



Communicating pricing changes

- The Australian Energy Regulator (AER) and the Australian Competition and Consumer Commission (ACCC) work together closely to monitor the retail electricity market and enforce consumer protection requirements under relevant laws and regulations.
- Given the current environment of elevated prices, it is essential that energy consumers are provided with clear and accurate information when being advised of price changes to enable them to make informed choices about their energy costs.
- This compliance bulletin reminds retailers of their obligations around:
 - notifying customers of price changes
 - the price cap on standing offers
 - the Australian Consumer Law
 - use of conditional discounts in advertising
 - communicating and advertising prices to customers.
- The AER and the ACCC will continue to monitor retailer behaviour in this space and may take enforcement action against retailers who fail to comply with these important obligations.

Obligations under the Electricity Retail Code

- The Electricity Retail Code (**Code**) is a mandatory industry code under the *Competition and Consumer Act 2010* (Cth) (**CCA**). The Code applies to retailers that supply electricity to households and small businesses in New South Wales, South Australia, and South East Queensland.
- It aims to prevent disengaged consumers from paying too much for electricity and to help consumers compare electricity offers.
- The Code does not apply to demand tariffs and small business time-of-use or controlled load tariffs. It also does not currently apply to embedded network customers or prepayment meter customers.

Requirements under the Code

Caps on standing offer prices

- Under the Code, retailers must not charge small customers standing offer prices that exceed the reference price set by the AER, also known as the Default Market Offer (**DMO**).

- Retailers must make and keep a record demonstrating how they calculated the total annual price a representative customer would pay at their standing offer prices.

Communicating prices to small customers

- Retailers must state specific information when communicating their prices to customers under the Code.
- A retailer communicates their prices to a small customer if they:
 - advertise or publish the prices
 - offer to supply electricity at those prices, or
 - give a customer written notice of a change to their prices.
- Retailers must clearly and conspicuously state:
 - the difference between the unconditional price¹ and the reference price, stated as a percentage of the reference price
 - for each proportional conditional discount², the difference between the unconditional price³ and conditional price, stated as a percentage of the reference price
 - the total amount a representative customer would be charged in a year if they met all conditional discounts, or an estimate⁴ of the total amount the specific customer would be charged in a year if they met all conditional discounts
 - the distribution region
 - the type of small customer (residential, residential with controlled load or small business).
- Retailers must make and keep a record of the content and date of communications to customers and how they calculated or estimated the comparison information in communications.

Advertising conditional discounts

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

The ACCC enforces the Code by checking compliance

- The ACCC actively monitors and enforces compliance with the Code in accordance with its [Compliance and Enforcement Policy and Priorities](#). Competition and consumer issues

¹Unconditional price means the total price a representative customer would be charged for the supply of electricity in the financial year at the offered prices, disregarding any conditional discounts.

²Proportional conditional discount refers to 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.

³ Conditional price means the total amount a representative customer would be charged for the supply of electricity in the financial year at the offered prices, assuming that the conditions on the discount were met and disregarding any other conditional discounts.

⁴ In making such an estimate, a retailer may have regard to the rate at which electricity was supplied to the customer in the past; the timing or pattern of that past supply, and any other matter the retailer considers relevant.

arising from the pricing and selling of essential services, with a focus on energy, are a current enforcement and compliance priority.

- The ACCC can require retailers to provide information or documents they're required to keep, generate, or publish under the Code. If a retailer is selected for a compliance check, they will receive a notice pursuant to section 51ADD of the CCA that sets out the information or documents that must be provided. Retailers have 21 days to provide the information or documents.
- The ACCC also uses public information to monitor compliance with the Code.
- If a compliance check reveals that a retailer may have breached the Code, we'll engage further with the retailer. We may take administrative or enforcement action in line with our Compliance and Enforcement Policy and Priorities.
- The requirements in the Code are civil penalty provisions with a maximum prescribed penalty of 300 penalty units. In lieu of formal legal action should the Commission have reasonable grounds to believe a person has contravened the Code, the ACCC may decide to issue an infringement notice specifying a penalty of 50 penalty units for each breach in the case of corporations. A penalty unit is currently equal to \$275.
- Infringement notices have previously been issued to [CovaU Pty Ltd](#) and [Locality Planning Energy Pty Ltd](#) for alleged contraventions of the Electricity Retail Code.

Obligations under the ACL

- Retailers should also be aware of their obligations under the Australian Consumer Law (**ACL**). The ACCC enforce the ACL.
- Retailers must ensure that they represent and communicate prices in a way that complies with the ACL, including prohibitions on false or misleading representations and misleading or deceptive conduct. Retailers should be clear when explaining why and how prices are changing so that consumers are not given misleading impressions.⁵
- Conduct that breaches any of the provisions of the ACL could result in fines of up to \$2,500,000 for individuals and the greater of \$50 million, 3 times the value of the benefit received, or where the benefit cannot be calculated, 30% of adjusted turnover during the breach turnover period for the offence for companies.

⁵In 2020, the ACCC issued an infringement notice to [Origin Energy](#) for allegedly misleading customers about the reason prices were changing.

Obligations under National Energy Retail Law and Rules

- The **Retail Law** and **Retail Rules** govern the sale of energy from retailers to customers in New South Wales, Queensland, South Australia, Tasmania and the Australian Capital Territory. The AER enforces obligations under the Retail Law and Retail Rules.

Obligations around standing offers

Requesting to go on a standing offer in response to price change

- Every retailer must have a standing offer and customers have the right to ask for one if they wish. However, for customers with an existing electricity connection, only their existing retailer is obliged to supply them on these terms. Therefore, customers seeking a standing offer can make that request of their existing retailer, knowing it will be met and that they will be protected by the DMO price cap. Retailers must ensure they comply with this obligation.
- The AER expects that, if a customer asks their existing retailer if there is a better offer available than their existing Market Retail Contract, that the retailer include the DMO as an option.

Notice of changes to tariff and charges

General requirements

- Under the Retail Rules retailers must comply with notification procedures when making changes to any tariffs and charges under a Market Retail Contract with a small customer (residential or small business).⁶
- Retailers must give notice to the customer of any variation to the tariffs and charges that affects the customer.⁷
- Retailers must give at least 5 business days prior notice before the price change takes effect.⁸ The notice must be delivered by the customer's preferred form of communication, or the same method as the customer's bill.⁹ These obligations are tier 2 civil penalty provisions. The maximum corporate civil penalty is \$1.435 million plus \$71,800 for every day during which the breach continues. The maximum individual civil penalty is \$287,000 plus \$14,400 for every day during which the breach continues.
- The notice must
 - specify that the customer's tariffs and charges are being varied and the date on which the variation takes effect
 - identify the customer's current tariffs and charges inclusive of GST
 - identify the customer's varied tariffs and charges inclusive of GST
 - specify that the current and varied charges are inclusive of GST

⁶ National Energy Retail Rules, subrule 46 ('Retail Rules').

⁷ Retail Rules, subrule 46(3).

⁸ Retail Rules, subrule 46(4)(a).

In Queensland, this requirement has been modified and energy retailers must give at least 10 business days prior notice for price increases. See <https://www.legislation.qld.gov.au/view/html/inforce/current/sl-2014-0339>

⁹ Retail Rules, subrule 46(4)(b).

- specify that customers can request historical billing data and electricity consumption data from the retailer.¹⁰
- This obligation is a tier 3 civil penalty provision. The maximum corporate civil penalty is \$170,000 plus \$17,000 for every day during which the breach continues. The maximum individual civil penalty is \$33,900 plus \$3,390 for every day during which the breach continues.
- Despite the requirement to give notice at least five business days before the variation takes effect, a retailer is required to provide a notice of tariff and charge variation to a customer as soon as practicable, and in any event no later than the customer's next bill, where the variations to the tariffs and charges are a direct result of a tariff reassignment by the distributor pursuant to clause 6B.A3.2 of the *National Electricity Rules (Electricity Rules)*.¹¹

Exemptions

- The Retail Rules also set out a number of limited scenarios when notice is not required. These are:
 - where the customer has entered into a market retail contract with the retailer within 10 business days before the date on which the variation referred to in rule 46(3) is to take effect, and the retailer has informed the customer of such variation pursuant to rule 46A of the Retail Rules and section 39(1)(a) of the Retail Law.
 - where the variations to the tariffs and charges are a direct result of a benefit change and the retailer has provided the customer with a notice under rule 48A
 - with respect to a tariff or charge that continually varies in relation to the prevailing spot price of energy
 - However, the retailer must provide notice under rule 46(3) with respect to variations to any remaining tariffs and charges that form part of the same market retail contract
 - where the variations to the tariffs and charges are a direct result of a change to, or withdrawal or expiry of, a government funded energy charge rebate, concession or relief scheme, or
 - where the variations to the tariffs and charges are a direct result of a change to any bank charges or fees, credit card charges or fees, or payment processing charges or fees applicable to the customer.¹²
- Section 23 of the Retail Law sets out the requirements for varying standing offers.

More information

- The ACCC's [Guide to the Electricity Retail Code](#)
- [Industry code compliance checks](#)

¹⁰ Retail Rules, subrule 46(4A).

¹¹ Retail Rules, subrule 46(4C).

¹² Retail Rules, subrule 46(4B).

© Commonwealth of Australia 2022

This work is copyright. In addition to any use permitted under the *Copyright Act 1968* all material contained within this work is provided under a Creative Commons Attributions 3.0 Australia licence with the exception of:

- the Commonwealth Coat of Arms
- the ACCC and AER logos
- any illustration diagram, photograph or graphic over which the Australian Competition and Consumer Commission does not hold copyright but which may be part of or contained within this publication.

The details of the relevant licence conditions are available on the Creative Commons website as is the full legal code for the CC BY 3.0 AU licence.

Inquiries about this publication should be addressed to:

Australian Energy Regulator and Australian Competition and Consumer Commission

GPO Box 3131

Canberra ACT 2601

Tel: 1300 585 165

Important notice

The information in this publication is for general guidance only. It does not constitute legal or other professional advice, and should not be relied on as a statement of the law in any jurisdiction. Because it is intended only as a general guide, it may contain generalisations. You should obtain professional advice if you have any specific concern.

The ACCC and AER have made every reasonable effort to provide current and accurate information, but it does not make any guarantees regarding the accuracy, currency or completeness of that information.

Parties who wish to re-publish or otherwise use the information in this publication must check this information for currency and accuracy prior to publication. This should be done prior to each publication edition, as ACCC and AER guidance and relevant transitional legislation frequently change. Any queries parties have should be addressed to the Director, Content and Digital Services, ACCC, GPO Box 3131, Canberra ACT 2601.