



15 January 2020

Ms Suzanne Falvi  
Acting Chief Executive  
Australian Energy Market Commission  
PO Box A2449  
Sydney South NSW 1235

Dear Ms Falvi

**AEMC Reference RRC0028 – Regulating conditional discounting**

Thank you for the opportunity to comment on this Draft Rule Determination.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. EWON receives and responds to complaints from customers on metering work and electricity supply interruption issues relating to retailer and distributor activities. Our comments are informed by our investigations into these complaints, and through our community outreach and stakeholder engagement activities.

We have only responded to those questions in the determination that align with issues customers raise with EWON, or with our organisation's operations as they relate to this rule change.

If you would like to discuss this matter further, please contact me or Rory Campbell, Manager Policy and Research, on (02) 8218 5266.

Yours sincerely

A handwritten signature in black ink that reads "Janine Young".

**Janine Young**  
Ombudsman  
Energy & Water Ombudsman NSW

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#### 4.3 Commission’s approach to coverage

EWON supports the AEMC’s proposed approach to coverage and considers it addresses the feedback and concerns raised in EWON’s submission. In particular, EWON supports the following proposed approaches:

1. Applying the draft rule to conditional contract terms relating to payment timing or method, including pay on time discounts, discounts for pre-purchasing energy, late payment fees and direct debit fees.
2. Treating conditional discounts and conditional fees such as late payment fees and payment method fees as an aggregate when determining reasonable costs.
3. Extending the proposed rule change to include gas retail contracts.
4. Applying the new rule to all new contracts from 1 July 2020, as well as all existing contracts with fixed benefit periods that retailers may seek to “roll over” at the end of the current period.
5. The application for civil penalties for breaches of the draft rule.

EWON also thanks the Commission for acknowledging under 3.2.2 of the determination, EWON’s position that any rule regarding conditional discounts should not take the current reduction in the prevalence of these types of products as a signal that regulation is not required.

#### 5.3 Principles-based restriction to reasonable costs

The determination proposes that for enforcement purposes, the AER may choose a low-cost approach where random audits are performed on a regular basis and that additional data may be sought from Ombudsman schemes to minimise monitoring costs.

Under EWON’s Charter, we cannot consider complaints that relate to the setting of prices or tariffs or determining price structures. EWON is therefore explicitly not able to comment on whether the conditional discounts contained in market offers reflect reasonable costs. However we do receive complaints from customers about the application of conditional discounts and can assess the level of an offered discount against any law, rule or regulation. We have in place a reporting regime with the AER and would anticipate sharing complaints data relating to the subject of this rule change as part of that process.

#### Enquiries

Enquiries about this submission should be directed to Janine Young, Ombudsman on (02) 8218 5256 or Rory Campbell, Manager Policy and Research, on (02) 8218 5266.