AUSTRALIAN COMPETITION & CONSUMER COMMISSION

Guide to the Electricity Retail Code

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Australian Competition and Consumer Commission
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Glossary

AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
ACL	Australian Consumer Law
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*
Comparison percentage	The difference between the reference price and the unconditional price, expressed as a percentage of the reference price. The first version of the guide referred to this as the unconditional percentage.
Communicating prices	A retailer communicates the offered prices to a small customer if the retailer: ▪ advertises, or publishes the prices, or ▪ offers to supply electricity to the customer at those prices, or ▪ gives the customer written notice of a change to the retailer's prices and the offered prices are the prices that apply after the change. This does not include customer bills.
Conditional discount	Discounts that apply only if a customer satisfies certain requirements or conditions. This can include any of the following: ▪ pay on time discounts ▪ bundling discounts (that is, when a customer receives a discount for contracting and/or maintaining an account with a retailer for multiple products or services) ▪ direct debit discounts ▪ conditional rebates ▪ conditional credits such as anniversary or loyalty credits ▪ certain membership-only based sign up credits, and ▪ 'refer a friend' type 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 are met and disregarding any other conditional discount.
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. The guide refers to this as a CL tariff but there are other common names in different states and territories, including: ▪ Off-peak (Australian Capital Territory and New South Wales) ▪ Tariff 31 or Tariff 33 (Queensland) ▪ Tariff 41 (Tasmania). A CL tariff may have one controlled load component (CL1 or CL 2) or 2 controlled load components (CL1 and CL2). Controlled load 1 is typically for electricity that is available for a set number of hours each day. Controlled load 2 is typically for electricity that is usually available for a longer period each day.
Demand tariff	A tariff for supplying electricity if working out the amount a consumer is charged for the supply of electricity during a period at prices that include that tariff requires identifying, from among particular sub-periods of the period, the sub-period during which the consumer's demand for supply of electricity is the highest.
DMO	Default Market Offer. This is the reference price and price cap for certain standing offers set by the AER.
DMO final determination	The AER's final determination for DMO prices for the current financial year. The current DMO final determination can be found on the AER website.
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.
Feed-in tariff	An amount that an electricity retailer must pay (or credit) to a consumer for electricity generated by a solar photovoltaic unit of the consumer.
Flat rate tariff	A tariff that includes a fixed daily supply charge, and a variable charge reflecting the volume (in kWh) of electricity consumed. The guide refers to this as a flat rate tariff but it is also known as a single rate tariff.
Flexible tariff	See ToU tariff definition. The guide refers to a flexible tariff as a time of use tariff.
Green charges	Any price a representative customer pays for retailers to source energy from an accredited green power source. The guide refers to green charges as either optional, or charges that are an intrinsic feature of the offer. For example, the charges in an electricity offer that is sourced from 100% green power. Please see the section on green charges in the guide for further information.
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 are met. If there are no conditional discounts, the lowest possible price is equal to the unconditional price.
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.
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 debit dishonour fee ▪ a fee for a service provided on request as needed such as a fee for a meter read requested by a customer.
Price cap	Maximum allowable price of standing offer prices. This is also the reference price. The price cap/reference price is set out in the DMO final determination.
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	The annual price set by the AER for a financial year in relation to electricity supply to a small customer of a particular type in the distribution region. The reference price acts as a price cap for standing offers. The reference price/price cap is set out in the DMO final determination. This is referred to as the reference bill in the DMO final determination.
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.
Residential customer	A customer who purchases electricity principally for personal, household or domestic use at their premises.
RPIG	AER's binding *Retail Pricing Information Guidelines*, made under the NERL.

SAPN	SA Power Networks
Solar tariff	A tariff that includes a solar feed-in tariff, which is an amount an electricity retailer must pay (or credit) to a consumer for electricity generated by a solar photovoltaic unit of the consumer. The guide refers to solar and non-solar tariffs. A non-solar tariff is a tariff that does not include a solar-feed in tariff.
Small business customer	A customer who does not purchase electricity principally for personal, household or domestic use with electricity supply that is, or will be, at a rate of less than 100 MWh a year. This includes a customer who consumes energy at a business premises.
Small customer	Any of the following solar and non-solar tariffs: ▪ 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.
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.
ToU CL tariff	A controlled load tariff that has a time of use structure.
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 explain concepts and to assist in the interpretation of the Code, rather than an endorsement to be used in communications with consumers. We note that some terms may have different or more specific definitions and uses in the NERL, NERR and in guidelines made by the AER (including the RPIG).

1. Introduction

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

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

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

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

The ACCC updated this guide in June 2020 to provide further clarity on the Code and to reflect additional requirements of the Code following amendments made in February 2020.[1] The amendments were made primarily to extend the application of the price cap to solar and residential Time of Use (ToU) standing offers, and to solar standing offers for small business customers, commencing from 1 July 2020. There are also additional requirements for retailers related to record keeping and communicating with small customers. In June 2021, the ACCC also updated the examples in this guide illustrating how to calculate unconditional prices for ToU offers (section 4.1.3) to reflect the AER's 2021–22 final determination for default market offer (DMO) prices, commencing from 1 July 2021.

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

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

It is important to note that this document is only intended as a guide for electricity retailers about their responsibilities under the Code. It is not a substitute for legal advice, nor is it intended to comprehensively encapsulate the responsibilities of electricity retailers under the Code, the Australian Consumer Law (ACL), National Energy Retail Law (NERL) and National Energy Retail Rules (NERR). The ACCC intends to do further work to refine the guide taking into account feedback from stakeholders, consumer testing and potential amendments to the Code.

1 *Competition and Consumer Legislation Amendment (Electricity Retail) Regulations 2020.*

2. Requirements concurrent with the Code

2.1 The Australian Consumer Law

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

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

2.2 The National Energy Retail Law

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

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

3. Overview of the Code requirements

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

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

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

Table 1 shows the offers covered by the Code.

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

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

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

Table 1: Summary of offers covered by the Code

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

3.1 Expectations of agents

The Code requirements apply to retailers that are advertising, publishing or making offers through agents. Therefore, the ACCC expects that agents presenting information on behalf of electricity retailers to act in accordance with the Code requirements. When an agent presents information on behalf of an electricity retailer, consumers can expect that this information is the same as what they would receive from the electricity retailer.

3.2 Expectations of comparator websites

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.[2] Therefore, comparator websites are an important tool and have the potential to add significant value for consumers. The ACCC expects 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 to present their offers should ensure that their offers are accurately presented in accordance with the Code. Comparator websites should also follow standards set out by the ACCC in its guide for comparator website operators and suppliers.[3]

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

3 ACCC, *Comparator websites: A guide for comparator website operators and suppliers*, ACCC 2015, https://www.accc.gov.au/publications/comparator-websites-a-guide-for-comparator-website-operators-and-suppliers.

4. Calculating the unconditional price

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

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

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

- any charges
- discounts[4]
- annual recurring fees such as membership and contribution fees, and
- recurring metering charges.[5]

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

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

The unconditional price of an offer must include GST.

Sign-up credits

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

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

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

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

Green charges

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

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

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.

4.1 Checking compliance of standing offers with the price cap

The reference price is the annual price set by the AER for a financial year in relation to electricity supply to a small customer of a particular type in the distribution region. The reference price acts as a price cap in that it is the maximum allowable price for standing offer prices. The reference price/price cap is set out in the Legislative Instrument which forms part of the DMO final determination.[6]

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

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

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

In June 2021, the ACCC updated the examples illustrating how to calculate unconditional prices for ToU offers (section 4.1.3) to reflect the AER's 2021–22 final determination for DMO prices, commencing from 1 July 2021. The AER's 2021–22 final determination for DMO prices contains half-hourly usage profiles for ToU offers (previously hourly), and introduces usage profiles for offers in the SAPN distribution region that have a ToU CL. The figures used in the examples below are illustrative only – some figures are drawn from previous DMO determinations – and retailers should consult the current DMO determination.

4.1.1 Residential and small business flat rate tariffs

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

If the unconditional price[7] calculated using the AER model usage amount is equal to or less than the relevant price cap, the standing offer is compliant with the Code. In example 1, the unconditional price of $1,223 is less than the example's price cap of $1,462 so it is compliant with the Code. In example 2, the unconditional price of $5,730 is less than the example's price cap of $7,240, so it is also compliant with the Code.

Example 1: Residential flat rate

Ausgrid distribution region	Annual profile	Retailer rate (GST)	Total (GST)
Supply charge	365 days	$1.00/day	$365
Annual usage	3,900 kWh	$0.22/kWh	$858
(AER model annual usage)			
Unconditional price			**$1,223**
AER reference price/price cap			**$1,462**

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

7 The first version of the guide referred to the unconditional price as the annual price in the price cap section.

Example 2: Small business flat rate

Ausgrid distribution region	Annual profile	Retailer rate (GST)	Total (GST)
Supply charge	365 days	$2.00/day	$730
Annual usage (AER model annual usage)	20,000 kWh	$0.25/kWh	$5,000
Unconditional price			**$5,730**
AER reference price/price cap			**$7,240**

4.1.2 Residential flat rate with controlled load tariffs

Example 3 shows how to calculate the unconditional price of a residential flat rate standing offer with one controlled load (CL). In example 3, given the retailer's charges and a model annual usage of 6,800 kWh with 2,000 kWh CL usage, the standing offer price is $1,657.50. This is less than the example's prices cap of $2,024 and therefore compliant under the Code.

Example 3: Residential flat rate with one CL

Ausgrid distribution region	Annual profile	Retailer rate (GST)	Total (GST)
Supply charge	365 days	$1.00/day	$365
Supply charge for CL	365 days	$0.10/day	$36.50
General usage (approx. 70% of AER model annual usage)	4,800 kWh	$0.22/kWh	$1,056
Usage for CL (approx. 30% of AER model annual usage)	2,000 kWh	$0.10/kWh	$200
AER model annual usage	6,800 kWh		
Unconditional price			**$1,657.50**
AER reference price/price cap			**$2,024**

However, if the retailer had a usage charge of 30 cents/kWh instead of 22 cents/kWh as shown in example 3A, this standing offer price of $2,041.50 would not be compliant with the Code as it exceeds the example's price cap of $2,024.

Example 3A: Residential flat rate with one CL

Ausgrid distribution region	Annual profile	Retailer rate (GST)	Total (GST)
Supply charge	365 days	$1.00/day	$365
Supply charge for CL	365 days	$0.10/day	$36.50
General usage (approx. 70% of AER model annual usage)	4,800 kWh	**$0.30/kWh**	$2400
Usage for CL (approx. 30% of AER model annual usage)	2,000 kWh	$0.10/kWh	$200
AER model annual usage	6,800 kWh		
Unconditional price			**$2,041.50**
AER reference price/price cap			**$2,024**

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

In example 4, given the retailer's charges and model annual usage of 6,800 kWh with 1,340 kWh CL 1 usage and 660 kWh CL 2 usage, the standing offer price is $1,734.30. This is less than the example's price cap of $2,024 and therefore compliant under the Code. This example has 2 different supply charges for each controlled load component.

Example 4: Residential flat rate with 2 CL

Ausgrid distribution region	Annual profile	Retailer rate (GST)	Total (GST)
Supply charge	365 days	$1.00/day	$365
Supply charge for CL1	365 days	$0.10/day	$36.50
Supply charge for CL 2	365 days	$0.12/day	$43.80
General usage (approx. 70% of AER model annual usage)	4,800 kWh	$0.22/kWh	$1,056
Usage for CL 1 (67% of AER model annual CL usage)	1,340 kWh	$0.10/kWh	$134
Usage for CL 2 (33% of AER model annual CL usage)	660 kWh	$0.15/kWh	$99
AER model annual usage	6,800 kWh		
AER model annual CL usage	2,000 kWh		
Unconditional price			**$1,734.30**
AER reference price/price cap			**$2,024**

4.1.3 Time of use tariffs

ToU tariffs apply different usage charges at different times of the day or week. The simplest ToU tariff is split into peak and off-peak (a 2-period ToU). However, there are also 3-period and 4-period ToU tariff types. An offer which has one shoulder period rate is considered a 3-period ToU offer. An offer with 2 shoulder period rates is considered a 4-period ToU offer.

The AER in its 2021–22 DMO Legislative Instrument sets out the daily usage profiles, which contain usage amounts for each half-hour of the day over a 24-hour period, in each distribution region, without designating particular times as peak, off-peak and shoulder periods and the usage amounts for controlled load. Retailers determine the amount of usage that is allocated to peak, off-peak and shoulder usage periods and their prices for these tariff windows. Retailers must use the AER's daily usage profile to calculate the unconditional price for ToU tariffs. The AER's approach provides retailers with flexibility in setting prices.

This section of the guide sets out how retailers are to calculate the unconditional price for ToU tariffs using the daily usage profiles. As there are many ways retailers can structure ToU tariffs, this guide refers to periods as period blocks and seeks to explain worked examples by the number of period blocks in the offer without categorising the offer into established network tariff structures, such as 2-period or 3-period tariffs.

The Code does not provide for the AER to develop a separate reference price for ToU tariffs. Retailers must use the residential reference price in the relevant distribution region.[8] For ToU tariffs without CL, the relevant price cap is the residential reference price without controlled load. For ToU offers with CL, the relevant price cap is the residential reference price with controlled load.

Retailers are able to calculate the unconditional price of a ToU offer by following the steps below:

Step 1. Calculate the daily usage for each period block based on the start and end times.

The relevant ToU daily residential usage profile (with or without CL) set out in the AER DMO determination should be used. From the profile, add the half-hourly usage amounts that correspond with the start and end time for each period block.

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

Step 2. Calculate the applicable days in the year for each period block by:

- converting the applicable days for each period block into a simple fraction[9], and
- multiplying it by the number of days in the year where the period block applies, based on the start and end date for each block.

Step 3. Calculate the annual usage for each period block by:

- using the daily usage amounts calculated in step 1, and
- multiplying it by the applicable days in the year, calculated in step 2.

Step 4. Calculate the unconditional price by:

- adding the total annual amounts for each component of the offer. For each period block, the total annual amount is based on the rate of the period block multiplied by the annual usage for the block, calculated in step 3.

Examples 5 and 5A below demonstrate how to calculate the unconditional price of a ToU offer using the steps above. As example 5 is an Ausgrid ToU offer without CL, the relevant ToU usage profile from the AER DMO determination is the Ausgrid profile without CL (see Table 2).

Example 5 has 5 period blocks: peak, off-peak and 3 shoulder period blocks. As shown in example 5 step 1 below, the daily usage for each block is calculated by adding the half-hourly usage amounts from the relevant ToU profile that correspond with the start and end time for each period block. For example, for the peak period, the daily usage of 2.3841 kWh is calculated by adding the half-hourly values in Table 2, for the period duration 16:00 – 19:59 (0.2541 + 0.2698 + 0.2875 + 0.3081 + 0.3215 + 0.3232 + 0.3156 + 0.3043).

Example 5 (step 1): Ausgrid residential ToU without CL

Period block	Start and end time	Daily usage
Peak (business days)	16:00 – 19:59	2.3841
Off-peak (all days)	22:00 – 7:29	3.5525
Shoulder (business days)	7:30 – 15:59	3.6316
Shoulder (business days)	20:00 – 21:59	1.1167
Shoulder (weekend)	7:30 – 21:59	7.1324

Table 2: ToU daily residential usage profile without CL (Ausgrid distribution region)

Time	0:00 – 0:30	0:30 – 1:00	1:00 – 1:30	1:30 – 2:00	2:00 – 2:30	2:30 – 3:00	3:00 – 3:30	3:30 – 4:00	4:00 – 4:30	4:30 – 5:00	5:00 – 5:30	5:30 – 6:00
kWh	0.2095	0.189	0.1766	0.1619	0.1511	0.144	0.141	0.1417	0.1485	0.1591	0.1718	0.1849
Time	6:00 – 6:30	6:30 – 7:00	7:00 – 7:30	7:30 – 8:00	8:00 – 8:30	8:30 – 9:00	9:00 – 9:30	9:30 – 10:00	10:00 – 10:30	10:30 – 11:00	11:00 – 11:30	11:30 – 12:00
kWh	0.1962	0.2115	0.2197	0.2251	0.2227	0.217	0.2126	0.2099	0.2079	0.2061	0.2045	0.2038
Time	12:00 – 12:30	12:30 – 13:00	13:00 – 13:30	13:30 – 14:00	14:00 – 14:30	14:30 – 15:00	15:00 – 15:30	15:30 – 16:00	16:00 – 16:30	16:30 – 17:00	17:00 – 17:30	17:30 – 18:00
kWh	0.2038	0.2038	0.2047	0.2085	0.2133	0.2189	0.228	0.241	0.2541	0.2698	0.2875	0.3081
Time	18:00 – 18:30	18:30 – 19:00	19:00 – 19:30	19:30 – 20:00	20:00 – 20:30	20:30 – 21:00	21:00 – 21:30	21:30 – 22:00	22:00 – 22:30	22:30 – 23:00	23:00 – 23:30	23:30 – 0:00
kWh	0.3215	0.3232	0.3156	0.3043	0.2953	0.2878	0.2735	0.2601	0.2514	0.2402	0.2333	0.2211

9 The number of weekdays and weekend days varies every year, including the number of public holidays. For simplicity we have adopted an approach that apportions 5/7 and 2/7 of a 365 day year to weekdays and weekends, respectively.

For the same ToU offer, example 5 step 2 below shows how to calculate the applicable days in a year for each period block. This is done by converting the applicable days for each block into a simple fraction. The fractions 5/7 and 2/7 are apportioned to period blocks that apply to business days/weekdays and weekends, respectively. Blocks that apply to all days are apportioned the value of one (7/7). For each period block, these fractions should be multiplied by the number of days the block applies for in a year, based on the start and end date of the block.

For example, as peak period applies only to business days, the fraction 5/7 is apportioned to the block. As the block applies for the entire year, the fraction 5/7 is multiplied by 365 to calculate 261, which is the applicable number of days in a year where the peak period applies.

Example 5 (step 2): Ausgrid residential ToU without CL

Start & end date	Period block	Applicable days	Fraction apportioned for applicable days	Applicable days in a year
1 Jul 21–30 Jun 22 (365 days)	Peak	Business days	5/7 = 0.7143	0.7143 x 365 = 261
	Off-peak	All days	7/7 = 1	1 x 365 = 365
	Shoulder	Business days	5/7 = 0.7143	0.7143 x 365 = 261
	Shoulder	Business days	5/7 = 0.7143	0.7143 x 365 = 261
	Shoulder	Weekends	2/7 = 0.2857	0.2857 x 365 =104

For the same ToU offer, example 5A below shows how to calculate the unconditional price. Given the retailer's charges, the unconditional price of the offer is $1,360.50. This is less than the example's price cap of $1,393, so it is compliant with the Code.

To calculate the annual usage for each period block in example 5A (step 3), the daily usage of each block (step 1) is multiplied by the applicable number of days in a year where the period block applies (step 2). For example, the annual usage profile for the peak period in example 5A is 622.2501 kWh (2.3841 kWh/day x 261 days).

To calculate the total annual amount for a period block in an offer, the rate for the block is multiplied by the annual usage (step 3). For example, the total annual amount for the peak period block in example 5A is $342.24 (0.55 cents/kWh x 622.2501 kWh).

The unconditional price is then calculated by adding the total annual amounts for each component of the offer (step 4).

Example 5A (steps 3 and 4): Ausgrid residential ToU without CL

	Daily usage	Applicable days in a year	Annual profile	Retailer rate (GST)	Total (GST)
Supply charge			365 days	$0.90/day	$328.50
Peak usage	2.3841	261	622.2501 kWh	$0.55/kWh	$342.24
Off-peak usage	3.5525	365	1,296.6625 kWh	$0.15/kWh	$194.50
Shoulder usage	3.6316	261	947.8476 kWh	$0.25/kWh	$236.96
Shoulder usage	1.1167	261	291.4587 kWh	$0.25/kWh	$72.86
Shoulder usage	7.1324	104	741.7696 kWh	$0.25/kWh	$185.44
AER model annual usage			3,899.9885 ~3,900 kWh		
Unconditional price					**$1,360.50**
AER reference price/price cap					**$1,393**

Examples 6 and 6A below demonstrate how to calculate the unconditional price of a ToU offer with controlled load, using the same steps as above.

As example 6 is an Ausgrid ToU offer with CL, the relevant ToU usage profile from the AER DMO determination is the Ausgrid profile with CL (see Table 3).

Example 6 has 16 period blocks: peak, shoulder and off-peak blocks in winter, summer, non-winter and non-summer. As shown in example 6 step 1 below, the daily usage for each block is calculated by adding the half-hourly usage amounts from the relevant ToU profile that correspond with the start and end time for each period block.

For example, for the winter peak period, the daily usage of 3.3396 kWh is calculated by adding the half-hourly values in Table 3, for the period duration 16:30 – 20:59 (0.3322 + 0.3539 + 0.3794 + 0.3957 + 0.3977 + 0.3885 + 0.3745 + 0.3635 + 0.3542).

Example 6 (step 1): Ausgrid residential ToU with CL

Period block	Start and end time	Daily usage
Winter peak (business days)	16:30 – 20:59	3.3396
Winter shoulder (all days)	7:00 – 16:29	5.0526
Winter shoulder (all days)	21:00 – 21:59	0.6567
Winter shoulder (weekends)	16:30 – 20:59	3.3396
Winter off-peak (all days)	22:00 – 6:59	4.1018
Non-winter peak (all days)	0:00– 6:29	2.6773
Non-winter shoulder (all days)	6:30 – 21:59	9.3092
Non-winter off-peak (all days)	22:00 – 23:59	1.1642
Summer peak (business days)	14:00 – 19:59	4.0437
Summer shoulder (all days)	7:00 – 13:59	3.6308
Summer shoulder (all days)	20:00 – 21:29	1.0542
Summer shoulder (weekends)	14:00 – 19:59	4.0437
Summer off-peak (all days)	21:30 – 6:59	4.4220
Non-summer peak (all days)	0:00– 6:29	2.6773
Non-summer shoulder (all days)	6:30 – 21:59	9.3092
Non-summer off-peak (all days)	22:00 – 23:59	1.1642

Table 3: ToU daily residential usage profile with CL (Ausgrid distribution region)

Time	0:00 – 0:30	0:30 – 1:00	1:00 – 1:30	1:30 – 2:00	2:00 – 2:30	2:30 – 3:00	3:00 – 3:30	3:30 – 4:00	4:00 – 4:30	4:30 – 5:00	5:00 – 5:30	5:30 – 6:00
kWh	0.2579	0.2326	0.2174	0.1992	0.186	0.1772	0.1735	0.1744	0.1828	0.1958	0.2115	0.2275
Time	6:00 – 6:30	6:30 – 7:00	7:00 – 7:30	7:30 – 8:00	8:00 – 8:30	8:30 – 9:00	9:00 – 9:30	9:30 – 10:00	10:00 – 10:30	10:30 – 11:00	11:00 – 11:30	11:30 – 12:00
kWh	0.2415	0.2603	0.2705	0.277	0.274	0.267	0.2616	0.2584	0.2558	0.2537	0.2517	0.2509
Time	12:00 – 12:30	12:30 – 13:00	13:00 – 13:30	13:30 – 14:00	14:00 – 14:30	14:30 – 15:00	15:00 – 15:30	15:30 – 16:00	16:00 – 16:30	16:30– 17:00	17:00– 17:30	17:30– 18:00
kWh	0.2508	0.2508	0.252	0.2566	0.2625	0.2694	0.2806	0.2966	0.3127	0.3322	0.3539	0.3794
Time	18:00 – 18:30	18:30 – 19:00	19:00 – 19:30	19:30 – 20:00	20:00 – 20:30	20:30 – 21:00	21:00 – 21:30	21:30 – 22:00	22:00 – 22:30	22:30– 23:00	23:00– 23:30	23:30– 24:00
kWh	0.3957	0.3977	0.3885	0.3745	0.3635	0.3542	0.3365	0.3202	0.3094	0.2956	0.2871	0.2721

For the same ToU offer with CL, example 6 step 2 below shows how to calculate the applicable days in a year for each period block. This is the same as example 5 above, however, the period blocks in example 6 are seasonal, so do not apply for the entire year.

For example, the winter peak period applies only to business days so the fraction 5/7 is apportioned to the block (same as example 5). However, as the winter peak period applies only for 3 months (92 days), the fraction 5/7 is multiplied by 92 (not 365) to calculate 66, which is the applicable number of days in a year where the winter peak applies.

Example 6 (step 2): Ausgrid residential ToU with CL

Start & end date	Period block	Applicable days	Applicable days in a year
1 Jun – 31 Aug (92 days)	Winter peak	Business days	0.7143 x 92 = 66
	Winter shoulder	All days	1 x 92 = 92
	Winter shoulder	All days	1 x 92 = 92
	Winter shoulder	Weekends	0.2857 x 92 = 26
	Winter off-peak	All days	1 x 92 = 92
1 Sept – 31 Oct (61 days)	Non-winter peak	All days	1 x 61 = 61
	Non-winter shoulder	All days	1 x 61 = 61
	Non-winter off-peak	All days	1 x 61 = 61
1 Nov – 31 Mar (151 days)	Summer peak	Business days	0.7143 x 151 = 108
	Summer shoulder	All days	1 x 151 = 151
	Summer shoulder	All days	1 x151 = 151
	Summer shoulder	Weekends	0.2857 x 151= 43
	Summer off-peak	All days	1 x 151 = 151
1 Apr – 31 May (61 days)	Non-summer peak	All days	1 x 61 = 61
	Non-summer shoulder	All days	1 x 61 = 61
	Non-summer off-peak	All days	1 x 61 = 61

For the same ToU offer with CL, example 6A below shows how to calculate the unconditional price. Given the retailer's charges, the unconditional price is $1,835.86. This is less than the example's price cap of $1,912 and therefore compliant under the Code.

As above, to calculate the annual usage for each period block in example 6A (step 3), the daily usage of each block (step 1) is multiplied by the applicable number of days in a year where the period block applies (step 2). For example, the annual usage for the winter peak period is 220.4136 kWh (3.3396 kWh x 66 days).

To calculate the total annual amount for a period block, the rate for the period block is multiplied by the annual usage profile (step 3). For example 6A, the total annual amount for the winter peak period is $110.21 (0.50 cents/kWh x 220.4136 kWh).

As above, the unconditional price is calculated by adding the total annual amounts for each component of the offer (step 4).

Example 6A (steps 3 and 4): Ausgrid residential ToU with CL

	Daily usage	Applicable days in a year	Annual profile	Retailer rate (GST)	Total (GST)
Supply charge			365 days	$0.86/day	$313.90
Supply charge for CL1			365 days	$0.07/day	$25.55
Winter peak	3.3396	66	220.4136 kWh	$0.50/kWh	$110.21
Winter shoulder	5.0526	92	464.8392 kWh	$0.24/kWh	$111.56
Winter shoulder	0.6567	92	60.4164 kWh	$0.24/kWh	$14.50
Winter shoulder	3.3396	26	86.8296 kWh	$0.24/kWh	$20.84
Winter off-peak	4.1018	92	377.3656 kWh	$0.14/kWh	$52.83
Non-winter peak	2.6773	61	163.3153 kWh	$0.40/kWh	$65.33
Non-winter shoulder	9.3092	61	567.8612 kWh	$0.24/kWh	$136.29
Non-winter off-peak	1.1642	61	71.0162 kWh	$0.14/kWh	$9.94
Summer peak	4.0437	108	436.7196 kWh	$0.50/kWh	$218.36
Summer shoulder	3.6308	151	548.2508 kWh	$0.24/kWh	$131.58
Summer shoulder	1.0542	151	159.1842 kWh	$0.24/kWh	$38.20
Summer shoulder	4.0437	43	173.8791 kWh	$0.24/kWh	$41.73
Summer off-peak	4.4220	151	667.7220 kWh	$0.14/kWh	$93.48
Non-summer peak	2.6773	61	163.3153 kWh	$0.40/kWh	$65.33
Non-summer shoulder	9.3092	61	567.8612 kWh	$0.24/kWh	$136.29
Non-summer off-peak	1.1642	61	71.0162 kWh	$0.14/kWh	$9.94
General usage (approx. 70% of AER model annual usage)			4,800.0055 ~4,800 kWh		
Usage for CL1 (approx. 30% of AER model annual usage)			2,000 kWh	$0.12/kWh	$240.00
AER model annual usage			6,800 kWh		
Unconditional price					**$1,835.86**
AER Reference price/price cap					**$1,912**

4.1.4 Offers with a time of use controlled load

In South Australia, the CL component of an offer can have different usage rates at different times of day. That is, the CL component of an offer can follow a ToU structure, referred to as an offer with a ToU CL. In its 2021–22 DMO determination, the AER introduces half-hourly usage profiles for offers in the SAPN distribution region that have a ToU CL.

Examples 7 and 7A below demonstrate how to calculate the unconditional price of a South Australian flat rate offer with a ToU CL[10], using similar steps to those shown above.

As example 7 is a SAPN flat rate offer with a ToU CL, the relevant usage profile from the AER DMO determination is the SAPN ToU CL profile (see Table 4).

The CL in example 7 has 4 period blocks: off-peak, shoulder[11] and 2 peak period blocks. In this example, these CL period blocks apply for all 365 days in a year. As shown in example 7 step 1 below, the daily usage for each block is calculated by adding the half-hourly usage amounts from the relevant ToU CL profile that correspond with the start and end time for each period block. For example, for the CL shoulder period, the daily usage of 2.4660 kWh is calculated by adding the half-hourly values in Table 4,

10 Retailers in South Australia may also have ToU offers with a ToU CL, and offers (flat rate or ToU) with a standard CL.

11 In the SAPN distribution region, the ToU CL shoulder block is referred to as the 'solar sponge'.

for the period duration 9:00 – 15:29 (0 + 0 + 0.2466 + 0.2466 + 0.2466 + 0.2466 + 0.2466 + 0.2466 + 0.2466 + 0.2466 + 0.2466 + 0.2466 + 0).

Example 7 (step 1): SAPN residential flat rate with ToU CL

Period block	Start & end time	Daily usage
CL peak	6:00 – 8:59	0.1761
CL peak	15:30 – 23:29	0.0000
CL off-peak	23:30 – 5:59	2.2893
CL shoulder	9:00 – 15:29	2.4660

Table 4: ToU CL daily residential usage profile (SAPN distribution region)

Time	0:00 – 0:30	0:30 – 1:00	1:00 – 1:30	1:30 – 2:00	2:00 – 2:30	2:30 – 3:00	3:00 – 3:30	3:30 – 4:00	4:00 – 4:30	4:30 – 5:00	5:00 – 5:30	5:30 – 6:00
kWh	0.1761	0.1761	0.1761	0.1761	0.1761	0.1761	0.1761	0.1761	0.1761	0.1761	0.1761	0.1761
Time	6:00 – 6:30	6:30 – 7:00	7:00 – 7:30	7:30 – 8:00	8:00 – 8:30	8:30 – 9:00	9:00 – 9:30	9:30 – 10:00	10:00 – 10:30	10:30 – 11:00	11:00 – 11:30	11:30 – 12:00
kWh	0.1761	0	0	0	0	0	0	0	0.2466	0.2466	0.2466	0.2466
Time	12:00 – 12:30	12:30 – 13:00	13:00 – 13:30	13:30 – 14:00	14:00 – 14:30	14:00 – 14:30	14:30 – 15:00	15:00 – 15:30	15:30 – 16:00	16:00– 16:30	16:30– 17:00	17:00– 17:30
kWh	0.2466	0.2466	0.2466	0.2466	0.2466	0.2466	0.2466	0	0	0	0	0
Time	18:00 – 18:30	18:30 – 19:00	19:00 – 19:30	19:30 – 20:00	20:00 – 20:30	20:30 – 21:00	21:00 – 21:30	21:30 – 22:00	22:00 – 22:30	22:30– 23:00	23:00– 23:30	23:30– 24:00
kWh	0	0	0	0	0	0	0	0	0	0	0	0.1761

For the same flat rate offer with a ToU CL, example 7A below shows how to calculate the unconditional price. Given the retailer's charges, the unconditional price of the offer is $2,016.08. This is less than the example's price cap of $2,077, so it is compliant with the Code.

To calculate the annual usage for each period block in example 7A (step 3), the daily usage of each CL block (step 1) is multiplied by the applicable number of days in a year where the CL period block applies (step 2 – 365 days, in this example). For example, the annual usage profile for the CL shoulder period in example 7A is 900.0900 kWh (2.4660 kWh/day x 365 days).

To calculate the total annual amount for a period block in an offer, the rate for the block is multiplied by the annual usage (step 3). For example, the total annual amount for the CL shoulder period block in example 7A is $135.01 (0.15 cents/kWh x 900.0900 kWh).

The unconditional price is then calculated by adding the total annual amounts for each component of the offer (step 4).

Example 7A (steps 3 and 4): SAPN residential flat rate with ToU CL

	Daily usage	Applicable days in a year	Annual profile	Retailer rate (GST)	Total (GST)
Supply charge			365 days	$1.05/day	$383.25
Supply charge for CL			365 days	$0.00/day	$0.00
General usage (approx. 70% of AER model annual usage)			4,200 kWh	$0.30/kWh	$1,260.00
CL peak usage	0.1761	365	64.2765 kWh	$0.45/kWh	$28.92
CL peak usage	0.0000	365	0 kWh	$0.45/kWh	$0.00
CL off-peak usage	2.2893	365	835.5945 kWh	$0.25/kWh	$208.90
CL shoulder usage	2.4660	365	900.0900 kWh	$0.15/kWh	$135.01
Usage for CL (approx. 30% of AER model annual usage)			1,799.9610 ~1,800 kWh		
AER model annual usage			6,000 kWh		
Unconditional price					$2,016.08
AER reference price/price cap					$2,077

4.2 Calculating the comparison percentage

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

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

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

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

Example 8: Market Offer 1

Ausgrid distribution region	Annual profile	Retailer rate (GST)	Total (GST)
Supply	365 days	$1.00/day	$365
General usage (AER model annual usage)	3,900 kWh	$0.24/kWh	$936
Unconditional price			**$1,301**
Lowest possible price			$1,301
AER reference price/price cap			**$1,462**

Example 8 Market Offer 1 illustrates how to calculate the comparison percentage.

1. Given the rates under this residential offer and the model annual usage of 3,900 kWh, the unconditional price is $1,301.
2. The difference between the unconditional price and the example reference price is -$161 ($1,301–$1,462).
3. This amount expressed as a percentage of the reference price is -11.01% (-$161 ÷ $1,462). As this figure is negative it should be stated as 11% less than the reference price when communicating price information to small customers.

5. What is a conditional discount?

How a discount is displayed and communicated to a small customer will depend on whether it is a conditional discount.

A conditional discount is a discount, including a conditional rebate or conditional credit that applies only if a customer satisfies certain requirements or conditions. However, under the Code, it does not include a discount, rebate or credit where all of the conditions on it relate to the circumstances in which a small customer enters into a contract with an electricity retailer for supplying electricity to the small customer.

A conditional discount may include any of the following:

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

While this paper offers guidance on the types of discounts, rebates and credits that are likely to constitute 'conditional discounts' under the Code, whether a particular discount, rebate or credit falls within the Code definition will ultimately depend on the nature of the specific discount, rebate or credit. Retailers should keep this in mind when determining whether a discount, rebate or credit is a 'conditional discount'.

Sections 6 and 7 of the guide set out how offers with conditional discounts should be communicated to small customers. Percentage-based conditional discounts and fixed credits are to be displayed differently (see section 7.4).

Anniversary or loyalty credits

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

Membership-only based sign up credits

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

'Refer a friend' credits

This refers to a credit received by either an existing customer for referring a friend, or a new customer for being referred by a friend, to a retailer. For example, where a new small customer receives a $50 credit on their first electricity bill for having been referred by a friend. We consider such credits would be a conditional discount as they require action by a third party (that is, a referral by an existing small customer).

We remind retailers that referral selling is prohibited under the ACL[12] and that retailers should therefore be mindful about how they represent these types of credits to customers and what conditions must be met.

5.1 Calculating the conditional price

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

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

For example, example 8A below is the same Ausgrid residential flat rate offer as example 8 but includes a conditional welcome credit of $50 for a member of a particular insurance group who signs up with the retailer. In this example, given the unconditional price of $1,301 and the fixed conditional discount of $50, the conditional price is $1,251 ($1,301–$50).

Example 8A: Market Offer 1 with a conditional credit

Ausgrid distribution region	Annual profile	Retailer rate (GST)	Total (GST)
Supply	365 days	$1.00/ day	$365
General Usage (AER model annual usage)	3,900 kWh	$0.24/kWh	$936
Unconditional price			**$1,301**
Insurance group membership-based welcome credit		$50	$50
Conditional price (If a small customer is a member of a particular insurance group and signs-up with the retailer)			**$1,251**
Lowest possible price (Including all discounts)			$1,251
AER reference price/price cap			**$1,462**

Example 8B below is the same Ausgrid residential flat rate offer as example 8 but includes a 5% pay on time conditional discount based on usage. In this example, given the retailer's usage charge and the model annual usage, a 5% discount on usage is $46.80 (5% x $936). Given the unconditional price is $1,301, the conditional price if the representative customer pays on time is $1,254.20 ($1,301–$46.80). This annualised conditional price is read as the price a representative customer would pay if they always pay on time. This is the annualised price the customer would pay in a financial year based on the charges of the offer and the model annual usage if the customer met the conditional discount.

12 See section 49 of the ACL.

Example 8B: Market Offer 1 with a percentage based conditional discount

Ausgrid distribution region	Annual profile	Retailer rate (GST)	Total (GST)
Supply	365 days	$1.00/ day	$365
General Usage (AER model annual usage)	3900 kWh	$0.24/kWh	$936
Unconditional price			**$1,301**
Pay on time discount on AER model annual usage		5%	$46.80
Conditional price (If the representative customer always pays on time)			**$1,254.20**
Lowest possible price (Including all discounts)			$1,254.20
AER reference price/price cap			**$1,462**

5.2 Comparing the conditional price with the reference price

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

1. Calculate the unconditional price of an offer as set out in section 4.
2. Calculate the conditional price based on the charges and fees for the offer and the model annual usage. See example 8B above on how to calculate the conditional price of an offer with a percentage-based conditional discount.
3. Calculate the difference between the unconditional price and the conditional price.
4. Express this difference as a percentage of the relevant reference price.

As demonstrated in example 8B above, a conditional discount available under an offer (such as a pay on time discount based on usage) is not the percentage figure that must be displayed; rather it is the annualised value of the proportional conditional discount expressed as a percentage from the reference price. In example 8B the conditional discount that needs to be communicated as price information to small customers is 3% not 5%. We explain this step by step below:

1. Given the rates in example 8B and the model annual usage set by the AER is 3,900 kWh, the unconditional price is $1,301. This does not include the pay on time discount of 5% based on the model annual usage.
2. As set out above, the conditional price if the representative customer always pays on time is $1,254.20 ($1,301–$46.80).
3. The difference between the unconditional price and the conditional price is $46.80 ($1,301–$1,254.20).
4. This amount expressed as a percentage of the example reference price is -3.20% (-$46.80÷$1,462). This is read as the percentage less than the reference price if a representative customer always pays on time. Section 7.4 of the guide sets out how this percentage figure should be displayed when communicating with small customers.

5.3 The lowest possible price

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

If there are no conditional discounts in the offer, the lowest possible price is the unconditional price (see example 8 above).

If there is one conditional discount, the lowest possible price is the conditional price (see examples 8A and 8B above).

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

6. Communicating price information to customers

6.1 When must retailers communicate the Code information?

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

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

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

Mass marketing price communications

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

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

Individual customer price communications

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

6.2 What are retailers required to tell customers?

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

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

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

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

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

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

7. Presentation of the Code information

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

In visual communication to consumers, retailers should consider the use of colour, font size or other visual tools to ensure the information required by the Code is conspicuously displayed and easily distinguishable from other information. We do not consider the Code information to be prominent if other information or elements of the communication are given more emphasis. For example, on a retailer's website, on any page that refers to specific prices and offers, the information required by the Code should be easy to find without navigating through other content.

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

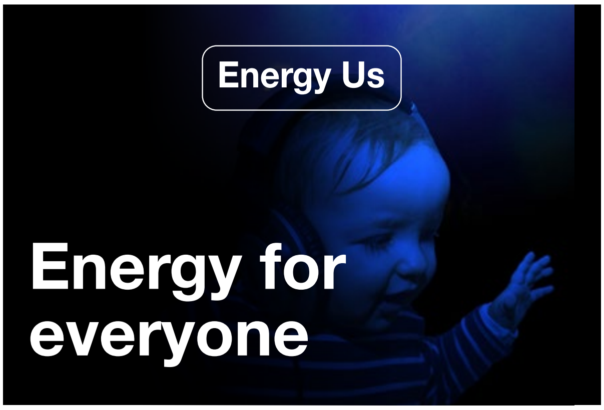
In video communication such as television advertisements or online video material, retailers should have regard to appropriate visual tools and sound elements when presenting a specific price or discount.

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

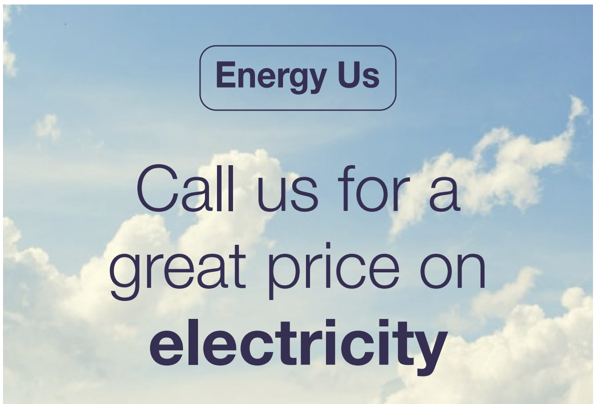
The requirements of the Code apply to residential and small business customers. The examples in this guide are based on residential customers.

7.1 Where the Code does not apply to advertising

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

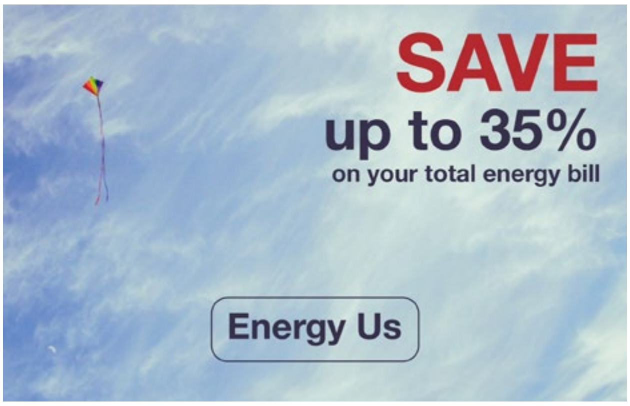


Below are some visual examples of general advertising on price, discounts and deals, to which the Code does not apply. Similarly, the Code does not apply where general statements on price, discounts and deals are made in other mediums of communication such as radio or video advertising.



7.2 Price advertising that does not comply with the Code

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



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

7.3 Displaying the comparison percentage in price advertising

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

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

Below is an example advertisement of example 8: Market Offer 1 to which the ACCC is unlikely to object.

7.4 Displaying conditional discounts

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

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

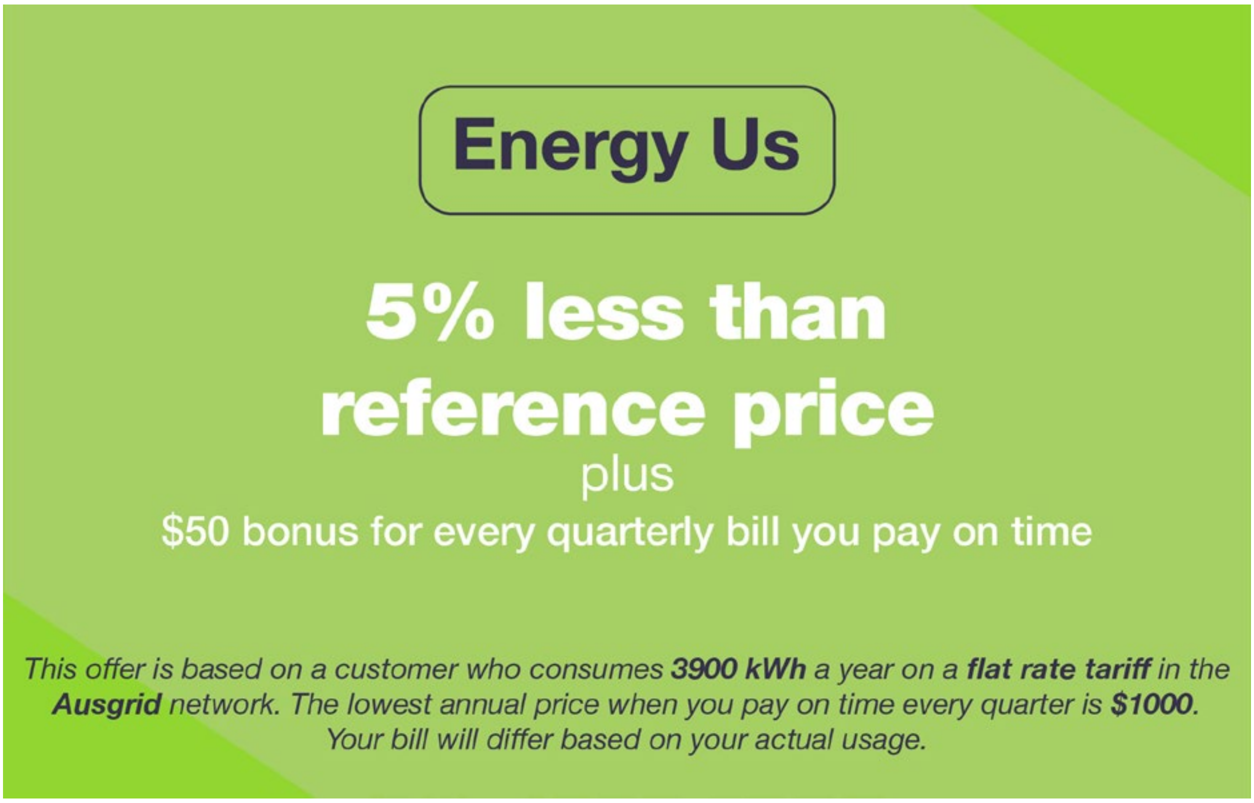
Retailers should not state conditional discounts as a cumulative discount combined with the unconditional price. For example, an offer with an unconditional price that is 10% below the reference price and a conditional discount of 5% if a representative customer pays on time should not be expressed as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

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

The below is an advertisement of example 8B to which the ACCC is unlikely to object.

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

Below is an example advertisement for a residential offer with a credit, to which the ACCC is unlikely to object (assuming the 5% is calculated in accordance with the methodology set out in this guide). It is clear that a customer would receive $50 credit for each quarterly bill that they pay on time and the comparison percentage is the most prominent price-related feature in the advertisement.



7.5 Displaying the lowest possible price

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

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

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

7.6 Alternative requirements for offers

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

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

However, in this instance where a retailer presents a customer with an offer based on their individual circumstances, a retailer is still required to state the comparison percentage and if proportional conditions apply, the difference between the conditional price and unconditional price as a percentage of the reference price. A retailer must make it clear that these comparison percentages relate to a representative customer. This includes where customers can enter their own usage on a retailer's website to get an estimated bill. As stated above, the information required by the Code on these web pages should be easy to find without having to navigate through other content.

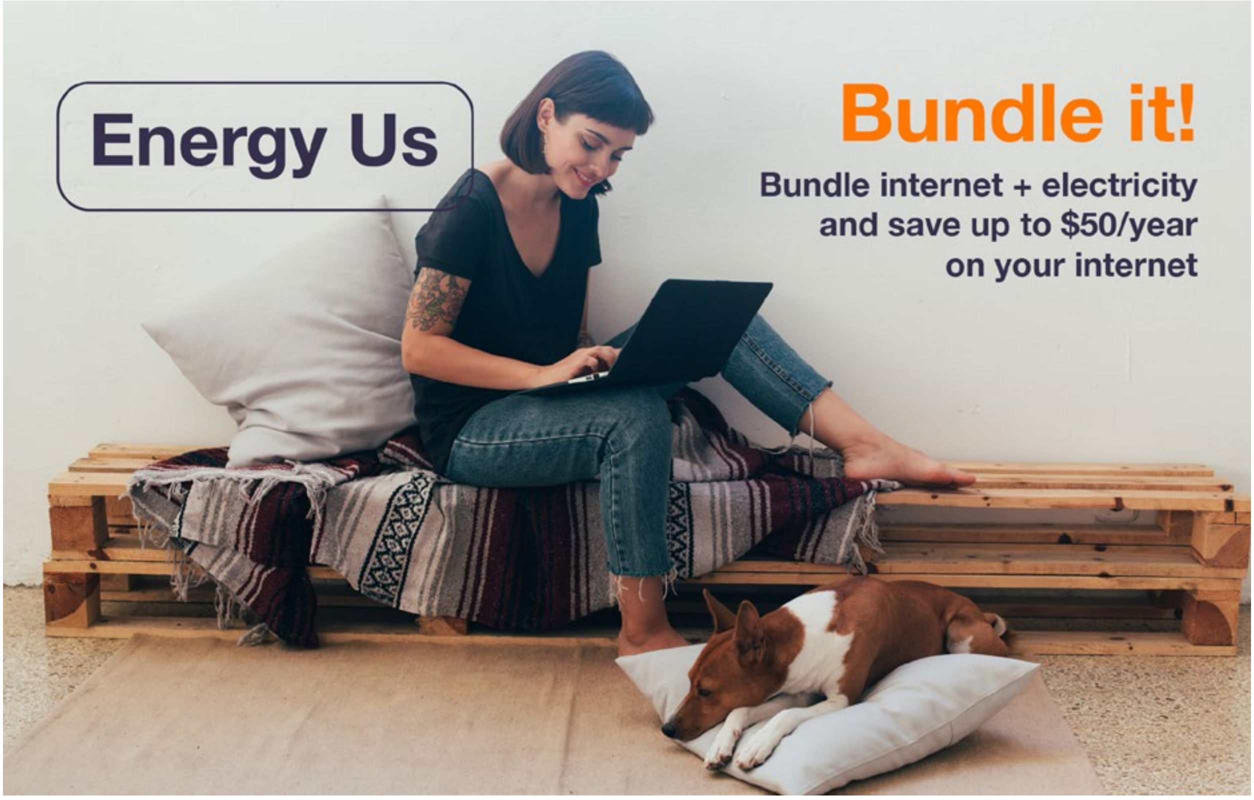
7.7 Bundled offers

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

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

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

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



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

7.8 Example advertising

This section sets out 2 example advertisements for example 8B (see section 5.1) to illustrate a preferable advertisement and a non-compliant advertisement.

Preferable example

The advertisement for example 8B is preferable because the:

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

Non-compliant example

The advertisement above for example 8B is non-compliant because the:

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

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

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

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

The annual dollar value of the conditional discount must be expressed as a percentage of the relevant reference price separate from the comparison percentage. The 3% conditional discount refers to the amount a customer with the model annual usage will receive if they always pay on time. The non-compliant example states it is a 'further 3% pay on time discount'. It is unclear what the value of the 3% conditional discount is when calculated for the model annual usage as a percentage of the reference price.

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

The lowest possible price refers to the total amount a representative customer would be charged in that financial year, using the model annual usage set by the AER and assuming all conditions on conditional discounts mentioned in the offer are met. Without appropriate explanation, the inclusion of this dollar value could mislead or deceive consumers. The non-compliant example states ‘$1,254 annual bill’.

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

8. Monitoring the Code

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

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

8.1 Record keeping requirements

The record keeping requirements support the ACCC's ability to monitor compliance with the price cap obligations and the communication requirements of the Code. Retailers are required to make and keep records of their communications of offered prices for 6 years from the end of the relevant financial year.

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

For standing offers with 2 controlled load components, information in retailer records should make clear the number of controlled load supply charges in the offer. Standing offers with 2 controlled load components may either have: one supply charge for both controlled components, 2 different supply charges for each controlled load component, or no additional supply charge for controlled load components. This information in records would assist in monitoring compliance with the price cap for offers with 2 controlled load components.

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

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

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

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

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

9. Non-compliance with the Code

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

The Code contains civil penalty provisions for contraventions including where:

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

A maximum civil penalty of 300 penalty units applies for each occurrence of non-compliance. As at 1 July 2020, the value of a penalty unit is $222, equating to $66,600 for each occurrence of a breach 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 for each breach (50 penalty units for a corporation and 10 penalty units for other persons)
- issue a public warning notice
- accept administrative or statutory undertakings, under which a non-compliant retailer would agree to remedy the harm caused by its conduct, accept responsibility for its actions and establish or review its compliance programs
- commence court proceedings to seek redress orders to compensate consumers for loss or damage suffered in relation to the contravening conduct, including a court order requiring a non-compliant retailer to provide refunds to affected customers, or
- commence court proceedings to seek injunctions to prevent the non-compliant conduct, non-punitive orders (such as community service orders) and other compensatory orders.

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

Conduct that breaches any of the provisions of the ACL could result in fines of up to $500,000 for individuals and the greater of $10 million, 3 times the value of the benefit received, or where the benefit cannot be calculated, 10% of annual turnover in the preceding 12 months for companies.

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

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

The ACCC is more likely to take enforcement action where:

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

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

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

10. Directing complaints

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

In addition to its own monitoring of compliance, the ACCC will liaise with the AER and the energy ombudsmen in South Australia, New South Wales and Queensland on customer complaints relating to the Code. The ACCC will also engage with stakeholders including consumer groups and retailers regarding such complaints.

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

- **ACCC consumer report form**: https://www.accc.gov.au/contact-us/contact-the-accc/report-a-consumer-issue
- ACCC Infocentre: 1300 302 502
- **Compliance concerns can be directed to**: ElectricityMonitoring@accc.gov.au

AUSTRALIAN COMPETITION
& CONSUMER COMMISSION