



Notice of Draft Instrument:

AER Retail Pricing Information Guidelines

Version 6

June 2019



Commonwealth of Australia 2019

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Contents

1	About this document	5
1.1	Introduction	5
1.2	Role of the Guidelines	6
1.3	Definitions and interpretation	7
1.4	Enforcement of the National Energy Retail Rules and National Energy Retail Law	8
1.5	Version history and effective date	9
2	Purpose of this Notice	10
2.1	Our approach	10
2.2	The draft Guidelines	10
2.3	How to make submissions	11
2.4	Publishing submissions	12
3	Proposed amendments to the Guidelines	13
3.1	Retailer responsibilities under the revised Guidelines	13
3.2	Proposed new structure of the Guidelines	13
3.3	Language requirements	14
3.4	Reference price requirements	15
3.5	Discounting requirements	15
3.6	Summary of key amendments	15
4	Overview of Part B of the Guidelines	16
4.1	Information requirements for reference price on energy plan documents	16
4.2	Unconditional discounts	17
4.3	Conditional discounts	17
4.4	Third parties and agents	17
4.5	Notice of price variation	18
4.6	Proposed timeframes for implementation	19
5	Other considerations	20
5.1	Relevant developments in the retail electricity market	20

5.2 Other matters 21

1 About this document

1.1 Introduction

This Notice of Draft Instrument (**Notice**)¹ accompanies the Australian Energy Regulator's (**AER**) revised draft Retail Pricing Information Guidelines (**Guidelines**).²

The revised draft Guidelines reflect key changes to retailer responsibilities as the Government implements recommendations from the Australian Competition and Consumer Commission's (**ACCC**) final Retail Electricity Pricing Inquiry (**REPI**) report. Specifically, these Guidelines make changes to reflect the AER's new 'Default Market Offer' (**DMO**) and the *Competition and Consumer (Industry Code - Electricity Retail) Regulations 2019 (the Electricity Code)*.

The Electricity Code comes into effect on 1 July 2019. It is a prescribed mandatory industry code made under the *Competition and Consumer Act 2010 (CCA)*. The Electricity Code is binding on electricity retailers that supply electricity to certain types of small customers in the applicable distribution regions, and will be enforced by ACCC.

The ACCC's final REPI report noted that standing offers, which were originally intended as a default protection for consumers who were not engaged in the market, were unjustifiably high. The final REPI report also found that standing offers have been used by retailers as a high priced benchmark from which their advertised market offers are derived. The DMO was a key ACCC recommendation.³

On 22 October 2018, the Government requested the AER develop a DMO consistent with relevant ACCC recommendations. We made the 2019-20 DMO determination on 30 April 2019. The DMO is:

- effective from 1 July 2019 for standing offer customers on relevant tariffs, in distribution regions not subject to state or territory based price regulation, and
- a mechanism for determining a reference bill amount ('reference price') for each network distribution region, from which headline discounts can be calculated.

The Electricity Code sets a cap on standing offers (the DMO, as determined by the AER) and specifies how prices and discounts must be advertised. The purpose of the Electricity Code is to:

- limit the standing offer prices that are charged to residential and small business consumers
- allow consumers to more easily compare offers, including by requiring retailers to inform customers how their advertised price for supplying electricity compares with a 'reference price'. An example of acceptable advertisement is electricity offer may be '10% less than the reference price'.⁴ The reference price will function as a

¹ Rule 173 (2) (b) of the National Energy Retail Rules

² Published on the AER website

³ Recommendations 30, 32, 49 and 50 of the ACCC's *2018 Retail Electricity Pricing Inquiry- Final Report*

⁴ Section 10 and 12 of the Electricity Code

benchmark comparison point against which customers can compare the relative price of different market offers,⁵ and

- prohibit conditional headline discounting – under the Electricity Code, the conditional discount must not be the most conspicuous price-related matter in the advertisement.⁶ The advertisement must also state the conditions on the conditional discount clearly and conspicuously.⁷

There are a number of developments underway that may have an impact on retail electricity pricing information. These include a rule change request about regulating conditional discounting, received by the Australian Energy Market Commission (AEMC) in February 2019.⁸ In addition, the Explanatory Statement to the Electricity Code notes that it is intended that the Department of the Environment and Energy, in consultation with the ACCC and other government agencies, will undertake a post-implementation review of the Electricity Code after two years.⁹ The objective of the review is to consider the operation of the Electricity Code, including in light of any changes, innovations or developments in the retail electricity market.¹⁰

The revised Guidelines will ensure retailer obligations are consistent with the Electricity Code in applicable distribution regions, to give effect to the reference price.

1.2 Role of the Guidelines

The AER may, in accordance with the retail consultation procedure, make and amend the Guidelines.¹¹

These Guidelines have two key functions:

1. to set out how retailers are required to present standing offer prices and market offer prices, and thereby assist small customers to consider and compare standing offer prices and market offer prices offered by retailers,¹² and
2. to prescribe how retailers and others are required to provide information for the purposes of maintaining the AER's Energy Made Easy (**EME**) price comparison service (<http://www.energymadeeasy.gov.au>).

By specifying the manner and form of retail pricing information, the AER aims to create clarity and consistency of presenting important information about energy plans to customers, giving them confidence in the accuracy and comparability of this information.¹³

⁵ Section 14 of the Competition and Consumer (Industry Code- Electricity Retail) Regulations 2019

⁶ Section 14 (2) of the Electricity Code

⁷ Section 14 (3) of the Electricity Code

⁸ The AEMC has not yet initiated this rule change request. The AEMC notes on its website that, when the AEMC initiates this process, the AEMC will publish a Consultation Paper to facilitate stakeholder consultation on the request <https://www.aemc.gov.au/rule-changes/regulating-conditional-discounting>

⁹ *Explanatory Statement - Competition and Consumer (Industry Code - Electricity Retail) Regulations 2019*, p.2

¹⁰ *Ibid*

¹¹ Section 61(1) of the National Energy Retail Law

¹² *Ibid.*, section 61 (2)

¹³ *Ibid.*, section 61(3)(a)

The Guidelines may specify any additional matters the AER considers necessary or convenient to assist customers to consider and compare standing offer prices and market offer prices offered by retailers.¹⁴

Under the National Energy Retail Law (**Retail Law**), a retailer must:

- without limitation, present standing and market offer plan prices (including any variation of those prices) in accordance with the Guidelines when publishing, advertising or notifying the AER of those prices or any variation¹⁵
- present standing and market offer plan prices prominently on their websites in accordance with the Guidelines¹⁶, and
- submit to the AER information and data relating to the presentation of standing and market offer plans that are generally available to classes of small customers, in the manner and form (and by the date or dates) specified in the Guidelines.¹⁷

The Retail Law also requires the AER to develop and make available on a website a price comparator.¹⁸ To meet this obligation, the AER has developed and maintains EME. The purpose of EME is to assist small customers to compare prices.¹⁹ EME may, in addition to information about the prices of standing offer and market offer plans, include such other information that the AER considers will achieve the purpose of a price comparator.²⁰ The Guidelines support the operation of EME by specifying the type of information retailers must provide to the AER, and how and when this information must be provided.

The Guidelines play an important role in ensuring customers receive information that is easy to understand and can assist them to assess and compare energy market offers, enabling them to confidently participate in the market.

1.3 Definitions and interpretation

In this Notice, terms and phrases have the meaning given to them in the glossary of the Guidelines, the Retail Law, National Energy Retail Rules (**Retail Rules**), the Electricity Code and/or the ACCC's *Guide to the Electricity Retail Code* (**Electricity Code Guide**).²¹ Clauses 13 and 14 of the Guidelines provide further information.

The Guidelines' glossary section contains some words and phrases used in Part B of the Guidelines. Some of these words and phrases are defined in the Electricity Code. The Guidelines' glossary also contains words and phrases used in Part A of the Guidelines, which are carried over from version 5 of these Guidelines.

¹⁴ Ibid., section 61(3)(c)

¹⁵ Ibid., section 24, 37

¹⁶ Ibid.

¹⁷ Ibid., section 63

¹⁸ Ibid., section 62(2)

¹⁹ Ibid., section 62(3)

²⁰ Ibid., section 62(5)

²¹ ACCC, *Guide to the Electricity Retail Code*, June 2019 <https://www.accc.gov.au/publications/guide-to-the-electricity-retail-code>

1.4 Enforcement of the National Energy Retail Rules and National Energy Retail Law

The AER is responsible for monitoring, investigating and enforcing compliance with the obligations under the Retail Law, Retail Rules and National Energy Retail Regulations (**National Energy Laws**). For more information please refer to AER guidance on its compliance and enforcement approach including, the AER's *Compliance and Enforcement Statement of Approach*.²²

The AER aims to exercise its functions and powers in a fair, consistent and transparent manner. The Retail Law gives the AER power to monitor, investigate, enforce and report.²³ In general, the AER's functions and powers include:

- a) monitoring and reporting on compliance with obligations under the Retail Law and Retail Rules
- b) investigating and making enquiries regarding breaches or possible breaches of the Retail Law and Retail Rules
- c) taking appropriate enforcement action, including:
 - issuing infringement notices
 - accepting voluntary or court enforceable undertakings
 - instituting proceedings in relation to breaches of obligations under National Energy Laws, and
 - where appropriate, revoking retailer authorisations.

The AER's enforcement response to breaches of the Retail Law or Retail Rules can generally be categorised as either administrative resolution (such as voluntary undertakings, revisions to internal processes or improved compliance training) or statutory enforcement action.

Statutory enforcement action can include issuing infringement notices, accepting enforceable undertakings and commencing court proceedings. The AER also has the power, in limited circumstances, to revoke a retailer's authorisation.²⁴

Businesses that operate under the Retail Law also have obligations under the Australian Competition Law (**ACL**) and the Electricity Code, which applies to their relationships with energy customers. The ACL prohibits retailers from representing prices or discounts in a manner which misleads or deceives consumers.²⁵

Nothing in these Guidelines affects the operation of the ACL or the Electricity Code. The AER and the ACCC work together to ensure misconduct in the energy market is

²² Available on the AER website at: <https://www.aer.gov.au/publications/corporate-documents/aer-compliance-and-enforcement-statement-of-approach>

²³ Section 204(1) of the National Energy Retail Law

²⁴ *Ibid.*, section 107

²⁵ Sections 18 and 29 of the Australian Consumer Law, Schedule 2 to the CCA

addressed.²⁶ As DMO prices and the reference price are being implemented through an industry code under the CCA, enforcement of its provisions will be the responsibility of the ACCC.²⁷

1.5 Version history and effective date

We are now consulting on a draft version 6 of the Guidelines.

Table 1 – Guideline version history

Release date	Version	Reason for revision
September 2011	1.0	Version 1.0 of the Guidelines was released in anticipation of the 1 July 2012 commencement of the Retail Law. Version 1.0 addressed the production and distribution of energy price fact sheets only.
January 2012	2.0	Version 2.0 contained requirements relating to EME for the first time.
June 2012	3.0	Version 3.0 included minor amendments to address feedback on the clarity of the Guidelines from retailers preparing for the anticipated 1 July 2012 commencement of the Retail Law.
August 2015	4.0	Version 4.0 was released in light of AEMC’s 2014 rule change requiring retailers to improve the information they give to consumers entering market retail contracts, particularly with respect to whether prices can vary. ²⁸
August 2018	5.0	Version 5.0 of the Guidelines introduced new requirements for retailers to present plan information simply and clearly through revised documents. Version 5.0 also improves consistency in how retailers present energy information to customers.
October 2019	This notice is in relation to version 6.0 of the Guidelines.	This version of the Guidelines reflects proposed changes to retailer responsibilities as a result of the AER’s DMO and requirements of the Electricity Code.

²⁶ ACCC, *Electricity Code Guide*, p. 2

²⁷ For more information regarding the ACCC’s role, see:

<https://www.accc.gov.au/business/industry-codes/electricity-retail-code>

²⁸ More information is available at <http://www.aemc.gov.au/Rule-Changes/Retailer-Price-Variations-in-Market-Retail-Contract>

2 Purpose of this Notice

2.1 Our approach

We are required to explain our approach to developing the draft Guidelines in a Notice.

This Notice provides information about the context in which the draft Guidelines have been prepared, the issues we have considered and the rationale for and effects of the proposed requirements.²⁹ The draft Guidelines and Notice have been prepared in accordance with the retail consultation procedure in rule 173 of the Retail Rules. The final notice will also set out stakeholder views on these issues.

In the following sections of the Notice, we explain the development and rationale for the requirements of the draft Guidelines:

- in **section 4.1**, presentation requirements to be complied with by retailers in the communication of reference price on energy plan documents
- in **section 4.2**, retailer responsibilities when specifying unconditional discounts, and
- in **section 4.3**, requirements to be complied with by retailers when presenting conditional discounts.

2.2 The draft Guidelines

In light of the requirements of the Electricity Code and the introduction of the DMO, retailer responsibilities have changed. We have developed the proposed Guidelines to reflect how the Electricity Code operates in applicable distribution regions. Our objectives are to:

- ensure that the Guidelines continue to serve as a practical mechanism for presenting a broad range of helpful information on energy plans to consumers
- remove any areas of potential inconsistency or confusion, and
- ensure that EME continues to receive updated and relevant information from retailers to meet both the requirements of the Guidelines and Electricity Code.

The proposed draft Guidelines set out retailer responsibilities in three sections. Part A applies to non-Electricity Code distribution regions and Part B applies to Electricity Code-affected distribution regions. Part C applies commonly to all retailers who are required to comply with Part A and/or Part B.

²⁹ Rule 173(2)(b)(ii) of the National Energy Retail Rules

2.3 How to make submissions

We are consulting on draft version 6 of the Guidelines. We invite stakeholder feedback on the draft Guidelines, published on 27 June 2019. Interested parties are invited to make written submissions by **5pm AEST, Friday 26 July 2019**.

Consultation questions

We invite stakeholder comment on the following consultation questions:

- 1. What are any practical barriers or impediments to implementing the proposed changes to the Guidelines? How can these be overcome?**
- 2. What other information should be included in the Guidelines to help retailers better understand their responsibilities under these Guidelines?**

We plan to publish the Guidelines as soon as possible, given the Electricity Code takes effect on 1 July 2019. As such, we are generally unable to accept late submissions.

Submissions should be sent electronically to [RPIGconsultation@aer.gov.au](mailto:RPIGconsultation@ aer.gov.au) with the subject line 'Draft AER Retail Information Pricing Information Guidelines submission'. We ask that all submissions sent in an electronic format are in Microsoft Word, PDF or other text readable document form.

Alternatively, submissions can be sent to:

General Manager—Consumer and Markets Branch
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

If interested parties prefer to meet with us rather than make a written submission, please contact the AER Consumer Policy team at [RPIGconsultation@aer.gov.au](mailto:RPIGconsultation@ aer.gov.au) by **5pm AEST, Tuesday 2 July 2019** to make arrangements.

We encourage interested parties to stay informed about this consultation process by subscribing to notifications via the AER website, at <https://www.aer.gov.au/newsletter/subscribe>

2.4 Publishing submissions

To ensure an informed and transparent consultative process we prefer that submissions be publicly available. Unless marked confidential, we will publish all responses on our website, www.aer.gov.au. If you wish to submit confidential information you should:

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

For further information about our use and disclosure of information provided to us, see the *ACCC/AER Information Policy* June 2014, which is available on our website.³⁰ If you have any questions about this Notice and the draft Guidelines, or about lodging a submission, please send your enquiry to [RPIGconsultation@aer.gov.au](mailto:RPIGconsultation@ aer.gov.au)

³⁰ *ACCC and AER information policy: collection and disclosure of information*, June 2014. Available at the AER website: <https://www.aer.gov.au/publications/corporate-documents/acc-and-aer-information-policy-collection-and-disclosure-of-information>

3 Proposed amendments to the Guidelines

3.1 Retailer responsibilities under the revised Guidelines

The proposed changes in this version of the Guidelines are mechanical revisions to reflect key changes to retailer responsibilities from the introduction of the DMO and the Electricity Code. This section of the Notice provides an overview of the proposed changes.

Specifically, these draft Guidelines contain proposed amendments to reflect changes to the following retailer responsibilities:

- requirements on retailers to advertise the reference price, and
- discounting requirements, where the most prominent discount in an advertisement must not be conditional, and if the advertisement mentions any conditional discounts, the relevant terms and conditions must be stated clearly and conspicuously.

The Retail Law and the Guidelines currently apply to retailers operating in New South Wales, South Australia, Tasmania, the ACT and Queensland. However, the Electricity Code applies to retailers advertising prices to residential and small business customers in distribution regions where there is not already price regulation.³¹ This currently includes distribution regions in New South Wales, South Australia and South-East Queensland.³²

The Electricity Code and the Guidelines do not currently apply in Victoria, Western Australia, and the Northern Territory.

To ensure the Guidelines apply correctly to distribution regions to which the Electricity Code applies, we propose amending version 5 of the Guidelines.

3.2 Proposed new structure of the Guidelines

In light of the changes required to the Guidelines, we have proposed the amended Guidelines adopt the following new structure:

Part A applies to distribution regions, offers and customer types to which the Electricity Code does not apply. This includes gas offers or the supply of gas.³³ It will continue to apply to residential solar customers.

Part A is based on version 5 of the Guidelines. Retailer responsibilities currently prescribed in clauses 19 to 69 and 79 to 110 of version 5 of the Guidelines remain largely unchanged. Part A specifies the use of required terms retained from the retailer obligations set out in version 5 of the Guidelines.

³¹ The Electricity Code does not apply to distribution regions in which there is price regulation – currently distribution regions in Tasmania, the ACT and Queensland (other than South East Queensland).

³² Section 8(a) of the Electricity Code

³³ Section 6(1) of the Electricity Code applies the requirements of the Electricity Code to electricity retailers supplying (or proposing to supply) electricity to a customer. Gas offers, or the supply of gas, are excluded from the requirements of the Electricity Code.

Part B applies to relevant distribution regions, customer types and offers to which the Electricity Code and reference price applies. Part B of the Guidelines includes proposed amended retailer obligations under clause 19 to 69 and 79 to 105 contained in version 5. These amendments seek to make the Guidelines work alongside the Electricity Code requirements and to give effect to the reference price. Proposed changes to retailer obligations relate to how retailers display and provide information, market their energy plans and describe their plans, to give effect to the reference price. The amendments also include requirements to provide updated price information to present the reference price in EME.

Section 4.7 of Part B includes specified language requirements, to ensure terms used are consistent with the definitions of Electricity Code.

Part C applies to all jurisdictions to which the Guidelines applies. This Part contains unchanged clauses (70 to 78 and 111-116) of version 5 of the Guidelines. These clauses do not require amendments as they are consistent with or do not interact with Electricity Code requirements.

The **Glossary** sets out terms to be applied to all Parts of the Guidelines, unless otherwise stated.

We consider this is the best approach to make it easier for retailers to understand their responsibilities.

3.3 Language requirements

Table 4 *Language requirements for Part B*, in the Guidelines have been updated to ensure that Part B is consistent with the terms contained in the Electricity Code and the Electricity Code Guide. To ensure consistency with the Electricity Code and Electricity Code Guide, the *Language requirements for Part B* at table 4 of the draft Guidelines require use of the term 'unconditional percentage' when referring to the reference price.

Section 12(3) of the Electricity Code requires advertisements, publications or offers by electricity retailers must state the difference between the reference price and the unconditional price, expressed as a percentage of the reference price. The Electricity Code Guide describes this difference between reference price and the unconditional price as the 'unconditional percentage'.³⁴ The Electricity Code Guide notes that, for market offers:

'...use of the word 'guaranteed' when referring to the unconditional percentage could lead consumers to incorrectly interpret this as the guaranteed discount consumers would receive under this offer. Depending on actual usage, a consumer's bill may differ from that of a representative customer. The word 'guaranteed' should therefore not be used when referring to the unconditional percentage.'³⁵

In the draft Guidelines, Table 4 *Language requirements for Part B* requires the use of the term 'guaranteed discount' in situations other than when referring to the reference price. The Guidelines define a guaranteed discount as any discount that does not require a particular

³⁴ ACCC, *Electricity Code Guide*, p. 7

³⁵ *Ibid*, p. 21

action or behaviour on the part of the customer. The current version of the Guidelines (version 5) requires the use of the term guaranteed discounts, rather than the specified prohibited terms.

3.4 Reference price requirements

The Electricity Code requires retailers to communicate to small customers how their prices for supplying electricity in a particular distribution region to a particular type of small customer compare with the reference price for that region and type of customer. This includes when the retailer advertises or publishes its prices or offers to supply electricity at those prices.

The proposed updates to clause 33 of the current Guidelines ('price information') will give effect to these changes.

3.5 Discounting requirements

Section 12 of the Electricity Code requires retailer advertisements, publications or offers to clearly and conspicuously state the percentage difference between the reference price and the unconditional price, expressed as a percentage of the reference price. If the offer includes a conditional price, a retailer's advertisement, publication or offer must state the difference between the unconditional price and the conditional price for the discount. These changes to clause 34 of version 5 of the Guidelines are required to reflect these changes in retailer responsibilities.

3.6 Summary of key amendments

The proposed amendments contained in Part B are:

- requirements to provide price information inputs to present the reference price on the AER's EME website
- changes relating to the presentation and description of discounts on EME and in other customer-facing information, and
- new requirements for the use of language for consistency with the Electricity Code.

Given the coverage of the Electricity Code, the proposed Part B does not include the 'Requirements for describing discounts in advertising and marketing' section (clauses 106-110) that forms part of the current version 5 of these Guidelines.

Proposed changes are discussed in more detail in the next section of this Notice.

4 Overview of Part B of the Guidelines

Part B of the Guidelines set out proposed requirements for retailers supplying electricity to small customers in distribution regions to which the Electricity Code applies.

The retailer requirements outlined in Part B of the revised Guidelines should be considered alongside retailer obligations in the Electricity Code.

4.1 Information requirements for reference price on energy plan documents

Under the Electricity Code, retailers must tell customers how their prices for supplying electricity compares with the reference price, stated as a percentage.³⁶ The offer must specify the particular distribution region and particular type of small customer to which the offer relates.³⁷

Section 4.6 of the draft Guidelines therefore sets out an updated list of information retailers must provide to the AER. This will enable the reference price to be published alongside retailer's offers on energy plan documents on EME. The table below sets out the proposed amended retailer information obligations contained in the draft Guidelines.

Table 2 – Proposed amended price and discount information requirements

Section of revised Guidelines	Proposed requirement contained in the draft Guidelines	Relevant or related section of the Electricity Code
Section 4.6.1 (124(a))	The difference in the unconditional price of the plan compared with the reference price, expressed as a percentage	Section 12(3)(a) of the Electricity Code
Section 4.6.1 (124(b))	The lowest possible price	Section 12(3)(c) of the Electricity Code
Section 4.6.1 (124(c))	The distribution region, and type of small customer	Section 12(6) of the Electricity Code
Section 4.6.1 (124(d))	The unit price for electricity. Removal of unit price for gas	Section 6 (1) of the Electricity Code
Section 4.6.2 (126(a))	Insertion of 'expressed as a percentage of the reference price'	Section 12(3)(a) of the Electricity Code
Section 4.6.2 (126(b))	If the price of the plan includes a proportional conditional discount, the difference between the unconditional price	Section 12(3)(b) of the Electricity Code

³⁶ Section 12(3) of the Electricity Code

³⁷ Ibid., section 12(6)

and the conditional price for the discount, expressed as a percentage.

Section 4.6.2
(128)

Components of unconditional price

Section 12(4) of the Electricity Code

4.2 Unconditional discounts

Clause 128, section 4.6.2 of the draft Guidelines specify that unconditional discounts must include:

- a) any fees or charges
- b) unconditional discounts
- c) any unconditional rebates or credits
- d) any annual recurring fees such as membership fees and
- e) any recurring metering charges.

The draft Guidelines note that unconditional discounts must not include any green charges or solar feed-in tariffs. These requirements in the revised Guidelines ensure that the 'unconditional discounts' set by retailers comply with the definition of 'price' under section 5 of the Electricity Code. We have included the reference to 'any unconditional rebates and credits' to capture one-off price benefits that do not fall within the definition of 'incentives' in the current Guidelines.

4.3 Conditional discounts

Clause 130, section 4.6.2 of the draft Guidelines clarify the requirements about 'conditional discounts', to ensure consistency with the definition of this term in section 5 of the Electricity Code. The revised Guidelines define 'conditional discounts' as including conditional rebates and conditional credits. The Electricity Code specifies that conditional discounts do not include a discount, rebate or credit if all of the conditions on it relate to the circumstances in which a small customer enters into a contract with an electricity retailer for supplying electricity to the small customer.³⁸ Clause 131 of the proposed Guidelines clarifies that one off discounts are not considered a conditional discount.

4.4 Third parties and agents

The Electricity Code's requirements in relation to the reference price primarily relate to advertisements, publications or offers. However, these Guidelines are broader in application, and currently apply to third parties involved in marketing, publishing or advertising energy plans. Part A of the Guidelines continues to apply in this way.

The broad policy objectives of the Electricity Code, reference price and these Guidelines are to enable customers to more readily compare energy plans. Therefore, at clauses 17 and 18 of the draft Guidelines, we note that Part B applies to electricity retailers and, where it would assist consumers, the AER expects that retailers should make arrangements so that third

³⁸ Ibid., section 5

parties (including comparator websites) and agents also comply. This is to ensure that a broad cross-section of customers experience the benefits of the Electricity Code and as the AER considers it is 'necessary and convenient' to include this in the Guidelines.³⁹

4.5 Notice of price variation

The National Energy Laws include provisions that require retailers to inform customers of price-related variations. The draft Guidelines include a requirement that retailers notify customers of price-related variations in a way that aligns with the information requirements in the Electricity Code and Electricity Code Guide. This is to ensure consistency, and to support the broad objectives of the Electricity Code.

The ACCC's final REPI report noted concerns about consumer disengagement from the energy market, and that consumers who are not active in shopping around tend to pay more (the 'loyalty tax').⁴⁰

The purpose of the Guidelines is to set out requirements for retailers about the presentation of standing offer prices and market offer prices. Section 61(2) of the Retail Law enables the AER to provide guidance to retailers 'in the presentation of standing offer prices and market offer prices, and thereby assist small customers to consider and compare standing offer prices and market offer prices offered by retailers'. Section 61(3)(c) notes that the AER Guidelines may, 'without limitation' specify 'any additional matters that the AER considers necessary or convenient to assist customers to consider and compare standing offer prices and market offer prices offered by retailers'.

Section 23(3)(c) of the Retail Law requires retailers to inform 'each affected customer of the variation when the retailer sends the next bill to the customer' when varying standing offer prices. Section 24(1)(a) of the Retail Law requires retailers to present standing offer prices, including any variation of those prices, in accordance with the Guidelines.

Section 37 of the Retail Law requires retailers to present market offer prices, including any variation of those prices, in accordance with the Guidelines.

In addition, section 46 of the Retail Rules requires that, for market retail contracts, retailers must give notice to customers of any variation to the tariffs and charges that affects the customer.

The AER considers there is a need to ensure electricity customers have access to up-to-date pricing information so that they may more readily compare deals, and to help address some of the key concerns identified in the REPI report. Therefore, section 6 of Part B of the draft Guidelines requires retailers to provide reference price information to customers when informing existing customers of price-related variations of the customer's standard retail price or market retail prices, in a way that aligns with the Electricity Code information requirements.

³⁹ Section 61(3)(c) of the Retail Law

⁴⁰ ACCC, *Retail Electricity Pricing Inquiry - Final Report*, June 2018, p. 259

4.6 Proposed timeframes for implementation

The AER expects to publish the final Guidelines during late August or early September, which will enable retailers to implement the changes by 1 October 2019. We consider this approach to be feasible and reasonable given the various policy consultations which have been conducted in the lead up to consulting on this draft Guideline, including on the Electricity Code and Electricity Code Guide.

5 Other considerations

The proposed Guidelines reflect recent key changes to retailer responsibilities as a result of the AER's DMO determination and the new Electricity Code requirements. The intent of these consequential changes in the draft Guidelines are to support consistency between the Guidelines and the Electricity Code to the greatest extent possible.

5.1 Relevant developments in the retail electricity market

We note that there are other related regulatory developments underway, which may impact the Guidelines, and further developments could occur during 2019.

In the interim, the mechanical changes contained in the proposed Guidelines will provide clarity, consistency and certainty for retailers and energy customers. This will enable customers searching for plans on EME, in distribution regions in which the Electricity Code applies, to access relevant energy offer information, including about the reference price.

In February 2019, the AEMC received a rule change proposal about regulating conditional discounting.⁴¹ This proposes that the Retail Rules and other rules be amended to 'ensure conditional discounts for both gas and electricity retail offers are no higher than the reasonable cost savings that a retailer expects it will make if a consumer satisfies the conditions attached to the discount'.⁴²

In addition, the Explanatory Statement to the Electricity Code indicates that the Commonwealth Department of Energy and the Environment will undertake a post-implementation review of the Electricity Code within two years.⁴³ We will monitor and review the operation of the proposed Guidelines in the broader context of the retail electricity market and relevant developments.

The AER is also currently undertaking a major redevelopment to enhance the EME website which will conclude by July 2020. This will enable EME to incorporate a broader range of available products and services.⁴⁴

Under section 16 of the Electricity Code, the AER is required to make DMO determinations on a yearly basis.⁴⁵ These Guidelines will not require updating on a yearly basis. We will continue to consider when the Guidelines need to be revisited or amended, and follow the retail consultation procedures in the Retail Law and Retail Rules.

⁴¹ <https://www.aemc.gov.au/rule-changes/regulating-conditional-discounting> The AEMC has not yet initiated this rule change request. The AEMC notes on its website that, when the AEMC initiates this process, the AEMC will publish a Consultation Paper to facilitate stakeholder consultation on the request

⁴² Ibid, p. 2

⁴³ Explanatory Statement- Competition and Consumer (Industry Code- Electricity Retail) Regulations 2019, p. 2

⁴⁴ <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/energy-made-easy-redevelopment-project>

⁴⁵ Section 16 of the Electricity Code

5.2 Other matters

The draft Guidelines include a proposed amendment to clause 27 of version 5 of the Guidelines, at clauses 32 and 118 of the draft Guidelines. This is a minor practical amendment in relation to information required for EME, to change the reference from 'retailer account administrator' to read 'retailer nominated approver'. The change appears in in both Part A and Part B of the Guidelines, and reflects the changed role names in the redevelopment of EME, to provide retailer flexibility and better matches current practice.