



**HARMONISATION OF ENERGY
RETAIL CODES AND GUIDELINES
WITH THE NATIONAL ENERGY
CUSTOMER FRAMEWORK**

CONSULTATION PAPER

DECEMBER 2012



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1 INTRODUCTION

1.1 Background

On 13 June 2012, the Victorian Government announced that it had decided to defer Victoria's transition to the National Energy Customer Framework (**NECF**), to ensure there was no reduction in key protections for Victorian consumers. The Victorian Government stated that it would explore opportunities to align Victoria's retail and consumer protection arrangements with the NECF where it did not result in lower standards for Victorian consumers.

In July 2012, the Minister for Energy and Resources wrote to the Essential Services Commission (the **Commission**) noting that the current Victorian regulatory regime and the proposed framework under the National Energy Retail Law (Victoria) Bill 2012 (**NERVLA**) were substantially equivalent in terms of protections to Victorian energy consumers.

The Minister requested that the Commission consider harmonising the regulations contained in our Codes and Guidelines to the extent possible with the NECF, as set out in the NERVLA.

1.2 Purpose of this paper

This paper outlines the Commission's approach to, and seeks comment on, a new draft Energy Retail Code (**the draft ERC**). The draft ERC amalgamates certain energy retail codes and guidelines into a single instrument and seeks to harmonise this new instrument where appropriate with the national requirements under the NECF.

The Victorian instruments which are the subject of this review are:

- the Energy Retail Code (**ERC**);
- the Code of Conduct for Marketing Retail Energy;
- Guideline 13 – Electricity Industry – Greenhouse gas disclosure on electricity bills;
- Guideline 19 – Energy Industry – Energy price and product disclosure; and
- Guideline 21 – Energy Industry – Energy retailer's financial hardship policies.

This paper sets out the approach adopted by the Commission in drafting the new instrument and identifies the key areas of consumer protection in Victoria that have been preserved.



All Guidelines have been incorporated in their entirety.

The harmonised draft ERC reflects what the Commission understands to be the Victorian Government's policy position.

A discussion of the approach and the key Victorian matters are set out in section 2 and section 3 respectively.

The draft ERC is intended to apply to energy retailers in the period prior to the implementation of the national framework in Victoria. At this stage, the Commission envisages that the harmonised document will take effect from 1 July 2013.

1.3 Regulatory power of the Commission

The Commission has responsibility for licensing electricity and gas retailers in Victoria. The Commission's powers are outlined in the *Electricity Industry Act 2000* (EIA), the *Gas Industry Act 2001* (GIA) and the *Essential Services Commission Act 2001* (ESC Act).

The ESC Act outlines objectives to which the Commission must have regard in undertaking its functions across all industries. The Commission's primary objective is to protect the long-term interests of Victorian consumers with regard to the price, quality and reliability of essential services. In seeking to achieve this primary objective, the Commission must have regard to the following objectives:

- to facilitate efficiency in regulated industries and provide the incentive for efficient long-term investment;
- to facilitate the financial viability of regulated industries;
- to prevent the misuse of monopoly or non-transitory market power;
- to facilitate effective competition and promote competitive market conduct;
- to ensure that regulatory decision making observes the relevant health, safety, environmental and social legislation applying to the regulated industry;
- to ensure that users and consumers (including low income or vulnerable customers) benefit from the gains from competition and efficiency; and
- to promote consistency in regulation between States and on a national basis.

The Commission also has specific energy sector objectives under the EIA and GIA. These are:

- to promote a consistent regulatory approach between the electricity industry and the gas industry, to the extent that it is efficient and practicable to do so; and



- to promote the development of full retail competition.

Our approach to consultation and regulatory reviews is set out in our Charter of Consultation and Regulatory Practice which is available on the Commission's website at the following address: <http://www.esc.vic.gov.au/getattachment/About-Us/Consultation-Policy/CharterofConsultationforWeb.pdf.aspx>

1.4 Submissions

Section 2 of this paper outlines the approach adopted by the Commission in preparing the draft ERC – in short, to harmonise the instruments identified in section 1.2 with the NECF except where inconsistent with Victorian legislation or government policy intention.

Submissions are invited from interested parties on the extent to which the draft instrument achieves that objective and any changes that would better achieve it. Submissions are also invited on any technical or implementation issues raised by adopting the draft instrument.

Please note that the Commission is not seeking submissions on matters of policy as part of this consultation. The policy positions represented in the NECF have already been the subject of very extensive stakeholder consultation as part of the development of the national framework.

Similarly, the Victoria-specific policy considerations in relation to the adoption of the NECF were the subject of extensive consultation by the Department of Primary Industries (DPI) Victoria.

Therefore, the Commission will not reopen any matters previously addressed through the NECF framework deliberations.

For these discussion papers and stakeholder submissions see:
<http://www.dpi.vic.gov.au/energy/about/legislation-and-regulation/national-energy-customer-framework>

Submissions on this consultation paper are preferred in electronic format and should be provided to the Commission by **1 February 2013**.

By email to: energy.submissions@esc.vic.gov.au

By mail to:

Level 37
2 Lonsdale Street
Melbourne 3000



Submissions will be made available on our website, except for any information clearly identified as commercially confidential or sensitive. Any material that is confidential should be clearly marked as such.

The Commission proposes to publish a Draft Decision during February 2013 and a Final Decision by April 2013.

Questions regarding this Consultation can be directed to:

Mr. Phil Waren, Senior Regulatory Manager, Energy on (03) 9651 0289 (or from 17 December 2012 (03) 9032 1384).



2 APPROACH ADOPTED IN PREPARING THE DRAFT ERC

The approach adopted by the Commission in preparing the draft ERC was to adopt the NECF provisions except where provisions of the NECF were either precluded by Victorian legislation, or were inconsistent with the Victorian Government's stated policy intentions.

The national requirements under the NECF reviewed for the purposes of drafting the ERC were:

- the National Energy Retail Law (**NERL**); and
- the National Energy Retail Rules (**NERR**).

The Victorian Government's stated policy intentions have been indicated through:

- the *National Energy Retail Law (Victoria) Bill 2012* (**NERVLA**) and associated Explanatory Memoranda; and
- papers published by DPI identifying Victoria-specific consumer protections that are in addition to or different to the NECF.

In the absence of a matter being either specifically prohibited by Victorian legislation, covered by the NERL (Vic) Bill, or covered by stated government policy, the NECF position has been adopted in the draft ERC. To the extent possible, wording and formatting has been drafted so that it is consistent with the NECF wording and formatting. Where a provision of the NERR has not been included in the draft ERC the numbering has been retained in order to maintain consistency and comparability with the NERR.

The key Victoria-specific statutory and regulatory requirements that have been included in the draft ERC are summarised in section 3 below. Further detail with respect to the provisions adopted in the draft ERC are set out in the footnotes to the ERC. These footnotes are intended to provide guidance on key differences between the NERR provisions and the equivalent Victorian requirements.

A clean copy of the draft ERC incorporating the detailed footnotes is attached as Annexure A.



3 VICTORIAN SPECIFIC REQUIREMENTS

This chapter details the Victorian specific requirements that we intended to include in the harmonised draft ERC. Most of these matters are covered in existing legislation or were outlined as intended Government policy in the NERVLA Bill 2012. We have consulted extensively with the DPI to ensure that our approach remains consistent with Government policy and to minimise any risk that our harmonised draft ERC will have any unintended adverse effect on existing energy programs, such as the Smart Meter program, in Victoria.

3.1 Late payment fees

Section 40C of the EIA and section 48B of the GIA specifically prohibit a retailer from including a term or condition in a customer retail contract that permits a retailer to charge fees for late payment of bills. This prohibition is not provided for the NECF.

Clause 14 of the NERL (Vic) Bill proposed to re-enact the Victorian prohibition under section 40C of the EIA and section 48B of the GIA in relation to late payment fees.

As this statutory requirement under the EIA and GIA continues to operate in Victoria, it was not necessary to include this prohibition in the new ERC.

3.2 Compensation for wrongful disconnection

Section 40B of the EIA and section 48A of the GIA require an electricity or gas retailer to pay compensation to customers if an electricity or gas licensee:

- (a) disconnects the supply to the customer; and
- (b) fails to comply with the terms and conditions of the contract specifying the circumstances in which disconnection may occur.

The current amount of compensation is \$250 payable to a customer for each whole day that the supply of electricity or gas is disconnected. In 2011, the Victorian Government amended the legislation to cap the compensation payable to a customer, if that customer had not contacted the retailer within 14 days of the alleged wrongful disconnection.

There is no equivalent provision for wrongful disconnection compensation in the NECF. DPI has indicated that this statutory compensation scheme should continue to apply in Victoria and provision for the scheme was included in clause 13 of the NERL (Vic) Bill.



As this statutory requirement under the EIA and GIA continues to operate in Victoria, it was not necessary to include this obligation in the new ERC.

3.3 Community service agreements

Section 21(f) and Part 2, Division 7 of the EIA and section 29(f) and Part 3, Division 5 GIA require a retailer to enter into an agreement with the State for the provision of community services. This requirement is not provided for the NECF. The DPI has indicated that there should be continuing requirements on retailers to enter into agreements with the State for the provision of community services (concessions) to customers.

As this statutory requirement under the EIA and GIA continues to operate in Victoria, it was not necessary to include this obligation in the new ERC.

3.4 Energy audits and appliance assistance

Section 43(2) of the EIA and section 48G(2) of the GIA require retailers as part of their financial hardship policies to offer customers free or subsidised home energy audits and flexible options for the purchase of appliances.

The NECF does not impose these requirements on retailers. The DPI has indicated that Victoria intends for the existing requirements to continue to apply to retailers.

The Commission's requirements for retail businesses' financial hardship policy, including the requirements in relation energy audits and appliance assistance, have been incorporated into the draft ERC at clauses 71A (g) and (h).

3.5 Pre-payment meters

Part 8 of the NERR regulates the use of pre-payment meter systems. Pre-payment meter systems are currently prohibited in Victoria.

DPI has indicated that Government policy is that the use of pre-payment meters in Victoria should continue to be prohibited. Accordingly the NERR provisions relating to the regulation of pre-payment meter systems have not been included in the draft ERC.

3.6 Extreme weather events

The NERR contains specific provisions in relation to extreme weather events. For example rules 108, 116(1)(i) and 120(d) of the NERR prohibit de-energisation of customer's premises during extreme weather events. The NERR provides for a local instrument to define an extreme weather event in the jurisdiction in which the customer's premises are located.

Similar provisions are not currently contained in the Energy Retail Code.



As per the guiding principle, these NERR provisions have been incorporated into the draft ERC. DPI has indicated that Victoria will adopt a regulatory instrument in relation to extreme weather events. We understand that the form and format of this instrument is yet to be determined by DPI.

3.7 Advanced metering infrastructure

Following the Commission's final decision on the Smart Meters Regulatory Review in September 2010, amendments were made to the ERC which took effect from April 2011 to include provisions relating to advanced metering infrastructure (**AMI**).¹ The DPI has indicated that the specific regulations that have been introduced in relation to AMI should be preserved when Victoria transitions to the national framework.

The provisions contained in the Victorian codes and guidelines in relation to AMI have been incorporated in the draft ERC.

Section 46C of the EIA provides that an electricity licence is deemed to include a condition requiring the licensee to comply with any relevant Orders in Council including those in relation to advanced metering infrastructure. As these statutory requirements continue to operate they have not been included in the draft ERC.

3.8 In-home displays

Clause 27A of the draft ERC incorporates clause 4.7 of the current ERC which requires retailers to provide customers with information setting out how any consumption and cost information displayed on the In-home Display compares to the consumption and cost information on the customer's bills.

3.9 Bulk hot water billing

Clause 3.2 of the ERC contains detailed requirements on retailers in relation to charging for the energy used in the delivery of bulk hot water. DPI has advised that Government policy is that the bulk hot water billing arrangements should be retained in Victoria.

Therefore the requirements for retailers to bill for bulk hot water in accordance with the specified formula have been incorporated in clause 20A of the draft ERC.

3.10 Timeframes for disconnecting and reconnecting customers

Section 14(d) of the ERC prohibits a retailer from disconnecting a domestic customer after 2pm whereas the NERR allows disconnection up to 3pm. Section 15.2(a) of the

¹ <http://www.esc.vic.gov.au/Energy/Smart-meters>



ERC also differs to the NERR in relation to the timeframe permitted to reconnect customers.

DPI has indicated that the existing timeframes which apply in Victoria in relation to disconnection and reconnection should continue to apply as implementation of the national approach would diminish current customer protection standards in Victoria.

The draft ERC incorporates the existing Victorian standards in relation to timeframes for disconnection and reconnection of customers' premises.

3.11 Energy price and product disclosures

Division 2A of the draft ERC incorporates the Commission's Guideline 19 – Energy Price and Product Disclosure. Guideline 19 was made in accordance with sections 35C and 36A of the EIA and sections 42C and 43A of the GIA, which impose obligations on retailers to publish standing offer and market contract tariffs, terms and conditions on their internet sites and provide information to the Commission in accordance with the Guidelines.

Under sections 24 and 37 of the NERL, retailers are required to present standing offer or market offer prices in accordance with the AER Retail Pricing Information Guidelines. As the AER is not currently responsible for producing pricing guidelines in Victoria, the draft ERC has incorporated the current Guideline 19. Once NECF is implemented in Victoria it will not be necessary to retain Division 2A.

3.12 Greenhouse gas disclosure on customer's bills

The Commission's Guideline 13 - Greenhouse Gas Disclosure on Electricity Customers' Bills has been incorporated into the draft ERC at clause 25A. There is no equivalent to Guideline 13 in the NERR.

Section 40R of the EIA requires retailers to include greenhouse gas information on customers' bills or to provide bill benchmarking information to a customer. Part 11 of the NERR establishes a regime under which the AER must determine electricity consumption benchmarks and requires retailers to include a comparison of consumption against those benchmarks on customer's bills.

We understand that DPI is of the view that customers would receive more information from the bill benchmarking approach and therefore there would not be a need to retain Guideline 13. As the AER is not currently responsible for bill benchmarking in Victoria, the draft ERC has incorporated the current Guideline 13.

Once NECF is implemented in Victoria it will not be necessary to retain clause 25A.



3.13 Additional retail charges

Clause 30 of the ERC sets out the circumstances in which a retailer may impose an additional retail charge on a customer. An additional retail charge is currently defined as any charge relating to the sale of energy by a retailer to a customer other than a charge based on a tariff that is applicable to a customer.

There is no equivalent provision in the NERR. Clause 35A of the draft ERC incorporates clause 30 of the current ERC.

Despite the NERR not addressing this matter, the Commission considers that as retailers are already abiding by this clause it should be retained to assure ongoing continuity of existing consumer protections until such time as the NECF is adopted in Victoria.

3.14 Agreed damages terms

Clause 31 of the ERC provides for particulars that must be included in an agreed damages term in an energy contract between a retailer and customer. There is no equivalent obligation in the NERR. Clause 49A of the draft ERC incorporates clause 31 of the ERC.

Despite the NERR not addressing this matter, the Commission considers that as retailers are already abiding by this clause it should be retained to assure ongoing continuity of existing consumer protections until such time as the NECF is adopted in Victoria.

3.15 Energy Marketing

Division 10 of the NERR relates to energy marketing. The equivalent Victorian obligations are set out in the Commission's Code of Conduct for Marketing Retail Energy (**Marketing Code**).

Division 10 of the NERR is drafted substantially differently to the Marketing Code and there are a number of matters set out in the Marketing Code that are not provided for in the NERR. These are identified in the footnotes to the draft ERC.

The Commission considers it appropriate to adopt the NECF drafting and that it is not necessary to include the additional obligations under the Marketing Code in the draft ERC. These specific obligations in the Marketing Code include the current prescriptive requirements for training, record keeping and representative conduct with consumers.

In determining this approach to the Marketing Code, the Commission is mindful of the newly introduced and Australian Consumer and Competition Commission (**ACCC**) approved Energy Assured Limited Code (**EAL Code**) – to which most Victorian energy



retailers have become signatories – and the consumer protections enshrined in the Australian Consumer Law.

Discussions with the DPI have confirmed that the Marketing Code was to be repealed as part of the NECF transition.

We consider that the sections of the Marketing Code that are not addressed by either the Australian Consumer Law or contained in the EAL Code reflect the regulatory framework required at the time when Victoria’s retail energy market was emerging.

Further, the level of prescription the Marketing Code contains in relation to training content or for some record keeping, for example, is no longer required in Victoria’s mature retail energy market.

Given all of these factors, the Commission intends adopting the NECF without including those residual Marketing Code provisions not considered as part of the NECF framework.

3.16 Model terms

The NERR sets out model terms and conditions which are mandatory for retailers to adopt when offering standard retail contracts (under the Victorian regulatory framework, *standing offers*) to customers. Under the Victorian regime and as a condition of their Retail Licences, retailers are required to submit terms and conditions for standing offers to the Commission for approval and publish the approved terms and conditions in the Government Gazette at least one month before they take effect.²

The draft ERC will permit retailers to adopt the model terms, and provides that where they do so it is not necessary to obtain Commission approval before they are published in the Government Gazette.

However, the draft ERC does not make adoption of the model terms mandatory

Should an energy retailer wish to submit their own standing offer terms and conditions for Commission approval they will be entitled to do so. The guiding principle is that the model terms or any standing offer terms submitted by retailers will need to address all relevant obligations outlined in the harmonised document.

² Section 35(1) of the EIA and section 42 of the GIA.



4 OTHER MATTERS

This chapter deals with other matters, notably consequential issues for other regulatory instruments arising from the harmonised ERC and a number of transitional issues that the Commission may need to be consider when determining when the proposed document will take effect.

4.1 Review of additional regulatory instruments

The draft ERC is limited to harmonising the Victorian regulatory instruments with the provisions of the NECF so far as they relate to retailer requirements. The NECF instruments contain more extensive obligations beyond those of retailers - for example it also regulates the relationship between distributors and customers and between distributors and retailers. Those sections of the NERR that relate to distributor obligations have not been included in the draft ERC. However there are some retailer obligations which overlap with distributor obligations, such as, the sharing of information with respect to premises registered as having life support equipment.

Additional work will be required with respect to reviewing other Victorian regulatory instruments to identify any consequential amendments. This will include review of the:

- Energy Distribution Code;
- energy retail licences;
- use of system agreements;
- deemed distribution contracts; and
- the retailer of last resort scheme.

4.2 Transitional provisions

The Commission's view is that the harmonised document, once finalised, will take effect from 1 July 2013 and will continue to be in force until such time as the NECF is adopted in Victoria.

Consideration of any transitional provisions that may be needed in connection with the adoption of the draft ERC will be considered by the Commission once the terms of the ERC are settled.



ANNEXURE A – DRAFT ERC