Decision

October 2021

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Request for submissions

The Essential Services Commission (Commission) invites written submissions from members of the community on this draft decision. Written comments should be provided by **Wednesday, 8 December 2021**.

It is the Commission's policy to make all submissions publicly available via its website (www.escosa.sa.gov.au), except where a submission either wholly or partly contains confidential or commercially sensitive information provided on a confidential basis and appropriate prior notice has been given.

The Commission may also exercise its discretion not to publish any submission based on length or content (for example, containing material that is defamatory, offensive or in breach of any law).

Responses to this paper should be directed to:

Retailer Energy Productivity Scheme (REPS) Code Review – Draft Decision

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Glossary of terms

Term	Description
Code	Retailer Energy Productivity Scheme Code
Commission	Essential Services Commission, established under the <i>Essential Services Commission Act 2002</i>
DEM	South Australian Government Department for Energy and Mining
EAT	Energy Audit Target
Electricity Act	<i>Electricity Act 1996</i>
EPT	Energy Productivity Target
ESC Act	<i>Essential Services Commission Act 2002</i>
Gas Act	<i>Gas Act 1997</i>
Minister	Minister for Energy and Mining, responsible for the administration of the <i>Electricity Act 1996</i> and/or the <i>Gas Act 1997</i>
Obligated retailer	An energy retailer with an obligation to meet one or more targets in a year
Regulations	<i>Electricity (General) Regulations 2012</i> and <i>Gas Regulations 2012</i>
REES	Retailer Energy Efficiency Scheme
REPS	Retailer Energy Productivity Scheme
REPS Code	Retailer Energy Productivity Scheme Code

1 Executive summary

The Essential Services Commission (**Commission**), established under the *Essential Services Commission Act 2002 (ESC Act)*, is the independent economic regulator of essential services in South Australia. In undertaking its regulatory functions, the Commission's primary objective is the protection of the long-term interests of South Australian consumers with respect to the price, quality and reliability of essential services.

One of the Commission's functions within both the electricity and gas industries is to administer the Retailer Energy Productivity Scheme (**REPS**). The scheme was established by the Government of South Australia and commenced on 1 January 2021. The South Australian Government's policy objective for the REPS is to focus on improving the productivity of energy through demand shifting and response management capabilities, as well as improving energy efficiency.

It requires energy retailers with sales and customer numbers above certain thresholds (obliged retailers) to provide energy productivity activities to South Australian households and businesses to meet annual Ministerial targets. REPS is the successor scheme to the Retailer Energy Efficiency Scheme (**REES**), which operated from 1 January 2009 to 31 December 2020.

As administrator, the Commission has the statutory functions and powers necessary to give effect to REPS.

To provide a framework through which it discharges certain of those responsibilities, in January 2021 the Commission made a REPS industry Code, pursuant to its powers under section 28 of the ESC Act. That Code was based on the architecture of the previous REES Code. Numerous changes were made so that the new Code was specific to REPS but, due to time constraints at the time of introduction of REPS, not all stakeholder suggestions for the new Code were able to be properly explored or accommodated. To ensure that the REPS Code properly supported the potential of the REPS scheme, at the time of making the REPS Code the Commission committed to a more extensive Code review during 2021 (this review).

Based on the information available through this review, the Commission is proposing five changes to the REPS Code to facilitate improved outcomes under, and administration of REPS within, the Government's policy framework. These changes relate to:

- ▶ **Line of sight between obliged retailers and customers** – In some cases, the Commission has found that activity providers have conducted REPS activities prior to those activities being assigned to an obliged retailer. Until an activity is assigned to a retailer, important consumer protections, particularly the ability to make a complaint to the retailer or to escalate a complaint to the Energy and Water Ombudsman, are not available to customers. The Commission proposes to address this gap through a new requirement that an obliged retailer *must* be identified upfront for REPS activities (ie before they occur).
- ▶ **Clarifying fit and proper person obligations** – The Code currently requires obliged retailers to ensure that persons carrying out activities on their behalf are 'fit and proper'. Given that REPS requires persons to enter customers' premises to perform certain activities, this requirement on retailers remains important. However, to give retailers more clarity and certainty in their application of that assessment and, critically, to further mitigate the risk of harm to members of the public caused by inappropriate behaviour, the Commission proposes to include minimum standards for the application of 'fit and proper' person assessments by those retailers.

- ▶ **Record keeping obligations** – Currently, records of REPS activities must be kept for five years following the expiry of the Regulations (ie, 2035). That timeframe imposes a cost burden on obliged retailers which exceeds the regulatory benefit of record keeping. It is therefore proposed that retailers must retain actual possession (and not simply legal control) of all activity records for a period of five years following the *completion of an activity*. This strikes an appropriate balance between the need to access records for regulatory purposes and the costs of complying with that regulatory obligation.
- ▶ **Provision of information to customers** – Under the Code as currently drafted, an information statement must be provided to a customer at the time the activity is 'performed'. Given that some REPS activities occur over a longer time horizon (ie, are not merely one-off events such as installation of a product), this creates a potential ambiguity about the relevant timing for the provision of the statement. The Commission therefore proposes to clarify that the information statement must be provided at the *commencement* of the activity.
- ▶ **REPS customer co-payments** – Unlike REES, activities under the REPS scheme require a customer co-payment (unless the customer or REPS activity is exempted from this requirement by the Minister). So that customers can make adequately informed decisions as to whether or not to pursue a REPS activity based on the existence or amount of a co-payment, the Commission proposes two amendments to the Code. First, the existence and amount of any co-payment must be clearly communicated to the customer at the time of booking. Second, those same matters must be clearly set out on the information statement (described above).

In addition, the Commission has taken the opportunity to propose other minor administrative variations to the REPS Code to update terminology, clarify obligations, remove duplication and update outdated references. These amendments are detailed in this report and in the draft REPS Code.

Stakeholders are invited to provide submissions on this draft decision by **Wednesday, 8 December 2021**. The Commission welcomes discussions with stakeholders on any of the matters raised in this draft decision or on any related matters.

Following consideration of the issues raised in submissions, the Commission will release its final decision in February 2022. The Commission's regulatory instruments will be amended to reflect the final decision and will apply from that time.

2 Introduction

The Essential Services Commission (**Commission**), established under the *Essential Services Commission Act 2002 (ESC Act)*, is the independent economic regulator of essential services in South Australia. In undertaking its regulatory functions, the Commission's primary objective is the protection of the long-term interests of South Australian consumers with respect to the price, quality and reliability of essential services.

One of the Commission's functions within both the electricity and gas industries is to administer the Retailer Energy Productivity Scheme (**REPS**). The scheme was established by the Government of South Australia and commenced on 1 January 2021. The South Australian Government's policy objective for the REPS is to focus on improving the productivity of energy through demand shifting and response management capabilities, as well as improving energy efficiency.¹

It requires energy retailers with sales and customer numbers above certain thresholds (obliged retailers) to provide energy productivity activities to South Australian households and businesses to meet annual Ministerial targets. REPS is the successor scheme to the Retailer Energy Efficiency Scheme (**REES**), which operated from 1 January 2009 to 31 December 2020.

As scheme administrator, the Commission has the statutory functions and powers necessary to give effect to REPS.

2.1 The Retailer Energy Productivity Scheme (REPS)

The South Australian Government's policy objective for REPS is to:

'improve energy productivity for households, businesses and the broader energy system, with a focus on low-income households. This will reduce energy costs and greenhouse gas emissions, while improving human health'.²

REPS is designed to take advantage of opportunities to achieve customer and system benefits by targeting:

'energy savings at peak times, and to facilitate the demand response market by incentivising activities based on their demand response capabilities.'³

REPS includes activities that improve the productivity (or economic output) of energy use. It does this by incentivising activities which promote the transition to a smarter power system with greater demand shifting capabilities. By incorporating activities designed to shift energy demand from times of peak energy use to off-peak energy use times, the scheme aims to put downward pressure on wholesale electricity prices. Incentivising the addition of demand shifting capabilities also aims to improve control over the power system and, in consequence, increase network security.

¹ Information on the South Australian Government's policy objectives for the REPS is available at: www.energymining.sa.gov.au/energy_and_technical_regulation/energy_efficiency/retailer_energy_productivity_scheme_reps

² Review into the South Australian Retailer Energy Efficiency Scheme Report, DEM, December 2019, p. 2.

³ Review into the South Australian Retailer Energy Efficiency Scheme Report, p. 14.

To achieve these objectives, the Minister for Energy and Mining (**Minister**) designated a range of energy productivity activities that included adapted pre-existing REES activities, modified interstate schemes' activities and activities specifically developed for REPS.⁴

REPS requires energy retailers with sales and customer numbers above certain thresholds (obliged retailers) to provide energy productivity activities to South Australian households and businesses to meet annual Ministerial targets.

The Minister has set REPS obligation thresholds and overall targets for the years 2021 to 2025, as well as the methodology by which REPS targets are apportioned amongst obliged retailers. The Commission is responsible for determining which retailers are 'obliged' under REPS and for the apportionment of targets in accordance with the prescribed methodology.

The Department for Energy and Mining (**DEM**) is the South Australian Government agency responsible for designing and establishing the legislative, regulatory and policy framework for the REPS.

In developing REPS, DEM took primary responsibility for engaging directly with REPS stakeholders and the public on the policy framework, including scheme objectives and methodology.

The Commission's responsibilities under the REPS are:

- ▶ determining obliged retailers and calculating and notifying obliged retailers of any targets that apply on an annual basis
- ▶ ensuring retailers comply with relevant obligations, and
- ▶ annually reporting, publicly and to the Minister, on retailers' progress in achieving the required targets.

To provide a framework through which it discharges certain of those responsibilities, in January 2021 the Commission made a REPS industry Code, pursuant to its powers under section 28 of the ESC Act. That Code was based on the architecture of the previous REES Code. Numerous changes were made so that the new Code was specific to REPS but, due to time constraints at the time of introduction of REPS, not all stakeholder suggestions for the new Code were able to be properly explored or accommodated. To ensure that the REPS Code properly supported the potential of the REPS scheme, at the time of making the REPS Code, the Commission committed to a more extensive Code review during 2021 (this review).

2.2 Purpose, scope and timing of proposed amendments

This draft decision outlines the Commission's proposed amendments to improve and clarify retailer obligations to provide appropriate protections to customers of the REPS. The proposed amendments are designed to resolve issues that had been identified in the administration of the REPS scheme since January 2021 and the REES scheme over the six years before that, or in other areas that have the potential to result in poor customer outcomes.

However, the wider statutory and policy frameworks are outside of the Commission's functions and powers, and so matters of policy are outside the scope of this draft decision.

The timetable for the Code review is set out in Table 1 below.

⁴ Refer SA Government Gazette No. 98 published 21 December 2021, available at https://governmentgazette.sa.gov.au/sites/default/files/public/documents/gazette/2020/December/2020_098.pdf.

Table 1: Timetable for the review of the REPS Code

Action	Date
Consultation closes on draft decision on draft Code	8 December 2021
Final Code published	February 2022
REPS Code comes into effect	February 2022

The Commission welcomes submissions on this draft decision, including appropriate timing for the transition to compliance with the proposed Code changes, by **Wednesday, 8 December 2021**. It also welcomes discussions with stakeholders on the matters raised in the paper or on any related matters.

3 Establishment of the REPS Code

To allow for the timely introduction of the REPS Scheme, scheduled to begin on 1 January 2021, the Commission undertook a compressed consultation in late 2020 on the introduction of the first Retail Energy Productivity Scheme Code (**REPS Code**).

The REPS Code was based on the former REES Code and included only the minimum consequential amendments required due to Government policy framework changes which were necessary to give effect to the new REPS.⁵ In particular, the REPS Code was amended to incorporate the following key policy changes made by the Minister, as set out in the Regulations:

- ▶ **Energy audit targets:** REPS, unlike REES, does not include the requirements for primary obliged retailers to achieve energy audit targets. Clauses relating to this now obsolete target were removed in the REPS Code.
- ▶ **Sub-targets:** The REPS Code reflects the variation of the existing '*priority group energy efficiency sub-target*' to the '*priority group household energy productivity primary sub-target*', and that the Minister retains the discretion to introduce subsequent additional primary and secondary sub-targets by notification in the Gazette.
- ▶ **Transitional arrangements:** The REPS Code reflects DEM's updated procedures relating to energy credit conversion and reporting cut-off dates. The clauses facilitated the administrative procedures governing the transition between the REES and the REPS.

3.1 Matters raised in the 2020 review of the REPS Code

During the establishment of the first REPS Code, the Commission consulted with stakeholders to seek their views on ways the Code could be more effective. Due to the constrained timeframes, not all stakeholder recommendations could be incorporated into the REPS Code that took effect on 1 January 2021. In response, the Commission committed to further consult on amendments to the Code in the latter part of 2021.

As part of the 2020 review, submissions were received from Energy Australia, ERM Power and Green Energy Trading,⁶ who raised compliance planning queries, identified minor drafting suggestions and provided feedback for consideration in the next REPS Code review. While the inaugural REPS Code incorporated feedback and suggestions received in submissions, the following matters raised are being considered in the current review.

3.1.1 Installer training requirements

Section 6.5.1 of the Code requires all installers to be trained by 31 March each year. This requirement is viewed by Green Energy Trading as problematic for two reasons:

- ▶ Installers are technically able to commence installations in January-March prior to having been trained, resulting in potentially non-compliant installations, and
- ▶ Turnover of staff/contractors will inevitably lead to installers dropping off during the year and Retailers need to find new installers to continue completing projects later in the year to fulfil targets. Mandating only installers trained as of 31 March can carry out activities for a Retailer will increase the risk that Retailers will fail to meet targets if their list of trained installers dwindles.

⁵ Consultation details are available on the Commission's website: refer: <https://www.escosa.sa.gov.au/projects-and-publications/projects/rees/retailer-energy-productivity-scheme-reps-2021>.

⁶ Submissions available on the Commission website, refer <https://www.escosa.sa.gov.au/projects-and-publications/projects/rees/retailer-energy-productivity-scheme-reps-2021>.

Green Energy Trading suggests that those shortfalls could be addressed by requiring that all installers are to be trained/qualified prior to them engaging in any energy saving activity, regardless of when they come onboard with the Retailer.⁷ The submission notes this would give flexibility to retailers and activity providers to find additional resources when needed and reduce the risk of non-compliance and missing targets.

Further, the submission also notes this will also bring REPS in line with other programs that require participants to maintain regular and ongoing training systems and installer registers throughout the year, allowing participants to streamline their training activities with the other schemes and reduce the administrative burden of having to manage all the year's training activities in one go by the end of March.

The Commission has considered the matter raised and has proposed changes to the REPS Code, refer section 4.2 of this draft decision.

3.1.2 Time required for maintaining activity information

Section 4.3.1 of the Code requires all records of REPS activities to be kept in the possession of the obliged retailer, in a readily accessible form, for at least five years following the expiry of Part 4 of the *Electricity (General) Regulations 2012* and Part 4 of the *Gas Regulations 2012*.

Green Energy Trading submitted that, as the REPS scheme is not expected to expire until 2030, the information retention requirement is overly onerous, increasing the cost burden for storage and maintenance of information. Instead, it is suggested that retailers be required only to maintain activity records for a five- or six-year period after the activity is *completed*. Green Energy Trading argued that such a modification would bring REPS in line with similar programs interstate.

The Commission has considered the matter raised and has proposed changes to the REPS Code, refer section 4.3 of this draft decision.

3.1.3 Timing of written information statement

Section 6.1.1 of the Code requires a written Information Statement to be provided to the customer '*at the time the activity is performed*'. Green Energy Trading suggested that this requirement is ambiguous and would be made clearer if a specific date was specified. It was submitted that the Code could, for example, specify that the Statement be provided on the day of commencement of the project.

The Commission has considered the matter raised and has proposed changes to the REPS Code, refer section 4.4 of this draft decision.

3.1.4 Activities undertaken 'at a customer's premises'

Energy Australia submitted that obligations to activities under the REPS should not be limited to activities undertaken '*at a premises*' but, should also cover activities not performed at the premises. Energy Australia suggested this change is called for as, under the REPS scheme, not all activities are performed '*at a premises*' – such as switching to a Time of Use energy plan.

The Commission has considered the matter raised and has proposed changes to the REPS Code, refer section 4.6 of this draft decision.

⁷ For example, the NSW Energy Savings Scheme requires that all representatives of the scheme be appropriately trained prior to performing any activities under the scheme. IPART, ESS Notice 01/2013 p.2

3.1.5 Accreditation of activity providers

The submission from ERM called for an accreditation regime of energy activity providers, to be outlined in the Code. ERM submitted that it would:

'... bring greater confidence to service provision, consistency in compliance oversight and remove the current inefficiencies and high compliance costs that are ultimately passed through to customers. An accreditation regime approach would see the removal of the duplication of compliance plans between the retailer and the activity provider and the same information produced by multiple retailers.'

The Commission administers REPS within the parameters defined by the South Australian Government's policy framework and in accordance with the *Electricity Act 1996*, Part 4 of the *Electricity (General) Regulations 2012*, the *Gas Act 1997* and the *Gas Regulations 2012*.

The regulatory framework that gives effect to REPS places a direct regulatory obligation on South Australian electricity and gas retailers to comply with the requirements of the scheme. The regulatory framework does not provide to the Commission functions and powers to enable direct regulation of activity providers. Therefore, the introduction of an accreditation regime is out of scope for the review of the REPS Code.

Instead, the Regulations specify that a *'retailer may enter into an arrangement with another person (including another retailer) for that person to undertake energy productivity activities on its behalf.'* In that context, it is a retailer's responsibility to ensure that the arrangements it puts in place with activity providers will deliver compliant REPS activities. These arrangements should be evidenced and demonstrated by retailers in their compliance plans. The Commission's role is to ensure that retailers comply with the relevant requirements of the REPS.

The Commission notes that retailers and activity providers may wish to implement an industry-led accreditation regime, should the benefits of doing so outweigh the costs.

4 Proposed amendments to the REPS Code

The Commission is proposing five consequential changes to the REPS Code to enable the administration of the REPS within the policy framework. These changes relate to:

- ▶ Record keeping obligations
- ▶ Provision of information to customers
- ▶ Clarifying fit and proper person obligations
- ▶ Line of sight between obliged retailers and customers, and
- ▶ REPS customer co-payments

These proposed amendments to the REPS Code are described in more detail below.

In addition, the Commission has taken the opportunity to propose other minor administrative variations to the REPS Code to update terminology, clarify obligations, remove duplication and update outdated references.

All amendments are detailed in Appendix 1: Table of amendments and included in the draft REPS Code at Appendix 2: Draft REPS Code.

4.1 Line of sight between obliged retailers and customers

One aspect of REPS where consumer protection can be strengthened is to improve the line of sight between an obliged retailer and specific activities being undertaken by third-party activity providers. The Commission proposes to require the name of the obliged retailer, on whose behalf an activity is undertaken, to be provided to the consumer at the time the activity is delivered as part of the information statement (the provision of which is already a requirement under the Code).

This amendment is proposed to resolve two issues identified through the administration of the REES and REPS:

- ▶ activities being undertaken by third parties with no existing arrangement with an obliged retailer, and
- ▶ instances where consumers and the Commission have no evidence of which obliged retailer an activity has been undertaken on behalf of, until the activity has been reported to the Commission, which can be months after the activity occurred.

Currently, the Regulations allow for an obliged retailer to 'enter into an *arrangement* with another person (including another [retailer](#)) for that person to undertake *on its behalf* energy efficiency activities' [emphasis added].⁸

The Commission understands that activity providers are undertaking activities, pursuant to arrangements with obliged retailers, but are not identifying to the consumer at the time of delivery the retailer on whose behalf an activity was undertaken. This is because activity providers may have contracts with multiple retailers and activities may only be allocated to a particular retailer when lodged in REPS-R (the Commission's Retailer File Validation System).

⁸ Retailers are required to retain records of these written arrangements with third parties. Where audits reveal activities have been undertaken by persons with no existing arrangement with a retailer, the resulting REPS credits will count, but an obliged retailer will be in breach of its obligations under the Code.

The Commission also understands that current industry practice may include activities being undertaken by persons that have no direct arrangement with an obliged retailer at the time the activities are undertaken. These activities are then 'on-sold' to obliged retailers. This is inconsistent with the provisions of the Regulations, as described above.

The Commission is concerned that customers are disproportionately bearing the risk of activity providers and sub-contractors delivering non-compliant REPS activities. This includes both faulty goods and/or services and adhering to the fit and proper person requirements prescribed in the Code. While retailers are required to ensure that a customer has access to complaint handling and dispute resolution procedures for any complaints in relation to energy productivity activities arising under REPS, the Commission's observation is that customers have significant difficulties in accessing adequate dispute resolution through activity providers and sub-contractors. This is particularly the case when the customer is raising concerns regarding misleading, deceptive or unconscionable conduct.

Where a customer is unable to resolve a matter with an activity provider or sub-contractor, this will generally be escalated to the Commission for resolution. The lack of line of sight between an obliged retailer and specific activities being undertaken under the REPS, provides for a poor customer experience in resolving any concerns in a timely manner. As administrator of the REPS, the Commission does not consider this identified gap in consumer protection to be a satisfactory outcome for customers or for the integrity of the scheme.

To resolve these concerns, the Commission proposes to require the name of the obliged retailer, on whose behalf the activity is undertaken, to be provided to the customer at the time the activity is performed as part of the 'Information statement'. This is to ensure that customers can access effective complaints and dispute resolution, including through retailers and, if required, the Energy and Water Ombudsman scheme, regarding any activity undertaken under REPS.

This amendment will provide customers with the information required to contact the obliged retailer and resolve any concerns or questions about the activity undertaken, or otherwise follow a clear complaints escalation process. The proposed amendment will also help to confirm that activities for the purposes of REPS are undertaken in accordance with the Regulations.

The Commission seeks to implement an appropriate and proportionate response to this issue and would welcome feedback and suggestions from stakeholders on how effective complaint and dispute resolution can be implemented.

Consultation question 1

Do stakeholders support amending the existing requirement to provide an information statement to include the requirement to provide the name of the obliged retailer on whose behalf the activity is undertaken prior to commencement of the REPS activity (refer clause 6.1.2(b) of the draft REPS Code at Appendix 2)?

Please provide evidence in support of, or a preferred alternative to, that proposal.

4.2 Clarifying fit and proper person obligations

The safety of REPS customers, and the quality of work undertaken pursuant to REPS, is a priority for the Commission. This is particularly important since REPS requires certain activities to be delivered in households, which will bring providers into contact with members of the public, including those who may be in vulnerable situations. To mitigate the risk of harm to members of the public, the Commission has included within the existing Code a requirement for obliged retailers to ensure that persons undertaking activities on their behalf have been assessed, by the relevant retailer, as being 'fit and proper'.

Given the importance of this protection, to give retailers more clarity and certainty in their application of that assessment and, critically, to further mitigate the risk of harm to members of the public caused by inappropriate behaviour, the Commission proposes to include minimum standards applicable to the application of ‘fit and proper’ person assessments by those retailers.

The Commission’s proposed amendments specify several minimum considerations to which an obliged retailer must have regard. These include taking into account a person’s skill, knowledge and capacity, their integrity and honesty and whether they can be trusted to act appropriately in undertaking activities for the purposes of REPS, including accessing customers’ homes.

A further proposed change, in response to a submission from Green Energy Trading, concerns the time limits for training requirements. The existing requirement is for an obliged retailer to ensure that all persons conducting energy productivity activities on behalf of that obliged retailer have undertaken all necessary training by no later than 31 March of each year. It is proposed to amend this so that all necessary training is completed prior to the person performing any REPS activities. This brings the training requirement into line with the Minister’s requirements and mitigates the risk of untrained persons performing REPS activities.

Consultation question 2

Do stakeholders support the introduction of minimum standards which must be applied by obliged retailers when conducting fit and proper person assessments (refer clause 6.6.2 of the draft REPS Code at Appendix 2)?

Please provide evidence in support of, or a preferred alternative to, that proposal.

4.3 Record keeping obligations

Currently, the REPS Code requires retailers to retain ‘possession or control’ over REPS activity records. This allows for retailers to retain legal control over the records but leave physical possession of the records with third parties.

The Commission has encountered several instances where this arrangement has led to lost records and compliance breaches, due to retailers not adequately monitoring third parties and providers for the required length of record retention. Accordingly, the Commission proposes to require retailers to retain actual possession of all its REPS activities records, and in a format it has ready access to (whether physical or electronic format).

Acknowledging, however, that there is a cost associated with record keeping, the Commission also proposes to reduce the current timing requirement for record keeping from a period of at least five years following the expiry of Part 4 of the *Electricity (General) Regulations 2012* and Part 4 of the *Gas Regulations 2012* down to a period of five years after the completion of an activity.

Consultation question 3

Do stakeholders support the clarification of record keeping requirements, such that obliged retailers must retain actual possession of all activity records for a period of five years following the completion of the activity (refer clause 4.3 of the draft REPS Code at Appendix 2)

Please provide evidence in support of, or a preferred alternative to, that proposal.

4.4 Provision of information to customers

Clause 6.1 outlines the expectations for the provision of information to customers about REPS activities undertaken. It is stated in 6.1.1 that an obliged retailer must ensure that each person conducting an energy productivity activity at a customer's premises for the purposes of REPS provides a written information statement, containing the matters required under clause 6.1.2, to the customer at the time that the activity is performed.

In a prior submission, Green Energy Trading suggested that the requirement, '*the time the activity is performed*', is somewhat ambiguous – particularly for activities that are not of a one-off nature or which take a long time from commencement to completion.

The Commission accepts that argument and proposes to make the change to clause 6.1.1 accordingly, recognising that the date of commencement would provide more certainty and offer customers more protections by having the required information available upfront.

Consultation question 4

Do stakeholders support the proposal to require the provision of information to customers at the commencement of the REPS activity (rather than at the time it is performed)?

Please provide evidence in support of, or a preferred alternative to, that proposal.

4.5 REPS customer co-payment

Under the Minister's REPS Activities General Specification, for some REPS activities customers are required to make a minimum co-payment, with the payment being a minimum of \$33 (including GST).⁹

Co-payments are not required to be made by priority group households, or for the following activities:

- ▶ **APP2** – removal and disposal of an unwanted refrigerator or freezer: residential or commercial
- ▶ **WH3** – switch electric (HP or resistance) water heater to tariff with solar sponge and off-peak blocks: residential or small energy consuming customer only
- ▶ **TOU1** – switch household electricity plan from single rate tariff to time of use (ToU) tariff: residential only
- ▶ **VPP1** – connecting a new or existing battery to an approved Virtual Power Plant: residential or small energy consuming customer only
- ▶ **APP4** – connecting a new or existing pool pump to an approved DR aggregator: residential only
- ▶ **HC2C** – connecting a new or existing HVAC to an approved DR aggregator (ducted and non-ducted): residential only
- ▶ **EV1** – connecting a new or existing EV charger to an approved DR aggregator: residential or small energy consuming customer only
- ▶ **WH4** – connecting a new or existing electric heat pump water heater to an approved aggregator: residential only

Payment of a co-payment is a new requirement under REPS that did not exist under the REES. As such, the Commission considers that retailers and activity providers should be communicating to customers,

⁹ See SA Govt Gazette No.98, 21 December 2020, p. 6028, refer: https://governmentgazette.sa.gov.au/sites/default/files/public/documents/gazette/2020/December/2020_09_8.pdf.

prior to a customer agreeing to the conduct of an activity, any requirement for a co-payment. On that basis, to facilitate customers making adequately informed decisions as to whether or not to pursue a REPS activity based on the existence or amount of a co-payment, the Commission proposes two amendments to the Code.

First, the existence and amount of any co-payment must be clearly communicated to the customer at the time of booking; second, those same matters must be clearly set out on the information statement.

Consultation question 5

Do stakeholders support the proposal that:

- ▶ the existence and amount of any co-payment must be clearly communicated to the customer at the time of booking a REPS activity, and
- ▶ the existence and amount of any co-payment must be clearly set out on the information statement?

Please provide evidence in support of, or a preferred alternative to, that proposal.

4.6 Other administrative variations

Energy Australia submitted that obligations to undertake activities under REPS should not be limited to activities undertaken *'at a premises'* but, should also cover activities not performed at the premises. Energy Australia suggested this change is called for as, under REPS, not all activities are performed *'at the premises'* – such as switching to a Time of Use energy plan.

The Commission accepts this suggestion and proposes to amend references in the REPS Code to *'at or in respect of a customer's premises'*, in recognition of the need to ensure that customers should have access to a retailer's customer protections, irrespective of whether those activities were performed at the customer's premises, or externally but in respect of those premises.

In addition, the Commission has taken the opportunity to propose other minor administrative variations to the REPS Code to update terminology, clarify obligations, remove duplication, correct typographical and/or grammatical errors and update outdated references.

These amendments are detailed in Appendix 1: Table of amendments and included in the draft REPS Code at Appendix 2: Draft Retailer Energy Productivity Scheme Code.

Consultation question 6

Do stakeholders support the administrative amendments proposed to the Code?

Please provide evidence in support of, or a preferred alternative to, that proposal.

5 Next steps

Stakeholders are invited to provide submissions on this draft decision by **Wednesday, 8 December 2021**. All submissions will be placed on the Commission's website, subject to any confidential material being excluded.

The Commission welcomes discussions with stakeholders on any of the matters raised in this draft decision or on any related matters.

Following consideration of the issues raised in submissions, the Commission will release a final decision in early 2022. The Commission's regulatory instruments will be amended to reflect the final decision and will apply from that time. The Commission is open to discussions with stakeholders as to the need for any transitional arrangements for certain amendments.

Appendix 1: Table of amendments

Existing term or clause/s	Proposed amendment	Reason for amendment
The Code in its entirety	The Commission has taken the opportunity to propose other minor administrative variations to the REPS Code to update terminology, clarify obligations, remove duplication, correct typographical and/or grammatical errors and, update outdated references.	Improve clarity and accuracy, and to integrate consistency with the Commission's current style.
New definition	Inclusion of the following definition: household energy productivity target is an energy productivity sub-target set by the Minister from time to time under Part 4 of the <i>Electricity (General) Regulation 2012</i> and Part 4 of the <i>Gas Regulations 2012</i> which must be met in the specified manner.	Revised obligation. The household energy productivity sub-target is a new sub-target established for the purposes of the REPS.
information statement has the meaning given to that term under clause 6.1.	information statement has the meaning given to that term under clause 6.1.	Clarity and revised obligation. Term amended to reflect the revised obligation to include additional details in the information statement provided to customers.
Changed terminology	'at a customer's premises' changed to 'at or in respect of' a customer's premises'.	Clarity – in recognition of the fact that not all activities under the REPS necessarily occur 'at a customer's premises'. Some, such as switching to a Time of Use energy offer, are more accurately described as 'in respect of' a customer's premises. The change means that customer protections extend to all activities under the REPS.
Clause 1.1 Authority Clause 1.2 Commencement	Merge clauses 1.1 and 1.2 New clause 1.1 Title, authority and commencement	Clarity. Clauses 1.1 and 1.2 have been merged, to make clear that the Code may only be varied in accordance with part 4 of the ESC Act.

Existing term or clause/s	Proposed amendment	Reason for amendment
Clause 1.5 Powers and functions of the Commission	Amendment to 1.5.1(b) to clarify the Commission's power to ensure compliance.	Clarity. This clause has been amended to specifically note that it will take compliance action against retailers who fail to meet their licence obligations. This is an important function of the Commission in its administration of the REPS.
Clause 1.6 Retailers general obligations	Amended to reduce complexity and remove duplication.	Clarity. This clause has been amended to remove duplication between the Code and the Regulations and to more clearly state retailers' general obligations.
Clause 2.2 Commission determination of obliged retailers	Clause deleted.	Clarity. The Commission has removed this clause from the Code to promote conciseness and reduce complexity. This clause provides information found in the Regulations and does not establish any additional obligations on retailers.
Clauses 3.1 and 3.2 Retailer Energy Productivity Scheme annual energy productivity targets	Clauses deleted.	Clarity. The Commission has removed this clause from the Code to promote conciseness and reduce complexity. This clause provides information found in the Regulations and does not establish any additional obligations on retailers.
Clause 3.3	Fix typographical error	Clarity, to ensure the clause reads as intended.
Clause 3.4 Notification of energy reduction target shortfall	Clause deleted.	Clarity. The Commission has removed this clause from the Code to promote conciseness and reduce complexity. This clause provides information found in the Regulations and does not establish any additional obligations on retailers.
Clause 3.5 Notification of energy reduction target excess	Clause deleted.	Obsolete.

Existing term or clause/s	Proposed amendment	Reason for amendment
		<p>The Commission does not provide specific notification of excess credits to obliged retailers.</p> <p>Obliged retailers will be able to see their current status against relevant energy productivity targets within the REPS system. There is therefore no need for the Commission to notify obliged retailers of any excess credits against relevant energy productivity targets.</p>
Clause 4.1 Compliance plans	<p>Clause 4.1.2(e)</p> <p>Addition of paragraph (e) to clarify persons capable of signing compliance plan.</p>	<p>Clarity.</p> <p>As not all entities have a Chief Executive Officer, or a person holding an equivalent position, this clause has been amended to ensure no entity can avoid the requirement of having compliance plans signed.</p>
	<p>Clause 4.1.3 (e)</p> <p>Amendment of paragraph (e) to clarify fit and proper person requirements.</p>	<p>Clarity.</p> <p>A person needs to be able to competently perform the work and also to be safe to be in someone's home.</p>
	<p>Clause 4.1.4</p> <p>Addition of sub clause to enable the Commission to require resubmission of compliance plan if it considers that not all of the required information had been addressed.</p>	<p>Clarity.</p> <p>The addition of this sub clause articulates an existing power of the Commission to require an obliged retailer to resubmit a compliance plan that does not address all of the required information.</p>
Clause 4.2 Energy productivity records	Clause 4.2 has been merged with 4.3	Clarify and consolidate matters of record keeping such as the evidence of compliance with REPS requirements, time to hold information and form of possession of information.
Clause 4.3 Record keeping obligations	Simplified to say that records are 'kept within the possession of an obliged retailer' and omitting the supplementary requirement 'or control'	<p>Clarity and simplification.</p> <p>Currently, obliged retailers may retain control or possession over energy productivity activity records. This amendment will require obliged retailers to retain possession of energy productivity activity records, control will no longer be sufficient.</p>

Existing term or clause/s	Proposed amendment	Reason for amendment
	Amended to require obliged retailers retain possession of activity records, and for a period of five years from the completion of the activity.	Further, the existing time period prescribed for keeping activity records is proposed to be changed from five years following the expiry of the Regulations (ie 2035) to be five years from the completion of the activity. This is aimed at reducing the information archive burden on obliged retailers.
Clause 4.4 Reporting obligations	Sub clauses 4.4.2, 4.4.3 and 4.4.4 have been deleted.	<p>Clarity and simplification.</p> <p>Clause 4.4.2 has been deleted as the Commission has not made Energy Industry Guideline No. 6 – Retailer Energy Productivity Scheme Guideline – Statistical Information.</p> <p>Clause 4.4.3 has been merged with clauses 4.4.1 and 4.4.2.</p> <p>Clause 4.4.4 has been deleted as matters relating to the reporting of REPS activities will be managed through the publication of REPS Bulletins on the Commission’s website.</p>
Clause 4.5 Substance to prevail over legal form	Clause deleted.	<p>Clarity and simplification.</p> <p>The Commission’s practice is to use its discretion in reviewing data provided by obliged retailers. This clause imports complexity into the Code, does not establish any enforceable obligations and is therefore not required.</p>
Clause 4.6 – Information provided must be verifiable	Merged with clause 4.4 - Reporting obligations (now 4.3)	Clarity and simplification
Clause 4.7 – Materiality	Deleted	<p>Clarity.</p> <p>The Commission has removed this clause from the Code to promote conciseness and reduce complexity. The Regulations establish obligations on retailers regarding compliance with scheme requirements and so this clause is not required.</p>
Clause 5.1 Commission assessment of quarterly performance	Deleted.	Obsolete.

Existing term or clause/s	Proposed amendment	Reason for amendment
		These notices are no longer required as an obliged retailer can see its performance online.
Clause 5.4 Shortfalls and excess notices	Deleted.	<p>Obsolete.</p> <p>These notices are not provided by the Commission. The Commission advises obliged retailers of shortfalls or excess credits when it advises on the determination of annual achievement</p>
Clause 5.6 Energy productivity activity credit	Deleted.	<p>Clarity and simplification.</p> <p>The Commission treats excess energy credits accrued by an obliged retailer in accordance with the Regulations. This clause is proposed to be removed as it duplicates these requirements contained in the Regulations.</p>
Clause 6.1 Information provision	<p>Clause 6.1.1 revised to clarify obliged retailer obligations.</p> <p>Clause 6.1.1 is revised so that the 'prior to the date of commencement of the REPS activity' is specified, rather than generally 'at the time the activity is performed'.</p> <p>A new clause 6.1.2(b) has been added to require a specific obliged retailer to be identified and recorded on the information statement.</p> <p>Clause 6.1.2 (f) has been added stating that the information statement must set out the required co-payment for the proposed REPS activity, unless the customer or activity has been exempted by the Minister.</p>	<p>Clarity and revised obligation.</p> <p>Clause 6.1.1 has been revised to reduce uncertainty in the timing of the provision of information, and potential inconsistencies in the recognised timing of REPS activities for record keeping purposes.</p> <p>Paragraph (b) has been added to require a person undertaking an energy productivity activity for the purposes of REPS to specify which obliged retailer the activity is completed on behalf of. This amendment is to ensure consumer protections under the Code are available to consumers from the moment an energy productivity activity for the purpose of REPS is completed at their premises.</p> <p>Clause 6.1.2 (f) has been added to communicate to customers the requirement for a co-payment, a requirement of the Minister as gazetted 21 December 2020.</p>

Existing term or clause/s	Proposed amendment	Reason for amendment
	<p>New clause 6.1.3 has been added stating that the existence and amount of any co-payment must be clearly communicated to the customer at the time of booking an activity.</p> <p>Previous clause 6.1.3 has been deleted.</p>	<p>New clause 6.1.3 has been added to communicate to customers the requirement for a co-payment, a requirement of the Minister as gazetted 21 December 2020.</p> <p>Previous clause 6.1.3 was deleted as it limited information provision only to activities installed at a customer's premises, whereas some activities such as Time of Use energy plans are not installed at the premises.</p>
Clause 6.3 Identification	Amended to require a recent colour photo.	<p>Revised obligation.</p> <p>In the interests of consumer protection, the Commission has updated the identification badge requirements to require a 'recent' photo of the person undertaking the energy productivity activity.</p>
Clause 6.5 Mandatory safety and training requirements	<p>Amended so that the requirement for training of personnel is shifted from the previous deadline of 31 March of each REPS year to be 'Prior to commencement' of energy productivity activities.</p> <p>Amended to include a requirement for training to include Retailer Energy Productivity Code Scheme consumer protection obligations training.</p>	<p>Revised obligation.</p> <p>For customer protection, and in response to a submission by Green Energy Trading, the deadline for necessary training has been shifted, to reduce the risk of inadequately trained personnel conducting energy productivity activities.</p> <p>In the interests of consumer protection, the Commission has updated the mandatory safety and training requirements to include specific training on the consumer protections included in the Code.</p> <p>The Code has also been updated to include a timeframe within which an obliged retailer must provide evidence that the mandatory safety and training requirements have been met. This timeframe is 10 business days.</p>
Clause 6.6 Fit and proper person test	Clause amended to specify those considerations an obliged retailer must have regard to in determining if a person is a fit and proper person for the purposes of the Code.	<p>Revised obligation.</p> <p>In the interests of consumer protection, the Commission has outlined a number of considerations to which an obliged retailer must have regard prior to engaging that person in an arrangement to undertaken energy productivity activities on its behalf.</p>

Existing term or clause/s	Proposed amendment	Reason for amendment
Chapter 7: Transitional arrangements	Deleted	These provisions were transitional and no longer have effect.



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