

Utilities (ACT Retail Electricity – Transparency and Comparability Code) Determination 2021*

Disallowable instrument DI2021–182

made under the

Utilities Act 2000, section 59 (Determined Codes) and s63 (Public Access)

1 Name of instrument

This instrument is the *Utilities (ACT Retail Electricity – Transparency and Comparability Code) Determination 2021*.

2 Commencement

This instrument commences on 1 October 2021.

3 Determination of code

The Commission determines the attached ACT Retail Electricity (Transparency and Comparability) Code under section 59 of the *Utilities Act 2000*.

4 Purpose of the code

The purpose of the ACT Retail Electricity (Transparency and Comparability) Code is to ensure that energy retailers offering to supply, or supplying, electricity to small customers in the Territory must:

- (1) show how their prices for supplying electricity to certain types of small customers compare to a reference price
- (2) 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
- (3) provide clear, timely and reliable information to assist small customers to assess the suitability of, and select, a retail electricity contract.

5 Public access to documents

Copies of the ACT Retail Electricity (Transparency and Comparability) Code and the decision to determine the code are available on the Independent Competition and Regulatory Commission's website. These documents are also

*Name amended under Legislation Act, s 60

available for inspection by members of the public between 9:00 am and 5:00 pm, Monday to Friday, at the Commission's office. Hard copies can be made available on request.

Joe Dimasi
Senior Commissioner
2 July 2021



ICRC
independent competition and regulatory commission

**UTILITIES ACT 2000 | INDUSTRY CODE
ACT Retail Electricity (Transparency
and Comparability) Code
Final, 2 July 2021**



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PART 1 PRELIMINARY

1.1 Name and authority

This instrument is the ACT Retail Electricity (Transparency and Comparability) Code, which is an industry code determined by the Independent Competition and Regulatory Commission (**ICRC**) under Part 4 of the *Utilities Act 2000* (ACT) (**Utilities Act**).

1.2 Commencement

The Code will commence on the day the **reference price** determination takes effect.

The obligations in clauses 3.3 and 3.4 will commence 9 months after the commencement of the Code or on a later date determined by the **ICRC**.

1.3 Application to NERL retailers

Under section 56A of the **Utilities Act**, the **ICRC** has determined that the ACT Retail Electricity (Transparency and Comparability) Code applies to **NERL retailers** offering to supply, or supplying, electricity to **small customers** in the **Territory**.

Section 75H of the **Utilities Act** outlines penalties for offences that a **NERL retailer** may commit.

1.4 Simplified outline

Under the ACT Retail Electricity (Transparency and Comparability) Code, **NERL retailers** offering to supply, or supplying, electricity to **small customers** in the **Territory** must:

- (1) show how their **prices** for supplying electricity to certain **types of small customers** compare to a **reference price**
- (2) 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**
- (3) provide clear, timely and reliable information to assist **small customers** to assess the suitability of, and select, a **retail electricity contract**.

1.5 Definitions

The following definitions apply for the ACT Retail Electricity (Transparency and Comparability) Code unless a contrary intention is specified:

benefit change means a change to, or the expiry of, a benefit (such as a price discount) provided to a customer for a minimum period or a fixed benefit period under a retail electricity contract during the term of that contract (whether or not as a result of a variation of the contract)

better offer has the meaning given in section 75GA of the *Utilities Act 2000* (ACT)

better offer check has the meaning given by clause 3.3

better offer message has the meaning given by clause 3.4

bill summary means a communication from the NERL retailer to the customer that informs the customer that the NERL retailer has issued a new bill, and which includes the bill due date and the amount due

conditional discount has the meaning given in section 75GA of the *Utilities Act 2000* (ACT)

conditional price for a proportional conditional discount means the total annual amount including GST that a representative customer would be charged for the supply of electricity in the regulatory period at the offered prices, assuming the conditions on the discount were met and disregarding any other conditional discounts

customer has the meaning given by section 5 of the *National Energy Retail Law*

distribution region means the region in which a particular electricity distribution network operates

explicit informed consent has the meaning given in section 39 of the *National Energy Retail Law*

fixed benefit period means a period of a retail electricity contract during which a benefit to the customer (such as a price discount) is available and where the end date of that period is specified or ascertainable at the beginning of that period, and earlier than the date on which the contract will end

ICRC means the Independent Competition and Regulatory Commission established under section 5 of the *Independent Competition and Regulatory Commission Act 1997* (ACT)

lowest possible price means the total annual amount including GST that a representative customer would be charged for the supply of electricity in the regulatory period at the offered prices, assuming the conditions on all conditional discounts (if any) mentioned in the communication were met

market retail contract has the meaning given in section 33 of the *National Energy Retail Law*

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

NERL retailer has the meaning given in section 75 of the *Utilities Act 2000* (ACT)

offered price has the meaning given by subclause 2.3(1)

price has the meaning given in section 75GA of the *Utilities Act 2000* (ACT)

price change means a change to any of the tariffs or charges payable by a customer under a retail electricity contract

price comparator website means Energy Made Easy (www.energymadeeasy.gov.au) operated by the Australian Energy Regulator

proportional conditional discount means 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

reference price has the meaning given in section 75GB of the *Utilities Act 2000* (ACT)

regulatory period means the period for which a representative consumption and reference price determined under section 75GB of the *Utilities Act 2000* (ACT) are in force

representative consumption has the meaning given in section 75GB of the *Utilities Act 2000* (ACT)

representative customer means a small customer of a particular type who is supplied electricity in the Territory in the regulatory period in accordance with the representative consumption

retail electricity contract means a standard retail contract or a market retail contract in connection with the sale and supply of electricity to a customer

retail electricity offer means an offer by a NERL retailer to a customer to supply electricity under a retail electricity contract

retailer's price has the meaning given in section 75GA of the *Utilities Act 2000* (ACT)

small customer has the meaning given by section 5 of the *National Energy Retail Law*

smart meter means an interval meter that is designed to transmit metering data to a remote location for data collection and does not, at any time, require the presence of a person at or near the meter for the purposes of data collection or data verification

standard control services are distribution network services that the Australian Energy Regulator classifies as standard control services, as opposed to alternative control services, which form the basic charges for use of the distribution system

standard retail contract has the meaning given in section 26 of the *National Energy Retail Law*

tell a small customer about prices has the meaning given in section 75GA of the *Utilities Act 2000* (ACT)

Territory means the Australian Capital Territory

transitional better offer message is the messaging at clause 3.5 that must be included during the transitional period.

transitional period is the period from the commencement of the Code until the commencement of the better offer obligation

type means a class of small customer in respect of which a representative consumption and a reference price determined under section 75GB of the *Utilities Act 2000* (ACT) are in force

unconditional price means the retailer's price including GST that a representative customer would be charged for the supply of electricity in the regulatory period at the offered prices, disregarding any conditional discounts

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

PART 2 PRICES TO BE COMPARED TO REFERENCE PRICE

2.1 Requirement

A **NERL retailer** is required to perform its obligations under this Part in a way that promotes the objective of this Part.

2.2 Objective

The objective of this Part 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**.

2.3 Communication must compare prices to the reference price

- (1) This clause applies, at a time in a **regulatory period**, to a **NERL retailer** offering to supply electricity in the **Territory** to a **small customer** of a particular **type** at particular **prices** (the **offered prices**) if both:
 - (a) a **representative consumption**
 - (b) a **reference price**are in force in relation to the supply.
- (2) A **NERL retailer** must not **tell** a **small customer** about the **offered prices** unless the communication meets the requirements of subclauses 2.3(3), (4) and (5) or, where the **NERL retailer** communicates directly with an individual **small customer**, the communication is in accordance with Part 4.
- (3) The communication must state the following matters, making it clear that the matters relate to a **representative customer**:
 - (a) the difference between:
 - (i) the **reference price**
 - (ii) the **unconditional price**expressed as a percentage of the **reference price**
 - (b) for each **proportional conditional discount** mentioned in the communication, the difference between:
 - (i) the **unconditional price**
 - (ii) the **conditional price** for the discountexpressed as a percentage of the **reference price**
 - (c) the **lowest possible price**.
- (4) The communication must also state:
 - (a) the **distribution region**
 - (b) the **type** of **small customer** to which the **offered prices** relate.
- (5) The communication must state the matters required by subclauses 2.3(3) and (4), and subclause 2.4(1) if applicable, clearly and conspicuously.

2.4 Alternative requirements for personalised offers

- (1) Subclause 2.3(3)(c) does not apply if the communication states the total annual amount including GST that the **NERL retailer** estimates the particular **small customer** would be charged for the supply of electricity in the **regulatory period** at the **offered prices**, assuming the conditions on all **conditional discounts** (if any) mentioned in the communication were met.
- (2) In making an estimate for the purposes of subclause 2.4(1), the **NERL retailer** may have regard to:
 - (a) the rate at which electricity was supplied to the **small customer** in the past

- (b) the timing or pattern of that past supply
- (c) any other matter the **NERL retailer** considers relevant.

2.5 Advertising conditional discounts

- (1) A **NERL retailer** must not advertise **prices** for supplying electricity to **small customers** if all the following apply:
 - (a) the requirements in clause 2.3 apply to the advertisement
 - (b) the advertisement mentions a **conditional discount** in relation to the **prices**
 - (c) the advertisement does not meet the requirements of subclauses 2.5(2) and (3).
- (2) The **conditional discount** must not be the price-related matter that is mentioned most conspicuously in the advertisement.
- (3) The advertisement must state the conditions on the **conditional discount** clearly and conspicuously.

2.6 Records of compliance

- (4) A **NERL retailer** must maintain records that are sufficient to evidence its compliance with this Part, including:
 - (a) the content of the communication
 - (b) the date of the communication
 - (c) how the **NERL retailer** calculated or estimated the matters mentioned in relation to the **offered prices**.
- (5) The **NERL retailer** must ensure that the records required to be maintained pursuant to subclause 2.6(1) are retained for at least six years.
- (6) The records required to be maintained pursuant to subclause 2.6(1) are not required to contain:
 - (a) the name or contact details of the **small customer**
 - (b) personal information about a **small customer** who is an individual.
- (7) The **NERL retailer** may make a single record for the purpose of subclause 2.6(1) in relation to two or more communications if all the following apply:
 - (a) the communications are made during the same **regulatory period**
 - (b) based on a single template or script
 - (c) substantially identical in content and form, apart from being made to different **small customers**.

PART 3 BETTER OFFER NOTIFICATION ON BILLS

3.1 Requirement

A **NERL retailer** is required to perform its obligations under this Part in a way that promotes the objective of this Part.

3.2 Objective

The objective of this Part is to give **small customers** an entitlement to prominently display, helpful information that enables them to easily:

- (1) identify whether their **NERL retailer** has a **better offer**
- (2) understand how to contact their **NERL retailer** for more information and advice about whether there is a plan that better suits their circumstances
- (3) understand how to access **retail electricity offers** from other **NERL retailers** via the **price comparator website**.

3.3 Better offer check

- (1) Before providing a **better offer message** in accordance with clause 3.4, a **NERL retailer** must check whether it has a **better offer**.
- (2) A **NERL retailer** is required to use reasonable endeavours to carry out a **better offer check** for a **small customer** as follows:
 - (a) if the **small customer** does not have a **smart meter** or has a smart meter but smart meter data is not available, the **NERL retailer** must assess whether the **annual total cost** of any of its **retail electricity offers** available to the **small customer** may be less than the **small customer's** current **retail electricity contract** having regard to any information the **NERL retailer** has about the **small customer**
 - (b) if **smart meter** data for a customer is available, the **NERL retailer** must use the **smart meter data** to assess whether the **annual total cost** of any of its **retail electricity offers** available to the **small customer** may be less than the **small customer's** current **retail electricity contract**.
- (3) The reference to 'any information the **NERL retailer** has' in subclause 3.3(2) includes, for example, the tariff structure of the **small customer's** current **retail electricity contract** or the rate at which electricity was supplied to the **small customer** in the past and the timing or pattern of that past supply.
- (4) A **NERL retailer** is not required to comply with this clause where the **small customer** receives a single bill in respect of the provision of electricity services at two or more premises.

3.4 Better offer message

- (1) A **NERL retailer** must provide a **better offer message** on a bill or **bill summary** to a **small customer** at least once every three months or, where a **NERL retailer** and a **small customer** have agreed to a billing cycle that is longer than three months, once in each billing cycle.
- (2) A **better offer message** must:
 - (a) be prominently displayed on the bill itself or the front page of the bill, whether the bill is provided by post or electronically
 - (b) be contained in a border
- (3) be located adjacent to and no less prominently than the amount due. If a **better offer check** conducted in accordance with clause 3.3 identifies a **better offer**, the **better offer message** must:

- (a) contain a title using the exact words “We think you could save money on another plan”
 - (b) invite the **small customer** to contact the **NERL retailer** for more information and advice about whether there is a plan that may better suit their circumstances and contain clear and simple instructions on how to contact the **NERL retailer**
 - (c) explain that offers from all **NERL retailers** can be compared on the **price comparator website** and provide the name and web address of the **price comparator website**.
- (4) If a **better offer check** conducted in accordance with clause 3.3 does not identify a **better offer**, the **better offer message** must:
- (a) contain a title using the exact words “Could you save money on another plan?”
 - (b) explain that offers from all **NERL retailers** can be compared on the **price comparator website** and provide the name and web address of the **price comparator website**.
- (5) Nothing in subclauses 3.4(3) and (4) otherwise limits a **NERL retailer** providing other information to **small customers** in a manner and form that promotes the objective of this Part.
- (6) Despite subclause 3.4(1), a **better offer message** on a **bill summary** is required to comply with subclause 3.4(2) only to the extent it is practicable to do so given the method by which a **bill summary** is communicated to the **small customer**.

3.5 Transitional arrangements

From the commencement of the Code until the commencement of the better offer obligations in clauses 3.3 and 3.4, a **NERL retailer** will be required to give its **small customers** a **transitional better offer message**.

3.5.1 Transitional better offer message

1. A **NERL retailer** must provide a **transitional better offer message** on a bill or **bill summary** to a **small customer** at least once every three months or, where a **NERL retailer** and a **small customer** have agreed to a billing cycle that is longer than three months, once in each billing cycle.
2. A **transitional better offer message** must:
 - a. be prominently displayed on the bill itself or the front page of the bill, whether the bill is provided by post or electronically
 - b. be contained in a border
 - c. be located adjacent to and no less prominently than the amount due.
3. The **transitional better offer message** must:
 - a. contain a title using the exact words “Could you save money on another plan?”
 - b. invite the **small customer** to contact the **NERL retailer** for more information and advice about whether there is a plan that may better suit their circumstances, give clear and simple instructions on how to contact the **NERL retailer** and provide the name and web address of the **price comparator website**.

4. When responding to a contact from a small customer in relation to a **transitional better offer message**, a **NERL retailer** must use reasonable endeavours to carry out a **better offer check** for the small customer in accordance with clause 3.3(2).

3.5.2 Period of effect

Clause 3.5 will cease to have effect from the commencement of the better offer obligation.

3.6 Records of compliance

- (1) A **NERL retailer** must maintain records that are sufficient to evidence its compliance with this Part.
- (2) The **NERL retailer** must ensure that the records required to be maintained pursuant to subclause 3.5(1) are retained for at least six years.

PART 4 CUSTOMERS ENTITLED TO CLEAR ADVICE

4.1 Requirement

A **NERL retailer** is required to perform its obligations under this Part in a way that promotes the objective of this Part.

4.2 Objective

The objective of this Part is to give **small customers** an entitlement to clear, timely and reliable information, provided in a respectful manner, to assist the **small customer** to assess the suitability of, and select, a **retail electricity contract**.

4.3 Minimum standards for clear advice

- (1) Prior to obtaining a **small customer's explicit informed consent** to enter a **retail electricity contract**, a **NERL retailer** must communicate to the **small customer** in a readily understandable manner information about:
 - (a) any terms pursuant to which the amounts payable by the **small customer** may vary depending on the actions of the **small customer** (for example, any **conditional discounts**)
 - (b) any terms pursuant to which the amounts payable by the **small customer** may vary depending on the actions of the **NERL retailer** (for example, any terms pursuant to which the **NERL retailer** may make **price changes**, or any specific **price changes** that will apply to the **retail electricity contract**)
 - (c) any terms pursuant to which a **benefit change** may occur
 - (d) the **NERL retailer's** other **retail electricity offers** available to the **small customer** that the **NERL retailer** reasonably believes may be more suitable for the **small customer** having regard to any information the **NERL retailer** has about the **small customer** wherever it is practicable to do so
 - (e) if switching to the **retail electricity contract** involves moving the **small customer** to a new tariff structure, how the timing or pattern of usage affects what the **small customer** may pay under the new tariff structure.

- (2) Subclause 4.3(1) does not apply to charges payable for distribution services other than **standard control services**.
- (3) The reference to 'any information the **NERL retailer** has' in subclause 4.3(1) includes any information the **small customer** provides during the communication required by subclause 4.3(1) or any other information that the **NERL retailer** has about the **small customer** that the **NERL retailer** considers relevant to providing the advice (for example, information about the rate at which electricity was supplied to the **small customer** in the past and the timing or pattern of that past supply).
- (4) In communicating the information required by subclause 4.3(1), the **NERL retailer** must do so in a manner that:
 - (a) insofar as possible, is done by reference to the NERL retailer's estimate of the dollar impact on the **small customer**
 - (b) emphasises any information that the **NERL retailer** reasonably believes may be relevant to that **small customer**.

4.4 Records of compliance

- (1) A **NERL retailer** must maintain records that are sufficient to evidence its compliance with this Part.
- (2) The **NERL retailer** must ensure that the records required to be maintained pursuant to subclause 4.4(1) are retained for at least six years.



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