

Australian Energy Market Commission  
Via “lodge a submission” at [www.aemc.gov.au](http://www.aemc.gov.au)

**ACAT SUBMISSION:  
AEMC, NATIONAL ENERGY RETAIL AMENDMENT (REGULATING  
CONDITIONAL DISCOUNTING) RULE, CONSULTATION PAPER, 1  
AUGUST 2019**

Please find below a Submission from the ACT Civil and Administrative Tribunal (ACAT) commenting on the above AEMC Consultation Paper.

**Summary of submission**

The AEMC proposes a Rule Change to Rule 45A of the National Energy Retail Rules, and new Rules 46C and 46D, to regulate the level of conditional discounts for gas and electricity retail offers. The proponents of the Rule Change propose that conditional discounts be restricted to the reasonable cost savings that a retailer expects to make if a consumer satisfies the conditions attached to the discount.

The ACAT supports the proposed Rule Change.

**The role of the ACT Civil and Administrative Tribunal (ACAT)**

Under Part 12 of the *Utilities Act 2000* (ACT), the ACAT is responsible for determining hardship applications and resolving non-hardship complaints made by consumers and customers of ACT energy and water utilities. These may include complaints about:

1. Contravention by a utility of a customer contract, or customer retail contract or customer connection contract made under the *National Energy Retail Law (ACT)*;
2. Contravention by a utility of an industry code dealing with utility service standards;
3. Failure (or potential failure) of a utility to provide a utility service to a consumer, or the withdrawal (or potential withdrawal) of a utility service from a consumer, where such failure or withdrawal causes, or is likely to cause, substantial hardship to the customer or a consumer;
4. Contravention by a utility in relation to the protection of personal information;
5. Contravention by a utility of an obligation under the *Utilities Act 2000* or the *Utilities (Technical Regulation) Act 2014* in relation to network operations;
6. Acts or omissions of an authorised person for a utility in relation to network operations;

7. The amount of a capital contribution charge imposed by a utility (water only). (s 172)

The ACAT is the jurisdictional energy ombudsman for the Australian Capital Territory by regulations under the *National Energy Retail Law (South Australia) Act 2011 (SA)* (NERL).

In addition, for more than 25 years, the ACAT and its predecessor agencies (the Energy and Water Consumer Council and the Essential Services Review Committee) have exercised legislative power (under the *Utilities Act 2000* and the *Essential Services (Continuity of Supply) Act 1992*) to protect energy and water consumers in the ACT from disconnection for utility debt, including by directly case managing the accounts of more than 15,000 ACT utility customers who have been unable to meet their payment commitments.

The comments which follow in this submission are made in the context of the responsibilities and experience of the ACAT described above.

## **General Comments**

### Conditional discounts

The ACAT notes that conditional discounting has not been a major element of energy complaints in the ACT in the past year. There were a considerable number of complaints in 2017 and 2018 concerning an ActewAGL Retail (AAR) discount conditional upon direct debit arrangements.

In the past year, AAR, the dominant retailer in the ACT, has focussed its attention on headline discounts from the ICRC-regulated electricity price, bundling discounts for both electricity and gas, and conducting “win-back” marketing when an existing customer advises a transfer to a new retailer. The price for gas before discount is not regulated and is set by AAR, but movements in that price seem to reflect the level of, and changes in, the NSW IPART-regulated gas price.

Two other large retailers – Origin Energy (OE) and Energy Australia (EA) - make market offers to customers in the ACT, however their share of the small customer market (while growing) is still relatively small. Discount offers such as pay on time discounts have been the subject of complaints to ACAT by OE customers. In our experience, OE and EA provide similar energy offers in the ACT to those they offer in NSW and the price before discount is often based on their general NSW tariff structure, and not on the ICRC-regulated electricity price.

There are some smaller retailers operating in the ACT, usually on a niche basis such as solar credit customers only. No conditional discount issues have arisen in relation to these retailers.

### Default Market Offers (DMO)

As the Consultation Paper points out, the ACCC Electricity Retail Code of Conduct which implements the DMO does not apply in the ACT because the ACT has a form of electricity price regulation administered by the ACT Independent Competition and Regulatory Commission (ICRC). The ACT is, however, covered by the National Energy Retail Law (NERL) and Rules (NERR) and therefore the proposed Rule changes will have an impact on the regulatory framework for electricity supply in the ACT and on ACT small electricity customers.

The ACAT supports the proposed Rule Change. It notes that the drafting of the amended Rules must be consistent with the DMO Code and also operate on a stand-alone basis to ensure that the changes work properly in both Code and non-Code jurisdictions.

The Rule Change is desirable because:

- The Code covers only electricity retailers; and
- Problems around conditional discounting may arise in the ACT and Tasmania where the DMO has no application.

### **Responses to Questions**

#### Question 1: Offer Comparability

- (a) Yes. The Code does not apply in the ACT.
- (b) It is noted that the larger interstate retailers such as OE and EA tend to make market offers based on their NSW or Victorian offers, and not tailored specifically to the ACT.

#### Question 2: Excessive Penalties

- (a) It is appropriate to characterise the substantially higher prices paid by customers when they miss a “pay on time” condition as excessive penalties. Market intervention to reduce this practice is justified.
- (b) The potential for failure to meet conditionality requirements is very high and is not restricted primarily to vulnerable and hardship customers. The ACAT has observed situations where:
  - administrative error by the customer, the utility or the bank causes a direct debit payment failure.
  - a customer receives a higher than expected bill and their bank account does not have sufficient funds to cover the bill;
  - the utility issues an incorrect and unduly high bill and takes this higher amount out of the customer’s bank account without notice and on a unilateral basis.

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Anecdotally, this often seems to occur on the weekend, leaving the customer without funds until they can contact the utility on the following Monday.

- (c) In the ACAT's experience, the preferable payment arrangement for vulnerable and hardship customers is by CPay from their Centrelink income support payment or family tax benefit. CPay has several distinct advantages:
- Payment is taken out of the customer's Centrelink payment at source on a fortnightly basis which reduces failure rates and, importantly, turns energy supply into a pay as you go arrangement rather than a quarterly credit arrangement.
  - There are no charges to the customer for CPay payments or failure of CPay arrangements.
  - The level of CPay can be annualised to spread the payment load away from seasonal peaks.
  - CPay is a voluntary payment arrangement, determined by the customer.

CPays need to be adjusted annually to reflect changes in household energy consumption and price rises.

- (d) The ACAT has not discussed this issue with OE or EA. There are few apparent problems.

AAR offers a non-conditional discount to all of its energy hardship customers and has extended this offer to ACAT energy hardship clients who are AAR customers and who make a personal request to AAR for application of the discount.

### Question 3: Key Data Needed to Establish Materiality

The ACAT does not have data of the type requested by the AEMC.

### Question 4: Energy Offers Not Covered By The Code

- (a) The ACAT considers that gas offers should be subject to conditional discount limitations in line with electricity offers for several reasons:
- gas and electricity are often bundled in the one market offer;
  - gas and electricity supply should be subject to a similar customer regulatory framework to the extent that this is practical; and
  - in the past, gas discount offers and payment arrangements have been the subject of a larger volume of complaints to ACAT than electricity offers and arrangements.
- (b) There has been no apparent impact, but it is still early days.

- (c) Hopefully not, but gas market offers have been a significant area of complaints to ACAT in the past, particularly in relation to direct debits, even pay, CPay and marketing.

Question 5: Solutions

The ACAT supports Option 4.

- (h) If the “reasonable cost” limitation was managed by the retailer rather than through an AER guideline, ACAT currently may not have power to determine whether the amount was “reasonable” in the event of a customer complaint.

This question of power to make an order about “reasonable cost” should be resolved on 1 July 2020 if the ACT *Consumer Protection Code* is amended, as currently proposed by the ICRC, to require a utility to act “ethically, fairly and honestly in all dealings with a Customer”. (Proposed new section 5(1)).

Please contact the Tribunal if you would like any further information about ACAT and its operations.

Yours sincerely



Graeme Neate AM  
President

19 September 2019