



## SUBMISSION

**Prepared for:**

Australian Competition and Consumer Commission (ACCC)

By email to [ElectricityMonitoring@accc.gov.au](mailto:ElectricityMonitoring@accc.gov.au)

# Guide to the Electricity Retail Code

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## 1. INTRODUCTION

### 1.1. THE ACCC'S GUIDE TO THE ELECTRICITY RETAIL CODE

On 4 May 2020, the ACCC released a revised Guide to the Electricity Retail Code for consultation.<sup>1</sup> The Guide has been updated to reflect the recent amendments to the *Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019*.<sup>2</sup>

The Code, as a mandatory industry code under Part IVB of the *Competition and Consumer Act 2010*, is binding on all retailers that supply electricity to small customers in the applicable distribution regions of New South Wales, South Australia and south-east Queensland. It sets a price cap on standing offers and specifies how prices and discounts must be advertised, published or offered.

The ACCC is responsible for monitoring and enforcing compliance under the Code. The Guide is intended to help electricity retailers understand their obligations under the Code. The ACCC has revised its guide to provide further clarity on the Code and to reflect additional Code requirements following amendments made in February 2020. The amendments extend the application of the price cap to solar standing offers for residential and small business customers and to Time of Use standing offers for residential customers, commencing 1 July 2020. There are also additional requirements for retailers relating to record keeping and communicating with small customers.

The ACCC has released a revised Guide for consultation and is seeking submissions from interested parties. Submissions close Friday 22 May 2020.<sup>3</sup>

### 1.2. ABOUT THIS SUBMISSION AND ETROG CONSULTING

This submission is a response from Etrog Consulting Pty Ltd (Etrog Consulting) to the ACCC's invitation for submissions on the revised Guide to the Electricity Retail Code.

Etrog Consulting is a specialist consultancy in energy and utilities, focusing on regulatory policy and the interaction of regulation and competition in energy and water industries and markets. The director of Etrog Consulting, David Prins, who is the author of this submission, has 30 years consulting experience in this field.

This submission discusses some aspects of the Guide, which we hope will be of interest and of value to the ACCC.

Etrog Consulting has been advising the Queensland Council of Social Service (QCOSS) on various related regulatory matters, and the author of this report is a member of the AER's Consumer Challenge Panel (CCP).

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<sup>1</sup> The existing Code that has been in force since 1 July 2019 can be found at <https://www.accc.gov.au/publications/guide-to-the-electricity-retail-code>

<sup>2</sup> See <https://www.accc.gov.au/business/industry-codes/electricity-retail-code> and <https://www.legislation.gov.au/Details/F2019L00530>

<sup>3</sup> See <https://consultation.accc.gov.au/regulated-infrastructure/2020-consultation-accc-guide-to-elec-retail-code>

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The views put forward in this submission are the views of Etrog Consulting and its author, and are not intended to represent the views of QCOSS or the CCP, or of any other person or organisation.

## 2. NEED FOR A CONSUMER FACING GUIDE

We understand that the Guide is focused on electricity retailers, and it is important that electricity retailers receive guidance on how to apply the Code. It seems to us that there is no equivalent guide for consumers in regard to Code. We feel this is a significant lacuna, and is something that the ACCC might consider for the future.

We have reviewed some of the submissions that were made this time last year to the equivalent consultation on the draft Code for 2019-20.<sup>4</sup>

We note for example the submission made on 31 May 2019 by Red Energy and Lumo Energy, which stated:

### ***Consumer education required***

*Consumers are likely to require clarity on how the new comparison rate applies, in particular its calculation, scope and relevance of the default market offer (DMO) as it relates to their electricity offer. These are new and complex concepts that retailers must now explain to consumers.*

*We consider that a coordinated approach across all stakeholders, including retailers, the ACCC, Government, and consumer groups is necessary to ensure that electricity consumers understand:*

- the term 'reference price' (which is a new concept for the energy sector), which is an annual amount that a representative customer will pay under highly specific circumstances.*
- an 'average' or 'representative' customer as a concept - as consumption profiles vary significantly between types of customers and it is unlikely they will be the 'representative' customer who uses the precise prescribed amount of electricity over a 12 month period.*
- the lowest annual amount the representative customer would pay if they meet all conditions for discounts and use the prescribed amount of electricity - this could easily be interpreted as the amount the electricity consumer will pay under their contract.*
- the scope of the DMO - that advertisements relate to a specific distribution area and only to a subset of all residential and small business consumers.*

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These are available at <https://consultation.accc.gov.au/regulated-infrastructure/consultation-guide-to-the-electricity-retail-code>

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Similarly, the submission from Meridian Energy Australia Pty Ltd and Powershop Australia Pty Ltd stated:

*The success or failure of a comparison price mechanism relies on customers understanding what the purpose of the reference price is and the benefits it should provide, in order for it to be effective and have the desired impact for industry.*

We are not aware that there has been a coordinated approach across all stakeholders, including retailers, the ACCC, Government, and consumer groups, to ensure that electricity consumers understand these concepts. We commend such an approach to the ACCC.

### 3. CONSUMER ENGAGEMENT PROCESSES

Section 7 of the draft Code is entitled 'Presentation of the Code information'.

It states:

*In communications to consumers, retailers should use clear, simple and widely understood language to help consumers understand offers. Where specific terms are used in communications, retailers should clearly explain those terms.*

*In visual communication to consumers, retailers should consider the use of colour, font size or other visual tools to ensure the information required by the Code is conspicuously displayed and easily distinguishable from other information.*

Various examples are given, including example advertisements, to which the ACCC is unlikely to object, preferable examples, and non-compliant examples. Figure 1 below shows one such example.<sup>5</sup>

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<sup>5</sup> This figure is copied from the draft Code, page 32

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**Figure 1: An illustrative example of an advertisement described by the ACCC as being preferable**



The reasons given regarding why the ACCC is unlikely to object to this advertisement are technical in nature. What is missing is any indication that the ease of consumer understanding of the advertisement has been a factor in determining that this advertisement is preferable, or that consumer stakeholder engagement undertaken by the ACCC has shown that this particular form of advertisement would be easily understood by consumers.

There have been many innovations in consumer engagements over the last few years. These can be seen, for example, in the energy network businesses' approaches to consumer engagement, where network businesses have been consulting and collaborating with actual customers in deliberative forums, a People's Panel and other such forums to ensure that the businesses' regulatory proposals really are in the long-term interests of consumers.

To our knowledge, the ACCC has not run focus groups with consumers, nor deliberative forums, or similar engagements. Those and other activities are things we have now come to expect from energy network businesses among others. We suggest that the ACCC might also in future consider such consumer stakeholder activities to ensure that the application of the Code is focused as it should be on ensuring that consumers understand and benefit from policy reforms such as those underlying the Code.

This may result in future advertisements not only being technically compliant with the Code, but also being optimised for consumer understanding and benefit.