



Competition and Consumer (Industry Code— Electricity Retail) Regulations 2019

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 04 April 2019

Peter Cosgrove
Governor-General

By His Excellency's Command

Angus Taylor
Minister for Energy
for the Treasurer

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Part 1—Preliminary

Division 1—Preliminary

1 Name

This instrument is the *Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 10 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	5 April 2019
2. Section 11	A single day to be fixed by the Minister by notifiable instrument. However, if the provisions do not commence within the period of 2 years beginning on the day after this instrument is registered, the provisions are repealed on the day after the end of that period.	
3. Sections 12 to 20	The day after this instrument is registered.	5 April 2019

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Competition and Consumer Act 2010*.

4 Simplified outline of this instrument

Part 2 prescribes a mandatory industry code for supplying electricity to small customers (i.e. most residential customers and small business customers: see section 6).

Under the code:

Section 4

- (a) standing offer prices must be set such that, were a small customer to be supplied in a financial year at those prices with the amount of electricity determined by the AER for the financial year under Part 3 (the *model annual usage*), the total amount the customer would have to pay for the supply would not exceed the price determined by the AER under that Part (the *reference price*) (see section 10); and
- (b) small customers must be told how prices for supplying electricity compare with the reference price (see section 12); and
- (c) an advertisement for supplying electricity to small customers must not have a discount as its most conspicuous price-related matter, and must state any conditions on discounts clearly (see section 14).

Under Part 3, the AER determines a model annual usage and reference price in relation to each distribution region and each type of small customer.

This instrument does not apply in relation to supplying electricity in:

- (a) small distribution regions; or
- (b) distribution regions where standing offer prices are set under a State or Territory law.

(See section 8).

Division 2—Definitions etc.

5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) AER;
- (b) contract;
- (c) corporation;
- (d) supply.

In this instrument:

Act means the *Competition and Consumer Act 2010*.

comply with the price cap has the meaning given by subsection 10(3).

conditional discount:

- (a) subject to paragraph (b), includes a conditional rebate or conditional credit; and
- (b) does 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.

conditional price has the meaning given by subsection 12(4).

consumer has the meaning given by subsection 51ACA(1) of the Act.

controlled load tariff means a tariff for supplying electricity for use only in specific appliances.

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

electricity retailer means a corporation authorised by or under a law of the Commonwealth or of a State or Territory to sell electricity.

flexible tariff means a tariff, for supplying electricity, that varies (wholly or partly) according to the time of day when the electricity is supplied.

industry code has the meaning given by subsection 51ACA(1) of the Act.

lowest possible price has the meaning given by subsection 12(4).

model annual usage for a financial year, in relation to supplying electricity in a distribution region to a small customer of a particular type, means (subject to section 18) the matters determined under paragraph 16(1)(a) for the year in relation to the supply.

MWh means megawatt hour.

price:

- (a) subject to paragraph (b), includes a charge of any description, including a recurring fee (for example, an annual membership fee); and
- (b) does not include any of the following:

Section 6

- (i) a one-off fee (for example, a connection or reconnection fee or an account establishment fee);
- (ii) a fee for making, or failing to make, a payment in particular circumstances (for example, a credit card transaction fee, a late payment fee or a direct debit dishonour fee);
- (iii) a fee for a service provided on request on an ad-hoc basis (for example, a fee for a meter read requested by a consumer).

proportional conditional discount has the meaning given by subsection 12(4).

reference price for a financial year, in relation to supplying electricity in a distribution region to a small customer of a particular type, means (subject to section 18) the per-customer annual price determined under paragraph 16(1)(b) for the year in relation to the supply.

representative customer, in relation to supplying electricity in a distribution region in a financial year to a small customer of a particular type, means a small customer of that type who is supplied with electricity in that region in the year in accordance with the model annual usage for the year in relation to the supply.

small business customer has the meaning given by section 6.

small customer has the meaning given by section 6.

standing offer prices means all of an electricity retailer's prices for supplying electricity in a distribution region to a small customer in any of the following circumstances:

- (a) the retailer is required under a law of a State or Territory to offer to supply the electricity;
- (b) the electricity is not supplied under a contract.

Note: Examples of the circumstances covered by paragraph (b) include the following:

- (a) the small customer starts consuming electricity at premises without first contacting the retailer;
- (b) the small customer continues consuming electricity at premises after a contract for the supply of electricity to the premises has ended;
- (c) the small customer is transferred to the retailer under a retailer of last resort scheme.

types of small customer has the meaning given by section 6.

unconditional price has the meaning given by subsection 12(4).

6 Small customers

- (1) This section applies in relation to an electricity retailer supplying (or proposing to supply) electricity to a consumer.
- (2) Subject to subsection (3), the consumer is a **small customer** if the consumer is any of the following **types** of small customer:
 - (a) a consumer in relation to whom both of the following apply:
 - (i) the electricity is principally for personal, household or domestic use;
 - (ii) the prices for the supply include a controlled load tariff;
 - (b) a consumer in relation to whom both of the following apply:

- (i) the electricity is principally for personal, household or domestic use;
 - (ii) the prices for the supply do not include a controlled load tariff;
- (c) a consumer (a ***small business customer***) in relation to whom all of the following apply:
 - (i) the electricity is not principally for personal, household or domestic use;
 - (ii) the supply is, or will be, at a rate of less than 100 MWh a year;
 - (iii) the prices for the supply do not include a controlled load tariff or a flexible tariff.
- (3) The consumer is not a ***small customer***, of any ***type***, if:
 - (a) a price for the supply varies (wholly or partly) with network-wide demand, at a time or during a period, for the supply of electricity; or
 - (b) the supply is through a prepayment meter; or
 - (c) the supply is by means of an embedded network; or
 - (d) the consumer has, or is expected to have, a solar photovoltaic unit and the contract between the consumer and the retailer for supplying the electricity requires the retailer to pay (or credit) the consumer for some or all of the electricity generated by the unit.

7 Civil penalty provisions

A provision of Division 2 of Part 2 that is of one of the following kinds and sets out at its foot a pecuniary penalty indicated by the words “civil penalty” is a civil penalty provision of the industry code in that Division for the purposes of Part IVB and section 76 of the Act:

- (a) a subsection;
- (b) a section that is not divided into subsections.

Division 3—Scope of this instrument

8 Distribution regions to which this instrument does not apply

This instrument does not apply, in relation to a financial year, to supplying electricity in a distribution region if:

- (a) any standing offer prices, or maximum standing offer prices, for supplying electricity in the year in the region to a small customer are set by or under a law of a State or Territory; or
- (b) the total number of consumers to whom electricity retailers supplied electricity in the region, and any interconnected distribution regions, in the previous financial year was less than 100,000.

Part 2—Electricity Retail Code of Conduct

Division 1—Introduction

9 Mandatory industry code in Division 2

For the purposes of section 51AE of the Act, the industry code set out in Division 2 of this Part:

- (a) is prescribed for the purposes of Part IVB of the Act; and
- (b) is declared to be a mandatory industry code.

Section 10

Division 2—Electricity Retail Code of Conduct

Subdivision A—Caps on standing offer prices

10 Caps on standing offer prices

- (1) This section applies on a day in a financial year to an electricity retailer's standing offer prices for supplying electricity in a distribution region to a small customer of a particular type if:
 - (a) both:
 - (i) a model annual usage; and
 - (ii) a reference price;are in force for the year in relation to the supply; and
 - (b) the prices do not include a flexible tariff.

Note: For distribution regions to which this instrument does not apply in relation to a financial year, see section 8.

- (2) The electricity retailer must ensure that the standing offer prices comply with the price cap on that day.

Civil penalty: 300 penalty units.

- (3) The standing offer prices ***comply with the price cap*** if the total amount a representative customer, who was a small customer of that type, would be charged for the supply of electricity in the region in the year at the standing offer prices would not exceed the reference price.

11 Extension of cap to residential solar customers

If:

- (a) a consumer is not a small customer; and
 - (b) the consumer would be a small customer of a particular type mentioned in paragraph 6(2)(a) or (b) (residential customers) apart from paragraph 6(3)(d) (customers with solar photovoltaic units);
- section 10 applies to an electricity retailer's standing offer prices for supplying electricity to the consumer as if the consumer were a small customer of that type.

Note: For the commencement of this section, see subsection 2(1).

Subdivision B—Advertising etc.

12 Advertisements etc. must compare retailer's prices with reference price

Scope of this section

- (1) This section applies, at a time in a financial year, to an electricity retailer's prices (the ***offered prices***) for supplying electricity in a distribution region to a small customer of a particular type if:
 - (a) a model annual usage; and
 - (b) a reference price;

are in force for the year in relation to the supply.

Note: For distribution regions to which this instrument does not apply in relation to a financial year, see section 8.

Civil penalty provision

- (2) The electricity retailer must not:
- (a) advertise or publish the offered prices; or
 - (b) offer to supply electricity at the offered prices;
- unless the advertisement, publication or offer meets the requirements of subsections (3), (5), (6) and (7).

Civil penalty: 300 penalty units.

Prices and discounts

- (3) The advertisement, publication or offer, must state the following matters, making it clear that the matters relate to a representative customer:
- (a) the difference between:
 - (i) the reference price; and
 - (ii) the unconditional price;expressed as a percentage of the reference price;
 - (b) for each proportional conditional discount mentioned in the advertisement, publication or offer—the difference between:
 - (i) the unconditional price; and
 - (ii) the conditional price for the discount;expressed as a percentage of the reference price;
 - (c) the lowest possible price.
- (4) In this instrument:

conditional price for a proportional conditional discount 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.

lowest possible 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 all conditional discounts (if any) mentioned in the advertisement, publication or offer were met.

Note: If the advertisement, publication or offer does not mention any conditional discounts, the lowest possible price is the unconditional price.

proportional conditional discount means a conditional discount that is calculated as a proportion of all or part of the amount a small customer is charged for the supply of electricity at the offered prices.

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

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- (5) For the purposes of paragraph (3)(a) or (b), the percentage must be a whole percentage. Round up if the first decimal place is 5 or more.

Other matters

- (6) The advertisement, publication or offer must also state:
- (a) the distribution region; and
 - (b) the type of small customer.
- (7) The advertisement, publication or offer must state the matters required by subsections (3) and (6) and 13(2) (whichever are applicable) clearly and conspicuously.

13 Alternative requirement for offers

- (1) Paragraph 12(3)(c) does not apply, at a time in a financial year, to an offer by an electricity retailer to supply electricity in a distribution region to a small customer at the offered prices mentioned in subsection 12(1) if the offer meets the requirement of subsection (2) of this section.
- (2) The offer must state the total amount the electricity retailer estimates the small customer would be charged for the supply of electricity in the region in the year, assuming that the conditions on all conditional discounts (if any) mentioned in the offer were met.
- (3) In making an estimate for the purposes of subsection (2), the electricity retailer may have regard to:
- (a) the rate at which electricity was supplied to the small customer in the past; and
 - (b) the timing or pattern of that past supply; and
 - (c) any other matter the retailer considers relevant.

14 Advertising conditional discounts

- (1) An electricity retailer must not advertise prices for supplying electricity in a distribution region to small customers if:
- (a) the advertisement mentions a conditional discount in relation to the prices; and
 - (b) the advertisement does not meet the requirements of subsections (2) and (3).

Civil penalty: 300 penalty units.

- (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.
- (4) To avoid doubt, in determining whether this section does not apply because of section 8 (distribution regions to which this instrument does not apply), have regard to the financial year in which the advertising occurs, rather than the financial year in which the electricity is expected to be supplied.

Part 3—Functions of the AER

15 Functions of the AER

For the purposes of paragraph 44AH(b) of the Act, the AER has the function of determining the matters required or permitted by the rest of this Part to be determined by the AER.

16 Determining model annual usage and annual prices

- (1) The AER must, by legislative instrument, determine the following matters for a financial year in relation to supplying electricity in a distribution region to small customers of a particular type:
 - (a) both of the following that the AER considers to be broadly representative, at the time it makes the determination, of the supply of electricity in that region in the year to small customers of that type:
 - (i) the per-customer amount of electricity supplied;
 - (ii) the timing or pattern of the supply (subject to subsection (2));
 - (b) what the AER considers would be a reasonable per-customer annual price for supplying electricity in that region to small customers of that type in accordance with the matters determined under paragraph (a).

Note: For distribution regions to which this instrument does not apply in relation to a financial year, see section 8.

- (2) Subparagraph (1)(a)(ii) does not apply in relation to small business customers.
- (3) Despite subsection 33(3A) of the *Acts Interpretation Act 1901*, the AER must not, under subsection (1) of this section:
 - (a) determine a matter in relation to supplying electricity:
 - (i) in a part, but not all, of the distribution region; or
 - (ii) to some, but not all, small customers of that type in the region; or
 - (b) make different provision with respect to supplying electricity:
 - (i) in different parts of the region; or
 - (ii) to different small customers of that type in the region.

Matters relevant to determining annual prices

- (4) For the purposes of paragraph (1)(b), the AER must have regard to the following matters:
 - (a) the prices electricity retailers charge for supplying electricity in the region to that type of small customer;
 - (b) the principle that an electricity retailer should be able to make a reasonable profit in relation to supplying electricity in the region;
 - (c) the following costs:
 - (i) the wholesale cost of electricity in the region;
 - (ii) the cost of distributing and transmitting electricity in the region;

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- (iii) the cost of complying with the laws of the Commonwealth and the relevant State or Territory in relation to supplying electricity in the region;
- (iv) if relevant to the region—the cost of acquiring and retaining small customers;
- (v) the cost of serving small customers;
- (d) any other matter the AER considers relevant.

Note: Before making a determination, the AER must consider any submissions received under subsection 17(1).

Disallowance

- (5) Despite subsection 44(1) of the *Legislation Act 2003*, section 42 (disallowance) of that Act applies to a determination made under subsection (1) of this section.

17 Requirements relating to making determinations

- (1) Subject to subsection (4) of this section, before making a determination under section 16, the AER must:
 - (a) publish a draft of the determination on the AER's website; and
 - (b) invite submissions about the draft determination, within a specified period (which must be at least 21 days after the draft is published); and
 - (c) consider any submissions received within that period.
- (2) The AER must not make a determination under section 16 for a financial year:
 - (a) before 1 July in the previous financial year; or
 - (b) subject to subsection (4) of this section—earlier than 42 days after the day the AER publishes a draft of the determination under subsection (1); or
 - (c) subject to subsections (4) and (5)—after 1 May in the previous financial year.
- (3) A determination made under section 16 must not commence earlier than 56 days after the day the determination is registered.

Exceptions

- (4) Subsection (1) and paragraphs (2)(b) and (c) do not apply to determining a model annual usage or a reference price (the **new determination**) for a financial year, in relation to supplying electricity in a distribution region to small customers of a type, if:
 - (a) the AER has previously made such a determination (the **previous determination**) for the year in relation to the region and the type of small customer; and
 - (b) the only effect of the new determination is to correct minor or technical errors in the previous determination.
- (5) Paragraph (2)(c) does not apply to determining a model annual usage or a reference price (the **new determination**) for a financial year, in relation to supplying electricity in a distribution region to small customers of a type, if:

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-
- (a) the AER has previously made, or purportedly made, such a determination (the *previous determination*) for the year in relation to the region and the type of small customer; and
 - (b) the previous determination was not validly made, or is repealed under section 42 (disallowance) of the *Legislation Act 2003*;

18 Previous model annual usage or reference price applies if determination disallowed

The *model annual usage* or the *reference price*, for a financial year (the *current year*), in relation to supplying electricity in a distribution region to a small customer of a particular type, is the same as the model annual usage or the reference price (whichever, if any, is applicable), for the previous financial year, in relation to supplying electricity in the region to a small customer of that type, if:

- (a) the AER made a determination under paragraph 16(1)(a) or (b) (whichever is relevant), for the current year, in relation to supplying electricity in the region to small customers of that type, but the determination was repealed under section 42 (disallowance) of the *Legislation Act 2003*; and
- (b) no determination made under that paragraph, for the current year, in relation to supplying electricity in the region to small customers of that type, is in force.

Part 4—Application and transitional provisions

Division 1—Application of this instrument

19 Application of this instrument

- (1) Subject to this section, this instrument applies to financial years starting on or after 1 July 2019.

Electricity Retail Code of Conduct

- (2) Section 11 applies to financial years starting on or after the commencement of that section.
- (3) Section 14 applies to advertising that occurs on or after 1 July 2019.

Determinations

- (4) Subsection 17(1), paragraph 17(2)(b) and subsection 17(3) do not apply in relation to a determination made on or before 30 June 2019.
- (5) Paragraph 17(2)(c) applies in relation to a determination for the financial year starting on 1 July 2019 as if the reference in that paragraph to 1 May in the previous financial year were a reference to 30 June 2019.

20 No acquisition of property otherwise than on just terms

Subdivision A of Division 2 of Part 2 (caps on standing offer prices) does not apply to the extent that its operation would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph).