Guide to the Electricity Retail Code

Draft for consultation

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Contents

Glossary

AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
ACL	Australian Consumer Law
Annual price	Price a small customer would be charged if the customer consumed electricity in accordance with the model annual usage for that distribution region in a financial year.
Bundled offer	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.
The Code	*Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019*
Conditional discount	Discounts that apply only if a customer satisfies certain requirements or conditions. This includes 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.
Conditional price	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 were met and disregarding any other conditional discount.
Conspicuous	Easily seen, or prominent.
CL tariff	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.
DMO	Default Market Offer. This is the reference price set by the AER.
Distribution region	The region in which a particular electricity distribution network operates.
EME	Energy Made Easy, the Australian Government's price comparator website maintained by the AER.
Electricity retailer	A corporation authorised by or under a law of the Commonwealth or of a state or territory to sell electricity.
Flat rate tariff	A tariff that includes a fixed daily supply charge, and a variable charge reflecting the volume (in kWh) of electricity consumed.
Flexible tariff	A tariff for supplying electricity that varies wholly or partly according to the time of day when the electricity is supplied. These tariffs also include a fixed daily supply charge.
Green charges	Any price a customer pays for retailers to source energy from an accredited

	green power source. For example, a customer may pay an additional $2 a week for 25% of the customer's usage to be sourced from an accredited green power source. This weekly $2 payment is a green charge.
kWh	Kilowatt hour
Lowest possible price	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 were met.
Market offer prices	All of an electricity retailer's prices for supplying electricity in a distribution region to a small customer under a market retail contract.
Model annual usage	A representative customer's annual electricity consumption and timing or pattern of the supply as set by the AER. Any reference to average household annual usage in this guide refers to model annual usage.
MWh	Megawatt hour
NEM	National Electricity Market
NERL	National Energy Retail Law, as adopted in a participating jurisdiction.
NERR	National Energy Retail Rules
Price	A charge of any description. This includes a recurring fee such as an annual membership fee. It does not include: • a one-off fee such as a connection or reconnection fee or an account establishment fee • 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 dishonour fee • a fee for a service provided on request on an ad-hoc basis such as a fee for a meter read requested by a customer.
Price cap	Maximum allowable price of standing offer prices. This is set at the reference price.
Price-regulated region	Region where standing offer prices are regulated under state or territory law. The Code does not apply to these regions.
Proportional conditional discount	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.
PV	Photovoltaic
Reference price	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.
REPI	ACCC's *Retail Electricity Pricing Inquiry*
Representative customer	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. Any reference to an average customer in this guide refers to a representative customer.
Residential customer	A customer who purchases electricity principally for personal, household or domestic use at premises.
RPIG	AER's Retail Pricing Information Guidelines
Small business	A customer who does not purchase electricity principally for personal,

customer	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.
Small customer	Any of the following: • a residential customer with a flat rate tariff • a residential customer with a flat rate and controlled load tariff • a residential customer with a time of use tariff • a small business customer with a flat rate tariff. Any reference to customers in this guide refers to small customers.
Small distribution region	Region with less than 100 000 consumers in the region and any interconnected regions. The Code does not apply to these regions.
Standing offer prices	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: • the small customer starts consuming electricity at premises without first contacting the retailer • the small customer continues consuming electricity at premises after a contract for the supply of electricity to the premises has ended • the small customer is transferred to the retailer under a Retailer of Last Resort (RoLR) scheme.
The Act	*Competition and Consumer Act 2010* (Cth)
ToU tariff	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. Any reference to flexible tariff in the guide refers to ToU tariff.
Unconditional discount	The difference between the reference price and the unconditional price, expressed as a percentage of the reference price, being a positive percentage where the reference price is higher than the unconditional price and a negative percentage where the reference price is lower than the unconditional price.
Unconditional price	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 interpretation of the Code. We note that some terms have different or more specific definitions and uses in the NERL, NERR and RPIG.

1. Introduction

The *Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019* (the Code) comes into force on 1 July 2019. The Code is prescribed as a mandatory industry code under the *Competition and Consumer Act 2010* (Cth) (the Act). 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 consumers, to allow consumers to more easily compare market offers and to prohibit conditional headline discounting. 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 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 only include unconditional discounts.[1] These recommendations sought to improve the ability of consumers to engage with the market, enabling them to make an informed decision about the retailer and tariff that is best suited to their needs and circumstances. These recommendations have been implemented through the Code, which applies in South Australia, New South Wales and south-east Queensland.

The ACCC promotes, monitors and enforces compliance with the Code and the Act. The ACCC will also be monitoring and reporting on the broader effects of the Code on standing and market offers and advertising practices as part of our inquiry into the supply of electricity in the National Electricity Market (NEM). In particular, the ACCC will be tracking whether standing offers that are currently below the price caps remain so, whether the number of market offers available changes and if there are increases in market offer prices, especially low-priced market offers, following the introduction of the Code. More generally, we will be monitoring and reporting on the effect of these policy changes on the prices faced by consumers, including both the level and spread of offer prices.

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

- which retail electricity offers are covered by the Code
- how the cap on standing offer prices works
- how offers must be compared to the reference price
- how conditional discounts can be advertised
- pricing and advertising requirements that operate concurrently with the Code
- 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, as well as the Australian Consumer Law (ACL), National Energy Retail Law (NERL) and National Energy Retail Rules (NERR).

1 Recommendations 30, 32, 49 and 50 of the ACCC's June 2018 *Retail Electricity Pricing Inquiry—Final Report*.

2. Requirements that apply concurrently with the Code

The requirements of the Code apply in conjunction with other requirements under the ACL and the NERL.

2.1. Complying with 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 advertising rules 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 prominent manner and the words or phrases used are unambiguous. Retailers must have regard to the medium of advertising used and the context of how it will be viewed by a consumer. It is vital that the wording used to explain the unconditional discount, conditional discounts and the lowest price gives customers the ability to make an informed choice.

2.2. Complying with the National Energy Retail Law

Electricity retail businesses that operate under the ACL also have obligations under the NERL and the NERR that apply to their relationships with energy consumers.

The ACCC is responsible for ensuring compliance with the Code. The AER is responsible for monitoring, investigating and enforcing compliance with obligations under the NERL and NERR. The AER also has the power to make certain binding guidelines, including the Retail Pricing Information Guidelines (RPIG), which sets out expectations of retailers in relation to presentation of pricing.

The ACCC and the AER work together by applying a coordinated approach to ensure misconduct in the energy market is addressed.

Retailers should contact the AER if there are any questions around how to meet obligations to comply with the NERL and NERR, in the context of the Code. If retailers have any questions about how to comply with the Code in the context of the NERL and NERR, they should contact the ACCC.

3. Offers covered by the Code

From 1 July 2019, a retailer supplying particular small customers in certain distribution regions must comply with the requirements under the Code. This guide discusses these requirements in turn.

The regions covered are New South Wales, South Australia and south-east Queensland. These regions have deregulated electricity prices. At the date of publication, the provisions of the Code apply in the following distribution regions: Ausgrid, Endeavour Energy and Essential Energy in New South Wales; Energex in south-east Queensland; and SA Power Networks in South Australia.

The Code does not apply to Victoria because the Victorian Government is implementing a separate default offer: the Victorian Default Offer. 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.

Table 1 shows the offers covered by the Code.

Table 1: Summary of offers and customer types covered by the Code

Small customers in the following distribution regions: Ausgrid, Endeavour Energy, Essential Energy, Energex and SA Power Networks		Price cap	Advertising requirements
Standing offers	Residential customer with flat rate tariff	Yes	Yes
	Residential flat rate customer with controlled load (CL) tariff	Yes	Yes
	Small business customer with flat rate tariff	Yes	Yes
	Residential customer with time of use (ToU) tariff	No	Yes
Market offers	Residential customer with flat rate tariff	No	Yes
	Residential flat rate customer with controlled load (CL) tariff	No	Yes
	Small business customer with flat rate tariff	No	Yes
	Residential customer with time of use (ToU) tariff	No	Yes

Other types of supply arrangements for households and small businesses are not covered by the Code. These are:

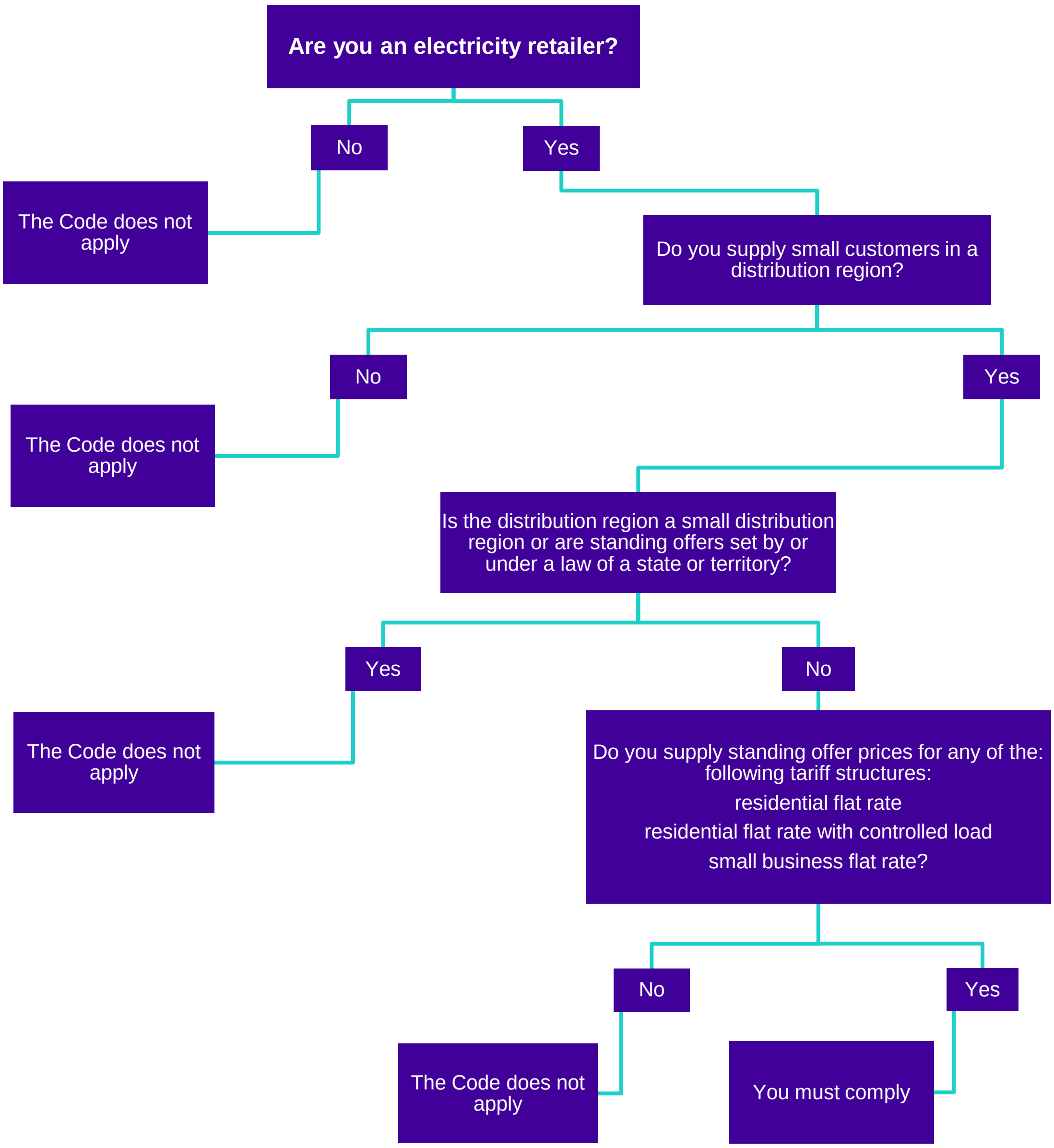
- embedded networks
- prepayment meters
- where prices vary due to network-wide demand tariffs
- solar photovoltaic (PV) units with feed-in tariffs.

The Code provides for the extension of the price cap provisions to standing offer prices for residential customers who receive a feed-in tariff for a rooftop PV system (that is, solar customers). This commences on a day to be fixed by the Minister by notifiable instrument. The date is yet to be determined but must be within two years of the registration of the Code.

4. Cap on standing offer prices

In the regions where the Code applies, table 1 outlines the types of offers that must comply with the price cap. The price cap refers to the maximum allowable price for standing offer prices and is set by the AER and enforced by the ACCC. The AER's Default Market Offer (DMO) determination sets the reference price and model annual usage, which acts as a price cap for the relevant customer types in the relevant regions. The determined values apply from 1 July of each year and are available on the AER's website. Figure 1 sets out a series of questions to help retailers understand how to comply with the cap on standing offer prices.

Figure 1: Do you need to comply with the cap on standing offer prices?



4.1. Calculating offers to comply with the Code

4.1.1. **Offers covered by the price cap**

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

Retailers must include the following items in calculating the annual price for an offer:

- any charges

- discounts[2]
- annual recurring fees such as membership and contribution fees
- recurring metering charges.[3]

Retailers must not include green charges or PV/solar feed-in tariffs in this calculation if these are present.

The three simplified examples below illustrate how offers should be calculated to check compliance. Appendix 1 provides more detail on the assumptions retailers must use to calculate the annual price of an offer.

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

If the annual price 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 annual price of $1223 is less than the reference price of $1467, so it is compliant with the Code. In example 2, the annual price of $5730 is less than the reference price of $7371 so it is also compliant with the Code.

Example 1: Residential flat rate

Ausgrid distribution region	Usage	Retailer rate	Total
Supply charge	365 days	$1.00/day	$365
General usage **(AER model annual usage)**	3900 kWh	$0.22/kWh	$858
Annual price			**$1223**
AER reference price			**$1467**

Example 2: Small business flat rate

Ausgrid distribution region	Usage	Retailer rate	Total
Supply charge	365 days	$2.00/day	$730
General usage **(AER model annual usage)**	20000 kWh	$0.25/kWh	$5000
Annual price			**$5730**
AER reference price			**$7371**

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

3 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.

Example 2A shows how to calculate the modelled percentage contribution from the flat rate with controlled load (CL).

Example 2A: Residential flat rate with CL

Ausgrid distribution region	Usage	Retailer rate	Total
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 CL AER model annual usage)	2000 kWh	$0.10/kWh	$200
AER model annual usage	6800 kWh		
Annual price			**$1657.50**
AER reference price			**$2059**

In example 2A, 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 below the cap of $2059 and therefore compliant under the Code.

Example 2B: Residential flat rate with CL

Ausgrid distribution region	Usage	Retailer rate	Total
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	$0.50/kWh	$2400
Usage for CL (approx. 30% of CL AER model annual usage)	2000 kWh	$0.10/kWh	$200
AER model annual usage	6800 kWh		
Annual price			**$3001.50**
AER reference price			**$2059**

However, if the retailer had a usage charge of 50 cents/kWh instead of 22 cents/kWh as shown in example 2B above, this standing offer price of $3001.50 would not be compliant with the Code as it exceeds the cap of $2059.

4.2. Notifying customers on existing standing offers

From 1 July 2019 retailers will not be able to supply customers on standing offers at prices exceeding the price cap. The AER DMO determination does not set standing offers but simply caps them. As such some standing offers will be above the price cap and will need to be adjusted while others will be below the price cap.

If a customer's standing offer tariff is varied as a result of the price cap, retailers should notify them of the change. As part of this publication or offer, retailers must comply with the advertising requirements of the Code as detailed in section 5.

Where a standing offer is less than the price cap it will require the percentage difference to be listed as a discount from the price cap. If offers are equivalent to the price cap this should also be publicised as a zero per cent discount.

The notification could also advise customers that:

- their tariff has changed as a result of the introduction of the Code
- the terms and conditions of their standing offer contract have not changed
- market offers are available and they can compare offers on Energy Made Easy (EME).

The NERL and NERR also set out obligations regarding the presentation and marketing of electricity contracts to customers and how customers are notified of price changes. These apply in addition to, and do not alter the application of the Code.

5. Advertising prices and discounts

The Code sets out requirements for advertisements, publications or offers by electricity retailers. These include:

- **the difference between the unconditional price and the reference price, stated as a percentage of the reference price (unconditional discount)**
- **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 advertisement, publication or offer)**
- **conditions for all conditional discounts**
- **the distribution region and type of small customer**
- no conditional discount is 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 advertising, publishing or offering 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 advertising requirements of the Code, retailers must:

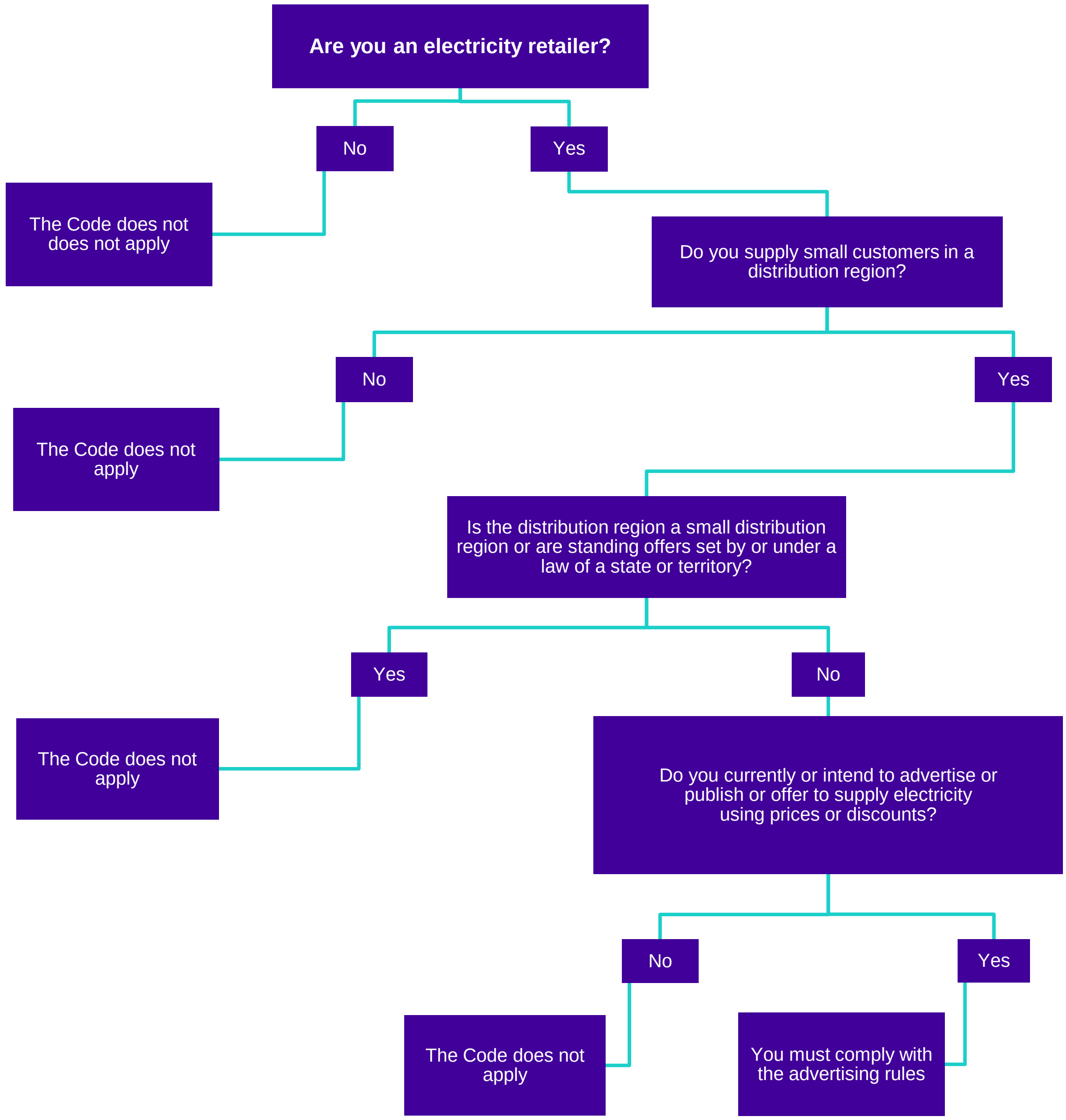
- ensure that they do not breach the prohibitions on false, misleading or deceptive conduct under the ACL
- comply with the NERL and NERR, which sets out obligations regarding the presentation and marketing of electricity contracts to customers (see section 2 for more detail).

The advertising rules in the Code apply to a retailer if a reference price and model annual usage is in force in a financial year for the particular distribution region and small customer to which supply is made. A retailer with other standing offers not set out in the Code will not need to include the advertising rules for those standing offers.

Retailers should be mindful of their ACL obligations when expressing discounts as a percentage. The Code requires discounts to be expressed as a whole number. However, in terms of rounding to a whole number, retailers should be cautious that the result is not misleading. For instance, a statement of a *guaranteed* discount of 11 per cent when, using the correct reference prices, the calculated discount amounts to 10.5 per cent would be misleading.

Figure 2 sets out a series of questions to help retailers understand whether they need to comply with the advertising rules.

Figure 2: Do you need to comply with the advertising rules?



5.1. Advertising time of use tariffs

This sections covers how residential time of use (ToU, or flexible tariff) offers are calculated for advertising purposes. The calculation of other types of tariffs is set out at section 4 of the guide.

While residential ToU offers do not, at the time of publication of this guide, need to comply with the price cap, the advertising requirements of the Code apply from 1 July 2019. Therefore, retailers are required to calculate the unconditional price for residential ToU offers for comparison to the reference price for advertising purposes. For an offer, retailers must:

- determine the ToU type for that offer (two period, three period or four period)
- use the usage allocation set by the AER for each period in the tariff type
- use the relevant residential annual usage amounts (with or without CL)
- calculate the unconditional price based on this above information and use the relevant reference price for comparison in advertising. Example 3 below illustrates how to do this.

ToU tariffs apply different charges to electricity usage at different times of the day or week. Typically, periods are 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 four 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 final DMO determination has provided usage allocations per period for each ToU tariff type and relevant distribution region. This is to enable retailers to calculate the unconditional price of a ToU offer for comparison with the reference price using a consistent set of information.

The Code does not require the AER to develop a separate reference price for ToU tariffs. Retailers must use the reference price for a residential flat rate tariff in the relevant distribution region. For ToU tariffs with no CL, the relevant reference price and annual usage is the flat rate tariff. For ToU offers with CL, the relevant reference price and annual usage is the same as for the flat rate with a CL tariff.

Example 3: Residential ToU without CL

Offer Ausgrid distribution region	AER usage allocation per period	AER residential annual usage without CL	Retailer rate	Total
Supply charge		365 days	$1.00/day	$365.00
Peak Usage	31.9%	1244.10 kWh	$0.45/kWh	$559.85
Off-Peak Usage	28.6%	1115.40 kWh	$0.10/kWh	$111.54
Shoulder usage	39.5%	1540.50 kWh	$0.20/kWh	$308.10
AER model annual usage		3900 kWh		
Unconditional Price				**$1344.49**
Lowest Possible Price				$1344.49
AER Reference Price				**$1467**
Unconditional discount				**-8.35%**

Example 3 above illustrates how a ToU offer must be calculated for advertising purposes.

As this offer has one shoulder period rate it is a three period ToU offer. This Ausgrid offer is for a residential customer with no CL so the Ausgrid residential annual usage with no CL of 3900 kWh is used. The usage amounts of each of the three periods is calculated based on the usage allocation set by the AER per period and the AER's model annual usage of 3900 kWh.

Given the retailer's rates under this offer the unconditional price for this ToU offer is $1344.49. The relevant AER reference price is the residential flat rate for Ausgrid of $1467. The unconditional discount is the difference between the unconditional price and the reference price, stated as a percentage of the reference price. As such, the unconditional discount is -8.35 per cent ($\frac{\$1344.49-\$1467)}{\$1467}$).

The unconditional discount is stated as 8 per cent less than the reference price for advertising purposes.

As this example offer has no conditional discounts, the lowest possible price is the unconditional price. This lowest possible price along with the guaranteed discount must be stated clearly and conspicuously for advertising purposes.

5.2. Types of advertising covered under the Code

Advertising under the Code refers to any advertisement, publication or offer. This includes written and verbal communication of prices or discounts in any of the following forms, but not limited to:

- newspaper or magazine

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

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 advertisement, publication or offer 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 having to navigate 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.

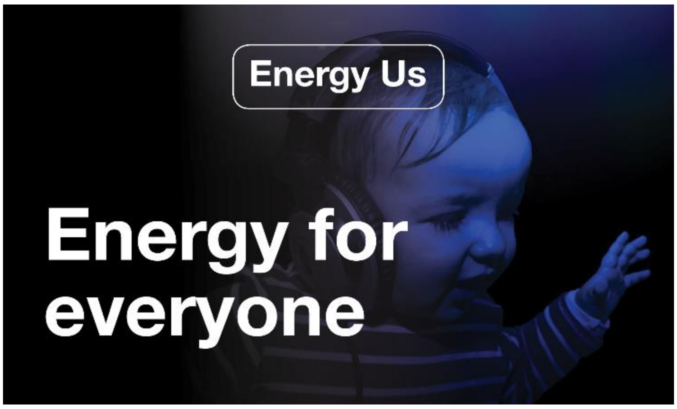
In video communication such as television advertisements or online video material, retailers should have regard to appropriate visual tools and sound elements when presenting a specific price or discount.

The advertising requirements only apply if a retailer refers to a specific price or discount in an advertisement, publication or offer. The advertising requirements of the Code do not apply if there is no reference to specific prices or discounts.

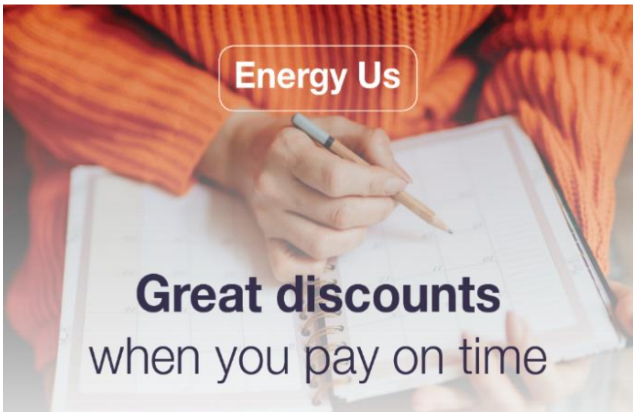
The advertising requirements apply to residential and small business customers. The examples in this guide are based on residential customers.

5.2.1. Where the Code does not apply to advertising

Below are some examples of general brand advertising to which the Code does not apply.



Below are some examples of general advertising on price, discounts and deals, to which the Code does not apply.

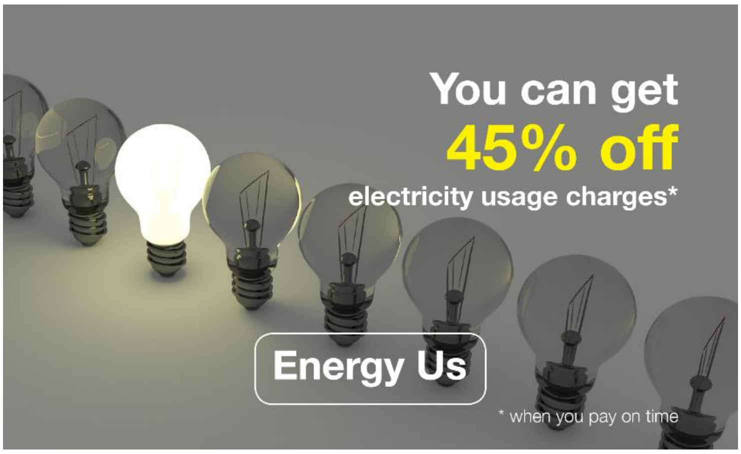


5.2.2. Price advertising that does not comply with the Code

Set out below are some examples of advertisements or offers which do not comply with the Code.

Advertising a discount percentage where that percentage is based on a reference other than the AER-determined relevant reference price is not allowed.

The most prominent discount advertised must be related to the reference price and have no conditions attached to it. The advertisement below includes a conditional discount if you pay on time and this is not allowed to be displayed as the most prominent discount.



5.3. Advertising the unconditional discount

The Code requires retailers to tell consumers how their unconditional prices for supplying electricity in a particular distribution region compare with the reference price for that region and type of customer. The unconditional price of an electricity offer is the total price a representative customer (based on the AER's model annual usage) would be charged in the financial year at the retailer's offered prices, disregarding any conditional discounts. This unconditional price is used to calculate the unconditional discount that the retailer needs to state in their advertisement, publication or offer. The guide refers to the unconditional discount within the glossary meaning. 'Unconditional discounts' that retailers typically use to refer to a discount off a tariff must be included in the calculation of the unconditional price, along with any charges and annual recurring fees for that offer.

The unconditional discount should be prominent and clear. As set out above, retailers should have regard to the appropriate visual tools and sound elements when communicating the unconditional discount to consumers.

To determine the unconditional discount to advertise, retailers need to:

1. Calculate the unconditional price of the offer based on the model annual usage set by the AER[4]. Retailers must include the following items in calculating the unconditional price for an offer:
    - any charges
    - unconditional discounts
    - annual recurring fees such as membership and contribution fees
    - recurring metering charges.[5]

    Retailers must not include green charges or PV/solar feed-in tariffs in this calculation if these are present.
2. Calculate the difference between the unconditional price and the relevant reference price set by the AER.

[4] The Market Offer 1 example is based on a residential customer.

[5] 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.

3. Express this difference as a percentage of the relevant reference price set by the AER. This number may be positive or negative, indicating whether the offer is above or below the reference price.

Example 4: Market Offer 1

Offer	**Usage**	**Rate**	**Total**
Supply	365 days	$1.00/day	$365
Usage (AER model annual usage)	3900 kWh	$0.24/kWh	$936
Unconditional price			**$1301**
Lowest possible price *			**$1301**
AER reference price			**$1467**

* If the advertisement, publication or offer mentions only one conditional discount, the lowest possible price is the conditional price (see section 5.5 for more detail).

For example, consider Market Offer 1 above which illustrates how to calculate the unconditional discount.

1. Given the rates under this residential offer and the model annual usage set by the AER is 3900 kWh, the unconditional price is $1301.
2. The difference between the unconditional price and the example reference price is -$166 ($1301-$1467).
3. This amount expressed as a percentage of the reference price is -11.32 per cent ($\frac{-\$166}{\$1467}$). 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 is read as 11 per cent less than the reference price.

Example 5 below is an example advertisement of Market Offer 1 to which the ACCC is unlikely to object.

Example 5: Market Offer 1 advertisement

5.4. Advertising conditional discounts

Retailers must express any proportional conditional discount being advertised, published or offered as the percentage of the applicable reference price set by the AER. If there is more than one conditional discount the retailer wishes to refer to, it must do this for each discount.

A retailer must not state any conditional discount as the main element of an advertisement, publication or offer. In presenting a specific conditional discount to a consumer, the retailer must state any conditions clearly and conspicuously.

It is important a retailer understands what percentage figure must be stated in an advertisement, publication or offer 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 from the reference price.

To determine the percentage figure advertised, the retailer needs to:

1. Calculate the unconditional price based on the model annual usage set by the AER.[6] As above, retailers must include the following items in calculating the unconditional price for an offer:
    - any charges
    - unconditional discounts
    - annual recurring fees such as membership and contribution fees
    - recurring metering charges.[7]

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[6] The Market Offer 2 example is based on a residential customer.

[7] 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.

Retailers must not include green charges or PV/solar feed-in tariffs in this calculation if these are present.

2. Calculate the conditional price based on the above charges and fees for the offer and the model annual usage set by the AER. This is the total amount a customer would pay in the financial year based on the model annual usage 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 all conditions for the conditional discount are met.
3. Calculate the difference between the unconditional price and the conditional price.
4. Express this difference as a percentage of the relevant reference price set by the AER. The figure should be read as a percentage less than the reference price. As this is based on the conditional price, it is read as the percentage off the reference price if a representative customer always pays on time.

Example 6: Market Offer 2

Offer	USAGE	RATE	TOTAL
Supply	365 days	$1.00/ day	$365
Usage **(AER model annual usage)**	3900 kWh	$0.24/kWh	$936
Unconditional price			$1301
Pay on time discount on AER model annual usage		5%	$46.80
Conditional price (If the customer pays on time)			$1254.20
Lowest possible price* (Including all discounts)			$1254.20
AER reference price			**$1467**

* If the advertisement, publication or offer mentions only one conditional discount, the lowest possible price is the conditional price (see section 5.5 for more detail).

For example, consider Market Offer 2 above which has the same supply and usage rates as Market Offer 1 (section 5.3), but includes a pay on time discount. This example illustrates the conditional discount that needs to be stated in the advertisement, publication or offer is 3 per cent not 5 per cent:

1. Given the rates under this residential offer 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. The conditional price if the 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.
3. The difference between the unconditional price and the conditional price is $46.80 ($1301-$1254.20).

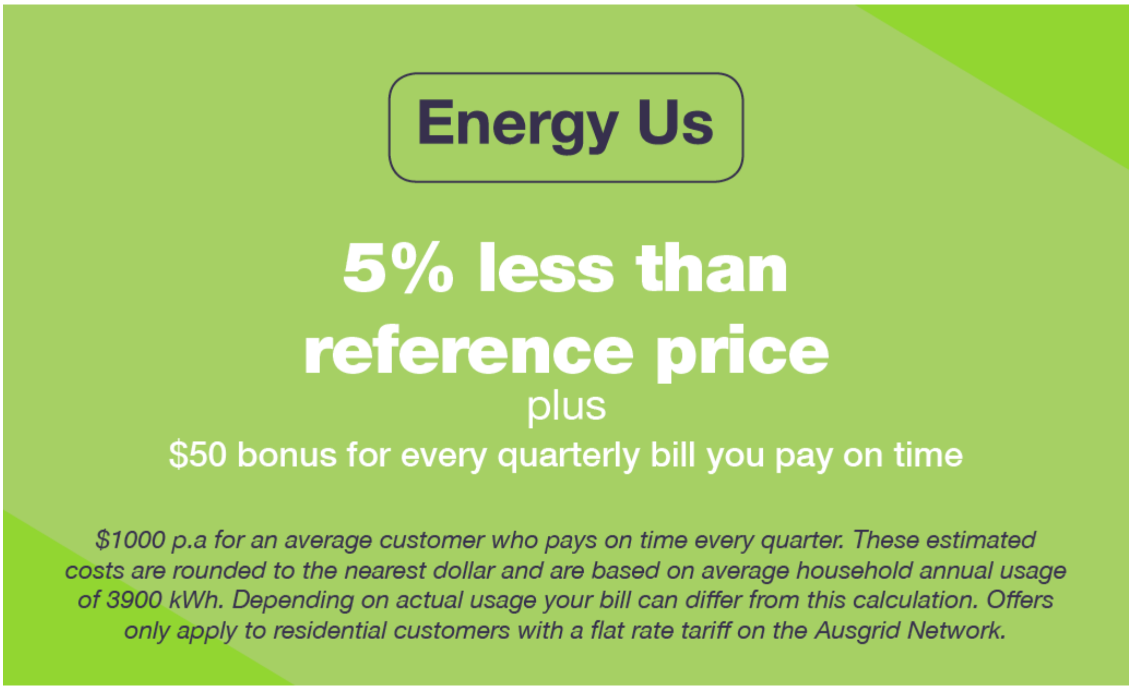
4. This amount expressed as a percentage of the example reference price is -3.19 per cent ($\frac{\$46.80}{\$1467}$). This will need to be displayed as 3 per cent, as percentages must be displayed as a whole percentage. As this is based on the conditional price, it is read as the percentage off the reference price if a representative customer always pays on time.

Example 7 below is an example advertisement of Market Offer 2 to which the ACCC is unlikely to object. The unconditional discount is the same as the Market Offer 1 example (section 5.3) as both offers have the same supply and usage charges.

Example 7: Market Offer 2 advertisement

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 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. Example 8 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). The conditions of the $50 credit are made clear in the example with the terms for every quarterly bill' and the reference to the $50 credit is smaller than the unconditional discount.

Example 8: Residential offer with a credit



5.5. Advertising the lowest possible price

The Code requires inclusion of the lowest possible price when presenting a specific price to a small customer. This is the total amount that the retailer estimates the customer would be charged in that year, using the model annual usage set by the AER and assuming all conditions on conditional discounts mentioned in the offer are met.

A retailer does not need to comply with this requirement if it presents the customer with a tailored offer 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.

To calculate the lowest possible price for an offer, the retailer must calculate the total amount a representative customer (based on the AER's model annual usage) would be charged at its offered prices in a financial year, assuming that all the conditions on all conditional discounts (if any) mentioned in the advertisement, publication or offer were met.

Retailers must include the following items in calculating the lowest possible price for an offer:

- any charges
- unconditional discounts
- conditional discounts
- annual recurring fees such as membership and contribution fees
- recurring metering charges.[8]

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[8] 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.

Retailers must not include green charges or PV/solar feed-in tariffs in this calculation if these are present.

If the advertisement, publication or offer does not mention any conditional discount, the lowest possible price is the unconditional price (see Market Offer 1 example in section 5.3). If there is only one conditional discount, the lowest possible price is the conditional price (see Market Offer 2 example in section 5.4). Typically offers only have one recurring conditional discount: the pay on time discount. However, if offers have more than one recurring conditional discount that retailers offer, the lowest possible price would include all the conditional discounts.

As highlighted above in section 5.4, the advertising of offers incorporating conditional discounts can cause confusion for consumers and result in consumers accepting offers that are not in their best interests. It is therefore very important that advertising the lowest possible price does not cause confusion for consumers. In order to avoid such confusion, the ACCC considers that the retailer needs to make clear (in addition to the prominent unconditional discount):

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

5.6. Advertising bundled offers

The Code does not extend to advertising offers other than electricity supply. However, electricity retailers must still comply with the Code requirements if they refer to a specific price or discount for electricity offers in any context.

For example, if a retailer advertises or offers an electricity and gas bundle, when referring to the electricity offer the retailer still must comply with the requirements under the Code.

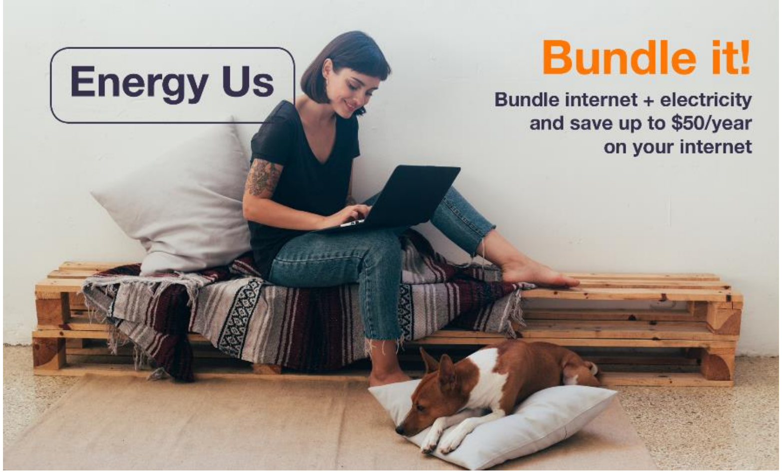
Example 9: Bundled offer for gas and electricity

Example 9 above is an example of a bundled offer for gas and electricity. The electricity element of this advertisement does not comply with the advertising rules because the:

- advertisement is missing the unconditional discount expressed as a percentage of the reference price
- distribution region and the type of small customer for the offer are not clearly and conspicuously stated.

While the advertising rules of the Code do not apply to the gas element of this advertisement, an electricity retailer is still required to comply with general rules regarding advertising under the ACL. The ACCC expects that if a retailer advertises bundled offers, information is stated in such a way that a consumer can make an informed decision about the offer.

Example 10: Bundled offer for electricity and internet



The Code only applies if the bundled offer makes specific price or discount references to the supply of electricity. Example 10 above is an example of a bundled contract for internet and energy. As this specific discount relates to internet supply and not energy, the Code does not apply. However, the general provisions of the ACL still apply.

5.7. Expected language

Clear, simple and widely understood language helps consumers to understand offers. Such language requirements apply to information provided to EME for use on plan documents and in other advertising and/or marketing by retailers or other agents.

Below is some suggested language that the ACCC considers retailers should adopt in their advertising practices.

Table 2: Expected language

Rather than	Instead use
Non-conditional discount Base discount Guaranteed discount	Unconditional discount
DMO Reference bill	Reference price
Consumption	Usage
Standing charge Fixed charge	Supply charge
Any term other than ‘general usage’ to describe the general consumption element of a single rate tariff plan	General usage
Model annual usage	Average household annual usage
Representative customer	Average customer

5.8. Example advertising

This section sets outs two example advertisements for Market Offer 2 (see section 5.4) to illustrate a preferable advertisement and a non-compliant advertisement.

Example 11: Preferable example

The preferable advertisement example above for Market Offer 2 complies with the advertising rules of the Code and is preferable because the:

- unconditional price of the offer is included and correctly stated as a percentage difference to the relevant reference price set by the AER (the unconditional discount)
- pay on time conditional discount is correctly stated as a percentage of the relevant reference price set by the AER
- pay on time conditional discount is not stated as the main element of the advertisement publication or offer
- pay on time condition for the discount is clearly and conspicuously stated
- unconditional discount and conditional discount are both correctly stated as a whole percentage
- lowest possible price of the offer is included and correctly stated
- meaning of the lowest possible price is included together with the dollar amount
- distribution region and type of small customer for the offer are clearly and conspicuously stated.

Example 12: Non-compliant example

The advertisement example above for Market Offer 2 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 consciously stated
- conditions on the lowest possible price are not clearly and consciously stated.

In addition to the missing information above, the words and phrasing used to explain the unconditional discount, conditional discount and the lowest possible price do not appropriately explain what these values mean to a consumer.

The unconditional discount is expressed as a guaranteed discount and does not explicitly state the discount is off the AER's reference price. The reference price is based on the AER's model annual usage for a representative customer. The preferable example above refers to these concepts as 'average household annual usage' and 'average customer'. The preferable example explicitly states the unconditional discount is based off the reference price. Without the words 'off the reference price' consumers will not know what the discount is based on and importantly that the unconditional discount is based on the average household annual usage. The words 'off the reference price' should be included in advertisements, publications or offers when referring to the unconditional discount.

Further, the use of the word 'guaranteed' when referring to the unconditional discount 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 or average customer as it is referred to in the preferable example. The word 'guaranteed' should therefore not be used when referring to the unconditional discount.

The conditional discount must be expressed as a percentage of the relevant reference price. The 3 per cent conditional discount from the reference price refers to the amount an average customer with average household annual usage will receive if they always pay on time. 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 non-compliant example just states it is a further 3 per cent pay on time discount. Without the words 'below the reference price' it is unclear that the conditional discount refers to an average customer with average household annual usage. Further, without the words 'if you always pay on time', it is unclear this conditional discount can only be met if the average 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 lowest possible price refers to the total amount a retailer estimates the customer would be charged in that 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 be misleading to consumers. The non-compliant example states '$1254 annual bill'. The example does not explain that this price is based on a representative customer (or average customer as it is referred to in the preferable example). It also does not clearly and conspicuously state the conditions that are required to be met to achieve the lowest possible price. Without this information consumers could interpret this price as what they will pay per annum under this offer.

5.9. Notifying customers of changes to current market offers

At the time the Code commences on 1 July 2019, there will be some customers on market offers with tariffs that are cheaper than the reference price, and there will be some customers on market offers with tariffs that are higher than the reference price. These market offers may also feature conditional or unconditional discounts for a benefit period (typically offered for 12 months). There also may be circumstances where some customers on market offers may be paying more than the reference price, regardless of whether conditions for the discount (or other benefit) are met or not.

If retailers vary the existing market contracts, this change would constitute an offer and should be compliant with the Code. The ACCC expects retailers to communicate any change to their customers and this should be done in compliance with the advertising requirements of the Code, detailed in this section. Retailers could also remind their customer that they can compare available offers on EME.

The NERL and NERR also set out obligations regarding the presentation and marketing of electricity contracts to customers and how customers are notified of price changes. These apply in addition to, and do not alter the application of the Code.

5.10. Expectations for comparator sites

According to research undertaken for the AEMC, price comparison websites are the second most common information source for consumers looking to switch energy plans, after internet searching.[9] Comparison sites therefore represent an important tool and have the potential to add significant value for consumers. The ACCC expects that these sites will present offers in a way that is easy for consumers to compare prices and make an informed decision about the best deal for their circumstances. Comparator sites should also follow standards set out by the ACCC in their guide for comparator website operators and suppliers.

The Code does not directly apply to third party comparison sites. However, to the extent that retailers are making offers or advertising offers on a third party comparison site, then the Code requirements apply to those retailers. The ACCC expects that retailers will present information to third party sites in compliance with the Code. These sites should present clear and comparable offers so as not to mislead consumers. Therefore, the ACCC expects that third party sites should adopt the features of the Code.

The AER runs the EME website, as required by the NERL.[10] It assists households and small businesses to make informed choices about electricity and gas offers. The EME website is specifically designed to help consumers make an informed choice about the best deal for them. The AER will be updating the RPIG to reflect the reference price. This will require consequential changes to be made to EME to provide information on the reference price.

6. 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 the contraventions including:

- A standing offer price does not comply with the price cap.
- An advertisement, publication or offer does not correctly compare its price to the reference price.
- 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, 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

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[9] Newgate Research, *Consumer research for the Australian Energy Market Commission's 2017 Retail Energy Competition Review*, April 2017, p. 27.

[10] Section 61 of the NERL.

- 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
- 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 advertising complies with the requirements of the ACL including those regarding false representations and misleading and 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.

6.1. Implementation

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 particular, in the transition period after the Code takes effect the ACCC will consider the extent to which a retailer can demonstrate to us that it has taken steps to prepare for the new requirements, is responsive to our concerns and agrees to timely remediation.

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. Consumer and competition issues arising from opaque and complex pricing of essential services, such as electricity, are an ACCC enforcement and compliance priority for 2019.

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 consumers.

If a retailer believes 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.

7. Directing complaints

If a retailer receives a complaint relating to their compliance with the standing offer price cap or advertising under the Code, 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, outlined in section 8, the ACCC will be liaising 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 be engaging with stakeholders including consumer groups and retailers regarding such complaints.

7.1. More information

Our website: https://www.accc.gov.au/business/industry-codes/electricity-retail-code

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@accc.gov.au

8. Monitoring the Code

The ACCC will monitor and report on the effect of the Code as part of its inquiry into the supply of electricity in the NEM. As set out in its March 2019 Report, in addition to monitoring compliance of standing offer prices not being higher than the price cap and retailers' advertising practices, the ACCC intends to monitor whether consumers are generally receiving a better deal.

In particular, the ACCC intends to monitor the level and spread of standing offers and market offers and whether the number of market offers changes. We will also monitor the proportion of customers on standing offers and market offers as well as analysing actual prices paid by customers. This includes monitoring the result of the price cap on standing offers, and the impact of the reference price on retailers' advertising practices.

The ACCC will be tracking whether discounts that are currently below the reference price remain so and will also monitor whether there are increases in market offers, especially low priced market offers, following the introduction of the Code. The ACCC will monitor the market outcomes of the Code over time and for all consumers and will report on the outcomes.

9. Appendix 1–Offer elements

Retailers must use the following assumptions when calculating the annual price of an offer.

Offer element	Notes
Usage benchmarks	Use general usage benchmarks for each distribution zone set by the AER For ToU/flexible tariffs, use ToU period allocations set by the AER
Controlled load	Use CL annual usage benchmarks, including the allocation of CL usage across multiple CLs, set by the AER
Seasonal usage profile	Assume uniform consumption across every day of the year
Days per year	365
Tariff periods	For tariff rates that apply to a season (or any time period less than a year), calculate usage for the period by multiplying daily usage by the number of days in the tariff period.
Four period TOU/Shoulder 2	An offer with a single shoulder period rate that applies in a season is considered a three period ToU offer (even if the price applies at different times). An offer with two shoulder period rates that apply in a season is considered a four period ToU offer.