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Residential Energy Productivity Scheme Code Review

Final Decision

June 2022

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Glossary of terms

Term	Description
Commission	Essential Services Commission, established under the <i>Essential Services Commission Act 2002</i>
DEM	South Australian Government Department for Energy and Mining
Electricity Act	<i>Electricity Act 1996</i>
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 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

2 The South Australian Government introduced the Retailer Energy Productivity Scheme (**REPS**) on
3 1 January 2021 to replace the Retailer Energy Efficiency Scheme (**REES**), which operated from
4 1 January 2009 to 31 December 2020. The REPS requires energy retailers with sales and customer
5 numbers above certain thresholds (**obliged retailers**) to provide enough energy productivity activities¹ to
6 South Australian households and businesses to meet annual targets set by the Minister for Energy and
7 Mining (**Minister**).

8 The Essential Services Commission (**Commission**) administers the scheme and sets requirements for
9 obliged retailers through the REPS Code. The REPS Code, made in January 2021, amended the REES
10 Code, to allow for the transition between the two schemes. The differences between the two codes
11 were limited to consequential amendments reflecting key changes in the regulations that give effect to
12 the REPS.²

13 A series of amendments to the REPS Code aimed at improving consumer protections and clarifying
14 retailers' obligations were proposed in October 2021.

15 Following consideration of the issues raised in submissions from a wide range of stakeholders,
16 including obliged retailers, activity providers, industry organisations and the Energy and Water
17 Ombudsman SA, the majority of the proposed amendments will be made to the REPS Code.

18 The Commission will not be proceeding with the proposal to require the obliged retailer to be identified
19 at the time an energy productivity activity is undertaken. The purpose of this proposal was to try to
20 eliminate any confusion for customers seeking a remedy when something goes wrong in the early
21 stages of REPS activities (ie before the activity has been sold and reported to a REPS obliged retailer).

22 Stakeholders were concerned that this proposal would fundamentally change the practical operation of
23 REPS, and could lead to a lessening of competition in the market that has evolved over time. The
24 Commission has continued to closely monitor market behaviour and although some concerns remain,
25 it appears recent instances of poor behaviour by activity providers have been limited to air conditioner
26 installations and hot water system replacement activities. An effective complaint referral process has
27 been established with Consumer and Business Services for issues covered by Australian Consumer
28 Law (for example, misrepresentation, false and misleading claims, poor sales and quoting practices),
29 and Consumer and Business Services has been able to negotiate good outcomes for customers in
30 many instances. Accordingly, this amendment will not be made at this point in time. Market monitoring
31 will continue to assess how industry responds to this issue and whether a stronger regulatory
32 intervention is required in the future.

33 The requirements for matters to be addressed in Compliance Plans have been clarified as part of this
34 review, including the requirement for obliged retailers to resubmit their Compliance Plans where the
35 Commission is not satisfied with the information provided. As an additional check on market behaviour,
36 the Commission will continue to undertake audits on different areas of the REPS each year. These
37 audits are in addition to any external audit the Commission requires an obliged retailer to undertake.

38 The new REPS Code will come into effect at the start of the new reporting year on 1 January 2023. This
39 will provide market participants with six months to make any necessary changes to their contractual
40 arrangements, policies and procedures.

¹ 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

² *Electricity (General) Regulations 2012* and *Gas Regulations 2012*.

2 Background on the REPS

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 REPS was established by the South Australian Government and commenced on 1 January 2021 and replaced the Retailer Energy Efficiency Scheme (**REES**), which operated from 1 January 2009 to 31 December 2020.

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.³ This objective is delivered by requiring energy retailers with sales and customer numbers above certain thresholds (obliged retailers) to provide enough energy productivity activities⁴ to South Australian households and businesses to meet annual targets set by the Minister for Energy and Mining (**Minister**).

The Commission's responsibilities in administering the REPS include:

- ▶ 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.

The Commission's requirements for obliged retailers are contained in the REPS Code. The REPS Code, made in January 2021, amended the REES Code, to allow for the transition between the two schemes. The amendments were limited to those necessary to reflect key changes in the regulations that give effect to the REPS.⁵

³ 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

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_09_8.pdf

⁵ *Electricity (General) Regulations 2012* and *Gas Regulations 2012*.

3 Consultation process

The Draft REPS Code (REPSC/02) was developed to include both proposed amendments suggested by stakeholders and other possible enhancements identified by the Commission.

Submissions were received from a range of obliged retailers, energy activity providers and industry associations.⁶ The issues raised by stakeholders and the reasons for final amendments are summarised in Chapter 4.

3.1 Stakeholder suggestions from the 2020 review

While the focus for the development of the first REPS Code was limited, stakeholders were invited to provide suggestions on potential future amendments to make administration of the REPS more effective.

As part of the 2020 review, submissions were received from Energy Australia, ERM Power and Green Energy Trading,⁷ who raised compliance planning queries, and identified minor drafting suggestions. The proposed amendments to address the matters raised are summarised in Table 1.

Table 1: Summary of issues raised in 2020 review and proposed REPS Code amendments

Issue raised	Proposed amendment
Installer training requirements – Move from requiring all installers to be trained by 31 March each year to an ongoing requirement for installers to be appropriately trained/qualified prior to undertaking activities at any time during the year. This would clarify a potential compliance loophole and provide flexibility to address staff turnover.	Amend clause 6.5 so that the requirement for training of personnel is shifted from the previous deadline of 31 March of each REPS year to be ' <i>prior to commencement</i> ' of undertaking energy productivity activities.
Time required for maintaining activity information – Reduce the requirement for 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 the REPS (i.e. 2035) to five years following completion of the activity. This would reduce the cost burden for storage and maintenance of information.	Amend clause 4.2.2 to require records to be kept for at least a period of five years following the completion of each energy productivity activity.
Timing of written information statement – A request to clarify the current requirement for a written Information Statement to be provided to the customer ' <i>at the time the activity is performed</i> ' to be ' <i>the day the activity commences</i> '.	Amend clause 6.1.1 so that the ' <i>prior to the date of commencement of the REPS activity</i> ' is specified, rather than generally ' <i>at the time the activity is performed</i> '.
Activities undertaken 'at a customer's premises' – It was noted that not all REPS activities will be undertaken at a premises, such as switching to a Time of Use energy plan, which requires a change to this requirement throughout the Code.	Terminology amended throughout the Code to expand characterisation of energy productivity activities from ' <i>at a customer's premises</i> ' to also include ' <i>at or in respect of a customer's premises</i> '.

⁶ Submissions are available at <https://www.escosa.sa.gov.au/projects-and-publications/projects/reps/reps-code-review-2021>

⁷ Submissions are available at <https://www.escosa.sa.gov.au/projects-and-publications/projects/reps/establishment-of-reps-code>

3.2 Other amendments

The Commission also proposed five consequential changes to improve administration of the REPS by clarifying retailers' obligations with regard to:

- ▶ record keeping
- ▶ providing information to customers
- ▶ fit and proper person requirements
- ▶ line of sight between obliged retailers and customers, and
- ▶ REPS customer co-payments

Other minor administrative variations to update terminology, clarify obligations, remove duplication and update outdated references were also proposed.

4 Final amendments

The amendments to the REPS Code are designed to improve administration of the REPS by clarifying retailers' obligations. In particular, the amendments are designed to resolve issues that have been identified in the administration of the REPS since January 2021 and the REES over the six years before that. They also address areas that have the potential to result in poor customer outcomes in the future, to the extent that the Commission can directly influence these outcomes.

Under the current policy framework, the Commission is limited in its ability to directly regulate the behaviour of all the participants in the wider energy productivity activity market. The issues raised by stakeholders around scheme design are further discussed in section 5.2.

The majority of the proposed amendments were broadly accepted in submissions:

- ▶ All the amendments proposed by stakeholders summarised in Table 1 have been accepted.
- ▶ The key points raised on the amendments proposed by the Commission and the resulting final decisions on the Code amendments are summarised in Table 2.
- ▶ The full record of all Code amendments is set out in Appendix 1.

The only material amendment that the Commission will not be proceeding with is the proposal to require the obliged retailer to be identified at the time the activity is undertaken. The Commission will continue to closely monitor market behaviour to assess whether additional regulation is required in the future.

The requirements for matters to be addressed in Compliance Plans has been clarified as part of this review. This includes the requirement for obliged retailers to resubmit their Compliance Plans where the Commission is not satisfied with the information provided.

As an additional check on market behaviour, the Commission will continue to undertake audits on different areas of the REPS each year. These audits are in addition to any external audit the Commission requires an obliged retailer to undertake.

4.1 Ongoing monitoring of market conduct and referrals to Consumer and Business Services

The market for energy productivity activities is extensive and continuing to evolve. The market for REPS activities is a subset of this wider market. There are numerous business models in the market and REPS obliged retailers have a lot of discretion to choose how they want to meet their obligations. A customer will not know who the REPS obliged retailer is under most of the business models.

It is also not always clear who is responsible when something goes wrong.

After an activity has been reported to the Commission, the REPS obliged retailer is responsible for resolving any issues customers have with that activity, whether it undertook the activity itself or purchased that activity from an activity provider. The Commission will continue to resolve these matters directly with the REPS obliged retailer.

In the past, complaints have been more difficult to address where issues arose early in a customers' interactions with activity providers.

In the process of generating leads, marketing and sales, some market participants have made representations about being an accredited provider under a State Government scheme; the REPS does not provide such accreditation (discussed further in section 5.2). The Commission will continue to monitor this issue and follow up on any identified instances of misrepresentation.

There were also issues at the quoting and contracting stages. Some market participants required a deposit or partial payment to be made at the time the REPS activity was booked. In some instances, after the deposit had been paid, there were issues of poor communication about locking in an installation time, missed appointments or withdrawal of the product or service, due to *'quotas being reached for the year'*.

These examples of poor customer experience create confusion for customers who need to try to contact the various parties involved to understand their options, and in some cases, negotiate a refund.

However, under the current design of the REPS, there is a substantial part of the customer journey where the Commission cannot use its powers under the REPS regulations to directly control the behaviour of REPS market participants. Indirect regulation is achieved through placing reasonable obligations on obliged retailers to have appropriate controls in place for any outsourced arrangements.

The Commission proposed to try to reduce the occurrence of these types of customer issues through a new requirement that an obliged retailer must be identified before the REPS activity was delivered.

Stakeholders raised concerns about this proposal, submitting that it would fundamentally change the practical operation of REPS, and could lead to a lessening of competition in the market that has evolved over many years. Stakeholder submissions on this issue are summarised in Table 2 below.

Monitoring of market activity and analysis of customer complaints has continued since the proposed amendment was suggested. Although some concerns remain, it appears instances of poor behaviour by activity providers have been limited to air conditioner installations and hot water system replacement activities. Issues are more frequently reported later in the year, once targets have been met, and customers who have paid deposits are informed that *'quotas have been reached'* and they have been placed on a waiting list for the next year. This approach results in a poor customer experience and should be avoided in the future through more active monitoring and management by obliged retailers and their activity providers.

Further, an effective complaint referral process has been established with Consumer and Business Services for issues covered by the Australian Consumer Law (for example, misrepresentation, false and misleading claims, poor sales and quoting practices). Consumer and Business Services has been able to negotiate good outcomes for customers.

Accordingly, this amendment will not be made at this point in time. Market monitoring will continue to assess how industry responds to this issue and whether a stronger regulatory intervention is required in the future.

4.2 REPS obliged retailers must demonstrate appropriate controls over the behaviour of activity providers

To allow REPS obliged retailers to continue to use a business model where REPS activities are allocated after they have been undertaken, Compliance Plans must provide a comprehensive view of how effective ongoing oversight of any activity providers will be achieved.

This review has clarified and expanded the requirements for Compliance Plans. As in the past, REPS obliged retailers will be required to prepare a Compliance Plan for review by the Commission each year. Compliance Plans will need to adequately address the following matters (clause 4.1.3):

- ▶ information about the obliged retailer's complaint and dispute resolution procedures in relation to the REPS, and how the complaint and dispute resolution process is made readily accessible to any customer that has had an energy productivity activity undertaken (which is required to comply with clause 6.2)

- ▶ a description of the training provided to the obliged retailer's employees, contractors and/or agents prior to undertaking energy productivity activities (including identification of any subcontractors engaged by Activity Providers)
- ▶ a description of the systems and processes in place to ensure that persons undertaking energy productivity activities have fulfilled all mandatory training requirements outlined in Chapter 6 of the REPS Code
- ▶ a description of the systems and processes in place to ensure those persons undertaking an energy productivity activity at or in respect of a customer's premises are fit and proper persons to both competently perform these activities and to be present at a customer's premises
- ▶ a prospective description of the resources, systems and processes which the obliged retailer intends to use to ensure that their obligations and responsibilities under the REPS and the REPS Code will be met for the coming year
- ▶ template copies of the information statement and activity record required by clause 6.1.1 and clause 6.1.2, and
- ▶ nomination of a senior officer of the obliged retailer to sign declarations relating to address errors and change of occupancy for reporting purposes.

Compliance Plans must receive an appropriate level of internal scrutiny by being signed off by the Chief Executive Officer (or other authorised person) of the obliged retailer (clause 4.1.2).

From 2023, where the above matters are not satisfactorily addressed, obliged retailers will be required to resubmit their Compliance Plans (clause 4.1.4). The Commission will continue to work with obliged retailers until they submit a Compliance Plan that meets the requirements of the REPS Code.

It is important for obliged retailers to note that there are ongoing requirements with Compliance Plans once they have been assessed by the Commission:

- ▶ Obligated retailers are required to advise the Commission of any material changes to their Compliance Plans with 20 business days; this would include providing updated information about new commercial relationships to deliver energy productivity activities (clause 4.1.5).
- ▶ Obligated retailers are also required to advise the Commission of any compliance concerns identified through reviews of either their own or their contractors' and/or agents' systems and processes within 20 business days (4.1.6).

As an additional check on market behaviour, the Commission will continue to undertake audits on different areas of the REPS each year. These audits are in addition to the Commission's ability to require an obliged retailer to have an independent expert conduct a quality assurance audit. The REPS Code has been amended to clarify that where this is required, the obliged retailer must pay for that audit to be conducted. This amendment aligns with the Commission's Compliance Audit Framework that requires regulated entities to pay for audits.

Table 2: Summary of issues raised by stakeholders and reasons for final amendments

Proposed amendment	Key issues raised	Commission response
<p>Line of sight between obliged retailers and customers:</p> <p><u>Issue:</u></p> <p>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 SA, are not available to customers. The Commission proposes to address this gap through a new requirement that an obliged retailer <i>must</i> be identified upfront for REPS activities (ie before they occur).</p> <p><u>Question:</u></p> <p>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)?</p>	<ul style="list-style-type: none"> ▶ Concern that may cause confusion for customers if REPS retailer is not the same as retailer for energy services. ▶ Perceived risk that REPS activity providers will avoid undertaking large REPS programs that are too large to fit into an activity providers' REPS target allocation from a single retailer. ▶ Concern that could lead to activity providers performing REPS activities on behalf of multiple obliged retailers, leading to confusion as to the division of responsibility in the event that something goes wrong. ▶ Conversely, concern that proposed changes will lead to exclusive arrangements between obliged retailers and activity providers and lessen competition between activity providers. ▶ Concern that proposed changes will require extra administration by requiring continuous monitoring and confirmation of the allocation of activities to retailers, which will add to cost and cause delays. ▶ Suggestion that direct regulation of activity providers would better address the problem (eg through an industry Code of Conduct), rather than via indirect regulation of retailers. ▶ Concern that the proposed change fundamentally changes the practical operation of REPS (going beyond matching the supply of activities with customer demand) and that it is likely to have unintended consequences. 	<p>Clause 6.1.2(b) will not be amended at this time.</p> <p>The Commission will continue to monitor market behaviour closely. This will include directing complaints to the relevant market participants for resolution and informing customers of their ability to discuss the matter with Consumer and Business Services if it is an Australian Consumer Law issue. The Commission will also continue to follow up with obliged retailers if it is one of the activity providers they have identified in their Compliance Plan.</p> <p>A change in relationships with activity providers represents a material change and thus REPS obliged retailers must keep their Compliance Plans updated throughout the year, so that all relevant parties are identified. This includes identification of any subcontractors engaged by activity providers.</p>

Proposed amendment	Key issues raised	Commission response
<p>Clarifying fit and proper person obligations:</p> <p><u>Issue:</u></p> <p>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.</p> <p><u>Question:</u></p> <p>Do stakeholders support the introduction of minimum standards which must be applied by obliged retailers when conducting fit and proper person assessments?</p>	<ul style="list-style-type: none"> ▶ General concern that not enough detail had been provided about what the ‘fit and proper person’ tests should be, particularly given that obliged retailers will have to comply with the requirements. ▶ Some concern expressed about the limitations on the information that obliged retailers are able to obtain to assist with these assessments. ▶ Suggestion that all persons coming onto a property in connection with REPS should comply with the standards, not just the installers. 	<p>Clause 6.6.2 amended.</p> <p>The additional ‘fit and proper person’ considerations are intended to assist obliged retailers to conduct their assessments rather than be a comprehensive and definitive check list. The level of due diligence required will vary and it is appropriate for obliged retailers to make this assessment on a case-by-case basis.</p>
<p>Record keeping obligations:</p> <p><u>Issue:</u></p> <p>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 <i>completion of an activity</i>. This strikes an appropriate balance between the need to access</p>	<ul style="list-style-type: none"> ▶ Some confusion among stakeholders as to whether or not physical, paper records would be required. ▶ Broad support for amending the timeframe for retaining activity records. 	<p>Clause 4.2.2 amended.</p> <p>Obliged retailers will not need to maintain physical possession of historical activity records but will be required to provide details of their information storage processes and protocols and be able to provide information in the manner and form requested by the Commission.</p> <p>The timeframe for retaining activity records will be amended to be five years from the completion of the activity rather than five years from the end of the REPS (ie 2035).</p>

Proposed amendment	Key issues raised	Commission response
<p>records for regulatory purposes and the costs of complying with that regulatory obligation.</p> <p><u>Question:</u></p> <p>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?</p>		
<p>Provision of information to customers:</p> <p><u>Issue:</u></p> <p>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 <i>commencement</i> of the activity.</p> <p><u>Question:</u></p> <p>Do stakeholders support the proposal to require the provision of information to customers prior to the commencement of the REPS activity (rather than at the time it is performed)?</p>	<ul style="list-style-type: none"> ▶ General support but suggest '<i>prior to or on the date of commencement</i>' would allow more flexibility. 	<p>Clauses 6.1.1 and 6.1.2 amended.</p> <p>The requirement will be amended to allow for information to be provided to customers prior to or on the date of commencement. This will allow sufficient flexibility for information to be tailored while still ensuring customers are left with basic information at the time the activity is undertaken.</p> <p>The existence of, and estimated amount of, any required co-payment must be provided at the time of booking rather than on the day the activity is undertaken. At the time of booking an appointment, the amount provided can be based on a reasonable estimate for the activity, but it must include information about any possible additional costs that may be applicable following a site visit, and provide the customer with the ability to not proceed with the activity if they are dissatisfied with the final costs.</p>
<p>Advice about customer co-payments:</p> <p><u>Issue:</u></p> <p>Unlike REES, activities under the REPS scheme require a customer co-payment (unless the customer or REPS</p>	<ul style="list-style-type: none"> ▶ Concerns that not all costs are known at the time of booking a REPS activity. 	<p>Clause 6.1.3 amended.</p> <p>Customers must be informed about any co-payment amounts prior to providing the products or services. At the time of booking an appointment, the amount provided can be based</p>

Proposed amendment	Key issues raised	Commission response
<p>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).</p> <p><u>Question:</u></p> <p>Do stakeholders support the proposal that:</p> <ul style="list-style-type: none"> ▶ 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? 		<p>on a reasonable estimate for the activity, but it must include information about any possible additional costs that may be applicable following a site visit, and provide the customer with the ability to not proceed with the activity if they are dissatisfied with the final costs.</p> <p>Customers must be provided with the final total costs for an activity before it is provided and given the explicit ability to not proceed with the activity if they are dissatisfied with the final costs.</p> <p>The requirement to provide advice of a co-payment is a legal requirement, as gazetted by the Minister, with the minimum being a payment of \$33 including GST.⁸</p>
<p>Other administrative amendments:</p> <p><u>Question:</u></p> <p>Do stakeholders support the administrative amendments proposed to the Code?</p>	<ul style="list-style-type: none"> ▶ General support for most amendments, but some concern about the removal of clauses 2.2, 3.1 and 3.2 on the basis that it reduces clarity and transparency. 	<p>Clauses 2.2, 3.1, 3.2 and 3.4 will be deleted as they simply duplicate requirements contained in the regulations.</p>

⁸ See South Australian Government 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

5 Other issues raised

5.1 Implementation timeframe

Energy Australia and Alinta Energy were concerned that the Draft Decision proposed to make any Code amendments take effect as soon as the Final Decision was released, which would not allow sufficient time for retailers to implement any changes. Energy Australia suggested a three month implementation period while Alinta Energy proposed the start of compliance year 2023 as the appropriate time to implement changes.

The amended Code will take effect from 1 January 2023, allowing a six month implementation period.

5.2 Scheme design

Stakeholders raised various issues about the design of the REPS, which are beyond the Commission's powers to address.

There was a recommendation to introduce an accreditation regime for energy activity providers. 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 the Commission with 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 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.

Some other issues outside the remit of the REPS Code were raised by SACOME and TSAA, relating to the design of the REPS. The submissions have been provided to the Department for Energy and Mining to consider in any future reviews of the scheme.

6 Next steps

The new REPS Code (REPSC/02) will come into effect at the start of the new reporting year on 1 January 2023. This will provide market participants with six months to make any necessary changes to their contractual arrangements, policies and procedures.

The Commission expects Compliance Plans for the 2023 REPS year to reflect updated requirements, including any feedback provided on 2022 Compliance Plans. The Commission will continue to work with obliged retailers until they submit a Compliance Plan that meets the requirements of the REPS Code.

Appendix 1: Table of amendments

Existing term or clause/s	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.
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.
Clause 1.3 Interpretation	Rules of interpretation moved from Schedule 2.	Consistency with the Commission's current style of providing interpretive requirements in the preliminaries section of industry codes.
Clause 1.4 Definitions	Definitions moved from Schedule 1.	Consistency with the Commission's current style of providing definitions in the preliminaries section of industry codes.
Insert 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. To clarify that the household energy productivity sub-target is a new sub-target established for the purposes of the REPS.
Amend characterisation of energy productivity activities throughout	Terminology amended to expand characterisation of energy productivity activities from ' <i>at a customer's premises</i> ' to also include ' <i>at or in respect of a customer's premises</i> '.	Clarity. In recognition of the fact that not all activities under the REPS necessarily occur ' <i>at a customer's premises</i> '. Some, such as switching to a Time of Use energy offer, are more accurately described as ' <i>in respect of</i> ' a customer's premises. The change means that customer protections extend to all activities under the REPS.

Existing term or clause/s	Amendment	Reason for amendment
Clause 1.5 Powers and functions of the Commission	Amended clause 1.5.1(b) to clarify the nature of the Commission's compliance powers to include 'and, if required, taking appropriate action in matters where energy retailers fail to comply with their obligations'.	Clarity. This clause has been amended to specifically note that the Commission 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. This clause has been deleted 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. This clause has been deleted 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. This clause has been deleted to promote conciseness and reduce complexity. This clause provides information found in the Regulations and does not establish any additional obligations on retailers.

Existing term or clause/s	Amendment	Reason for amendment
Clause 3.5 Notification of energy reduction target excess	Clause deleted.	<p>Obsolete.</p> <p>The Commission does not provide specific notification of excess credits to obliged retailers.</p> <p>Obliged retailers are 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 its Compliance Plan signed.</p>
	<p>Clause 4.1.3(a)(i)</p> <p>Amendment of paragraph (a)(i) to explicitly require details of how the obliged retailer will comply with its obligations under the Retailer Energy Productivity Scheme.</p>	<p>Clarity.</p> <p>Obliged retailers should include information about their overall compliance system with respect to monitoring their obligations under REPS.</p>
	<p>Clause 4.1.3(a)(iv)</p> <p>Addition of paragraph (a)(iv) to require the obliged retailer to identify any persons or entities engaged to undertake work on their behalf, including but not limited to any subcontractors engaged by activity providers.</p>	<p>Clarity and new obligation</p> <p>Obliged retailers were already required to identify any contractors or agents they engaged to undertake energy productivity activities on their behalf. This subclause has been added to require any subcontractors to also be identified to assist with directing customer enquiries and complaints to the appropriate parties for resolution.</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>To clarify that any person undertaking REPS activities needs to be able to competently perform the work and also to be safe to be in someone's home.</p>

Existing term or clause/s	Amendment	Reason for amendment
	<p>Clause 4.1.3(f)</p> <p>Deletion of paragraph (f) to remove duplication of substance of obligation under paragraph (g).</p>	<p>Clarity and simplification.</p> <p>This subclause is unnecessary as the requirement to provide a description of the resources, systems and processes which the obliged retailer intends to use under subclause 4.1.3(g) should include information about internal and external allocations of obligations and responsibilities.</p>
	<p>Clause 4.1.4</p> <p>Addition of subclause 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 subclause 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>
<p>Clause 4.2 Energy productivity records</p>	<p>Clause 4.2 has been merged with 4.3</p>	<p>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.</p>
<p>Clause 4.3 Record keeping obligations</p>	<p>As noted above, clause 4.2 has been merged with clause 4.3</p> <p>Clause 4.2.1 has been amended to clarify that the onus is on an obliged retailer to be keeping evidence that shows activities are compliant. The evidence required includes but is not limited to the information provided on an activity record.</p> <p>Clause 4.2.2 has been amended to require that all information required under clause 4.2.1 must be:</p> <ul style="list-style-type: none"> ▶ managed and maintained so that the obliged retailer can obtain and provide relevant information in the manner and form specified by the Commission for the purposes of assessing compliance, and ▶ kept for at least a period of five years following the completion of each energy productivity activity. 	<p>Clarity and simplification.</p> <p>The inclusion of clause 4.2.1 in the Code makes it clear that it is an obliged retailer's responsibility to produce evidence that shows compliance with the requirements of the activity specification and Code. Bulletins provide guidance as to what evidence is acceptable but are not prescriptive so that obliged retailers have flexibility to determine how to meet the evidentiary requirements for each activity.</p> <p>Obliged retailers will not need to maintain physical possession of historical activity records but will be required to provide details of their information storage processes and protocols and be able to provide information in the manner and form specified in any request by the Commission.</p> <p>Further, the existing time period prescribed for keeping activity records will 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.</p>

Existing term or clause/s	Amendment	Reason for amendment
Clause 4.4 Reporting obligations	Subclauses 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 does not intend to make 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>
	Subclause 4.4.1(c) amended to clarify that obliged retailers are required to appoint (and pay for) an independent expert to conduct a quality assurance audit, where directed by the Commission to do so.	<p>Clarity.</p> <p>This subclause has been amended to align with the Commission’s Compliance Audit Framework that requires regulated entities to pay for audits.</p>
Clause 4.5 Substance to prevail over legal form	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>This clause has been deleted 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>

Existing term or clause/s	Amendment	Reason for amendment
Clause 5.1 Commission assessment of quarterly performance	Deleted.	Obsolete. These notices are no longer required as an obliged retailer can see its performance online.
Clause 5.4 Shortfalls and excess notices	Deleted.	Obsolete. 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
Clause 5.6 Energy productivity activity credit	Deleted.	Clarity and simplification. The Commission treats excess energy credits accrued by an obliged retailer in accordance with the Regulations. This clause provides information found in the Regulations and does not establish any additional obligations on retailers.
Clause 6.1 Information provision	Clause 6.1.1 is revised to provide more flexibility by including 'on or prior to the date of commencement of the REPS activity' is specified, rather than generally 'at the time the activity is performed'.	Clarity and revised obligation. 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.
	Clause 6.1.2 (e) 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.	New obligation. Clause 6.1.2 (e) has been added to communicate the amount of any co-payments to customers, including but not limited to the minimum contribution amount required by the Minister (as gazetted 21 December 2020).

Existing term or clause/s	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 obligation.</p> <p>New clause 6.1.3 has been added to require that customers are provided with an accurate estimate of the amount of any co-payments at the time the activity is booked. This must include information about any possible additional costs that may be applicable following a site visit, and provide the customer with the ability to not proceed with the activity if they are dissatisfied with the final costs.</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>
	<p>New clause 6.1.4 has been added to ensure that customers are provided with the final total costs for an activity, and the right to not proceed, if they are dissatisfied with the amount.</p>	<p>New obligation.</p> <p>As quotations with estimated costs will be allowed at the time of booking, it is important for customers to be provided with the final total costs for an activity before it is provided and given the explicit ability to not proceed with the activity if they are dissatisfied with the final costs.</p>
<p>Clause 6.3 Identification</p>	<p>Amended to require a recent colour photo.</p>	<p>Revised obligation.</p> <p>The requirement for identification badges to have a recent colour photo of the person undertaking the energy productivity activity will allow customers to more easily identify people prior to them entering their premises.</p>
<p>Clause 6.5 Mandatory safety and training requirements</p>	<p>Clause 6.5.1 amended to remove annual deadline for training and require training to include information on how the consumer protection obligations in the Code are met.</p>	<p>Revised obligation.</p> <p>The deadline for necessary training has been shifted to provide flexibility for training to occur throughout the year as new resources are employed to undertake activities. Clarified that mandatory safety and training must include specific training on the consumer protections included in the Code.</p>

Existing term or clause/s	Amendment	Reason for amendment
	Clause 6.5.2 amended to require evidence of the above to be provided to the Commission within 10 business days of a request.	Revised obligation. Evidence that mandatory safety and training requirements have been met must be provided to the Commission within 10 business days of a request.
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.	Revised obligation. Additional guidance provided on the types of matters that are likely to be relevant in considering whether a person is a fit and proper person to undertake a particular activity of function. The onus is on the obliged retailer to determine the relevance and evidence required to satisfy this requirement as it relates to their particular arrangements with activity providers.
Chapter 7: Transitional arrangements	Deleted	These provisions were transitional and no longer have effect.



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