

Helping customers engage confidently in the retail energy market

Final decision

21 March 2019



An appropriate citation for this paper is:

Essential Services Commission 2019, Helping customers engage confidently in the retail energy market: Final decision, 21 March

Copyright notice

© Essential Services Commission, 2019



This work, Helping customers engage confidently in the retail energy market, is licensed under a Creative Commons Attribution 4.0 licence [creativecommons.org/licenses/by/4.0/]. You are free to re-use the work under that licence, on the condition that you credit the Essential Services Commission as author, indicate if changes were made and comply with the other licence terms.

The licence does not apply to any brand logo, images or photographs within the publication.

Contents

Executive summary	3
New fact sheet to support customer decision making	3
Avoiding bill shock from estimated bills	3
Our final decision	4
Status of Recommendation 3	6
Commencement	6
1. Context	7
1.1. Independent Review into the Electricity and Gas Retail Markets	7
1.2. Relevant developments within the national framework	8
1.3. Our work program	9
1.4. Consultation in the development of our final decision	11
2. New rules for marketing and information disclosure	12
2.1. The diversity of energy plans and marketing styles causing customer confusion	12
2.2. Current information disclosure and marketing rules	13
2.3. A new fact sheet to support customer decision making	14
2.4. Design and content of the new fact sheet	16
2.5. New rules defining when and how customers access the fact sheet	20
3. Estimated meter reads and customer entitlement to request an adjusted bill	24
3.1. Strengthening consumer entitlements for estimated meter reads	24
3.2. Stakeholder views and our response	25
3.3. Our final decision	27
4. Amending the Energy Retail Code	28
4.1. Summary of amendments	28
4.2. Customer read estimates	28
4.3. Marketing and information disclosure	29
4.4. Commencement of new requirements	29
Appendix A: Terms of reference	31
Terms of Reference to the Essential Services Commission	31
Appendix B: Role of the commission	34
Role of the Essential Services Commission	34
Appendix C: Final code amendments	35
Amendments to Part 2, Division 4 – Customer retail contracts	35

Introduction

Executive summary

This final decision builds on our earlier reforms by continuing to help customers engage confidently in the retail energy market through the introduction of a Victorian energy fact sheet and the ability to provide their retailer with a customer read estimate when receiving an estimated bill. Our work in this final decision forms part of the second round of changes arising from the Independent Review into the Electricity and Gas Retail Markets in Victoria.

New fact sheet to support customer decision making

This final decision outlines new information disclosure and marketing rules designed to ensure customers can more confidently assess and compare plans in the retail energy market.

Consistent with the broad support received in public submissions, we have decided to introduce a new Victorian energy fact sheet. The fact sheet is an additional tool that can support customers in navigating through the complexity of offers in the market. The new Victorian energy fact sheet will display key information about available energy offers in a consistent format across retailers. It will include a comparison table that will help customers to easily compare plans based on an average yearly cost for a range of typical customers. The introduction of the fact sheets will improve and streamline the existing information disclosure requirements. The new fact sheet will be provided to customers at critical points in their decision making process, and will also be referenced in marketing material.

The new information disclosure and marketing rules arise from our work to implement recommendations of the Independent Review into the Electricity and Gas Retail Markets. In March 2018, the Victorian Government referred recommendation 3 of the review to the Essential Services Commission to implement. This final decision gives effect to specific sub-recommendations of recommendation 3.

Stakeholders' submissions provided a number of suggestions to improve the form and content of the fact sheet. Details in relation to the final design of the fact sheet, including consideration of stakeholder feedback and how our decisions are reflected in the Energy Retail Code, are being addressed through a separate technical draft decision. The technical draft decision was released on 12 March 2019 and is consistent with the high level decisions outlined in this final decision. The technical draft decision is available on the commission's website.

Avoiding bill shock from estimated bills

This final decision also clarifies the rules around when a customer is entitled to have their bill adjusted on the basis of a self-read of their meter.

Stakeholders were supportive of the proposed rules that make it clear that customers can provide their retailer with a customer read estimate when receiving an estimated bill, subject to certain requirements. This will help customers receiving estimated bills to avoid bill shock. The new rules align with the national framework requirements for estimated meter reads and do not apply to smart (interval) meters.

Our final decision

Submissions to our draft decision were supportive of the intent of the changes and alignment with requirements in the national framework. As a result, the commission's final decision for eight of the ten decisions is unchanged from our draft decision. Final decisions 6 and 7 have been slightly modified.

Final decision 1: A new Victorian energy fact sheet

A new Victorian energy fact sheet will replace the existing price and product information statements (PPIS) and offer summaries.

Final decision 2: Form and content of new Victorian energy fact sheet

The form and content of the fact sheet will be based on the requirements of the Australian Energy Regulator's (AER) energy fact sheets, drawing on the research undertaken to support document design.¹

Final decision 3: Victorian energy fact sheet to include a comparison mechanism

The Victorian energy fact sheet will include a comparison table that uses typical customer usage profiles to estimate annual costs under the plan to help consumers compare alternatives.²

Final decision 4: Incorporation of typical customer usage profiles that align with AER equivalents

The typical customer usage profiles that will be used in the Victorian energy fact sheet will align with the AER's methodology for calculating typical usage profiles.³

Final decision 5: Making the Victorian energy fact sheet available to customers

The Victorian energy fact sheet must be made available to customers:

¹ The AER fact sheet referred to in this final decision is the Basic Plan Information Document (BPID), the requirements for which are set out in the AER's Retail Pricing Information Guidelines (RPIG).

² In keeping with the content of the BPID.

³ Referred to by the AER as the 'Electricity and gas bill benchmarks for residential customers', 2017 <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/electricity-and-gas-bill-benchmarks-for-residential-customers-2017>

- on request by a customer (electronically or postage)
- on retailers' websites
- on third party comparator websites
- as an initial step in any online search or sign up process
- for any telemarketing activity.

Final decision 6: Fact sheets to be referenced in marketing material

If a retailer or its agent markets energy plans, using mass or social media channels including magazines, the internet, newspaper or billboards that reference prices, discounts, or the value of existing or potential plans, the following statement must be made in clear and easily readable text:

'Fact sheets available at [insert link to the retailer/agent website where the fact sheet is located]. For clear advice to help you decide if this is a suitable plan for you, contact [us/the name of the relevant retailer] on [insert contact details for the relevant retailer].'

In circumstances where character limitations prevent the prescribed text (above) to be included, a retailer must include the text in a prominent location on the first webpage linked to the advertisement.

These rules are aligned with equivalent rules within the national framework.

Final decision 7: Consultation on technical matters

We have initiated a separate technical consultation on the Energy Retail Code amendments required to give effect to final decisions 2, 5 and 6, and to develop the methodology for the usage profiles in final decision 4.

Final decision 8: Meter read provisions

The Energy Retail Code is to be aligned with the Australian Energy Market Commission's (AEMC) final determination on estimated meter reads.

Final decision 9: Commencement date of marketing and information disclosure code amendments

The anticipated commencement date for the new marketing and information disclosure code amendments is 1 July 2019.

Final decision 10: Commencement date of customer read estimate code amendments

The new customer read estimate requirements is to take effect from 1 July 2019.

Status of Recommendation 3

Our terms of reference (in Appendix A) requested that the commission take a staged approach to implementing recommendation 3 from the Independent Review into the Electricity and Gas Retail Markets.

We have now reached a final decision on recommendations 3B-H. As foreshadowed in our December 2018 draft decision, to ensure an orderly implementation of new rules relating to discounts, we propose to consult on the implementation of the discount related recommendations (3A, 4D and 4E) from the Independent Review into the Electricity and Gas Retail Markets as a package.⁴ The commission will work on those recommendations (including 3A) in 2019.

Commencement

The anticipated commencement date for the new rules implementing recommendations 3B-E of the independent review will come into effect on 1 July 2019.

The new rules in Victoria to strengthen customer entitlements to request an adjusted bill on the basis of a self-meter read will take effect from 1 July 2019.

⁴ Essential Services Commission, Draft decision on helping customers engage confidently in the retail energy market, December 2018, p. 23

1. Context

Our work in this final decision represents the second round of changes arising from the Independent Review into the Electricity and Gas Retail Markets in Victoria. Our first round of reforms focused on rebuilding trust through clear information entitlements in the retail energy market. This decision builds on these reforms and supports customers to engage confidently in the market with new information disclosure and marketing rules. In addition, it clarifies the rules around when a customer is entitled to have their bill adjusted on the basis of a self-read of their meter.

This chapter provides a brief overview of our work program in the context of the independent review and our terms of reference. The role of the commission is set out in Appendix B.

1.1. Independent Review into the Electricity and Gas Retail Markets

In November 2016, the Victorian Government appointed an independent panel to conduct a review of electricity and gas retail markets in Victoria. In August 2017, the independent panel's final report was released and concluded the market was not working for consumers.

The independent review determined that there were three main reasons why the market was not working for Victorian consumers: the cost of competition, the structure of the market, and the practices of the industry. Specifically, the independent review found that the marketing practices of energy companies were not supporting customers in choosing the best price.

The independent review proposed 11 overarching reforms, which contained 29 detailed recommendations. The recommendations aim to improve energy market outcomes for consumers, including changing retailer marketing practices, improving market monitoring, establishing a regulated basic service offer and abolishing standing offer contracts.⁵

The Victorian Government released its final response to the independent review in October 2018, which supported all recommendations, subject to some refinements.⁶ As part of its interim response in March 2018, it referred terms of reference to the Commission under section 10(g) of the Essential Services Commission Act 2001.⁷

These terms of reference (outlined in Appendix A) are for the commission to review the Energy Retail Code to give effect to:

⁵ Victorian Government, 'Terms of Reference for Independent Review of the Electricity and Gas Retail Markets in Victoria', November 2016.

⁶ The final government response can be found on our website.

⁷ See Appendix C for further information about the role of the Essential Services Commission.

- customer outcomes in the energy market, relating to recommendations 3 and 9
- efficient pricing in the energy market, relating to recommendation 8.⁸

In doing so, the commission must have regard to its objectives (outlined in Appendix B) under the Essential Services Commission Act 2001, Electricity Industry Act 2000, and Gas Industry Act 2001, as well as:

- the findings from the review
- the approaches being used by other regulators such as the Australian Energy Regulator (AER)
- the information needs of Victoria's rich and diverse community, including our culturally and linguistically diverse (CALD) and aged population
- other matters it deems relevant.

The terms of reference specify that the commission is not required to assess the merits of the independent review's findings and recommendations. Our role is limited to identifying the most timely and cost-effective ways to implement the findings and recommendations.

In December 2018, the Victorian Government also referred terms of reference for the commission to review the Energy Retail Code to give effect to recommendation 4, relating to ensuring contracts are clear and fair.

1.2. Relevant developments within the national framework

The Victorian energy retail market has its own state-based regulatory framework which is managed by the commission. The Australian Capital Territory, New South Wales, Queensland, South Australia and Tasmania all operate within a national framework administered by the Australian Energy Market Commission (AEMC) and regulated by the AER. Some rule changes implemented within the national framework by the AER and AEMC overlap with the work we are undertaking as part of the independent review in Victoria. We continue to review the relevance of each of these rule changes in considering whether these requirements should be mirrored in the Victorian framework.

Two developments in the national framework in 2018 were relevant for Victoria's framework. These were the AER's work on the use of a comparison tool for energy fact sheets (and underlying usage profiles) and the AEMC's final determination on estimated meter reads.

In April 2018, the AER updated its Retail Pricing and Information Guidelines, which set out how retailers must provide information about their plans. The guidelines established requirements to standardise key information presented in an energy price fact sheet. From 31 August 2018, retailers in the national framework have been required to use these fact sheets when they present,

⁸ Section 20(2) of the Electricity Industry Act 2000 and section 28(2) of the Gas Industry Act 2001 set out the licence conditions requiring energy retailers to comply with the Energy Retail Code.

market or advertise pricing information to customers. To identify the best form of a marketing and product disclosure instrument for energy customers, the AER undertook extensive customer testing to develop a fact sheet that reduced the complexity of the energy plan information and simplified energy plan comparisons.⁹

During October 2018, the AEMC also determined a change to the national energy rules enabling small customers to submit evidence to amend estimated meter reads. This means that if a small customer receives an estimated bill and the customer considers it to be based on an inaccurate estimate, the customer can request that the retailer adjust the bill, by providing their own reading of the meter. In addition, the rule change requires retailers to inform relevant small customers of their right to request an adjustment, while providing retailers with grounds for rejecting a customer read estimate in certain circumstances (for example, in cases where the read does not comply with the retailer's requirements or is late).

1.3. Our work program

Recommendation 3 from the independent review provided a series of remedies to assist customers to overcome the complexity of the market. The terms of reference (in Appendix A) requested that the commission take a staged approach to implementing recommendation 3.

On 30 October 2018, we released our final decision on the first round of changes to the Energy Retail Code relating to recommendations 3F-H. We created three new customer entitlements for Victorian consumers to cut through the complexity of the market and make it easier to find a suitable energy deal. Additionally, retailers must present all prices inclusive of GST to make it easier to compare offers between retailers.

On 18 December 2018, we released a draft decision on changes to align with the national framework requirements on estimated meter reads and our proposed approach to implementing a second round of changes to the Energy Retail Code related to recommendations 3A-E. Through our consultation on our December 2018 draft decision, stakeholders supported our approach to give effect to recommendation 3B with the clear advice entitlements made in the first round of Energy Retail Code amendments. As a result, we have not considered any further changes, and consider that the clear advice entitlement reforms fulfil recommendation 3B of the independent review.

This final decision reflects our final position on changes to:

- information disclosure and marketing requirements to introduce a Victorian energy fact sheet that give effect to recommendations 3C-E

⁹ Australian Energy Regulator, 'Notice of Final Instrument: AER Retail Pricing Information Guidelines Version 5', April 2018, p.12.

- align with the national framework requirements on estimated meter reads.

The detail that gives effect to recommendations 3C-E and the final decisions in this document in the Energy Retail Code and associated guidelines are reflected in the technical draft decision released on 12 March 2019.¹⁰ The requirements for the Victorian energy fact sheet largely align with the national framework.

Table 1.1 provides a summary of the status of final decisions in our work program.

Table 1.1: Status of final decisions in our work program

Item	Final decision date	
	30 October 2018	21 March 2019
Enable small customers to be able to submit their own estimated meter reads (AEMC rule change)		✓
3A - Require retailers to market their offers in dollar terms, rather than as percentages or unanchored discounts	N/A	N/A
3B - Where the retailer knows the actual usage profile for a specific customer, the marketing to that customer to be based on the estimated annual costs of the offer for that customer, and the \$ costs if conditions attached are not met		✓
3C - The Essential Services Commission to develop a small number of typical customer usage profiles (3–4) for use in standardised marketing material (for 2,000 kWh, 4,000 kWh, 6,000 kWh per year)		✓
3D - Marketing of prices to appear in a standardised format and display the actual annual cost for the 3–4 standardised customer usage profiles. Annual energy costs for the standardised customer usage profiles to be the comparison rates in marketing materials		✓
3E - The Essential Services Commission to develop a standardised format for retailer information disclosure and marketing material		✓
3F - Require retailers to notify a customer of the best offer available by that retailer, and reference the Victorian Energy Compare website, in advance of any price or benefits change	✓	
3G - Require retailers to include the following information on customer bills: <ul style="list-style-type: none"> – How the customer can access the Victorian Energy Compare website – The retailer’s best offer for that customer based on their usage patterns – The total annual bill for that customer based on the customer’s current offer and usage patterns 	✓	✓
3H - Require marketing material and bills to provide GST-inclusive pricing	✓	

The commission will commence work on recommendation 4 in 2019. To ensure an orderly implementation of new rules relating to discounts, we also propose to consult on the

¹⁰ Essential Services Commission, Technical consultation on the Victorian energy factsheet, March 2019

implementation of the discount related recommendations (3A, 4D and 4E) from the Independent Review into the Electricity and Gas Retail Markets as a package.¹¹

1.4. Consultation in the development of our final decision

Following the release of our draft decision on 18 December 2018, we consulted with stakeholders through a workshop and our regular reference group meeting to develop our approach to the new information disclosure and marketing requirements.

Our draft decision received 15 submissions – 11 from retailers (including three partly confidential submissions), three from consumer groups and a submission from the Energy and Water Ombudsman, Victoria (EWOV).¹² Their submissions are available on our website:

- Australian Energy Council
- AGL
- Amaysim
- Consumer Action Law Centre (CALC)
- Consumer Policy Research Centre (CPRC)
- EnergyAustralia
- Energy and Water Ombudsman (Victoria)
- ERM Power
- Momentum Energy
- Onsite Energy Solutions
- Origin Energy
- Powershop
- Red Energy & Lumo Energy
- Simply Energy
- Victorian Council of Social Service (VCOSS).

We would like to thank stakeholders for their involvement and contributions to the consultation process.

¹¹ Essential Services Commission, Draft decision on helping customers engage confidently in the retail energy market, December 2018, p. 23

¹² Three stakeholders requested that certain commercially sensitive sections of their submission remain confidential. These sections have been redacted from the submissions published on our website.

2. New rules for marketing and information disclosure

The independent review found it has become too difficult for customers to meaningfully assess and compare offers in the Victorian retail energy market. This has been driven by an increasingly complex array of offers from retailers, and a lack of effective mechanisms to support customers in choosing between them.

In this chapter, we explain our decision to give effect to recommendations 3C, 3D, and 3E, by streamlining the existing information disclosure requirements in line with behavioural principles. The fact sheet will use primary research recently undertaken directly with customers by the Australian Energy Regulator (AER) in developing fact sheets.

As proposed in our draft decision we have introduced a new fact sheet to replace two existing information disclosure mechanisms – the price and product information statement (PPIS) and the offer summary. The fact sheet will include a comparison table that will help customers to easily compare plans on the basis of how much they would cost per annum for a range of typical customers.

We also confirm new rules that define when customers receive or are alerted to the availability of the fact sheet, including a requirement that all marketing material make reference to it. These new rules ensure customers can access the fact sheet when it is most relevant to them.

The new rules for marketing and information disclosure using fact sheets align closely with requirements in the national framework.

2.1. The diversity of energy plans and marketing styles causing customer confusion

The independent review found that marketing practices by energy companies were not supporting customers to choose the best price. Customers find it difficult to choose between different energy deals in the market, as these offers can look very different from each other.

The substantial number of different retail contracts confuses consumers. The market contains a complex array of prices, tariffs, discounts and contract terms. Most consumers have difficulty making an informed decision. They resort to simplistic evaluation tools such as the discount on offers.¹³

¹³ 'Independent Review into Electricity & Gas Retail Markets', August 2017, p. 26.

The wide variety of offers combined with the various methods that retailers use to market these offers creates a complex environment in which consumers are required to assess, understand and select the deal best suited to them. The presentation of discounts, prices, incentives, length of contract and bundling of offers makes it difficult to assess and compare different deals between retailers.

The AER's work on retail pricing information also highlighted the complexity and range of information in the market was preventing customer engagement.

Many customers feel overwhelmed and confused by the range of energy plans available, and perceive that scanning the market and comparing offers is time-consuming and difficult.¹⁴

The AER argued that simplifying the process of comparing offers using a comparison tool within a fact sheet could reduce barriers to customers engaging with the market.¹⁵ The AER proceeded to undertake extensive and detailed research into how information disclosure tools, such as a fact sheet, can be designed to deliver on this objective. This included behavioural research undertaken directly with customers. Consequently, we have placed significant focus on the AER's recent work in this space.

2.2. Current information disclosure and marketing rules

Under the current rules in Victoria, information disclosure is standardised through a number of statements and documents prescribed in the Energy Retail Code.

Price and product information statement (PPIS)

Division 2A of the Energy Retail Code outlines energy price and product disclosure requirements that include the requirement to publish a PPIS. The PPIS provides customers with information on the details of the disaggregated fees and charges associated with a product, contract terms, rebates, incentives and any applicable tariffs relevant to a customer.

Retailers are required to make the PPIS accessible to customers on their website without the need for the customer to provide any personal or technical information.

Offer summary

The energy price and product disclosure requirements in Division 2A also require energy retailers to provide offer summaries. Offer summaries provide customers with the same key information presented in PPIS and additional information about any fixed fees or charges that relate to the supply of energy and the number of days in the period to which the charge relates.

¹⁴ Australian Energy Regulator, 'Customer price information, Issues Paper', September 2017, p. 7.

¹⁵ Ibid, p.9.

An offer summary must be provided to a customer in writing if requested by the customer, or when new retail contract terms are presented to the customer, including as part of marketing activities. The offer summary is separate to any document outlining full contractual terms and conditions.

Detailed information provided in relation to the contract

Division 10 of the Energy Retail Code outlines the specific information retailers are required to provide customers in relation to retail contracts when carrying out marketing. The information must be provided either before or as soon as practicable after the formation of the contract and includes information on:

- all applicable fees and charges
- contract length
- compliance with electronic transactions, if required.

Marketing code of conduct

The code of conduct for marketing retail energy in Victoria sets out the standards of behaviour expected by representatives that market energy. The code of conduct also sets out the pre-contractual information and clear language requirements a retailer must provide to a consumer before entering a contract, which includes:

- details of all applicable prices, charges, tariffs and service levels that will apply to the consumer
- the type, frequency of bills and payment methods the consumer will receive
- the retailer's contact details
- information on cancellation rights and charges that would apply
- all relevant information about the contract's terms and conditions.

The existing information disclosure requirements for energy contracts described in the PPIS, offer summary, detailed contract information and marketing code of conduct set out requirements that can support a customer in understanding the product features of a contract.

The existing information requirements do not address the challenge faced by customers in assessing and easily comparing offer information (at a high level). By presenting information in a consistent format, we consider that customers would have more confidence and ability to compare products in the market.

Our draft decision proposed changes to the requirements of how key information is presented to customers, to better assist them compare and easily understand key offer features across products.

2.3. A new fact sheet to support customer decision making

Our December 2018 draft decision proposed to replace the existing PPIS and offer summary requirements with a Victorian energy fact sheet, using evidenced-based consumer research.

We consider the Victorian energy fact sheet to be an additional tool that can help customers confidently assess and compare energy offers. The new Victorian energy fact sheet will display key information about available energy offers in a consistent format across retailers. It will include a comparison table that will help customers to easily compare plans based on an average yearly cost for a range of typical customers. We will also be considering whether potential market reforms such as a Victorian Default Offer will impact the presentation of the fact sheet.

The fact sheet will help customers compare plans without having to answer a series of questions or provide granular smart (interval) meter data to generate an estimate of the annual plan cost and would provide a benchmark cost to help a customer identify if one plan would be significantly cheaper for them than another. Customers will also be able to obtain a more personalised cost estimate of plans via the Victorian Energy Compare (VEC) website.

The introduction of the fact sheet will also improve and streamline the existing information disclosure requirements. We also propose new rules governing when customers receive or are alerted to the availability of the fact sheet, including a requirement that all marketing material make reference to it. These new rules will ensure customers can access the fact sheet when it is most relevant to them. Our proposed requirements for the Victorian energy fact sheet are aligned closely with the requirements in the national framework. During the AER's consultation on its Retail Pricing and Information Guidelines, stakeholders welcomed the proposal to introduce a concise document (fact sheet) as it will help customers to compare different plans at a high level and identify differences between retailers and their plans.¹⁶

We set out in our December 2018 draft decision that we proposed to adopt the behavioural principles and evidenced research used by the AER in the development of its equivalent fact sheets (the Basic Plan Information Document, BPID). Our proposed requirements for the Victorian energy fact sheet mirror many of the requirements in the national framework.

Stakeholder views and our response

Stakeholders supported our decision.¹⁷

In particular, EnergyAustralia supported the commission's proposal to remove offer summaries, as fact sheets met the requirements and provide a better customer experience.¹⁸

¹⁶ Australian Energy Regulator, Notice of Final Instrument: AER Retail Pricing Information Guidelines Version 5, April 2018, p.12.

¹⁷ Australian Energy Council, AGL, Origin Energy, Momentum Energy, Powershop, Simply Energy, Red Energy & Lumo Energy, VCOSS, EWOV submissions to the Essential Services Commission consultation paper 'Draft decision on helping customers engage confidently in the retail energy market', February 2019.

¹⁸ Energy Australia, submission to the Essential Services Commission consultation paper 'Draft decision on helping customers engage confidently in the retail energy market', February 2019.

Support from some retailers was on the basis that the fact sheet was generated via Victoria's comparator website, VEC, to reduce implementation costs.¹⁹ ERM Power sought for the obligations to exclude certain customer groups or offer types.²⁰ Due to their focus on implementation detail, both these matters are considered in our technical draft decision.

The Consumer Action Law Centre (CALC) supported the development of a fact sheet but pointed to behavioural research, which suggested that fact sheets can add complexity to a consumer's decision making process and may not be used by consumers.²¹ As a result, it emphasised that regulations should carefully prescribe where fact sheets appear and how marketing refers to them.

We acknowledge this view and also have given consideration to when the Victorian fact sheet should be available to customers and its purpose.

Final decision

All submissions supported the introduction of a Victorian energy fact sheet to replace the existing PPIS and offer summary requirements. We have therefore made no changes in our final decision.

Final decision 1: A new Victorian energy fact sheet

A new Victorian energy plan fact sheet will replace the existing price and product information statements (PPIS) and offer summaries.

2.4. Design and content of the new fact sheet

Our December 2018 draft decision proposed to consider the existing requirements in the Energy Retail Code against examples of current best practice, insight and evidence-based research to understand how to develop the design and content of the energy price fact sheets. The terms of reference required that we give consideration to approaches being used by other regulators. We have therefore given particular attention to the work undertaken by the AER during 2017-18 in their research on fact sheet design.²²

¹⁹ Origin, Simply Energy, Powershop, Red Energy & Lumo Energy, February 2019.

²⁰ ERM Power, submission to the Essential Services Commission consultation paper 'Draft decision on helping customers engage confidently in the retail energy market', February 2019.

²¹ Consumer Action Law Centre, submission to the Essential Services Commission consultation paper 'Draft decision on helping customers engage confidently in the retail energy market', February 2019.

²² Australian Energy Regulator, 'Notice of Final Instrument: AER Retail Pricing Information Guidelines Version 5', April 2018, pp. 12.

Summary of the AER's energy price fact sheets: the Basic Plan Information Document

The AER recently reviewed its energy fact sheet information requirements to develop energy price fact sheets that allow customers to easily compare and assess key features of contracts. The AER considered that by:

specifying the manner and form in which information is presented by retailers, we aim to create a clear and consistent form of presenting important information to customers, giving them confidence in the accuracy and comparability of this information.²³

The energy price fact sheets developed by the AER summarise important contract information for an energy plan. It also includes a comparison pricing table that estimates the annual price of the plan for three household usage profiles with and without discounts.

The AER's energy price fact sheets: the Basic Plan Information Document (BPID)

The AER's energy price fact sheet provides a summarised overview of the:

- estimated annual cost for a one-person, 2-3 people and 4-5+ people household
- energy plan features
- fees and charges
- discounts and incentives
- contract details
- retailer's contact details.

One of the key features of the AER's energy fact sheets is the ability to compare the price of the plan across different products using the estimated annual costs for typical usage profiles. The annual cost estimates in the usage profile comparison tables in the AER's energy price fact sheets are based on typical customer usage profiles developed by the AER.

The design and key product features represented in the AER's energy price fact sheet are also the product of extensive consumer testing and behavioural insights. This has helped to identify the best form of product disclosure for energy customers to reduce the complexity of plan information and simplify energy plan comparisons.

In our draft decision we considered that adopting consistent energy plan information presentation requirements in Victoria would achieve the same benefits found by the AER for Victorian consumers.

²³ 'Customer price information: Issues Paper,' Australian Energy Regulator, September 2017.

Stakeholder views and our response

Stakeholders were supportive of using the AER's BPID as a starting point for the Victorian energy fact sheet and provided a number of suggestions to further improve its form and content.²⁴

Some stakeholders proposed for the fact sheet to contain simplified language, formatting and terminology that ensured a consistent experience with the VEC website.²⁵ The Consumer Policy Research Centre (CPRC) and EnergyAustralia supported the use of the unique offer IDs generated via the VEC website on the fact sheet. Additionally, CPRC noted that retailers (including their call centres and other agents) should be able to use such unique offer IDs to identify the offer a customer is referring to.²⁶ Amaysim noted the need for fact sheets to be able to accommodate more innovative tariff types.²⁷ We have given consideration to these matters in our technical draft decision.

Final decision

We will introduce a new fact sheet based on the national framework requirements. Specific changes to the design and content of the Victorian energy fact sheet such as the terminology used, key plan features highlighted and the presentation structure are being considered separately through our technical draft decision. As these matters have been considered through our technical draft decision, our final decision remains unchanged.

Final decision 2: Form and content of new Victorian energy fact sheet

The form and content of the fact sheet will be based on the requirements of the AER's energy fact sheets, drawing on the research undertaken to support document design.²⁸

Similar to the national framework, to help customers compare the plan against alternatives, our draft decision proposed that the Victorian energy fact sheet would also include a comparison table that uses typical customer usage profiles to estimate annual costs of the plan. We engaged ACIL Allen Consulting to develop a methodology for creating energy usage profiles for typical Victorian consumers. The methodology we have adopted is similar to that used in the national framework, using the same underlying Victorian-specific survey and energy usage data.

²⁴ Australian Energy Council, AGL, Energy Australia, Powershop, Onsite Energy Solutions, EWOV, February 2019.

²⁵ Consumer Law Action Centre, Victorian Council of Social Services and Consumer Policy Research Centre submissions to the Essential Services Commission consultation paper 'Draft decision on helping customers engage confidently in the retail energy market', February 2019.

²⁶ Consumer Policy Research Centre and Energy Australia, February 2019.

²⁷ Amaysim, submission to the Essential Services Commission consultation paper 'Draft decision on helping customers engage confidently in the retail energy market', February 2019.

²⁸ The AER fact sheet referred to in this final decision is the BPID, the requirements for which are set out in the AER's RPIG.

Stakeholder views and our response

All stakeholders supported draft decisions 3 and 4 to include a comparison table that uses typical customer usage profiles consistent with the AER's methodology in the Victorian energy fact sheet.

AGL, ERM Power and EA supported the exclusion of a comparison table for small business customers in the Victorian energy fact. AGL also suggested the commission exclude residential customers with demand charges and plans where customer usage data is required to price the plan from the Victorian energy fact.²⁹ We have given consideration to these issues in our technical draft decision.

Final decision

Our final decisions 3 and 4 remain unchanged. These decisions fulfil recommendations:

- 3C - to develop typical customer usage profiles for use in marketing material.³⁰
- 3D - which calls for marketing prices to appear in a standardised format and display the annual cost for standardised usage profiles.
- 3E - to standardise the format for marketing material and information disclosure.

Final decision 3: Victorian energy fact sheet to include a comparison mechanism

The Victorian energy fact sheet will include a comparison table that uses typical customer usage profiles to estimate annual costs under the plan to help consumers compare alternatives.³¹

Final decision 4: Incorporation of typical customer usage profiles that align with AER methodology

The typical customer usage profiles that will be used in the Victorian energy fact sheet will align with the AER's methodology for calculating typical usage profiles.³²

²⁹ AGL, ERM Power and Energy Australia, February 2019.

³⁰ The AER has also developed requirements for presenting consumers with a separate, more detailed product information tool called a Detailed Plan Information Document (DPID). We consider the information requirements contained in the existing Division 10 of the Victorian Energy Retail Code equivalent to those required in the AER's document. We did not, therefore, perceive a need to emulate the AER's more detailed product information tool.

³¹ In keeping with the content of the BPID.

³² Referred to by the AER as the electricity and gas bill benchmarks for residential customers 2017 <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/electricity-and-gas-bill-benchmarks-for-residential-customers-2017>

2.5. New rules defining when and how customers access the fact sheet

To support customers in assessing the suitability of energy products, the fact sheets will be readily available and prominent in retailers' marketing materials. This means that at a minimum, all marketed offers point to the existence of a corresponding fact sheet.

The AER has set out obligations that extend to all types of marketing and publishing of energy plans to small customers. This includes energy retailers and any agents marketing or providing information about energy plans on their behalf, such as comparison websites and telemarketing or door-to-door sales agents.³³

Consistent with the AER's requirements, our draft decision proposed that the Victorian fact sheet will be provided by a retailer:³⁴

- upon any request by a customer about the offer being marketed to them (electronically or by postage)
- on retailers' own websites in a way that is readily identifiable and easily accessible to customers
- on third party comparator websites in a way that is readily identifiable and easily accessible to customers
- as an initial step in any online search or sign up process
- for any telemarketing activity.

In addition, we also proposed standard wording that retailers and their agents will have to use when marketing plans using mass media channels.

If a retailer or its agent markets plans on mass media channels including magazines, the internet, newspaper or billboards that reference prices, discounts, or the value of existing or potential plans, our draft decision proposed that the following statement will be made in clear and easily readable text:

'[Fact sheet(s) for plan(s) available at [insert link to the retailer/agent website where the fact sheet is located]'

In circumstances where character limitations prevent the prescribed text (above) to be included, a retailer will include the text in a prominent location on the first webpage linked to the advertisement.

³³ Australian Energy Regulator, 'RPIG', Version 5.0 April 2018.

³⁴ The Retail Pricing Information Guideline (RPIG) also sets out how BPIDs are made available to customers via the AER's comparator website, Energy Made Easy. We don't propose that the fact sheets be made available to customers via Victoria's equivalent, VEC. This is because VEC already has a more advanced feature that provides plan information and a comparison tool that is personalised to the customer. VEC provides this level of personalised information even if the customer has not provided their smart (interval) meter data, by estimating the customer's usage profile on the basis of a series of questions the customer answers when navigating the site. In other words, the information disclosure and comparison tool provided by VEC is already superior to the fact sheet we have developed.

Stakeholder views and our response

Stakeholders were supportive of the proposed approach in principle, subject to alignment with the national framework.³⁵ Some stakeholders also proposed how we might implement both these recommendations in Victoria.

CALC supported the commission using mandated text in marketing material, to signpost the availability of transparent information when retailers market plans. They noted that there may be benefits to refer to the availability of other tools such as the Victorian Default Offer and VEC, not just fact sheets.³⁶

We have considered how mandated references to VEC can be incorporated on the factsheet, and also consider that the standardised text presents an important opportunity for consumers to be made aware of their rights under the new clear advice entitlements. Therefore, we have modified the standardised wording that retailers and their agents will be required to use when mass marketing offers. We have amended final decision 6 to reflect this. We have also shortened the prescribed text from the draft decision to:

Fact sheets available at [insert link to the retailer/agent website where the fact sheet is located]. For clear advice to help you decide if this is a suitable plan for you, contact [us/the name of the relevant retailer] on [insert contact details for the relevant retailer].'

Some stakeholders also sought to clarify how the fact sheet would integrate with the VEC website.³⁷ In addition, VCOS and Powershop questioned the role of the fact sheet to customers given the typical consumption profiles may not reflect an individual household's consumption.³⁸ We recognise that the Victorian energy fact sheet has a distinct purpose from the output a customer would get if they compared plans using VEC. The fact sheet will help customers compare plans without having to answer a series of questions or provide granular smart (interval) meter data to generate an estimate of the annual plan cost. Customers will be able to obtain a more personalised estimate via the Victorian price comparison website, VEC. However, the fact sheet would provide a benchmark cost to help a customer identify if one plan would be significantly cheaper for them than another.

³⁵ Powershop & EWOV, February 2019.

³⁶ Consumer Law Action Centre, February 2019.

³⁷ AGL, Red Energy & Lumo Energy, Victorian Council of Social Services and Consumer Law Action Centre, February 2019.

³⁸ Victorian Council of Social Service and Powershop, February 2019.

Final decision

Final decision 5 remains unchanged. Final decision 6 has been updated to shorten the mandated text and reflect the reference to clear advice.

These decisions give effect to recommendation 3E to standardise the format for marketing material and information disclosure.

Final decision 5: Making the Victorian energy fact sheet available to customers

The Victorian energy fact sheet must be made available to customers:

- on request by a customer (electronically or postage)
- on retailers' websites
- on third party comparator websites
- as an initial step in any online search or sign up process
- for any telemarketing activity.

Final decision 6: Standardised format for referencing fact sheets in marketing material

If a retailer or its agent markets plans using mass media channels including magazines, the internet, newspaper or billboards that reference prices, discounts, or the value of existing or potential plans, the following statement must be made in clear and easily readable text:

'Fact sheets available at [insert link to the retailer/agent website where the fact sheet is located]. For clear advice to help you decide if this is a suitable plan for you, contact [us/the name of the relevant retailer] on [insert contact details for the relevant retailer].'

In circumstances where character limitations prevent the prescribed text (above) to be included, a retailer must include the text in a prominent location on the first webpage linked to the advertisement.

Technical consultation

To develop the requisite Energy Retail Code amendments that give effect to final decisions 2, 4, 5 and 6, our draft decision proposed to consult with stakeholders via a separate technical consultation.

We have commenced to give effect to this decision with an initiation workshop on 22 January 2019 and released our technical draft decision on 12 March 2019. As set out in our technical draft decision, we anticipate the new marketing and information disclosure arrangements will take effect from 1 July 2019. The Department of Environment, Land, Water and Planning (DELWP) are developing the requisite systems within the Victorian Retailer Portal (VRP) in anticipation of the implementation date.

With this in mind, we have made a slight modification to final decision 7 to reflect that we have initiated the separate technical consultation. The technical draft decision is consistent with all ten high level decisions outlined in this final decision.

Final decision 7: Consultation on technical matters

We have initiated a separate technical consultation on the Energy Retail Code amendments required to give effect to final decisions 2, 5 and 6, and to develop the methodology for the usage profiles in final decision 4.

3. Estimated meter reads and customer entitlement to request an adjusted bill

This chapter explains our final decision to introduce a new rule in Victoria in relation to a customer's entitlement to request an adjusted bill on the basis of a self-meter read. This new requirement is aligned with the requirements in the national framework determined by the AEMC. Consistent with AEMC's determination, this decision does not apply to smart (interval) meters.

3.1. Strengthening consumer entitlements for estimated meter reads

Historically, estimated meter reads have been used as a means for both customers and retailers to resolve the difficulties of access constraints which limit in-person meter reading. On occasion customer bills are issued based on estimated reads that are inaccurate, and require billing adjustments at the next actual read.

A consumer's ability to influence an estimated bill is currently limited to ensuring appropriate access arrangements are available for distributors and meter data providers. The alternative for consumers is to request their retailer arrange for a check of the meter reading or metering data.

The Energy Retail Code stipulates where estimates of meter reads are permitted to be used as the basis for a small customer's bill. However, there has been no requirement on retailers to accept a customer's meter reading (if provided) as the basis for an estimate of energy usage at the customer's premises.³⁹

Our draft decision proposed to adopt the AEMC's final determination on estimated meter reads, made on 25 October 2018. Under this determination, when a small customer who has an electricity accumulation meter or gas meter has been issued an estimated bill, retailers must inform customers of their entitlement to request an adjusted bill, by providing a self-read of their meter before the due date of the bill.⁴⁰

Consistent with AEMC's final determination, this decision does not apply to small customers with smart (interval) meters. The AEMC noted consumers with smart (interval) meters are very unlikely

³⁹ Under current arrangements, estimates may be based on: historical metering data, average energy use by a comparable customer or the customer's reading of the relevant meter.

⁴⁰ Australian Energy Market Commission Rule Determination, 'National Electricity Amendment (Estimated Meter Reads) Rule 2018, National Gas Amendment (Estimated Meter Reads) Rule 2018', National Energy Retail Amendment (Estimated Meter Reads) Rule 2018.

to receive an estimated meter read because smart (interval) meters are capable of being read remotely.

Under this new entitlement, retailers must:

- make clear any changes to the customer's payment obligations if the customer makes such a request
- provide clear, simple and concise guidance to the customer on how to read their meter and the methods through which the customer can lodge the customer read estimate
- outline the types of information the customer should provide when lodging the customer read estimate
- set out a process under their complaints and dispute resolution procedures for a customer to attempt to rectify a reading of their meter that is not accepted by the retailer
- inform the customer they may also lodge a dispute with the energy ombudsman or request that the retailer review the bill if the customer is dissatisfied with the retailer's decision
- inform customers that a retailer can reject a customer read estimate where it has not been provided in accordance with instructions by the retailer, or was received after the bill due date
- if rejecting a customer read estimate, the retailer must notify the customer of the reason for its decision⁴¹
- as part of the billing adjustment process, maintain any existing benefits the customer would otherwise receive under the terms of their retail contract with respect to the new payment date.⁴²

3.2. Stakeholder views and our response

Stakeholders supported our draft decision. Specific issues raised by stakeholders are discussed below.

Limiting the number of self-reads

Red Energy and Lumo Energy proposed that we should consider a limit on how many customer self-reads can occur, as estimated reads tend to signify an "underlying problem (of safe or limited

⁴¹ Australian Energy Market Commission Rule Determination, 'National Electricity Amendment (Estimated Meter Reads) Rule 2018, National Gas Amendment (Estimated Meter Reads) Rule 2018', National Energy Retail Amendment (Estimated Meter Reads) Rule 2018, p.36.

⁴² Ibid, p.iv.

access, for example) that prevents an actual meter read and allowing a self-read might prolong this issue”.⁴³

We agree that consumers should only conduct a self-meter read where it is safe to do so. Where access is limited, customers providing a self-read of their meter could improve outcomes for consumers. Therefore, we do not consider a provision limiting the number of self-reads to be consistent with the intent of our draft decision which seeks to improve a consumer’s ability to influence an estimated bill.

Customer information on how to accurately provide a self-read estimate

The Energy and Water Ombudsman (Victoria) proposed that the commission could provide simple information instructing consumers on how they can accurately provide self-read estimates.⁴⁴ Consistent with the national framework, and as part of the new obligations, when a customer has an estimated bill, retailers are required to tell their customers in writing about how and when a customer can provide a self-read of their meter as the basis for requesting an adjusted bill. Our view is that this responsibility falls to retailers as part of their new obligations and communications to their customers.

Using customer self-reads for market settlement purposes

Red Energy and Lumo Energy raised concerns around a potential ‘mismatch’ between customer reads and the data files used by other metering parties for market settlement.⁴⁵ In its final determination, the AEMC determination found that retailers were generally in favour of passing a customer read on to metering parties or distributors for market settlement purposes. AEMC also suggests that retailers are unlikely to face liquidity risk due to a temporary mismatch between what the retailer recovers from a customer’s bill compared to what the retailer is billed for in the wholesale market.⁴⁶ Furthermore, it is likely that in the overwhelming majority of the time, potential customer read data will be overwritten by actual meter data prior to the final settlement revision.

Consistent with the AEMC’s final determination, we will not preclude the use of customer self-reads to be used for market settlement purposes by metering parties or distributors. We expect that retailers and distributors continue to exchange relevant data and information for market settlement.

⁴³ Red Energy & Lumo Energy, submission to the Essential Services Commission consultation paper ‘Draft decision on helping customers engage confidently in the retail energy market’, February 2019.

⁴⁴ Energy and Water Ombudsman (Victoria), submission to the Essential Services Commission consultation paper ‘Draft decision on helping customers engage confidently in the retail energy market’, February 2019.

⁴⁵ Red Energy & Lumo Energy, February 2019.

⁴⁶ Australian Energy Market Commission Rule Determination, National Electricity Amendment (Estimated Meter Reads) Rule 2018, National Gas Amendment (Estimated Meter Reads) Rule 2018, National Energy Retail Amendment (Estimated Meter Reads) Rule 2018, p.27.

3.3. Our final decision

Our final decision is to adopt the AEMC's determination on estimated meter reads, to strengthen consumer entitlements associated with retailers informing customers about requests for adjusted bills. This decision will come into effect on 1 July 2019 (providing three months for retailers to implement any necessary changes) and is unchanged from our draft decision.

As part of the Victorian compliance performance and reporting requirements, retailers are currently already obliged to self-report the number of estimated bills issued.⁴⁷ We recognise the value in measuring customer read estimates in Victoria, as well as the proportion of customers receiving adjusted bills. We will also monitor retailer compliance with this obligation and consider the necessary application of enforcement action under our compliance and enforcement policy, where we identify any non-compliance.

Final decision 8: Meter read provisions

The Energy Retail Code is to be aligned with the AEMC's final rule on estimated meter reads.

⁴⁷ Under the commission's Compliance and Performance Reporting Guideline v.3, Performance Indicator Schedule, retailers are required to maintain monthly data on the number of estimated bills issued during the reporting period; for example, where a customer's meter was not accessible on the day of a scheduled meter read. These bills are not counted if a retailer has obtained explicit and informed consent from a customer to use estimated accounts; for example, for the purpose of monthly billing (bill-smoothing).

4. Amending the Energy Retail Code

In Victoria, energy retailers are required to comply with the Energy Retail Code as a condition of their energy licence.⁴⁸ This chapter translates our final decision into amendments to the Energy Retail Code to give effect to new rules that entitle customers to submit customer read estimates of their meter in order to request a bill adjustment (see chapter 3).

The proposed code changes and associated guidelines required to give effect to the commission's decisions relating to marketing and information disclosure rules (as set out in chapter 2) are set out separately in our technical draft decision (released on 12 March 2019).

4.1. Summary of amendments

To give effect to the customer read estimate rule we are amending Division 4 of Part 2 of the Energy Retail Code, which sets out rules relating to billing.

Our technical draft decision provides further detail on the proposed Energy Retail Code changes to the new information disclosure and marketing rules. The amendments to the Energy Retail Code will be made under the provisions of the Electricity Industry Act 2000 (in particular sections 25, 35C and 36A) and the Gas Industry Act 2000 (in particular sections 31, 42C and 43A).

4.2. Customer read estimates

Chapter 3 sets out our final decision in relation to circumstances in which customers can submit a customer read estimate of their meter to request a bill adjustment. The consequential changes centre on Division 4 of Part 2. We have created new sub clauses within clause 21 of that Division, which sets out the terms on which estimates of usage can be used as the basis for bills. The new subclauses 3A-H mirror the equivalent sections of the AEMC's rule change, and cover matters such as:

- the circumstances in which a customer can request a bill adjustment following an estimated bill
- the steps the retailer must take to support customers to provide a meter read
- the requirement for the retailer to provide an adjusted bill following a customer's meter read
- circumstances in which the retailer may reject a customer's meter read
- complaint and dispute resolution
- how discounts and benefits should be managed in relation to an adjusted bill.

⁴⁸ The licence conditions requiring retailers to comply with the code are made under Section 20(2) of the Electricity Industry Act 2000 and Section 28(2) of the Gas Industry Act 2001.

Separately, we have amended clause 29, which deals with billing disputes. This amendment simply clarifies the pre-existing rules that prohibit retailers from requiring advance payment when a customer requests a test of the meter.

The final code amendments are set out in Appendix C.

4.3. Marketing and information disclosure

As set out in chapter 2, our final decision is to replace the existing price and PPIS and offer summary documents with a new Victorian energy fact sheet. The new fact sheet is based the form and content of equivalent fact sheets in the national framework (the BPID).

Our technical draft decision sets out our proposed Energy Retail Code changes and new Energy Fact Sheet Guidelines. The requirements around how and when a customer is provided with or notified about the new fact sheet have been based on the equivalent rules in the AER's Retail Pricing Information Guidelines.

4.4. Commencement of new requirements

The terms of reference propose that the new rules implementing recommendations 3B-E of the independent review take effect from 1 July 2019. Consumer groups⁴⁹ supported this implementation timeframe. However, retailers sought a staged implementation timeline, noting the reliance on the Victorian Retailer Portal (VRP) to generate the fact sheets.⁵⁰ We acknowledge the request for extended implementation times from retailers. We reiterate that DELWP are developing the requisite systems within VRP to ensure that the required functionality for retailers will be available in anticipation of the implementation date.

As set out in our technical draft decision, we anticipate the new marketing and information disclosure arrangements will take effect from 1 July 2019.

The customer read estimate code changes will take effect from 1 July 2019.

Final decision 9: Commencement date of marketing and information disclosure code amendments

The anticipated commencement date for the new marketing and information disclosure code amendments is 1 July 2019.

⁴⁹ Victorian Council of Social Service and EWOV, February 2019.

⁵⁰ Australian Energy Council, AGL, Energy Australia, Origin, Momentum Energy, Powershop, Simply Energy and Red Energy and Lumo Energy, February 2019.

Final decision 10: Commencement date of metering customer read estimate code amendments

The new customer read estimate requirements will take effect from 1 July 2019

Appendix A: Terms of reference

Customer outcomes in the energy market

Terms of Reference to the Essential Services Commission

The Essential Services Commission is requested to conduct a review under section 10(g) of the *Essential Services Commission Act 2001* on the appropriate amendments to the Energy Retail Code -to efficiently give effect to recommendations 3A to 3H and 9A of the Independent Review of the Electricity and Gas Retail Markets in Victoria (the independent review), released on 13 August 2017.

Background

The independent review, commissioned by the Victorian Government in November 2016, found the deregulated energy market was not delivering the anticipated benefits to consumers. It made 29 recommendations designed to place consumers back on a level playing field, including changing retailer marketing practices, introducing a basic service offer and abolishing standing offer contracts.

In February 2018, the Government provided its support to the recommendations from the independent review, except for two recommendations - introducing a Basic Service Offer (BSO) and abolishing standing offer contracts (recommendations 1A and 2A). The Government will undertake further analysis on the application and scope of the BSO and abolishing standing offers and their effect on Victoria's energy sector. The Government will consult further with stakeholders regarding the design of a BSO and any alternatives to the BSO.

Request

The Government is now requesting the Essential Services Commission to give effect to recommendations 3A to 3H and 9A.

Recommendations 3A to 3H propose changes to the information provided by energy companies to customers, including marketing material and information on bills. To give effect to these changes, the Commission is required to review the Energy Retail Code (the Code).

Recommendation 9A requires the Commission to review its regulatory codes to ensure a focus on customer outcomes and to account for new business models of service provision. The Code is issued under Part 2 of the *Essential Services Commission Act 2001*.

All licensed energy retailers must comply with the Energy Retail Code in accordance with their retail licences.

The review is to be conducted in two phases. While undertaking its review, the ESC may consider early adoption of any measures, including those introduced in other Australian jurisdictions, that it considers necessary in the context of its statutory objectives.

First phase

In conducting its review of the Code for the purposes of giving effect to recommendations 3A to 3H, the Commission is required to have regard to its objectives under the *Essential Services Commission Act 2001*, *Electricity Industry Act 2000*, *Gas Industry Act 2001* and the following:

- findings from the independent review;
- approaches being used by other regulators, such as the Australian Energy Regulator;
- information needs for Victoria's rich and diverse community, including our culturally and linguistically diverse and aged population; and
- other matters it deems relevant.

For the avoidance of doubt, the Commission is not required to assess the merits of the independent review's findings and recommendations. Its role is limited to identifying the most timely and cost-effective opportunities for implementing these findings and recommendations through amendments to the Energy Retail Code.

The Commission is required to complete and publish its review that gives effect to recommendation 3G, specifically relevant Code changes relating to information published on customer bills, by 1 October 2018. These changes are to take effect from 1 July 2019.

The Commission is required to complete and publish its review that gives effect to recommendations 3A to 3F and 3H, including relevant Code changes, by 30 January 2019. Unless otherwise determined by Government, changes made by the Commission to the Code relating to marketing information

Appendices

(recommendations 3A-3F and 3H) will take effect no later than 1 July 2019 so that the marketing of energy retail offers in a standardised format (including incorporation of annual energy costs for standardised customer usage profiles) can commence from that date.

Second phase

The Commission is required to review its codes and guidelines, for the purposes of establishing an energy market code (recommendation 9A). In developing the energy market code, the Commission should have regard to developing a principles-based, consumer-focused framework that can account for new business models of service provision.

The Commission should also have regard to its objectives under the *Essential Services Commission Act 2001*, *Electricity Industry Act 2000* and *Gas Industry Act 2001*. The Commission is required to complete this stage of the review, including relevant Code changes, by 31 December 2019.

Consultation

In undertaking this review, the Commission is required to consult widely, including with consumers, consumer advocacy groups, energy businesses, relevant experts, government departments and other regulators.

Reporting

Throughout the review, the Commission will advise the Minister for Finance and Minister for Energy, Environment and Climate Change regarding its progress and its final approach.

Appendix B: Role of the commission

Role of the Essential Services Commission

The commission is Victoria's independent economic regulator of essential services. Primary legislation passed by the Victorian Parliament sets out the objectives and expectations for the commission in the regulation of retail energy markets.

The *Essential Services Commission Act 2001 (Vic)* (ESC Act) sets out the commission's overarching objective to promote the long-term interests of Victorian consumers.⁵¹ The commission is also guided by objectives under the *Electricity Industry Act 2000 (Vic)* and *Gas Industry Act 2001 (Vic)* to promote the protections for customers, including in relation to customers who are facing payment difficulty.⁵²

The legislation establishing the regulatory framework for the energy industry in Victoria assigns the commission a range of functions and powers, including the power to grant licences to energy market participants and to create codes and guidelines.

The principal instrument used to set out retailers' obligations is the Energy Retail Code. After being established in 2002,⁵³ the commission released the first version of the Energy Retail Code, of which version 11b is in force today.

⁵¹ Section 8 Essential Services Commission Act 2001 (Vic).

⁵² Section 10(c) Electricity Industry Act 2000 (Vic) and section 18(c) Gas Industry Act 2001 (Vic).

⁵³ The commission replaced the Office of the Regulator-General (ORG), which was established to oversee regulation of electricity and gas industries during the privatisation of the industry and accompanying establishment of markets in generation, distribution and retail segments of the industry. The legislative objective for the ORG in relation to consumers was expressed as: "to ensure that users and consumers benefit from competition and efficiency" (Office of the Regulator-General Act 1994 (Vic), s7(1)(e)).

Appendix C: Final code amendments

Amendments to Part 2, Division 4 – Customer retail contracts

AMENDMENTS TO THE ENERGY RETAIL CODE: ESTIMATED METER READS

21 March 2019

Amendments made by the Essential Services Commission on 21 March 2019

1 Nature and commencement of this instrument

- (1) This instrument amends the *Energy Retail Code*.
- (2) This instrument comes into operation on 1 July 2019.

2 Table of amendments

- (1) In subclause 20(1)(a)(i), omit “and clause 21”.
- (2) After subclause 20(1)(a)(i), insert:
 - (ii) on an estimation of the *customer’s* consumption of *energy*, as provided by clause 21;
or
- (3) Renumber existing subclause 20(1)(a)(ii) to (iii).
- (4) In subclause 21(1), after “A *retailer* may”, insert “only”.
- (5) In subclause 21(2), after “the estimations”, omit “may” and substitute “must”.
- (6) In subclause 21(2)(a), omit “;” and substitute “(which may be a customer read estimate, as defined in subclause (3A));”
- (7) In subclause 21(3), after “on an estimation”, insert “, and (if applicable) that the estimation is based on the *customer’s* reading of the relevant *meter* under subclause (2)(a)”.
- (8) After subclause 21(3), insert:
 - (3A) If:

- (a) a *small customer* receives a bill based on an estimate, other than a *customer's* reading of the relevant *meter*; and
- (b) where the bill under paragraph (a) is for the supply of electricity, the consumption of electricity at the *customer's* premises is not recorded by an interval *meter*, being a *meter* that records consumption derived from interval *metering* data,

the *small customer* may request an adjusted bill based on the *customer's* reading of the relevant *meter* (a **customer read estimate**) by providing the *retailer* with the customer read estimate before the due date for payment of the bill under paragraph (a).

- (3B) On each occasion when the conditions in subclauses (3A)(a) and, as applicable, (b) are met, the *retailer* must inform the *small customer* in writing:
 - (a) that the *customer* may request an adjusted bill in accordance with subclause (3A); and
 - (b) of any changes to the *customer's* payment obligations if the *customer* makes such a request; and
 - (c) how the *customer* can obtain the information under subclause (3C).
- (3C) A *retailer* must make available to *small customers* at no charge and in clear, simple and concise language for the purposes of subclause (3A):
 - (a) guidance on how to read the *customer's meter*; and
 - (b) the types of information the *customer* is required to provide when lodging the customer read estimate; and
 - (c) instructions on the methods by which the *customer* can lodge the customer read estimate.
- (3D) Where:
 - (a) a *small customer* requests an adjustment to a bill based on an estimate in the circumstances set out in subclause (3A) by providing the *retailer* with a customer read estimate; and
 - (b) the *retailer* receives the customer read estimate before the due date for payment of the bill; and

- (c) the customer read estimate is provided in accordance with the guidance and requirements provided by the *retailer* under subclause (3C),

the *retailer* must, promptly and at no extra charge, provide the *small customer* with an adjusted bill based on the customer read estimate.

(3E) If:

- (a) the customer read estimate was received on or after the due date for the payment of the bill;
- (b) the customer read estimate is not provided in accordance with the guidance and requirements provided by the *retailer* under subclause (3C),

the *retailer* may reject the customer read estimate and, if it does so, must promptly notify the *small customer* in writing of the specific reasons for its decision.

Note:

For example, specific reasons that a *retailer* might provide for rejecting a customer read estimate for the purposes of subclause (3E)(b) include:

- the number value of the customer read estimate provided for cumulative *energy* consumed is smaller than a previous actual read of the *meter*; or
- where the customer read estimate is provided in the form of a photograph of the *meter*, that the *meter* display is not clearly visible or the photograph does not show the correct *meter* installed at the *small customer's* premises.

(3F) The *retailer* must set out a process under its standard complaints and dispute resolution procedures for a *small customer* to attempt to rectify a customer read estimate that is not accepted under subclause (3E)(b).

(3G) If the *retailer* does not accept the customer read estimate under subclause (3E), the *retailer* must inform the *small customer* in the same notice required to be provided under that subclause, that the *customer* may:

- (a) lodge a dispute with the *energy ombudsman* where the *customer* is not satisfied with the *retailer's* decision after the *customer* has followed the process under subclause (3F); and
- (b) separately, request the *retailer* to review the bill under clause 29.

(3H) If under subclause (3B)(b) a *retailer* has advised a *small customer* of changes to the *customer's* payment obligations, and those changes include a new date for payment

of the *customer's* bill, any benefits provided under the *retailer's* contract with the *customer* for payments made by the due date must be applied with respect to the new date for payment.

(9) Omit subclause 29(5)(b) and substitute:

(b) the *retailer* may require the *customer* to pay for the cost of the check or test if the check or test shows that the *meter* or *metering data* was not faulty or incorrect.

(10) Omit subclause 29(5)(c).

(11) After subclause 29(5) insert:

(5A) For the purposes of subclause (5), a *small customer* request made under subclause 21(3A) is not to be treated as a request for the *meter* reading or *metering data* to be checked or the *meter* tested.