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6 October 2021

Electricity Division – Wholesale and Retail Markets
Department of Industry, Science, Energy and Resources

Submitted via email: electricitycode@industry.gov.au

Re: Consultation on Electricity Retail Code review

Thank you for the opportunity to comment on your consultation paper for the review of the *Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019 (Code)*.

The Australian Competition and Consumer Commission (ACCC) is Australia's competition and consumer regulator with the purpose of making markets work for consumers. We take an active role in the Australian energy sector, undertaking a long-running inquiry into the National Electricity Market (NEM) and enforcing the Code and electricity-specific provisions of the *Competition and Consumer Act 2010*.

The policy objectives of the Code are to:

- limit standing offer prices to prevent retailers from charging well above their supply costs
- increase retail market transparency to allow consumers to easily compare offers and remove the confusion that can arise from pricing practices including discounts.¹

About two years on from implementation, the Code is delivering consumer benefits against these objectives. Unreasonably high prices have come down and advertising has improved. Retailer compliance of the Code is generally high. There is no evidence that market offer prices have increased to compensate for reduced standing offer prices. Nevertheless, we consider there are some refinements that can be made to the Code to improve its effectiveness.

The Department's review should take into account that we have been in a period of generally falling prices and consider whether the framework is robust in the event that prices start increasing, as we are currently seeing in Europe.

It is also important to consider the Code as both part of the package of consumer protections, that also includes the National Energy Retail Law (Retail Law) and the Australian Consumer Law (ACL), and in the context of other elements of the customer interface in the electricity market, which includes energy retailer advertising, electricity bills

¹ Department of the Environment and Energy, [Regulation Impact Statement – the introduction of the Default Market Offer \(DMO\) price cap and reference bill on retail electricity prices](#), p.13.

and price comparator websites. We discuss opportunities to improve pricing information disclosures in these different media in our submission.

Reference price comparisons

The Code requires retailers to provide consumers with a quick, generalised impression of the relative value of an offer. This provides information to those consumers who do not invest the time to undertake a full offer search with the Energy Made Easy (EME) price comparison website (run by the Australian Energy Regulator (AER)) based on their individual consumption information.

In June 2020 the ACCC and AER published jointly commissioned research that tested how consumers understand different explanations and presentations of energy price comparison information. One key recommendation is that energy advertisements should explicitly state that the reference price is set by the Government. Secondary to this, the research also found that calling the reference price the 'comparison price' helped consumers to understand its purpose. This would improve consumer comprehension and make the comparison framework more credible in the eyes of consumers.

There is a trade-off between detail and comprehension but considering the value of the Code in the overall regulatory context can inform the right balance. We consider that the Code comparison information should be made simpler and clearer to enhance comprehension, by:

- removing the lowest possible price concept in favour of reliance on the reference price comparison percentage
- mandating that retailers' price communications refer to the reference price as the 'comparison price set by the Government'.

To prevent confusion, we continue to call the reference price by its current name throughout the rest of our submission.

We also discuss the merits and timing of any proposal to include reference price comparisons on electricity bills or price comparator websites.

The AER is consulting on issues that will inform its Bill Contents and Billing Requirements Guideline (Better Bills Guideline). The Better Bills Guideline is being developed following a rule change request submitted by the Honourable Angus Taylor MP, Minister for Energy and Emissions Reduction.

We consider that the reference price comparison percentage should be required for residential bills to enable a simple comparison with offers from other retailers.

However, we consider that the inclusion of comparison percentages on price comparator websites is a complex issues which requires more thought. The AER's next review of the Retail Pricing Information Guidelines will present an opportunity to consider whether the information should appear on EME and more consumer research would be useful to inform this decision. The impacts of the application of the Consumer Data Right to energy on private comparators should also be taken into account.

Price cap requirements

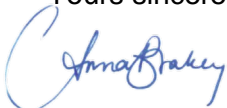
The coverage of the Code's price cap provisions should be expanded to embedded networks, which are private distribution networks common in apartment blocks, caravan parks and retirement villages. Embedded networks often have the effect of restricting consumers to a single electricity provider who is either the owner of the site or sells

electricity on the owner's behalf. The Code's Default Market Offer (DMO) provisions cap standing offer prices to protect those not engaged in the market from being exploited by retailers. However, customers that are supplied electricity by means of an embedded network are expressly excluded from the Code.

The AER's retail exemption guideline imposes a price cap on energy sales to small customers in embedded networks who are restricted from accessing market competition, and who include some of the most financially vulnerable consumer groups. Where the position of the incumbent provider has been outsourced to an authorised retailer, the AER's retail exemption guideline (and therefore price caps) do not apply. A gap in consumer protections therefore exists between these 2 price cap mechanisms, which would otherwise provide comparable protections to all small customers in the NEM. We recommend that this gap be eliminated by extending the DMO price cap to all retailers' offers to small customers in embedded networks.

Our views are set out in more detail in the attached submission. We would welcome the opportunity to discuss in more detail some of the matters raised in your consultation paper and this submission. To arrange a meeting or for any questions about this submission, please contact Lyn Camilleri, General Manager, Electricity Markets Branch, on (03) 9290 1973.

Yours sincerely



Anna Brakey
Commissioner

Code post-implementation review submission

1. Key points

1.1. The Default Market Offer (DMO)

- The Code is performing well against the objective of limiting standing offer prices. The DMO has significantly reduced prices paid by standing offer customers. It has also reduced advertised standing offer prices.
- Our compliance monitoring shows that retailers have priced the vast majority of their advertised standing offers at or below the price cap. Where retailers overcharged customers, our engagement led to pricing adjustments and financial remediation for affected customers.
- Market offer prices have not increased because of the DMO pricing reform.
- Increasing numbers of residential customers took up market offers. But we are concerned that the proportion of small businesses on standing offers remains steadily high and has increased in some regions. We are working with businesses to help them get the best out of the market.
- We **recommend** that the Code be amended to make the DMO apply as a cap on retailers' offers to embedded network customers who cannot rely on competitive forces to keep a downward pressure on prices.

1.2. Reference price

- The reference price requirement has increased retail price transparency and improved offer comparability.
- The comparison percentage is a reliable 'rule of thumb' guide on the relative values of offers, especially for residential flat rate offers. However, there are opportunities to enhance reliability for small business offers, such as by adjusting regional usage benchmarks to better reflect actual usage data. We are working with the AER to enhance the reliability of the comparison framework for small businesses.
- Less customers are on offers with conditional discounts than previously. And those who remain on such offers are increasingly achieving those discounts.
- Price incentives such as sign-up, anniversary or refer a friend credits are common. The Code satisfactorily regulates these practices in line with the transparency objective. We also consider that it is not necessary to capture non-financial incentives in the Code's communication requirements.
- The ACCC uses a range of tools to encourage compliance and to enforce the Code's communication requirements. We balance consumers' interests in price transparency with retailers' ambitions to innovate. We have taken one enforcement action against a retailer for an alleged breach of the Code. Based on our compliance monitoring, industry compliance has improved since the Code was introduced.
- Consumer studies find that more consumers recognise the benefit of the 'apples with apples' comparison that is possible under the reference price requirement and many can use the reference price comparison and price estimate to pick the cheapest offers.

However, consumers also tend to find the current approach to information disclosure complex and confusing.

- There are opportunities for retailers to use simpler, clearer and more easily understood language when communicating offered prices. This can be achieved in 2 ways:
 1. Remove the requirement for offers to include an annual dollar estimate.
 2. Require each relevant offer's comparison percentage for the unconditional price and any proportional conditional discount to be expressly compared to the 'comparison price set by the Government'.
- Our views are informed by ACCC and AER commissioned research that tested how consumers understand different explanations and presentations of energy price comparison information.
- Communicating the reference price policy more broadly will further improve comprehension and consumer benefits.
- We **recommend** including the reference price comparison percentage on residential electricity bills by adding the requirement to the AER's forthcoming Better Billing Guideline.
- It is premature to extend the reference price comparison requirements to price comparator websites shortly before introduction of the Consumer Data Right (CDR). Government should consider the need for additional regulation after the CDR has been implemented across the energy sector and its effects on the market for comparison services are known. More consumer research can be done to inform a decision about whether the reference price comparison should appear on EME.

2. The Default Market Offer (DMO)

Since 1 July 2019 the DMO price caps have protected standing offer customers from paying excessive prices.

The DMO is the maximum yearly price an electricity retailer can charge certain standing offer customers in New South Wales (NSW), South Australia (SA) and south-east Queensland (SEQ).

The DMO has brought price reductions for the minority of small customers who remain on standing offers. Market offer prices have not increased post implementation of the DMO, contrary to some stakeholders' initial concerns.

Standing and market offer price trends for residential and small business customers are summarised below.

2.1. The DMO has reduced prices for standing offer customers

Residential

Our customer billing data analysis shows that effective prices for residential standing offer customers decreased from 2018 to 2020. Across all NEM regions combined, effective prices decreased by 4.3% from 2018 to 2019, then by another 6.3% from 2019 to 2020.²

² ACCC, [Inquiry into the National Electricity Market – May 2021 report](#), Commonwealth of Australia, 24 June 2021, p.19.

The NEM includes the regions where the DMO applies (NSW, SA and SEQ) and Victoria, where the Victorian Default Offer applies. The effective price is the total bill divided by usage.

Similarly, the AER’s analysis of generally available residential flat rate standing offers shows that prices fell substantially between 2019 and 2020 as DMO pricing reforms removed inflated offers from the market (see Table 1).

Table 1: Change in residential standing offer prices using average consumption

Jurisdiction	Distribution Network Area	Change in Median Offer (%)	
		Jun 2019 – Jun 2020	Jun 2020 – Feb 2021
Queensland	Energex	-7.8	-4.4
NSW	Ausgrid	-10.5	-0.8
	Endeavour Energy	-13.7	-0.9
	Essential Energy	-12.2	+0.5
South Australia	SA Power Networks	-13.3	-5.7

Source: AER, State of the Energy Market 2021, Table 6.2.

Small business

Effective prices for small business standing offer customers reduced by 7.5% between 2018 and 2019 and increased by 1.4% in the next year in all NEM regions combined. This increase is likely because of large reductions in small business usage in 2020.³

2.2. Retailer price cap compliance

The ACCC promotes, monitors compliance with, and enforces the Code’s price cap requirements.

We regularly check all relevant standing offers on EME against the price cap. Our checks show that the vast majority of standing offers comply with the price cap. In the last financial year, we identified 38 standing offers that were priced above the cap, which was less than 4% of offers to which the price cap applies.

Over the Code’s first 2 years, we have engaged with 4 retailers who had overcharged customers. These retailers have since all provided affected customers with appropriate financial remedies. We have also enforced compliance with the Code’s communication requirements, including issuing an infringement notice, as discussed at part 3.2 below.

To further improve retailer compliance, we also took the following steps:

- In April 2021 we issued a joint ACCC/AER communication to remind retailers to ensure the accuracy of their EME offers and comply with the price cap.
- We recently published minor updates to our [Guide](#). They reflect changes in the AER’s latest DMO determination for time of use offers, and should reduce retailer errors in respect of these offers.

The ACCC will continue to monitor compliance and may take enforcement action against retailers who breach the price cap requirements.

³ ACCC, [Inquiry into the National Electricity Market – May 2021 report](#), Commonwealth of Australia, 24 June 2021, p.19.

2.3. Customers on standing offers

The high and increasing proportion of residential customers on market offers is good news because effective prices for market offers tend to be lower than for standing offers.

The proportion of residential customers on standing offers decreased between quarter 3 of 2018 and quarter 3 of 2020. Quarter 3 covers the months of July, August and September. The change was most pronounced in NSW, where the standing offer proportion reduced from 14% to 9%. It reduced to 9% in SEQ and 7% in SA.⁴

However, the overall proportion of small business customers on standing offers remained steadily high in that period, and increased slightly in NSW between quarter 3 of 2019 (17%) and quarter 3 of 2020 (20%). In SEQ and SA, 18% and 14% respectively were on standing offers as at quarter 3, 2020.⁵

The ACCC remains concerned about the stubbornly high proportion of small businesses on standing offers. One factor appears to be that many small businesses have low usage, which reduces the financial benefit from switching to a better offer. Small businesses may not concern themselves with switching offers if electricity is just a small fraction of their trading costs.

We have released a [fact sheet](#) to assist small businesses to engage with the market, and have engaged with the Department of Industry, Science, Energy and Resources (Department) about the Government's business energy advice program.⁶ It was launched in August 2019 and delivers consultations to help small businesses discover industry specific energy saving opportunities and choose better energy deals.

2.4. The DMO does not appear to have increased market offer prices

A concern with the introduction of the DMO was that retailers would increase prices for market offer customers to make up for lost revenue from standing offer customers. There was a perceived risk by some that the DMO may result in the best available market offers increasing in price and that it would reduce price dispersion.⁷

We have not found evidence to date in our retailer billing data that the DMO pricing reform has had an adverse effect on prices paid by customers on market offers. This analysis looks at actual amounts paid by consumers. Similarly, the AER's analysis of market offer prices shows that after 1 July 2019 cheaper offers have remained while the most expensive offers have disappeared.⁸

Residential

- Between 2018–19 and 2019–20 the median market offer effective price paid by residential customers (c/kWh) decreased by 2% in NSW and 0.6% in SA, but increased by 2.4% in Victoria.

⁴ ACCC, [Inquiry into the National Electricity Market – May 2021 report](#), Commonwealth of Australia, 24 June 2021, Appendix E (4. Residential Standing Offer).

⁵ ACCC, [Inquiry into the National Electricity Market – May 2021 report](#), Commonwealth of Australia, 24 June 2021, Appendix E (10. SME Standing Offer).

⁶ For information about the program, see <https://businessenergyadvice.com.au/>.

⁷ Department of the Environment and Energy, [Regulation Impact Statement – the introduction of the Default Market Offer \(DMO\) price cap and reference bill on retail electricity prices](#), pp. 26-8.

⁸ AER, [Final Determination – Default Market Offer Prices 2021-22](#), Commonwealth of Australia, 27 April 2021, Appendix B. Also, AER analysis of August 2021 market offer prices.

- From 2018–19 to 2019–20 overall median market offer effective prices decreased by more than changes in supply costs (see table 3.4 from our May 2021 Inquiry Report, reproduced as Table 2 below).⁹

Table 2: Changes in residential median market offer effective prices paid and estimated price impacts from changes in supply costs

	Change in median market offer price paid (c/kWh; 2018-19 to 2019-20) *	Estimated average price impact due to network, wholesale and environmental costs (c/kWh; 2018-19 to 2019-20)
Victoria	2.4%	5.4%
NSW	-2.0%	-2.1%
SA	-0.6%	2.4%
All	-0.2%	0.6%

Source: ACCC analysis of retailer billing and cost stack data.

*For customers who use 10-15 kWh/day, which is representative of the average residential market offer usage.

Small business

- Between 2018–19 and 2019–20 the median market offer effective price paid by small business customers (c/kWh) reduced by 0.4% in NSW and 1.4% in SA, but increased by 2.9% in Victoria.
- The comparison of small business median market offer effective prices with changes in supply costs is mixed (see table 3.5 from our May 2021 Inquiry Report, reproduced as table 3 below).¹⁰ However, the most significant extent to which price changes were greater than the cost impacts was less than 1%.

Table 3: Changes in small business median market offer effective prices paid and estimated price impacts from changes in supply costs

	Change in median market offer price paid (c/kWh; 2018-19 to 2019-20) *	Estimated average price impact due to network, wholesale and environmental costs (c/kWh; 2018-19 to 2019-20)
Victoria	2.9%	2.1%
NSW	-0.4%	-1.0%
SA	-1.4%	5.3%
All	0.7%	0.5%

Source: ACCC analysis of retailer billing and cost stack data.

*For customers who use 40+ kWh/day, which is representative of the average small business market offer usage.

We excluded SEQ from this analysis because of the impacts of the Queensland Government COVID-19 rebates on effective prices, which we were not able to isolate.

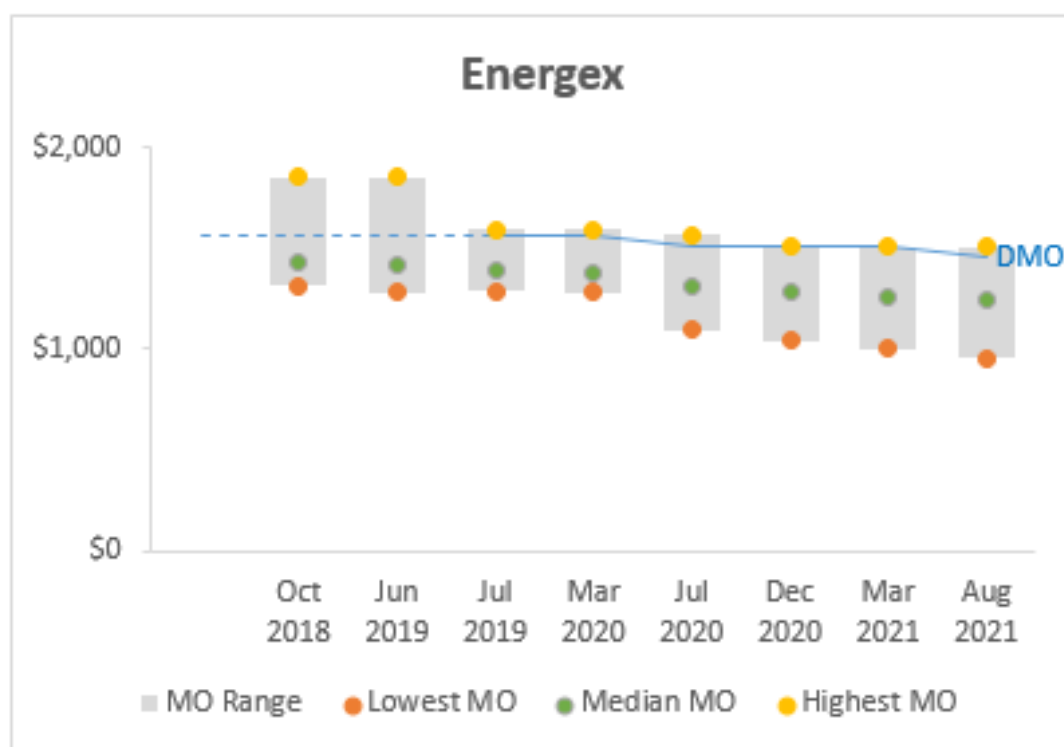
⁹ ACCC, [Inquiry into the National Electricity Market – May 2021 report](#), Commonwealth of Australia, 24 June 2021, p.25.

¹⁰ ACCC, [Inquiry into the National Electricity Market – May 2021 report](#), Commonwealth of Australia, 24 June 2021, p.26.

Advertised market offer price trends

A complimentary way to assess the impact of the DMO on market offers is to consider trends in the prices of advertised offers. The AER has analysed changes in market offer prices in each of the 5 covered network distribution areas. The following figure is broadly representative of trends in market offer prices for residential flat rate tariffs in all regions¹¹:

Figure 1: Changes in market offer prices in the Energex region, residential flat rate tariff



Source: AER.

Note: The blue dotted line shows the period before the DMO took effect on 1 July 2019.

It shows that the initial period of the reform was characterised by the elimination of the highest priced offers. The best available market offers also became cheaper after March 2020, and the median prices fell, which suggests that there continue to be many competitive offers available.

Attachment 1 to this submission includes specific detail about the price changes for residential and small business customers in each NEM region.

2.5. Application of the price cap

We recommend that the DMO price cap be expanded to cover retailers' offers to embedded network customers.

Consumers in embedded networks who purchase electricity from authorised retailers do not benefit from the Code's cap on standing offer prices and have limited access to competition.

¹¹ AER, [Final Determination – Default Market Offer Prices 2021-22](#), Commonwealth of Australia, 27 April 2021, p. 71.

Embedded networks are common in apartment blocks, caravan parks and retirement villages, which include a large number of financially vulnerable consumers.

Embedded network operators are not integrated into national market systems and embedded network infrastructure is often not to national market specifications. This creates barriers for customers who attempt to purchase electricity from any businesses other than the incumbent embedded network electricity provider. Often the incumbent provider is the owner or operator of the site and is permitted to sell electricity through the Retail Law's retail exemption provisions administered by the AER. Given the near monopoly of such providers, the AER requires them to comply with a price cap through the imposition of conditions on retail exemptions.

Where the position of the incumbent provider has been outsourced to an authorised retailer, retail exemptions do not apply. The same near monopoly arrangement exists but there is no mechanism under the Retail Law to impose a price cap. This is a gap in the current consumer protection framework. These consumers are the least protected from price increases and should be given comparable protections to other consumers.

The Code's price cap on standing offer prices applies only to consumers who are small customers under section 6 of the Code, which expressly excludes supply by means of an embedded network. We favour the removal of this exclusion in relation to the price cap requirements.

We do not advocate for the Code's communication requirements to apply to offers for embedded network customers. With severely restricted access to competition, there is no need to impose communication requirements designed to help consumers who can shop around for better offers.

Recommendation 1:

Apply the Code's caps on standing offer prices to retailers' offers to small customers in embedded networks.

2.6. DMO determination methodology

The AER determines DMO prices each year for residential and small business customers in each of the 5 covered network distribution areas. The default price has been updated each financial year since DMO1 in 2019, with adjustments for:

- forecast changes in environmental, wholesale and network costs
- changes in consumer price index (CPI) for residual costs (which includes retail costs).¹²

The ACCC considers that the AER struck an appropriate balance in its methodology for setting DMO prices. It has maintained prices for standing offer customers at levels that represent a reasonable fall-back position, whilst not being so low that it would risk stifling competition or would not enable retailers to recover their efficient costs in servicing customers.

We consider it appropriate that the AER is reviewing the methodology it uses to fulfil its DMO setting functions 2 years into these reforms. For the reasons outlined in the next section, we

¹² AER, [State of the Energy Market 2021](#), Commonwealth of Australia, 2 July 2021, p. 266.

will work with the AER to determine whether the AER can make any improvements in setting the model annual usage for small business customers.

Reliability of the reference price comparison percentages to identify cheaper offers

Retailers have to use the model annual usage to calculate each applicable offer's reference price comparison percentage. The AER uses the model annual usage to calculate the DMO. The AER sets the model annual usage at a level it considers broadly representative at the time of making its determination.

The customer billing data we collected from retailers shows that many small customers' usage (particularly small business usage) differs from the consumption benchmarks used by the AER in its DMO determinations.¹³

We therefore analysed how reliable the reference price comparison percentages are to identify cheaper offers for flat rate customers across a range of usage levels.

We found that the comparison percentage framework is a reliable guide as to the value of residential offers because:

- the distribution area-specific model annual usage for residential customers was relatively close to the observed median usage for each region
- the residential usage range was relatively small and normally distributed.

In other words, a residential offer with a better comparison percentage tended to be cheaper than an offer with a worse comparison percentage across a range of household sizes.

On the other hand, the framework could be enhanced for small business consumers.

While it performed well in many offer comparisons, it could be an inaccurate guide on the relative value of offers when a small business customer's specific usage differs substantially from the model annual usage.

We showed in our May 2021 Inquiry Report that in NSW, SA and SEQ, there was wide dispersion of small business usage and significant differences in usage levels. Median small business annual grid usage in 2019 and 2020 was well below the small business benchmark of 20,000 kWh.¹⁴

The AER will re-consider annual usage assumptions as part of its DMO 2022–23 methodology review. We will work with the AER to find the best consumption data set in order to find the most representative model annual usage for each distribution area.

3. Reference price

In this section, we discuss our compliance, data analysis and consumer research insights to measure the Code's performance against its transparency objective.

We also recommend changes to the Code's rules about communicating prices to small customers to make the framework simpler and clearer for consumers.

¹³ ACCC, [Inquiry into the National Electricity Market – May 2021 report](#), Commonwealth of Australia, 24 June 2021, Appendix E (3. Residential Usage, 9. SME Usage).

¹⁴ ACCC, [Inquiry into the National Electricity Market – May 2021 report](#), Commonwealth of Australia, 24 June 2021, Appendix E (9. SME Usage for all NEM regions combined).

3.1. Retailer practices

Reference price policy has increased price transparency

The policy has increased retail price transparency and improved offer comparability. It has addressed the 'discount off what' problem that plagued the retail market. Price competition tended to play out through headline discounting that often misled consumers because retailers applied discounts off different price bases.

The encouraging compliance trends have enabled consumers to benefit from the policy by making easier and generally reliable value comparisons across many offers, as shown by our analysis of market offer prices.

Post-reform plan features

Discounting

The proportion of residential customers on market offers with conditional discounts has decreased from 65% (2018) to 59% (2019) to 37% (2020).¹⁵ These include discounts for paying a bill on time or by direct debit. This suggests that retailers are either moving customers onto non-conditional discounts or that customers are engaging in the market and selecting non-conditional discount plans.

The AER has observed that the size of offered discounts also reduced between 2018 and 2020.¹⁶ New rules which came into effect on 1 July 2020 cap conditional discounts at a level that reflects the reasonable cost savings a retailer would expect if a consumer satisfies the conditions attached to the discount.¹⁷

The customer billing data shows that the proportion of small customers on market offers who achieved their discounts increased to high levels between 1 July 2019 and 1 July 2020.¹⁸

Other financial incentives

Newgate is conducting research on behalf of the Department to evaluate the impact of the DMO and reference price policies on electricity consumers. It found in its second evaluation research paper (April 2021) that retailer incentives are becoming more prominent. It reported that 31% of residential and 42% of small business consumers in DMO jurisdictions received an incentive from their electricity provider. Sign-up offers such as referral bonuses and cash back were the most prominent type. Those who switched in the past year were most likely to receive an incentive.¹⁹

¹⁵ ACCC, [Inquiry into the National Electricity Market – May 2021 report](#), Commonwealth of Australia, 24 June 2021, p. 47. See also part 5.5, which discussed the positive trends in the proportions of concession, hardship and payment plan customers on conditional discount offers.

The AER has reported the same trend in relation to generally available offers on EME. At February 2021 around 90% of offers in Queensland, NSW and SA had guaranteed prices (up from 44–60% in 2019)(AER, [State of the Energy Market 2021](#), Commonwealth of Australia, 2 July 2021, p. 256).

¹⁶ AER, [State of the Energy Market 2021](#), Commonwealth of Australia, 2 July 2021, p. 256.

¹⁷ Australian Energy Market Commission (AEMC), [Regulating conditional discounts – Rule determination](#), AEMC website, 27 February 2020, accessed 21 April 2021; Essential Services Commission, [Ensuring contracts are clear and fair: Final decision](#), Victorian Government website, 28 February 2020, pp 55–62.

¹⁸ For residential customers, 87% of NSW, 91% in SA and 86% of SEQ customers achieved their discounts as at 1 July 2020 (Appendix E – 5. Residential Cond Discounts). For small business customers, 85% in all NEM regions combined (including Victoria) achieved their discounts as at 1 July 2020 (Appendix E – 11. SME Cond Discounts).

¹⁹ Newgate, [Default Market Offer and Reference Price Evaluation Research \(Wave 2\) Draft Report](#), April 2021, p.9.

Newgate also found that consumers could easily understand incentive offers, such as sign up credits, and were often drawn to them. Some used financial incentives as a shortcut to avoid a convoluted comparison of rates.²⁰

Retailers generally agreed that incentives are the new discounts.²¹

While these types of incentives may complicate the task of comparing offers for consumers, we do not consider that these types of incentives raise new pricing concerns of a kind that may undermine the Code's performance against the transparency objective. The Code has satisfactory and comprehensive disclosure requirements for these incentives to help consumers understand the conditions and value attached to these incentives.

Our [Guide](#) explains how we expect retailers to categorise financial incentives and charges, including whether to include them in the calculation of the unconditional price. This helps to achieve consistent approaches across retailers for the benefit of consumers.

Non-financial incentives

Some retailers promote non-financial incentives with energy plans, such as discounts off gift cards, retail brands, theme park entry or the chance to earn frequent flyer points.

Newgate's research found that consumers are more likely to choose one plan over another based on price rather than rewards. Only about a third of study participants reported that they considered rewards.

We therefore consider that regulating non-financial incentives within the Code's price communication requirements is not necessary at this stage to allow consumers to more easily find a cheaper offer. It would also be challenging to assign the financial value of these incentives if included in an offer's comparison percentage.

3.2. Retailer compliance with the communications requirements

The ACCC regularly assesses whether retailers' advertising practices comply with the Code's communication requirements. We also assess whether retailers comply with the general rules regarding advertising contained in the ACL.

Businesses must not engage in conduct that is likely to mislead or deceive consumers. They must ensure that the information displayed in their advertisements does not contain false or misleading claims or statements or otherwise breach the ACL. Competition and consumer issues arising from the pricing and selling of essential services are a current ACCC enforcement and compliance priority.

The ACCC has discretion about the matters we investigate and how we resolve concerns. We apply a case by case assessment, following the general approach set out in our Compliance and Enforcement policy.²² We will continue to engage with retailers to achieve our compliance objectives and to deliver outcomes that provide the greatest overall benefit.

Over the last 2 years, we have engaged with six retailers about communication practices that we alleged were not consistent with the Code. Most followed our earliest compliance monitoring activities. Compliance has improved.

²⁰ Newgate, *Default Market Offer and Reference Price Evaluation Research (Wave 2), Draft Report*, April 2021, p.50.

²¹ Newgate, *Default Market Offer and Reference Price Evaluation Research (Wave 2), Draft Report*, April 2021, p.65.

²² For more information, see <https://www.accc.gov.au/about-us/australian-competition-consumer-commission/compliance-enforcement-policy-priorities>.

The types of issues we observed include retailers not clearly and conspicuously stating all of the prescribed Code information or miscalculating the reference price comparison percentage.

In July 2020 the ACCC took its first enforcement action against a retailer for an alleged breach of the Code. The ACCC alleged that Locality Planning Energy (LPE) breached the Code by publishing an offer on its website but failing to include:

- a comparison of its offered price to the reference price
- the total amount a customer consuming an average amount of electricity would pay in a year based on the offered price
- the distribution region and type of small customer to which the offer applied.

LPE paid a penalty of \$10,500 after the ACCC issued it with an infringement notice.²³

Electricity retailers have now had sufficient time to ensure they comply with the Code. The ACCC will not hesitate to take enforcement action against those who fail to do so.

The ACCC considers that retail product innovation is an important market feature. Current examples include products like subscription type plans. We encourage retailers who plan to offer new products to contact us to discuss the communication of these types of offers.²⁴

3.3. The consumer experience

A key purpose of the Code is to allow consumers to easily compare offers.

In 2019 the ACCC and AER jointly commissioned research, *Testing Comprehension of the Reference Price*, from the Behavioural Insights Team (BIT). This research helps us to understand if different explanations and presentations of energy price comparison information would improve consumer comprehension of retail offers. A copy of BIT's final report is available on the ACCC's [Electricity Retail Code webpage](#).

The study found that many participants used the Code concepts (reference price, comparison percentage and lowest possible price) to select the cheapest offer across a series of advertisements despite having a low understanding of them.²⁵

BIT also found that the use of 2 metrics (comparison percentage and lowest possible price) together could be confusing consumers.²⁶

Consumer research also shows that while consumers recognise that the reference price policy should make it easier to compare offers, its complexity and consumers' lack of familiarity made it difficult to understand and use when looking at offers.

Newgate found that when prompted, around a quarter of consumers who looked into electricity offers in the past year reported using the reference price during their search. However, few participants mentioned spontaneously that they refer to it when looking into offers and observations suggest it currently has limited use during the market investigation process.²⁷

²³ ACCC, [Locality Planning Energy pays penalty for alleged breach of the Electricity Retail Code](#), ACCC website, 29 July 2020, accessed 10 August 2021.

²⁴ For more information, see <https://www.accc.gov.au/business/industry-codes/electricity-retail-code/faq-for-electricity-retailers>.

²⁵ The Behavioural Insights Team (BIT), [Testing comprehension of the reference price – Final report](#), 2019, p. 11.

²⁶ BIT, [Testing comprehension of the reference price – Final report](#), 2019, pp. 11, 14.

²⁷ Newgate, *Default Market Offer and Reference Price Evaluation Research (Wave 2) Draft Report*, April 2021, p.39.

Clearer and simpler Code comparison information

We make 2 recommendations that would result in clearer and simpler Code comparison information. Amendments to the Code's communication requirements that value simplicity and clarity of information would increase consumer understanding and use of the Code comparison information. This approach acknowledges consumers' tendency to want to use mental shortcuts and not engage with extra information in the decision-making process.

BIT's key recommendations to improve comprehension are to:

- use simple descriptive terms that focus on the key and relevant aspects of the Code concepts
- avoid relying on critical information or explanation in fine print
- prioritise improving comprehension of the most important concepts. For example, energy advertisements should explicitly state that the 'reference price' (as a concept that could be described as the comparison price) is 'set by the government'.²⁸

In the BIT online trial, telling consumers that the reference price is set by the government resulted in a 15.8% increase in comprehension.²⁹ Almost all participants in the study said they preferred a descriptor that the government or AER set the reference price to make it clear that it is not set by the energy company. Participants reported higher confidence in the government and the regulator, which would give the advertisements credibility as consumers trust these bodies to look out for their best interests.³⁰ Given this persuasive finding, we strongly support an explicit statement in price communications that the reference price is set by the government.

Recommendation 2:

Require electricity retailers to state their offers' percentage comparison(s) as being relative to the 'comparison price set by the government'.

There is a very small window to influence consumer decision making, and only the top-level message will be processed by most consumers.³¹ The top level price-related message would be easier to notice if the Code requires the comparison percentage to be communicated without the lowest possible price.

The comparison percentage-only model gives consumers a simple, clear and straightforward comparison tool.

We consider that this will enhance the Code's value as a comparison tool to give a quick indication of an offer's comparative price. This approach also acknowledges the Code's place as but one piece of a suite of consumer protections empowering consumers to manage their energy costs.

The Essential Services Commission of Victoria (ESCV) commissioned BIT to conduct an online experiment to determine the most effective way to present information about energy plans in consumer advertisements. BIT found that a headline that expressed the difference

²⁸ BIT, [Testing comprehension of the reference price – Final report](#), 2019, pp. 50-2.

²⁹ BIT, [Testing comprehension of the reference price – Final report](#), 2019, p. 52.

³⁰ BIT, [Testing comprehension of the reference price – Final report](#), 2019, p. 17.

³¹ See for example, BIT, [Testing comprehension of the reference price – Final Report](#).

between the unconditional cost of the plan and the reference price as a percentage discount was most effective in enabling consumers to correctly choose the cheapest plan.³²

We agree with BIT's hypothesis that a headline percentage means there will likely be conditions attached, and/or that the cost will vary, which encourages consumers to read the full details. This reduces the chance of confusion with the actual amount to be billed.

There is a real risk that the familiarity of a dollar figure leads consumers to make quick, incorrect assumptions that the lowest possible price is in fact the amount they will be billed or some kind of price cap or floor. The issue could be further exacerbated by Newgate's findings about the apparent preference consumers have for use of the lowest possible price over the comparison percentage.

To implement this change, sections 12(3)(c) and 13 of the Code should be deleted.

We acknowledge that if retailers are not required to display a dollar estimate using a common benchmark, they may advertise price estimates that are calculated according to different usage levels. To help ensure price transparency, the ACCC will actively assess pricing information for compliance with the ACL's prohibition against the making of false or misleading representations with respect to the price of goods and services.

We have made this recommendation considering the roll out of the Consumer Data Right (CDR) in energy. The CDR will allow consumers to require their energy retailer to share their consumer data (for example billing or account data) with an accredited service provider, such as a price comparison service. That provider can then use it together with product data to offer the consumer tailored, competitive and individually priced goods and services. We expect that consumers will increasingly select goods and services from such personalised offers received via accredited service providers.

Recommendation 3:

Electricity retailers' offers not be required to state the lowest possible price or a personalised estimate.

Consumer education

Newgate reported that consumers felt mostly positive about the policy, mainly because they recognised that it makes it easier to shop around for electricity deals. Among those who felt negatively towards the policy, the main reason was that it is too confusing and complicated. These findings suggest that there remains an ongoing need to educate consumers to help them to recognise the potential benefits to them and also to simplify the policy.³³ Increasing comprehension of the Code information is likely to improve decision-making.³⁴

We have been working to improve consumer comprehension of the Code. We conducted a campaign to increase consumer awareness of the reference price. We commissioned consumer testing to inform the improvements to electricity prices and plans information on the [ACCC website](#). We ran a social media campaign aligned with the 1 July price changes which promoted the use of the comparison percentage to compare offers.

³² BIT, [Testing the presentation of energy price information – Final Report](#), 10 December 2019, pp. 2, 12.

³³ Newgate, *Default Market Offer and Reference Price Evaluation Research (Wave 2) Draft Report*, April 2021, p.8.

³⁴ See for example: Consumer Policy Research Centre, *Five pre-conditions of effective consumer engagement – a conceptual framework*, p.4.

Consumer awareness and comprehension of the reference price policy will improve through a wider education campaign that is optimised by consumer research and testing.

Reference price comparison on bills or price comparator websites

The Department's consultation paper also invites stakeholder feedback on whether the use of the reference price comparison should be expanded, for example, to be included in electricity bills or price comparator websites.

Electricity bills

We have considered this issue in the AER's Better Bills Guidelines consultation process, where the Behavioural Economics Team of the Australian Government (BETA) investigated how the reference price comparison on energy bills can aid consumer switching.

BETA found that including it on bills seems to be highly valued by consumers and may prompt some consumers to shop around. However, it could induce some complacency for consumers whose plans are cheaper than the reference price. While this may be true, BETA did not assess this potential for complacency against the complacency and disengagement from consumers that already exists in this sector.³⁵

As noted in our submission to the AER we consider that the reference price comparison percentage should be required for applicable residential bills together with information about how much they could save if they switched to their current retailer's best offer.³⁶ By including the reference price comparison on the best offer notification, a consumer has the information to enable a simple comparison with offers from other retailers. We do not consider that this should extend to small business bills at this time.

Price comparator websites

Price comparator websites are either commercially or government operated.

Some, but not all, commercial comparators display offers with the Code's reference price comparison percentages. The ACCC's [Guide to the Electricity Retail Code](#) states our expectation that these websites 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. While the Code does not expressly apply to comparator websites, retailers that use comparator websites should ensure that their offers are accurately presented in accordance with the Code.

The introduction of the CDR in energy over the next 2 years could bring large changes to the comparison industry. For example, there may be much less need for comparisons based on average usage if the CDR can increase consumer trust in providing personal information and reduce the time taken to conduct a personalised offer search. Given the uncertainty as to how the comparison services will respond to the introduction of the CDR, we recommend evaluating the need to regulate price comparators with reference price comparison obligations after this imminent reform has been implemented across the energy industry. In the meantime, the ACCC will continue to monitor reports received about commercial price

³⁵ Department of Industry, Science, Energy and Resources, *Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019 – Post-Implementation Review*, p.12.

³⁶ ACCC, *Submission to AER Developing the better bills guideline consultation*, 20 September 2021, p.5. Published on the AER website: <https://www.aer.gov.au/retail-markets/guidelines-reviews/better-bills-guideline/consultation>

comparators and take enforcement action against those who make false or misleading claims.

The AER's Retail Pricing Information Guidelines set out retailer obligations in providing data to EME. Annual estimates for residential offers in EME are based on the AER's electricity consumption benchmarks, which are calculated according to household size as required by the National Energy Retail Rules. The design of EME's current features is the result of extensive consumer research and stakeholder engagement by the AER.³⁷

To avoid unintended consequences, we consider that more consumer research should be done to inform a decision about whether the reference price comparison should appear on EME. The AER's next review of the Guidelines will present an opportunity to consider the issue further.

³⁷ See: <https://www.energymadeeasy.gov.au/hot-topics/energy-made-easy-has-changed>.

Attachment 1 – Advertised market offer price trends

Residential

Between June 2019 and August 2021, the prices (\$) of residential offers in SEQ, NSW and SA changed as follows:³⁸

- The cheapest market offers fell by 25.4% in SEQ, 14.9 – 18% in NSW and 17.3% in SA. The AER has observed that the decreases in the lowest market offer prices are part of a trend where small retailers, some of whom are new entrants, continue to aggressively price their market offers.
- The median market offer prices fell by 11.4% in SEQ, 5.7 – 10.9% in NSW and 12% in SA.
- The higher priced market offers became cheaper after June 2019. The prices of the most expensive market offers fell by 18.5% in SEQ, 7.4 – 16.2% in NSW and 15.5% in SA.³⁹

In Victoria, between June 2019 and February 2021, the prices (\$) of the equivalent residential offers changed as follows:

- The cheapest market offers increased in 2 network areas by 1.8 and 4.7% but decreased in the other areas by between 2 – 3.9%.
- The median decreased by 4.7 – 10.4% depending on the network area.
- The most expensive market offers fell in all areas by between 20.5 – 27.6%.⁴⁰

Small business

The AER has analysed changes to the price (\$) of generally available single rate SME market offers since the introduction of the DMO. Between June 2019 and August 2021 offered prices changed as follows:

- The cheapest market offers fell by 14.9% in SEQ, 3.3 – 9.1% in NSW and 17.6% in SA.
- The median market offer prices fell by 10.6% in SEQ, 6.4 – 15.4% in NSW and 13.2% in SA.
- The prices of the most expensive market offers fell by 15.7% in SEQ, 0.5 – 19.5% in NSW and 19.7% in SA.⁴¹

³⁸ Single rate generally available residential offers without controlled load.

³⁹ AER, [Final Determination – Default Market Offer Prices 2021-22](#), Commonwealth of Australia, 27 April 2021, Appendix B. Also, AER analysis of August 2021 market offer prices.

⁴⁰ AER, [State of the Energy Market 2021](#), Commonwealth of Australia, 2 July 2021, Figure 6.11 data. At the timing of writing this submission, the most recent Victorian pricing data available to us was to February 2021.

⁴¹ AER, [Final Determination – Default Market Offer Prices 2021-22](#), Commonwealth of Australia, 27 April 2021, Appendix B. Also, AER analysis of August 2021 market offer prices.