



Amendments to AER Retail Pricing Information Guidelines V 4.0

**Selected sections for additional
consultation only**

17 July 2015

About this consultation

Background

On 15 April 2015, the AER released revised draft Retail Information Pricing Guidelines (Guidelines) and an accompanying Notice of Draft Instrument (Notice) for public consultation.

We received 19 submissions and these were generally supportive of the goals of clarity and consistency of language that the revised Guidelines proposed to achieve. The consultation documents and submissions are published on our website.¹

A number of submissions raised concerns that, even with the proposed changes to the Guidelines, some confusion may continue due to inconsistency across different documents provided to consumers.

We have given consideration to issues raised throughout the consultation process. To inform our finalisation of the Guidelines, we are inviting feedback from stakeholders about three further amendments that we are proposing. This document discusses those amendments.

- Feedback should be submitted to AERInquiry@aer.gov.au by **3 August 2015** (see page 3).
- The implementation timeline has been updated to accommodate this extension to the consultation period (see page 3).

The proposed amendments should be read in conjunction with the Guidelines released on 15 April 2015.

Approach to consultation

Under the retail consultation procedure, the AER must prepare draft Guidelines for consultation, together with a Notice providing details of the context in which the Guidelines have been prepared, the issues involved and the possible effects of the Guidelines.²

The AER must invite submissions and comments on the draft Guidelines, and consider all submissions made within a specified time period of at least 20 business days. The AER must then publish final Guidelines on its website, together with a written Notice stating the reasons for making the final Guidelines.

This consultation has met these requirements. In addition to meeting these formal consultation requirements, we have conducted two stakeholder forums prior to the release of the draft Guidelines and continue to meet with stakeholders on request.

¹ <http://www.aer.gov.au/node/29505>

² Rule 173 of the National Energy Retail Rules sets out a consultation procedure that the AER must follow when it is required by the Retail Law or Retail Rules to publish an instrument (such as the Retail Information Pricing Guidelines) and a Notice that sets out reasons

We regard this consultation as an opportunity for interested stakeholders to consider and provide feedback on amendments that we are proposing to include in the final Guidelines. It is not a new consultation, rather an extension of the ongoing consultation process.

Amended timeline

Due to the extension of the consultation phase, we anticipate the final version of the Guidelines to be published on or before 1 October 2015, to take effect on 1 January 2016.

Please refer to the Retail Pricing Information Guidelines consultation page of the AER website for an updated timeline³.

Submissions

Interested parties are invited to provide written feedback regarding these amendments by close of business, **Monday 3 August 2015**.

Feedback should be sent electronically to: AERinquiry@ aer.gov.au with the subject line 'AER Retail Pricing Information Guidelines'.

Alternatively, written feedback can be sent to:

Ms Sarah Proudfoot
General Manager—Retail Markets Branch
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

We prefer that all feedback be publicly available to facilitate an informed and transparent consultative process. Feedback will be treated as public documents unless otherwise requested. Parties wishing to submit confidential information are requested to:

- clearly identify the information that is the subject of the confidentiality claim
- provide a non-confidential version of the submission in a form suitable for publication.

We will place all non-confidential feedback on our website at www.aer.gov.au. For further information regarding the AER's use and disclosure of information provided to it, see the ACCC/AER Information Policy, June 2014, available on the AER website.

³ <http://www.aer.gov.au/node/29505>

Explanation of additional amendments

Included in this document are three amended sections that we are inviting further stakeholder feedback on. These sections are outlined below and references provided are to the initial consultation draft.

Section	Reference	Amendment
Language requirements	2.3	<p>The amendment is to expand the language requirements to also include advertising and marketing materials, and to provide for a staggered commencement of these requirements.</p> <p>The amendments respond to concerns that customers may be confused by inconsistent language across different retailer materials. A staggered commencement will reduce potential compliance impacts.</p> <p>The amendments would not extend the language requirements to bills or to contractual documents.</p>
Conditional discounts	2.4.2.2	<p>The amendment is to expand the conditional discount disclosure obligations to also include advertising and marketing materials.</p> <p>The amendment is to maintain consistency with equivalent requirements for Energy Price Fact Sheets.</p>
Guaranteed discounts	2.4.2.3	<p>The draft Guidelines originally proposed to require retailers to display the tariff rate inclusive of guaranteed discounts alongside a guaranteed discount statement.</p> <p>The amendment is to now limit when retailers are required to display a tariff rate alongside a guaranteed discount statement. Retailers will only be required to show the particular tariff rate when they have necessary information about the customer to determine the tariff rate that would apply.</p> <p>When required to show the tariff rate, the amendments also require retailers to show the tariff rate <i>exclusive</i> of any discounts.</p> <p>The amendments respond to concerns that the original proposed approach may create confusion if customers compared tariffs displayed on Energy Price Fact Sheets to tariffs displayed on their bills and contracts.</p> <p>There was also some concern that circumstances would arise where it would not be possible to determine a particular customer's actual tariff rate (for example, on billboard or web-banner advertising) to which the guaranteed discount would apply.</p>

Language requirements

Date and scope of commencement

The language requirements apply to all Energy Price Fact Sheets from 1 January 2016. This includes all generally and non-generally available offers.

The language requirements apply to marketing and advertising materials that are created, printed or generated from 1 January 2016. Retailers are not required to withdraw or change materials created, printed or generated prior to this date, even if those materials do not comply with these language requirements.

Retailers should update existing online materials to comply with the language requirements, but are only required to do so when webpages are updated as part of their regular course of business.

Language requirements

On an Energy Price Fact Sheet and in marketing and advertising materials retailers must choose language that is clear, simple and widely understood. Terminology must be consistent, that is, the same word should be used throughout the Energy Price Fact Sheet, in marketing and in advertising materials where the meaning of the term is unchanged.

Table 1 lists the terms that must not be used by retailers on an Energy Price Fact Sheet, in marketing or advertising material and lists the acceptable terms that must be used as an alternative.

The language requirements do not extend to contracts or to customer bills. We do, however, encourage retailers to maintain consistency across these documents wherever possible.

Table 1

Prohibited terms	Acceptable terms
'Evergreen' / 'evergreen contract'	Ongoing contract
'Evergreen contract with fixed benefit period'	Ongoing contract with fixed benefit period (Note: When referring to a 'fixed benefit period' as defined in the National Energy Retail Rules, ⁴ no term other than 'fixed benefit period' may be used.)
'Fixed term' or 'Fixed' (in relation to contract length) except where the price is also fixed or when referring to the 'fixed benefit period' of an ongoing contract.	Contract term, Contract length or '[number] month contract' If there is no contract term: 'No contract term' or 'ongoing contract'
'Early termination fee' or 'Termination fee'	Exit fee
'Unconditional discount', 'Non-conditional discount', 'Base discount'	Guaranteed discount
Consumption	Usage

⁴ National Energy Retail Rules s 45A.

Conditional discounts

Conditional discounts are discounts that only apply if a customer satisfies certain requirements or conditions (for example, by paying on time).

Examples of conditional discounts include (but are not limited to):

- loyalty discounts
- pay on time discounts
- bundling discounts (when a customer signs up to both electricity and gas with a retailer)
- direct debit discounts.

Each discount must be named and described clearly and simply using language that is widely understood by the general public.

On each Energy Price Fact Sheet, and in marketing and advertising materials, a retailer must provide information on any conditional discounts that applies to an offer. Information must include:

- the amount and/or percentage of the discount (and for percentage discounts, whether the discount applies to the whole bill or usage charges only)
- how the small customer qualifies for the discount, and
- for dual fuel offers, which fuel(s) the discount applies to.

Guaranteed discounts

A guaranteed discount is any discount that does not require a particular action or behaviour on the part of the customer.

A retailer that offers a guaranteed discount must clearly indicate on the relevant Energy Price Fact Sheet, and in marketing and advertising materials, what the discount applies to.

Where a guaranteed discount is offered to a customer, and the retailer has the necessary information (such as distribution zone and eligible meter type) to determine the tariff rate that would be available to that particular customer, then the retailer must display that tariff rate without the discount, alongside any guaranteed discount statement.

For example, a retailer may promote a guaranteed discount in a major metropolitan newspaper without specifying the specific tariff rate if the advertisement is clear about what tariff the guaranteed discount will applied to (e.g. the retailer's standing offer tariff).

However, if the retailer is marketing to a particular customer at a known address with a known meter type, the retailer must ensure that the representations of the guaranteed discount to that customer are accompanied by the pre-discount tariff rate.

The Australian Consumer Law prohibits retailers from representing guaranteed discounts in a manner that misleads or deceives consumers.⁵ Nothing in these Guidelines affects the operation of the Australian Consumer Law.

⁵ *Competition and Consumer Act 2010* (Cth) ss 18, 29(1)(g), 29(1)(i).