

VICTORIAN

Energy Market

REPORT

MARCH 2022

An enhanced enforcement
landscape for the protection of
Victorian energy consumers

Innovation, differentiation,
and consumer choice

Energy in Victoria



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The Victorian Energy Market Report meets our reporting obligations under section 10AAB of the Essential Services Commission Act 2001; sections 39A and 109A of the Electricity Industry Act 2000, and; sections 47 and 223 of the Gas Industry Act 2001.

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An enhanced enforcement landscape for the protection of Victorian energy consumers





Summary

The commission's compliance and enforcement toolkit has been enhanced with new investigative powers and enforcement pathways to effectively address non-compliance.

Significant changes have been made to the Victorian energy regulatory framework following the commencement of two pieces of legislative amendments, namely the *Essential Services Commission (Compliance and Enforcement Powers) Amendment Act 2021* and the *Energy Legislation Amendment (Energy Fairness) Act 2021*. In response, the commission has also updated its codes and guidelines.

The commission's compliance and enforcement toolkit has been enhanced with new investigative powers and enforcement pathways to effectively address non-compliance. Both the likelihood of detection and the prospect of enforcement action to address non-compliance with Victorian energy laws and rules have materially increased.

Persons selling or supplying electricity under the exemption framework became subject to the new enforcement regime. Officers of body corporates also became more accountable, with the possibility of enforcement action being taken for their participation in contravening conduct.

The changes recognise the essential nature of energy for Victorian households and businesses. They highlight community expectations of businesses when being sold or supplied energy, and an expectation that poor conduct is appropriately deterred, prevented, or held to account.

New criminal offences were introduced in relation to wrongful disconnections and provision of false or misleading information to the commission.

New prohibitions on door-to-door sales, cold-calling, and using save and win-back offers were created.

The risk of increased severity of consequences for non-compliance, makes it imperative that energy businesses and those in positions of responsibility within those businesses are taking action to ensure their compliance systems are effective.



A modern regulator with the right tools to promote the long-term interests of consumers

The recent commencement of the *Essential Services Commission (Compliance and Enforcement Powers) Amendment Act 2021*, on 1 December 2021, equipped the commission with more investigative tools and enforcement options.

The commission is now equipped with the investigative tools of a modern regulator and is more effectively able to regulate the market in the long-term interests of consumers. Information gathering powers have been enhanced and new search and seizure powers have been created. This includes new powers to conduct inspections and execute search warrants.

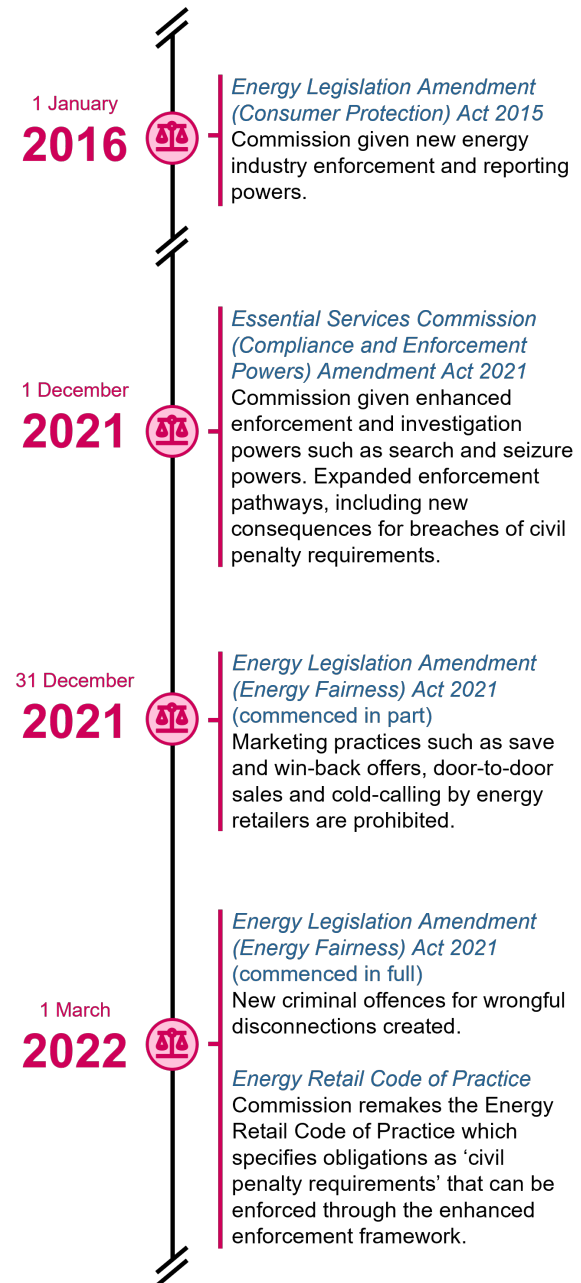
The commission's enforcement pathways have also been enhanced. The commission retains its ability to issue penalty notices and accept enforceable undertakings but may now also commence civil litigation in relation to contraventions of the Victorian energy rules. This includes applications for urgent injunctions without notice.

These new significant penalties reinforce community expectations that disconnection should only ever be as a last resort.

Penalty levels were significantly increased by the recent legislation. For instance, conduct that may previously have been subject to a penalty of \$5,000 per contravention may now be subject to a penalty notice requiring payment of \$36,000 per contravention and if the commission chooses to commence civil penalty proceedings, that may increase to over \$200,000 per contravention. With the potential for regulations to put the maximum penalty levels even higher.

The changes give the commission options to address non-compliance similar to other modern regulators in Victoria and Australia. In addition, from 1 March 2022, there are criminal penalties of up to \$1 million per contravention for energy licensees or exempt persons who knowingly or recklessly disconnect supply of electricity to premises otherwise than in accordance with the legislative framework or who disconnect supply of electricity at the premises of life support customers.

Figure 1: Legislative timeline of recent enforcement developments



These new significant penalties reinforce community expectations that disconnection should only ever be as a last resort. It also highlights the seriousness of harm for customers, particularly those experiencing vulnerability, caused by the potential non-compliance of energy businesses.

It is vital that the commission can undertake litigation as part of its options, particularly for alleged contraventions that pose significant harm on consumers and to preserve the public interest and trust in the regulatory framework.

... certain marketing practices are prohibited, such as save and win-back offers, door-to-door sales and cold-calling by energy retailers.

In light of the expanded investigative powers and enforcement options, the commission will continue to carefully consider how it addresses potential non-compliance. The commission's discretion as to how it proceeds with potential contraventions requires evaluative judgement and choosing an enforcement option that may be most conducive to securing compliance or deterring non-compliance with the relevant regulatory regime.

We will publish our updated Compliance and Enforcement Policy by the end of March 2022. This update will reflect the recent legislative reforms and sets out the commission's approach to compliance and enforcement including the factors to which it will have regard when deciding to pursue a particular enforcement pathway.

The commission emphasises that we prefer that Victorian energy businesses are proactive in ensuring they are complying with the energy laws. We expect that these recent changes will motivate businesses to continue investing in the enhancement of their compliance systems, processes, and culture for their customers.



Exempt persons and corporate officers may be subject to enforcement action

A further important change brought about by the commencement of the *Essential Services Commission (Compliance and Enforcement Powers) Act 2021* is to increase the scope of persons considered 'regulated entities' who may be subject to enforcement action.

In particular, from 1 December 2021, persons exempt from section 17 of the *Electricity Industry Act 2000* or section 24 of the *Gas Industry Act 2001* became persons subject to the new enforcement framework as 'regulated entities'.

Persons undertaking activities under the exemption framework have obligations placed on them in the commission's codes of practice. These obligations may be specified as civil penalty requirements, meaning that contravention can lead to penalties and other enforcement action being undertaken. This is a significant change that reflects the expectation that customers that are being sold or supplied electricity or gas under the exemption framework are properly protected from non-compliant activity.

The involvement of senior officers of a body corporate in contravening is now directly relevant under the new legislation. If officers knowingly authorise or permit a contravention, they may become personally subject to enforcement action, including potential criminal prosecution.

Cold-calling and door to door sales banned

The Victorian government also passed new legislation to protect consumers in its *Energy Legislation Amendment (Energy Fairness) Act 2021*. From 31 December 2021, certain marketing practices are prohibited, such as save and win-back offers, door-to-door sales and cold-calling by energy retailers.

Compliance with these provisions is now being actively monitored by the commission.



Legislative change was complemented by a new Energy Retail Code of Practice

From 1 December 2021, all the commission's codes were deemed to be 'codes of practice', or legislative instruments, made under Part 6 of the *Essential Services Commission Act 2021*. The commission is required to review and, if appropriate remake, each of these instruments over the next four years. This will include reviewing what provisions of these instruments should be enforced through the new enforcement framework.

On 1 March 2022, our remade Energy Retail Code of Practice took effect, following two rounds of public consultation. The content of obligations on retailers and exempt persons remains largely unchanged, but there were some changes, including to disconnection and life support frameworks. These changes result from the criminalisation of those contraventions. This occurred by way of the amendments to the *Electricity Industry Act 2000* and *Gas Industry Act 2001* which commenced on the same day, and include matters in relation to disconnection and life support that had previously been regulated by the Energy Retail Code.

Importantly, the Energy Retail Code of Practice now specifies obligations as ‘civil penalty requirements’, These are the obligations that, if breached, can be enforced by the commission through the enhanced enforcement framework that came into effect in December 2021. Important protections, such as those for energy customers experiencing family violence, can now be enforced using penalties.

The importance of this accountability is also highlighted by the creation of a criminal offence, with potential penalties of up to \$1 million for providing false or misleading information to the commission.

With the changes to the Energy Retail Code of Practice came the repeal of the Code of Conduct for Marketing Retail Energy. Core obligations previously dealt with in that code are now consolidated in the Energy Retail Code of Practice.

Likewise, the commission’s guideline on supporting utility relief applications was also repealed and the Energy Retail Code of Practice was updated to make practical assistance in the completing and lodgement of utility relief applications part of the payment difficulty framework.

The commission will continue to progress its review of its codes, with the Electricity Distribution Code of Practice being the next code we are consulting on as part of this transition.



New reporting requirements and consequences for not reporting as required

Finally, on 1 March 2022, the commission published new requirements for energy businesses to report on potential non-compliance and their performance. The commission’s revised Compliance and Performance Reporting Guideline took effect on 1 March 2022 and enhances the commission’s capacity to monitor and regulate the Victorian energy market.

The guideline requires more extensive reporting although more generous timeframes for reporting are allowed under the updated guideline.

We emphasise that non-compliance with the Compliance and Performance Reporting Guideline is now a matter that may be subject to enforcement action, including penalties. Non-compliant businesses are more than ever accountable for being transparent with the regulator about when they are failing to comply with their obligations.

The importance of this accountability is also highlighted by the creation of a criminal offence, with potential penalties of up to \$1 million for providing false or misleading information to the commission.



The commission continues to take strong enforcement action

Over the past few years, the commission has been actively working to enforce and promote the compliance of energy rules.

Between July and December 2021 alone, nearly \$8 million in penalty notices were paid by energy companies for alleged contraventions. Outside of enforcement, we also conduct complementary compliance activities such as developing education materials and holding workshops, to providing warning notices to energy businesses. Relevant details are set out in article 3 below.

The recent legislative changes further enhance the commission’s ability to undertake its compliance and enforcement function, acting in the long-term interests of Victorian consumers.

Innovation, differentiation, and consumer choice





Summary

Do energy consumers value innovation? This question is deceptively nuanced and tricky to answer.

We approached this question by analysing what is being offered by energy retailers to Victorian consumers as well as the offers that consumers are opting to take up. What we found was complexity. We found complexity in the relatively large volume of superficially differentiated offers that can make it confusing for consumers to navigate the market. We also found that, for the small number of more differentiated offers many of these included complex tariff structures that do not seem to be attractive to consumers.

So while there does appear to be evidence that Victorian energy consumers value innovation, it is not clear that the products on offer are meeting consumers' preferences. Three broad market observations support this answer.

First, the idea of innovation can be imprecise, with successful innovation usually identified after measuring consumers' responses. That is, many new ideas are tried in the market, but only a few succeed. As a result, it is not unusual to default to the sometimes simplistic starting point of product differentiation as a proxy for innovation.

Second, consumers may value innovation in one industry area, while avoiding change in seemingly related markets. For example, Victorian energy consumers have been enthusiastic technology adopters, as evidenced by the State's high residential solar penetration rates. However, consumers appear less eager to adopt innovative or complex offers in the retail energy space.

Third, innovation is only beneficial if it addresses a consumer demand. This supply-demand dynamic strongly influences both energy retailers' strategic behaviour and energy consumers' choices. There is little value in the energy industry offering innovation that consumers do not want. At the same time, there is a question about how best consumers might be able to signal their demand for new innovations if these innovations do not yet exist in the market.

The commission may have a role to play in the development of innovation in the energy sector. We aim to foster an environment of innovation that supports positive consumer outcomes, including through the regulatory sandboxing framework (commencing soon) and the product exemption process.

Do energy consumers value innovation? This question is deceptively nuanced and tricky to answer.



Innovation types

This article is not focused on any specific type of innovation. Instead, we consider all potential types of innovation based on the associated consumer outcomes. The four innovation types defined below, along with the two product differentiation approaches, are used to organise the main findings presented later.

Providing an innovation framework with clear definitions is a useful starting point to discuss and analyse innovation. The Harvard Business Review introduced a broad innovation framework in 2017 that incorporates a number of separate insights and ideas.¹ This framework defines four innovation types based on two dimensions: problem definition and market definition.

Table 1: Innovation types²

Clear ↑ Problem definition ↓ Unclear	BREAKTHROUGH INNOVATION Breakthrough innovation is when a new market is created by the solution of a previously well defined problem.	INCREMENTAL INNOVATION Incremental innovation refers to a series of small improvements that compound over time into measurably better consumer and/or market outcomes.	
	BASIC RESEARCH This is innovation that stems from more general scientific research and breakthroughs, often unrelated to the problem or market.	DISRUPTIVE INNOVATION Disruptive innovation involves changes to a market that make a product cheaper and easier to access.	
	← New	Market →	Established

‘Breakthrough innovation’ is defined in this framework as innovation where the problem is clear, but the market is not identified or does not yet exist. Such innovations might be considered ‘market makers’ and are exemplified by products like Apple’s iPhone that created the mobile application market. In this example, the iPhone was created to address a specific problem, the need for a user-friendly web-connected mobile device, that then created an entirely new market. Once a breakthrough innovation has created and/or defined a new market space, any further innovation in this market space is not usually considered a breakthrough.

Within the framework, innovation in an established market that does not address a specific problem is called ‘disruptive innovation’. The term ‘disruptive innovation’ was originally defined by Harvard Business School professor Clayton Christensen,³ who saw it as a process for making products more accessible and affordable. Thus, instead of solving a specific problem, disruptive innovation is more about making something cheaper and/or simpler. This definition of ‘disruptive innovation’ aligns with a commission report by Deloitte Access Economics highlighting innovation’s objectives to, “empower consumers and reduce complexity” and “enhance affordability.”⁴

Innovations within a defined market that target identified problems are considered ‘incremental innovation’. This type of innovation involves smaller steps that compound into significant progress in some key product or market area. Incremental innovation is an important process. Bain & Company estimated that US\$5 trillion of incremental GDP would be created globally between 2011 and 2020 through the idea of “everything the same, but nicer.”⁵

Lastly, ‘basic research’ covers all innovation that is neither linked to a specific market nor addressing a specific problem. Examples of basic research innovation can be found in academic research and internal research divisions, such as auction theory in economics that were later used to inform Ebay auctions⁶ or numerous separate technological advances at Xerox PARC that lead to the creation of the personal computer market.⁷

Separate to the innovation types framework, how energy retailers can approach product differentiation has also been explored by a number of consulting firms who highlight a variety of strategies and focus areas. Perhaps the most simple view comes from Bain & Company,⁸ who define product differentiation approaches as ‘soft’ or ‘hard’ based on their fundamentals. Soft approaches are, “improvements that may be generated from market or customer insights and process or business-model inventions.” Hard approaches are typically more research and development (R&D) intensive, usually focused on technology to drive efficiencies, such as decreased energy consumption. It is important to note that any type of innovation described in the earlier framework can be pursued with any combination of ‘soft’ and ‘hard’ approaches.

¹ Satell (2017)

² Source: Commission work based on Satell (2017).

³ Christensen, Raynor, and McDonald (2015)

⁴ Deloitte Access Economics (2019)

⁵ Bain (2011)

⁶ The Economist (1999)

⁷ See Xerox PARC (2022) and The New Yorker (2011).

⁸ Bain (2011)



What others have found

Innovation that benefits consumers is central to the proper functioning of a competitive market and has been observed in other industry areas,⁹ such as mobile phones,¹⁰ software,¹¹ and automobiles.¹² However, when looking at the retail energy market, there is no clear consensus concerning either the level or impact of current innovation activity.

Taking a broad view, a number of reports outline the potential benefits of retail energy market innovation.¹³ For example, the Australian Energy Market Commission (AEMC) states that, “[h]igher retailer returns can reward innovation and strong customer service, and also drive new entry which in turn creates further incentives for differentiation and cost reduction.”¹⁴ Similarly, the Australian Energy Regulator (AER) found that “retailers are looking to differentiate their products in other ways” to “attract and retain customers.”¹⁵

However, some have begun to ask if retail energy is different. A recent St. Vincent de Paul Society report observed that, “[a]n increasing number of retailers are offering an increasing number of offers and there are developments indicating that retailers are applying strategies to make the market unnecessary [sic] complex and confusing.”¹⁶

Similarly, when thinking about energy consumers’ product differentiation preferences, previous research is sometimes inconclusive.

For example, work by the Grattan Institute¹⁷ and CSIRO¹⁸ concluded that most consumers are unlikely to be interested in offers where prices vary throughout the day and week as reflected in wholesale energy prices, using survey data to support their position. More recently, research from the Victoria Energy Policy Centre comes to a similar conclusion, suggesting that, “Victorian households respond weakly to time varying rates and households in the lowest socio-economic areas do not respond at all.”¹⁹ These positions contrast with the more positive view of others, who highlight energy retailers offering

cost-reflective wholesale pricing as potential examples of industry innovation that may broaden consumers’ energy options, particularly if the positive consumer sentiment shown in surveys is accurate.²⁰ This positive consumer sentiment may stem from potential benefits discussed in previous research. This includes consumer and industry benefits of real-time energy pricing to enable changes in consumer energy demand through the day, also known as demand-side responses. Technological solutions that lower the cost and simplify changing the timing of demand may increase consumer appetite for new pricing models.

Innovation that benefits consumers is central to the proper functioning of a competitive market . . .

Such a divergence of conclusions can also be found in the available research regarding offer discounting²¹ and consumers’ price preferences.²²

Some previous research efforts also analyse retailer strategies together with consumer preferences. This work may explain some of the observed product differentiation patterns, both in terms of energy retailer offerings and consumer choices. In particular, the Independent Pricing and Regulatory Tribunal²³ notes that, “a smaller market for ‘active’ customers could lead to less vigorous competition and innovation, with fewer retailers competing.” Therefore, it might be that the most innovative energy offers are currently attractive only to a discrete consumer cohort, meaning that energy retailers have little incentive to deeply innovate for the majority of their energy consumer base.

⁹ Arrow (1972)

¹⁰ Shashidhara and Chandramma (2018)

¹¹ McKinsey & Company (2020)

¹² PWC (2018)

¹³ For example, AEMC (2019); AEMC (2020); and IPART (2018).

¹⁴ AEMC (2015)

¹⁵ AER (2021)

¹⁶ St. Vincent de Paul Society (2021), the commission has not independently verified this observation.

¹⁷ Grattan Institute (2017)

¹⁸ CSIRO (2015)

¹⁹ Burns and Mountain (2020)

²⁰ For example, Tayal and Evers (2018); and ECA (2021).

²¹ For example, IPART (2018); Grattan Institute (2017); AEMC (2019); and AEMC (2020).

²² For example, ACCC (2018); Newgate Research (2017); and Ernst & Young (2022).

²³ IPART (2021)

Attempting to identify specific energy industry innovation areas, McKinsey & Company in 2018 note that customer service and experience will drive customer retention, while also pointing to “untapped growth opportunities” in “digital marketing” and “tailoring products and innovations to the needs of different customer segments.”²⁴ A few years later, McKinsey & Company specifically highlighted the untapped potential of digital transformation, noting that “[e]nergy companies have failed to achieve substantial business value from digital.”²⁵ Deloitte suggests there are 10 types of innovation and three levels of innovation ambition, concluding that, “[t]echnology itself isn’t transformative; it has to be integrated with several other types of innovation if it is going to disrupt the status quo.”²⁶

Product differentiation

Product differentiation in the energy market involves distinguishing one offer from another, to make it more attractive to a particular target market. If the product differentiation features retailers experiment with are successful, particularly in disrupting previous patterns of market or consumer behaviour, then these product differentiation features might be considered innovative.

The commission’s role, economics capability, and data access supports a unique approach to the topic of innovation. More specifically, by bridging a number of previously disconnected research areas, a clearer picture of innovation and product differentiation in Victoria is provided. This clearer view yields new insights that may inform the public policy debate concerning retail energy competition.

We begin with an analysis of product differentiation in the Victorian energy market using a unique category-based framework. This framework is then used in subsequent analyses of energy retailers’ offers and energy consumers’ actual energy offer selections. This evidence-base then supports a deeper investigation of product differentiation patterns in Victoria, considering both energy retailer strategies and consumer preferences.



What’s on the product differentiation menu?

To make assessing the market impact of product differentiation possible, a categorisation framework was created. This framework supports analyses of (i) energy product differentiation in Victoria; (ii) energy retailers’ generally available offers; (iii) the take-up of differentiated offers; and (iv) the impact of product differentiation on the Victorian energy market.

This approach involved compiling a list of the offer characteristics available in the Victorian retail energy market and then classifying them by the associated consumer objectives they might address.²⁷ The analysis posits that a consumers’ main aim is to find an offer with the characteristics that best address their objectives, subject to their specific preferences. These objectives can be broadly divided into three groups: price, service, and convenience.

Table 2 shows the categorisation of energy offer characteristics available in Victoria. The four grey rows represent categories of consumers based on their preferences (noting that consumers can fall within more than one category).²⁸ For the purposes of this research these consumer categories are defined as traditional, non-traditional, financially focused, and sustainability focused. These consumer types broadly define how a consumer might approach any of their main retail energy objectives:²⁹

- Price structure - covers offer characteristics related to energy tariff structures, such as flat (single tier) pricing or time-of-use pricing that varies energy prices depending on the time of day. Non-flat pricing structures may require electricity smart meters.
- Price incentives - covers all other pricing differentiation that is not related to the tariff structure, including discounts, upfront rebates, financial incentives, and promotions.
- Convenience - covers any energy offer characteristic that attempts to simplify the energy retail consumer experience.
- Service - covers all differentiation related to consumers’ interaction with an energy retailer and broader societal characteristics, such as corporate sustainability.

²⁴ McKinsey & Company (2018)

²⁵ McKinsey & Company (2020)

²⁶ Deloitte (2019)

²⁷ Attributes were collected by visiting the websites of any brands with publicly available information on offers. The research was conducted between 1 January 2022 and 28 February 2022. For brevity, future reference to this research will be Commission Research (January 2022).

²⁸ The commission of course appreciates that this research adopts only one approach to the categorisation of consumers.

²⁹ The price objective is split between price structure and price incentive objectives, as this setup supports subsequent analyses.

Table 2: Energy offer product differentiation in Victoria³⁰

	Price: structure	Price: incentives	Convenience	Service
Traditional	<ul style="list-style-type: none"> Flat pricing ⚡ 		<ul style="list-style-type: none"> Direct debit, option Billing option, 30 days 	<ul style="list-style-type: none"> Call centre
Non-traditional	<ul style="list-style-type: none"> Wholesale pricing ⚡ Time of use pricing ⚡ 	<ul style="list-style-type: none"> Decentralised energy ⚡ Entertainment subscriptions Retail or entertainment, financial incentive 	<ul style="list-style-type: none"> Bundling, convenience Bundling, non-energy Paper bills, option Bill smoothing Billing option, 60 days Mobile app, convenience 	<ul style="list-style-type: none"> Australian owned Australian service team Financial investment in local community Online chat tool Usage monitoring app
Financial focus	<ul style="list-style-type: none"> Subscription pricing ⚡ 	<ul style="list-style-type: none"> Bundling, financial incentive Discounts Off-peak usage, financial incentive ⚡ 	<ul style="list-style-type: none"> Direct debit, required Billing option, 90 days 	<ul style="list-style-type: none"> Energy assessment 🏠
Sustainable focus	<ul style="list-style-type: none"> Higher FiT ⚡ Virtual power plant ⚡🏠 	<ul style="list-style-type: none"> EV owners, financial incentive ⚡ Renewables financing and installation, financial incentive ⚡🏠 	<ul style="list-style-type: none"> Renewables financing and installation, convenience ⚡🏠 	<ul style="list-style-type: none"> Retailer corporate sustainability goal Retailer: renewable energy ownership GreenPower ⚡ Carbon offsetting
	⚡ Electricity only	🔥 Gas only	🏠 Residential only	🏢 Small business only

Table 2 shows that there are relatively few price structure characteristics. This means that consumers searching for different offer tariff structures will have few options, especially compared to customers who have a service or convenience objective.

Another notable observation is that some objectives (set out in the columns) have relatively few characteristics, partly due to the fact that each listed offer characteristic can represent multiple types of similar offer differentiation. For example, there are a number of GreenPower options, ranging from 10 to 100 per cent coverage, which are captured as a single offer feature in the table.³¹

Electricity smart meters

A smart meter measures how much electricity is used and when, sending the information back to a customer's energy retailer remotely. Smart meters are required to take advantage of time of use tariffs.

Sorting offer characteristics into consumer types is relatively straight-forward, particularly for the financially- and sustainability focused types. Categorising the remaining attributes between traditional and non-traditional types is also necessary to define the minimum standard energy offer. This is important because defining undifferentiated characteristics creates a baseline to assess the extent of offer differentiation.

For example, an energy offer from a retailer that has only a call centre in the service category would be considered an undifferentiated service offer. Offering features such as an Australian service team or an online chat tool is considered service differentiation, setting that offer apart from the undifferentiated offer.

Figure 1 shows the number of retailers that offer each characteristic. Offer characteristics provided by at least 80 per cent of retail brands are considered a traditional or standard characteristic. Including only characteristics offered by at least 80 per cent of retailers is a conservative approach, setting a high standard for classifying any offer characteristic as traditional.³²

³⁰ Source: Commission research (January 2022).

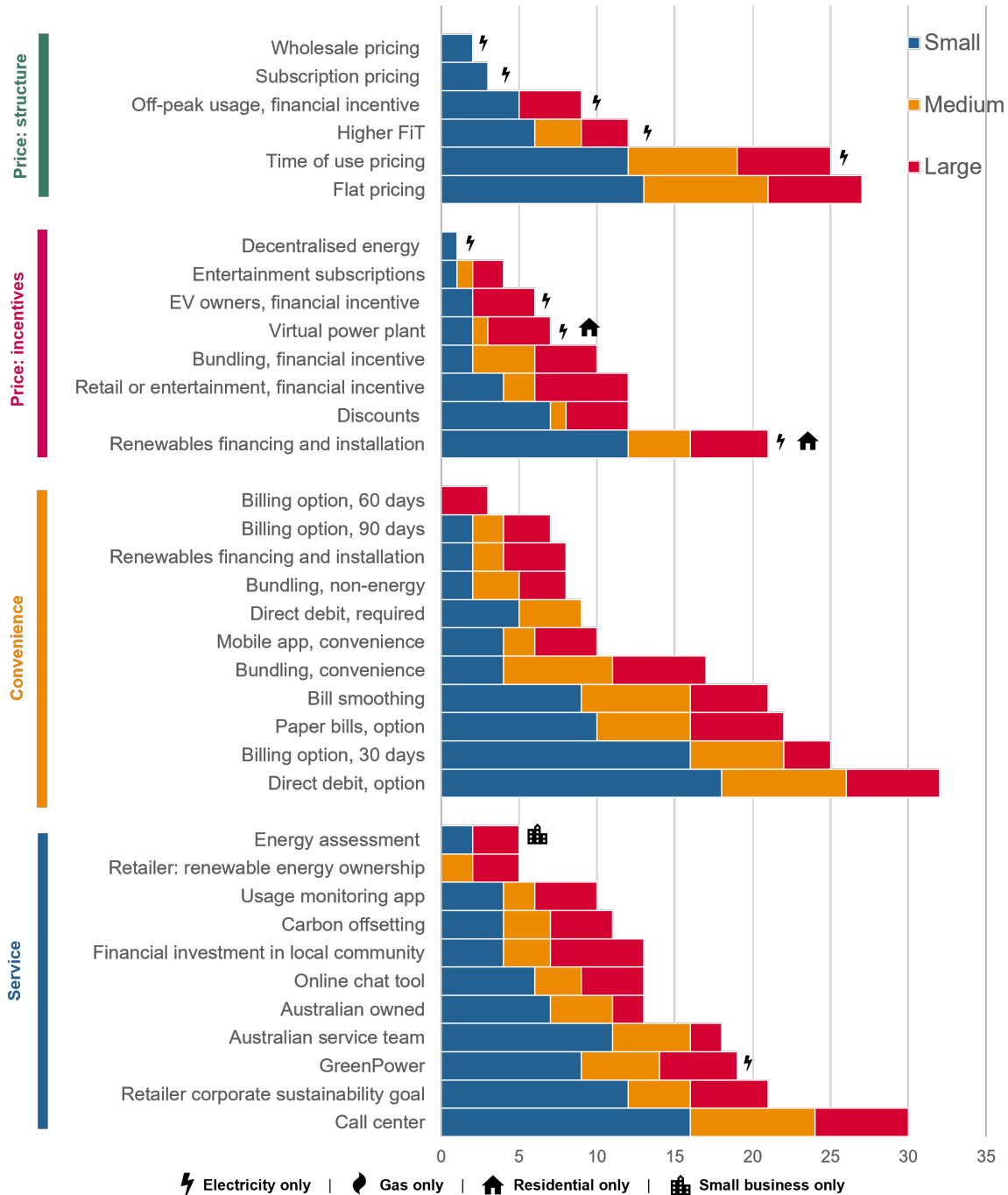
³¹ The framework presented in Table 2 captures all available energy offer differentiation in a summarised manner, which is sufficient for the analyses presented in this article. The terms characteristics, attributes, and features are used interchangeably throughout the article to describe offer attributes.

³² This categorisation framework has two main elements that will be used throughout this article. First, the definition of a traditional (undifferentiated) energy offer is an important starting point and is the only consumer type distinction that is required for this article. Second, the four consumer objective columns will be the main groupings used for the following quantitative analyses.

Superficially, Figure 1 suggests that there is substantial competition between the different energy retailer size groups,³³ as there is an even spread of large, medium and small retailers across both individual characteristics and the broader customer objective categories.

That said, many of the offer characteristics are only available from a handful of energy retailers and only in a small number of specific offers. This issue is addressed when looking at energy offers' specific features and characteristics in the next sections.

Figure 1: Energy offer product differentiation in Victoria by number of energy brands³⁴



³³ An energy retailers' size is determined by their market share in the relevant market (e.g. residential electricity). Large retailers (such as Origin Energy) each have a market share greater than five per cent, medium retailers (such as Powershop) each have a market share between one and five per cent, and small retailers are defined by having market shares less than one per cent.

³⁴ Offer characteristics in early 2022 for Victorian retail brands with publicly available information on their websites.



Energy retailers' offers

Analysing data for all generally available energy offers in Victoria in 2020,³⁵ some interesting energy retailer strategies concerning product differentiation are revealed, along with highlighting consumers' experience in the energy market.

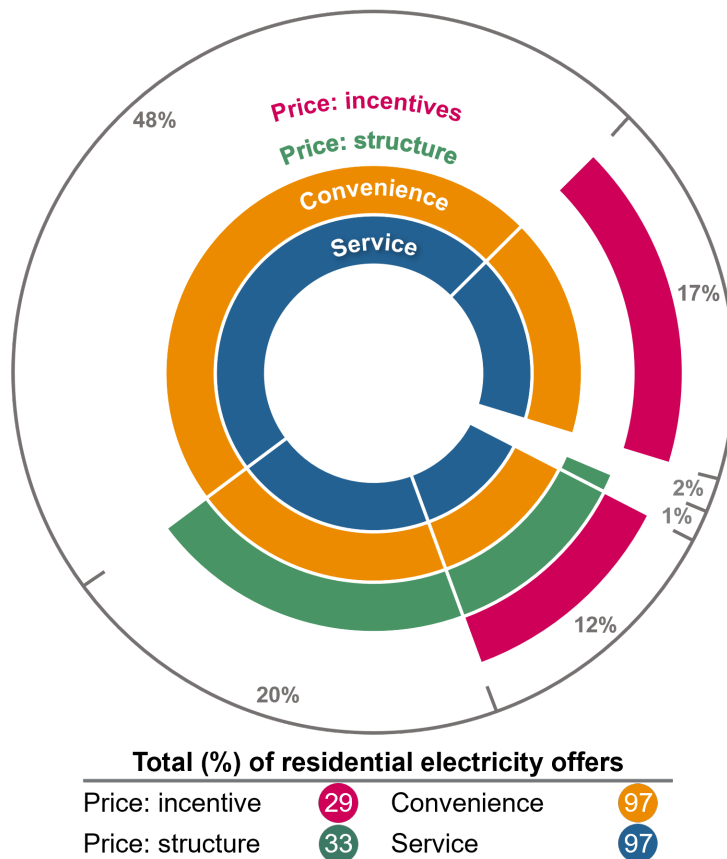
Figure 2 shows the availability of offer characteristics at the offer level. To simplify the analysis, the offer characteristics are shown using the four consumer objectives of price structure, price incentives, convenience, and service. The colour-coded sections of each ring represent all offers that are differentiated for that consumer objective, while the blank sections represents undifferentiated offer characteristics.

For an offer to be considered differentiated in any one of the four consumer objectives, the offer must include one characteristic that is differentiated. For example, if a retailer is Australian owned, the offers associated with that retailer would all be considered differentiated in service.

Figure 2 shows that 12 per cent of all residential electricity offers have at least one differentiated characteristic across all four product differentiation (objective) categories. In contrast, only two per cent of all residential electricity offers are undifferentiated across all four categories. Looking at the total number of residential electricity offers differentiated in each category, 29 per cent of offers are differentiated in the price incentives category, 33 per cent in the price structure category, and 97 per cent are differentiated for both the convenience and service categories.

The general pattern of product differentiation for residential electricity offers shows that convenience and service differentiation is common, whereas price structure and price incentive differentiation is relatively rare.³⁶

Figure 2: Offers in the Victorian residential electricity market, by differentiation category³⁷



³⁵ While more recent energy offer data is available from Victorian Energy Compare, the most recent consumer invoice data available to the commission covers the calendar year 2020. To ensure comparability between offer data and invoice data, all quantitative analysis aligns to the calendar year 2020.

³⁶ Similar product differentiation patterns appear in small business retail electricity offers, although approximately 40 per cent of small business electricity offers are price structure differentiated. Analysis of retail gas offers shows a smaller percentage of price structure differentiated offers for both residential and small business markets, at approximately seven and 14 per cent, respectively.

³⁷ Source: Commission research (January 2022); and Victorian Energy Compare (2020).



Energy consumers' choices

While it is important to track energy offers in the market, knowing what offers consumers select is required to better understand the functioning of the energy market. Consumers' choices are an equilibrium between energy retailer offers (supply) and consumers preferences (demand). Victorian residential electricity invoices³⁸ are used to assess consumers' choices across different energy offers. The anonymised data used here covers about 142,000 individual residential electricity consumers during the 2020 calendar year. This data is a large sample that statistically captures 88 per cent of all Victorian residential consumers. However, the sampling methodology used does not include any small and some medium retailers.³⁹

While it is important to track energy offers in the market, knowing what offers consumers select is required to better understand the functioning of the energy market.

Figure 3 is an updated version of Figure 2 using the same energy retailers included in the available residential electricity invoicing data. This is to allow for comparisons between energy retailers' offers and consumers' choices. All small and some medium energy retailers have been removed when moving from Figure 2 to Figure 3.

Removing the smaller retailers to create a comparable data set produces an interesting result. The number of residential electricity offers differentiated across all four categories drops from 12 to seven per cent. This suggests that small energy retailers supply almost half the highly differentiated offers in Victoria.

The number of offers differentiated in the remaining categories of Figure 3 are: 23 per cent in the price incentives category, 28 per cent in the price structure category, and 98 per cent for both the convenience and service categories.

Equilibrium

Equilibrium refers to a state where economic forces are in balance. In a market, as buyers and sellers interact around price and quantity, they reach a point where neither can do better. This point is an equilibrium.

Using data from invoices instead of offers, Figure 4 shows the differentiation of offers actually selected by consumers in 2020.⁴⁰ Aligning the retailer samples between offer and invoice data makes direct comparisons between Figure 3 and Figure 4 possible.

The clearest observation when comparing these figures is the substantial consumer uptake of electricity offers differentiated by price incentives. That is, the ratio of energy retailers' offers with a price incentive in Figure 3 is 23 per cent compared to 44 per cent of consumers' selected offers in Figure 4.⁴¹

To simplify comparisons between Figure 3 and Figure 4, an uptake-to-offer ratio can be calculated.⁴² This ratio provides a summary measure of consumer interest, with larger ratios indicating relatively high consumer demand for a specific feature relative to the number of offers available with that specific feature.

The uptake-to-offer ratio for the price incentives category is nearly two, suggesting relatively high consumer interest. In contrast, the uptake-to-offer ratio for the price structure category is about 0.6.⁴³ It should be noted that the uptake-to-offer ratio for the service category is also less than one, but service differentiation is practically a default at 94 per cent.⁴⁴

³⁸ The retail electricity invoice data is identical to the data received by the Australian Consumer and Competition Commission (ACCC) for their Inquiry into the National Electricity Market reports, except only covering Victoria.

³⁹ The retail electricity invoice data samples from retailers who supply a combined 88 per cent of Victorian residential electricity consumers.

⁴⁰ Using the same methodology as previous figures, only a single non-standard offer characteristic is required for a selected offer to be shown as differentiated in any of the four differentiation categories.

⁴¹ One of the main differences between Victorian residential electricity and small business electricity groups is the smaller percentage of price incentive differentiated offers aimed at small businesses, with a correspondingly low uptake of these offers by small businesses.

⁴² The uptake-to-offer ratio is the per cent of offers selected by consumers divided by the per cent of offers in the market, with higher ratios indicating higher consumer interest.

⁴³ The uptake-to-offer ratio for price incentive and price structure differentiation in the small business retail electricity market is about 0.7 and 0.9, respectively.

⁴⁴ Note that many features that differentiate by convenience and service are options that are applicable to all of a retailer's offers, e.g. the ability to choose different billing periods. When consumers take up such offers, they elect whether to utilize these features. Thus, though an offer may be flagged as differentiated in Figure 3, a customer plan corresponding to that offer may not be flagged as differentiated in Figure 4 if they customer does not elect to have the differentiating feature in their plan.

Figure 3: Subset of offers in the Victorian residential electricity market, by differentiation category⁴⁵

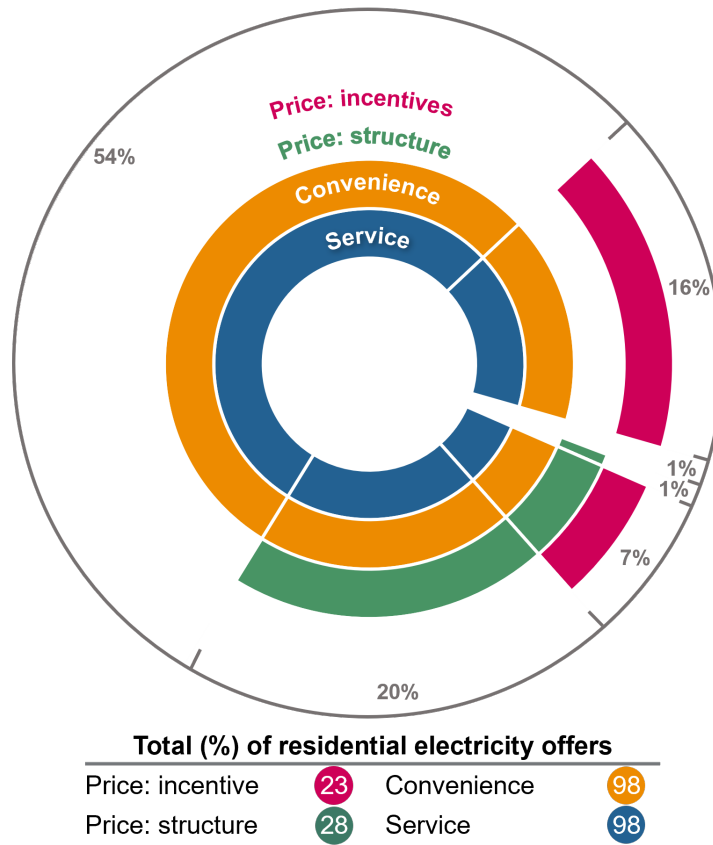
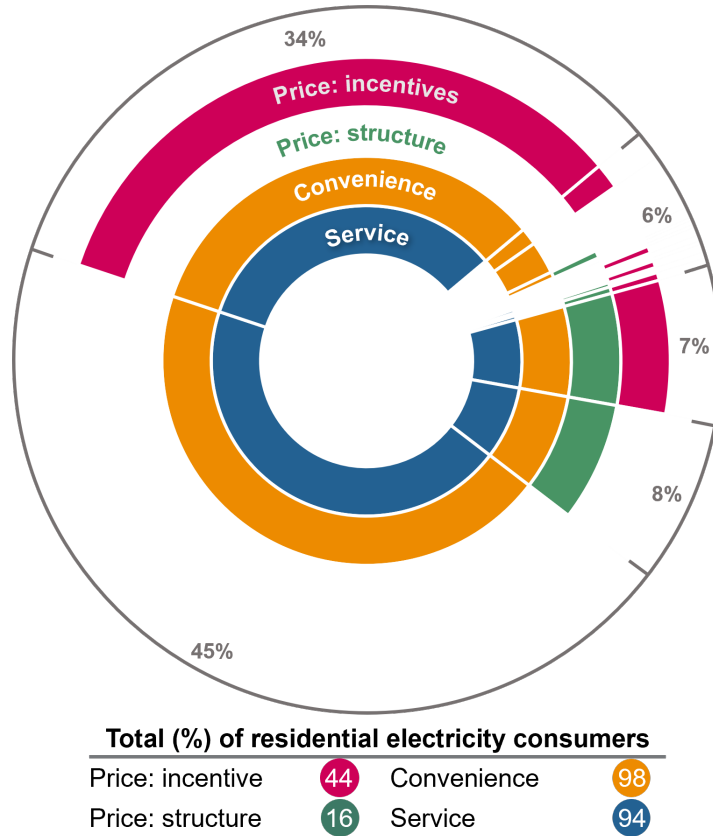


Figure 4: Uptake by consumers of Victorian residential electricity offers, by differentiation category⁴⁶



⁴⁵ Source: Commission research (January 2022); Victorian Energy Compare (2020); Retail electricity invoice data (2020).

⁴⁶ Source: Retail electricity invoice data (2020); Commission research (January 2022).



Patterns of product differentiation

There are three broad product differentiation patterns identified in the results shown in Figures 2-4:

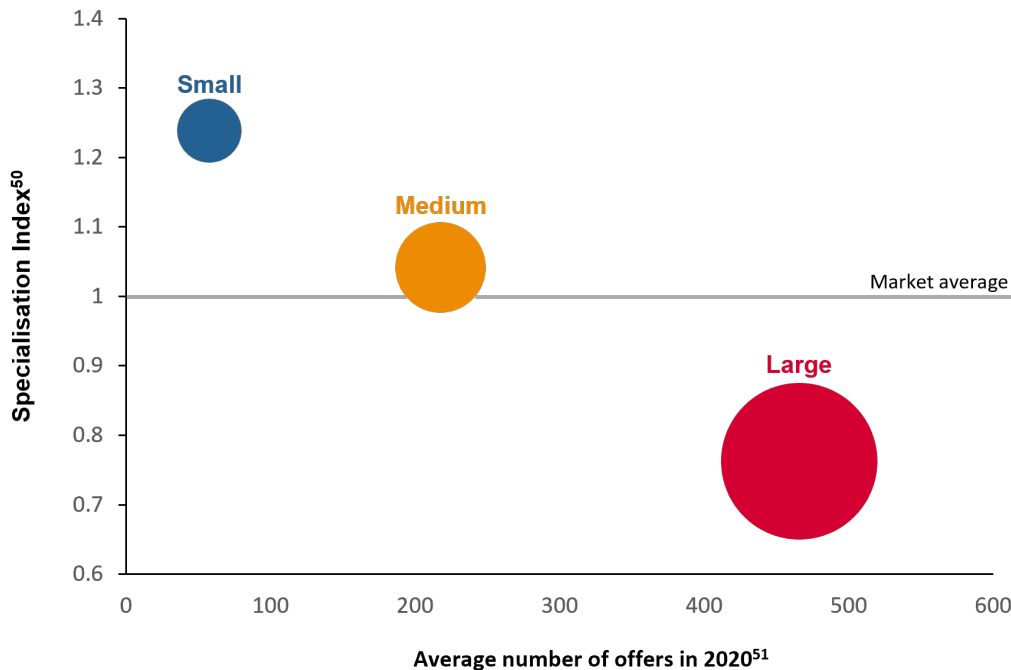
- **No effort access (convenience and service)**
These categories of product differentiation are easy for consumers to understand and select, to the point that they are generally accessed without any additional consumer effort.
- **High uptake-to-offer ratio (price incentives)**
While not a characteristic seen across the majority of offers, price incentive differentiation is easy for consumers to understand and select, and consumers appear to be highly sensitive to these characteristics.
- **Low uptake-to-offer ratio (price structure)**
Sometimes seen as a potentially new innovation area,⁴⁷ price structure differentiation does not currently appear to be attractive for many consumers, likely due to a combination of complexity, lack of understanding of any associated risks/potential cost savings, and ability to achieve purported benefits.

These three broad product differentiation patterns have important implications for retailer strategies in Victoria's relatively mature market.⁴⁸ Generally, the energy retailers appear to have substantially different market strategies. This can be seen in Figure 5, where small energy retailers offer more specialised (differentiated) products as part of a smaller product portfolio, compared to large retailers who offer a relatively large number of more standard (undifferentiated) products, with medium retailers situated between the two.

Specialisation index

The specialisation index identifies which retailers are adding to the overall level of product differentiation in the market, by offering services that are unique, or not offered by many other retailers. The index is normalised to one and more specialised firms have a higher index.

Figure 5: Specialisation index - Victorian residential electricity differentiation by retailer size⁴⁹



⁴⁷ For example, see previous discussion of cost-reflective pricing in the "What others have found" section.

⁴⁸ Victoria's energy market generally exhibits moderate annual customer growth.

⁴⁹ Source: Commission research (January 2022); Victorian Energy Compare (2020).

⁵⁰ The specialisation index ranks firms on the uniqueness of their Victorian residential electricity offer portfolio in 2020, where 1 is the average specialisation in the market. X is a matrix where each row is a retailer (i) and each column a differentiation category (j). If a retailer (i) is offering a category (j) then $x_{i,j} = 1$, otherwise it is zero. $Z_i = x_i \cdot \sum_j x_j$. The specialisation index: $Q_i = \text{mean}(Z_i) / Z_i$.

⁵¹ This is the average across retailers in each size group, for the number of offers each retailer submitted to the Victorian Energy Compare website for the year 2020.

These results suggest that large energy retailers might be focused on maintaining and defending their customer base through relatively fewer innovation activities, even if their market share has declined over time.⁵² In contrast, smaller energy retailers seem to primarily focus their efforts on capturing customers from other retailers by (i) offering products that are very different from existing offers⁵³ and/or (ii) specialising in an existing product area.⁵⁴

... large energy retailers might be focused on maintaining and defending their customer base through relatively fewer innovation activities, even if their market share has declined over time.

Fostering an environment of innovation

Regulatory sandboxes provide a framework for innovative technologies, approaches, business models, products and services to be trialled in a real-world environment with time-limited regulatory requirements. Trial projects facilitate innovation and provide intelligence and an evidence base to support decision making about potential future regulatory reforms that will benefit consumers. Regulatory sandboxing commences from 1 June 2022 in Victoria.

Current energy retailers, and prospective new entrants, may be eligible or may apply for **product exemptions**, which allow them to offer innovative products and pricing that is not compatible with limiting price increases to once a year. A retailer wanting to offer such a product must clearly demonstrate an innovative approach that better meets specific customer needs, enhances the efficiency of the energy system, or is otherwise part of a Victorian government program or policy.

An interesting secondary finding concerns retailers' potential customer growth strategies. As smaller retailers grow, they must appeal to a broader set of energy consumers who may only respond to certain types of product differentiation. That is, energy retailers may be using strategies of offering a more standardised, undifferentiated portfolio of offers to capture certain consumers.

The regulatory environment is another factor that can shape energy retailer behaviour. The commission takes a considered approach to regulation. More specifically, the commission aims to foster an environment of innovation that supports positive consumer outcomes through its regulatory approach, including regulatory sandboxes and the product exemption process.



The main findings

The analyses above support a nuanced set of conclusions concerning product differentiation in the Victorian retail energy market. This view can be summarised in three points:

1. The retail energy market is characterised by a relatively large volume of superficially differentiated offers that can make searching the market more difficult, which does not empower consumers, reduce market complexity or enhance affordability.
2. To the extent that there is deeper offer differentiation available, it: (i) is generally more complex; (ii) may need additional consumer investment; and (iii) is less likely to appeal to the average consumer.
3. The evidence suggests that the current retail energy market has not yet seen innovation that appeals to the average Victorian consumer.

To better understand these findings, it is useful to reengage with the innovation types previously discussed, along with Bain & Company's ideas of "soft" and "hard" product differentiation approaches.

The current retail energy market is characterised by a large number of very similar offers, which may disincentivise consumer engagement by making it more difficult to search for offers.⁵⁵ Energy retailers attempt to stand out in this market by further pushing easily understood product differentiation in the service, convenience and discounting categories.

⁵² ESC (2021)

⁵³ For example, Cabral (2003) and Rosen (1991).

⁵⁴ Kalra and Li (2008)

⁵⁵ Commission research shows that consumers find the retail energy market confusing/complex, which is a potential barrier to better consumer outcomes. See U1 (2020), CPRC (2020), and Chioveanu and Zhou (2013).

This product differentiation might be considered a “soft” approach stemming from marketing and/or consumer insights. However, this market behaviour does not appear to align with any of the four innovation types discussed earlier.

While there is potentially some evidence of incremental innovation, it takes the form of more complex product differentiation or largely benefits consumers who are able to invest in new technology.⁵⁶ This type of product differentiation is more aligned with a “hard” approach, stemming from smart meters and other physical technology. This more complex product differentiation can be seen in offers with different price structures, which are not favoured by many consumers, despite the potential consumer savings.

Finally, the evidence suggests that smaller energy retailers are more open to exploring new/unique product differentiation, even if the number of offers is relatively small. In contrast, large energy retailers’ offer portfolios are relatively large and exhibit less product differentiation.



Conclusion

In any broad discussion about innovation, it can be tempting to focus on ‘breakthrough innovation’ and ‘disruptive innovation’. However, these types of innovation are rare and should not be the only yardstick by which progress is measured. Such innovation can be difficult to find.

At the same time, incremental innovation should not be under-valued. Energy retailers appear to be moving in this direction, with smaller retailers clearly more active in this area. However, some of this incremental innovation has not yet generated substantial interest with the median Victorian consumer. This is evidenced by the low uptake of price structure differentiated products, compared to commonly seen differentiation in the price incentive, service, and convenience categories.

Innovation is a result of market conditions, and all energy market participants have a role to play in improving outcomes in this space. Consumers’ appetite for innovative energy products is likely to grow and this should continue to incentivise energy retailers to innovate. The commission will continue to focus on contributing to a regulatory environment that supports such innovation to facilitate the energy transition while maintaining the long term interests of consumers.

⁵⁶ For example, electric vehicles, batteries, and internet connected appliances.

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Energy in Victoria

- ▶ Compliance and enforcement
- ▶ Payment difficulty and disconnections
- ▶ Laws, codes, and guidelines
- ▶ Reports and reviews
- ▶ Market entry and exit

July - December 2021



July - December 2021

Compliance and enforcement

\$5.45m

Origin Energy
(paid in penalty notices)

\$8 million in penalty notices paid

- For retailers' allegedly:
- Charged prohibited exit fees
 - Switching without consent
 - Wrongfully disconnecting customers

\$2.5m

Simply Energy
(paid in penalty notices)

Customer compensation paid for wrongful disconnections

64

Wrongful disconnections
(Self-reported by retailers)

\$55,806

Laws, codes and guidelines



On 31 December 2021, legislative prohibitions on save and win-back offers as well as prohibitions on door-to-door sales and cold-calling by energy retailers commenced.

Reports and price reviews

Victorian Default Offer

Between 1 January 2022 and 30 June 2022, annual electricity bills for residential and business customers on the VDO are estimated to decrease by five and six per cent respectively.

↑ 5%

VDO annual bill decrease

↓ 6%



Energy in Victoria

The following sections provide a summary of the energy industry in Victoria between July and December 2021. This includes a summary of our compliance and enforcement actions, the experience of customers experiencing payment difficulty, and recent changes to the energy market.



Compliance and enforcement activities

The following summarises key compliance and enforcement activity the commission undertook between 1 July and 31 December 2021.

Nearly \$8 million paid in penalty notices for alleged overcharging, wrongful disconnection, and improper marketing behaviour

The commission continued to undertake enforcement action on alleged poor behaviour in energy retailing such as charging prohibited fees to customers, improper marketing behaviour, and failing to provide useful information to customers experiencing payment difficulty.

Our enforcement actions have resulted in \$7,955,000 in penalty notices being paid by Victorian energy retailers between 1 July and 31 December 2021.

These penalty notice payments are briefly described below and included in Table 1 of the appendix.

Origin Energy paid \$5 million in penalty notices after allegedly charging prohibited exit fees to more than 20,000 gas and electricity small business customers. This is the strongest action by the commission against an energy company in Victoria to date. Our actions highlight the importance of having fair energy contracts for customers, which is critical for building trust in the energy market.

Origin Energy also paid a further \$450,000 in penalty notices for the alleged wrongful disconnection of 349 customers after sending text messages that failed to inform customers about payment help. The commission alleged that Origin Energy did not provide clear and unambiguous information to customers about assistance they are entitled to under Victorian energy rules designed to assist customers experiencing payment difficulty (Victoria's payment difficulty framework).

Simply Energy paid \$2.5 million in penalty notices after external sales agents acting on its behalf allegedly impersonated customers consenting to the switch of their energy accounts. The commission considers that this type of conduct has the potential to erode the consumers' trust in the energy market

working to their long-term interests. We will continue to take action in relation to this concerning sales practice, particularly with the introduction of banned marketing practices following recent legislation.

Simply Energy paid a further \$5,000 in penalty notices for the alleged wrongful disconnection of a visually impaired, elderly woman's electricity. This matter highlighted how non-compliance can harm customers, particularly those who may be experiencing vulnerability.

Penalty notices paid after December 2021

In January 2022, Powercor and AusNet Services paid \$250,000 and \$280,000 respectively in relation to alleged failures to notify customers of planned outages. These penalty notices were issued in November 2021.

In February 2022, Sumo paid \$500,000 in penalties for the alleged wrongful disconnection of 143 customers in December 2020. The evidence showed 142 customers were cut-off before the required six-day warning period had expired. One customer was cut-off without warning, despite actively participating in a payment plan. These penalty notices were issued in November 2021.

Compensation for customers who may have been wrongfully disconnected

Over a dozen retailers self-reported they may have wrongfully disconnected 64 customers between 1 July 2021 and 31 December 2021 (see Table 2 in the appendix). Retailers made total compensation payments of \$55,806 (see Table 3 in the appendix).

Retailers must report any potential or actual wrongful disconnection to the commission. The commission may also further investigate reported breaches and consider taking enforcement action.

We also resolved one referral from the Energy and Water Ombudsman Victoria (EWOV) of a possible wrongful disconnection of a customer by Momentum Energy. Based on the information provided, the commission found that compensation was not required as the retailer complied with the provisions that may lead to disconnection in the Energy Retail Code.

Acting to protect customer account security, overcharging, and improving compliance for customers living in embedded networks

When the commission identifies potential breaches of the energy rules by businesses, we act to protect customers, build trust in the market, and deter future non-compliance. This includes warning and working with retailers to resolve issues that can cause consumer harm.

Origin Energy reported an IT error that resulted in over 400 of its customers being sent a communication via a channel that was not their preferred method of communication. One of these customers was experiencing vulnerability due to family violence. We worked with Origin Energy to resolve the matter as quickly as possible, including safely contacting the affected customer. We then issued a warning letter to Origin emphasising the importance of following customer preferences in communication, particularly as this may be relevant to protections for customers experiencing family violence.

Four Powershop customers were signed up to the Victorian Default Offer instead of the market contract that they had agreed with their retailer. Powershop reported that this was due to an error by the agents making the sale. As a result, the customers were overcharged and transferred without their explicit informed consent to the transaction.

We worked with the retailer to refund customers and to improve its training, including for its third-party agents, so customers are not overcharged when signing to a new energy deal.

We worked with 15 embedded networks to bring their processes into compliance. These cases involved either failure of the embedded network operator to obtain membership with EWOV or failure to pay their fees. We worked with providers to either join or re-join EWOV once their fees were paid, so that their customers will have redress to a complaints handling process if needed.

In response to complaints from their customers, we also worked with two embedded networks, Fins Australia and Ellerton Lodge Unit Trust, to change the content of their bills to comply with the code's requirements. This is consistent with our compliance and enforcement priority that all energy consumers have the right to expect they are billed appropriately for their energy use.

In addition to the above compliance and enforcement actions, between 1 July 2021 and 31 December 2021, we also:

- issued 5 warning and education letters;
- undertook 20 compliance actions; and
- provided 481 responses to customer enquiries.

Engaging with stakeholders to improve compliance from the industry

In recent months, we have been engaging with stakeholders on key reforms such as our Energy Retail Code of Practice and new compliance reporting obligations for energy businesses. These engagements aim to improve awareness of key changes to legislation and the codes and guidelines we administer. We also use these forums to set out our intended approach for compliance and enforcement.

All energy businesses should be focusing on their compliance systems at this time, to ensure they are compliant with the energy rules.

Our energy industry roundtable in September 2021 was attended by 34 representatives from energy businesses and peak bodies. Our stakeholder forum in October 2021, which consulted on our recent draft reforms, was attended by over 100 energy industry and community stakeholders.

Emerging potential compliance issues

The commission has been made aware of potential non-compliance from retailers relating to bill information and unsolicited sales practices.

In October 2021, we were made aware of customers receiving bills with start and end index read dates that did not match the billing period. This does not comply with the requirement of clause 63(z) of the Energy Retail Code of Practice, and potentially results in confusion to customers who use index read information to check their bills against their physical meter readings. We encourage retailers to consider this issue and the potential confusion it may cause some customers.

Concerningly, the commission also recently received consumer reports of door-to-door sales and cold calling by energy retailers which have been prohibited from 31 December 2021. We heard of agents reportedly telephoning and door knocking customers for the purpose of selling energy on retailers' behalf. We emphasise to industry that calling a domestic customer for the purpose of selling energy can result in the taking of enforcement action by the commission (including if these actions are by a third-party agent on a retailer's behalf).

The commission will continue to closely monitor the behaviour of energy retailers and their third party agents, particularly given the new prohibitions on improper marketing practices.

Simply Energy audit

In July 2021, Simply Energy paid penalties totalling \$2.5 million to the commission. The penalties were in relation to the allegedly fraudulent transfer of 525 gas and electricity accounts without any contact to obtain explicit informed consent. In addition, between January 2019 and January 2020, Simply Energy self-reported several breaches where customers were not provided with accurate information, leading to lack of explicit informed consent.

We requested Simply Energy appoint an external auditor to review key process controls and compliance in relation to explicit informed consent, focusing on telesales and third-party sales channels. Simply Energy accepted and implemented the auditors' recommendations. This resulted in checks that any agent acting on its behalf are trained to obtain explicit informed consent. Simply Energy has also taken steps to quality control activities of its third-party agents.

We audit energy businesses to check they are complying with rules designed to protect consumers.



Disconnections for non-payment

Our rules and industry guidance to protect consumers continued to apply during the government's stay-at-home restrictions, to keep energy customers connected where there were health and safety concerns.

Disconnections for non-payment stopped during stay-at-home restrictions

The government re-introduced stay-at-home restrictions twice between July and December 2021. In light of advice to industry, this led to a reduction in the monthly disconnections for non-payment when compared with the first half of calendar year 2021.

In months where stay-at-home restrictions were lifted, disconnections for non-payment resumed (see Figure 1 in the appendix). The monthly average number of disconnections for non-payment between July and December 2021 was lower than the monthly average for 2019, the most recent year not impacted by stay-at-home restrictions.

Disconnections for non-payment resumed in 2022

From 6 January 2022, retailers resumed disconnections for non-payment.

In January 2022, 1,894 electricity and 361 gas residential customers were disconnected.

In February 2022, 2,616 electricity and 931 gas residential customers were disconnected.

Engaged customers are protected from disconnection

It is important for customers to engage with their retailers to receive payment assistance during this time, and also for retailers to work with their customers to help manage their energy debt. Customers who are meeting a payment arrangement with their retailer are protected from disconnection.

Energy customers' debt, on average, continues to be at a high level

At the end of December 2021, 61,560 electricity and 48,827 gas residential customers were receiving tailored assistance from their retailer to help pay their bills (see Figure 2 in the appendix). This represents 2.2 per cent of all residential electricity customers and 2.3 per cent of all residential gas customers.

The average outstanding arrears of electricity residential customers receiving tailored assistance in November 2021 was at the highest level it has been since the introduction of the payment difficulty framework in January 2019 (see Figure 3 in the appendix). During 2021, the average arrears of electricity residential customers has been steady and remained high.

The average arrears at the end of December 2021 was six per cent higher compared to the monthly average in 2020–21 for electricity, while the average arrears for gas was 11 per cent higher to the monthly average in 2020–21.

Reviewing the implementation of the payment difficulty framework

The commission is reviewing the implementation of the payment difficulty framework, which was introduced in 2019. The review aims to better understand consumers' experience, and how to further improve the framework.

The commission has received a number of submissions on both the approach to the review and the key questions. Submissions have been received from community representatives, energy retailers, consumers, customer advocacy groups, and community organisations.

In November 2021, the commission published early observations from analysis of quantitative data and consumer insights, which informed a stakeholder workshop.

More detail is available on the commission website.



Laws, codes and guidelines

Expanded compliance and enforcement powers for the commission

On 1 December 2021, the Essential Services Commission (Compliance and Enforcement Powers) Amendment Act 2021 took effect. This provides the commission with an expanded range of investigative powers and enforcement options.

On 31 December 2021 and 1 March 2022, different parts of the Energy Legislation Amendment (Energy Fairness) Act 2021 commenced – prohibiting some marketing practices and creating new criminal offences.

In February 2022, we published our final decision on updates to the Compliance Performance Reporting Guideline. The new reporting framework commenced on 1 March, with transitional arrangements in place until 1 July.

Prohibitions to win-back offers and door-to-door sales

On 31 December 2021, legislative prohibitions on save and win-back offers, as well as prohibitions relating to door-to-door sales and cold-calling by energy retailers, commenced. Compliance with these provisions is now being actively monitored by the commission. See sections 40EA and 40EB of the Electricity Industry Act 2000 for details of the prohibitions.

New Energy Retail Code of Practice

The commission's new Energy Retail Code of Practice (which replaces the Energy Retail Code) has now been finalised and took effect on 1 March 2022. As part of these changes, the Code of Conduct for Marketing Retail Energy was repealed, and relevant provisions were incorporated into the Energy Retail Code of Practice.

The life support provisions of the Electricity Distribution Code and Gas Distribution Code of Practice were also amended as a consequence of changes brought about by the Energy Legislation Amendment (Energy Fairness) Act 2021. These codes became 'codes of practice' on 1 December 2021 and will undergo further review in due course. In particular, a draft Electricity Distribution Code of Practice has now been published for consultation.



Future editions of the Victorian Energy Market Report

The Victorian Energy Market Report (VEMR) is changing. Each report will now include in-depth economics articles providing analysis and commentary on how the Victorian energy market is functioning, focusing on consumer outcomes. Future editions of VEMR will cover a range of topics including: consumers' offer search experience, green preferences and offers, and prices in the Victorian energy market.

Victorian Default Offer

In November 2021, we set the Victorian Default Offer (VDO) prices to apply from 1 January 2022 to 30 June 2022. Average annual bills for VDO customers will go down by about five per cent for residential customers and six per cent for small business customers.

A 'striking consumer preference' for large energy retailers

In November 2021, we released the 2021 annual VEMR. The central finding is that consumers have a preference for large retailers when they search for an energy deal. The report highlighted that consumers should consider the full set of available options when selecting an energy retailer because it could result in cheaper prices. More detail is available on the commission website.

Victorian Energy Upgrades performance report 2020

In October 2021, we released the Victorian Energy Upgrades Performance Report 2020. It highlighted that upgrades during 2020 will save almost 200,000 homes an average of \$229 per year.



Ten licences issued to generate and retail energy in Victoria

The commission has a function to licence energy businesses to operate in the Victorian energy market.

Between July and December 2021, we issued seven new retail energy licences and three electricity generation licences as follows:

- Enel Energy Australia Pty Ltd was issued an electricity retail licence.
- CleanTech Energy Pty Ltd (trading as Delorean Energy Retail) was issued a gas retail licence.
- ReAmped Energy Pty Ltd was issued a gas retail licence.
- Telstra Energy (Retail) Pty Ltd was issued electricity and gas retail licences, which also included special conditions to provide additional protections for Victorian consumers, particularly those experiencing vulnerability.
- GEE Power Gas Pty Ltd was issued electricity and gas retail licences.
- Apsu Power Pty Ltd was issued an electricity generation and sale licence.
- Diapur Wind Farm Pty Ltd was issued an electricity generation and sale licence.
- Murra Warra II Project Co Pty Ltd was issued an electricity generation and sale licence.

We also varied the following licences by agreement with the licensee:

- Sustainable Energy Infrastructure Pty Ltd's electricity retail licence.
- SmartestEnergy Australia Pty Ltd's electricity retail licence.
- Progressive Green Pty Ltd's (trading as Flow Power) electricity retail licence.

By request of the licensees, the commission agreed to revoke the following licences:

- Amaysim Pty Ltd (trading as Click Energy)'s electricity and gas retail licences.
- Australian Power and Gas Pty Ltd's electricity and gas retail licences.
- Esso Australia Pty Ltd's gas retail licence.
- GoEnergy Pty Ltd's electricity retail licence.

We also received two licence applications:

- Mortlake South Wind Farm Pty Ltd applied for an electricity generation and sale licence.
- Tilt Renewables Retail Pty Ltd applied for an electricity retail licence.

Appendix

Figure 1: Residential disconnections for non-payment by month in 2021

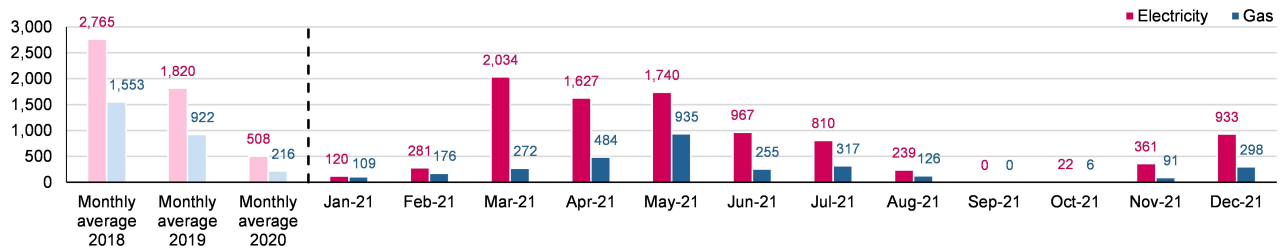


Figure 2: Residential customers receiving tailored assistance

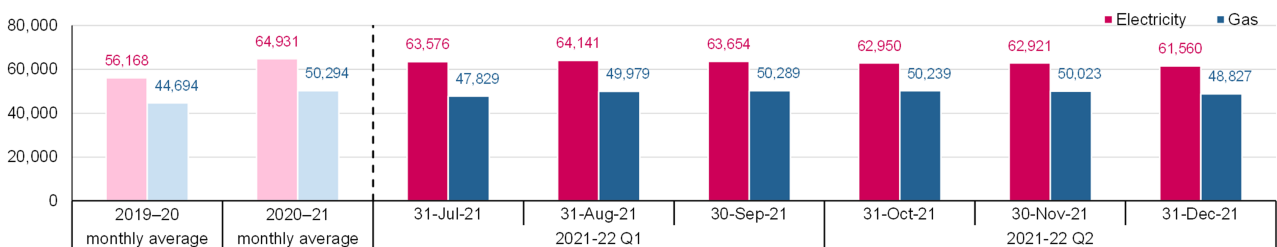


Figure 3: Average arrears for residential customers receiving tailored assistance

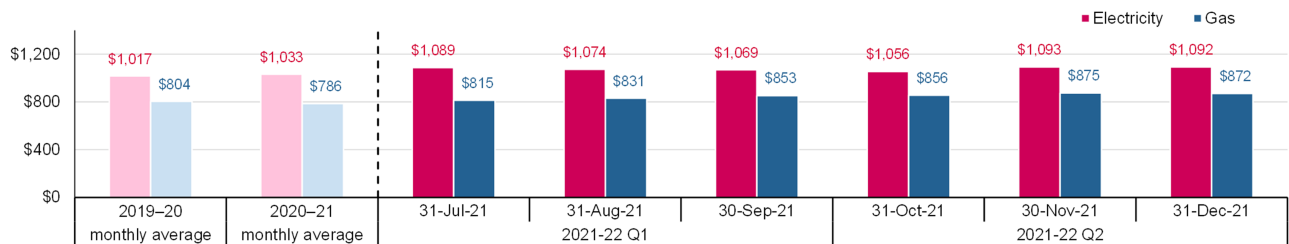


Table 1: Summary of penalty notices paid during 1 July and 31 December 2021

Penalty Notices		
Retailer	No. of	Total amount (\$)
Origin Energy	250	\$5,000,000
Simply Energy	125	\$2,500,000
Origin Energy	90	\$450,000
Simply Energy	1	\$5,000
Total	466	\$7,955,000

Table 2: Number of customers affected per self-reported wrongful disconnections⁵⁷

Total customers affected		
Retailer	Jul to Sep 2021	Oct to Dec 2021
1st Energy	1	1
AGL	2	2
Alinta	1	1
Elysian Energy	-	5
EnergyAustralia	-	2
Lumo Energy	1	1
Momentum Energy	2	2
Origin Energy	3	-
Powershop Australia	4	2
Red Energy	1	-
Simply Energy	19	8
Sumo Energy	2	-
Tango Energy	1	4
Total	37	27

Table 3: Compensation paid in relation to self-reported wrongful disconnections⁵⁸

Total wrongful disconnection amount paid		
Retailer	Jul to Sep 2021	Oct to Dec 2021
1st Energy	\$4,755	\$ 127
AGL	\$1,303	\$5,569
Alinta	\$27	\$ 3,500
Elysian Energy	-	\$5,160
EnergyAustralia	-	\$1,562
Lumo Energy	\$546	\$638
Momentum Energy	\$140	\$714
Origin Energy	\$1,265	-
Powershop Australia	\$897	\$232
Red Energy	\$111	-
Simply Energy	\$15,950	\$11,274
Sumo Energy	\$655	-
Tango Energy	\$458	\$922
Total	\$26,108	\$29,698

⁵⁷ Data source: Compliance and Performance Reporting Guideline (CPRG) data collection includes wrongful disconnections logged in our database where the wrongful disconnection payment was received between July 2021 and December 2021. Excludes wrongful disconnection disputes referred to us by EWOV.

⁵⁸ Data source: Compliance and Performance Reporting Guideline (CPRG) data collection includes wrongful disconnections logged in our database where the wrongful disconnection payment was received between July 2021 and December 2021. Excludes wrongful disconnection disputes referred to us by EWOV.

Table 4: Summary of payment support during 1 July and 31 December 2021

Residential customers receiving tailored assistance								
Residential customers receiving tailored assistance	Monthly Average	2021–22 Q1, as at:			2021–22 Q2, as at:			
	2019-20	2020-21	31 Jul	31 Aug	30 Sep	31 Oct	30 Nov	31 Dec
Electricity								
Number of residential customers receiving tailored assistance	56,168	64,931	63,576	64,141	63,654	62,950	62,921	61,560
Average arrears of residential customers receiving tailored assistance	\$1,017	\$1,033	\$1,089	\$1,074	\$1,069	\$1,056	\$1,093	\$1,092
Gas								
Number of residential customers receiving tailored assistance	44,694	50,294	47,829	49,979	50,289	50,239	50,023	48,827
Average arrears of residential customers receiving tailored assistance	\$804	\$786	\$815	\$831	\$853	\$856	\$875	\$872

