

Wholesale Retail Code Change Proposal – Ref CPW134

Modification proposals	Wholesale Retail Code (WRC) Change Proposal – CPW134 – Clarifications to Default Provisions
Decision	The Authority has decided to approve this Change Proposal
Publication date	15 June 2022
Implementation date	2 August 2022

The Issue

Minor drafting errors have been identified in the Default and Termination provisions set out in Section 10.1.4 of the Business Terms of the Wholesale Retail Code (WRC), which, if left unaddressed, could result in:

- Trading Parties challenging their Defaulting Trading Party status, or a contract termination
- Wholesalers being unable to, or unsure whether to, enforce their rights arising from a Retailer being classified as a Defaulting Trading Party
- MOSL potentially issuing notifications incorrectly under section 11.5.3 of the Business Terms by disclosing that a Retailer has been classified as a Defaulting Trading Party, resulting in reputational damage
- Trading Parties being unsure whether they can exercise rights under the cross-default provisions under section 10.1.15 of the Business Terms
- Ofwat potentially being unable to act on a default or termination notice issued by a Trading Party on the basis that the notice includes an incorrect code reference.

Proposed solution

It is proposed that clauses 10.1.4(b) and 10.1.4(c) of the WRC are amended to remove incorrect cross references and insert new correct ones. The Change Proposal, Final Recommendation Report and legal text to implement this solution are available on the [MOSL website](#).

We are approving this Change Proposal.

The Code Change Committee (CCC), acting on delegated authority from the Panel under the Market Arrangements Code (MAC), considered this Change Proposal at its meeting

on 26 April 2022. The CCC agreed that as this change was non-substantive, the recommendation should be delegated to the Market Operator (MOSL). MOSL submitted this change to the Authority on 6 May for approval.

We have considered the issues raised by this Change Proposal and the supporting documentation provided in the Final Report.

We agree with the view of the CCC, that the current drafting could inadvertently allow a Retailer that is in financial difficulty to continue trading for longer than intended, which could impact its ability to provide retail services and could negatively impact business customers. The amendment supports the efficient and timely exit from the market of a failing Retailer.

We consider that the Change Proposal furthers the **primary principle** of the WRC as it is in the interest of existing and future customers that there is clarity on the status of Trading Parties in relation to the provisions in the WRC and that the arrangements in place to manage Retailer failure and market exit are robust.

The change will remove the potential for default notices and subsequent termination notices to be challenged on the basis that they incorrectly refer to legal drafting errors that are currently included in section 10.1.4 of the Business Terms. This change removes the risk that costs arising from such challenges and an unnecessarily protracted exit process could be passed on to customers. For these reasons, it is our view that the Change Proposal is also consistent with the supporting principles of **Efficiency** and **Transparency and clarity**.

Decision notice

In accordance with paragraph 6.3.7 of the MAC, the Authority approves this Change Proposal.

Dan Mason
Associate Director, Business Retail Market