

# Consequential amendments related to the Victorian Default Offer

Draft decision

8 May 2019

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# 1. Our draft decision

## 1.1. Several reforms are underway in the Victorian retail energy market

Newly passed Victorian energy legislation states that from 1 July 2019, every Victorian residential and small business electricity customer will be able to access a Victorian Default Offer (VDO) from their energy retailer.

We are in the process of implementing various recommendations from the Independent Review into the Electricity and Gas Retail Markets in Victoria. We have already given effect to recommendations 3B to 3H via two rounds of Energy Retail Code changes, which will take effect from 1 July 2019.<sup>1</sup> These rule changes will require retailers to:

- make energy fact sheets available for each of their offers, to help customers compare offers
- include their 'best offer' on customer bills
- express tariffs, fees, prices and charges in GST inclusive terms only
- provide customers signing up to a plan with clear advice about terms and conditions of offers
- provide advanced notice of changes to prices and benefits that impacts a customer's bill.

Now that the legislation to implement the VDO has been passed, we consider it is important to clarify how the VDO will interact with certain new rules coming into effect on 1 July 2019.

Furthermore, when we implemented recommendations 3B to 3H in October 2018, we noted that we would consider how the VDO would interact with these new requirements. Responses to our December 2018 staff working paper on the VDO also noted interest in how the VDO would interact with other regulatory changes.<sup>2</sup>

This draft decision clarifies the intent of our new rules in the context of the VDO.

## 1.2. Clarifying the intent of the best offer requirement and the VDO

We are introducing the best offer requirement to help customers assess the energy plan they are receiving from their retailer. Retailers will be required to regularly display their 'best offer' on customers' bills, along with advice on how to access it. Retailers will also be required to personalise the information by using the customer's actual meter data to calculate the savings that

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<sup>1</sup> Essential Services Commission, Building trust through new customer entitlements in the retail energy market: Final Decision, October 2018 / Helping customers engage confidently in the retail energy market: Final decision, March 2019.

<sup>2</sup> Essential Services Commission, Victorian Default Offer for domestic and small business electricity customers: Staff working paper, December 2018.

may be available. The 'best offer' must either be the retailer's lowest cost generally available offer (having regard to the customer's annual usage history) that does not require paid membership or affiliation as an eligibility criteria, or the retailer can choose to show a cheaper restricted offer.

Given retailers will be required to make the VDO available to their customers, we expect that the VDO be included in the best offer message, if it is their best offer for a customer. We also note that the draft order supporting the VDO propose that retailers provide on energy bills information on how a customer can access the VDO.

#### **Draft decision 1**

The deemed best offer must be the lowest cost of a generally available plan or Victorian Default Offer applicable to the customer.

### **1.3. Clarifying the intent of the clear advice entitlement and the VDO**

We are introducing requirements for retailers to provide clear advice to a customer when seeking a better energy offer. The clear advice entitlement will require retailers to be upfront with customers about any terms within the contract that could lead to the customer paying more than they expect. It will ensure all customers are clearly provided with the key information they need to assess their options prior to signing onto a new plan. This includes the dollar impact of missing out on any conditional discounts associated with a plan they are reviewing, or information about better plans the customer may not have realised were available.

Given retailers will be required to make the VDO available to their customers, we expect that where a retailer has reason to believe that the VDO may be a better option for that customer, the retailer would tell that customer about the VDO and how to access it. Under the clear advice entitlement a customer calling up their retailer to request the VDO should also be told about other offers that the retailer considers may be more suitable for that customer.

#### **Draft decision 2**

A retailer, under the clear advice entitlement, must communicate to a customer information about the retailer's other applicable generally available plans and a Victorian default offer that it reasonably believes may be more suitable for the customer.

Additionally, the Victorian government recently published a draft Order in Council to give effect to the VDO. The draft order proposes that retailers include information on the electricity bill of all Victorian customers on how they could access the VDO.<sup>3</sup>

To support the implementation of government policy, we propose that retailers provide information to any customer about the VDO prior to signing a customer onto any electricity contract. To give effect to this, we propose an additional obligation be made under the clear advice entitlement (clause 70H). It is proposed that retailers have some discretion on how to carry out this obligation, so long as a customer is made aware of the VDO and how to access it.

### **Draft decision 3**

Under the clear advice entitlement, a retailer is to communicate information about the availability of the Victorian Default Offer and how the customer may access the plan from the retailer.

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<sup>3</sup> Department of Environment, Land, Water and Planning, 2019, *Victorian Default Offer – Draft Orders: Consultation paper*, p 7.

## 2. Next steps

### 2.1. Proposed implementation

We propose to make the draft decisions as consequential amendments to the Energy Retail Code, as set out in Appendix A. The new amendments will commence on 1 July 2019.

### 2.2. How to make a submission

We are open to stakeholder feedback on this draft decision, particularly on the pros and cons on providing customers with information on the VDO when seeking a new energy plan with a retailer.

We will continue to consult with interested stakeholders and invite you to contribute your views by making a submission in response to this draft decision in writing by 5pm **Wednesday 22 May 2019**.

It should be noted that this will provide a two-week consultation period for stakeholders. We have allowed for a shorter consultation period for this draft decision given the discrete changes proposed and recognising that the VDO is to be made available to customers from 1 July 2019.

Submissions marked 'Submissions to the Consequential amendments related to the Victorian Default Offer' should be sent by

email to: [RetailEnergyReview@esc.vic.gov.au](mailto:RetailEnergyReview@esc.vic.gov.au)

mail to: Essential Services Commission

Level 37, 2 Lonsdale Street

Melbourne, Victoria 3000

To promote an open and transparent decision-making process, all submissions will be made available on the commission's website, except for any information that is commercially sensitive or confidential. Submissions should clearly identify information that is sensitive or confidential.

If you have any questions, please contact us on (03) 9032 1300.

Our approach to consultation is set out in our updated Stakeholder Engagement Framework.<sup>4</sup>

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<sup>4</sup> Essential Services Commission, Stakeholder engagement framework – Charter of Consultation and Regulatory Practice, June 2018.

## **Final decision**

Once we have received and considered the submissions, we intend to make a final decision in June 2019, or as soon as is practicably possible

Next steps



# Appendix: Draft Energy Retail Code amendments

## AMENDMENTS TO THE ENERGY RETAIL CODE: CONSEQUENTIAL AMENDMENTS RELATED TO THE VICTORIAN DEFAULT OFFER

[Insert date]

### Amendments made by the Essential Services Commission on [Insert date]

#### 1 Nature and commencement of this instrument

- (1) This instrument amends the *Energy Retail Code* and the Amendments to the Energy Retail Code: Market Integrity approved on 30 October 2018 to the extent of any inconsistency.
- (2) This instrument comes into operation on 1 July 2019.

#### 2 Table of amendments

- (1) Replace the following definition in clause 3, after *de-energisation or disconnection*:

*Deemed best offer* means the plan identified in accordance with clause 70P;

- (2) Insert the following definition in clause 3, after *telemarketing call*:

*Victorian default offer* means any offer to supply or sell electricity that is subject to a regulated price in an Order made under section 13 of the *Electricity Industry Act*.

- (3) In subclause 70H(1), replace paragraph (d):

(d) the *retailer's* other *generally available plans* and a *Victorian default offer* applicable to the *customer* that the *retailer* reasonably believes may be more suitable for the *customer* having regard to any information the *retailer* has regarding the *customer* wherever it is practical to do so;

- (4) In subclause 70H(1):

(a) delete 'and' at the end of paragraph (d);

(b) replace '.' with ';and' at the end of paragraph (e);

(c) add paragraph (f):

(f) information about the availability of the *Victorian default offer* and how the *customer* may access the plan from the *retailer*.

- (5) In clause 70P, replace subclause (2):
- (2) The *deemed best offer* must be either:
- (a) the plan that the *retailer* offers which:
- (i) is the lowest cost of a *generally available plan* or *Victorian default offer* applicable to the *customer* having regard to the *customer's annual usage history*; and
- (ii) does not have as a precondition or condition that the *customer* have or maintain a paid affiliation or membership with an entity that is unrelated to the *retailer*; or
- (b) a plan that has a lower cost than the lowest cost of a *generally available plan* or *Victorian default offer* applicable to the *customer*.