



# Guide to the Electricity Retail Code

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Version 2

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# Glossary

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<b>AEMC</b>	Australian Energy Market Commission
<b>AER</b>	Australian Energy Regulator
<b>ACL</b>	Australian Consumer Law
<b>Bundled offer</b>	An offer that includes more than one product or service for sale as a combined product or service package. This guide refers to a bundled offer in relation to an offer for electricity supply which includes other products or services for sale as one combined product or service package.
<b>The Code</b>	<i>Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019</i>
<b>Comparison percentage</b>	<p>The difference between the reference price and the unconditional price, expressed as a percentage of the reference price.</p> <p>The first version of the guide referred to this as the unconditional percentage.</p>
<b>Communicating prices</b>	<p>A retailer communicates the offered prices to a small customer if the retailer:</p> <ul style="list-style-type: none"><li>• advertises, or publishes the prices, or</li><li>• offers to supply electricity to the customer at those prices, or</li><li>• gives the customer written notice of a change to the retailer's prices and the offered prices are the prices that apply after the change.</li></ul> <p>This does not include customer bills.</p>
<b>Conditional discount</b>	<p>Discounts that apply only if a customer satisfies certain requirements or conditions. This can include any of the following:</p> <ul style="list-style-type: none"><li>• pay on time discounts</li><li>• bundling discounts (that is, when a customer receives a discount for contracting and/or maintaining an account with a retailer for multiple products or services)</li><li>• direct debit discounts</li><li>• conditional rebates</li><li>• conditional credits such as anniversary or loyalty credits</li><li>• certain membership-based sign-up credits, and</li><li>• 'refer a friend' type credits.</li></ul>
<b>Conditional price</b>	Total amount a representative customer would be charged for the supply of electricity in the financial year at the offered prices, assuming the condition(s) on the discount are met and disregarding any other conditional discount.
<b>CL tariff</b>	<p>A controlled load tariff is a tariff for supplying electricity for use only in specific appliances. This is usually a separately metered appliance such as an electric hot water system or underfloor slab heating. The guide refers to this as a CL tariff but there are other common names in different states and territories, including:</p> <ul style="list-style-type: none"><li>• Off peak (Australian Capital Territory and New South Wales)</li><li>• Tariff 31 or Tariff 33 (Queensland)</li></ul>

	<ul style="list-style-type: none"> <li>• Tariff 41 (Tasmania)</li> </ul> <p>A CL tariff may have one controlled load component (CL1 or CL 2) or two controlled load components (CL1 and CL2). Controlled load 1 is typically for electricity that is available for a set number of hours each day. Controlled load 2 is typically for electricity that is usually available for a longer period each day.</p>
<b>Demand tariff</b>	A tariff for supplying electricity if working out the amount a consumer is charged for the supply of electricity during a period at prices that include that tariff requires identifying, from among particular sub-periods of the period, the sub-period during which the consumer's demand for supply of electricity is the highest.
<b>DMO</b>	Default Market Offer. This is the reference price and price cap for certain standing offers set by the AER.
<b>DMO final determination</b>	The AER's final determination for DMO prices 2020-21.
<b>Distribution region</b>	The region in which a particular electricity distribution network operates.
<b>EME</b>	Energy Made Easy, the Australian Government's price comparator website maintained by the AER.
<b>Electricity retailer</b>	A corporation authorised by or under a law of the Commonwealth or of a state or territory to sell electricity.
<b>Feed-in tariff</b>	An amount that an electricity retailer must pay (or credit) to a consumer for electricity generated by a solar photovoltaic unit of the consumer.
<b>Flat rate tariff</b>	A tariff that includes a fixed daily supply charge, and a variable charge reflecting the volume (in kWh) of electricity consumed. The guide refers to this as a flat rate tariff but it is also known as a single rate tariff.
<b>Flexible tariff</b>	See ToU tariff definition. The guide refers to a flexible tariff as a time of use tariff.
<b>Green charges</b>	<p>Any price a representative customer pays for retailers to source energy from an accredited green power source.</p> <p>The guide refers to green charges as either optional, or charges that are an intrinsic feature of the offer. For example, the charges in an electricity offer that is sourced from 100% green power. Please see the section on green charges in the guide for further information.</p>
<b>kWh</b>	Kilowatt hour
<b>Lowest possible price</b>	<p>Total amount a representative customer would be charged for the supply of electricity in the financial year at the offered prices, assuming that the conditions on all conditional discounts (if any) mentioned in the advertisement, publication or offer are met.</p> <p>If there are no conditional discounts, the lowest possible price is equal to the unconditional price.</p>
<b>Market offer prices</b>	All of an electricity retailer's prices for supplying electricity in a distribution region to a small customer under a market retail contract.
<b>Model annual usage</b>	A representative customer's annual electricity consumption and timing or pattern of the supply as set by the AER.
<b>MWh</b>	Megawatt hour
<b>NEM</b>	National Electricity Market

<b>NERL</b>	National Energy Retail Law, as adopted in a participating jurisdiction.
<b>NERR</b>	National Energy Retail Rules
<b>Price</b>	<p>A charge of any description. This includes a recurring fee such as an annual membership fee. It does not include:</p> <ul style="list-style-type: none"> <li>• a one-off fee such as a connection or reconnection fee or an account establishment fee</li> <li>• a fee for making or failing to make a payment in particular circumstances. For example, a credit card transaction fee, a late payment fee or a direct debit dishonour fee</li> <li>• a fee for a service provided on request as needed such as a fee for a meter read requested by a customer.</li> </ul>
<b>Price cap</b>	Maximum allowable price of standing offer prices. This is also the reference price. The price cap/reference price is set out in the DMO final determination.
<b>Price-regulated region</b>	Region where standing offer prices are regulated under state or territory law. The Code does not apply to these regions.
<b>Proportional conditional discount</b>	A conditional discount that is calculated as a proportion of all or part of the amount a small customer is charged for the supply of electricity at the offered prices.
<b>PV</b>	Photovoltaic
<b>Reference price</b>	The annual price set by the AER for a financial year in relation to electricity supply to a small customer of a particular type in the distribution region. The reference price acts as a price cap for standing offers. The reference price/price cap is set out in the DMO final determination. This is referred to as the reference bill in the DMO final determination.
<b>REPI</b>	<i>ACCC's Retail Electricity Pricing Inquiry</i>
<b>Representative customer</b>	Small customer of that type who is supplied with electricity in that distribution region in a financial year in accordance with the model annual usage for that year.
<b>Residential customer</b>	A customer who purchases electricity principally for personal, household or domestic use at their premises.
<b>RPIG</b>	AER's binding <i>Retail Pricing Information Guidelines</i> , made under the NERL.
<b>Solar tariff</b>	<p>A tariff that includes a solar feed-in tariff, which is an amount an electricity retailer must pay (or credit) to a consumer for electricity generated by a solar photovoltaic unit of the consumer.</p> <p>The guide refers to solar and non-solar tariffs. A non-solar tariff is a tariff that does not include a solar-feed in tariff.</p>
<b>Small business customer</b>	A customer who does not purchase electricity principally for personal, household or domestic use with electricity supply that is, or will be, at a rate of less than 100 MWh a year. This includes a customer who consumes energy at a business premises.
<b>Small customer</b>	<p>Any of the following solar and non-solar tariffs:</p> <ul style="list-style-type: none"> <li>• a residential customer with a flat rate tariff</li> <li>• a residential customer with a flat rate and controlled load tariff</li> </ul>

	<ul style="list-style-type: none"> <li>• a residential customer with a time of use tariff</li> <li>• a small business customer with a flat rate tariff.</li> </ul>
<b>Small distribution region</b>	Region with less than 100 000 consumers in the region and any interconnected regions. The Code does not apply to these regions.
<b>Standing offer prices</b>	<p>All of an electricity retailer's prices for supplying electricity in a distribution region to a small customer either because the retailer is required to under state or territory law, or because the electricity is not supplied under a contract. Electricity not supplied under a contract includes if:</p> <ul style="list-style-type: none"> <li>• the small customer starts consuming electricity at premises without first contacting the retailer</li> <li>• the small customer continues consuming electricity at premises after a contract for the supply of electricity to the premises has ended</li> <li>• the small customer is transferred to the retailer under a Retailer of Last Resort (RoLR) scheme.</li> </ul>
<b>The Act</b>	<i>Competition and Consumer Act 2010</i> (Cth)
<b>ToU tariff</b>	<p>A time of use tariff is a flexible tariff that applies different charges to electricity usage in kWh at different times of the day (or week). Days are commonly split into peak and off-peak (and sometimes shoulder) periods. Peak periods are intended to correspond to the times the network faces high demand, but in practice are wide periods that cover much of the day. These tariffs also include a fixed daily supply charge.</p> <p>Any reference to flexible tariff in the guide refers to ToU tariff.</p>
<b>Unconditional price</b>	Total price a representative customer would be charged for the supply of electricity in the financial year at the offered prices, disregarding any conditional discounts.

The terms used in this guide are relevant to explain concepts and to assist in the interpretation of the Code, rather than an endorsement to be used in communications with consumers. We note that some terms may have different or more specific definitions and uses in the NERL, NERR and in guidelines made by the AER (including the RPIG).

# 1. Introduction

In the ACCC's [2018 Retail Electricity Pricing Inquiry \(REPI\) final report](#), we found that standing offer prices charged to consumers who are inactive or disengaged from the market were unreasonably high. We also found that the marketing of retail offers was focused on headline discounts, but these discounts were not calculated off the same base price and were often conditional. This meant that consumers could not effectively compare offers. To address these issues, we made several recommendations to improve consumers' ability to engage with the market and choose the retailer and offer that is best suited to their needs and circumstances.

We recommended the introduction of a default price to replace excessive standing offers, and a requirement for discounts to be calculated with reference to this default price as well as headline discounts to not include conditional discounts. These recommendations were the basis for introducing the [Competition and Consumer \(Industry Code—Electricity Retail\) Regulations 2019](#) (the Code) which commenced on 1 July 2019.

The Code is prescribed as a mandatory industry code under the *Competition and Consumer Act 2010* (Cth) (the Act). The ACCC is responsible for ensuring compliance with the Code. The Code is binding on all electricity retailers that supply electricity to small customers in the applicable distribution regions. The purpose of the Code is to:

- limit the standing offer prices that are charged to residential and small business customers
- allow consumers to more easily compare market offers, and
- prohibit conditional headline discounting.

The ACCC has updated this guide to provide further clarity on the Code and to reflect additional requirements of the Code following amendments made in February 2020.<sup>1</sup> The amendments were made primarily to extend the application of the price cap to solar and residential Time of Use (ToU) standing offers, and to solar standing offers for small business customers, commencing from 1 July 2020. There are also additional requirements for retailers related to record keeping and communicating with small customers.

This guide is designed to help electricity retailers understand their responsibilities under the Code. It offers guidance on:

- which retail electricity offers are covered by the Code
- how to calculate the unconditional price of an offer to check compliance with the price cap
- when retailers are required to communicate information required by the Code to small customers
- how the information required by the Code should be presented to customers
- how to make and maintain records required under the Code, and
- the consequences of non-compliance with the Code.

It is important to note that this document is only intended as a guide for electricity retailers about their responsibilities under the Code. It is not a substitute for legal advice, nor is it intended to comprehensively encapsulate the responsibilities of electricity retailers under the Code, the Australian Consumer Law (ACL), National Energy Retail Law (NERL) and

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<sup>1</sup> *Competition and Consumer Legislation Amendment (Electricity Retail) Regulations 2020*.



National Energy Retail Rules (NERR). The ACCC intends to do further work to refine the guide taking into account feedback from stakeholders, consumer testing and potential amendments to the Code.

## 2. Requirements concurrent with the Code

### 2.1 The Australian Consumer Law

While complying with the Code, retailers must make sure they comply with the general rules regarding advertising contained in the ACL. The ACL states that businesses must not engage in conduct that is likely to mislead or deceive consumers and must not make false or misleading claims or statements. Retailers must ensure that the information displayed in their advertisements does not breach any other part of the ACL. It must be accurate and truthful.

Information required under the Code needs to be displayed or referred to in such a way that a consumer can make an informed decision about the offer. It is therefore important that the information is displayed or referred to in a clear and conspicuous manner and the words or phrases used are unambiguous. Retailers must have regard to the medium of communication used and the context of how it will be viewed by a consumer. It is vital that any wording used to explain the elements of the Code gives consumers the ability to make an informed choice.

### 2.2 The National Energy Retail Law

Electricity retailers also have obligations under the NERL and the NERR that apply to their relationships with energy consumers. The AER is responsible for monitoring, investigating and enforcing compliance with the NERL and NERR. The AER also has the power to make guidelines. This includes the Retail Pricing Information Guidelines (RPIG), which set out how retailers must provide information about their plans and present their prices, and the Benefit Change Notice Guidelines (BCNG), which require retailers to notify customers when a benefit provided to them through their market offer is expiring or changing.

The ACCC and the AER have distinct but supplementary roles in the electricity retail market to ensure retailers are complying with the relevant law. Retailers should contact the AER if there are any questions around how to meet their obligations under the NERL and NERR.

## 3. Overview of the Code requirements

The Code has two broad elements: (1) it applies a price cap to standing offers, and (2) sets requirements on the pricing information retailers must communicate to small customers and how retailers are to communicate this price information to small customers (the 'communication requirements').

At the date of publication of this guide, a retailer supplying small customers in the following distribution regions must comply with the Code:

- Ausgrid (New South Wales)
- Endeavour Energy (New South Wales)
- Essential Energy (New South Wales)
- Energex (south-east Queensland)
- SA Power Networks (South Australia)

Table 1 shows the offers covered by the Code.

The Code does not apply to Victoria where the Victorian Government has implemented a separate default offer (the Victorian Default Offer) and has introduced other related retail electricity market reforms. The Code does not apply to the Northern Territory, Australian Capital Territory, Tasmania, regional Queensland and Western Australia where standing offer prices are set by or under a law of a state or territory.

The Code does not apply to small distribution regions with less than 100 000 consumers. The Code also does not apply to small customers under the following supply arrangements:

- embedded networks
- prepayment meters
- where the prices for the supply include a demand tariff.

**Table 1: Summary of offers covered by the Code**

Offers	Price cap	Communication requirements
<b>Standing offers (non-solar and solar):</b>		
Residential customer with flat rate tariff	Yes	Yes
Small business customer with flat rate tariff	Yes	Yes
Residential flat rate customer with controlled load (CL) tariff	Yes	Yes
Residential customer with time of use (ToU) tariff	Yes	Yes
Residential customer with ToU and CL tariff	Yes	Yes
<b>Market offers (non-solar and solar):</b>		
Residential customer with flat rate tariff	No	Yes
Small business customer with flat rate tariff	No	Yes
Residential flat rate customer with CL tariff	No	Yes
Residential customer with ToU tariff	No	Yes
Residential customer with ToU and CL tariff	No	Yes

## 4. Calculating the unconditional price

The unconditional price is used to: (1) check compliance of standing offers with the price cap and (2) calculate the comparison percentage for communicating price information to small customers. Both are discussed in turn in the sections of the guide below.

The unconditional price of an electricity offer is the total price a representative customer would be charged in the financial year at the retailer's offered prices, disregarding any conditional discounts. Section 5 sets out what a conditional discount is.

Retailers must include the following items in calculating the unconditional price of an offer:

- any charges

- discounts<sup>2</sup>
- annual recurring fees such as membership and contribution fees, and
- recurring metering charges.<sup>3</sup>

Retailers should also include sign-up credits and charges on green products in the calculation of the unconditional price.

In the calculation of the unconditional price, retailers must not include optional green charges, or PV/solar feed-in tariffs, if these are present.

The unconditional price of an offer must include GST.

### **Sign-up credits**

Sign-up credits should be included in the calculation of the unconditional price. This refers to credits for signing up with a retailer in a particular way; for example, a \$75 credit for signing up online or for signing up through a particular website.

Sign-up credits that are limited to particular groups of small customers, where credit is only provided if a condition unrelated to entering an electricity contract with the retailer is met, should not be included in the calculation of the unconditional price. We consider this would include:

- certain membership-based sign-up credits; for example, where a credit is only provided to small customers who sign up and are members of a particular insurance group
- 'refer a friend' type credits; for example, where credit is only provided to a new small customer who is referred by an existing customer and who signs up with the retailer.

Section 5 sets out what a conditional discount is and provides more information on membership-based sign-up credits and 'refer a friend' type discounts.

### **Green charges**

Green charges that are an intrinsic feature of an offer should be included in the unconditional price calculation of an offer. For example, the charges for an offer that is 100 per cent supplied from green sources should be included in the unconditional price calculation. This is distinct from green charges that a customer may elect to pay on an offer for electricity to be supplied by green sources. For example, a small customer may pay an additional \$2 a week for 25 per cent of the customer's usage to be sourced from an accredited green power source. This \$2 payment is what the guide refers to as an optional green charge and should be excluded from the unconditional price calculation as these charges are not obligatory for small customers.

## **4.1 Checking compliance of standing offers with the price cap**

The reference price is the annual price set by the AER for a financial year in relation to electricity supply to a small customer of a particular type in the distribution region. The reference price acts as a price cap in that it is the maximum allowable price for standing offer

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<sup>2</sup> Standing offers do not typically include discounts. However, in the case there are discounts these must be included.

<sup>3</sup> Where the metering charge is a range, the upper end charge should be used. For example, if a plan has a metering charge that ranges from \$15 to \$30 per month, prices should be calculated using the \$30 figure.

prices. The reference price/price cap is set out in the Legislative Instrument which forms part of the DMO final determination.<sup>4</sup>

Standing offer prices must be equal to or less than the relevant price cap. To check compliance with the price cap, the unconditional price is calculated using the model annual usage. This unconditional price must be equal to or less than the relevant price cap.

The simplified examples below illustrate how offers should be calculated to check compliance for the following tariffs:

- residential and small business flat rate
- residential flat rate with controlled load
- residential time of use, and
- residential time of use with controlled load.

#### 4.1.1 Residential and small business flat rate tariffs

The AER will set separate price caps for small business customers and residential customers with a flat rate tariff for the distribution regions. Examples 1 and 2 show the same method is used to check whether the standing offer price exceeds the price cap for both customer types.

If the unconditional price<sup>5</sup> calculated using the AER model usage amount is equal to or less than the relevant price cap, the standing offer is compliant with the Code. In example 1, the unconditional price of \$1223 is less than the price cap of \$1461 so it is compliant with the Code. In example 2, the unconditional price of \$5730 is less than the price cap of \$7371, so it is also compliant with the Code.

##### Example 1: Residential flat rate

Ausgrid distribution region	Annual profile	Retailer rate (GST)	Total (GST)
Supply charge	365 days	\$1.00/day	\$365
Annual usage (AER model annual usage)	3900 kWh	\$0.22/kWh	\$858
<b>Unconditional price</b>			<b>\$1223</b>
<b>AER reference price/price cap</b>			<b>\$1461</b>

<sup>4</sup> In the Legislative Instrument the reference price/price cap for residential customers (with and without controlled load) and small business customers is referred to as the residential annual price (with and without controlled load) and the small business annual price, respectively.

<sup>5</sup> The first version of the guide referred to the unconditional price as the annual price in the price cap section.

## Example 2: Small business flat rate

Ausgrid distribution region	Annual profile	Retailer rate (GST)	Total (GST)
Supply charge	365 days	\$2.00/day	\$730
Annual usage (AER model annual usage)	20000 kWh	\$0.25/kWh	\$5000
<b>Unconditional price</b>			<b>\$5730</b>
<b>AER reference price/price cap</b>			<b>\$7232</b>

### 4.1.2 Residential flat rate with controlled load tariffs

Example 3 shows how to calculate the unconditional price of a residential flat rate standing offer with one controlled load (CL). In example 3, given the retailer's charges and a model annual usage of 6800 kWh with 2000 kWh CL usage, the standing offer price is \$1657.50. This is less than the cap of \$2021 and therefore compliant under the Code.

#### Example 3: Residential flat rate with one CL

Ausgrid distribution region	Annual profile	Retailer rate (GST)	Total (GST)
Supply charge	365 days	\$1.00/day	\$365
Supply charge for CL	365 days	\$0.10/day	\$36.50
General usage (approx. 70% of AER model annual usage)	4800 kWh	\$0.22/kWh	\$1056
Usage for CL (approx. 30% of AER model annual usage )	2000 kWh	\$0.10/kWh	\$200
AER model annual usage	6800 kWh		
<b>Unconditional price</b>			<b>\$1657.50</b>
<b>AER reference price/price cap</b>			<b>\$2021</b>

However, if the retailer had a usage charge of 30 cents/kWh instead of 22 cents/kWh as shown in example 3A, this standing offer price of \$2041.50 would not be compliant with the Code as it exceeds the cap of \$2021.

### Example 3A: Residential flat rate with one CL

Ausgrid distribution region	Annual profile	Retailer rate (GST)	Total (GST)
Supply charge	365 days	\$1.00/day	\$365
Supply charge for CL	365 days	\$0.10/day	\$36.50
General usage (approx. 70% of AER model annual usage)	4800 kWh	<b>\$0.30/kWh</b>	\$2400
Usage for CL (approx. 30% of AER model annual usage)	2000 kWh	\$0.10/kWh	\$200
AER model annual usage	6800 kWh		
<b>Unconditional price</b>			<b>\$2041.50</b>
<b>AER reference price/price cap</b>			<b>\$2021</b>

Example 4 shows how to calculate the unconditional price of an offer with two controlled loads. Retailers should use the controlled load 1 and controlled load 2 proportions from the AER DMO final determination for the relevant distribution region.

In example 4, given the retailer's charges and model annual usage of 6800 kWh with 1340 kWh CL 1 usage and 660 kWh CL 2 usage, the standing offer price is \$1734.30. This is less than the cap of \$2021 and therefore compliant under the Code. This example has two different supply charges for each controlled load component.

#### Example 4: Residential flat rate with two CL

Ausgrid distribution region	Annual profile	Retailer rate (GST)	Total (GST)
Supply charge	365 days	\$1.00/day	\$365
Supply charge for CL1	365 days	\$0.10/day	\$36.50
Supply charge for CL 2	365 days	\$0.12/day	\$43.80
General usage (approx. 70% of AER model annual usage)	4800 kWh	\$0.22/kWh	\$1056
Usage for CL 1 (67% of AER model annual CL usage)	1340 kWh	\$0.10/kWh	\$134
Usage for CL 2 (33% of AER model annual CL usage)	660 kWh	\$0.15/kWh	\$99
AER model annual usage	6800 kWh		
AER model annual CL usage	2000 kWh		
<b>Unconditional price</b>			<b>\$1734.30</b>
<b>AER reference price/price cap</b>			<b>\$2021</b>

#### 4.1.3 Time of use tariffs

ToU tariffs apply different usage charges at different times of the day or week. The simplest ToU tariff is split into peak and off-peak (a two-period ToU). However, there are also three-period and four-period ToU tariff types. An offer which has one shoulder period rate is considered a three-period ToU offer. An offer with two shoulder period rates is considered a four-period ToU offer.

The AER in its 2020-21 DMO Legislative Instrument sets out the daily usage profiles, which contain usage amounts for each hour of the day over a 24-hour period, in each distribution region, without designating particular times as peak, off-peak and shoulder periods and the usage amounts for controlled load. The usage profile shows electricity usage during each hour of the day, over a 24-hour period for each distribution region. Retailers determine when their peak, off-peak and shoulder usage periods apply and their prices for these tariff windows. Retailers must use the AER's daily usage profile to calculate the unconditional price for ToU tariffs. The AER's approach enables retailers to determine when their peak, off-peak and shoulder usage periods apply and their prices for these tariff windows and aims to minimise any potential impacts on network tariff reform and retailer innovation.

This section of the guide sets out how retailers are to calculate the unconditional price for ToU tariffs using the daily usage profiles. As there are many ways retailers can structure ToU tariffs, this guide refers to periods as period blocks and seeks to explain worked examples by the number of period blocks in the offer without categorising the offer into established network tariff structures, such as two-period or three-period tariffs.

The Code does not provide for the AER to develop a separate reference price for ToU tariffs. Retailers must use the residential reference price in the relevant distribution region.<sup>6</sup> For ToU tariffs without CL, the relevant price cap is the residential reference price without controlled load. For ToU offers with CL, the relevant price cap is the residential reference price with controlled load.

To calculate the unconditional price of a ToU offer, retailers must:

- use the start and end date for each period block
- use the start and end times for each period block
- use the relevant hourly usage amounts set by the AER (with or without CL)
- calculate the daily usage for each period block based on the above
- calculate the annual usage for each period block based on the daily usage and the day that applies to the period blocks
- use the charges for each period block, and
- calculate the unconditional price based on all the above information. Examples 5 and 5A illustrate how to do this.

Example 5 has five period blocks: peak, off-peak and three shoulder period blocks. The annual usage for these period blocks is calculated by multiplying the daily usage of each period block by the number of days that apply to each period block. Given the retailer's charges, the unconditional price of the offer is \$1437.62. This is less than the price cap of \$1461, so it is compliant with the Code.

Example 5A illustrates how to calculate the daily usage and the applicable number of days in a year for each period block. The daily usage in a period block is the sum of hourly usage values set by the AER for the duration of that period block. For example, the daily usage of 2.2724 kWh for the peak period block is calculated by adding the Ausgrid hourly values set by the AER (without CL) for the period block duration of 16:00 – 19:59.

The applicable number of days in a year for a period block is calculated by using the days that apply to the period block, converting it into a decimal by dividing the applicable days by seven and multiplying the resulting number by the duration of the period block in the tariff. In example 5A, the peak usage period block applies for the full year and is only applicable to business days. The decimal of 0.7143 is equivalent to  $\frac{5}{7}$  as there are five business days in a week. The applicable number of days in a year for the peak usage period block is therefore 261 days ( $0.7143 \times 365$ ).

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<sup>6</sup> The Legislative Instrument which forms part of the DMO Final Determination refers to the reference price/price cap for residential ToU customers (with and without CL) as the annual residential price (with and without CL).



### Example 5: Residential ToU without CL

Ausgrid distribution region	Daily usage	Applicable days in a year	Annual profile	Retailer rate (GST)	Total (GST)
Supply charge			365 days	\$1.33/day	\$442.65
Peak usage	2.2724 kWh	261	593.1 kWh	\$0.36/kWh	\$194.10
Off-Peak usage	3.0555 kWh	365	1115.3 kWh	\$0.19/kWh	\$192.64
Shoulder 1 usage	4.4192 kWh	261	1153.4 kWh	\$0.24/kWh	\$251.65
Shoulder 2 usage	0.9299 kWh	261	242.7 kWh	\$0.24/kWh	\$52.95
Shoulder 3 usage	7.6215 kWh	104	792.6 kWh	\$0.24/kWh	\$172.94
AER model annual usage			3897.1kWh ~3900 kWh		
<b>Unconditional price</b>					<b>\$1437.62</b>
<b>AER reference price/price cap</b>					<b>\$1461</b>

### Example 5A: Residential ToU without CL

Start & end date	Period block	Start & end time	Daily usage	Applicable days	Decimal for applicable days	Applicable days in a year
1 Jul 20 – 30 Jun 21  365 days	Peak	16:00 – 19:59	2.2724	Business days	0.7143	0.7143 x 365 = 261
	Off-peak	22:00 – 6:59	3.0555	All days	1	1 x 365 = 365
	Shoulder 1	7:00 – 15:59	4.4192	Business days	0.7143	0.7143 x 365 = 261
	Shoulder 2	20:00 – 21:59	0.9299	Business days	0.7143	0.7143 x 365 = 261
	Shoulder 3	7:00 – 21:59	7.6215	Weekends	0.2857	0.2857 x 365 = 104

**ToU daily residential usage profile without CL (Ausgrid distribution region)**

	0:00	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00
Time	–	–	–	–	–	–	–	–	–	–	–	–
	0:59	1:59	2:59	3:59	4:59	5:59	6:59	7:59	8:59	9:59	10:59	11:59
kWh	0.3395	0.3395	0.3395	0.3395	0.3395	0.3395	0.3395	0.469	0.469	0.469	0.469	0.469
	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00
Time	–	–	–	–	–	–	–	–	–	–	–	–
	12:59	13:59	14:59	15:59	16:59	17:59	18:59	19:59	20:59	21:59	22:59	23:59
kWh	0.469	0.469	0.5681	0.5681	0.5681	0.5681	0.5681	0.5681	0.469	0.4609	0.3395	0.3395

Examples 6 and 6A illustrate how to calculate the unconditional price of a ToU offer with controlled load. Example 6 has eighteen period blocks, which includes: winter and summer peak period blocks and non-winter and non-summer peak, shoulder, and off-peak period blocks. The unconditional price for this offer is calculated in the same way as above. Given the retailer’s charges, the unconditional price is \$1934. This is less than the relevant price cap of \$2021 and therefore compliant under the Code.

Example 6A is an example of the daily usage and the applicable number days in a year for each period block. As above, the daily usage in a period block is the sum of hourly usage values set by the AER for the duration of that period block. For example, the daily usage of 2.67 kWh for the winter peak period block is calculated by adding the Ausgrid hourly values set by the AER (with CL) for the winter peak block duration of 17:00 – 20:59.

The applicable number of days in a year for a period block is calculated in the same way as above. In this example, there are different duration lengths for period blocks. The appropriate start and end date which apply to a period block should be used to calculate the applicable number of days in a year for a period block. For example, the duration of the winter peak period block is 92 days. Given only business days apply to this period block, the applicable number of days in a year for the winter peak period is 66 days, calculated by multiplying 0.7143 by 92.

### Example 6: Residential ToU with CL

Ausgrid distribution region	Daily usage <sup>7</sup>	Applicable days in a year	Annual profile	Retailer rate (GST)	Total (GST)
Supply charge			365 days	\$0.95/day	\$346.75
Supply charge for CL 1			365 days	\$0.25/day	\$91.25
Usage for CL 1			2000 kWh	\$0.12/kWh	\$240.00
Winter peak	2.67 kWh	66	175.72 kWh	\$0.55/kWh	\$96.45
Winter shoulder 1	6.14 kWh	92	564.51 kWh	\$0.26/kWh	\$145.96
Winter shoulder 2	0.58 kWh	92	53.08 kWh	\$0.26/kWh	\$13.73
Winter shoulder 3	2.67 kWh	26	70.29 kWh	\$0.26/kWh	\$18.13
Winter off-peak 1	0.84 kWh	92	76.91 kWh	\$0.20/kWh	\$15.22
Winter off-peak 2	2.93 kWh	92	269.19 kWh	\$0.20/kWh	\$53.29
Non-winter peak	2.93 kWh	61	178.49 kWh	\$0.20/kWh	\$35.33
Non- winter shoulder	9.38 kWh	61	572.61 kWh	\$0.26/kWh	\$147.96
Non-winter off-peak	0.84 kWh	61	51.00 kWh	\$0.20/kWh	\$10.09
Summer peak	4.19 kWh	108	452.35 kWh	\$0.55/kWh	\$248.47
Summer shoulder 1	4.04 kWh	151	609.89 kWh	\$0.26/kWh	\$157.71
Summer shoulder 2	1.15 kWh	151	174.25 kWh	\$0.26/kWh	\$45.06
Summer shoulder 3	4.19 kWh	43	180.94 kWh	\$0.26/kWh	\$46.71
Summer off-peak 1	0.84 kWh	151	126.24 kWh	\$0.20/kWh	\$24.99
Summer off-peak 2	2.93 kWh	151	441.83 kWh	\$0.20/kWh	\$87.46
Non-summer peak	2.93 kWh	61	178.49 kWh	\$0.20/kWh	\$35.33
Non-summer shoulder	9.38 kWh	61	572.61 kWh	\$0.26/kWh	\$147.96
Non-summer off-peak	0.84 kWh	61	51.00 kWh	\$0.20/kWh	\$10.09
AER model annual usage			4797.7 ~4800 kWh		
<b>Unconditional price</b>					<b>\$2017.96</b>
<b>AER Reference price/price cap</b>					<b>\$2021</b>

<sup>7</sup> This is calculated to four decimal places but for presentation purposes is displayed as two decimals.

**Example 6A: Residential ToU with CL**

Start & end date	Period block	Start & end time	Daily usage	Applicable days	Applicable days in a year
1 Jun 20 - 31 Aug 20 (92 days)	Winter peak	17:00 – 20:59	2.67	Business days	0.7143 x 92 = 66
	Shoulder 1	7:00 – 16:59	6.14	All days	1 x 92 = 92
	Shoulder 2	21:00 – 21:59	0.58	All days	1 x 92 = 92
	Shoulder 3	17:00 – 20:59	2.67	Weekends	0.2857 x 92 = 26
	Off-peak 1	22:00 – 23:59	0.84	All days	1 x 92 = 92
	Off peak 2	0:00– 6:59	2.93	All days	1 x 92 = 92
1 Sept 20 - 31 Aug 20 (61 days)	Non-winter peak	0:00– 6:59	2.93	All days	1 x 61 = 61
	Non-winter shoulder	7:00 – 21:59	9.39	All days	1 x 61 = 61
	Non-winter off-peak	22:00 – 23:59	0.84	All days	1 x 61 = 61
1 Nov 20 – 31 Mar 20 (151 days)	Summer Peak	14:00 – 19:59	4.19	Business days	0.7143 x 151 = 108
	Shoulder 1	7:00 – 13:59	4.04	All days	1 x 151 = 151
	Shoulder 2	20:00 – 21:59	1.15	All days	1 x 151 = 151
	Shoulder 3	14:00 – 19:59	4.19	Weekends	0.2857x151= 43
	Off-peak 1	22:00 – 23:59	0.84	All days	1 x 151 = 151
	Off-peak 2	0:00– 6:59	2.93	All days	1 x 151 = 151
1 Apr 20 – 31 May 20 (61 days)	Non-summer peak	0:00– 6:59	2.93	All days	1 x 61 = 61
	Non-summer shoulder	7:00 – 21:59	9.39	All days	1 x 61 = 61
	Non-summer off-peak	22:00 – 23:59	0.84	All days	1 x 61 = 61

**ToU daily residential usage profile with CL (Ausgrid distribution region)**

Time	0:00	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00
	–	–	–	–	–	–	–	–	–	–	–	–
	0:59	1:59	2:59	3:59	4:59	5:59	6:59	7:59	8:59	9:59	10:59	11:59
kWh	0.4179	0.4179	0.4179	0.4179	0.4179	0.4179	0.4179	0.5772	0.5772	0.5772	0.5772	0.5772
Time	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00
	–	–	–	–	–	–	–	–	–	–	–	–
	12:59	13:59	14:59	15:59	16:59	17:59	18:59	19:59	20:59	21:59	22:59	23:59
kWh	0.5772	0.5772	0.699	0.699	0.6992	0.6992	0.6929	0.5772	0.5772	0.4179	0.4179	0.4179

## 4.2 Calculating the comparison percentage

This section sets out how to calculate the comparison percentage. The Code requires retailers to show how the unconditional price of an offer compares with the relevant reference price. This difference must be expressed as a percentage of the reference price. The guide refers to this as the comparison percentage.

Sections 6 and 7 of the guide sets out how the comparison percentage should be displayed when communicating with small customers.

To determine the comparison percentage for communicating price information to small customers, retailers need to:

1. Calculate the unconditional price of the offer as set out in Section 4.
2. Calculate the difference between the unconditional price and the relevant reference price.
3. Express this difference as a percentage of the relevant reference price. This number may be positive or negative, indicating whether the offer is more than or less than the reference price.

### Example 7: Market Offer 1

Ausgrid distribution region	Annual profile	Retailer rate (GST)	Total (GST)
Supply	365 days	\$1.00/day	\$365
General usage (AER model annual usage)	3900 kWh	\$0.24/kWh	\$936
<b>Unconditional price</b>			<b>\$1301</b>
Lowest possible price			\$1301
<b>AER reference price/price cap</b>			<b>\$1461</b>

Example 7 Market Offer 1 illustrates how to calculate the comparison percentage.

1. Given the rates under this residential offer and the model annual usage of 3900 kWh, the unconditional price is \$1301.
2. The difference between the unconditional price and the example reference price is -\$160 (\$1301-\$1461).
3. This amount expressed as a percentage of the reference price is -10.95 per cent ( $\frac{-\$160}{\$1461}$ ).

This will need to be stated as 11 per cent, as percentages must be displayed as a whole percentage. As this figure is negative it should be stated as 11 per cent less than the reference price when communicating price information to small customers.

## 5. What is a conditional discount

How a discount is displayed and communicated to a small customer will depend on whether it is a conditional discount. A conditional discount is a discount that applies only if a customer satisfies certain requirements or conditions. A conditional discount can include any of the following:

- pay on time discounts
- bundling discounts (that is, when a customer receives a discount for contracting and/or maintaining an account with a retailer for multiple products or services)
- direct debit discounts
- conditional rebates
- conditional credits such as anniversary or loyalty credits
- certain membership-based sign-up credits, and
- 'refer a friend' type credits.

Sections 6 and 7 of the guide set out how offers with conditional discounts should be communicated to small customers. Percentage-based conditional discounts and fixed credits are to be displayed differently.

### **Anniversary or loyalty credits**

Anniversary or loyalty credits refer to a credit that a customer receives on the condition that they remain on a contract for a specified period of time. For example, where a small customer signs up for a contract and receives a credit every 6 months if they remain on that plan. Such a credit would be a conditional discount and would need to be displayed as a percentage of the applicable reference price (see section 7.4 of the guide).

### **Membership-based sign-up credits**

This refers to credit a customer receives for being a member of a certain group (such as a club or organisation) and signing up to a retailer. For example, a welcome credit of \$75 for a small customer who is a member of a certain insurance group and who signs up to the retailer. Such a credit would be considered a conditional discount because in order to receive the credit, not only must the small customer sign up, but they must be a member of that insurance group.

### **'Refer a friend' credits**

This refers to a credit received by either an existing customer for referring a friend, or a new customer for being referred by a friend, to a retailer. For example, where an existing small customer receives a \$50 credit on their next electricity bill if they refer a friend to their retailer and their friend signs up. The friend also receives a \$50 credit on their first bill. We consider such credits would be a conditional discount as they require a referral by an existing small customer.

## **5.1 Calculating the conditional price**

The conditional price is the total amount a representative customer would pay in the financial year if that customer met the conditions for the conditional discount. The conditional price is therefore an annualised price a representative customer would pay in the financial year if the conditions for the conditional discount are met.

The conditional price for a conditional discount is calculated by taking the unconditional price of an offer and subtracting the total amount a representative customer would pay if that customer met the conditions for the conditional discount in the financial year. This is based on the charges and fees in the offer and the model annual usage.

For example, example 7A below is the same Ausgrid residential flat rate offer as example 7 but includes a conditional welcome credit of \$50 for a member of a particular insurance

group who signs up with the retailer. In this example, given the unconditional price of \$1301 and the fixed conditional discount of \$50, the conditional price is \$1251 (\$1301-\$50).

**Example 7A: Market Offer 1 with a conditional credit**

Ausgrid distribution region	Annual profile	Retailer rate (GST)	Total (GST)
Supply	365 days	\$1.00/ day	\$365
General Usage (AER model annual usage)	3900 kWh	\$0.24/kWh	\$936
<b>Unconditional price</b>			<b>\$1301</b>
Insurance group membership-based welcome credit		\$50	\$50
<b>Conditional price</b> (If a small customer is a member of a particular insurance group and signs-up with the retailer)			<b>\$1251</b>
Lowest possible price (Including all discounts)			\$1251
<b>AER reference price/price cap</b>			<b>\$1461</b>

Example 7B below is the same Ausgrid residential flat rate offer as example 7 but includes a 5 per cent pay on time conditional discount based on usage. In this example, given the retailer’s usage charge and the model annual usage, a 5 per cent discount on usage is \$46.80 (5 per cent x \$936). Given the unconditional price is \$1301, the conditional price if the representative customer pays on time is \$1254.20 (\$1301–\$46.80). This annualised conditional price is read as the price a representative customer would pay if they always pay on time. This is the annualised price the customer would pay in a financial year based on the charges of the offer and the model annual usage if the customer met the conditional discount.

**Example 7B: Market Offer 1 with a percentage based conditional discount**

Ausgrid distribution region	Annual profile	Retailer rate (GST)	Total (GST)
Supply	365 days	\$1.00/ day	\$365
General Usage (AER model annual usage)	3900 kWh	\$0.24/kWh	\$936
<b>Unconditional price</b>			<b>\$1301</b>
Pay on time discount on AER model annual usage		5%	\$46.80
<b>Conditional price</b> (If the representative customer always pays on time)			<b>\$1254.20</b>
Lowest possible price (Including all discounts)			\$1254.20
<b>AER reference price/price cap</b>			<b>\$1461</b>

## 5.2 Comparing the conditional price with the reference price

This section sets out how to calculate the difference between the conditional price and unconditional price as a percentage of the reference price. Section 7.4 of the guide sets out how this percentage figure should be displayed when communicating with small customers.

For each conditional discount, retailers need to calculate the difference between the conditional price and unconditional price, stated as a percentage of the relevant reference price. To do this, the retailer needs to:

1. Calculate the unconditional price of an offer as set out in section 4.
2. Calculate the conditional price based on the charges and fees for the offer and the model annual usage. See examples 7A and 7B above on how to calculate the conditional price of an offer with a fixed conditional credit and percentage-based conditional discount.
3. Calculate the difference between the unconditional price and the conditional price.
4. Express this difference as a percentage of the relevant reference price. The figure should be read as a percentage less than the reference price.

As demonstrated in example 7B above, a conditional discount available under an offer (such as a pay on time discount based on usage) is not the percentage figure that must be displayed; rather it is the conditional discount expressed as a percentage from the reference price. In example 7B the conditional discount that needs to be communicated as price information to small customers is 3 per cent not 5 per cent. We explain this step by step below:

1. Given the rates in example 7B and the model annual usage set by the AER is 3900 kWh, the unconditional price is \$1301. This does not include the pay on time discount of 5 per cent based on the model annual usage.
2. As set out above, the conditional price if the representative customer always pays on time is \$1254.20 (\$1301-\$46.80).
3. The difference between the unconditional price and the conditional price is \$46.80 (\$1301-\$1254.20).
4. This amount expressed as a percentage of the example reference price is -3.20 per cent ( $\frac{-46.80}{\$1461}$ ). This will need to be displayed as 3 per cent, as percentages must be displayed as a whole percentage. This is read as the percentage less than the reference price if a representative customer always pays on time.

## 5.3 The lowest possible price

To calculate the lowest possible price for an offer, the retailer must calculate the total amount a representative customer would be charged at its offered prices in a financial year, assuming that all the conditions on all conditional discounts (if any) were met.

If there are no conditional discounts in the offer, the lowest possible price is the unconditional price (see example 7 above).

If there is one conditional discount, the lowest possible price is the conditional price (see examples 7A and 7B above).



Typically offers have had only one recurring conditional discount: the pay on time discount. However, if offers have more than one recurring conditional discount, the lowest possible price would include all the conditional discounts.

## 6. Communicating price information to customers

### 6.1 When must retailers communicate the Code information?

The Code does not apply to general advertising but does apply where a retailer communicates the offered prices to a small customer. A retailer communicates the offered prices to a small customer if they:

- advertise or publish the offered prices, or
- offer to supply electricity at those offered prices, or
- give a customer written notice of a change to the retailer's offered prices and the offered prices are the prices that apply after that change.

A customer's bill is not a 'communication' for these purposes, nor is a message informing a customer of an overpayment or underpayment.

#### **Mass marketing price communications**

The communication of prices can occur in any of the following forms, but is not limited to:

- newspaper or magazine
- television
- radio
- web-based or online
- social media
- billboards
- transit advertising such as on buses, taxis or bicycles
- face to face
- door-to-door sales
- offers over the phone, and
- direct mail, catalogues and leaflets.

#### **Individual customer price communications**

The communication of prices to small customers also occurs where a retailer notifies a customer of a change in prices. This can occur when a retailer sends a tariff change notice or when a retailer notifies a customer of a change in or end to their benefit period as required by the NERR.

### 6.2 What are retailers required to tell customers?

The Code sets out specific information that electricity retailers must communicate to customers when communicating their offered prices to small customers. This includes:

- **the difference between the unconditional price and the reference price, stated as a percentage of the reference price (comparison percentage)**

- **for each conditional discount, the difference between the conditional price and unconditional price, stated as a percentage of the relevant reference price**
- **the lowest possible price of the offer (inclusive of all conditional discounts mentioned in the communication)**
- **conditions for all conditional discounts**
- **the distribution region and type of small customer**
- a conditional discount should not be stated as the main element of the advertisement, publication or offer.

Items in **bold** must be clearly and conspicuously stated.

The Code does not limit retailers from communicating additional details relating to price and discounts, provided that retailers comply with the Code requirements. However, we expect retailers to consider whether additional detail will cause confusion to consumers or dilute the information required by the Code.

In addition to complying with the requirements of the Code, retailers must:

- ensure that they do not breach the prohibitions against false, misleading or deceptive conduct under the ACL
- comply with the NERL and NERR, which set out obligations regarding the presentation and marketing of electricity to consumers.

## 7. Presentation of the Code information

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. We do not consider the Code information to be prominent if other information or elements of the communication are given more emphasis. For example, on a retailer's website, on any page that refers to specific prices and offers, the information required by the Code should be easy to find without navigating through other content.

In oral communication to consumers such as radio advertising or offers over the phone, retailers should have regard to speed, volume and other audio tools to ensure information required by the Code is clearly audible and emphasis is placed on this information compared to other statements, dialogue or sounds.

In video communication such as television advertisements or online video material, retailers should have regard to appropriate visual tools and sound elements when presenting a specific price or discount.

Retailers are able to advertise an offer specific to a customer type and distribution region across a jurisdiction or state, provided it is clear that the offer relates only to a specific distribution region.

The requirements of the Code apply to residential and small business customers. The examples in this guide are based on residential customers.

## 7.1 Where the Code does not apply to advertising

Below are some visual examples of general brand advertising to which the Code does not apply. Similarly, the Code does not apply where general brand statements are made in other mediums of communication such as radio, television or social media.

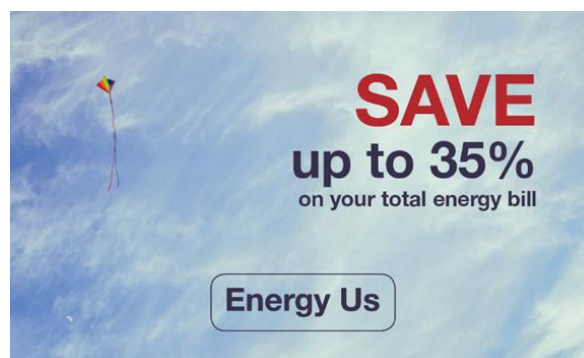


Below are some visual examples of general advertising on price, discounts and deals, to which the Code does not apply. Similarly, the Code does not apply where general statements on price, discounts and deals are made in other mediums of communication such as radio or video advertising.



## 7.2 Price advertising that does not comply with the Code

Below are some examples of visual advertisements which do not comply with the Code. Advertising that uses prominent headline percentage discounts is not permitted. Retailers must display the comparison percentage clearly and conspicuously.



The advertisement below includes a conditional discount if you pay on time. This is not allowed to be the most prominent price-related matter in the advertisement.



### 7.3 Displaying the comparison percentage in price advertising

The Code requires retailers to tell consumers how their unconditional price for supplying electricity in a particular distribution region compares with the reference price for that region and type of customer. This difference must be expressed as a percentage of the reference price. This guide refers to this as the comparison percentage. This number may be positive or negative, indicating whether the offer is above or below the reference price. If the offer is equal to the AER reference price/price cap, this should be expressed as equal to the reference price.

Retailers should have regard to the appropriate visual tools and sound elements when communicating the unconditional percentage to consumers to ensure that the comparison percentage is clear and conspicuous.

Below is an example advertisement of example 7: Market Offer 1 to which the ACCC is unlikely to object.



## 7.4 Displaying conditional discounts

A retailer must not state any conditional discount as the main price-related element of an advertisement. In presenting a conditional discount, the retailer must state any conditions clearly and conspicuously.

Retailers must express any proportional conditional discount in communications of offered prices as a percentage of the relevant reference price set by the AER. If there is more than one conditional discount, the retailer must do this for each discount. The Code requires any proportional conditional discount to be expressed individually.

Retailers should not state conditional discounts as a cumulative discount combined with the unconditional price. For example, an offer with an unconditional price that is 10 per cent below the reference price and a conditional discount of 5 per cent if a representative customer pays on time should not be expressed as 15 per cent off the reference price if you pay on time. The conditional discount of 5 per cent should be separate to the comparison percentage.

It is important that a retailer understands what percentage figure must be stated in its communication when referring to a conditional discount. As demonstrated in the example below, a conditional discount available under an offer (such as a pay on time discount based on usage) is not the percentage figure that must be stated; rather it is the conditional discount expressed as a percentage of the reference price.

The below is an advertisement of example 7B to which the ACCC is unlikely to object.



**Energy Us**

**11% less than  
reference price**  
plus  
**Further 3% below the reference price if you always pay on time**

*This offer is based on a customer who consumes 3900 kWh a year on a flat rate tariff in the Ausgrid network. The lowest annual price when you always pay on time is \$1254. Your bill will differ based on your actual usage.*

Credits that are not percentage based do not have to be compared to the reference price. For example, a fixed credit of \$50 towards the representative customer's next quarterly bill if the customer pays on time does not need to be compared to the reference price. However the conditions on this discount will need to be conspicuously stated. Also, this discount must not be the most conspicuous price-related matter set out in the advertisement.

Below is an example advertisement for a residential offer with a credit, to which the ACCC is unlikely to object (assuming the 5 per cent is calculated in accordance with the methodology set out in this guide). It is clear that a customer would receive \$50 credit for each quarterly

bill that they pay on time and the comparison percentage is the most prominent price-related feature in the advertisement.

**Energy Us**

**5% less than  
reference price**  
plus  
\$50 bonus for every quarterly bill you pay on time

This offer is based on a customer who consumes 3900 kWh a year on a flat rate tariff in the Ausgrid network. The lowest annual price when you pay on time every quarter is \$1000. Your bill will differ based on your actual usage.

## 7.5 Displaying the lowest possible price

The Code requires a retailer to include in its communication of offered prices to small customers, the lowest possible price for a representative customer. A retailer does not need to comply with this requirement if it presents a customer with an estimated annual price based on their individual circumstances (see section 7.6).

Communication of offered prices with conditional discounts can cause confusion for consumers and result in consumers accepting offers that are not in their best interests. The ACCC considers that to reduce this confusion the retailer needs to make clear (in addition to including the comparison percentage):

- that the lowest possible price is based on a representative customer
- the conditions of any conditional discount, and
- that the lowest possible price will only be payable when these conditions are met and not otherwise.

## 7.6 Alternative requirements for offers

A retailer is not required to state the lowest possible price of an offer if it presents a customer with an estimated annual price based on their individual circumstances. A retailer could do this having regard to:

- the rate at which electricity was supplied to the small customer in the past, or
- the timing or pattern of that past supply.

However, in this instance where a retailer presents a customer with an offer based on their individual circumstances, a retailer is still required to state the comparison percentage and if conditions apply, the difference between the conditional price and unconditional price as a

percentage of the reference price. This includes where customers can enter their own usage on a retailer's website to get an estimated bill. As stated above, the information required by the Code on these web pages should be easy to find without having to navigate through other content.

## 7.7 Bundled offers

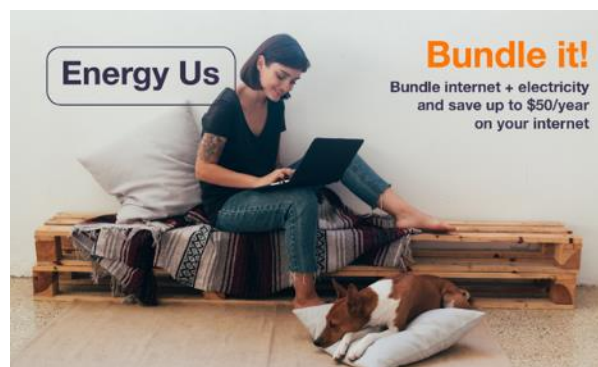
The Code does not extend to communicating offers other than electricity supply. However, electricity retailers must still comply with the Code requirements if they refer to a specific price for electricity offers in any context, including where this is marketed as 'energy' supply.

For example, if a retailer communicates its electricity prices as part of an electricity and gas bundled offer, the retailer still must comply with the requirements under the Code when referring to the electricity offer. The electricity element of the example advertisement below does not comply with the Code requirements for communicating offered prices because:

- the advertisement is missing the required information on the difference from the reference price of the electricity offer expressed as a percentage of the reference price, and
- the distribution region and the type of small customer for the offer are not clearly and conspicuously stated.



The Code only applies if the bundled offer makes specific price or discount references to the supply of electricity. Below is an example of a bundled contract for internet and electricity. As this specific discount relates to internet supply and not energy, the Code does not apply.

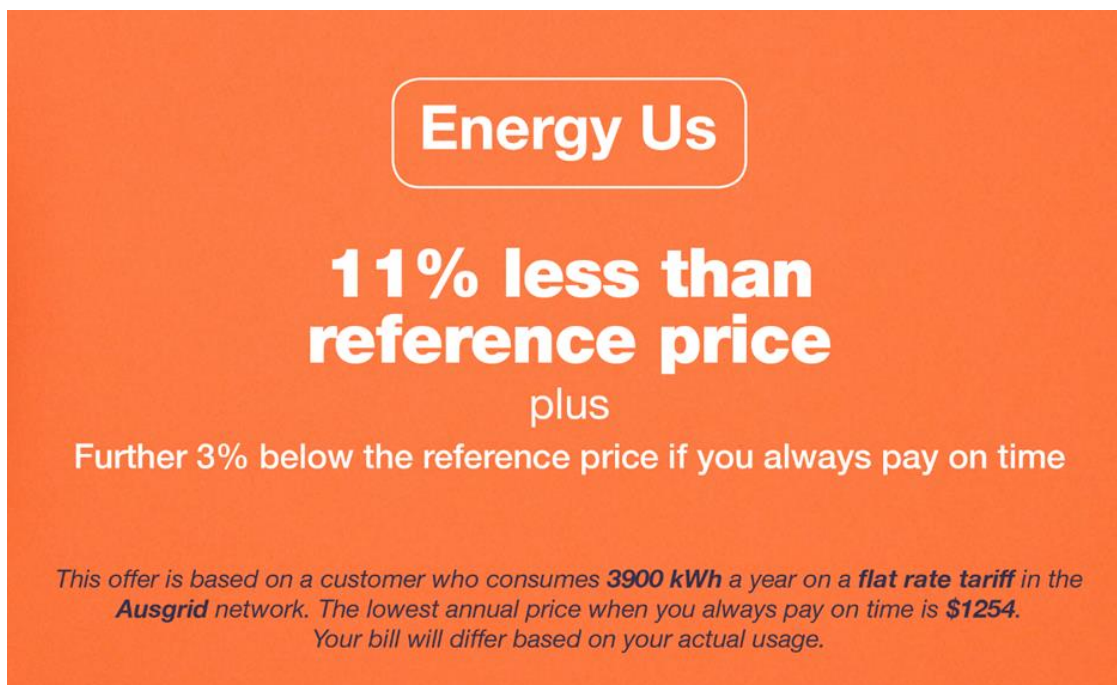


While the Code does not apply to the sale of internet or gas, an electricity retailer is still required to comply with general rules regarding advertising under the ACL. If a retailer communicates its electricity prices as part of a bundled offer, it should be mindful of their obligations under the ACL to ensure that information is stated in such a way that a consumer can make an informed decision about the offer.

## 7.8 Example advertising

This section sets out two example advertisements for example 7B (see section 5.1) to illustrate a preferable advertisement and a non-compliant advertisement.

### Preferable example



**Energy Us**

**11% less than  
reference price**  
plus

Further 3% below the reference price if you always pay on time

*This offer is based on a customer who consumes **3900 kWh** a year on a **flat rate tariff** in the **Ausgrid** network. The lowest annual price when you always pay on time is **\$1254**.  
Your bill will differ based on your actual usage.*

The advertisement for example 7B is preferable because the:

- offer clearly and conspicuously states the difference between the unconditional price of the offer and the reference price as a percentage of the reference price set by the AER (for a particular customer type and model annual usage in the relevant distribution region)
- offer clearly and conspicuously states the difference between the conditional price (includes the annual value of the pay on time discount) and the unconditional price as a percentage of the reference price set by the AER (for a particular customer type and model annual usage in the relevant distribution region)
- pay on time conditional discount is not stated as the main price-related element of the communication
- pay on time condition for the discount is clearly and conspicuously stated
- comparison percentage and the difference between the conditional price and unconditional price as a percentage of the reference price are both correctly stated as whole numbers
- lowest possible price of the offer is clearly and conspicuously stated, and
- distribution region and type of small customer for the offer are clearly and conspicuously stated.



## Non-compliant example



The advertisement is on a blue background. At the top, the text 'Energy Us' is enclosed in a rounded rectangular box. Below this, the text reads: 'Guaranteed 11% off' in large white font, followed by 'PLUS' in a smaller white font, and 'Further 3% Pay-On-Time Discount' in a smaller white font. At the bottom, it says '\$1254 annual bill' in a smaller white font.

The advertisement above for example 7B is non-compliant because the:

- distribution region and type of small customer for the offer are not clearly and conspicuously stated
- conditions for the pay on time discount are not clearly and conspicuously stated, and
- advertisement does not make clear that the matters in the advertisement relate to a representative customer.

In addition to the missing information above, the advertisement does not sufficiently explain what the comparison percentage, the difference between the conditional price and unconditional price as a percentage of the reference price, and the lowest possible price mean to a consumer.

Furthermore, the example advertisement does not state that the comparison percentage is calculated from the AER's reference price or that the reference price is based on the AER's model annual usage for a representative customer. Without this information, consumers will not know what the percentage is based on or that the reference price is based on a representative customer. The preferable example explicitly states that the comparison percentage is in relation to the reference price. The words 'less than the reference price' should be included in communications of offered prices when referring to the comparison percentage.

It is important that the comparison percentage is not mistaken for a discount. The use of the word 'guaranteed' when referring to the unconditional percentage could lead consumers to incorrectly interpret this as the guaranteed discount consumers would receive under this offer. Depending on actual usage, a consumer's bill may differ from that of a representative customer. The word 'guaranteed', should therefore not be used when referring to the comparison percentage.

The annual dollar value of the conditional discount must be expressed as a percentage of the relevant reference price separate from the comparison percentage. The 3 per cent conditional discount refers to the amount a customer with the model annual usage will

receive if they always pay on time. The non-compliant example states it is a 'further 3 per cent pay on time discount'. It is unclear what the value of the 3 per cent conditional discount is when calculated for the model annual usage as a percentage of the reference price.

Without the words 'if you always pay on time', it is also unclear that the conditional price only applies if the customer always pays on time. Consumers could incorrectly interpret the conditional discount in the non-compliant example as a 3 per cent discount which they can receive each time they pay on time under that offer. The preferable example explicitly refers to the conditional discount as a 'further 3 per cent below the reference price if you always pay on time'.

The lowest possible price refers to the total amount a representative customer would be charged in that financial year, using the model annual usage set by the AER and assuming all conditions on conditional discounts mentioned in the offer are met. Without appropriate explanation, the inclusion of this dollar value could mislead or deceive consumers. The non-compliant example states '\$1254 annual bill'.

The example does not clearly and conspicuously state the conditions that are required to be met in order to achieve the lowest possible price. It also does not explain that this price is based on a representative customer who consumes the model annual usage and that a customer's bill will differ based on actual usage, as set out in the preferable example. Without this information, consumers could interpret this price as what they will pay per annum under this offer.

## 8. Monitoring the Code

The ACCC will continue to monitor and report on the effects of the Code as part of its inquiry into the supply of electricity in the NEM. We will continue to monitor the level and spread of standing offers and market offers and changes in the number of market offers. We will also monitor the proportion of customers on standing offers and market offers as well as analysing actual prices paid by customers. The ACCC is also monitoring whether there are increases in market offers, especially low priced market offers, following the introduction of the Code.

We will also continue to monitor retailers' advertising practices and that the reference price comparison and other required Code information is being communicated to consumers accurately. The information required by the Code is still relatively new and it is essential for consumers to understand and trust the information required by the Code to be able to engage with the information and select an appropriate offer. It is critical that retailers provide the Code information in a clear and conspicuous manner and ensure that the purpose of the Code information is explained accurately and consistently.

### 8.1 Record keeping requirements

The record keeping requirements support the ACCC's ability to monitor compliance with the price cap obligations and the communication requirements of the Code. Retailers are required to make and keep records of their communications of offered prices for six years from the end of the relevant financial year.

In relation to a standing offer that is subject to the price cap obligations of the Code, a retailer must make and keep a record that demonstrates how it calculated the unconditional price of an offer.

For standing offers with two controlled load components, information in retailer records should make clear the number of controlled load supply charges in the offer. Standing offers

with two controlled load components may either have: one supply charge for both controlled components, two different supply charges for each controlled load component, or no additional supply charge for controlled load components. This information in records would assist in monitoring compliance with the price cap for offers with two controlled load components.

A retailer must also make and keep records relating to communicating its prices for supplying electricity to a customer. The record must include:

- the content of the communication
- the date of the communication, and
- how the retailer calculated the difference between its prices and the reference price. In particular, the comparison percentage, the difference between the conditional price and unconditional price as a percentage of the reference price (if applicable) and the lowest possible price.

The record is not required to contain the personal details of a small customer or personal information about a small customer who is an individual.

For multiple communications of offered prices made to small customers in the same way (for example, through a mass marketed campaign), retailers may make and keep a single record. This includes circumstances where offers are made to different small customers of the same type, in the same distribution region, in the same financial year, based on a single template or script, and substantially identical in content and form.

Under section 51ADD of the Act, the ACCC can request any information or records required by the Code for investigation or auditing purposes. The penalty provisions for non-compliance with these provisions are consistent with other industry codes made under the Act.

## 9. Non-compliance with the Code

The Code is a legally binding set of regulations. This means that if retailers do not comply with the rules in the Code, they will breach the Act and risk facing very serious consequences. The ACCC, or any other affected parties, can start legal action against a retailer that breaches the Code.

The Code contains civil penalty provisions for contraventions including where:

- a standing offer price does not comply with the price cap
- communications of offered prices do not correctly compare the offered price to the reference price, and
- an advertisement does not correctly display a conditional discount and its conditions.

A civil penalty of 300 penalty units applies for each day and occurrence of non-compliance. At the date of publication of this guide, the value of a penalty unit is \$210, presently equating to \$63 000 for every day and occurrence of breaches of the Code.

The Act also permits the ACCC to pursue other remedies against non-compliant retailers. For instance, the ACCC can:

- issue an infringement notice
- issue a public warning notice

- accept administrative or statutory undertakings, under which a non-compliant retailer would agree to remedy the harm caused by its conduct, accept responsibility for its actions and establish or review its compliance programs
- commence court proceedings to seek redress orders to compensate consumers for loss or damage suffered in relation to the contravening conduct, including a court order requiring a non-compliant retailer to provide refunds to affected customers, or
- commence court proceedings to seek injunctions to prevent the non-compliant conduct, non-punitive orders (such as community service orders) and other compensatory orders.

In addition to complying with the Code, retailers must also ensure that their communications of offered prices comply with the requirements of the ACL including those regarding false representations and misleading or deceptive conduct, as outlined in section 2 of this guide.

Conduct that breaches any of the provisions of the ACL could result in fines of up to \$500 000 for individuals and the greater of \$10 million, three times the value of the benefit received, or where the benefit cannot be calculated, 10 per cent of annual turnover in the preceding 12 months for companies.

The ACCC has discretion about the matters we investigate and how we resolve concerns. Where we identify possible non-compliance with the Code we will take into account the surrounding circumstances.

In line with the principles set out in our [Compliance and Enforcement Policy](#), we will escalate matters for an enforcement approach where stronger action is warranted. Competition and consumer issues arising from the pricing and selling of essential services, with a focus on energy and telecommunications are an ACCC enforcement and compliance priority for 2020.

The ACCC is more likely to take enforcement action where:

- retailers take inadequate steps towards compliance with the Code
- retailers fail to respond to our concerns or choose not to take steps to mitigate compliance failures
- the issues go beyond a failure to comply with new Code requirements and involve conduct that is likely to mislead or deceive consumers.

If a retailer believes that they may be in breach of the Code, they should:

- seek professional advice on whether they are in breach of the Code
- engage with the ACCC
- take steps to comply with the Code
- review how the breach came about
- put in place an effective compliance program to avoid future recurrences.

## 10. Directing complaints

If a retailer receives a complaint relating to their compliance with the standing offer price cap or their communications of offered prices, it is expected that this will be handled in accordance with their standard complaints and dispute resolution procedures, consistent with the provisions of the NERL and NERR.

In addition to its own monitoring of compliance, the ACCC will liaise with the AER and the energy ombudsmen in South Australia, New South Wales and Queensland on customer

complaints relating to the Code. The ACCC will also engage with stakeholders including consumer groups and retailers regarding such complaints.

Complaints or concerns can be submitted directly to the ACCC via the following avenues

- **ACCC consumer report form:** <https://www.accc.gov.au/contact-us/contact-the-accc/report-a-consumer-issue>
- **ACCC Infocentre:** 1300 302 502
- **Compliance concerns can be directed to:** [ElectricityMonitoring@acc.gov.au](mailto:ElectricityMonitoring@acc.gov.au)