

19 September 2019

Australian Energy Market Commission

PO Box A2449

Sydney South NSW 1235

## **ActewAGL Retail response to Consultation Paper on Regulating Conditional Discounting**

ActewAGL Retail ('ActewAGL') welcomes the opportunity to comment on the Consultation Paper on Regulating Conditional Discounts, issued by the Australian Energy Market Commission (AEMC) on 1 August 2019.

ActewAGL is committed to delivering value to our diverse customer base and ensuring offers are easy to understand. We also agree that customers (especially vulnerable customers) should not face excessive penalties if they are unable to fulfil the conditions attached to their retail offer. That's why we already have in place a comprehensive program to assist customers facing financial hardship, including the removal of any conditions associated with their discount.

While ActewAGL agrees with the need to protect customers from paying excessive penalty charges. We believe that discounted offers with conditions are important to help drive pricing innovation in the retail energy sector and provide greater choice to customers seeking to manage their energy costs.

In particular, ActewAGL considers that:

1. given the recent introduction of reference prices through the *Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019*<sup>1</sup> (hereafter 'the Code') it is premature to determine their effectiveness;
2. regulation of conditional discounts could diminish customer choice in retail offers, and reduce customers' ability to benefit from discounting; and
3. the case for regulating conditional offers is less clear in the ACT, where ActewAGL's electricity standing offers are regulated. Regulating conditional discounts may increase regulatory costs and the complexity of offers in the ACT.

These three points are discussed in more detail below.

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<sup>1</sup> <https://www.legislation.gov.au/Details/F2019L00530>

### 1. Recent regulatory changes

The past 12 months has seen a substantial change to the regulation of retail electricity pricing. This includes the introduction of the Code. Given the recent implementation of these changes, the effectiveness of the current regulatory regime has not yet been established. Therefore, ActewAGL considers that the effectiveness of recently implemented changes must be tested before applying the proposed rule change. This includes assessing the benefits of the rule change compared to the current framework, and weighing these benefits against the added regulatory costs and complexity. ActewAGL believes that the costs and benefits should be, in the first instance, established in the electricity market before considering whether the regulations could be extended to gas.

### 2. Customer choice of retail offers and ability to benefit from discounting

ActewAGL's experience shows that conditional offers are operating well in the ACT, with effective controls in place to insulate vulnerable customers from excessive penalties. Indeed, the vast majority of ACT customers with offers that are subject to conditional discounts meet the conditions and enjoy lower electricity bills. Regulating conditional discounts may mean that these customers are no longer able to benefit from the full range of discounted offers. Regulation of conditional discounts also has the potential to introduce greater complexity in retail pricing, by restricting retailers' ability to bundle conditional and other types of discounts within a single, easy-to-understand offer.

Given that many customers are benefiting from higher level discounts which have conditions attached to them and few (ActewAGL) customers are failing to meet the conditions, conditional discounting is generally working well. ActewAGL considers that it is important to analyse the potential bill savings that would be forgone by customers who are able to meet the conditions of the discount before regulating conditional discounts. It is possible that these foregone savings, together with the added regulatory costs, may exceed the benefits of the proposed rule change in the ACT (where customers rarely fail to meet the conditions required to receive a discount).

### 3. Regulating conditional discounts in the ACT

The ACT differs from most jurisdictions in that its retail electricity standing offers are regulated. When an ACT ActewAGL customer on an electricity market offer with conditional discounts does not meet the conditions, the customer pays the regulated standing offer which is deemed prudent and efficient by the Independent Competition and Regulatory Commission. Hence, ActewAGL electricity customers who fail to meet the conditions of the discount are not subject to 'excessive penalties', but rather the regulated standing offer. ActewAGL, as the largest retailer in the ACT, also has a comprehensive hardship program, which encourages eligible customers to transition to the highest discounted market offer, with all conditions waived. Thus, hardship customers do not lose any discount if they are unable to meet the conditions of a market offer.

In addition to the issues discussed above, Attachment 1 contains ActewAGL's responses to the specific questions raised in the Consultation Paper.

If you have any queries or wish to discuss this matter further, please contact Emily Brown on (02) 6248 3130 or via email [emily.brown@actewagl.com.au](mailto:emily.brown@actewagl.com.au)

Regards



Rachael Turner  
Acting General Manager Retail

## Attachment 1

Questions		ActewAGL's Feedback
<b>Question 1: Offer comparability</b>		
A)	Will comparability issues for conditional discount offers continue to be material with the introduction of the Code?	The Code seeks to improve the comparability of electricity offers in the jurisdictions where it is applied. Given that the introduction of reference prices (under the Code) has only been in place since 1 July 2019, it is premature to determine their effectiveness in addressing comparability of electricity offers.
B)	What other factors may be present that contribute to the difficulty of offer comparability?	<p>Reference prices are based on a typical customers' consumption profile. For example, in the Essential Energy distribution area of NSW, the reference price assumes a residential customer uses 4,600 kWh annually. Customers with non-typical consumption (i.e. with annual consumption significantly higher or lower than 4,600 kWh p.a.) may have limited ability to compare offers that are discounted from the reference price.</p> <p>As retailers offer more cost reflective retail tariffs (such as a demand tariff), these customers will have a limited ability to compare their offer because the reference price is currently based on less cost reflective tariff options.</p>
<b>Question 2: Excessive penalties</b>		
A)	Do stakeholders agree with the characterisation of substantially higher prices paid by customers when they miss conditional discount conditions as excessive "penalties"?	<p>When an ACT ActewAGL customer on an electricity market offer with conditional discounts does not meet the conditions, the customer pays the regulated standing offer which is deemed prudent and efficient by the Independent Competition and Regulatory Commission. Hence, ActewAGL electricity customers who fail to meet the conditions of the discount are not subject to 'excessive penalties', but rather the regulated standing offer.</p> <p>When a NSW ActewAGL customer on an electricity market offer with conditional discounts does not meet the conditions, the customer pays either the regulated reference price or a price based on a guaranteed offer, depending on the structure of their offer. Hence, similar to our ACT customers, our NSW customers are not subject to 'excessive penalties' if they fail to meet conditional discounts.</p>
B)	What customer groups are most at risk of failing to realise conditional discounts? How significant are these groups as a proportion of the energy customer base? (e.g. [i] Should payment plan customers be considered? [ii] Hardship customers make up 1.4% of all	ActewAGL offers a range of conditional and guaranteed discounts on market offers. The conditions include: paying-on-time, paying by direct debit, receiving e-bills, and smart meter installation. Apart from the pay-on-time condition, other conditions are generally met at the time a customer enters into the conditional market offer and therefore few customers 'fail' to realise the conditions. The exception to this is the pay-on-time condition, which could potentially be 'failed' by a customer. Even this condition is generally realised by ActewAGL

	customers according to AER data).	customers, with only 0.2 per cent of customers with a pay-on-time discount failing to meet that condition <sup>2</sup> .
C)	Do stakeholders have views on the ability of vulnerable customers to anticipate their energy plan costs and ability to pay?	<p>As the ACT Council Of Social Services has noted, “Disadvantage in the ACT tends to be hidden behind high averages across indicators such as income, education, and employment. It is estimated that 25,800 people are living below the poverty line in the ACT (representing 7.7% of the population). An estimated 37,000 people in the ACT live in households with an income below \$500 per week.” <i>Energy affordability and hardship in the ACT Factsheet June 2019</i>.</p> <p>Due to the seasonal nature of energy consumption in the region, it can be difficult for some customers in the ACT to anticipate their seasonal usage. In recognition of this, ActewAGL has implemented a range of programs (outlined below) to assist vulnerable customers pay their energy bills.</p> <ol style="list-style-type: none"> <li><b>Staying Connected program.</b> This program provides personalised support to help customers with financial difficulties to get back on track with their utility bills. This is achieved through the establishment of flexible and affordable payment plans. This program assists hardship customers to anticipate their energy plan costs, and incentivises them to follow an agreed payment plan. If program participants make five consecutive payments to their schedule, ActewAGL credit their account with an equal instalment (up to \$50).</li> <li><b>Energy Support Fund established with the ACT Government.</b> This program provides \$100 energy support vouchers to assist customers with the financial management of their energy bills. It also connects customers to government, community and ActewAGL programs that focus on financial counselling or energy efficiency.</li> <li><b>Feedback from vulnerable customer representatives.</b> Vulnerable customer representatives (such as Care Financial Services) have provided feedback to our Product Development and Web Development teams, who take on this feedback when designing product offers and developing web content for customers.</li> <li><b>Customer assistance engagement.</b> ActewAGL holds ‘bring your bill’ days at a range of locations to assist customers’ understanding of their bill. ActewAGL has also opened a walk-in ‘energy kiosk’ where customers can speak to a customer service officer face-to-face.</li> </ol>
D)	What internal rules do retailers have in place to ensure customers on a hardship program do not lose any benefit or discount for late	Under the ActewAGL Staying Connected hardship program, customers are entitled and encouraged to take up the highest discounted market offer with conditional requirements waived (as recommended by the Australian Council of Social Service). Hence, these hardship customers do not lose any benefit or discount because there are no conditions applied to those discounts.

<sup>2</sup> Australian Energy Regulator, Schedule 3 Retail Performance Data, June 2019.

	<p>payment (in line with the commitment announced on 7 August 2017 noted above)? Are retailers still committed to this approach now that the DMO has been introduced?</p>	
<p><b>Question 3: Key data needed to establish materiality (please provide data on the following points)</b></p>		
<p>A)</p>	<p>Price dispersion data on residential customer contracts, i.e. actual uptake and prices of customer contracts in the post-1 July 2019 period, including the magnitude of discounts in these contracts, the difference between highest and lowest market offers, etc.</p>	<p>Given that the introduction of reference prices under the Code has only been in place since 1 July 2019, it is premature to determine its effectiveness in encouraging the take-up of market offers.</p>
<p>B)</p>	<p>Uptake of different types of market offers (including conditional &amp; guaranteed discounts, as well as other types of market offers), both before and after the introduction of the Code.</p>	<p>Based on billing data, the number of new customer sign-ups in July and August 2019 is between 0 per cent and 1 per cent higher than the same period in 2018. Given the recent implementation of the Code, it is premature to assess the impact of the Code on the uptake of market offers.</p>
<p>C)</p>	<p>Realisation rates of conditional discounts contracts, i.e. the percentage of customers on conditional discounts who satisfy conditions each payment cycle and earn the discount.</p>	<p>The most common forms of conditions on an ActewAGL discounted market offer are paying by direct debit, receiving e-bills and/or online sign-up. These conditions are generally satisfied when a customer signs up for the conditional market offer.</p> <p>ActewAGL has very few customers on a pay-on-time discount as they are only offered through certain external sales channels. Of those with a pay-on-time conditional discount, only 0.2% of residential customers fail to meet the condition and therefore lose the benefit of the discount.<sup>3</sup></p>
<p>D)</p>	<p>Information on the scale and effectiveness of retailers' hardship programs with regard to conditional discounts and customers being on appropriate contracts. Including processes in place to comply with their obligations under s. 44 of NERL regarding the review of the appropriateness of a hardship customer's market retail</p>	<p>Currently 80% of ActewAGL's hardship customers on the Staying Connected program are on market offers (without conditional requirements). The percentage is monitored, and periodic reviews are conducted on accounts to proactively encourage these customers to take up a market offer. As an example, in May 2019, 744 texts were sent to customers on the Staying Connected program, advising them of their eligibility to sign up to new market offers. In June 2019, an Electronic Direct Marketing Campaign was conducted to 316 email contacts in the hardship program, advising them of the same information. These are just a couple of examples of the ways in which ActewAGL is proactively encouraging hardship customers to take up</p>

<sup>3</sup> ibid

	<p>contract.</p>	<p>market offers (with conditions waived).</p> <p>Although AER reporting does not take into account those being assisted through the ACT Civil and Administrative Tribunal (ACAT) Energy and Water Hardship Program, ActewAGL maintains a working relationship with the Tribunal and has extended the offer of automatic entitlement to our highest discounted market offer (without any conditions) to account holders protected under their program.</p> <p>The President of ACAT, Graeme Neate AM, has offered the following comments in support of this approach:</p> <p>“1. ACAT EW has received few complaints against AAR in recent years about tariff and discount issues. None of these complaints involved conditional discounts.</p> <p>2. ACAT EW and the AAR Hardship Program work closely together to ensure that their respective responsibilities are dealt with in an economical and effective manner. ACAT EW ensures that hardship issues are first taken up with AAR through their retailer hardship program. Customers can enter the ACAT hardship program only where they are disconnected, face imminent disconnection through retailer action, or are referred by AAR (or another retailer) to ACAT EW as cases which are more appropriate for ACAT hardship case management.</p> <p>3. AAR provides discounts to all of its hardship clients and has extended this arrangement to all ACAT hardship clients who have AAR as their retailer and who make a personal request for a discount. The discount offered is generous (20% off the cost of consumption at the regulated price for electricity, and 20% off the standard offer price for gas) and no conditions are attached to the offer.”</p> <p><i>Note: “AAR” refers to ActewAGL Retail</i></p>
<p>E)</p>	<p>Evidence of the impact of conditional discount on retailer debt management. Retailers may want to compare trends in debt levels during periods before and after conditional discounts were introduced.</p>	<p>It is difficult to draw conclusions regarding the impact of conditional discounts on ActewAGL’s debt management because there are many factors that influence debt levels.</p>
<p><b>Question 4: Energy offers not covered by the Code</b></p>		
<p>A)</p>	<p>Do stakeholders consider gas offers should be subject to conditional discount limitations, in line with electricity offers?</p>	<p>Given the numerous set of recently introduced regulations relating to electricity retail pricing and discounts, it is too early to determine the effectiveness of the current regulatory regime. Thus, it is important that stakeholders assess the effectiveness of the recently introduced regulations relating to electricity before extending these regulations to gas.</p> <p>Recent new regulations relating to retail electricity pricing and discounting include the following.</p>

		<ul style="list-style-type: none"> <li>• ACCC Competition and Consumer Industry Code – Retail Electricity Regulations (July 2019)</li> <li>• AEMC rule change: Preventing discounts on inflated energy rates (15 May 2018)</li> <li>• AER Default Market Offer Final Decision (April 2019)</li> <li>• AER, Retail Pricing Information Guidelines – Version 5 (April 2018)</li> <li>• AEMC, Notification of end of fixed benefit period final rule change (November 2017)</li> <li>• AER, Customer Hardship Policy Guideline (March 2019)</li> <li>• Voluntary changes by retailers including signing up to the Energy Charter.</li> </ul>												
<p>B)</p>	<p>How has the introduction of the Code impacted the prominence and magnitude of gas offers?</p>	<p>Given that ActewAGL sells electricity and gas, the introduction of the Code (for our NSW customers) has changed the way in which gas offers are advertised.</p> <p>Before the introduction of the Code, ActewAGL applied market offer discounts to the usage charge of gas standing offers. This was consistent with the method of advertising electricity offers.</p> <p>After the introduction of the Code, all electricity discounts (in NSW) are based on the reference price (i.e. the total bill, not usage only). For consistency between electricity and gas offers, ActewAGL’s NSW gas discounts are now applied to the total bill, rather than only the usage charge. This consistent approach, with regards to discounting for electricity and gas, serves to reduce confusion for customers.</p>												
<p>C)</p>	<p>Do retailers expect conditional discounts to become a material issue in the ACT and/or Tasmania?</p>	<p>The take-up of market offers is now at a relatively high/material level (compared to historic levels), with 40 per cent of ACT customers on market offers. The chart below shows the take-up of these offers over the past five years.</p> <p><b>Percentage of ACT customers on market contracts</b></p> <table border="1"> <caption>Percentage of ACT customers on market contracts</caption> <thead> <tr> <th>Year</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>2013-14</td> <td>19%</td> </tr> <tr> <td>2014-15</td> <td>25%</td> </tr> <tr> <td>2015-16</td> <td>24%</td> </tr> <tr> <td>2016-17</td> <td>21%</td> </tr> <tr> <td>2017-18</td> <td>39%</td> </tr> </tbody> </table> <p>Source: AER, Schedule 2 Retail Performance Data, June 2019.</p>	Year	Percentage	2013-14	19%	2014-15	25%	2015-16	24%	2016-17	21%	2017-18	39%
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<p><b>Question 5: Solutions</b></p>														
<p>A)</p>	<p>Are there any alternative solutions that should be</p>	<p>No further options to consider.</p>												

	considered by the Commission?	
B)	What benefits and detriments have stakeholders identified on the options outlined by the proponent?	Of the four options presented, ActewAGL agrees that option four is the most appropriate due to the transparency it can provide to customers. However, as stated earlier, ActewAGL considers that the recently introduced retail electricity pricing regulations need testing and analysis before additional regulation is introduced.
C)	What systems and processes do retailers have in place to screen customers? What is the scale and effectiveness of these screening processes?	ActewAGL does not currently have a system or process in place to screen customers when they are considering the most appropriate market offer (either through the website or contact centre). A screening process is not deemed necessary in the ACT where a customer who does not meet the conditions of a discount defaults to the regulated standing offer, nor in NSW where a customer defaults to standing offer prices, which are set to be compliant with the reference price.
D)	What processes are in place by retailers to give vulnerable customers opportunities to shift from offers which are not suitable to their circumstances?	<p>Contact centre staff are trained to direct customers who indicate financial hardship towards the Staying Connected program, where (if eligible) they will be encouraged to take up the market offer with the highest discount (with conditions normally associated with that discount, waived).</p> <p>Email and text message campaigns are conducted to encourage Staying Connected customers to transition from standing to market offers.</p> <p>From 1 January 2019, ActewAGL implemented the NSW Concession Contract Offer – NSW electricity customers, on a standing offer and with an active concession, are now rebated an additional 10% off usage charges, without the need for a market contact. This enabled ActewAGL to apply a “discount” to less engaged customers.</p>
E)	What customer data/factors should retailers consider when determining the suitability of an energy offer to each customer? Would vulnerable customers easily be able to provide this information? What action should retailers take when the information cannot be supplied by the customer?	<p>Retailers can consider a range of factors when determining the suitability of an offer for a particular customer or group of customers. This includes their usage pattern, payment method, bill delivery method, ability to pay, frequency of billing, etc. Different customers place different weighting on the above factors when choosing a retail electricity and gas offer that is suitable for them.</p> <p>For financially vulnerable customers, the most appropriate offer is the one that will reduce their ongoing expense (on utility bills) by the greatest amount. At ActewAGL, this is achieved through the current process of applying the highest discounted market offer, free of any conditional requirements, for that customer.</p> <p>Customers who are neither eligible for the hardship program nor willing to opt in to a conditional market offer are still able to take up a market offer with a guaranteed discount.</p>
F)	If conditional discounts were banned how would retailers manage credit risk?	Conditional discounts such as paying by direct debit encourage customers maintain payment of their energy bills. Such measures may

		still be encouraged by retailers (if conditional discounts were banned) albeit not as conditional on a discount.
G)	Do stakeholders have views on the appropriate level of the simple price cap on conditional discounts? What methodology could be employed to determine this level?	A price cap on conditional discounts would mean that both the base (i.e. reference price) and conditional discounts are regulated. Such regulation could stifle innovation in retail pricing structures which may ultimately reduce the opportunity for customers to reap the benefit of retail competition.
H)	If a reasonable cost limitation was imposed, should this limitation be enforced through an AER guideline or should this be left to retailers?	If a reasonable cost limitation were to be enforced through an AER Guideline, there is a risk that this option may shift to resemble the 'percentage cap on conditional discounts' option (option 3). To ensure retail innovation and differentiation in pricing offers, it is efficient to allow retailers to set the reasonable cost associated with conditional discounts. Furthermore, reasonable costs will differ from one retailer to another. Thus, allowing retailers to determine reasonable costs is appropriate.
I)	Should the Commission determine that an AER guideline is the most appropriate instrument to determine "reasonable costs", which costs and factors should be included in the estimate?	As per the response to part (h), ActewAGL considers it most appropriate for retailers to set the reasonable cost associated with conditional discounts.
J)	Should the Commission determine that retailers are best placed to determine "reasonable costs", are there any specific compliance or disclosure requirements necessary to satisfy the regulator of the accuracy of the estimate?	As per the response to part (h), ActewAGL considers it most appropriate for retailers to set the reasonable cost associated with conditional discounts.
<p>▪ <b>Question 6: Centrally determined baselines</b></p>		
A)	Do you agree with the assessment framework outlined by the Commission?	No comment
B)	Are there any other considerations the Commission should take into account?	<p>Under this proposed rule change, customers who are able to meet the conditions required to receive a discount would no longer be able to receive the benefit they had previously received.</p> <p>ActewAGL considers that it is important to analyse the potential bill savings that would be forgone by customers who do meet the conditional requirements of discounts.</p>