



# ICRC

independent competition and regulatory commission

UTILITIES ACT 2000 | INDUSTRY CODE | GUIDELINE

## **CONSULTATION DRAFT: ACT Retail Electricity (Transparency and Comparability) Code Guideline**

Report 14 of 2021, July 2021



The Independent Competition and Regulatory Commission is a Territory Authority established under the *Independent Competition and Regulatory Commission Act 1997* (the ICRC Act). We are 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.

We have responsibility for a broad range of regulatory and utility administrative matters. We are responsible 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. We also have responsibility for arbitrating infrastructure access disputes under the ICRC Act

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

Our objectives are set out in section 7 and 19L of the ICRC Act and section 3 of the Utilities Act. In discharging our objectives and functions, we provide independent robust analysis and advice.

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# 1. Introduction

In accordance with section 59 of the *Utilities Act 2000* (Utilities Act), the commission has determined the *ACT Retail Electricity (Transparency and Comparability) Code 2021* (ACT Code). The ACT Code imposes 3 requirements on retailers licenced under the National Energy Retail Law (NERL retailers) offering to supply, or supplying, electricity to small customers in the Territory:

- show how their prices for supplying electricity to certain types of small customers compare to a reference price
- tell their small customers if they have a better offer and invite their small customers to contact them for more information or use the price comparator website
- provide clear, timely and reliable information to assist small customers to assess and select the retail electricity contract best suited to their needs.

This guideline is designed to help NERL retailers understand how to comply with their responsibilities under the ACT Code. It offers guidance on:

- the application of the retailer obligations and the clear advice entitlement in the ACT Code to retail electricity offers and communications with customers
- how to calculate the unconditional price of an offer and conditional discounts and how to communicate offer price details relative to the reference price consistent with the obligations set by the ACT Code
- how to undertake better offer checks and give better offer messages to customers, including during the transitional period set by the ACT Code
- the minimum standards retailers should apply to meet the clear advice entitlement in communicating with small customers who contact them for advice and assistance to choose a suitable electricity offer.

**It is important to note** that this guideline is not legal advice and that the ACT Code does not replace the rules on advertising contained in the Australian Consumer Law.

## 1.1. Structure of the guideline

The remainder of this report is structured as follows:

- Chapter 2 steps through Part 2 of the ACT Code, which is the reference price obligation.
- Chapter 3 steps through Part 3 of the ACT Code, which is the better offer obligation.
- Chapter 4 steps through Part 4 of the ACT Code, which is the clear advice entitlement.

## 2. Reference price obligation

Part 2 of the ACT Code establishes a requirement for NERL retailers to show small customers how the price of their offers to supply electricity compares with a reference price. NERL retailers are required to make these comparisons in advertising and marketing as well as in certain direct communications with customers, such as when they are notifying customers of a price change. The ACT Code prevents NERL retailers from presenting conditional discounts as the most prominent price-related matter and requires NERL retailers to clearly state the terms relating to any conditional discounts.

The ACT Code requires NERL retailers to perform the reference price obligation in a way that promotes the objective of the reference price obligation.

### 2.1. Objective of the reference price obligation

The objective of the reference price obligation is to ensure that NERL retailers communicate prices for the supply of electricity in a consistent way to help small customers compare retail electricity offers.

The reference price obligation:

- makes it simpler and faster for small customers to compare offers from different NERL retailers
- helps to reduce confusion between different plans and offers for small customers
- helps small customers choose the best plan for their circumstances.

Under the reference price obligation, all offers must be compared to a reference price, which is a common benchmark or reference point set by the ACT Government on an annual basis.

The ACT Code requires NERL retailers, when advertising, marketing or otherwise communicating the price of an offer to a customer, to state in clear, plain language and in a way that is clearly visible:

- the percentage difference between the reference price and the price of the offer, excluding any conditional discounts that apply to the offer
- the additional percentage value of any conditional discounts that apply to the offer
- the annual price of the offer for a customer who uses a specified amount of electricity and achieves all the conditional discounts or, for personalised offers, an estimate of the annual amount that the customer would pay under the offer assuming they achieve all the conditional discounts
- the distribution region where the offer is available
- the type of customer that can sign up to the offer
- the terms on any conditional discounts that apply to the offer.

## 2.2. Application of the reference price obligation

### 2.2.1. Types of customers covered

In the *Utilities (Representative Consumption and Reference Price) Determination 2021* — available on the ACT legislation register — the Minister for Water, Energy and Emissions Reduction and the Treasurer have determined that the reference price and representative consumption made under section 75GB of the Utilities Act will apply to small customers of the following types:

- residential customers on flat tariffs or time-of-use tariffs and whose prices for the supply do not include a controlled load tariff
- residential customers with controlled load on flat tariffs or time-of-use tariffs and whose prices for the supply include a controlled load tariff
- small business customers on flat tariffs and whose prices for the supply do not include a controlled load tariff.

The reference price obligation applies to an offer to a customer if both a reference price and representative consumption are in force for that type of customer. Section 75GB of the Utilities Act allows the Minister and Treasurer to make different determinations for different types of customers.

### 2.2.2. Application to customers in embedded networks

Under the Utilities Act, industry codes apply to NERL retailers. This means that if the embedded network is operated by a NERL retailer, the ACT Code will apply but if it is operated by an exempt retailer the ACT Code does not apply.

For NERL retailers, the ACT Code applies in relation to the embedded network customer, that is, the party that has a contractual electricity supply relationship with the retailer. Who the customer(s) is(are) will depend on the nature of the embedded network and the electricity supply arrangements for that network.

For example, where the NERL retailer has contracted with an owners corporation (body corporate) of an apartment complex to provide electricity services on behalf of the apartment owners/residents within that apartment complex, the ACT Code would not extend to directly cover the apartment owners/residents. In this example, the reference price information should be given to the appropriate representative of the owners corporation.

Giving information to the embedded network customer about how the price it is paying for electricity compares to the reference price may assist the embedded network customer in discussions with the NERL retailer about the future cost and supply of electricity. In the apartment complex example, the owners corporation acts as a decision making body on behalf of the owners/residents and can negotiate on their behalf.

If a NERL retailer were to consider the costs of implementing the ACT Code could outweigh the benefits to its embedded network customer(s), it is open to the NERL retailer to seek an exemption from the commission in relation to the application of the ACT Code to its embedded network customer(s).

### 2.2.3. Application to third-party sales channels and comparison websites

The commission has made a determination in accordance with section 56A of the Utilities Act that the ACT Code applies to anyone who holds a retailer authorisation under the National Energy Retail Law (ACT). This means that any third-party sales channels or price comparison websites that hold a retailer authorisation under the National Energy Retail Law (ACT) are also subject to the ACT Code when they are offering to supply electricity to customers.

NERL retailers are responsible for ensuring that any parties acting on their behalf meet the same requirements that they are expected to comply with under the ACT Code. Commercial price comparison websites should follow the standards set out by the ACCC in its guide for comparator website operators and suppliers.<sup>1</sup>

The ACT Code does not apply to the Australian government's Energy Made Easy comparison website. NERL retailers are legally required to provide information about their offers to the AER, which is then presented on the website in the manner decided by the AER. Unlike agents, brokers and commercial price comparison websites, there is no commercial relationship between NERL retailers and the AER. The AER works to ensure that offers are presented on the Energy Made Easy website in a way that is easy for consumers to compare prices and make informed decisions about the best deals for their circumstances

## 2.3. Type of communications covered

The ACT Code applies to all advertising and communication where a retailer is communicating/advertising a price, tariff or offer to a small customer in the ACT.

This would include, but is not limited to:

- newspapers and magazine advertising
- television and radio advertising
- sponsored media content where prices are referenced
- web-based, online or social media
- third party or comparison websites
- billboards or transit advertising
- telephone or door to door marketing
- mail, catalogues and leaflets.

This does not include:

- the customer's bill unless advertising of other tariffs or offers is included on the bill
- late payment or enforcement correspondence

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<sup>1</sup> ACCC, *Comparator websites; A guide for comparator website operators and suppliers*, August 2015. [Comparator websites: A guide for comparator website operators and suppliers | ACCC](#)



- general advertising where no offers or prices are mentioned
- where ‘clear advice’ is being provided.<sup>2</sup>

## 2.4. Calculating the unconditional price

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.

In calculating the unconditional price of an offer, NERL retailers must include the following items:

- any relevant charges
- unconditional discounts
- annual recurring fees such as membership and contribution fees
- recurring metering charges
- sign-up credits
- charges on green products
- GST.

The following sub-sections give more detail on the types of fees and charges that should be included.

### 2.4.1. Sign-up credits

These are credits for signing up with a retailer in a particular way. For example, a small customer may receive a \$50 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 or where credit is only provided if a condition unrelated to entering an electricity contract should not be included in the calculation of the unconditional price. Examples of these types of offers include refer-a-friend benefits or discounts dependent on entering into other contracts for service.

### 2.4.2. Green charges

NERL retailers should include charges that relate to green energy in the unconditional price where those charges are an intrinsic and mandatory component of the offer. An example is where the offer is for energy that is 100 percent supplied from green energy sources.

Where the charges that relate to green energy are an optional extra, then retailers should not include those charges in the unconditional price. An example is where a customer can choose to pay an additional fee to have a proportion of their energy supplied from green energy sources (for example, an additional \$2 a week for 25 per cent of their usage to be sourced from an accredited green power source).

Solar feed-in tariffs should not be included in calculating the unconditional price.

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<sup>2</sup> For a detailed explanation of the minimum standards for providing clear advice, see Part 4.3 of the Code.

### 2.4.3. One-off and other fees

One-off fees such as termination fees or break fees, missed payment fees and fees for services provided on request are expressly excluded from being included in the unconditional price by section 75GA of the Utilities Act.

This information should be clearly explained in communications with customers about the terms and conditions of the offer and advised to a customer under the clear advice entitlement.

### 2.4.4. Conditional discounts

Conditional discounts are not included within the unconditional price and are defined in section 75GA of the Utilities Act.

A conditional discount may include any of the following:

- pay on time discount
- bundling discount
- direct debit discounts
- anniversary or loyalty credits
- membership discount
- refer-a-friend discount.

Referral selling, where the receipt of a benefit by one customer is dependent on the customer(s) they refer also acquiring services, is prohibited under section 49 of the Australian Consumer Law.<sup>3</sup> Retailers should be careful how they present 'refer-a-friend' type credits to customers and what conditions must be met.<sup>4</sup>

## 2.5. Calculating the comparison percentage for the unconditional price

The ACT Code requires NERL 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, which is the comparison percentage.

Part 2.6 of this guideline sets out how the comparison percentage should be displayed when communicating with small customers.

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<sup>3</sup> [Competition and Consumer Act 2010 \(legislation.gov.au\)](http://legislation.gov.au)

<sup>4</sup> ACCC, Guide to the Electricity Retail Code; Version 2, 30 June 2020, p. 17

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

- calculate the unconditional price of the offer using the relevant annual representative consumption in the *Utilities (Representative Consumption and Reference Price) Determination 2021* (the Reference Price Determination).
- calculate the difference between the unconditional price and the reference price. The reference price in relation to electricity supply to a small customer of a particular type is in the Reference Price Determination.
- express this difference as a percentage of the reference price. This number may be positive or negative, indicating whether the offer is more than or less than the reference price.

The rest of this section sets out simplified examples of these calculations for the following tariffs:

- residential and small business flat rate tariffs
- residential flat rate with controlled load
- residential time-of-use without controlled load
- residential time-of-use with controlled load.

### 2.5.1. Residential and small business flat rate tariffs (without controlled load)

**Examples 1 and 2** show how to calculate the annual unconditional price for a representative customer on a residential flat rate offer and on a small business flat rate offer, and how that unconditional price is compared with the corresponding reference prices. The relevant annual reference price and the annual representative consumption are based on the 2021 Reference Price Determination.

#### **Example 1: Residential flat rate without controlled load**

- The annual reference price for a residential customer without controlled load is \$2,090.
- Given the charges for this residential offer and an annual representative consumption of 6,100 kWh, the annual unconditional price is \$1,929.
- The difference between the unconditional price and the reference price is -\$161 ( $\$1,929 - \$2,090$ ).
- The difference expressed as a percentage of the reference price is -7.70% ( $-\$161 \div \$2,090$ ). This is the comparison percentage.

**Table 1. Residential flat rate without controlled load**

	Profile (2021 determination)	Example retailer rate (GST inclusive)	Total (GST inclusive)
Supply charge	365 days	\$0.94/day	\$343
Annual usage	6,100 kWh	\$0.26/kWh	\$1,586
Annual unconditional price			\$1,929
Annual reference price			\$2,090
Difference (\$)			- \$161
Comparison percentage (%)			-7.70%

Note: \$ values in the “total” column rounded to the nearest dollar.

**Example 2: Small business flat rate**

- The annual reference price for a small business customer is \$7,520.
- Given the charges for this small business offer and an annual representative consumption of 20,000 kWh, the annual unconditional price is \$6,911.
- The difference between the unconditional price and the reference price is -\$609 (\$6,911 - \$7,520).
- The difference expressed as a percentage of the reference price is -8.10% (-\$609 ÷ \$7,520).

**Table 2. Small business flat rate**

	Profile (2021 determination)	Example retailer rate (GST inclusive)	Total (GST inclusive)
Supply charge	365 days	\$1.40/day	\$511
Annual usage	20,000 kWh	\$0.32/kWh	\$6,400
Annual unconditional price			\$6,911
Annual reference price			\$7,520
Difference (\$)			- \$609
Comparison percentage (%)			-8.10%

Note: \$ values in the “total” column rounded to the nearest dollar.

## 2.5.2. Residential flat rate with controlled load

**Example 3** shows how to calculate the annual unconditional price for a representative customer on a residential flat rate offer with controlled load, and how the unconditional price is compared with the corresponding reference price. The annual representative general consumption and controlled load consumption, and the corresponding reference price are based on the 2021 Reference Price Determination.

- The annual reference price for a residential customer with controlled load is \$2,629.
- Given the charges for this residential offer and an annual representative consumption of 6,300 kWh as general usage and 2,500kWh as controlled load usage, the annual unconditional price is \$2,431.
- The difference between the unconditional price and the reference price is -\$198 (\$2,431 - \$2,629).
- The difference expressed as a percentage of the reference price is -7.53% (-\$198 ÷ \$2,629).

**Table 3. Residential flat rate with controlled load**

	Profile (2021 determination)	Example retailer rate (GST inclusive)	Total (GST inclusive)
Supply charge	365 days	\$0.94/day	\$343
Annual general usage	6,300 kWh	\$0.26/kWh	\$1,638
Annual controlled load usage	2,500 kWh	\$0.18/kWh	\$450
Annual unconditional price			\$2,431
Annual reference price			\$2,629
Difference (\$)			- \$198
Comparison percentage (%)			-7.53%

Note: \$ values in the “total” column rounded to the nearest dollar.

## 2.5.3. Residential time-of-use tariff without controlled load

**Example 4** shows how to calculate the annual unconditional price for a representative customer on a time-of-use offer without controlled load, and how that unconditional price is compared with the corresponding reference price. The annual representative consumption allocation for each period (peak, shoulder and off-peak) is based on the 2021 Reference Price Determination.

- The annual reference price for a residential customer without controlled load is \$2,090.
- Given the charges for this residential offer and an annual representative consumption of 1,796 kWh as peak usage, 2,501kWh as shoulder usage and 1,830 kWh as off-peak usage, the annual unconditional price is \$1,892. To calculate the total annual amount for a period in an offer, the rate for that period is multiplied by the corresponding annual representative consumption. For example, the total annual amount for the peak period in Example 4 is \$601 (\$0.34/kWh x 1,796 kWh).

- The difference between the unconditional price and the reference price is -\$198 (\$1,892 - \$2,090).
- The difference expressed as a percentage of the reference price is -9.45% (-\$198 ÷ \$2,090).

**Table 4. Residential time-of-use without controlled load**

	Profile (2021 determination)	Example retailer rate (GST inclusive)	Total (GST inclusive)
Supply charge	365 days	\$0.94/day	\$343
Annual peak usage	1,796 kWh	\$0.34/kWh	\$601
Annual shoulder usage	2,501 kWh	\$0.24/kWh	\$600
Annual off-peak usage	1,830 kWh	\$0.19/kWh	\$348
Annual unconditional price			\$1,892
Annual reference price			\$2,090
Difference (\$)			- \$198
Comparison percentage (%)			-9.45%

Note: \$ values in the “total” column rounded to the nearest dollar.

## 2.5.4. Residential time-of-use with controlled load

**Example 5** shows how to calculate the annual unconditional price for a representative customer on a time-of-use offer with controlled load, and how that unconditional price is compared with the corresponding reference price. The annual representative consumption allocation for each period (peak, shoulder and off-peak) and the annual representative controlled load consumption are based on the 2021 Reference Price Determination.

- The annual reference price for a residential customer with controlled load is \$2,629.
- Given the charges for this residential offer and an annual representative consumption of 1,827 kWh as peak usage, 2,583 kWh as shoulder usage, 1,890 kWh as off-peak usage, and 2,500 kWh as controlled load usage, the annual unconditional price is \$2,393. To calculate the total annual amount for a period in an offer, the rate for that period is multiplied by the corresponding annual representative consumption. For example, the total annual amount for the peak period in Example 5 is \$621 (\$0.34/kWh x 1,827 kWh).
- The difference between the unconditional price and the reference price is -\$236 (\$2,393 - \$2,629).
- The difference expressed as a percentage of the reference price is -8.97% (-\$236 ÷ \$2,629).

**Table 5. Residential time-of-use with controlled load**

	Profile (2021 determination)	Example retailer rate (GST inclusive)	Total (GST inclusive)
Supply charge	365 days	\$0.94/day	\$343
Annual peak usage	1,827 kWh	\$0.34/kWh	\$621
Annual shoulder usage	2,583 kWh	\$0.24/kWh	\$620
Annual off-peak usage	1,890 kWh	\$0.19/kWh	\$359
Annual controlled load usage	2,500 kWh	\$0.18/kWh	\$450
Annual price			\$2,393
Annual reference price			\$2,629
Difference (\$)			- \$236
Comparison percentage (%)			-8.97%

Note: \$ values in the “total” column rounded to the nearest dollar.

## 2.6. Calculating the 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.

A conditional discount may include any of the following:

- pay on time discount
- direct debit discounts
- anniversary or loyalty credits.

Part 2.6.4 of this guideline shows how offers with conditional discounts should be communicated to small customers.

For each proportional conditional discount, NERL 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 must:

- calculate the unconditional price of an offer as shown in part 2.4 of the guideline
- calculate the conditional price. This is the total amount a representative customer would pay in the financial year if that customer met the conditions for the conditional discount. This is based on the charges and fees for the offer and the representative annual consumption.
- calculate the difference between the unconditional price and the conditional price
- express this difference as a percentage of the relevant reference price.

Examples 6 and 7 show how to calculate the annual conditional price for a representative customer on a residential offer with a conditional discount, and how to calculate the comparison percentage for a

conditional price. In each example, the corresponding representative annual consumption price and reference price are based on the 2021 Reference Price Determination.

**Example 6** is the same residential flat rate offer as Example 1 but includes a 4% discount on the supply charge if customer pays electricity bill using direct debit.

- The annual reference price for a residential customer without controlled load is \$2,090.
- Given the charges for this residential offer and an annual representative consumption of 6,100 kWh, the annual unconditional price is \$1,929.
- The difference between the unconditional price and the reference price is -\$161 (\$1,929 - \$2,090).
- The difference expressed as a percentage of the reference price is -7.70% ( $-\$161 \div \$2,090$ ).
- Given the retailer’s supply charge, a 4% discount on supply charge is \$14 ( $4\% \times \$343$ ).
- The conditional price if the representative customer paid using direct debit is \$1,915 (\$1,929 - \$14). This is the annualised conditional price the customer would pay if the customer met the condition of the discount.
- The difference between the unconditional price and the conditional price is \$14. This amount expressed as a percentage of the reference price, which is -0.66%.
- The conditional discount that needs to be communicated as price information to small customers is 0.66% not 4%.
- This price offer could be advertised as: ‘7.70% less than reference price plus a further 0.66% below the reference price if you pay by direct debit’.

**Table 6. Residential flat rate without controlled load with direct debit discount**

	Profile (2021 determination)	Example retailer rate (GST inclusive)	Total (GST inclusive)
Supply charge	365 days	\$0.94/day	\$343
Annual usage	6,100 kWh	\$0.26/kWh	\$1,586
Annual unconditional price			\$1,929
Direct debit supply charge discount		4.00%	\$14
Annual conditional price			\$1,915
Annual reference price			\$2,090
Conditional discount (%)			-0.66%

Note: \$ values in the “total” column rounded to the nearest dollar.

**Example 7** is the same residential time-of-use with controlled load offer as Example 5 but includes a 15% discount on peak, shoulder, off-peak and controlled load usage.

- The annual reference price for a residential customer with controlled load is \$2,629.



- Given the charges for this residential offer and an annual representative consumption of 1,827 kWh as peak usage, 2,583 kWh as shoulder usage, 1,890 kWh as off-peak usage, and 2,500 kWh as controlled load usage, the annual unconditional price is \$2,393. To calculate the total annual amount for a period in an offer, the rate for that period is multiplied by the corresponding annual representative consumption. For example, the total annual amount for the peak period in Example 5 is \$621 ( $\$0.34/\text{kWh} \times 1,827 \text{ kWh}$ ).
- The difference between the unconditional price and the reference price is -\$236 ( $\$2,393 - \$2,629$ ).
- The difference expressed as a percentage of the reference price is -8.97% ( $-\$236 \div \$2,629$ ).
- Given the retailer's usage charges, a 15% discount on peak, of-peak, shoulder and controlled load usage is \$308 ( $15\% \times (\$621 + \$620 + \$359 + \$450)$ ).
- The conditional price is \$2,086 ( $\$2,393 - \$308$ ). This is the annualised conditional price the customer would pay if the customer met the condition of the discount.
- The difference between the unconditional price and the conditional price is \$308. This amount expressed as a percentage of the reference price, which is -11.70%.
- The conditional discount that needs to be communicated as price information to residential customers is 11.70% and not the 15% headline discount.
- This price offer could be advertised as: '8.97% less than reference price plus a further 11.70% below the reference price if the condition is met'.

**Table 7. Residential time-of-use with controlled load with a conditional discount**

	Profile (2021 determination)	Example retailer rate (GST inclusive)	Total (GST inclusive)
Supply charge	365 days	\$0.94/day	\$343
Annual peak usage	1,827 kWh	\$0.34/kWh	\$621
Annual shoulder usage	2,583 kWh	\$0.24/kWh	\$620
Annual off-peak usage	1,890 kWh	\$0.19/kWh	\$359
Annual controlled load usage	2,500 kWh	\$0.18/kWh	\$450
Annual unconditional price			\$2,393
Annual peak usage		15.00%	\$93
Annual shoulder usage		15.00%	\$93
Annual off-peak usage		15.00%	\$54
Annual controlled load usage		15.00%	\$68
Annual conditional price			\$2,086
Annual reference price			\$2,629
Conditional discount (%)			-11.70%

Note: \$ values in the "total" column rounded to the nearest dollar.

## 2.7. Examples of advertising

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

The ACT Code requires information to be clearly displayed and easily distinguishable from other information. For example, on an NERL retailer's website, on any page that refers to specific prices and offers, the information required by the ACT 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, NERL retailers should ensure that the information required by the ACT Code is clearly audible. To accomplish this, the retailer should have regard to speed, volume and other audio tools. The retailer should also emphasise this information compared to other statements, dialogue or sounds.

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

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

### 2.7.1. Displaying the comparison percentage in price advertising

The ACT Code requires retailers to tell consumers how their unconditional price for supplying electricity compares with the reference price for that type of customer. This difference must be expressed as a percentage of the reference price — this is 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 reference price, this should be expressed as equal to the reference price. Section 2.5 of this guideline explains how to calculate the comparison percentage, with examples.

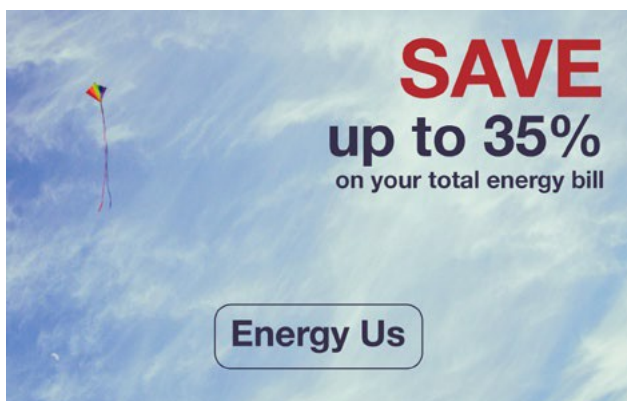
NERL retailers should have regard to the appropriate visual tools and sound elements when communicating the unconditional percentage to consumers to ensure that the comparison percentage is clear and easily visible.

Below is an example advertisement that displays the comparison percentage in price advertising in a way that is consistent with the ACT Code.



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Under the ACT Code, NERL retailers are not permitted to advertise offers using headline percentage discounts. Below is an example of an advertisement that is not compliant with the ACT Code because it uses a headline percentage discount rather than the comparison percentage. This means customers are not told how much they can save compared to the reference price, which makes it harder for them to compare offers. NERL retailers must display the comparison percentage clearly and prominently, as shown in the compliant example. The advertisement is also non-compliant because it fails to include other information required under the ACT Code.



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## 2.7.2. Displaying conditional discounts

NERL retailers must express any proportional conditional discount in communications about price offers as a percentage of the relevant reference price. Section 2.6 of this guideline explains how to calculate the conditional discount, with examples.

If there is more than one conditional discount, the NERL retailer must do this for each discount. The ACT Code requires any proportional conditional discount to be expressed individually.

NERL 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% must be communicated separately to the comparison percentage.

When referring to a conditional discount in its communication, a NERL retailer must express the discount as a percentage of the reference price, not the percentage amount of the discount in relation to the offer (such as a pay on time discount based on usage).

Below is an example advertisement that correctly displays a conditional discount.



**Energy Us**

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

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

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The next example advertisement does not comply with the ACT Code for multiple reasons:

- The advertisement does not tell consumers how the retailer's unconditional price for supplying electricity compares with the reference price for that type of customer.
- The message about the conditional discount is not allowed to be the most prominent price-related matter in the advertisement.
- The condition that the customer will only receive the discount if they pay on time is not clearly visible.
- The percentage discount is not expressed as a percentage of the reference price.



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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. But the conditions on this discount will need to be clearly and visibly stated. Also, this discount must not be the most prominent price-related matter set out in the advertisement.

Below is an example advertisement for a residential offer that is 5% lower than the reference price and also includes a credit for paying on time. The example makes it clear that a customer will receive a \$50 credit for each quarterly bill that they pay on time. And the advertisement complies with the ACT Code because the comparison percentage is the most prominent price-related feature in the advertisement.



Reprinted with permission from ACCC Guide to the Electricity Retail Code, July 2021.

### 2.7.3. Displaying the lowest possible price

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

Communication of price offers with conditional discounts can cause confusion for consumers and result in consumers accepting offers that are not in their best interests. To reduce confusion, the NERL 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
- that the lowest possible price will only be payable when these conditions are met and not otherwise.

### 2.7.4. Bundled offers

The ACT Code does not extend to communicating offers other than electricity supply. But NERL retailers must still comply with the ACT 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 NERL retailer communicates its electricity prices as part of an electricity and gas bundled offer, the NERL retailer still must comply with the requirements under the ACT Code when referring to the electricity offer.

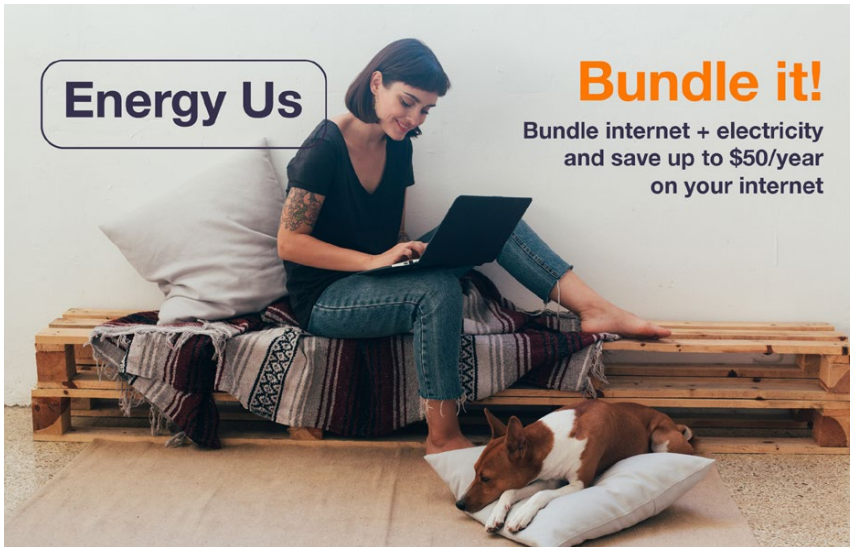
The electricity element of the example advertisement below does not comply with the ACT Code requirements for communicating offered prices because:

- 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
- the type of small customer for the offer is not clearly and conspicuously stated.



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The ACT 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 the discount relates to internet supply and not energy, the ACT Code does not apply.



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

## 2.7.5. Examples of compliant and non-compliant advertising

Below are 2 example advertisements to illustrate a compliant advertisement and a non-compliant advertisement. These examples combine the points discussed in this section of the guideline.

### Example advertisement that complies with the ACT Code

**Energy Us**

**11% less than  
reference price**

plus

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

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

Reprinted with permission from ACCC *Guide to the Electricity Retail Code*, July 2021.

The advertisement complies with the ACT Code 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 (for a particular customer type and model annual usage).
- The 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 (for a particular customer type and model annual usage).
- The pay on time conditional discount is not stated as the main price-related element of the communication.
- The pay on time condition for the discount is clearly and conspicuously stated.
- The comparison percentage and the difference between the conditional price and unconditional price as a percentage of the reference price are both correctly stated.
- The lowest possible price of the offer is clearly and conspicuously stated.
- The type of small customer for the offer is clearly and conspicuously stated.



## Example advertisement that does not comply with the ACT Code



**Energy Us**

**Guaranteed 11% off**

PLUS

Further 3% Pay-On-Time Discount

*\$1254 annual bill*

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The advertisement above is non-compliant for multiple reasons.

First, information that must be included is missing:

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

Second, the advertisement does not sufficiently explain what the comparison percentage and the lowest possible price mean to the consumer.

Third, the example advertisement does not state that the comparison percentage is calculated from the reference price or that the reference price is based on the 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 compliant example specifically 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.

Fourth, 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 not be used when referring to the comparison percentage.

Fifth, 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 representative consumption 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 representative consumption as a percentage of the reference price.

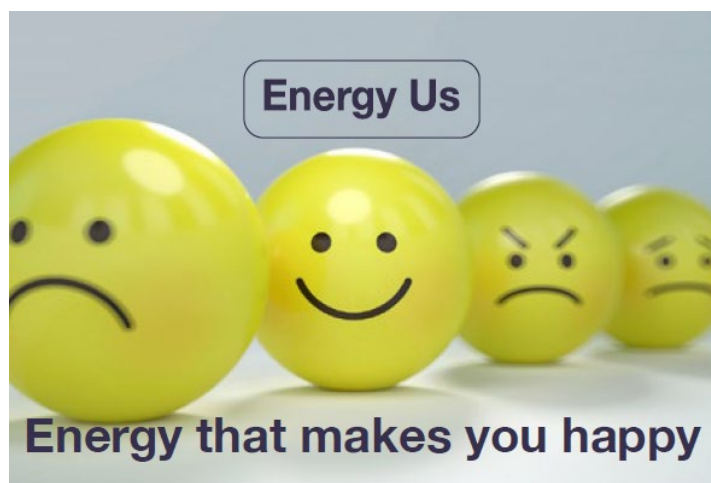
Without the words ‘if you always pay on time’, it is also unclear that the conditional price only applies if the customer always pays on time. Consumers could incorrectly interpret the conditional discount in the non-compliant example as a 3% discount which they can receive each time they pay on time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

Finally, the lowest possible price refers to the total amount a representative customer would be charged in that financial year, using the representative consumption 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 to achieve the lowest possible price. It also does not explain that this price is based on a representative customer who consumes the representative consumption (over a year) and that a customer’s bill will differ based on actual usage, as noted in the compliant example. Without this information, consumers could interpret this price as what they will pay in a year under this offer.

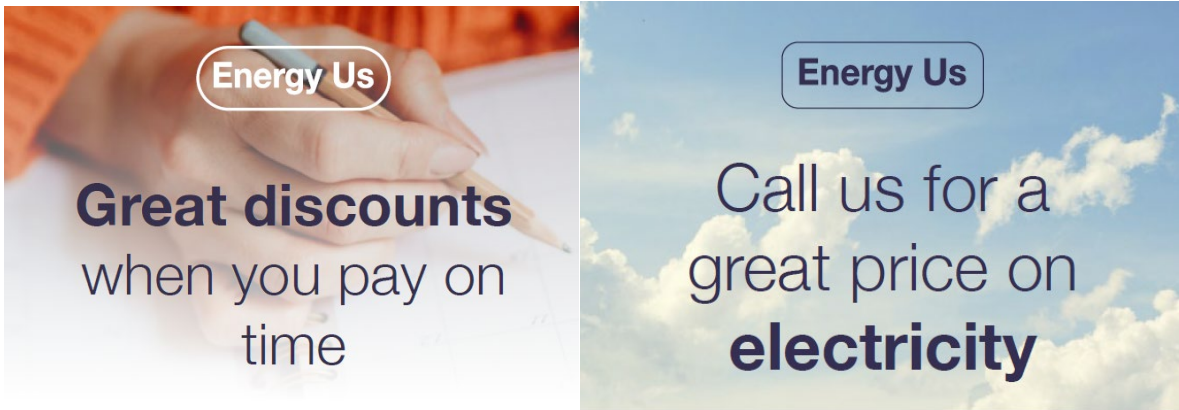
### 2.7.6. Where the ACT Code does not apply to advertising

The ACT Code does not apply to general brand advertising such as the example below. Similarly, the ACT Code does not apply where general brand statements are made in other mediums of communication such as radio, television or social media.



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Below are 2 visual examples of general advertising on price, discounts and deals, to which the ACT Code does not apply. Similarly, the ACT 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.



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## 3. Better offer obligation

Part 3 of the ACT Code establishes a requirement on NERL retailers to check whether they have an offer that could save their customers money and to put a written message on their customers' bills inviting them to contact their retailer for more information. The message must also invite customers to contact their retailer and/or use the Australian Government's price comparison website to compare offers.

NERL retailers are required to perform the better offer obligation in a way that promotes the objective of the better offer obligation.

### 3.1. Objective of the better offer obligation

The purpose of the better offer obligation is to prompt small customers to shop around for better deals and tell them how they can find a better offer that suits their needs and could save them money off their bills. There are 3 main aspects to the better offer obligation:

- NERL retailers must check whether they have a better offer for each of their customers (the better offer check) from the offers the NERL retailer has that are available to those customers and give each customer an appropriate message.
- The message must tell the customer how they can contact the retailer for more information and advice.
- The message must include an invitation to use the Australian Government's Energy Made Easy website to compare offers from other retailers that might be better than the offers the customer's retailer has.

The message must be displayed prominently and be helpful to the retailer's customers.

### 3.2. Application of the better offer obligation

#### 3.2.1. Types of customers covered

The better offer obligation applies to all small customers of a NERL retailer, except for customers of embedded networks. Small customers include business customers who consume electricity below the upper consumption threshold. The upper consumption threshold for business customers is currently 100 MWh of electricity in a year.

#### 3.2.2. Transitional arrangements

To allow retailers time to adapt their billing systems for undertaking the better offer checks, the requirement to undertake the better offer check and messaging has been postponed until 1 July 2022 or a later date as decided by the commission.

From the commencement of the ACT Code until the commencement of the better offer obligation, transitional arrangements have been created which are outlined in part 3.5 of the ACT Code and are discussed at section 3.5 of this guideline.

### 3.2.3. Application to customers in embedded networks

The ACT Code applies to NERL retailers with embedded network customers. Since embedded network customers do not have the choice of offers and suppliers that other small customers have and because there is a cost to retailers in undertaking a better offer check, we have determined that the better offer obligation will not apply to embedded network customers.

## 3.3. Better offer check

The ACT Code gives retailers discretion in how they undertake better offer checks provided they meet the requirements in the ACT Code. Retailers must use the customer's smart meter data when it is available and use 'reasonable endeavours' to undertake a review of the small customer's usage in a way that will achieve the purpose of the better offer obligation.

'Reasonable endeavours' has been defined by the High Court as 'what is reasonable in the circumstances'.<sup>5</sup> We expect this will include consideration of the small customer's individual circumstances, based on the information that is available to the NERL retailer, and calculations of what the customer would be expected to pay under all plans that the NERL retailer has available that the small customer is eligible for, using the information available to the retailer about the customer's individual circumstances.

This section applies after the transitional period. The requirements during the transitional period are discussed in section 3.4.

### 3.3.1. Undertaking a better offer check

The better offer check is used to check whether the NERL retailer has an electricity offer that is available to the individual small customer that would better suit the customer's circumstances and allow them to reduce their bills.

When undertaking a better offer check, the NERL retailer should use the best information that is available about the individual customer.

If smart meter data is available, it should be used. Where a customer has a smart meter, using the smart meter data will allow the retailer to accurately assess which offers are likely to be cheaper, having regard to not only the customer's total historical usage but also the timing and pattern of that usage.

Where smart meter data is not available, the retailer should use the information that is available about the individual customer, such as the customer's total usage over the past year and any information that is available about the timing and pattern of the customer's usage, such as for customers on time-of-use tariffs.

If the customer has been with the retailer for less than a year, the retailers should use the period of available information.

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<sup>5</sup> Electricity Generation Corporation v Woodside Energy Ltd [2014] HCA 7 at 41.

The better offer check should look at whether the small customer would be better off overall considered against all offers and tariff structures that the small customer is eligible for. For example, a small customer may be better off over the year on a plan with a lower daily supply charge and a higher usage charge, based on their usage pattern.

At a minimum, for customers on standing offers, the NERL retailer must check whether it has a market offer that is lower-priced than the comparable standing offer.

As the ACT Code does not require a calculation of the amount that could be saved to be included in the better offer message, there is no dollar savings threshold in the better offer check. The customer would either be better off on another plan or would be on the best offer available.

### **3.3.2. Wording of the better offer message**

The ACT Code gives retailers discretion about what they put in the better offer message, provided it meets the requirements set out in the ACT Code. The ACT Code frames the message to ensure that there is a similarity of the messaging from different retailers.

The ACT Code requires that the message:

- promotes the objectives of the better offer obligation
- is prominently displayed
- is titled 'We think you could save money on another plan' if a better offer is available for the customer
- explains that the NERL retailer believes that it has a better offer available that would save the small customer money
- is titled 'Could you save money on another plan?' if the better offer check indicates that the customer is receiving the best offer available
- gives clear, simple instructions to the small customer about how to contact the retailer to discuss the better offer if a better offer is available for the customer
- contains the line 'You can also compare plans from other retailers by going to the Australian Government's Energy Made Easy website [www.energymadeeasy.gov.au](http://www.energymadeeasy.gov.au)'.

If the price comparator website information can be included as a hyperlink, then it should be included in that way. If a hyperlink is not possible, the web address [www.energymadeeasy.gov.au](http://www.energymadeeasy.gov.au) must be included.

The wording requirements for the transitional better offer message are in section 3.4.2.

### **3.3.3. Display of the better offer message**

The better offer message must be prominently displayed in a border next to the billing total, either on the bill itself or on the cover page of the billing notification.

If the better offer message is to be included on the billing notification cover page and this page does not contain the billing total, the better offer message must appear in a prominent border, centred in the bottom third of the page using a font that is no smaller than 14 point.

### 3.3.4. Examples of better offer messages

Example message if the better offer check indicates that a better offer is available for the customer

<b>DUE DATE:</b> 24 April 2021	<b>AMOUNT DUE:</b> \$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](http://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](http://energymadeeasy.gov.au).

Example message the better offer check indicates that the customer is receiving the best offer available

<b>DUE DATE:</b> 24 April 2021	<b>AMOUNT DUE:</b> \$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](http://energymadeeasy.gov.au).

Example message in larger font where the message cannot be placed adjacent to the billing total

**We think you could save money on another plan.**

Call us on XXX for information about our other plans that could save you money or head to [energyus.com.au/compare](http://energyus.com.au/compare).

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

## 3.4. Transitional arrangements for the better offer check

The requirement to undertake a better offer check (clause 3.3) and provide a better offer message (clause 3.4) to small customers will not take effect until 1 July 2022 or a later date decided by the commission. This gives retailers time to adapt their billing systems to use the usage and other information available for their customers, including smart meter data when available, in their better offer checks.

### 3.4.1. Undertaking a transitional better offer check

When a small customer contacts their retailer in response to a transitional better offer message, the retailer must use reasonable endeavours to carry out a better offer check for the small customer. The process for undertaking such 'personalised' better offer checks is similar to the process set out in section 3.3.1 of this guideline, where the retailer must use the best information available about the customer to compare the suitability of offers that are available to the customer.

A small customer's right to a personalised better offer check is established by the clear advice entitlement. Personalised better offer checks are discussed further in section 4.3.5.

### 3.4.2. Transitional better offer message

All customers will receive the same message during the transitional period. This will ensure that customers receive a message to prompt them to seek information about other offers and suppliers as soon as possible. If a customer contacts their retailer, the clear advice entitlement (described in chapter 4) will apply to advice given to customers by their retailer based on personalised information.

The transitional better offer message must be sent whenever a better offer message would have been sent to the customer. Like the better offer message, it must be prominently displayed in a border next to the billing total either on the bill itself or on the cover page of the billing notification.

If the transitional better offer message is to be included on the billing notification cover page and this page does not contain the billing total, the transitional better offer message must appear in a prominent border, centred in the bottom third of the page using a font that is no smaller than 14 point.

The transitional better offer message must:

- be titled 'Could you save money on another plan?'
- provide clear, simple instructions to the small customer about how to contact the retailer to discuss whether a better offer is available for the customer
- contain the line 'You can also compare plans from other retailers by going to the Australian Government's Energy Made Easy website [www.energymadeeasy.gov.au](http://www.energymadeeasy.gov.au)' using a hyperlink where possible.



### 3.4.3. Examples of transitional better offer messages

#### Example transitional better offer message

Due date:  
24 April 2021

Amount due  
\$127.36

**Could you save money on another plan?**

Call us on XXX for information about our other plans that may save you money or head to [energyus.com.au/compare](http://energyus.com.au/compare).

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

#### Example message in larger font where the message cannot be placed adjacent to the billing total

**Could you save money on another plan?**

Call us on XXX for information about our other plans that could save you money or head to [energyus.com.au/compare](http://energyus.com.au/compare).

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

## 4. Clear advice entitlement

Part 4 of the ACT Code introduces an entitlement for customers to receive clear, timely and reliable information from retailers to help them assess and select an electricity offer that best suits their circumstances.

The ACT Code requires a NERL retailer to perform its obligations under the clear advice entitlement in a way that promotes the objective of the clear advice entitlement.

### 4.1. Objective of the clear advice entitlement

The clear advice entitlement for small customers supplements the better offer obligation. It helps them to assess offers that are available to them and choose an offer that is suitable for their circumstances.

When small customers contact their retailer to ask about alternative retail electricity offers, they should receive an appropriate level of assistance. The retailer should help the small customer identify the best plan for their circumstances. This helps small customers avoid switching to a plan that is not suitable for them. The clear advice obligation is intended to make customers aware of the features and terms and conditions of offers and help them understand how those features and terms and conditions may affect what they will pay under the offer. With this information, customers can make more informed decisions about electricity offers.

### 4.2. Application of the clear advice entitlement

#### 4.2.1. Types of customers covered

The better offer obligation applies to all small customers of NERL retailers. Small customers include business customers who consume electricity below the upper consumption threshold of 100 MWh in a year.

#### 4.2.2. Application to embedded networks

Under the Utilities Act, industry codes apply to NERL retailers. This means that if the embedded network is operated by a NERL retailer, the ACT Code will apply but if it is operated by an exempt retailer the ACT Code does not apply.

We have determined that the clear advice obligation will apply to embedded network customers (as discussed in section 2.2.2 of this guideline).

## 4.3. Minimum standards for clear advice

The information NERL retailers must give to small customers should be clear, timely and reliable. It must be given to customers in a respectful manner with the purpose of helping their customers make an informed decision about whether an electricity offer is suitable for them.

The information should be communicated in clear, plain language and given due prominence in the interaction between the retailer and the customer. This means drawing attention to the relevant terms and conditions of the offer, rather than including them within a recital of the full terms and conditions of the contract.

The clear advice entitlement requires retailers to communicate with the customer in clear and easily understood terms:

- the estimated dollar impacts of terms and conditions, including tariff structures, that influence the costs they will face over the term of the contract
- any of that retailer's alternative offers that, based on their interaction with the customer, the retailer believes might be better suited to the customer.

The rest of this section sets out more detailed guidance on the minimum information NERL retailers should give their small customers who contact them for assistance and the information retailers should ask the customer for to help give them appropriate advice.

### 4.3.1. Relevant plans

Retailers are only required to tell a customer about plans that they know are available to the customer. Retailers do not need to tell customers about plans that those customers are not eligible to sign up to.

For example, a customer who has a basic meter cannot sign up to tariff types that are not supported by a basic meter. Retailers only need to tell customers with basic meters about the estimated bill impacts of different plans that are available to those customers.

Where a retailer has a plan that is targeted at an exclusive group, and the retailer has information that establishes that the customer meets the eligibility criteria to sign up to the plan (such as information divulged during the interaction), the retailer should tell the customer about it if the retailer thinks the plan is more suitable for the customer than the plan the customer is currently on.<sup>6</sup> This does not require the retailer to specifically ask the customer questions to establish their eligibility for each plan that is targeted at an exclusive group.

### 4.3.2. Tariff structures

When a small customer seeks advice on choosing an offer, the retailer must give information about how the timing or pattern of usage affects what the customer may pay under the tariff structure for offers that are available to them. This information will help the customer understand how their own actions can

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<sup>6</sup> An example of 'exclusive group' includes group buying arrangements with membership or sign-up conditions.

influence the cost of their bill, such as shifting part of their usage to the off-peak period in a time-of-use tariff.

If the customer is considering an offer with a more complex tariff structure than their current plan, such as demand pricing or moving from a flat tariff to a time-of-use tariff structure, the retailer should explain the potential impact of the different tariff structure to the customer.

### **4.3.3. Contract conditions**

Contracts often include conditions where the customer's bill is affected by actions taken by the customer and actions that the retailer can take. Examples of contract conditions that would need to be highlighted in complying with the clear advice entitlement are:

- conditional discounts, where the customer's actions influence the cost of their bill – for example, the cost impact of not paying a bill on time where the offer has a pay-on-time discount
- additional fees and charges based on the customer's choices – for example, switching from electronic to paper bills or credit card payment processing fees where the customer signs up to pay by direct debit with a credit card
- other actions the retailer can take that influence the cost of the customer's bill – for example, if the contract allowed the retailer to change prices during the term of the contract, this would need to be disclosed even though the retailer cannot estimate in advance the bill impact because the magnitude of future price changes is not known.

### **4.3.4. Fees and charges**

Retailers are expected to tell customers about fees and charges that they would have to pay in the normal course of events. This requires retailers to exercise some judgement about whether they need to disclose a specific fee or charge having regard to the objective of the clear advice entitlement.

As a guide to deciding what information on fees and charges should be given to the customer, the retailer should consider whether telling the customer would help them choose the best plan for their circumstances and understand how much they are likely to pay over the term of the contract. Too much information, particularly about fees and charges that a customer would not expect to pay in the normal course of events, could be confusing and would not meet the standard of being clear, timely and helpful.

### **4.3.5. Customer information and personalised 'better offer checks'**

The ACT Code gives retailers the responsibility for determining what information about the customer they consider when meeting their clear advice entitlement.

The type of information that will help the retailer to estimate the dollar impacts of terms and conditions, including tariff structures, of available offers and the costs the customer will face over the term of the contract is similar to the information needed to do a better offer check. The information needed to compare offers and check if there is an offer that would better suit the customer's circumstances is described in section 3.3.1 of this guideline.

A retailer will be more likely to have access to historical information where a customer is communicating directly with a retailer, such as through a call centre, than might be the case where a customer is comparing

offers on the retailer's website. This is because, for a retailer to access historical information and give personalised information, it needs to verify the identity of the customer for privacy purposes. But retailers should consider relevant information provided by the customer during the interaction which, on digital platforms, might include a response to a question about their typical usage.

The retailer may need to ask the customer for information to gain a better understanding of the customer's annual usage, and timing and pattern of usage, where historical information is not available. This may be where the customer has been with the retailer for less than 12 months. Or the customer may be considering an offer with a more complex tariff structure than their current plan, such as demand pricing or moving from a flat tariff to a time-of-use tariff structure. In these cases, the retailer may need to ask broad questions about the size of the customer's household, number of large appliances, type of heating and cooling, and when they typically use electricity. This information can help the retailer make a better-informed estimate of the customer's annual usage and timing and pattern of usage. For small businesses, the retailer could ask questions to understand how much electricity the customer is using.

Where smart meter information is available for the customer, this information should be used.

When a customer contacts their retailer during the transitional period for the better offer obligation, the retailer should go through a personalised 'better offer check' based on information provided by the customer during the interaction. The retailer would conduct this check as part of meeting its obligations under the clear advice entitlement.

We understand that many retailers are already doing personalised manual checks when customers contact them, using information already in their billing systems and information provided during the interaction. Retailers should consider whether their current checks meet the requirements of the clear advice entitlement.

After the transitional period for the better offer obligation, retailers will have already done the better offer check when a customer contacts them in response to a better offer message. Retailers are likely to need to collect less information from customers during the interaction to meet their obligations under the clear advice entitlement. However, they may still need to ask for additional information where this would help the retailer to advise the customer on choosing a better offer that suits their circumstances and helps them reduce their bills.

## 4.4. Explicit informed consent

The NERL requires a customer to contact a retailer to give explicit informed consent before switching to another offer. The NERL outlines explicit consent at section 39. The clear advice entitlement complements the requirement for explicit informed consent because it sets out what retailers should communicate to customers before the customer signs up to an offer.

In summary, the NERL provides that:

- Consent must be informed. The retailer must clearly, fully and adequately disclose all matters relevant to the consent of the customer, including each specific purpose or use of the consent.
- Consent must be voluntary. This means that the small customer must be free from pressure, duress or undue influence when making their decision. The small customer must have a genuine opportunity and choice to say 'yes' or 'no'.

- The small customer must have the capacity to consent. The retailer must consider whether the small customer can understand the information and make an informed decision. In presenting the information, the retailer should consider any relevant cultural factors or physical or intellectual disabilities.
- Consent must be recorded. The small customer's informed consent must be recorded either in writing with a dated signature, or verbally in a recording, or by an electronic confirmation generated by the small customer.

# Abbreviations and acronyms

**ACCC** means the Australian Competition and Consumer Commission

**ACT Code** means the ACT Retail Electricity (Transparency and Comparability) Code

**AER** means the Australian Energy Regulator

**Australian Consumer Law** means the *Competition and Consumer Act 2010* (Cth)

**Energy Made Easy website** means the Australian Government's website [www.energymadeeasy.gov.au](http://www.energymadeeasy.gov.au)

**GST** means the goods and services tax

**ICRC** means the Independent Competition and Regulatory Commission

**ICRC Act** means the *Independent Competition and Regulatory Commission Act 1997* (ACT)

**kWh** means kilowatt-hour

**MWh** means megawatt-hour

**NERL** means the National Energy Retail Law – set out in the schedule of the *National Energy Retail Law (South Australia) Act 2011*

**Reference Price Determination** means the Utilities (Representative Consumption and reference Price) Determination 2021

**Utilities Act** means the *Utilities Act 2000* (ACT)



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