ESSENTIAL SERVICES COMMISSION

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REVIEW OF REGULATORY INSTRUMENTS – STAGE 1

DRAFT DECISION

AUGUST 2008

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CONTENTS

1 INTRODUCTION

1.1 Background to the Review

The Essential Services Commission (the Commission) is responsible for regulating Victoria's distribution and retail energy markets.[1] The Commission has exercised this responsibility since 2001, when it was established by the *Essential Services Commission Act 2001* (Vic) (ESC Act). Its establishment coincided with the introduction of full retail competition for domestic and small business customers. Before then, small customers purchased their energy from the franchised energy businesses regulated by the Office of the Regulator-General (the ORG).[2]

In preparation for full retail competition, the ORG put in place a suite of regulatory protections to ensure that small customers continued to access essential energy supply on fair and reasonable terms and that licensed retailers and distributors operated efficiently and effectively in the competitive market. Since that time, the Commission has amended the regulatory framework. These amendments included new guidelines concerning service standards and conduct of the licensed energy businesses, because of requirements under industry legislation or because of a perceived market failure.

The Commission recognises that competition in the Victorian energy market has evolved significantly since 2001, which coincides with the recent review of the effectiveness of competition by the Australian Energy Market Commission (AEMC) which concluded that there is effective competition in Victoria.[3] Further, national market regulation and general consumer protection law now embodies many of the protections that were considered necessary when the Victorian market first opened to competition.[4]

Consequently, the Commission is now undertaking a comprehensive review of its non-economic distribution and retail regulatory framework to assess its efficiency and effectiveness and whether it accords with the objectives of the *Essential Services Commission Act*, *2001* and relevant industry legislation.

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[1] Gas Distribution economic regulation was transferred to the Australian Energy Regulator (AER) on 1 July 2008 and Electricity Distribution economic regulation will be transferred to the AER on 1 January 2009.

[2] The Essential Services Commission succeeded the Office of the Regulator-General, which was established in 1995.

[3] AEMC 2008*, AEMC's Review of the Effectiveness of Competition in the Electricity and Gas Retail Markets in Victoria*, Second Final Report, 29 February, Sydney,

[4] For example, general consumer regulation oversighted by the Victorian *Fair Trading Act* 1999 or national regulation oversighted by the National Electricity Market Management Company (NEMMCO)

The Review also provides an opportunity to identify and reduce the regulatory burden on businesses, consistent with the Victorian Government's *Reducing the Regulatory Burden* initiative.[5]

The Commission published an open letter setting out the objectives of the review and seeking submissions in February 2008.

1.2 Legislative framework for this draft decision

The broad objectives of the Commission, as set out in the ESC Act, are to promote the long term interests of Victorian consumers and to have regard to price, quality and reliability when regulating essential services.

Further, the Act requires the Commission to have regard to relevant matters in seeking to achieve this objective including the financial viability of the industry, the degree of, and scope for, competition within the industry and the benefits and costs of regulation on consumers and users of products or services (including low income and vulnerable consumers) and the regulated entities. The Act also requires the Commission to have regard to the need for consistency in regulation between States and on a national basis.

The Commission's functions are provided for by section 10 of the Act, which include the performance of functions conferred by the Act and relevant industry legislation, namely the *Electricity Industry Act 2000* (Vic.) (EI Act) and the *Gas Industry Act 2001* (GI Act).

The EI Act and GI Act empower the Commission to licence Victorian energy businesses[6] and specify Orders in Council, industry codes, standards, rules and guidelines which must be observed by the licensee[7]

Against this background, the Commission has exercised its powers under Section 11 of the Act, which enables the Commission to do all things necessary or convenient to be done for or in connection with the performance of its functions and to enable it to achieve its objectives. The codes and guidelines under review in this draft decision arise from these legislative powers.

1.3 Approach to the Review

Licences, codes and guidelines are the instruments used by the Commission to regulate the Victorian energy market. All instruments, including guidelines, contain regulatory obligations, and there is both duplication between instruments and inconsistency between the obligations. Consequently, in this Review, the Commission decided to streamline the regulatory framework by reviewing its codes and guidelines and consolidating all its regulatory obligations into the codes.

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[5] Department of Treasury and Finance 2008, *Reducing the Regulatory Burden,* accessed at www.dtf.vic.gov.au..

[6] Division 3 of Part 2 of the *Electricity Industry Act 2000* and Division 2 of Part 3 of the *Gas Industry Act 2001.*

[7] Section 21(1) of the *Electricity Industry Act 2000* and section 29 (c) of the *Gas Industry Act 2001.*

Appendix A shows a diagrammatic overview of the existing and proposed regulatory frameworks.

The breadth of the regulation, and the uncertainty concerning some outcomes, has led the Commission to separate its Review into two stages. This draft decision deals with stage 1. Stage 2 will commence in September 2008 (see section 5 for further detail).

1.4 National developments

The Commission notes that the Ministerial Council of Energy (MCE) is currently developing a National Framework for Regulating Electricity and Gas (Energy) Distribution and Retail Services to Customers.[8] The MCE's Standing Committee of Officials released a Policy Response Paper and Table of Recommendations – National Energy Customer Framework in June 2008.

The Commission has taken account of the proposed national framework recommendations in this Review and, where appropriate, has attempted to achieve consistency with the national framework in the Victorian regulation. However, the Review is not intended to significantly change the fundamental customer protections in Victoria. The Commission expects that any substantive changes to the customer protection regulation for Victorian customers will be implemented in accordance with the MCE's decision on the national framework.

1.5 Purpose of the Draft Decision

This draft decision sets out the proposed amendments to certain energy regulation in stage 1 of the Review. In particular, the draft decision proposes amendments to the Energy Retail Code (ERC), the Code of Conduct for Marketing Energy Retail in Victoria (the Marketing Code) and the Electricity Customer Metering Code (ECMC) and the repeal of certain energy retail guidelines.

This draft decision provides stakeholders with an opportunity to respond prior to the Commission finalising its decision and drafting the proposed amendments to the regulatory instruments in stage 1 of the Review.

1.6 Structure of this paper

This paper is structured as follows:

- Chapter 2 provides the conceptual framework under which issues identified by the review were considered and addressed.
- Chapter 3 sets out the consultation process undertaken by the Commission and summarises stakeholder views from their written submissions and workshop participation.
- Chapter 4 details the Commission's draft decision regarding the amendment and repeal of certain energy regulation.

[8] Retail and non-economic distribution functions are scheduled to be transferred to the national regulators in 2010.

Attachment B details energy regulation which is to be amended or repealed.

1.7 How to respond to this paper

The Commission invites stakeholders to make submissions on its Draft Decision. Submissions presented in electronic form are preferred.

Submissions should be provided to the Commission by 12 September 2008 by:

Email: EnergyRegulatoryReview@esc.vic.gov.au

Mail: Review of Regulatory Instruments

Level 2, 35 Spring Street

Melbourne Vic 3000

Fax: (03) 9651 3688

Submissions presented in electronic form are preferred. Submissions will be made available on the Commission's website in accordance with its website policy. Any material that is confidential should be clearly marked as such. Publication is subject to the privacy policy available on the website www.esc.vic.gov.au.

2 OBJECTIVES & FRAMEWORK FOR THE REVIEW

This section discusses the objectives of the Review and the framework used by the Commission to determine which regulation would be addressed in the Review and the reasons for the approaches adopted.

2.1 Objectives

The objectives of the Review, as set out in the open letter published in February 2008, are to:-

1. Remove regulatory provisions that may have become redundant over time.
2. Modify regulation obligations to facilitate the orderly implementation of the Government's advanced interval metering program from 2009-12.
3. Assess the obligations relating to the provision of information to customers to improve their access to the competitive market, in view of the increasing effectiveness of energy retail competition in Victoria.
4. Examine whether the obligations in regulatory guidelines would be better placed in existing codes and whether existing obligations are appropriately drafted or unnecessarily duplicate other regulation.
5. Consider the compliance and reporting requirements arising from the existing framework and whether improvements can be made to reduce or remove unnecessary administrative burden, consistent with the Victorian Government's policy initiative.

The reasons for these objectives are explained more fully below.

2.1.1 Remove regulatory provisions that may have become redundant over time

The Commission considers it necessary to repeal regulation that has become redundant in the energy market over time, through legislative reform or other factors. For example, the Victorian Government removed price oversight for small business customers from 1 January, 2008 because of the effectiveness of retail competition in that sector.[9] Hence, the Commission has examined whether some non-price protections could be repealed because the competitive market will sufficiently protect small business customers.

[9] Department of Primary Industries 2008, "Energy: Pricing", *Department of Primary Industries website,* accessed at www.dpi.vic.gov.au.

All regulatory instruments under review were considered against this objective.

2.1.2 Modify regulation obligations to facilitate the orderly implementation of the Government's advanced interval metering program from 2009-12

In 2006, the Victorian Government announced a decision to roll-out advanced interval meters to all Victorian consumers, commencing 2008. Whilst there had been some delays in implementation, the Commission was aware that, when it announced the Review of Regulatory Instruments in February 2008, the regulatory framework did not cater for advanced interval meter regulation (for small customers, the framework is primarily based on accumulation meters and to some small degree, manually read interval meters).

The Commission wished to facilitate the implementation of the advanced interval metering program by ensuring that the regulation was relevant. However, recent developments in the implementation of the advanced interval meter roll-out to Victorian consumers have prompted the Commission to defer its review of the regulatory instruments in this regard. Consideration will be given to amending the regulatory instruments to support the remote interval metering functionalities in stage 2 of the Review.

2.1.3 Assess the obligations relating to the provision of information to customers to improve their access to the competitive market

This review seeks to ensure customers have accessible and accurate information in order to make informed choices in the increasingly competitive market.

The capacity of customers to access sufficient information on which to base their decisions has been acknowledged in the AEMC review (and previous effectiveness reviews in Victoria) as important for customers to gain equitable access to the competitive market

There have been a number of initiatives in Victoria to increase the level of information to customers, including a legislative requirement for retailers to publish certain market offer information on their websites and regulatory requirements for retailers to provide certain offer and contractual information to customers.

The Commission considers that this Review provides an opportunity to improve and build on these tools to enhance customers' access to market information to customers and therefore improve the effectiveness of a customer's engagement with the energy market.

2.1.4 Examine whether the obligations in regulatory guidelines would be better placed in existing codes and whether existing obligations are appropriately drafted or unnecessarily duplicate other regulation

A key component of this Review is streamlining the regulatory framework by removing unnecessary duplication or by redrafting regulation.

A number of the Commission's regulatory instruments duplicate other regulation and legislation. For example, the Marketing Code duplicates some aspects of the *Fair Trading Act 1999* and the Guideline No 10: Confidentiality and Informed Consent both duplicates and expands the National Privacy Principles under the federal *Privacy Act 1988.*

This regulation was considered necessary at the onset of full retail competition in Victoria because the general consumer law did not sufficiently address the potential market failure perceived to exist at that time. However, the market has significantly matured since 2001 and customers are now participating actively in the competitive market by exercising choice not only among available retailers but also price and service offerings.[10]

Therefore, this Review will determine whether regulation which duplicates other regulation or legislation can either be repealed or placed more appropriately in another instrument.

2.1.5 Reduce or remove unnecessary administrative burden

The Review identifies regulation that imposes on businesses or other entities an unnecessary administrative burden to determine whether it can be removed or reduced. This analysis will inform the Commission's internal administrative burden review, which is being undertaken as part of the Victorian Government's *Reducing the Regulatory Burden* initiative.[11]

2.2 Framework

A framework has been developed to guide the Commission and inform stakeholders on the approach to the Review.

The framework establishes three categories of regulation:

1. *Regulation which will not be addressed in the review*, because it is mandated through legislation and therefore considered fundamental to protect small customers. For example, regulation dealing with disconnection, information provision about rights and entitlements, access to a customer's premises and confidentiality of customer information.
2. *Regulation which may be addressed in the review* as it does not appear necessary to protect relevant customers in competitive energy markets because small customers will not experience significant detriment if the regulation is removed. The assessment will rely on there being sufficient confidence that the competitive market will act to serve the interests of small customers. Further, the decision to remove the regulation in Victoria will not

[10] AEMC 2007*, AEMC's Review of the Effectiveness of Competition in the Electricity and Gas Retail Markets in Victoria*, First Final Report, 19 December, Sydney

[11] *Identification of Administrative Burden: Evaluation of administrative burden imposed on businesses regulated by the Essential Services Commission.*

negatively impact on retailers if the regulation is retained by the national framework for regulating energy distribution and retail services.

3. *Regulation which may be addressed in the review, but about which the Commission's decision will be informed by the national framework.* There may be regulation which the Commission would consider amending or repealing because it no longer appears necessary in the Victorian competitive market. However, the Commission would not want to impose unnecessary costs on retailers or customers if the national framework retained that regulation

To facilitate a structured approach to the Review, six work streams were identified as follows:

1. Small business non-price regulation

2. Implementation of AMI program

3. Customer information provision

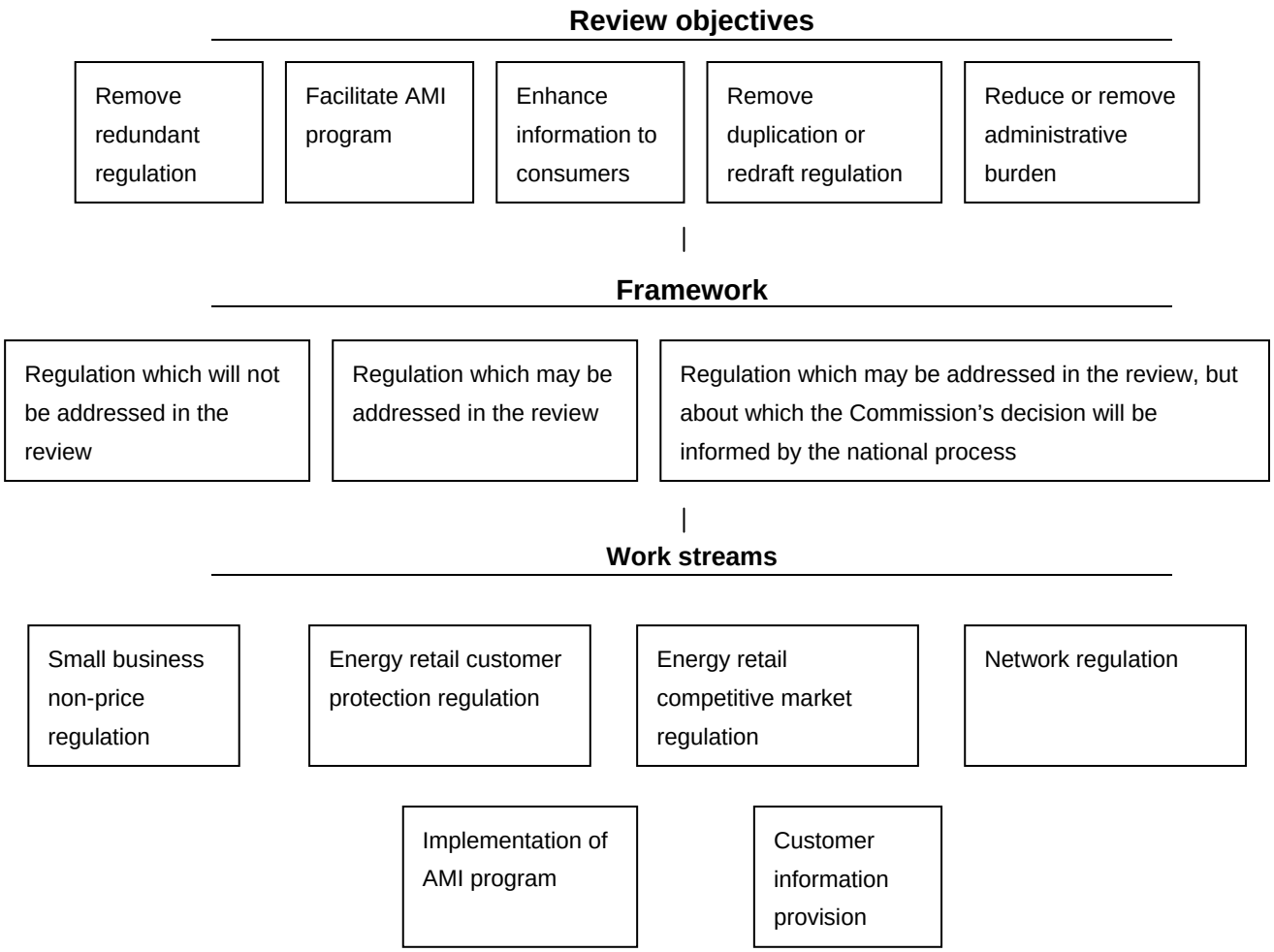
4. Energy retail customer protection regulation

5. Energy retail competitive market regulation

6. Energy network regulation

Whilst there was some overlap between the work streams, all relevant regulation was considered against the framework (see Diagram 1 below). Regulation relating to the advanced interval metering roll-out (work stream 2), information for customers on the competitive market, including information of interval meter information on bills (work stream 3) and the national transfer rules has been deferred to stage 2 of the Review.

Diagram 1: Review approach



3 CONSULTATION AND SUBMISSIONS

The Commission undertook an extensive consultation during the Review, commencing with an open letter calling for submissions in February 2008. Since then, the Commission released an issues paper and seven working papers, and held five workshops and one public forum. This section more fully outlines the consultation process and summarises stakeholder submissions.

3.1 Initial call for submissions

In February 2008, the Chairperson published an open letter announcing the Commission's review of energy regulatory instruments.

Fourteen submissions were received.[12] Retailers' and distributors' submissions primarily focused on regulation that they considered duplicated existing regulation or was redundant. They proposed that entire codes and guidelines, or individual clauses, should be repealed, including those obligations which could be considered fundamental protections for small customers (for example, amendments to reminder and disconnection notices). Other issues raised by industry submissions included information provision to customers and the implementation of the AMI program.

EWOV submitted that non-price regulation of small business had not become redundant following the removal of the Victorian Government's price oversight for small business. EWOV also made recommendations to enhance information to customers and raised AMI regulatory issues for the Commission's consideration.

The Consumer Utilities Advocacy Centre, Consumer Action Law Centre and St Vincent de Paul Society Victoria provided a joint submission to the Review. They asserted that the Victorian energy market is not overly-regulated or restrictive and the regulation has set the benchmark for other jurisdictions. The submission provided six recommendations which included the enhancement of information to consumers. Further, the joint submission recommended that only duplicated or superseded regulatory obligations be removed.

[12] Submissions were received from AGL, Australian Power & Gas, Australian Utility Choice, Citipower/Powercor, Consumer Utilities Advocacy Centre, Consumer Action Law Centre and St Vincent de Paul – joint submission (consumer groups), Energy and Water Ombudsman (Victoria) (EWOV), Energy Retailers Association of Australia (ERAA), Envestra, Origin Energy, Simply Energy, SP AusNet, TRUenergy, United Energy Disitribution, Alinta AE and Multinet Gas and are available at www.esc.vic.gov.au

Australian Utility Choice, a price comparison service, focused their submission on information required to effectively provide an interactive website where customers can compare prices and offers from a range of retailers.

3.2 Issues Paper on submissions

An issues paper was published in May 2008, summarising all stakeholders' submissions and clarifying which issues would be considered by the Review against the framework outlined in section 2.2. The issues paper also outlined the Review's proposed consultative approach to reaching its draft decision, which included workshops and papers as outlined below.

3.3 Workshops and papers

The extent of the issues raised in response to the open letter prompted the Commission to hold a series of workshops with members of the Commission's Customer Consultative Committee (CCC) and licensees.[13] These workshops were held in May and June 2008.

To enable informed discussion at the workshops, a paper outlining relevant issues was published and distributed among participants prior to the workshop. The paper also set out a preliminary view or proposed questions to assist discussion.

Discussion at the workshops varied, but a consistent theme through the Review was that the Victorian regulation should be consistent with the emerging national framework. Stakeholders, particularly industry representatives, advocated for regulation that was consistent with the national reform process, whilst consumer groups favoured regulatory changes that did not lessen customer protections.

The Victorian Employers' Chamber of Commerce and Industry (VECCI) supported the objectives of the Review, particularly the removal of unnecessary regulation. However, in a written submission to the workshop papers, VECCI urged the Commission to consider some small businesses in the same way as domestic customers, noting that these customers may not necessarily be in a strong bargaining position in relation to their negotiations with energy retailers.

3.4 Public forum

On 5 August 2008, a public forum attended by 24 participants was held to enable broader participation by interested parties and to inform the general public regarding the objectives of the Review and the process undertaken to date. The public forum also provided an opportunity for feedback regarding the proposed amendments. In general, participants did not oppose the proposals to repeal guidelines and some regulatory obligations. Retailers encouraged the Commission to go further with some reforms and opposed any additional regulation recommended by other stakeholders (for example, the distributors' proposal that they are identified on customer bills – see 4.3.1 below).

The outcomes of all these consultations and submissions have been taken into account in reaching the Draft Decision set out in chapter 4 and Appendix B.

[13] The competitive market and customer information provision workshops were combined.

4 DRAFT DECISION

This section summarises the key outcomes of the draft decision and sets out the substantive issues arising from the Review or the submissions. A summary of all submissions to the Review and the detailed draft decision is set out in Appendix B

4.1 Overview

All written submissions and stakeholder comments provided at the workshops have been taken into account in this draft decision.

Overall, the Commission's draft decision in stage 1 of the Review is to amend a number of obligations in three key codes, repeal four energy retail guidelines and one operating procedure. This represents a gross reduction of 81 pages of regulation.

The key reasons for amending the obligations in the ERC and the Marketing Code are to remove duplication within the instruments and with general consumer law. Regulation which is considered redundant because the competitive market is sufficiently effective has also been addressed.

Further, the draft decision is to achieve consistency with the national market and this impacts regulation under the Electricity Customer Metering Code and a small number of obligations in other codes.

The draft decision to repeal the four guidelines and Wrongful Disconnection Operating Procedure is based on the view that they contain obligations which are redundant or unnecessarily duplicate other regulations and legislation.

The remainder of this chapter will set out the substantive issues of the Commission's draft decision for each segment considered in stages 1 of the Review.

4.2 Small business non-price regulation

Overall, there is only a small amount of regulation which applies to small business customers and which could be considered against the framework outlined in chapter 2. However, in light of the Victorian Government's removal of price oversight for small business customers, the Commission's draft decision is that non-price protections for small business customers should be removed where competition is deemed to be sufficiently effective to provide efficient outcomes.

This regulation applies to those areas where it is considered that energy-specific regulation is no longer required (for example, use and disclosure of customer

information) or where normal commercial practices should enable the small business customer to negotiate effectively with energy suppliers.

This regulation is found in the ERC and Guideline No.10: Confidentiality and Explicit Informed Consent, and is summarised below.

4.2.1 Energy Retail Code

The key elements of the ERC which have been addressed for small business customers are those obligations which place restrictions on retailers with respect to their commercial arrangements with these customers. In particular:

- The capacity of customers to negotiate smoothed billing arrangements (clause 5.3)
- The rules applying to how undercharging accounts are to be remedied (clause 6.2)
- Security deposits or refundable advances (clause 8)
- The provision of instalment plans (clause 12)
- The restrictions applying to retailers in disconnecting small business customers (clause 14)
- Payment for goods and services and other goods (clause 4.6)

Consideration was also given to the obligations on retailers to provide certain information to small business customers. For example, retailers argue that they no longer need to be regulated to provide energy efficiency advice to a small business customer on request because the competitive market and other policy imperatives will necessitate this information being provided.

The draft decision is either to repeal or reduce this regulation as set out in Appendix B.

(a) Refundable advances

A key amendment relates to the regulation of refundable advances. Retailers currently cannot require a security deposit from a small business customer unless they have an unsatisfactory energy account payment record or an unsatisfactory credit rating. The Commission currently defines 'unsatisfactory credit rating' in the relevant credit assessment guidelines.

In consultation, there was no agreement between stakeholders about whether the Commission should continue to regulate this clause. However, there was general support for a requirement that the deposit be fair and reasonable.

The Commission has decided to remove the regulation which prescribes how retailers can assess small business customers' credit risk for security deposit purposes. Small businesses are required more regularly to negotiate commercial arrangements with a range of suppliers and the Commission considers that regulating this area for energy suppliers alone is unnecessary. However, recognising that electricity is an essential service and small business customers may face similar financial stress to domestic customers, the Commission considers

that some regulatory oversight on security deposits for small business customers should be retained.[14]

Therefore, the Commission has decided to require that if a security deposit is imposed, the amount of the deposit must be fair and reasonable having regard to related costs incurred by the retailers. Guidance to retailers on how fair and reasonable security deposits for small business customers may be assessed will be included in the Compliance Policy Statement for Victorian Energy Businesses.

4.2.2 Guideline No 10 – Confidentiality and Explicit Informed Consent

Part II of Guideline No 10 provides for the use and disclosure of customer information. This regulation sets out in general terms the requirements which must be observed by licensees in complying with the National Privacy Principles which arise from the *Privacy Act 1988*.

The National Privacy Principles apply only to individuals (or natural persons). At the onset of full retail competition, the Commission decided to extend the privacy regulation to protect the use and disclosure of information in relation to small business customers (bodies corporate), given the risk that information could be inappropriately used for marketing purposes.

The Commission no longer considers that small business customers should continue to enjoy a higher level of privacy protection than that afforded by the privacy legislation. Therefore, the draft decision is that this energy-specific regulation is repealed.

4.3 Energy Retail Customer Protection Regulation

Energy retail customer protection regulation applies primarily to domestic customers, particularly vulnerable or low income customers, to ensure that they are adequately protected in the Victorian energy market. General consumer law and the competitive market are not considered adequate to protect these customers' access to essential services, particularly electricity.

There is a significant amount of existing regulation applying to these customers, most of which was put in place in 2000 in preparation for full retail competition. The regulation was included in the ERC and supplemented by guidelines, which both established rules and set out the Commission's views on how compliance with the rules would be assessed.

[14] The Commission notes that under the draft national framework, a similar approach to the existing Victorian regulation has been proposed. However, the approach to security deposits can be negotiated in market contracts.

The Commission's draft decision is that the majority of this existing regulation remains necessary to protect small customers in the competitive market. Thus the essential regulation will be retained in the ERC and Marketing Code. The information which assists in assessing compliance has been placed in the Compliance Policy Statement for Victorian Energy Businesses. Guidelines No 1 and 4 - Electricity and Gas Credit Assessment Guidelines, Guideline No 20- Bulk Hot Water Charging Guideline and the Operating Procedure: Compensation for Wrongful Disconnection have been repealed.

The sections below outline the substantive issues raised in the draft decision.

4.3.1 Energy Retail Code

Consistent with the regulation impacting on small business customers, the key obligations addressed for domestic customers were:

- Information on bills, particularly distributors' information (clause 4.2(o))
- The capacity of customers to negotiate smoothed billing arrangements (clause 5.3)
- The rules applying to how undercharging accounts are to be remedied (clause 6.2)
- Security deposits or refundable advances (clause 8.1)
- The provision of instalment plans (clause 12)
- The agreement of customers to variations of market contracts (clause 20).

Overall the Commission's draft decision is that the majority of existing protections for domestic customers under the ERC will be retained. However, the Commission has taken account of retailers' submissions that consistency, where appropriate, should be achieved with national developments or regulation should be reviewed if it is inhibiting the competitive market development.

The discussion below outlines those substantive issues raised in submissions or where stakeholders' opinions were divided as to the best regulatory approach.

(a) Faults number on the bill

Clause 4.2(o) requires retailers to put billing and fault enquiries telephone numbers on customers' bills.

SP AusNet submitted that the distributor's name should also be included with the faults number on the bill to reduce the number of customers contacting the fault line in error (according to SP AusNet on average, 6% of calls are incorrectly dialled to their gas emergency number).

Retailers do not support the proposal, claiming significant costs to undertake the systems change. Further, they argue that there may be little material benefit for the system changes because customers may be confused by an unfamiliar distributors'

name. Customer groups and EWOV indicated some support for the distributors' proposal, and were concerned to ensure that customers know who to appropriately contact for electricity or gas supply information.

The Commission considered SP AusNet's submission primarily because, in the proposed national framework, it is foreshadowed that the obligation to supply will be placed on all retailers. This is consistent with the approach in the Queensland market where the distributors are the initial contact point for customers who move-in to premises without knowing who their retailer is. Requiring a distributor's name on the bill against the fault number may increase customers' familiarity with the distributors if this model is adopted in Victoria.

The draft decision is that clause 4.2(o) of the ERC will be amended to require reference to the distributor against the fault and emergencies line number.

The Commission however seeks stakeholder submissions on whether this approach will assist in meeting the intended objective and on the cost implications for retailers, to inform its final decision.

(b) Use of bill smoothing arrangements

Clause 5.3 prescribes the requirements under which a retailer may provide a customer with estimated bills under a bill smoothing arrangement. This was put in place to allow retailers flexibility in negotiating billing arrangements with customers.

A key obligation is for the retailers to re-estimate consumption after 6 months of the bill smoothing arrangements to ensure that the original estimation is consistent with customers' actual consumption. This would avoid a significant undercharging at the end of a 12 month period.

Simply Energy submitted that the prescriptive regulation of bill smoothing is prohibiting them from offering this product to their customers in the competitive market. In particular, the requirement to undertake a 6 monthly reconciliation is an inadequate period of time in which to properly take into account seasonal factors. Therefore, the readjustment period should be 12 months.

The Commission is persuaded that more flexibility should be provided for retailers in this regard. The draft decision is to increase the reconciliation period to 9 months, rather than 12 months, given that this is the maximum amount that retailers are allowed to recover if their bills to customers are inaccurate (see section (c) below).

(c) Undercharging

Clause 6.2 prescribes the circumstances where the retailer may recover an undercharged amount. Specifically, the clause provides that retailers may only recover 9 months undercharging that result from a failure of a retailer's billing system, irrespective as to whether the fault rests with the distributor or the retailer. Otherwise, the retailer may recover 12 months of the amount undercharged.

In their submissions and at the workshops, retailers were particularly keen to see amendments to this regulation in Victoria to reflect the regulation recently introduced into the Queensland and, in particular, the obligation that no restrictions would apply if customers were at fault or did not allow access to the meters.

Consumer groups and EWOV did not want customers to receive large bills due to retailer or distributor errors and were concerned that the rules were sufficiently fair and clear to mitigate customer disputes.

The Commission has carefully considered all submissions and has concluded:

- Retailers' capacity to recover undercharged amounts due to faults in either the retailers' or the distributors' systems or processes should continue to be restricted.
- The Commission notes that, whilst isolated incidents still occur, the incentive to improve the billing systems appears to have been effective and considers therefore that this regulation should be retained. This is consistent with its Final Decision on the Energy Retail Code in May 2004, which provided that an amount that can be recovered due a fault in the retailers' systems should be up to 9 months. The decision was made in 2004 because of significant problems with some retailers' billing systems. The reduction to 9 months was to provide an added incentive for retailers to ensure their billing systems were efficient and accurate.[15]

  However, the Commission now considers that the restriction on billing should only apply to faults in the retailers' systems, not where distributors have not provided relevant meter information to retailers. Retailers may recover up to 12 months in those circumstances.
- The Commission notes that the proposed national framework is for retailers to recover up to 12 months in all circumstances, but that no limitation should apply if the undercharging arises as a fault or unlawful action of the customer. The Commission accepts EWOV's submission that determining "fault of the customer" is ambiguous and potentially could lead to a number of disputes. However, the general principle is supported and the draft decision is that no limitation should apply if the undercharging arises as a result of meter access being blocked, or unlawful action, by the customer. It is considered that these restrictions provide sufficient certainty for the retailers.

The draft decision is that retailers may only recover up to 9 months for amounts undercharged if the reason for the undercharging is due to a fault in the retailers' billing systems. In all other circumstances, they may recover up to 12 months undercharged, unless the undercharging arises as a result of meter access being blocked, or unlawful action, by the customer.

(d) Overcharging

Clause 6.3 sets out how retailers must deal with overcharging on bills; in particular, that the retailer must inform the customer within 10 business days of becoming aware of the error and repay the amount in accordance with the customer's reasonable instructions or otherwise credit the customer's next bill.

[15] ESC May 2004: *Final Decision, Gas and Electricity Retail Codes – Energy Retail Code.*

The retailers submitted that the obligation be amended to reflect the Queensland energy regulation, which is proposed to be adopted in the national framework. This regulation is simpler and more efficient for the retailer, as it only requires retailers to notify customers of overcharging within 10 business days if the amount exceeds a threshold amount ($50), otherwise the amount is to be credited on their next bill.

The Commission agrees with the retailers that this approach is sensible and consequently the draft decision is to amend the obligation accordingly.

(e) Refundable advances for domestic customers

Clause 8.1 prescribes the circumstances when a retailer may require a refundable advance from a domestic customer. The obligations in the ERC are supplemented by other rules and explanation in Guidelines No 1 and 4. The draft decision is to repeal these guidelines and include key regulation in the ERC.

Therefore, the Commission intends to publish the minimum debt amount which a customer is required to exceed before a retailer may require a refundable advance (to date, this amount has been confidential to retailers and EWOV, although it is generally well known amongst financial counsellors and welfare agencies). This proposal was foreshadowed at the public forum and is consistent with the approach taken by the Commission in its regulation of the water sector. . Consumer groups considered that the minimum amount should be increased. However, the proposal was not opposed by stakeholders.[16]

The Commission intends to increase and publish the minimum debt amount to accord with the *Water Customer Service Code for Metropolitan and Regional Water Businesses*, that is $120 compared with the existing $100.

The Commission believes the revised figure is fair and reasonable, providing consistency across utility industries in Victoria.

(**f) Variations require customer's agreement**

Clause 20 details when agreement is required for variations in the customer's tariff or any terms and conditions of an energy contract between a retailer and customer. In particular, clause 20(b) provides that if a tariff changed in accordance with some term or condition of an energy contract previously agreed between the customer and the retailer, no further agreement is required.

Consumer Affairs Victoria has previously advised the Commission that agreement by the consumer through this clause is unfair if the agreement is provided in an obscure clause in the contract. CALC also submitted that the overall impact of the clause appears to be unfair to consumers.

Based on these submissions, the Commission's draft decision is that the obligation in the ERC be redrafted to ensure that customer's agreement with contractual variations must be explicit and transparent.

[16] The proposed national framework does not appear to intend having a minimum amount.

4.3.2 Gas and Electricity Credit Assessment Guidelines

Guidelines No 1 and 4: Gas and Electricity Credit Assessment are issued in accordance with clause 8.1 of the Energy Retail Code, which deals with the provision of a refundable advance. A refundable advance refers to when a customer is required to provide its retailer with a deposit as a pre-condition of their standing offer or market contract.

The guidelines define the circumstances under which a retailer may require a refundable advance. In particular, they prohibit the consideration of non-utility related debt for the purposes of requiring a refundable advance. The guidelines also provides for minimum amounts of outstanding debt that must apply for credit reporting or disconnection purposes.

Retailers submitted that these guidelines duplicate other regulations and legislation, such as the *Privacy Act 1988* and the Victorian *Fair Trading Act.* Overall, the Commission agrees with these submissions and considers that there is duplication between this regulation and general consumer law. However, the Commission considers that there is energy-specific regulation which should continue to be retained as it provides a necessary level of protection for more vulnerable customers.

The Commission proposes to repeal these guidelines and place any necessary regulation in the ERC. The detailed draft decision can be found in Appendix B.

4.3.3 Operating Procedure: Compensation for Wrongful Disconnection

The Operating Procedure: Compensation for Wrongful Disconnection (Operating Procedure) was issued to provide clarity to retailers and customers regarding their legislative and regulatory rights and obligations in relation to compensation for wrongful disconnection. The procedure set out the process for dealing with disputes and to provide guidance where the obligation in the ERC was ambiguous or unclear.

The Commission foreshadowed that it intended to repeal the procedure as it duplicated other regulation or procedures (for example, EWOV's complaint handling procedures). This approach was supported by submissions from retailers and EWOV advice.

The draft decision is to repeal the Operating Procedure: Compensation for Wrongful Disconnection. Notwithstanding, the Commission considers that there is information in the procedure which assists relevant parties to comply with the relevant regulation. This information will be retained in the Compliance Policy Statement for Victorian Energy Businesses.

4.3.4 Bulk Hot Water Charging Guideline

Guideline No 20: Bulk Hot Water Charging Guideline specifies the requirements for energy retailers charging for delivery of electric bulk hot water or gas bulk hot water to customers from gas or electrical distribution systems. In particular, the guideline prescribes the formulas which must be used by retailers to calculate the energy used by customers consuming bulk hot water.

The responsibility for setting the formula was transferred from the Commission to the Department of Primary Industries in early 2008. Obligations that have remained are the Commission's responsibility to include how retailers should detail bulk hot water charges on bills.

The Commission's draft decision is to repeal this guideline because the responsibility for setting the formula has been transferred to DPI. The remaining obligations which are contractual will be included in the Energy Retail Code.

4.4 Energy retail competitive market regulation

At the onset of full retail competition, the Commission put in place considerable energy-specific regulation which applied to marketing conduct. This decision was made for two substantive reasons. Firstly, because the general consumer law did not deal with the particular marketing behaviour that potentially could impact negatively on the competitive energy market (for example, the *Fair Trading Act* did not regulate telemarketing at the time). Secondly, the general consumer law was not considered sufficiently robust to protect more vulnerable customers in an immature competitive energy market.

The AEMC assessment of the effectiveness of competition in the Victorian market has caused the Commission to review this regulation.

4.4.1 Marketing Code of Conduct

The Marketing Code sets out the pre-contractual rights and obligations of retailers and consumers.

(a) Duplication with *Fair Trading Act 1999*

The Marketing Code duplicates significant sections of the *Fair Trading Act 1999* (FTA). Retailers submitted that the duplication is unnecessary and that the Marketing Code of Conduct should be repealed.

Consumer groups disagreed with this assessment and submitted that the Marketing Code regulated areas of pre-contractual activity that were not addressed by the FTA, in particular, training and product knowledge, the maintenance of no contact lists for door-to-door marketing and the information required for explicit informed consent.

The Commission agrees that there is significant duplication in the regulation, which is now unnecessary. However, it also agrees with the consumer submissions that there are elements of the Marketing Code which facilitate good marketing behaviour in the Victorian energy market and there is not sufficient evidence that this behaviour will continue if the obligations are removed. The Commission also notes that, while the incidence of marketing complaints is very low compared to marketing activity, reported marketing issues increased by 52 per cent from 2005-06 to 2006-07.[17]

The Commission considers there is still a need for some level of energy-specific regulation in the area of marketing to ensure customers can effectively participate

[17] ESC, 2007, *Energy Retail Business: Comparative Performance Report 2006-07,* p.viii.

in the energy market. This regulation relates to training and product knowledge, the maintenance of no contact lists for door-to-door marketing and the information required for explicit informed consent. It is noted that the national framework proposes to include these obligations in the national rules.

However, the Commission proposes to repeal sections of the Marketing Code of Conduct that directly duplicate the FTA or are no longer considered necessary in this market. The specific details of the draft decision are shown in Appendix B.

(b) Rationalise consent and cooling-off provisions

The Marketing Code, the ERC and Guideline No 10 - Confidentiality and Explicit Informed Consent address customer's contractual consent and cooling-off period rights and obligations. The Commission agrees with Australian Power & Gas' submission that this duplication is unnecessary and potentially confusing.

The draft decision is that the obligations for both consent and cooling-off period will be referred to only in the Marketing Code of Conduct.

4.5 Confidentiality and Explicit Informed Consent Guideline

The Confidentiality and Explicit Informed Consent Guideline regulates the use and disclosure of customer information and explicit informed consent for contracts for the Victorian energy market.

Retailers submitted that this guideline should be repealed because the areas addressed by this guideline are adequately and appropriately regulated by legislation including the *Privacy Act 1988, Trade Practices Act 1974* and the FTA. EWOV supported that the guideline be repealed, primarily because the obligations could be incorporated into the ERC and the Marketing Code of Conduct.

The Commission supports these submissions. The draft decision is that only relevant regulation on informed consent will be retained and placed in the Marketing Code of Conduct.

Information which may be helpful to consumers and retailers, for example, the operation of the Privacy Act in regard to the use and disclosure of information, will be provided on the Commission's website as fact sheets.

4.6 Energy network regulation

Gas distribution economic regulation transferred to the AER on 1 July 2008 and electricity distribution economic regulation will transfer to that regulator on 1 January 2009. Technical and safety regulation will remain with the jurisdictional safety regulator (Energy Safe Victoria). Consequently, the Commission expects to have minimal functions in distribution regulation from 1 January 2009.

Therefore, the Commission has limited its regulatory review of distribution instruments to those that either have a distributor and retailer impact or will assist the energy market now if the instrument was significantly repealed. Given that the consideration of the AMI-related regulation and the Electricity Customer Transfer Code has been deferred until stage 2, this Draft Decision is concerned only with

two instruments, that is, the Electricity Customer Metering Code (ECMC) and Guideline No 12: Electricity Metering Reversion and Contract Termination.

4.6.1 Electricity Customer Metering Code

Historically, the ECMC regulated electricity metering matters that were not specified in the National Electricity Rules (NER) or the National Electricity Market Metrology Procedure (NEM Metrology Procedure) published by the National Electricity Market Management Company (NEMMCO).[18]

NEMMCO has implemented a programme to develop consistent technical requirements for both first tier and second tier metering in the national electricity market. As a result, technical metering requirements are generally covered by the NER and the NEM Metrology Procedures, and therefore should be removed from jurisdictional provisions to avoid duplication and inconsistency. However, for the immediate future, there is an ongoing need for jurisdictional provisions in the areas of obligations on customers (to enable enforcement) and the regulation of non-technical matters.

All Victorian distributors supported the simplification of the ECMC in line with the national harmonisation of metrology.

The Commission agrees with the distributors that the ECMC should not overlap the NER and the NEM Metrology Procedure. The Commission will remove from the ECMC technical and market issues that are contained in the NER and the NEM Metrology Procedure and will restructure the ECMC to combine the metering installation requirements for the first and second tier customers.

There were two specific issues arising from the submissions, which are briefly outlined below.

[18] From 1 January 2007, the National Electricity Market Metrology Procedure has been published and maintained by NEMMCO under clause 7.14 of the National Electricity Rules, available from http://www.nemmco.com.au/met_sett_sra/640-0106.html

Prior to 1 January 2007, the Commission was the Metrology Coordinator for Victoria under National Electricity Rule clause 7.2.1A(b).

(a) Access to meters

SP AusNet considered that the regulation needs to be strengthened to ensure access for meter reading purposes. However, the Commission notes that the ERC, which sets the contractual arrangements between retailers and customers for meter reading and access, addresses SP AusNet's concerns.

Therefore, the Commission considers that no amendment is required to the ECMC.

(b) Franchised unmetered load

SP AusNet submitted that the testing methodology for franchised unmetered loads has not been historically well defined in the Victorian Metrology Procedure, hence, the Commission should recognise distributors' traditional agreements with the retailers and customers on this matter.

While the National Metrology Procedure does not cover the testing of this type of load, the Commission considers that distributors should test all unmetered loads in accordance with the NEM Metrology Procedure to the extent possible.

To recognise that distributors may not be able to follow the NEM Metrology Procedure requirements for some franchised unmetered loads, it is proposed to amend the existing ECMC clause for the testing of unmetered load to: *Franchised unmetered loads Unless otherwise advised by the Commission, a distributor must conduct tests in respect of franchised unmetered loads in accordance with clauses 3.10 of the Metrology Procedure.*

4.6.2 Guideline No 12: Electricity Metering Reversion and Contract Termination

Guideline No 12: Electricity Metering Reversion and Contract Termination was published in late 2001 to allow those customers with usage between 40 and 160 MWh per annum the capacity to revert to a basic meter to access retail competition (where they had an interval meter for this purpose) after January 2002 and prior to 1 July 2002 and not suffer any contract termination fee. The guideline, which prevented a contract termination fee being charged therefore only applied for the period from January 2002 to 1 July 2002.

This guideline is now redundant and will be repealed.

4.7 Summary

The Commission's draft decision on all the obligations and regulatory instruments is shown in Attachment B. Attachment A shows the overview of regulatory instruments impacted by stage 1 of the Review.

5 NEXT STEPS

Consultation on this draft decision will occur during August and September 2008. The Commission intends to release its stage 1 final decision in early October 2008, together with the draft Energy Retail Code, Code of Conduct for Marketing Energy Retail in Victoria and the Electricity Customer Metering Code.

Consultation will be undertaken on the drafting of the amended codes during October and the final revised codes will take effect from 1 January 2009.

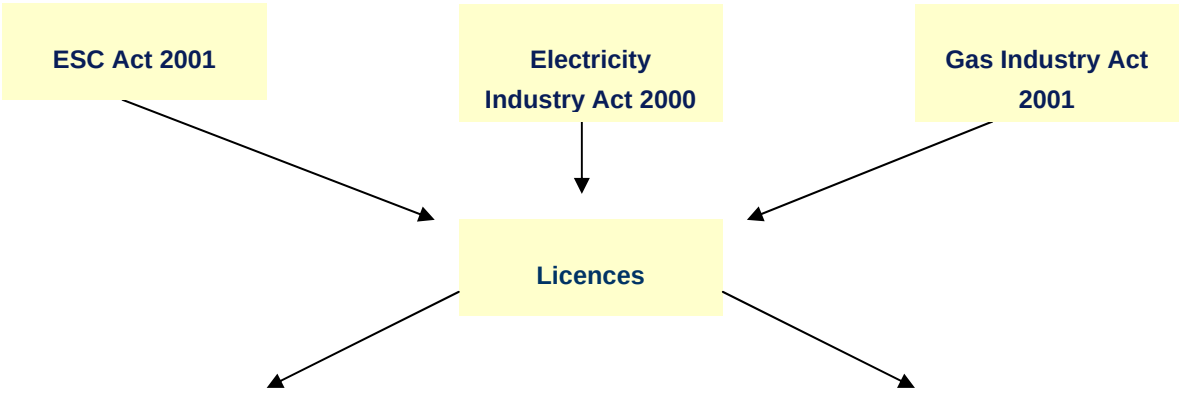
Stage 2 of this review will begin in September 2008 and is scheduled to be completed in March 2009. Stage 2 will address:

- Guideline No 19: Price Disclosure, specifically to take account of the Victorian Government's relevant amendments to the *Electricity Industry Act 2000* and the *Gas Industry Act 2001*.
- Interval metering billing, particularly to address the relevant ERC requirement to provide relevant information on a customer's bill to enable the customer to reconcile their billing periods.
- Electricity Customer Transfer Code, to remove duplication with the national customer transfer procedures
- Advanced Metering Infrastructure, to the extent necessary to assist the implementation of the Victorian Government's AMI policy
- Electricity System Code, which will be repealed.

APPENDIX A

Review of Victorian Energy Regulatory Instruments

Stage 1 – August 2008 – Current Framework



Retail:
•Retail Code
•Customer Transfer Code
•Marketing Code of Conduct

Distribution:
•Distribution Code
•Customer Metering Code
•Public Lighting Code

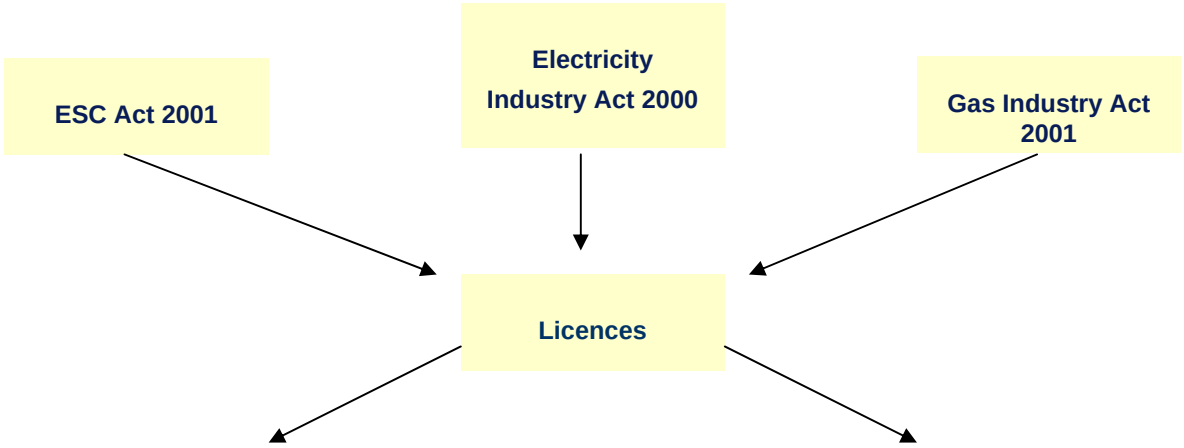
Generation/Transmission
•System Code

Retail:
•Guideline No 1: Gas Industry - Credit Assessment
•Guideline No 4: Electricity Industry – Credit Assessment
•Guideline No 8: Gas Industry – Operational and Compliance Audits
•Guideline No 9: Electricity Industry – Regulatory Audits of Retail Businesses
•Guideline No 10: Confidentiality & Explicit Informed Consent – Electricity & Gas
•Guideline No 13: Greenhouse Gas Disclosure on bills
•Guideline No 19: Energy Product Disclosure
•Guideline No 20: Bulk Hot Water Charging
•Guideline No 21: Energy Financial Hardship Policies Wrongful Disconnection Operating Procedure

Distribution:
•Guideline No 15: Electricity Industry – Connection of Embedded Generation
•Guideline No 18: Electricity Industry – Augmentation and Land Access
•Guideline No 17: Gas Industry – Regulatory Accounting Information Requirements
•Guideline No 14: Electricity Industry – Provision of Services by Electrical Distributors
•Guideline No 16: Energy Industry – Regulatory Audits of Distribution Businesses
•Guideline No 11: Voltage Variation Compensation
•Guideline No 12: Metering Reversion & Contract

Review of Victorian Energy Regulatory Instruments

Stage 1 – August 2008 – New Framework



Retail:
•Retail Code
•Customer Transfer Code
•Marketing Code of Conduct

Distribution:
•Distribution Code
•Customer Metering Code
•Public Lighting Code

Generation/Transmission:
•System Code

Retail:
•Guideline No 8: Energy Industry – Operational and Compliance Audits
•Guideline No 13: Greenhouse Gas Disclosure on bills
•Guideline No 19: Energy Product Disclosure
•Guideline No 21: Energy Financial Hardship Policies

Distribution:
•Guideline No 15: Electricity Industry – Connection of Embedded Generation
•Guideline No 18: Electricity Industry – Augmentation and Land Access
•Guideline No 17: Gas Industry – Regulatory Accounting Information Requirements
•Guideline No 14: Electricity Industry – Provision of Services by Electrical Distributors
•Guideline No 16: Energy Industry – Regulatory Audits of Distribution Businesses
•Guideline No 11: Voltage Variation Compensation
•Guideline No 12: Metering Reversion & Contract

APPENDIX B

ENERGY RETAIL CODE		
Existing Obligations	**Submissions**	**Draft Decision**
2. Retailer's obligation to connect	A retailer must connect a customer at the customer's supply address as soon as practicable after the customer applies for connection in accordance with clause 1. Without limiting clause 36.1, by no later than the next business day after the application is made or their energy contract commences to be effective (whichever occurs last), the retailer must make a request to the relevant distributor to connect the customer's supply address to the distributor's distribution system.	Simply Energy submitted that the drafting appeared to place an obligation on all retailers to connect	**Retain with minor redrafting**. The Commission clarify that the obligation to connect only applies if the retailer has agreed to offer a market contract or the obligation to supply applies. That is "If a retailer has an obligation to connect…'.
3.1 Retailer to issue bills 3.2 Billing cycles	A retailer must issue bills to a customer for energy consumed at the customer's supply address. .A retailer must issue a bill to a customer:* (a) in the case of an electricity contract, at least every three months; * (b) in the case of a gas contract, at least every two months; and(c) in the case of a dual fuel contract, at least as often as the retailer and the customer have agreed. That agreement is not effective unless the customer gives explicit informed consent.	Participants at the customer protection workshop considered clause 3.1 should be repealed and incorporated into clause 3.2.	**Collapse clauses 3.1 and 3.2.** That is, "A retailer must issue a bill to a customer for energy consumed at the customer's supply address…"
3.3 Bulk Hot Water charging	A retailer must issue bills to a customer for the charging of the energy used in the delivery of bulk hot water in accordance with the Commission's Energy Industry Guideline No 20 – Bulk Hot Water Charging.	AGL, Origin Energy and TRUenergy queried whether this clause is redundant given that pricing for small business customers has been deregulated.	**Retain and redraft to reflect repeal of Guideline No.20.** This clause deals with billing, not pricing.

ENERGY RETAIL CODE

Existing Obligations	Submissions	Draft Decision
4.2 Information	A retailer must include at least the following information in a customer's bill: ▪ the customer's name and account number, each relevant supply address and any relevant mailing address; ▪ each relevant assigned meter identifier and checksum or, if any case there is no assigned meter identifier, the customer's meter number or another unique identifying mark assigned to the customer's metering installation; ▪ the period covered by the bill; ▪ the relevant tariff or tariffs applicable to the customer; ▪ whether the bill is based on a meter reading or is wholly an estimated bill; ▪ whether the bill is based on any substituted data (consistent with the retailer's obligations under clauses 17.2 and 23.2 of the Electricity Customer Metering Code); ▪ the total amount of electricity (in kWh) or of gas (in MJ) or of both consumed in each period or class of period in respect of which a relevant tariff applies to the customer and, if a customer's meter measures and records consumption data only on an accumulation basis, the dates and total amounts of the immediately previous and current meter readings, estimates or	Clause 4.2 Australian Power & Gas recommended that clauses 4.2 (b), (e), (h)[19], (n), (o) (p) & (q) are retained and the remaining clauses are repealed. Distributor's name. 4.2(o) requires the retailer to ensure the distributor's fault line number is on the bill. SP AusNet submitted that the distributor's name should also be included. Retailers have raised concern regarding cost implications of the proposed amendment.	**Retain and amend clause 4.2(o). Refer consideration of clause 4.2(h) to stage 2 of the Review.** All the existing Victorian obligations for information on the bill (with the exception of 4.2(h)) are included in the proposed draft national framework. Therefore, no changes will be made to the existing obligations, with the following exceptions: 4.2(h) – this obligation applies to customers with interval meters. This will be addressed in stage 2 of the Review. 4.2(o) -The Commission proposes to amend clause 4.2(o) to require retailers to include the distributors' names on bills

[19] If under AMI, customer can reconcile consumption back to the meter.

	substitutes; ▪ if the retailer elects to include meter readings or accumulated energy usage from an interval meter on the bill, the meter readings or accumulated energy usage based on quantities read or collected from the corresponding meter accumulation register(s); ▪ if the retailer directly passes through a network charge to the customer, the separate amount of the network charge; ▪ for an electricity contract the amount payable for electricity and for a gas contract the amount payable for gas; ▪ the pay by date; ▪ the amount of arrears or credit and the amount of any refundable advance provided by the customer; ▪ *a summary of payment methods and payment arrangement options; ▪ if the customer is a domestic customer, details of the availability of concessions; ▪ a telephone number for billing and payment enquiries and a 24 hour contact telephone number for faults and emergencies; ▪ if the customer is a domestic customer, in relevant languages, details of interpreter services; and ▪ if the bill is a reminder notice, contact details for the retailer's complaint handling processes.		
4.3 Bundled charges	On request, a retailer must provide a customer with reasonable information on network charges, retail charges and any other charges relating to the sale or supply of	The Victorian retailers' experience is that customers rarely seek this information. Therefore, consideration	**Retain.**

ENERGY RETAIL CODE

Existing Obligations		Submissions	Draft Decision
	energy comprised in the amount payable under the customer's bill.	was given to removing the obligation. Participants at the customer protection workshop discussed whether the obligation may be valuable in resolving a customer dispute and whether there may be implications for AMI. The national framework proposes to retain this obligation.	The Commission will retain this obligation in light of proposed national framework.
4.5 Payments for electricity and gas	A retailer must apply a payment received from a customer to charges for the supply or sale of electricity and charges for the supply or sale of gas respectively as directed by the customer. If the customer gives no direction, the retailer must apply the payment in proportion to the relative value of those charges	The majority of participants at the small business workshop advocated for the repeal of this obligation for small business customers.	**Repeal for small business customers.**
4.6 Payments for other goods or services	If beyond the supply or sale of energy, a retailer supplies other goods or services to a customer, the retailer may bill for those other goods or services separately. If the retailer chooses not to bill separately, the retailer must: (a) include the charge for the other goods or services as a separate item in its bill, together with a description of the other goods or services supplied; and (b) apply payments received from the customer as directed by the customer or, if the customer gives no direction, apply	Generally retailers considered that small business customers do not require this regulation in the competitive market.	**Repeal for small business customers.**

	the payment to the charges for the supply or sale of energy before applying any part of it to the other goods or services.		
5.3 Bill smoothing	Despite clause 5.1, in respect of any 12 month period a retailer may provide a customer with estimated bills under a bill smoothing arrangement if and only if: (a) the following requirements are met: • the amount payable under each bill is initially the same and is set on the basis of the retailer's initial estimate of the amount of energy the customer will consume over the 12 month period; • that initial estimate is based on the customer's historical billing data or, where the retailer does not have that data, average consumption at the relevant tariff calculated over the 12 month period; • in the sixth month: o the retailer re-estimates the amount of energy the customer will consume over the 12 month period, taking into account any meter readings and relevant seasonal factors; and o if there is a difference between the initial estimate and the re-estimate of greater than 10%, the amount payable under each of the remaining bills in the 12 month period is to be re-set to reflect that difference; and	Simply Energy considers that the six month re-estimation is an unnecessary administrative burden that fails to account for seasonal variations. Simply Energy believes accounts should be able to be reconciled at the end of 12 months. The draft national framework requires re-estimation at six months; however this may be varied by agreement.	**Retain and simplify and enable variations for market contracts (*).** The reconciliation period will be 9 months to be consistent with the existing obligation for retailers only be able to recover up to 9 months if undercharging is due to a retailer's error (refer to clause 6.2).

	• at the end of the 12 month period, the meter is read and any undercharging or overcharging is adjusted for under clause 6.2 or 6.3; and (b) the retailer has obtained the customer's explicit informed consent to the retailer billing on that basis.		
5.6 Unmetered supplies for electricity	Despite clause 5.1, if there is no electricity meter in respect of the customer's supply address, the retailer must base the customer's bill on energy data which is calculated in accordance with applicable regulatory instruments.	AGL, Origin Energy and TRUenergy consider that this obligation should not apply to small business customers	**Retain and amend in accordance with the proposed amendments to the ECMC.**
6.2 Undercharging	If a retailer has undercharged or not charged a customer, whether this becomes evident as a result of a review under clause 6.1 or otherwise, the retailer may recover the amount undercharged from the customer but, in doing so, the retailer must: (a) limit the amount to be recovered as follows: • if the undercharging results from a failure of the retailer's billing systems, the retailer may recover no more than the amount undercharged in the 9 months prior to the date on which the retailer notifies the customer that undercharging has occurred. To avoid doubt, a retailer's billing system fails if the retailer does not receive relevant billing data from a distributor, no matter whether it is the retailer or the distributor at fault	Undercharging – retailer/distributor fault Simply Energy stated that the recovery period should be extended from 9 to 12 months. EWOV considers the undercharging clause should be rewritten to read "… unless the undercharging arises as a result of meter access being repeatedly blocked, or unlawful action, by the current account holder". The Queensland model provide for a maximum of 12 months. The draft National framework similarly provide for a recovery period of 12	**Retain and redraft to reflect more directly the proposed national approach.** • retain the 9 months obligation if the reason for the undercharging is directly related to the retailers' billing problems • apply a 12 month limitation for all other reasons • provide that no limitation applies, if the undercharging arises as a result of meter access being blocked, or unlawful action, by the customer.

	in respect of that failure; and • otherwise, the retailer may recover no more than the amount undercharged in the 12 months prior to that date. To the extent necessary, the amount undercharged is to be calculated in proportion to relevant periods between dates on which the customer's meter has been read; o list the amount to be recovered as a separate item in a special bill or in the customer's next bill together with an explanation of the amount; o not charge the customer interest on the amount undercharged; and o offer the customer time to pay the amount undercharged in a payment arrangement covering a period at least equal to the period over which the recoverable undercharging occurred.	months 'Failure of the retailer's billing systems' Simply Energy considers that a retailer's billing systems has not failed where incorrect meter data has been provided to it, or where no data has been provided to it.	
6.3 Overcharging	Where a retailer has overcharged a customer, whether this becomes evident as a result of a review under clause 6.1 or otherwise, the retailer must inform the customer within 10 business days of the retailer becoming aware of the error and repay the amount in accordance with the customer's reasonable instructions or, if no reasonable	Two retailers submitted to amend this clause, seeking to replace 10 business days with ASAP and not require the retailer act in accordance with the customer's reasonable instructions where the overcharged amount is a	**Retain and redraft to reflect more directly the proposed national approach.** "A retailer must promptly inform the customer within 10 business days of becoming aware of an overcharge that exceeds the relevant threshold amount and must repay any amount

ENERGY RETAIL CODE			
Existing Obligations		**Submissions**	**Draft Decision**
	instructions are given, by crediting the amount on the customer's next bill.	small amount and bit a final bill. Queensland model requires retailers to notify customers of overcharging within 10 business days. Further provides crediting the overcharged amount as the default arrangement. The draft national framework provides that the retailer must notify the customer of an overcharged amount within 10 business days, when it exceeds the threshold amount of $50.	overcharged. If the amount overcharged is less than the threshold amount, the retailer must credit that amount to the next bill. If the amount overcharged exceeds the relevant threshold, the retailer must credit the customer's next bill unless otherwise directed by the customer." The proposed threshold amount is $50.
7.2 (b) Payment methods (Direct Debit)	Clause 7.2 (b) prescribes key terms which the customer and retailer must agree on in writing before a direct debit arrangement is established.	General agreement from stakeholders to amend the ERC to enable verbal consent to direct debit arrangements.	**Repeal the regulation to require direct debit arrangements in writing.** The obligation will be amended to enable direct debit arrangements by phone, rather than just in writing, which provides considerably more flexibility to the retailers. The obligations which are consistent with the proposed national framework will be retained.
7.4 Late Payment Fees	Clause 7.4 details when a retailer may charge or waive a late payment fee for a customer.	AGL, Origin Energy and TRUenergy consider regulation on late payment fees for small business customers	**Repeal redundant regulation** Clauses 7.4(b) – (d) proscribe the imposition

Existing Obligations		Submissions	Draft Decision
		should be fair and reasonable.	of late payment fees by retailers under certain circumstances. The Victorian Government legislated that late payment fees cannot be imposed on small retail customers, which are the customers the regulation was intended to protect. Therefore, the regulation is largely redundant. However, where late payment fees are allowed to be imposed, the requirement for fair and reasonable fees will be retained. Retain obligation that: 7.4. The amount of any late payment fee must be fair and reasonable having regard to related costs incurred by the retailer
7.5 Fees and charges for dishonoured payments and merchant service fees	(a) If a customer pays the retailer's bill and through fault of the customer the payment is dishonoured or reversed, resulting in the retailer incurring a fee, the retailer may recover the fee from the customer. An amount may also be payable by the customer under an agreed damages term. (b) If a customer pays the retailer's bill using a method which results in the retailer incurring a merchant service fee, the retailer may only recover the amount of that fee from the customer if their energy contract is a market contract.	The majority of participants at the small business workshop advocated for the repeal of this obligation for small business customers.	**Repeal for small business customers.**
7.6 Vacating a	Clause 7.6 requires customers to notify their retailer of the date of their departure from their supply address. This clause seeks to ensure customers are not held liable for	There were no stakeholder submissions on this regulation.	**Retain and simplify**

supply address	energy they did not consume.		The Commission considers the drafting of the obligation is cumbersome and therefore intends to simplify the regulation.
8.1 Refundable advances – Domestic customers	(a) A retailer may only require a domestic customer to provide a refundable advance if: • the customer has left a previous supply address or has transferred to the retailer and still owes the retailer or former retailer more than an amount the Commission nominates in any relevant guideline; • within the previous two years the customer has used energy otherwise than in accordance with applicable laws and codes; • the customer is a new customer and has refused to provide acceptable identification; or • the retailer decides the customer has an unsatisfactory credit rating, but only if the retailer has first offered the customer an instalment plan and the customer has not accepted the offer.	There were no stakeholder submissions on this regulation	**Include relevant regulation from Guideline Nos 1 and 4, which are to be repealed.** Include the following obligations: A retailer may only require a domestic customer to provide a refundable advance if: • the customer has left a previous supply address or has transferred to the retailer and still owes the retailer or former retailer more than $120. • within the previous two years the customer has used energy otherwise than in accordance with applicable laws and codes; • the customer is a new customer and has refused to provide acceptable identification; or • the retailer decides the customer has an unsatisfactory credit rating, but only if the retailer has first offered the customer an instalment plan and the customer has not accepted the offer. Despite clause xxx, a retailer must not require a domestic customer to provide a refundable

ENERGY RETAIL CODE

Existing Obligations	Submissions	Draft Decision
		advance if the retailer's decision that that customer's credit rating is unsatisfactory is based on a relevant default: (a) where the domestic customer has made a complaint in good faith about the relevant default and the complaint has not been resolved; (b) relating to that portion of an electricity bill which the domestic customer has requested the relevant retailer to review; or (c) relating to an electricity bill where: • the retailer has not undertaken an assessment of, or provided assistance to, the domestic customer as contemplated by clause 11.2 of the Code; or • in respect of the electricity bill, the domestic customer has formally applied for a Utility Relief Grant and a decision on the application has not been made. Unsatisfactory credit rating will be defined in the ERC and will include the following: Where a domestic customer 1. Has failed within the past five years to pay a bill for the domestic customer's

ENERGY RETAIL CODE		
Existing Obligations	**Submissions**	**Draft Decision**
		water, electricity or gas consumption, where: (i) the amount outstanding is or is more than $120 (ii) the payment is at least 60 calendar days[20] overdue; and (iii) the water, electricity or gas provider has taken steps to recover the whole or any part of the amount of credit outstanding. 2. has had a court judgment within the past five years in relation to a debt 3. where a bankruptcy order against the domestic customer has not been discharged Amount outstanding will be defined as: An amount is not overdue in respect of an electricity or gas bill on the pay by date included in the bill if the retailer offers, or the domestic customer and the retailer enter into an arrangement, for the domestic customer to pay the amount or an instalment on a new

[20] The period is expressed in calendar days so as to accord with section 18(b)(vi) of the *Privacy Act 1988*.

ENERGY RETAIL CODE

Existing Obligations		Submissions	Draft Decision
			date later than the pay by date. If the amount or the instalment is not paid by the new date then whether the amount or the instalment is overdue is to be determined from the new date.
8.2 Business customers	A retailer may only require a business customer to provide a refundable advance if the business customer does not have a satisfactory energy account payment record or the retailer decides the customer has an unsatisfactory credit rating.	Participants at the small business workshop discussed whether there should be regulation of refundable advances for small business customers and in particular, whether a fair and reasonable approach should be applied.	**Redraft obligation to allow more flexibility for retailers, but that advances must be fair and reasonable**
8.3 Credit management guideline	In making decisions about a customer's credit rating and in dealing with credit management issues generally, a retailer must comply with any relevant guideline.	AGL, Origin Energy and TRUenergy considered that the requirements of the Electricity and Gas Credit Assessment Guidelines were duplicated by other regulation and legislation.	**Repeal.**
9.3 Transitional provision for gas	For gas, references to reminder notices and disconnection warnings in clause 9.1 are to reminder notices and disconnection warnings given to a customer both: (a) after the FRC date (as defined in the Retail Rules); and (b) after notice of an intention to invoke shortened collection cycles for applicable customers has been given generally on bills for all customers in three consecutive	Participants at the small business workshop had the view that this clause was redundant and should be repealed.	**Repeal.** This obligation was intended as a transitional provision to full retail competition and is now redundant.

Existing Obligations		Submissions	Draft Decision
	billing cycles and in customer charters distributed during and after those cycles by the retailer.		
10.2 Former franchise customers	(a) An electricity customer who was a franchise customer on 31 December 2000 and on a monthly billing cycle continues on and from that date with the same billing cycle terms until such time as the deemed contract between the customer and a retailer which commenced on 1 January 2001 terminates. (b) A gas customer who was a franchise customer on 31 August 2001 and on a monthly or two month billing cycle continues on and from that date with the same billing cycle terms until such time as the deemed contract between the customer and a retailer which commenced on 1 September 2001 terminates.	There were no stakeholder submissions	**Repeal.** This obligation was intended as a transitional provision to full retail competition and is now redundant.
12.2 Requirements for instalment plans	A retailer offering an instalment plan must (amongst other obligations):… (d) provide the customer with energy efficiency advice and advice on the availability of an independent financial counsellor.	For a customer seeking an instalment plan out of convenience, Simply Energy believes it is inappropriate to provide that customer with energy efficiency advice or information relating to a financial counsellor.	**Repeal.** There are other obligations in the ERC which require retailers to provide relevant customers with this advice. It is agreed that the obligation in this clause is unnecessary.

ENERGY RETAIL CODE

Existing Obligations		Submissions	Draft Decision
12.3 Business customers (Instalment Plans)	A retailer must consider any reasonable request from a business customer for, and may impose an additional retail charge on the business customer if they enter into, an instalment plan.	VECCI submitted that access to flexible payment options is important for small business customers who can experience fluctuating cash-flow positions. AGL, Origin Energy and TRUenergy considered that the removal of this clause will not impact on the accessibility of plans.	**Retain.** The current Victorian approach is consistent with the proposed national approach (that is, that the obligation is discretionary). Therefore, retaining the clause for the present is proposed, particularly as it allows for retailers to charge a small business customer for such an arrangement on a default contract.
13.3 Denying access to the meter	A retailer may disconnect a customer if, due to acts or omissions on the part of the customer, the customer's meter is not accessible for the purpose of a reading for three consecutive bills in the customer's billing cycle but only if: (a) the retailer or the relevant meter reader has: used its best endeavours, including by way of contacting the customer in person or by telephone, to give the customer an opportunity to offer reasonable access arrangements; each time the customer's meter is not accessible, given or ensured the retailer's representative has given the customer a	Australian Power & Gas submitted that the minimum time a meter is not accessible that could lead to disconnection, should not exceed the final revised settlement timeframe in the wholesale market which is 30 weeks. Australian Power & Gas seek to do this so they can input final data within this 30 week period.	**Retain.** Current time period is consistent with draft national framework.

	notice requesting access to the customer's meter; and given the customer a disconnection warning including a statement that the retailer may disconnect the customer on a day no sooner than seven business days after the date of receipt of the notice; and (b) due to acts or omissions on the part of the customer, the customer's meter continues not to be accessible.		
13.4 Refusal to provide acceptable ID or refundable advance	A retailer may disconnect a customer if the customer refuses when required to provide acceptable identification (if the customer is a new customer of the retailer) or a refundable advance but only if: (a) the retailer has given the customer a disconnection warning including a statement that the retailer may disconnect the customer on a day no sooner than 10 business days after the date of receipt of the notice; and (b) the customer has continued not to provide the acceptable identification or the refundable advance.	Australian Power & Gas submitted that the classification of a new customer should be clarified.	**Retain.** The proposed national approach is that the retailers do not have to connect a customer if they do not provide acceptable identification. This is significantly different to the current Victorian regulation, which requires retailers to connect and then disconnect if acceptable identification is not provided. In light of this, it is proposed to retain the obligation in the Victorian jurisdiction.
14 (a). No disconnection	Despite clause 13, a retailer must not disconnect a customer:	Simply Energy proposed that this clause should not apply to small	**Partially repeal for small business customers**.

	(a) for non-payment of a bill: i. where the amount payable is less than any amount approved by the Commission for this purpose in a relevant guideline; ii. if the customer has made a complaint directly related to the non-payment of the bill, to the Energy and Water Ombudsman Victoria or another external dispute resolution body and the complaint remains unresolved; iii. if the customer has formally applied for a Utility Relief Grant and a decision on the application has not been made; or iv. if the only charge the customer has not paid is a charge not for the supply or sale of energy;	business customers at all.	It is agreed that (a)(i) should not apply to small business customers as the relevant amount is likely to be much less than their account, and that (a)(iii) would not apply in any event. However, (a) (ii) must be retained as this is a broader right for consumers. It is understood that a(iv) is intended to be retained in the national framework. The obligations therefore will be redrafted to apply differently to residential and small business customers.
16 (b). No limitation of liability	(b) Clause 16(a) does not prevent the inclusion of a term or condition in an energy contract: of the sort contemplated by section 68A of the Trade Practices Act 1974 (Cth) or section 97 of the Goods Act 1958 or any other similar statutory provision;	There were no stakeholder submissions	**Editorial** Delete 'S97 of the Goods Act 1958' no longer applies.

ENERGY RETAIL CODE

Existing Obligations	Submissions	Draft Decision
19.1 No inconsistency with the Code If a retailer and a customer agree to: (a) a term or condition to be included in a new energy contract; or (b) a new term or condition in addition to the terms and conditions of their existing energy contract or instead of one of those terms and conditions, and the agreed term or condition is inconsistent with a term or condition set out in this Code marked with an asterisk (*), their agreement is effective, and is deemed to result in a term or condition which is not inconsistent with this Code, only if and from when the customer has given explicit informed consent.[21]	There were no stakeholder submissions.	**Repeal from ERC and include in Marketing Code.** This obligation is more appropriately placed in the Marketing Code as it applies to pre-contractual arrangements
19.2 Creation of a new market contract If a retailer and a customer have: (a) an existing deemed contract; or (b) an existing energy contract which resulted from the acceptance by the customer of the retailer's	There were no stakeholder submissions	**Repeal (explicit informed consent) from ERC and refer in Marketing Code.** Elements which deal with explicit informed consent are pre-contractual and will be placed

[21] A list of asterisked (*) terms and conditions appears in appendix 1.

ENERGY RETAIL CODE

Existing Obligations	Submissions	Draft Decision
relevant standing offer, and: (1) they agree to a new term or condition in addition to the terms and conditions of their existing energy contract or instead of one of those terms and conditions; and (2) the new term or condition is inconsistent with a term or condition set out in this Code marked with an asterisk (*) and the customer has given explicit informed consent, their existing energy contract terminates and they enter into a new market contract on new terms and conditions including the inconsistent term or condition.		in the Marketing Code. **Retain elements which deal with the inclusion of a varied provision in an existing deemed and standing offer contracts.**
19.3 Quarterly billing cycles for gas contracts	Despite clauses 3.2(b) and 19.2, if in the case of a gas contract a retailer and a customer agree that the retailer must issue a bill to the customer at least every three months, rather than at least every two months, their existing gas contract does not terminate and they do not enter into a new market contract.	There were no stakeholder submissions	**Repeal.** This obligation was intended as a transitional provision to full retail competition and is now redundant.
20. Variation requirements	(a) The tariff and any terms and conditions of an energy contract between a customer and a retailer may only be	CALC considered that this clause	**Redraft to increase clarity of obligation.**

customer's agreement	varied by agreement in writing between the customer and the retailer.[22] (b) For the avoidance of doubt, if the amount of the tariff changes in accordance with some term or condition of an energy contract previously agreed between the customer and the retailer, no further agreement is required.	provided for unfair contract terms. Simply Energy considered a price variation would not be unfair where the customer is given sufficient notice and is entitled to terminate without penalty.	
21.1 Gazetted tariffs and gazetted terms and conditions	This clause provides that customer agreement is not required for the variation of terms and conditions under a standing offer contract that are contemplated by legislation.	Simply Energy stated that this clause will need to be reviewed upon legislative change. AGL, Origin Energy and TRUenergy stated that this clause is now redundant for small business.	**Review in Stage 2.** The obligations will be impacted by amendments to the EIA & GIA (late 2008) – review in Stage 2 of the review.
22.1Commencement	(a) A retailer and a customer may agree on a date when their energy contract commences to be effective. (b) Despite clause 22.1(a): • before the customer has given explicit informed consent.if the energy contract is to include a term or	There were no stakeholder submissions	**Repeal.** Provisions appear to imply a customer can vary a standard contract by explicit informed consent. This is not intended.

[22] In the case of the variation of some terms and conditions of an ***energy contract***, the ***customer's explicit informed consent*** may also be required if an agreement between the ***customer*** and the ***retailer*** to vary the term or condition is to be effective. See clauses 5.1 and 10.1 and the list of asterisked (*) terms and conditions in appendix 1.

	condition which is inconsistent with a term or condition set out in this Code marked with an asterisk (*); • the energy contract is a market contract; or • if the customer is transferring from another retailer (with whom the customer had an energy contract for the relevant supply address) to the retailer, the energy contract is not made and therefore cannot commence to be effective before the customer has given explicit informed consent.		
23.1 Customer's right to cancel an energy contract	(a) Beyond any right a customer may have to cancel an energy contract under the FT Act, the customer may cancel the energy contract if the energy contract is a market contract or arises from the acceptance of a standing offer. (b) Unless the customer has a longer cancellation period under the FT Act, to cancel an energy contract a customer must give a cancellation notice to the retailer within: • if the energy contract is for electricity and it is an energisation contract or it is for gas and is in respect of a supply point which requires only unplugging or installation of a meter to allow the flow of gas, 5 business days from and including the relevant date; and	Simply Energy believes clause 23 is duplicated by the Fair Trading Act 1999. Australian Power & Gas asserted that this clause is duplicated by the Marketing Code.	**Repeal from ERC and refer to Marketing Code.** The *Fair Trading Act 1999* does not provide coverage for all contracts.

ENERGY RETAIL CODE

Existing Obligations		Submissions	Draft Decision
	• otherwise, 10 business days from and including the relevant date.		
23.2 No right to cancel deemed contract	No right to cancel deemed contracts A customer has no right under this Code to cancel a deemed contract.	No stakeholder submissions.	**Repeal** Repeal of this clause would not impact customers as clause 23.2 does not confer any rights on customers.
23.3 Effect of cancellation	Effect of cancellation Appendix 2 applies in respect of the cancellation of an energy contract which is neither a door-to-door agreement nor a non-contact sales agreement.	AP&G considers this clause is duplicated in the Marketing Code.	**Repeal from ERC and refer to Marketing Code.** This clause will be consolidated as part of the cooling-off provisions in the Marketing Code.
23. 4 Documenting energy contracts and customers' cancellation rights	On or before the second business day after the relevant date in respect of their energy contract, a retailer must give a customer: • a copy of the energy contract or other document evidencing the energy contract which sets out the tariff and all of the terms and conditions of the energy contract including: • the total consideration to be paid or provided by the	Australian Power & Gas stated that this clause duplicated provisions in the Marketing Code.	**Repeal from ERC and refer to Marketing Code.** The Fair Trading Act 1999 does not provide coverage for all contracts.

	customer under the energy contract or, if the total consideration is not ascertainable at the time the energy contract is entered into, the manner in which it is to be calculated; and • any additional retail charges or other charges or fees to be paid by the customer or which the customer may become liable to pay, including any payable on cancellation. The retailer must comply with any relevant guideline in preparing this document; and • if the customer has a right to cancel the energy contract, a notice advising the customer of the customer's right to cancel the energy contract, accompanied by a further form of notice which sets out the name and address of the retailer and the date and details of the energy contract which may be used by the customer to cancel the energy contract. A retailer will be taken to have given the document and notices required by clause 23.4(a) on the second business day after the relevant date if by then the retailer has posted the document and notices to the energy customer.		
26.2 Retailer's charter	This clause requires retailers to provide its customers with a copy of its charter, which is to include details of the customer's rights, entitlements and obligations.	Australian Power & Gas stated that this obligation is inconsistent with other jurisdiction and the requirement to provide periodic bill messages appears excessive.	**Retain.** This clause addresses a necessary obligation regarding information of the rights and entitlements of customers.

ENERGY RETAIL CODE

Existing Obligations		Submissions	Draft Decision
26.6 Energy efficiency advice	On request, a retailer must provide energy efficiency advice to a customer.	Participants at the workshop considered that this obligation could be repealed for small business customers, noting the availability of energy efficiency advice.	**Repeal for small business customers.**
28.1 Complaint handling	A retailer must handle a complaint by a customer in accordance with the relevant Australian Standard on Complaints Handling or the 'Benchmark for Industry Based Customer Dispute Resolution Schemes' published by the Department of Industry, Tourism and Resources (Cth). The retailer must include information on its complain handling processes in the retailer's charter.	There were no stakeholder submissions	**Editorial.** References in clause to be updated.
29. Privacy and Confidentiality	A retailer must comply with any condition of its retail licence, and with any relevant guideline, concerning the use or disclosure of personal information about a customer.	There were no stakeholder submissions	**Repeal.** This is not a contractual matter and therefore will be repealed from the ERC.

CODE OF CONDUCT FOR MARKETING RETAIL ENERGY IN VICTORIA

Existing Obligations		Submissions	Draft Decision
Code in general	Marketing Code of Conduct	AGL, Origin Energy, TRUenergy and the ERAA asserted that the MCC duplicates legislation including the *Fair Trading Act 1999* and *Trade Practices Act 1974*. The consumer groups disagreed.	**Retain.** The Marketing Code is a necessary consumer protection which will benefit from review and simplification, but repeal is not warranted.
4.1 Training	Clauses 4.1 provides for the training of retailers' marketing representatives.	There were no stakeholder submissions received.	**Retain and simplify.** This clause will be retained because it is not included in the *Fair Trading Act 1999.*
4.2 Product and Code knowledge	Clause 4.2 prescribes what retailers should include as part of their training and testing of their marketing representatives.	Some stakeholders considered the regulation should be focussed on outcomes, not inputs.	**Remove duplication.** Remove clauses which duplicate the *Fair Trading Act 1999* and *Trade Practices Act 1974.*
4.3 Training Records	Clause 4.3 requires retailers to maintain and make accessible training manuals and records. Further, that they shall be made available for independent audit as required.	There were no stakeholder submissions received.	**Retain and simplify.** This clause will be retained because it is not included in the *Fair Trading Act 1999.*
5.1 Contact Hours	Clause 5.1 prescribes the times when retailers must not contact a consumer at the consumer's home for the purpose of marketing**.**	No stakeholder submissions.	**Repeal.** The obligations duplicate the *Fair Trading Act 1999.*
5.2 Personal	Clause 5.2 prescribes what a marketing representative must do when they are undertaking negotiations in person and in the presence of a	EWOV submitted that marketing representatives should be obliged to state	**Repeal the elements of clause 5.2 which address the presence of marketing representatives on**

Existing Obligations		Submissions	Draft Decision
contact	consumer which may lead to a contract for the sale of energy or related purpose and is not being carried out at the retailer's business premises.	the purpose of their visit at the start of any door to door sales visit.	**customers' premises.** These elements are duplicated by the *Fair Trading Act 1999*. **The requirements regarding identification of marketing representatives will be redrafted to reflect the draft national framework.**
5.3 Telephone contact	Clause 5.3 provides what a marketing representative must do when they are conducting negotiations with a consumer on the telephone which may lead to a consumer entering a contract or for a related purpose.	The competitive market workshop considered whether this clause should be retained. As part of this discussion, participants considered the scope of this regulation and in particular, door knocking.	**Repeal bullet point 1.** Duplicated in s 67B of the *Fair Trading Act 1999*. **Repeal the fourth sub-bullet point of bullet point 2** Requires what is usual business practice. **Retain remaining clauses.** These clauses provide a higher level of protection to consumers than the *Fair Trading Act 1999* and are considered necessary to retain
5.4 No contact lists	Clause 5.4 requires retailers to maintain a record of consumers who do not wish to be contacted for marketing purposes.	Some participants at the competitive market workshop questioned whether this clause should continue to exist, considering there is a 'do not call' register.	**Retain and redraft for simplicity.** This protection applies specifically to 'do not call' for door-knocking purposes.

CODE OF CONDUCT FOR MARKETING RETAIL ENERGY IN VICTORIA

Existing Obligations		Submissions	Draft Decision
5.5 Visit records	Clause 5.5 requires retailers to maintain marketing records which include information relating to personal visits made by marketing representatives.	At the competitive market workshop, EWOV believed this obligation assisted with the resolution of complaints.	**Retain.** Considered a necessary protection for both retailers and consumers.
5.6 Telephone records	Clause 5.6 requires retailers to maintain marketing records in relation to telephone contacts made by marketing representatives with consumers.	No stakeholder submissions received	**Retain and simplify**
6.2 Conduct	Clause 6.2 regulates the marketing conduct of retailers.	At the competitive market workshop participants discussed whether this clause duplicates the *Fair Trading Act 1999*	**Repeal** Obligations provided by *Fair Trading Act 1999* and retail licences.
6.3 Contract Information	Clause 6.3 prescribes the information that a retailer must give the consumers before the consumer enters into a contract.	At the competitive market workshop, participants discussed whether this clause should be retained.	**Rename clause to 'Pre-contractual information'.** Clause to be renamed to reflect more appropriately reflect the purpose of clause. **Repeal bullet points 2 to 4** These are addressed by the *Fair Trading Act 1999.* **Retain remaining bullet points** These issues are not addressed by the *Fair Trading Act 1999* and are considered necessary to retain in

CODE OF CONDUCT FOR MARKETING RETAIL ENERGY IN VICTORIA

Existing Obligations		Submissions	Draft Decision
			this market
7.1 Consumer transfer	Clause 7.1 deals with consumer consent to retailer transfer.	No stakeholder submissions received.	**Retain and simplify** This clause will be simplified to include the consent requirements for the incorporation of varied provisions into energy contracts (clauses 19.1 and 19.2 of the ERC).
7.2 Consent audit – audit process	Clause 7.2 prescribes the retailer's audit process which seeks to ensure customers understand that they have entered and consented to the contract and is aware of their cooling-off period.	No stakeholder submissions received.	**Repeal.** This obligation is more appropriately placed in the Commission's Audit Guidelines.
7.3 Consent audit - records	Clause 7.3 requires retailers to maintain records of their consent audit	No stakeholder submissions received.	**Repeal** This obligation is more appropriately placed in the Commission's Compliance Policy Statement.
7.4 Sales to minors and 'authorised' consumers	Clause 7.4 seeks to ensure that the consumer who enters into the contract is authorised to do so.	No stakeholder submissions received.	**Repeal.** This obligation is more appropriately placed in the Commission's Compliance Policy Statement.
8. Commencement of Retail Services	Clause 8 provides for retailer communication to consumers regarding the commencement of retail service to the supply address.	No stakeholder submissions received.	**Retain.** This clause relates to provision of information regarding a customer's connection of service.
11. Definitions		No stakeholder submissions received.	**To be completed on conclusion of review.**

CODE OF CONDUCT FOR MARKETING RETAIL ENERGY IN VICTORIA

Existing Obligations	Submissions	Draft Decision

Guideline No 1: Gas Industry – Credit Assessment
Guideline No 4: Electricity Industry – Credit Assessment

Existing Provision		Issue	Draft Decision
There were no stakeholder submissions on these guidelines. The Commission reviewed the provisions for relevancy and necessary regulation.			**Repeal.** The guidelines will be repealed and the necessary regulation incorporated in the ERC or other relevant regulatory instrument as set out below.
2.1 Relevant defaults	Meaning of relevant default A relevant default in respect of a domestic customer means: (a) default: a failure by the domestic customer within the past five years to pay a bill for the domestic customer's water, electricity or gas consumption, where: (1) the amount outstanding is or is more than the amount specified in item A of the schedule; (2) the payment is at least 60 calendar days[23] overdue; and (3) the water, electricity or gas provider has taken steps to recover the whole or any part of the amount of credit outstanding.	This regulation supplements the regulation in the ERC, and sets out what debt defaults the retailers can take into account when considering a refundable advance (or security deposit) on customers.	**Repeal (b) and (e).** **Include remaining regulation in Clause 8.1 ERC.**
	(b) address vacated without notice:[24] a failure by a domestic customer to give a retailer notice of the date on which the domestic customer intends to vacate their supply address and a forwarding address to which a final bill may be sent, where: ▪ that failure continues for at least 10 business days after the date the final bill		

[23] The period is expressed in calendar days so as to accord with section 18(b)(vi) of the *Privacy Act 1988*.

[24] This clause reflects what constitutes a "serious credit infringement" under section 18E 1(b)(x) of the *Privacy Act 1988*.

Existing Provision	Issue	Draft Decision
for the vacated supply address is issued;[25] and ▪ the domestic customer has not paid the final bill within 10 business days after the date the final bill for the vacated supply address is issued. (c) court judgment: a court judgment within the past five years against the domestic customer in relation to a debt; (d) bankruptcy: the bankruptcy of the domestic customer where the bankruptcy order against the domestic customer has not been discharged; or (e) dishonoured cheque: a cheque provided by the domestic consumer in payment of a bill for their water, electricity or gas consumption for an amount not less than the amount specified in item A of the schedule has twice been presented and dishonoured and the second dishonouring of the cheque occurred within the past five years.		
2.1 Definition of 'Amount Outstanding'	An amount is not overdue in respect of an electricity bill on the pay by date included in the bill if the retailer offers, or the domestic customer and the retailer enter into an agreement or arrangement, for the domestic customer to pay the amount or an instalment on a new date later than the pay by date. If the amount or the instalment is not paid by the new date then whether the amount or the instalment is overdue is to be determined from the new date.	Definition links with 2(a)(1) above	**Include in Definitions of the ERC.**
3.2 Domestic customer dealing with the	Despite clause 3.1, a retailer must not require a domestic customer to provide a refundable advance if the retailer's decision that that customer's credit rating is	This regulation which supplements the regulation in the ERC, and sets out when a refundable advance cannot be required.	**Include in clause 8 of the ERC**

[25] If a ***domestic customer*** notifies the retailer within 10 business days but does not pay the ***final bill*** within this time because of an incapacity to pay, the ***retailer*** must act in accordance with clause 11.2 of the ***Electricity Retail Code***.

Existing Provision		Issue	Draft Decision
relevant default	unsatisfactory is based on a relevant default: (a) where the domestic customer has made a complaint in good faith about the relevant default and the complaint has not been resolved; (b) relating to that portion of an electricity bill which the domestic customer has requested the relevant retailer to review; or (c) relating to an electricity bill where: • the retailer has not undertaken an assessment of, or provided assistance to, the domestic customer as contemplated by clause 11.2 of the Code; or • in respect of the electricity bill, the domestic customer has formally applied for a Utility Relief Grant and a decision on the application has not been made.		
4 Information about an unsatisfactory credit rating	If a retailer requires a refundable advance from a customer because it has decided that the customer has an unsatisfactory credit rating, the retailer must inform the customer: (a) that the retailer has decided that the customer has an unsatisfactory credit rating; (b) the reasons for the decision under clause 2.1; of their rights to raise a complaint in accordance with clause 28.2 of the Electricity Retail Code; (c) if the decision: ▪ was based wholly or partly on information provided by a credit reporting agency, the name and address and telephone number of the credit reporting agency and that the customer has the right to obtain access to the credit		**Repeal because covered by S18M of the *Privacy Act 1988*, with the exception of (c.)**

Existing Provision		Issue	Draft Decision
	information file maintained by the credit reporting agency; and ▪ was based wholly or partly on information in the possession, custody or control of the retailer, that that is so and that the customer has the right to obtain relevant details of the information.		
5. Complaints about an unsatisfactory credit rating	5.1 A customer may make a complaint about a matter dealt with in this guideline to a retailer, which must handle the complaint in accordance with clause 28 of the Code. 5.2 The EWOV Charter sets out its functions in receiving, investigating and facilitating the resolution of billing disputes and the administration of credit and payment services. EWOV may consider any complaint made by a customer in relation to a matter dealt with in this guideline.	A customer's right to make a complaint about any retail matter is already contained in the ERC. The obligations on the retailer to advise about EWOV are also codified.	**Repeal.**
6. Reporting of defaults to a credit reporting agency	6.1 A retailer may only provide information about a relevant default by a domestic customer to a credit reporting agency if the relevant default relates to an electricity (or gas) bill issued by that retailer. If a domestic customer remedies the relevant default the retailer must inform the credit reporting agency immediately of that fact.	A retailer would only be aware of non-payment of energy bills. Therefore, regulating that a retailer can only report on energy defaults appears superfluous. Obligations on credit providers to amend records when faults are remedied are also covered by Section 18(F) (3) & (4) of the *Privacy Act 1988* .	**Repeal.**
6.2	Despite clause 6.1, a retailer must not provide information about a relevant default: (a) where the domestic customer has made a complaint in good faith about the relevant default and the complaint has not been resolved; (b) relating to that portion of an electricity bill which the domestic customer has requested the relevant retailer to review; or	These provisions regulate when a retailer may report defaults to a credit reporting agency. It is no longer considered appropriate for the energy regulator to duplicate the *Privacy Act 1988.*	**Repeal.**

Existing Provision		Issue	Draft Decision
6.3	(c) relating to an electricity bill where: ▪ the retailer has not undertaken an assessment of, or provided assistance to, the domestic customer as contemplated by clause 11.2 of the Electricity Retail Code; or ▪ in respect of the electricity bill, the domestic customer has formally applied for a Utility Relief Grant and a decision on the application has not been made. Where a domestic customer with a relevant default under clause 2.1(b) remedies, or enters into an agreement or arrangement with the retailer to remedy the relevant default after it was reported to the credit reporting agency, and demonstrates to the retailer that extenuating circumstances meant that a forwarding address could not be provided and that the final bill could not be paid within the 10 business day period in accordance with clause 2.1(b), the retailer must request the credit reporting agency to remove the information about that relevant default from the domestic customer's record.		
7. Domestic customer leaves supply address or transfers without paying	For the purpose of clause 8.1(a) of the Electricity Retail Code the amount owing to a retailer or former retailer (as the case may be) must be more than that specified in item A of the schedule to this guideline. A retailer must offer an instalment plan before requiring a refundable advance.	This regulation duplicates the regulation in the ERC	**Repeal.**
8. Minimum disconnection amount	A retailer must not disconnect a customer for non-payment of a bill where the amount payable is less than the approved amount specified in item A of the schedule to this guideline.	This regulation duplicates the regulation in the ERC	**Repeal.**

Guideline No 10: Confidentiality and Informed Consent Electricity and Gas

Existing Provision		Issue	Draft Decision
Some retailers submitted that Guideline No.10 should be repealed because it duplicated legislation including the *Privacy Act 1988.* The Commission reviewed the provisions for relevancy and necessary regulation.			**Repeal.** The guidelines will be repealed and the necessary regulation incorporated in the ERC or other relevant regulatory instrument as set out below.
Part 1. Introduction	Part 1 provides Guideline No.10's introduction, which includes the commencement, purpose, relationship with other requirements and process for review.	Part 1 is redundant upon repeal of Guideline No.10.	**Repeal.**
Part 2. Confidentiality	Part 2 sets out the National Privacy Principles and in particular, details how it applies to the Victorian energy market.	The essential duplication of the National Privacy Principles provided by Part 2 creates unnecessary regulation which should be repealed. Guidance provided by Part 2 will however be retained in a fact sheet. Clause 2.1.2, however, extended regulation to small business. The repeal of this part will therefore reduce small business regulation in the energy market.	**Repeal.**
Part 3. Explicit Informed Consent	Part 3 provides for the use and definition of explicit informed consent.		
4.1 Entering into a *contract*	The explicit informed consent of a customer is required by virtue of clause 22.19 of the relevant Retail Code, in connection with a contract between the customer and a retailer commencing to be effective, if: · the contract includes a term or condition which is inconsistent with a term or condition set out in the Retail Codes marked with an asterisk (*); or	Clause 4.1 to be repealed on the basis that the subject matter will be addressed by the revised Marketing Code.	**Retain and include in Marketing Code.**

Guideline No 10: Confidentiality and Informed Consent Electricity and Gas

Existing Provision		Issue	Draft Decision
	· the customer is transferring to the retailer		
4.2 Estimated bills and different billing cycles	The explicit informed consent of a customer is also required by virtue of: · clause 5.1 of the Retail Codes, if a retailer wants to base the customer's bill other than on a reading of the customer's meter; and · by virtue of clause 10.1 of the Retail Codes, if a retailer and the customer want to agree a billing cycle other than that specified in the relevant Retail Code.	Clause 4.2 can be repealed as it duplicates clauses 5.1 and 10.1 of the ERC.	**Repeal**

Guideline No 12: Metering Reversion and Contract Termination

Existing Provision	Issue	Draft Decision
There were no stakeholder submissions on these guidelines. The Commission reviewed the provisions for relevancy and necessary regulation.		**Repeal.** Guideline no. 12 was transitionary at the commencement of full retail competition and is no longer required.

Guideline No 19: Energy Product Disclosure

Existing Provision	Issue	Draft Decision
3.1 Offer summary to be provided A retailer must provide an offer summary in writing to a small retail customer: (a) on request by the customer and (b) when providing the customer the terms or information about the terms of a new retail contract.	Consumer groups consider there should be time frame to require the retailer to send an offer summary within 3 business days of the customer's request.	**Defer until stage 2 and consider against amended industry legislation.**

Guideline No 20: Bulk Hot Water Charging

Existing Provision		Issue	Draft Decision
1. Introduction	(Includes Purpose, Authority and Application Date).	Section 1 provides Guideline No.20's introduction, including the purpose and commencement date of the Guideline. This is redundant upon the repeal of the Guideline.	**Repeal**
2.1.1	Where a retailer charges for energy in delivering gas bulk hot water to a relevant customer, the gas bulk hot water rate, supply charge and final customer billing for the provision of the gas bulk hot water are to be determined in accordance with Appendix 1.	Clause 2.1.1 requires the calculation of gas bulk hot water charges to be in accordance with a regulated formula. This rule will be retained and transferred to clause 3.3 of the ERC.	**Retain and include in the ERC (clause 3.3).** **Appendix 1 to be replaced with DPI reference**.
2.1.2	Appendix 1 will not change before 31 December 2007. The Victorian Government will determine the gas bulk hot water pricing formulae from 1 January 2008 as part of any gas pricing arrangements applicable from that time	The transfer date has passed and responsibility for determining the gas bulk hot water pricing formulae has been transferred to the Victorian Government. This clause is now redundant.	**Repeal.**
2.1.3	A retailer must publish its gas bulk hot water rate (in cents per litre), any applicable supply charge (in cents) and the conversion factor (MJ per litre) used to determine those prices and charges whenever any of the above components change.	Clause 2.1.3 requires the publication of the gas bulk hot water rate by retailers. This rule will be retained and transferred to clause 4.2 of the ERC.	**Retain in ERC (clause 4.2).**
2.2.1	Where a retailer charges for energy in delivering electric bulk hot water to a relevant customer, the electric bulk hot water charges are to be based on the appropriate tariff rate(s) applicable to the bulk hot water storage unit and are to be determined in accordance with Appendix 2.	Clause 2.1.1 requires the calculation of electric bulk hot water charges to be in accordance with a regulated formula. This rule will be retained and transferred to clause 3.3 of the ERC.	**Appendix 2 to be replaced by DPI reference.**
2.2.2	Appendix 2 will not change before 31 December 2007. The Victorian Government will confirm the electric bulk hot water pricing formulae from 1 January 2008 as part of any electricity pricing arrangements applicable for that period.	The transfer date has passed and responsibility for determining the ***electric bulk hot water*** pricing formulae has been transferred to the Victorian Government. This clause is now redundant.	**Repeal.**

Guideline No 20: Bulk Hot Water Charging

Existing Provision		Issue	Draft Decision
2.3 Information to be included on bills	Where a retailer charges for energy in delivering either gas bulk hot water or electric bulk hot water to a relevant customer, the retailer must include at least the following information in the customer's bill: • the relevant gas bulk hot water rate applicable to the customer in cents per litre; • the relevant electricity rate(s) being charged to the customer for the electricity consumed in the electric bulk hot water unit in cents per kWh; • the relevant electric bulk hot water conversion factor for electric bulk hot water in kWh/kilolitre; • the total amount of gas bulk hot water or electric bulk hot water in kilolitres or litres consumed in each period or class of period in respect of which the relevant gas bulk hot water rate or electricity tariffs apply to the customer and, if a customer's meter measures and records consumption data only on an accumulation basis, the dates and total amounts of the immediately previous and current meter readings or estimates; • the deemed energy used for electric bulk hot water (in kWh); and • separately identified charges for gas bulk hot water or electric bulk hot water on a customer's bill.	Clause 2.3 requires retailers to detail on the customer's bill certain information regarding the calculation of the customer's bulk hot water charges. This information is important in enabling customers who consume bulk hot water to understand their bill.	**Retain and include in the ERC.**
3.1 Definitions	electric bulk hot water" means water centrally heated by electricity and delivered to a number of customer supply addresses where the customer's consumption of hot water is measured with a meter and where an energy bill is issued by a retailer. "electric bulk hot water conversion factor" is the conversion factor detailed in this guideline used to convert the measured bulk hot water consumption of a customer (in kilolitres) to a deemed electricity usage (in kWh). "gas bulk hot water" means water centrally heated by gas and delivered to a number of customer supply addresses where the customer's consumption of hot water is measured	Clause 3.1 defines certain terms used within Guideline No.10. Where a defined term has been transferred to the ERC, its definition will be included in the ERC's definition section.	**Where a defined term has been transferred to the ERC, its definition will be included in the ERC's definition section.**

Guideline No 20: Bulk Hot Water Charging

Existing Provision		Issue	Draft Decision
	with a meter and where an energy bill is issued by a retailer. "gas bulk hot water conversion factor" is a conversion factor detailed in this guideline used to convert the gas bulk hot water tariff (in cents per MJ) to the gas bulk hot water rate (cents per litre). "gas bulk hot water rate" means the gas price in cents per litre that is used by a retailer to charge customers for energy in delivering gas bulk hot water. "gas bulk hot water tariff" has the relevant meaning set out in Appendix 1. "meter" means the device which measures and records consumption of bulk hot water consumed at the customer's supply address. Other terms in bold and italics which are not defined in this guideline have the meaning given in the ERC.		
3.2 Interpretation	Clause 3.2 provides guidance regarding how to interpret Guideline No.20.	Clause 3.2 is redundant upon repeal of Guideline No.20.	**Repeal.**
Appendix 1: Gas bulk hot water pricing formulae	Appendix 1 sets out the formula for calculating gas bulk hot water prices.	Appendix 1 is redundant, because the responsibility for setting the formula has been transferred from the Commission to the Victorian Government.	**Repeal.**
Appendix 2: Electricity bulk hot water billing formulae	Appendix 1 sets out the formula for calculating electric bulk hot water price	Appendix 1 is redundant, because the responsibility for setting the formula has been transferred from the Commission to the Victorian Government.	**Repeal.**

Operating Procedure
Compensation for Wrongful Disconnection

Existing Provision		Issue	Draft Decision
The purpose of the Operating Procedure: Compensation for Wrongful Disconnection was to assist retailers meet their obligations under the wrongful disconnection provisions of the Energy Acts and to address any ambiguities in the ERC created as a result of these legislative provisions. While the Operating Procedure was not intended to set new regulation, it has often been treated as such. Most of the Operating Procedure is descriptive, rather than regulatory, so only those elements which will be contained in the rules or compliance policy are discussed in the Draft Decision.			**Repeal.**
1.2 Legislative intent and context	This procedure and the practices it promotes in Appendix A should be regarded as corporate behaviour minimums and not necessarily best practice. Retailers should strive to attain best practice in their handling of disconnections and maintain existing practices where they are more favourable to customers than those in this procedure.	Provides guidance to retailers on how disconnection of customers should be handled and how possible breaches of contractual obligations could be avoided.	**Retain and include in the Commission's Compliance Policy Statement.**
2.3 Disconnection by a retailer	Consistent with clause 36.1 of the ERC, a reference in the relevant provisions or this procedure to a disconnection by a retailer means a disconnection procured by a retailer. Accordingly: • if a disconnection performed by a distributor occurs where the distributor is acting strictly on the retailer's instructions, the retailer has "disconnected" the customer. if a disconnection performed by a distributor occurs not in accordance with the instruction to disconnect given by the retailer, the retailer has not disconnected the customer.	Clarification on the accountabilities of the distributors and retailers was determined when the legislation was put into place. The ERC will set out clearly that the legislation applies to the retailers.	**Retain and include in ERC.**
3.2 Standards of proof	Where a clause of the ERC or the applicable interpretative guidance in Appendix A refers to requirements to give notices or similar documents to a customer or to make contact by telephone, or in person, it will be necessary for a retailer to establish such requirements have been met by demonstrating the matters set out in Appendix B.	Appendix B prescribes the evidence the retailer must be able to provide to demonstrate they have satisfied the requirements of the ERC. Appendix B is necessary to retain to assist EWOV and the Commission resolve application for compensation for wrongful disconnection.	**Retain and include in Compliance Policy Statement.**

Operating Procedure
Compensation for Wrongful Disconnection

Existing Provision		Issue	Draft Decision
4. Enquiries and complaints handling by Commission	The Commission will refer any enquiries or complaints received from a customer directly to the retailer concerned[26] or, if the retailer has dealt with a complaint, to EWOV. The Commission will give brief particulars to the retailer or EWOV (as the case may be) of the contact made by the customer. Recording The Commission will keep a record of brief particulars of each complaint received and to whom it has been referred	Clause 4 provides how enquiries and complaints will be considered and referred by the Commission. This clause is to be retained to provide ensure clarity and transparency when dealing with complaints of this nature.	**Retain and include Compliance Policy Statement.**
5. Enquiries and complaints handling by Retailers	A retailer must handle a complaint by a customer in accordance with the relevant Australian Standard on Complaints Handling or the "Benchmark for Industry Based Customer Dispute Resolution Schemes' published by the Department of Industry, Tourism and Resources (Cwth).	Obligation already on retailers in clause 28 of ERC	**Repeal.**
	Referral to Commission for advice A retailer may seek guidance from the Commission on any questions of interpretation of the ERC. The Commission will send a copy to EWOV and each retailer, and will publish details of all guidance provided in its annual compliance report.	This clause is to be retained to provide ensure clarity and transparency when dealing with complaints of this nature.	**Retain and include in Compliance Policy Statement.**
	Advice on customer's rights When a retailer responds to a customer's complaint, the retailer must inform the customer: ▪ that the customer has a right to raise the complaint to a higher level within the retailer's management structure; and ▪ if, after raising the complaint to a higher level the customer is still not satisfied with the retailer's response, the customer has a right to refer the complaint to EWOV or other	Obligation already on retailers in clause 28 of ERC	**Repeal.**

[26] The referral will be to a retailer's "higher level contact" (within the meaning given to those terms by EWOV).

Operating Procedure
Compensation for Wrongful Disconnection

Existing Provision		Issue	Draft Decision
	relevant external dispute resolution body. That information must be given in writing and include details on how to contact EWOV.		
6 Enquiries and complaints handling by EWOV	Enquiries EWOV should refer all wrongful disconnection enquiries to a retailer's "higher level contact" (within the meaning given to those terms by EWOV). The retailer must ensure that the customer is contacted in accordance with EWOV's case handling procedures for discussion of the matter.	EWOV has advised that the repeal of clause would not impact the handling of this issue.	**Repeal.**
	Complaints EWOV should handle all wrongful disconnection complaints (including unresolved enquiries) as "level 1 complaints" (within the meaning given to that term by EWOV). As such, EWOV will require the retailer to reconnect the customer in accordance with EWOV's current procedure for disconnection complaints, pending the outcome of EWOV's investigation. EWOV will endeavour to resolve complaints to the satisfaction of both parties[27].	EWOV has advised that the repeal of clause would not impact the handling of this issue.	**Repeal.**
	Referral to Commission for advice Consistent with clause 6.4 of the EWOV Charter, EWOV should seek guidance from the Commission on any questions of interpretation of the ERC or retailers' terms and conditions of supply. The Commission will send a copy to each retailer and publish details of guidance provided in its annual Compliance Report.	Duplicates EWOV's Charter.	**Repeal**
7. Commission	Clause 7 details how the Commission considers wrongful disconnection cases.	Sections 7, 8 & 10 provide useful guidance to stakeholders regarding compliance with	**Retain and include in Compliance Policy Statement.**

[27] Consistent with the usual application of EWOV's normal case-handling procedures, EWOV's ability to do so quickly and efficiently will be assisted by the retailer promptly returning all completed documentation required by EWOV.

Operating Procedure
Compensation for Wrongful Disconnection

Existing Provision		Issue	Draft Decision
Decision		wrongful disconnection requirements. They will be retained for prosperity as well as assistance.	
8. Enforcement Orders	Without limiting the Commission's powers under section 53 of the Essential Services Commission Act 2001, the Commission will serve a provisional order requiring a retailer to satisfy its *wrongful disconnection compensation obligation* if the retailer does not promptly give the Commission the confirmation which the Commission seeks under clause 7.4 of this procedure, or if the retailer does not fulfil its commitment to rectify the breach, the Commission may use the powers available to it under sections 53 and 54 of the Essential Services Commission Act 2001 to ensure that *wrongful disconnection compensation* obligations are met.	Clause provides guidance regarding the Commission's enforcement powers. This clause will be retained and place in the Commission's Compliance Policy Statement.	**Retain and include in Compliance Policy Statement.**
9. Reporting	Clause 9 prescribes the reporting requirements for retailers, EWOV and the Commission in relation to wrongful disconnection.	This clause provides useful guidance regarding the Commission's reporting requirements and therefore will be retained and placed in the Commission's Compliance Reporting Manual.	**Retain and include in Compliance Reporting Manual.**
10. Auditing of Retailers' Response to Enquiries and complaints	The Commission will audit each retailer's compliance with its *wrongful disconnection compensation obligations* generally and the reports received under clause 9.1 in particular as part of the Commission's normal regulatory audit program. The Commission may also conduct other such audits on an ad hoc basis if the Commission believes the audit is warranted, in which case it would take place in accordance with the Commission's usual procedures for a regulatory audit.	This clause provides useful guidance regarding the Commission's audit practices and therefore will be retained and placed in the Commission's Compliance Reporting Manual	**Retain and include in Compliance Policy Statement.**
11. Interpretation	Terms defined in the relevant provisions or in the ERC will have the same meanings when used in this procedure. Also: relevant provision means section 40B of the Electricity Industry Act 2000 or section 48A of the Gas Industry Act 2001. wrongful disconnection compensation obligation means an obligation on a retailer to make a payment to a customer under a relevant provision.		**To be reviewed at completion of Review.**
Appendix A Interpretation of	Appendix A provides interpretative guidance regarding relevant clauses of the ERC regarding wrongful disconnection cases.	Appendices A –D provide useful guidance to stakeholders regarding compliance with	**Retain and include in Compliance Policy Statement.**

Operating Procedure
Compensation for Wrongful Disconnection

Existing Provision		Issue	Draft Decision
ERC		wrongful disconnection requirements. They will be retained for prosperity as well as assistance.	
Appendix B Proof of Dispatch of Notices, Phone Contacts and visits	Appendix B details the customer contact required by retailers to satisfy the requirements of the ERC.		**Retain and include in Compliance Policy Statement.**
Appendix C Flow Chart – ERC	Appendix C seeks to diagrammatically capture how a retailer should assess a customer's capacity to pay without advice from an independent financial counsellor.		**Retain and include in Compliance Policy Statement.**
Appendix D Sample Call Centre Scripts	Appendix D seeks to provide guidance to retailers on how to write their call centre scripts in order to optimise the receipt of useful and meaningful information about a customer's capacity to pay.		**Retain and include in Compliance Policy Statement.**

Electricity Customer Metering Code			
Existing Provision		**Duplicated by**	**Draft Decision**
2.1 (b)	Access to Metering Equipment	Metrology Procedure S1-3.5A, S2-1.5A and S3-1.5 (3).	**Repeal**
2.3	Location of Metering Equipment	NER clause 7.3.2 and Metrology Procedure S1-3.5, S2-1.5 and S3-1.5	**Repeal**
2.5	Summation Metering	NER clause 7.3.1 (b) (14) and Metrology Procedure S1-1.4	**Repeal**
2.6 (b) and (c)	Impulse Output	Metrology Procedure clauses 2.3.9, S1-3.3A and S2-3.2A.	**Repeal**
2.7 (c)	Check Metering	NER clauses 7.3.3, 7.3.4 and 7.9.4 and by NER S7.2.4.	**Repeal**
3.2	Time Keeping	Metrology Procedure S3-3.1B, S1-4.10B and S2-4.8A	**Repeal**
4.1	Security of Metering Equipment	NER clause 7.8.1 (a) and Metrology Procedure S1-3.7, S1-4.7, S1-5.7, S2-3.6, S2-4.6, S3-3.6, S4-2.10, S5-2.10 and S6-3.8. NEMMCO's Service Level Requirements28 clauses 4.1.4 and 4.16.	**Repeal**

28 Service Level Requirements: Metering Provision Services for the Provision, Installation and Maintenance of Metering Installation Types 1 – 6, available on NEMMCO's website at www.nemmco.com.au.

Electricity Customer Metering Code

Existing Provision		Duplicated by	Draft Decision
4.2 (b), (c) and (d)	Broken Seals	NER clause 7.8.1	**Repeal**
5.2	Method of Testing	NER S7.2.3, S7.3.1 and S7.4.3. Metrology Procedure S2 and S3.It should also be noted that provisions for existing first tier sites are 'grandfathered' under NER clause 11.20 and Metrology Procedure clause 2.3.7.	**Repeal**
5.4	Active Energy Meters	NER S7.2.3 and Metrology Procedure clause 2.6.3, S3-3.1, S3-3.2 and S5-1.5.	**Repeal**
5.5	Current Injection	NER clause 7.8.4.	**Repeal**
5.7 (c)	Notice, Presence and Records	Metrology Procedure clause 3.10.1 (b).	**Repeal**
6.1	Repair or Replace	NER clause 7.11.2.	**Repeal**
6.2	Costs	NER clauses 7.3.6 (a) and (f).	**Repeal**
7A.1	Responsibility for metering: Distributor or Retailer	as NER clauses 7.2.1, 7.2.2 and 7.2.3 are considered as being suitable for determining the Responsible Person role	**Repeal**
7A.2	Consumption Level	Metrology Procedure S2-1.2.	**Repeal**
7.1 (a), (b), (d), (e) and (f)	Obligation to Provide	NER clauses 7.2.1, 7.2.2, 7.2.3, 7.2.5 and S7.2.3 Item 5Metrology Procedure clause 2.7.4 and 14.2.1.	**Repeal**
7.2 (a) and (b)	Embedded Networks	Metrology Procedure clause 2.4.2.	**Repeal**
7.3	Non-Reversion	Metrology Procedure clause 2.5.1.	**Repeal**
8	Minimum standards for metering equipment	Technical standard now specified by the NER and Metrology Procedure	**Repeal**
9	Installation and testing of metering equipment	Technical standard now specified by the NER	**Repeal**

Electricity Customer Metering Code

Existing Provision		Duplicated by	Draft Decision
		and Metrology Procedure	
10	Accuracy assurance	Technical standard now specified by the NER and Metrology Procedure	**Repeal**
11	Repair or replacement of metering equipment	Technical standard now specified by the NER and Metrology Procedure	**Repeal**
12	Installation	Technical standard now specified by the NER and Metrology Procedure	**Repeal**
13	Meter reading for customer transfer	Metrology Procedure clause 3.3.12.	**Repeal**
14.1 (a)	Access to Data	NER clause 7.7 (a).	**Repeal**
15A	Satisfaction of Obligations	NER clause 7.2.5 (a) (1).	**Repeal**
15.1A	Interval Metering	Metrology Procedure clause 3.3.	**Repeal**
15.1	General Obligation	NER clause 7.11.1 and Metrology Procedure clause 3.3.	**Repeal**
15.2	First Tier Interval Energy Data	NER clause 7.11.1 and Metrology Procedure clause 3.3.	**Repeal**
15.3	Alteration to Original Metering Data	a reference to the relevant clause in the NER.	**Repeal**
15.5	Data Security	NER clauses 7.8.2 (a) and 7.10.	**Repeal**
15.6	Discrepancies	NER clause 7.6.3 (c) and Metrology Procedure clauses 3.10.3 and 3.10.5.	**Repeal**
16	Estimation of Energy Data	NER Table S7.2.3.1 Item 4 and Metrology Procedure clause 3.5.	**Repeal**
17.1 and 23.1	Validation and Substitution	These clauses simply provide a reference to requirements contained in the Metrology Procedure	**Repeal**
18	Calculation of Energy Data for Unmetered Loads	Metrology Procedure clause 3.6.	**Repeal**
19	Storage of Energy Data	NER clause 7.9.1.	**Repeal**
20	Access to Energy Data	NER clause 7.7 (a) and Metrology Procedure	**Repeal**

Electricity Customer Metering Code			
Existing Provision		**Duplicated by**	**Draft Decision**
		clauses 3.81 to 3.8.4.	
21	Transfer of Energy Data	NER clause 7.3.5 (b) and Metrology Procedure clauses 3.11.6 and 3.11.7 and S4-1.7, S4-1.8, S4.1.9 and S4-15.	**Repeal**
22	Audits of Energy Data	NER clause 7.6.1 (f)	**Repeal**
23A	Access to Energy Data	NER clause 7.7 (a) and Metrology Procedure clauses 3.8.1 to 3.8.4 and S4-1.11, S4-1.12 and S6.2.9.	