



ICRC

independent competition and regulatory commission

DRAFT REPORT

Improving the transparency and comparability of retail electricity offers

Report 4 of 2021, 10 March 2021



The Independent Competition and Regulatory Commission is a Territory Authority established under the *Independent Competition and Regulatory Commission Act 1997* (ICRC Act). The Commission is constituted under the ICRC Act by one or more standing commissioners and any associated commissioners appointed for particular purposes. Commissioners are statutory appointments. Joe Dimasi is the current Senior Commissioner who constitutes the Commission and takes direct responsibility for delivery of the outcomes of the Commission.

The Commission has responsibilities for a broad range of regulatory and utility administrative matters. The Commission has responsibility under the ICRC Act for regulating and advising government about pricing and other matters for monopoly, near-monopoly and ministerially declared regulated industries, and providing advice on competitive neutrality complaints and government-regulated activities. The Commission also has responsibility for arbitrating infrastructure access disputes under the ICRC Act.

The Commission is responsible for managing the utility licence framework in the ACT, established under the *Utilities Act 2000* (Utilities Act). The Commission is responsible for the licensing determination process, monitoring licensees' compliance with their legislative and licence obligations and determination of utility industry codes.

The Commission's objectives are set out in section 7 and 19L of the ICRC Act and section 3 of the Utilities Act. In discharging its objectives and functions, the Commission provides independent robust analysis and advice.

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The Commission may be contacted at the above addresses or by telephone on (02) 6205 0799. The Commission's website is at www.icrc.act.gov.au and its email address is icrc@act.gov.au.

How to make a submission

This draft report provides information about a new industry code that sets out obligations on electricity retailers to improve the transparency and comparability of retail electricity offers. A draft of the industry code is provided at Attachment A.

We invite stakeholders to make submissions on this draft report and/or draft of the industry code **by Friday 9 April 2021**.

Submissions can be emailed to icrc@act.gov.au. We encourage submissions in either Microsoft Word format or PDF (OCR readable text format – that is, they should be direct conversions from the word-processing program, rather than scanned copies in which the text cannot be searched). Alternatively, submissions can be mailed to:

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For submissions from individuals, all personal details (for example, home and email addresses, and telephone and fax numbers) will be removed for privacy reasons before the submissions are published on the website.

We are guided by the principles of openness, transparency, consistency and accountability. Public consultation is a crucial element of our processes. Our preference is that all submissions are treated as public and are published on our website unless the author of the submission indicates clearly that all or part of the submission is confidential and not to be made available publicly. Where confidential material is claimed, we prefer that this be given to us in a separate document that is clearly marked 'In Confidence'. We will assess the confidentiality claim and talk to the author if the submission about how to protect the confidential material while maintaining the principles of openness, transparency, consistency and accountability.

We can be contacted at the above address, by telephone on (02) 6205 0799 or through our website at www.icrc.act.gov.au.

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1. Introduction

The Independent Competition and Regulatory Commission is seeking views on a draft of a new industry code called the ACT Retail Electricity (Transparency and Comparability) Code (the ACT Code), which sets out obligations on retailers to:

- show how the annual price of their offers compares with a reference price
- tell their existing customers if they may have a better offer and invite their customers to contact them for further information or compare offers on the Australian Energy Regulator's (AER) Energy Made Easy price comparison website
- give clear advice to their customers.

These new obligations are intended to improve the transparency and comparability of retail electricity offers to help customers navigate the market and find the best deals for their circumstances. Together, they also place greater pressure on retailers to make competitive offers to win customers, and so promote effective competition in the interests of consumers.

We have developed the draft ACT Code based on a direction from the Minister for Water, Energy and Emissions Reduction (the Minister). But the ACT Code is also dependent upon amendments proposed to be made to the *Utilities Act 2000* (Utilities Act) to:

- give the Minister the power to determine a reference price
- require retailers to give customers information that helps them make informed decisions about retail electricity offers
- support the making of an industry code that set out the details about how and when retailers are required to give the information to customers.

The content and approval of any such amendments will be subject to the normal legislative process.

As we are consulting on the draft ACT Code before proposed amendments are introduced into the Legislative Assembly, we may need to undertake further consultation after any such amendments are made before we finalise the ACT Code.

This draft report provides additional information about the draft ACT Code, including how we envisage retailers would be required to comply with the new obligations and our initial views on key issues. It also outlines our process, including planned consultation with stakeholders.

1.1 Background

The Commission regulates prices, access to infrastructure services and other matters in relation to regulated industries in the ACT. We undertake price investigations and issue price directions in accordance with Part 3 and 4 of the *Independent Competition and Regulatory Commission Act 1997* (ICRC Act). We also make and vary industry codes in line with Part 4 of the Utilities Act.

Our most recent electricity-related investigation was the *Retail electricity price investigation 2020–24*, which examined prices for the supply of electricity by ActewAGL to customers on its regulated standing offers for the period 1 July 2020 to 30 June 2024. The terms of reference for the investigation asked us to consider whether changes could be made to improve the transparency and comparability of electricity offers in the ACT.¹

We found that many ACT electricity customers find it difficult to identify the best offers for their circumstances and that the transparency and comparability of retail electricity prices could be improved to help customers navigate the market. We recommended that:

- a reference bill (also referred to as a reference price) be developed, based on existing regulated standing offer prices, to provide customers with a common point of comparison for assessing electricity offers
- retailers be required to regularly tell their customers if they have a better offer and ask customers to call them for more information
- a clear advice entitlement be implemented to ensure consumers have information they need to make an informed decision when selecting an electricity plan.²

Similar obligations have been implemented in other National Electricity Market (NEM) regions. Retailers in South Australia (SA), New South Wales (NSW), South East Queensland and Victoria must show how the price of their offers compare to a Default Market Offer (DMO) reference price determined by the AER or Victorian Default Offer (VDO) reference price determined by the Essential Services Commission (ESC) as applicable. Retailers in Victoria must also tell customers on their bills whether they are on the retailer's best energy plan and how much they could save by switching plans, and give clear advice.³

1.2 Ministerial Direction and additional requirements under the Utilities Act

We will determine the ACT Code in line with a direction from the Minister under section 19 of the Utilities Act.

The Ministerial Direction is reproduced in Box 1.1. Sections 59 and 60 of the Utilities Act also set out additional requirements for the Commission when determining an industry code, which are provided in Boxes 1.2 and 1.3.

¹ Independent Competition and Regulatory Commission, *Final report; Retail electricity price investigation 2020–24*, 5 June 2020, pp. 114–116. Also available at: <https://www.legislation.act.gov.au/View/di/2019-72/current/PDF/2019-72.PDF>.

² Independent Competition and Regulatory Commission, *Final report; Retail electricity price investigation 2020–24*, 5 June 2020, p. 8.

³ Essential Services Commission, *New standards for energy bills and marketing 2018*, <https://www.esc.vic.gov.au/electricity-and-gas/inquiries-studies-and-reviews/electricity-and-gas-retail-markets-review-implementation-2018/new-standards-energy-bills-and-marketing-2018>, accessed 13 January 2020.

Box 1.1 Ministerial Direction under section 19 of the Utilities Act

On 26 February 2021, the Minister gave the Commission a direction under section 19 of the Utilities Act to create a clear advice entitlement and establish new regulatory obligations on NERL retailers by determining a new industry code to:

- a. compare the annual price of their offers to the [reference price] to enable customers to more easily compare electricity offers
- b. regularly notify their customers if they have a better offer and ask customers to contact them for information.⁴

Box 1.2 Considerations under section 59 of the Utilities Act

Subsection 59(1) of the Utilities Act provides that the Commission may determine an industry code if it has:

- a. consulted the Minister, and the Minister responsible for the *Utilities (Technical Regulation) Act 2014*, in relation to the ACT Code
- b. is satisfied that (i) the ACT Code is not inconsistent in material respects with another industry code or a technical code and (ii) it is necessary or convenient to determine the ACT Code.

Subsection 59(2) further provides that the Commission may determine an industry code, for example, in the following circumstances:

- a. if a utility fails to submit a draft industry code in accordance with a direction under section 57
- b. the proponent of a draft industry code fails to submit a further draft of the ACT Code in accordance with a requirement in a notice of refusal under section 58
- c. the Commission is satisfied that a draft industry code submitted for consideration or approval is not appropriate
- d. to give effect to a direction by the Minister under section 19.

⁴ The Utilities Act defines a NERL retailer as ‘a person who holds a retailer authorisation under the *National Energy Retail Law (ACT)*’.

Box 1.3 Public consultation requirements under section 60 of the Utilities Act

Subsection 60(1) of the Utilities Act states that, before the Commission approves or determines and industry code, it must:

- a. give public notice that—
 - i. states that the draft code has been prepared
 - ii. states the place or places where copies of the draft code may be inspected or obtained
 - iii. invites interested people to make submissions to the Commission about the draft code within the period specified in the notice
- b. make copies of the draft code available for public inspection in accordance with the notice.

Subsection 60(2) further provides that the period stated in the notice must run for at least 30 days after the publication of the notice, while subsection 60(3) says that the Commission must have due regard to any submission made in accordance with the notice when approving or determining the industry code.

1.3 Our process and timing

We will seek stakeholder comments through the process in table 1 to ensure that stakeholders are well informed and can contribute to the development and implementation of the new obligations.

After releasing this draft report and draft ACT Code, we will arrange a public forum to obtain initial feedback from stakeholders before the closing date for submissions. The ACT Government will simultaneously progress amendments to the Utilities Act through the normal legislative process.

After any such amendments are made, we will consider whether further consultation is needed before we finalise the ACT Code.

Table 1: Timeline

Event	Date
Draft report and code released for consultation	10 March 2021
Public forum	24 March 2021
Submissions on draft report and code due	9 April 2021
Further consultation if required	ASAP after amendments to the Utilities Act are passed
Final report and code released	ASAP after amendments to the Utilities Act are passed

1.4 Structure of this report

The remainder of this draft report is structured as follows:

- Chapter 2 steps through each Part of the draft ACT Code.
- The draft ACT Code is at Attachment A.
- The Ministerial Direction is at Attachment B.

2. ACT Retail Electricity (Transparency and Comparability) Code

The draft ACT Code sets out the obligations on retailers to:

- show how the annual price of their offers compares with a reference price
- tell their existing customers if they may have a better offer and invite their customers to contact them for further information or compare offers on the AER's Energy Made Easy price comparison website
- give clear advice to their customers.

The Australian Government's *Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019* (the Federal Code) and the Victorian Government's *Energy Retail Code (Version 18)* (the Victorian Code) set out similar obligations on retailers in other NEM regions.

We have sought to apply the approaches taken in the Federal Code and the Victorian Code wherever possible to promote consistency and ease of implementation for retailers. However, there are some differences due to specific circumstances that apply in the ACT. For example, the Victorian Code requires retailers to tell customers on their bills if they have a better offer and how much the customer could save by switching. As smart meters are standard in Victoria, retailers can use smart meter data to provide accurate estimates of the savings from switching. However, smart meters are less prevalent in the ACT, and so we have considered alternative approaches for how retailers in the ACT should have to determine whether they may have a better offer and notify customers of potential savings on their bills.

This chapter steps through each Part of the draft ACT Code, providing an outline of the Part, how it compares with the Federal Code and the Victorian Code, and our initial views on key issues.

2.1 Preliminary

Part 1 of the draft ACT Code sets out details about our authority to determine the ACT Code and who it applies to. It also gives a simplified outline of the obligations and the definitions that apply for terms used in the draft ACT Code.

Name and authority

Section 59 of the Utilities Act sets out requirements for the Commission to determine an industry code.

Subsection 59(2) provides that the Commission may determine an industry code under certain circumstances, including to give effect to a direction by the Minister under section 19. The Minister gave us a direction under section 19 on 26 February 2021 (see section 1.3 of this draft report). We therefore consider that the requirements under subsection 59(2) have been met.

Subsection 59(1) provides that the Commission must have consulted with the Minister and the Minister responsible for the *Utilities (Technical Regulation) Act 2014*, which is currently the Minister and the Minister for Environment and Heritage. The Director-General of the Environment, Planning and Sustainable Development Directorate has carriage of the *Utilities (Technical Regulation) Act 2014* on behalf of the

Minister and the Minister for Environment and Heritage.⁵ We will consult with the Minister and the Director-General of the Environment, Planning and Sustainable Development Directorate on the draft ACT Code concurrently with other stakeholders.

Subsection 59(1) also provides that the Commission must be satisfied that: (i) the ACT Code is not inconsistent in material respects with another industry code or a technical code; and (ii) it is necessary or convenient to determine the ACT Code. We have sought to ensure that the draft of the ACT Code uses terminology and approaches that are consistent with other existing legislation and frameworks wherever possible. We will also consult with other regulators that have responsibilities for overseeing obligations on electricity retailers in the ACT, such as the AER, to ensure that material inconsistencies do not exist.

Application to NERL retailers

Section 56 of the Utilities Act provides that an industry code applies to a NERL retailer if a determination is made under section 56A that it applies to the retailer.

The direction by the Minister under section 19 of the Utilities Act is for an industry code that improves the transparency and comparability of retail electricity offers. The direction does not refer to retail gas offers. Therefore, although the Commission intends to make a determination under section 56A that the ACT Code applies to NERL retailers, clause 1.2 of the draft ACT Code provides additional clarity that it applies to NERL retailers 'offering to supply, or supplying, electricity to customers in the Territory'. We consider that this wording, along with definitions used in the draft ACT Code that limit its application to instances involving the 'supply of electricity' or variations thereof, provide sufficient clarity about the intent of the draft ACT Code to apply to electricity retailers, not gas retailers.

Simplified outline

Clause 1.3 of the draft ACT Code provides an overview of the obligations on retailers that follow in Parts 2, 3 and 4. It is intended to act as a quick reference guide. The obligations are discussed in detail below.

Definitions

Table 2 compares the definitions provided in the draft ACT Code to other relevant legislation or codes, such as the Federal Code and the Victorian Code. Any significant differences in definitions are discussed in the sections that follow.

⁵ ACT Government, *Utilities Technical Regulation*, https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/2203/~utilities-technical-regulation, accessed 16 February 2021.

Table 2: Definitions

Term used in the ACT Code	Definition in the ACT Code	Notes about any differences when compared with other legislation or codes
annual reference consumption	for a regulatory period, in relation to supplying electricity in the Territory to a customer of a particular type, means the amount specified in the reference price determination for the regulatory period in relation to the supply	Equivalent to ‘model annual usage’ in the Federal Code and ‘annual reference consumption’ in the Victorian Code. See discussion in section 2.2 of this draft report.
annual total cost	the minimal possible amount payable by the customer under the offer excluding the value of any one-off gift or sign-up credits calculated on the basis of the tariff, charges and discount rates current at, as relevant, the date a bill or bill summary will be issued with all discounts applied (except any discount which applies because the customer buys another good or service) and including any amounts deducted, credited or received by the retailer under a government funded rebate, concession or relief scheme	Consistent with definition of ‘annual total cost of current plan’ and ‘annual total cost of deemed best offer’ in the Victorian Code. Not applicable to the Federal Code.
benefit change	a change to, or the expiry of, a benefit (such as a price discount) provided to a customer for a minimum period or a fixed benefit period under a retail electricity contract during the term of that contract (whether or not as a result of a variation of the contract)	Consistent with the <i>National Energy Retail Rules</i> and the Victorian Code. Not applicable to the Federal Code.
better offer check	has the meaning given by clause 3.3	Replaces ‘deemed best offer check’ in the Victorian Code as a different approach is taken for the ACT Code. See discussion in section 2.3 of this draft report. Not applicable to the Federal Code.

better offer message	has the meaning given by clause 3.4	Replaces 'deemed best offer message' in the Victorian Code as a different approach is taken for the ACT Code. See discussion in section 2.3 of this draft report. Not applicable to the Federal Code.
bill summary	a communication from the NERL retailer to the customer that informs the customer that the NERL retailer has issued a new bill, and which includes the bill due date and the amount due	Consistent with the definition of 'bill summary' in the Victorian Code. Not applicable to the Federal Code.
communicate	prices for supplying electricity has the meaning given by subclause 2.3(3)	Consistent with the definition of 'communicate' in the Federal Code. The Victorian Code uses terms such as 'advertisement' and 'mass-marketing communication' to cover the same kinds of communications covered by the Federal Code.
conditional price	for a proportional conditional discount means the total annual amount including GST that a representative customer would be charged for the supply of electricity in the regulatory period at the offered prices, assuming the conditions on the discount were met and disregarding any other conditional discounts	Consistent with the Federal Code and the Victorian Code.
customer	has the meaning given in the <i>National Energy Retail Law (ACT) Act 2012</i>	Consistent with the definition of 'consumer' in the Federal Code and 'customer' in the Victorian Code.
distribution region	the region in which a particular electricity distribution network operates	Consistent with the Federal Code and the Victorian Code.
explicit informed consent	has the meaning given in section 39 of the <i>National Energy Retail Law (ACT) Act 2012</i>	Also consistent with the Victorian Code. Not applicable to the Federal Code.
fixed benefit period	a period of a retail electricity contract during which a benefit to the customer (such as a price discount) is available and where the end date of that period is specified or ascertainable	Consistent with the <i>National Energy Retail Rules</i> and the Victorian Code. Not applicable to the Federal Code.

	at the beginning of that period, and earlier than the date on which the contract will end	
ICRC	the Independent Competition and Regulatory Commission established under section 5 of the <i>Independent Competition and Regulatory Commission Act 1997</i> (ACT)	
lowest possible price	the total annual amount including GST that a representative customer would be charged for the supply of electricity in the regulatory period at the offered prices, assuming the conditions on all conditional discounts (if any) mentioned in the communication were met	Consistent with the Federal Code and the Victorian Code.
market retail contract	has the meaning given in the <i>National Energy Retail Law (ACT) Act 2012</i> and is a contract for a market offer	Also consistent with the Victorian Code. Not applicable to the Federal Code.
meter	in relation to a customer, means a device that measures the quantity of electricity passing through it or records the consumption of electricity at the customer's premises	Consistent with the Victorian Code. Not applicable to the Federal Code.
metering data	has the same meaning as in the <i>National Electricity Rules</i>	Also consistent with the Victorian Code. Not applicable to the Federal Code.
NERL retailer	has the meaning given in section 75 of the <i>Utilities Act 2000</i> (ACT)	Equivalent to 'electricity retailer' in the Federal Code and 'retailer' in the Victorian Code.
offered price	has the meaning given by subclause 2.4(1)	Consistent with the Federal Code and the Victorian Code.
price	(a) subject to paragraph (b), includes a charge of any description, including a recurring fee (for example, an annual membership fee) (b) does not include any of the following:	Consistent with the Federal Code and the Victorian Code.

	<p>(i) a one-off fee (for example, a connection fee or reconnection fee or an account establishment fee)</p> <p>(ii) 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)</p> <p>(iii) a fee for a service provided on request on an ad-hoc basis (for example, a fee for a meter read requested by a customer)</p>	
price change	a change to any of the tariffs or charges payable by a customer under a retail electricity contract	Consistent with the Victorian Code. Not applicable to the Federal Code.
price comparator website	Energy Made Easy (www.energymadeeasy.gov.au) operated by the AER	Equivalent to 'price comparator' in the Victorian Code. Not applicable to the Federal Code.
proportional conditional discount	a conditional discount that is calculated as a proportion of all or part of the amount a customer is charged for the supply of electricity at the offered prices	Consistent with the Federal Code and the Victorian Code.
reference price	for a regulatory period, in relation to supplying electricity in the Territory to a customer of a particular type, means the annual price in the reference price determination	Equivalent to 'reference price' in the Federal Code and 'VDO price' in the Victorian Code.
regulatory period	the period for which a reference price determination is in effect	Equivalent to financial year in the Federal Code and 'regulatory period' in the Victorian Code.
representative customer	in relation to supplying electricity in the Territory in a regulatory period to a customer of a particular type, means a customer of that type who is supplied electricity in the Territory in the regulatory period in accordance with the	Equivalent to 'representative customer' in the Federal Code and the Victorian Code.

	annual reference consumption for that regulatory period in relation to the supply	
retail electricity contract	a standard retail contract or a market retail contract in connection with the sale and supply of electricity to a customer	Consistent with the Federal Code
retail electricity offer	an offer by a NERL retailer to a customer to supply electricity under a retail electricity contract	Consistent with the Federal Code
small business customer	a customer in relation to whom both the following apply: <ul style="list-style-type: none"> the electricity is not principally for personal, household or domestic use the supply is, or will be, at a rate less than 100 MWh a year 	Consistent with the Federal Code. The Victorian Code applies a threshold of less than 40 MWh a year. See discussion in sections 2.2 and 2.4 of this draft report.
small customer	a residential or small business customer	The Federal Code provides a more detailed definition of a small customer. See discussion in section 2.2 of this draft report. Difference from the Victorian Code relates only to threshold for small business customer.
smart meter	an interval meter that is designed to transmit metering data to a remote location for data collection and does not, at any time, require the presence of a person at or near the meter for the purposes of data collection or data verification	Consistent with the Victorian Code. Not applicable for the Federal Code.
standard control services	are distribution network services that the AER classifies as standard control services, as opposed to alternative control services, which form the basic charges for use of the distribution system	Undefined term in the Victorian Code. Not applicable for the Federal Code.
standard retail contract	has the meaning given in the <i>National Energy Retail Law (ACT) Act 2012</i> and is a contract for a standing offer	Also consistent with the Victorian Code. Not applicable for the Federal Code.

Territory	Australian Capital Territory	
type	a customer in respect of which an annual reference consumption is determined in the reference price determination	Equivalent to 'type' in the Federal Code and the Victorian Code.
unconditional price	the total annual amount including GST that a representative customer would be charged for the supply of electricity in the regulatory period at the offered prices, disregarding any conditional discounts	Consistent with the Federal Code and the Victorian Code.
Utilities Act	<i>Utilities Act 2000</i> (ACT)	

2.2 Reference price comparison requirements

Part 2 of the draft ACT Code implements the obligation on retailers to show how the annual price of their offers compares with a reference price. It also sets out alternative requirements for personalised offers, rules around advertising offers with conditional discounts, and record keeping for compliance purposes.

Division 2 of Part 2 of the Federal Code includes a requirement for retailers' communications about prices to compare those prices with a DMO reference price. Similarly, Division 10 of Part 2 of the Victorian Code includes a requirement for advertisements to compare prices with the VDO price. As the requirements are largely the same, either could be adapted for the circumstances that apply in the ACT.

As most retailers operating in the ACT likely also operate in SA, NSW and South East Queensland where the Federal Code applies, we have modelled Part 2 of the draft ACT Code on the Federal Code to promote greater consistency in regulation.

This section outlines the reference price comparison requirements set in the draft ACT Code, explains any differences from the Federal Code, and discusses the effect of the requirements on retailers. Some examples of how retailers are required to perform calculations or estimates for the reference price comparison requirements are also provided.

Outline of reference price comparison requirements

The reference price requirements in the draft ACT Code apply to communications between retailers and residential and small business customers about the price of electricity offers. When advertising, publishing or otherwise communicating about the price of an offer, a retailer is required to state clearly and conspicuously:

- the difference between the unconditional price of the offer and the relevant reference price, expressed as a percentage of the reference price
- for each conditional discount, the difference between the unconditional price of the offer and the conditional price, expressed as a percentage of the reference price
- the lowest possible price of the offer, which is the price of the offer after applying any conditional discounts
- the distribution region
- the type of customer that the offer relates to, such as a residential customer with a flat rate tariff.

What constitutes clear and conspicuous will depend on the circumstances but means that, in communications to customers, retailers should use clear, simple and widely understood language to help customers understand the information that is being presented to them. In visual communications, we would expect retailers to consider the colour, font size and other visual tools to ensure that the reference price information is easily distinguishable from other information and is prominently placed relative to that other information. In oral or video communications, we would expect retailers to also have regard to speed, volume and other audio tools or visual effects. These requirements are important to ensure that customers are directed to information that will help them understand offers and make well informed decisions.

The unconditional price of an offer is the total annual amount including GST that a representative customer would be charged for the supply of electricity in the regulatory period at the offered prices, disregarding

any conditional discounts. This means any charges, unconditional discounts, annual recurring fees such as membership and contribution fees, recurring metering charges, sign-up credits, and charges on green products are included in the unconditional price. The unconditional price does not include optional green charges or solar feed-in tariffs if applicable.

Subclause 2.3(1) requires retailers to meet the above requirements in instances where the offer is made to a customer for which the reference price determination provides an annual reference consumption and a reference price. In terms of what constitutes communications for the purposes of the reference price comparison requirements, subclause 2.3(3) provides that it is when retailers advertise, publish or otherwise offer to supply customers and in doing so say or communicate the price of the offer. Subclause 2.3(3)(c) clarifies that this includes instances where a retailer notifies a customer of a change in the retailer's prices, the notification communicates the price of the offer, and those prices apply after the retailer's prices change.

Clause 2.4 exempts retailers from having to state the lowest possible price of the offer if the communication states the total annual amount that the customer in question would be charged assuming conditional discounts were achieved. This provides retailers with the ability to provide more personalised information to customers taking into the customer's past usage habits or other relevant matters.

With respect to advertising offers with conditional discounts, clause 2.5 provides for retailers to do so if the conditional discount is not the most prominent price-related matter mentioned in the communication. It also requires retailers to state in a clear manner the conditions on any conditional discounts that apply to an offer to help customers understand whether the offer is suitable for them.

Clause 2.6 requires retailers to retain records of their compliance for at least six years. Such records include the content and date of communications as well as how the retailer performed its calculations or estimates. Subclause 2.6(4) allows retailers to retain a single record for multiple communications that are identical apart from being made to different customers, such as those based on a template or script.

Example calculations and advertisements

The Australian Competition and Consumer Commission (the ACCC) has published a guide to the Federal Code. Because the draft ACT Code is modelled on the Federal Code, the ACCC's guide will be a useful resource for retailers requiring more information about the following:

- calculating the unconditional price and comparison percentage
- calculating the conditional price and comparison percentage
- calculating the lowest possible price
- presenting information and meeting the requirements for clear and conspicuous information.

The guide is available at: <https://www.accc.gov.au/publications/guide-to-the-electricity-retail-code>.

For illustration only, assume that the reference price determination is:

- reference price = \$1462
- annual reference consumption = 3900 kWh
- customer type = residential customer on a flat rate tariff without a controlled load
- regulatory period = 2020–21.

In this example, a retailer offering a flat rate tariff to residential customers without a controlled load at any time during 2020–21 would need to calculate the unconditional price of its offer and compare it to the reference price by expressing the difference as a percentage of the reference price as shown in table 3. Note that the retailer needs to use the annual reference consumption specified in the reference price in its calculations.

Table 3: Example for a flat rate tariff for a residential customer without a controlled load

	Annual profile	Retailer charge (incl. GST)	Total (incl. GST)
Daily supply charge	365 days	\$0.9570/day	\$349
General usage	3900 kWh	\$0.2442/kWh	\$952
Unconditional price			\$1301
Reference price			\$1462
Comparison percentage			-11.01%

As the comparison percentage in the example is negative, this indicates that the unconditional price of the retailer's offer is less than the reference price and so the retailer would express the offer as being 11 per cent less than the reference price.

Figure 1 gives an example from the ACCC's guide to the Federal Code showing how a retailer might advertise the offer.

Figure 1: Example advertisement



Source: ACCC's guide to the Federal Code.

Differences when compared with the Federal Code

The draft ACT Code differs from the Federal Code in that it does not define the types of customers that the requirements of the code apply to. The Federal Code specifies the types of customers that the requirements apply to. For the ACT, the types of customers to which the requirements of the ACT Code will apply will be specified in the reference price determination.

Therefore, the draft ACT Code does not define the types of customers that the reference price requirements apply to. Instead, subclause 2.3(1) of the draft ACT Code says that the requirements to compare the price of offers to a reference price apply to communications between retailers and a customer of a particular type if both an annual reference consumption and a reference price are in force. The definitions of type, annual reference consumption and reference price in the draft ACT Code all refer to the reference price determination.

Differences when compared with the Victorian Code

Two key differences arise when comparing the draft ACT Code with the Victorian Code. These relate to the definition of small business customers and records of compliance.

Definition of small business customers

Under the Victorian Code, a small business customer is defined ‘as a person whose aggregate consumption of electricity taken from the relevant supply point has not been, or in the case of a new supply point, is not likely to be, more than 40 MWh per year’. The Federal Code, however, applies a threshold of 100 MWh a year for small business customers.

Part 2 of the draft ACT Code also adopts a threshold of 100 MWh a year for small business customers as it has been modelled on the Federal Code and it is the same threshold that applies to the regulation of small business standing offers in the ACT. We consider that this promotes consistency in definitions across regulation within the ACT as well as across regions given that retailers operating in the ACT also operate in SA, NSW and South East Queensland where the Federal Code applies.

For consistency throughout the draft ACT Code, this also means that a threshold of 100 MWh a year for small business customers is adopted for all Parts.

Records of compliance

Division 10 of the Victorian Code, which includes requirements about comparing offers to the VDO, requires retailers to keep records for 12 months or longer if there is a complaint that is still being investigated by the energy ombudsman. It does not specify what these records must include. In contrast, the Federal Code requires retailers to keep records of compliance for six years and provides details on what the record must include.

Part 2 of the draft ACT Code adopts the same approach as the Federal Code because it is modelled on that code. We consider that, when requested, retailers should be able to show how they have complied with their obligations, and that specifying what records must include in the draft ACT Code provides clear expectations about record keeping for this purpose.

For consistency throughout the draft ACT Code, we have also proposed to adopt a period of six years for record keeping for all Parts. In contrast, the Victorian Code adopts a period of two years with respect to its deemed best offer and clear advice entitlements, or longer if there is a complaint that is still being investigated by the energy ombudsman. We consider that six years allows sufficient time to cover instances where there is a complaint being resolved by the energy ombudsman.

Effect of the reference price requirements on retailers

As Part 2 of the draft ACT Code implements the reference price requirements in a manner that is consistent with the Federal Code, we consider that retailers that already operate in SA, NSW and South East Queensland should be able to readily implement the requirements using their existing processes and systems. The same applies to retailers that operate in Victoria given the similarities with the Victorian Code. Of note, during the *Retail electricity price investigation 2020–24*, EnergyAustralia submitted that the costs of implementing a reference price framework in the ACT that is similar to the frameworks applying in SA, NSW, South East Queensland and Victoria would likely be small for most retailers.⁶

For retailers that do not currently operate in SA, NSW, South East Queensland or Victoria, we understand that the reference price requirements will likely require systems to be updated and that retailers may incur a cost to do this. However, we consider that these initial costs will be outweighed by the longer-term benefits to customers of an improved ability to navigate the market, which in turn places greater pressure on retailers to minimise their costs and make competitive offers to attract customers.

2.3 Better offer notification requirements

Part 3 of the draft ACT Code implements a requirement for retailers to notify customers on their bills if the retailer may have a plan that is lower priced than the customer's current plan. It sets out how retailers must go about checking whether they may have a better offer for a customer as well as the form and content of messages to be provided to customers. It is intended to prompt customers to consider whether they could save money on another plan, and to either contact their retailer to discuss their options or visit the AER's Energy Made Easy comparison website to compare offers across various retailers.

Division 4 of Part 2A of the Victorian Code provides an entitlement for customers to receive information on their bills that helps them to easily identify whether they are on their retailer's best offer, how to access their retailer's best offer and how to access offers from other retailers by using the Victorian Government's energy price comparison website. Equivalent requirements do not currently exist under the national framework for other NEM regions. Therefore, we have used the Victorian Code as a starting point for its better offer notification requirements, but with significant adjustments for specific circumstances that apply in the ACT.

The following outlines the better offer notification requirements in the draft ACT Code and explains the differences from the Victorian Code and the effect of the better offer notification requirements on retailers.

⁶ EnergyAustralia, submission to the issues paper for the *Retail electricity price investigation 2020–24*, p. 2.

Outline of the better offer notification requirements

Under the better offer notification requirements in the draft ACT Code, retailers must put a message (referred to as a better offer message) on customer bills at least once every three months, or once every billing cycle if the billing cycle is longer than three months. The better offer message is different depending on whether the retailer has identified a plan that may save the customer money.

To determine what the better offer message should be, the retailer must first do a 'better offer check' for each customer. Clause 3.3 gives retailers some discretion in how they do a better offer check, although subclause 3.3(2) sets certain requirements depending on whether the customer has a smart meter:

- If the customer has a smart meter, the retailer must use the data from that smart meter to compare the annual cost for the customer under their current plan and what the customer would pay under the retailer's other plans.
- If the customer does not have a smart meter, the retailer must use reasonable endeavours to assess whether the customer would pay less under the retailer's other plans based on the information about the customer available to the retailer.

Subclause 3.3(3) gives examples of the kinds of information a retailer might consider for a customer who does not have a smart meter. This includes the tariff structure that the customer is currently on and their past annual usage where that data is available. One potential approach is for retailers to consider whether there is a discounted version of the customer's current plan that, all other things being kept equal, would result in them paying less. For example, if a customer is currently on a flat rate standing offer and the retailer has a flat rate market offer that simply applies a 5 per cent discount to the daily supply and usage rates of the standing offer, then the retailer could reasonably assume that the customer would pay less if they were on the market offer. Alternatively, if basic meter data that shows that the customer is a low usage customer, then the retailer might consider whether the customer would pay less if they were on a plan that had a lower daily supply charge even if usage charges were slightly higher.

Clause 3.4 sets out the form and content of the better offer message, requiring it to be prominently displayed on the front page of a bill next to the amount due. Subclauses 3.4(3) and (4) set out what the message must be depending on the outcome of the better offer check:

- If the retailer has identified a plan that could save the customer money, the better offer message must be titled 'We think you could save money on another plan', give clear information about contacting the retailer to find out more about its other plans, and include the name and website address for Energy Made Easy where customers can compare plans for other retailers.
- If the retailer has not identified a plan that could save the customer money, the better offer message must be titled 'Could you save money on another plan?' and include the name and website address for Energy Made Easy where customers can compare plans for other retailers.

Retailers can otherwise decide how and what information they provide so long as they do so in a way that promotes the objective (subclause 3.4(5)). For example, retailers may still choose to invite customers to contact them about other plans even where it is not required to do so in its better offer message. We do not intend to require retailers to do this in all instances to reduce the potential for increased unnecessary contact. We have also considered the impact on customers' time and efforts in contacting their retailer where there is likely to be a small chance of a cheaper offer and the need to avoid creating unrealistic customer expectations of bill savings with their current retailer.

With respect to bill summaries, subclause 3.4(6) provides that retailers must still meet the requirements of the better offer message being prominently displayed on the front page and next to the amount due where it is practicable to do so. We understand that some modification may be required in certain instances due to the way the bill summary is communicated, such as through a text message or other short form message. However, we still expect retailers to provide the better offer message.

Clause 3.5 requires retailers to retain records of their compliance for at least six years.

Example messages

For illustration only, figure 2 gives examples of how a retailer might show the better offer message on a customer's bill. The left is an example where the retailer has identified a plan that could result in the customer paying less, while the right is an example where the retailer has not identified a cheaper plan

Figure 2: Example better offer messages

Retailer has identified cheaper plan

DUE DATE: 24 April 2021	AMOUNT DUE: \$127.36
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We think you could save money on another plan.

Call us on XXX for more information about our other plans that could save you money or head to energyus.com.au/compare.

You can also compare plans from other retailers by going to the Australian Government's [Energy Made Easy](http://energymadeeasy.gov.au) website energymadeeasy.gov.au.

Retailer has not identified cheaper plan

DUE DATE: 24 April 2021	AMOUNT DUE: \$127.36
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Could you save money on another plan?

You can compare plans across retailers by going to the Australian Government's [Energy Made Easy](http://energymadeeasy.gov.au) website energymadeeasy.gov.au.

Differences when compared with the Victorian Code

The key differences between the draft ACT Code and the Victorian Code relate to how retailers must determine whether they have a better offer for their customer and the contents of the message that must be given to the customer. These differences are largely as a result of smart meters being less prevalent in the ACT, which makes it more difficult for retailers to assess whether a customer would be better off on another plan and provide personalised dollar estimates of the savings a customer could make by switching plans.

Another difference is that small business customers in the draft ACT Code are defined as business customers who use less than 100 MWh per annum whereas the amount is less than 40 MWh per annum under the Victorian Code. Additionally, records of compliance must be retained for six years rather than two years as required by the Victorian Code. These differences were previously discussed in relation to Part 2 of the draft ACT Code.

How retailers assess whether they have a better offer

The Victorian Code requires retailers to perform a ‘deemed best offer check’. Section 70Q of the Victorian Code sets out how a deemed best offer check must be done, which involves the retailer calculating the annual cost of the customer’s current plan and the annual cost of the retailer’s other plans and seeing if any result in a saving of \$22 or more. The calculation is based on the customer’s usage history, or an estimate of the usage based on meter readings, over the last 12 months.

Retailers have ready access to a customer’s usage history in Victoria because all homes have a smart meter because of the Victorian Government’s mandatory rollout. As smart meters provide remote and accurate real-time information about electricity consumption, retailers in Victoria have ready access to annual usage data as well as data on the times of day a customer predominantly uses electricity. This means retailers in Victoria can consider time of use tariffs in addition to more traditional flat rate tariffs when performing a deemed best offer check for a customer.

However, smart meters are not mandatory in the ACT and only about 10 per cent of customers have a smart meter installed.⁷ In our final report for the *Retail electricity price investigation 2020–24*, we agreed with submissions from stakeholders that, particularly given the low take-up of smart meters in the ACT, it would be costly for retailers to analyse customers’ data to calculate personalised estimates of savings.

The draft ACT Code therefore adopts a simplified and less prescriptive approach, while still requiring retailers to consider whether they may have a better offer for the customer. As outlined above, retailers will have to use the data and information available to them to assess whether they have a plan that might result in the customer paying less than their current plan. The draft ACT Code does not require retailers to determine a dollar estimate of the savings for the customer or even consider all their plans, rather retailers must use reasonable endeavours to assess whether they may have a plan that would be cheaper. This is consistent with the requirement in NSW for retailers to use reasonable endeavours when helping a customer identify the most appropriate market offer under the NSW Social Program for Energy Code.⁸ The result of this assessment would then inform the type of message that the retailer must put on the customer’s bill and bill summary.

We consider that this is a lower cost approach and gives retailers flexibility in how they implement the requirement as long as they are doing their best to meet the objective of identifying whether they may have a better offer.

Form and content of messages

The Victorian Code requires retailers to place personalised messages on bills, including dollar estimates of the savings the customer could make by switching where a retailer identifies another offer that it estimates could save the customer more than \$22 per annum (see section 70S of the Victorian Code).

In contrast, clause 3.4 of the draft ACT Code does not require retailers to include dollar estimates of savings in their better offer notification to customers due to the inability of retailers to accurately estimate the savings a customer could make without smart meter data. We have considered whether displaying savings for a representative customer using an average amount of electricity could be an alternative as the

⁷ Independent Competition and Regulatory Commission, *Final report; Retail electricity price investigation 2020–24*, 5 June 2020, p. 110.

⁸ NSW Government, NSW Social Programs for Energy Code as per Gazette No 41 of 3 May 2019, p. 1329.

presence of a dollar amount could give customers a greater incentive to act. However, in our final report for the *Retail electricity price investigation 2020–24*, we noted a concern that this would be of limited assistance or even misleading for customers with usage patterns that are significantly different from the average.

We consider that the approach taken in the draft ACT Code meets the overarching objective of prompting customers to shop around and potentially find a better deal for their circumstances without placing significant burden on retailers by requiring more personalised messages. But the draft ACT Code does not prevent retailers from including dollar estimates of the savings the customer could make by switching. We encourage retailers to provide dollar estimates where they can make accurate assessments, such as for customers with smart meters.

The Victorian Code only requires retailers to include the name and web address of the Victorian Government’s energy price comparison website in instances where the retailer has not identified a lower cost plan for the customer (see subsections 70S(3) and (4)).

In contrast, the draft ACT Code requires retailers to include information about the AER’s Energy Made Easy website in all instances. In our final report for the *Retail electricity price investigation 2020–24*, we found that there was relatively low awareness among ACT customers of the AER’s Energy Made Easy website.⁹ We consider it important for all customers to be aware of reliable services that can help them navigate the market and compare plans. This is consistent with views expressed by others, such as the ACCC and the Public Interest Advocacy Centre, in submissions to the Australian Energy Market Commission’s (the AEMC) bill contents and billing requirements rule change request process.¹⁰

Effect of the better offer notification requirements on retailers

As Part 3 of the draft ACT Code implements the better offer notification requirements in a more simplified and less prescriptive form than the Victorian Code, we consider that retailers should be able to readily implement the requirements with relatively low administrative cost. This is particularly so given that retailers are not required to present personalised estimates of savings and can use standardised messages.

We know that the AEMC is considering giving the AER the ability to determine billing guidelines and that submissions to the AEMC have suggested that the AER could require retailers to include a ‘best offer’ message on customer bills.¹¹ We consider that the approach taken in the draft ACT Code provides a simple and timely solution that will ensure that customers receive useful information without placing significant burden on retailers.

We were told during our *Retail electricity price investigation 2020–24* that many consumers do not read their electricity bill in detail, and therefore may not notice the better offer notification.¹² But bills are the

⁹ Independent Competition and Regulatory Commission, *Final report; Retail electricity price investigation 2020–24*, 5 June 2020, pp. 112–113.

¹⁰ Australian Energy Market Commission, *Bill contents and billing requirements*, <https://www.aemc.gov.au/rule-changes/bill-contents-and-billing-requirements>, accessed 12 February 2021.

¹¹ Australian Energy Market Commission, *Bill contents and billing requirements*, <https://www.aemc.gov.au/rule-changes/bill-contents-and-billing-requirements>, accessed 12 February 2021.

¹² Independent Competition and Regulatory Commission, *Final report; Retail electricity price investigation 2020–24*, 5 June 2020, p. 112.

main communication between retailers and customers and we consider that requiring the better offer notification to be next to the amount due will ensure that even customers who do not closely examine their bills are likely to see the message. This approach also minimises any additional burden that would be placed on retailers by a requirement to prepare a separate notice or set up systems to deliver content in a different way.

2.4 Clear advice entitlement

Part 4 of the draft ACT Code introduces an entitlement for residential and small business customers to receive clear, timely and reliable information from retailers to help them assess and select an electricity plan that best suits their circumstances. Such information includes the dollar impact of all terms and conditions that influence the costs that the customer will face over the term of the plan, and whether the retailer believes another plan may be more suitable for the customer.

In our final report for the *Retail electricity price investigation 2020–24*, we saw a potential risk with suggesting on bills that another plan is better is that it may not be suitable for the customer having regard to their particular circumstances.¹³ The ESC found that this risk is more pronounced for vulnerable customers, such as those from culturally and linguistically diverse backgrounds, who may experience difficulties in fully understanding the fine print of the contract.¹⁴ The clear advice entitlement supplements the better offer notification on bills and helps to manage the risk of a customer switching to a plan that is not suitable for their circumstances.

Division 2 of Part 2A of the Victorian Code includes a clear advice entitlement. An equivalent requirement does not currently exist under the national framework for other NEM regions. Therefore, we have modelled the clear advice entitlement on the Victorian Code with some relatively minor changes for the circumstances that apply in the ACT.

The following section outlines the clear advice entitlement in the draft ACT Code and explains any differences from the Victorian Code and the effect of the clear advice entitlement on retailers.

Outline of the clear advice entitlement

The clear advice entitlement in the draft ACT Code applies to interactions between retailers and residential and small business customers that happen before the customer signs up to a new electricity contract (including a new contract with its current retailer). Retailers must communicate with the customer in a readily understandable manner on:

- where possible, the estimated dollar impact of terms and conditions that influence the costs that the customer will face over the term of the contract, including terms such as conditional discounts or the ability for the retailer to make price changes

¹³ Independent Competition and Regulatory Commission, *Final report; Retail electricity price investigation 2020–24*, 5 June 2020, pp. 114-116.

¹⁴ Essential Services Commission, *Building trust through new customer entitlements in the retail energy market; Final Decision*, 30 October 2018, p. 47.

- any of the retailer's alternative offers that the retailer believes would be better suited to the customer on the basis of information gained from their interaction with the customer and any other relevant information available to the retailer, such as information about the customer's past usage.

Under subclauses 4.3(1)(a)–(c), the terms and conditions that retailers must communicate about are those that are determined by the retailer, and so retailers should be well placed to estimate the dollar impacts of those terms and conditions. Similarly, retailers should be well placed to assess and estimate the cost impacts of a customer switching to a different plan, including where it involves moving to a different tariff structure as necessary for subclauses 4.3(1)(d)–(e), because they have access to the necessary information as discussed below.

Subclause 4.3(2) makes it clear that retailers only need to have regard to standard control services when considering charges payable for distribution services in their estimates. These are distribution services that are central to the electricity supply and make up the general network charges recovered through customer bills, as opposed to alternative control services that are customer specific or customer requested and involve a service specific charge.¹⁵

In terms of the kind of information about a customer that retailers should consider, subclause 4.3(3) gives retailers scope to decide what kind of enquiries need to be made in the circumstances. For example, if a customer has a smart meter, the retailer may decide that it is appropriate to use that data to inform its assessment. Alternatively, if a customer does not have a smart meter, the retailer may use the data that is available, such as annual usage figures, and supplement that data by asking the customer questions about their usage habits. Other relevant information that retailers may consider could be the customer's payment history, particularly where an offer has a pay on time discount.

Subclause 4.4(2) requires retailers to retain records of their compliance for at least six years.

Differences when compared with the Victorian Code

The key differences between the draft ACT Code and the Victorian Code relate to the application of the clear advice entitlement to electricity only and the plans that the retailer must consider when assessing if there may be one that is more suitable for the customer.

Another difference is that small business customers in the draft ACT Code are defined as business customers who use less than 100 MWh per annum whereas the amount is less than 40 MWh per annum under the Victorian Code. Also, records of compliance must be retained for six years rather than two years as required by the Victorian Code. These differences were previously discussed in relation to Part 2 of the draft ACT Code.

Application to electricity only

The Victorian Code applies to interactions about both electricity and gas plans. Section 70H of the Victorian Code applies to interactions between retailers and customers before the retailer obtains the customer's explicit informed consent to enter a customer retail contract. A customer retail contract is a contract for the supply of electricity and/or gas.

¹⁵ Australian Energy Regulator, *Electricity Distribution Service Classification Guideline*, 28 September 2018.

In line with the Ministerial Direction, the ACT Code is to apply only to interactions about electricity plans. Therefore, Part 4 of the draft ACT Code replaces the term ‘customer retail contract’ with ‘retail electricity contract’, which is a contract for the supply of electricity.

Plans that retailers must consider

Subsection 70H(1)(d) of the Victorian Code requires a retailer to consider whether its other ‘generally available plans’ may be more suitable for the customer. A generally available plan is defined as a plan that is available to the customer and is not targeted at an exclusive individual or group, such as plans restricted to concession or hardship customers.

Subclause 4.3(1)(d) of the draft ACT Code replaces the term ‘generally available plans’ with ‘retail electricity offers’, which includes plans that are targeted at an exclusive individual or group. We consider that a retailer should consider all its plans that are available to the customer regardless of whether they are generally available or restricted to ensure that the customer is provided with the best deal. For example, if the retailer is aware that a customer has a concession and the retailer has a plan that is targeted at concession customers that would result in the customer paying less, then the retailer should tell the customer. We consider that the caveats ‘available to the small customer’ and ‘that the NERL retailer reasonably believes may be more suitable’ in the draft ACT Code allow sufficient scope for retailers to exclude plans such as ‘save’ plans, which would be unlikely to be available to the customer unless they met the retailer’s criteria (i.e. signalling that they intend to switch).

Effect of the clear advice entitlement on retailers

As Part 4 of the draft ACT Code implements the clear advice entitlement with few differences from the Victorian Code, we consider that retailers that already operate in Victoria should be able to readily implement the requirements using their existing processes and systems.

For retailers that do not currently operate in Victoria, we understand that the clear advice entitlement may require some changes to existing processes and systems to the extent that those retailers are not already providing this kind of service. Where this is the case, those retailers may incur additional costs, at least initially.

But we consider the clear advice entitlement is an important for ensuring that customers receive quality advice that helps them to select an electricity plan that best suits their circumstances. Therefore, the benefits to customers are likely to outweigh any additional costs incurred by retailers.



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