AUSTRALIAN ENERGY COUNCIL

Essential Services Commission
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Lodged by email: [redacted]

21 January 2020

Ensuring Energy Contracts are Clear and Fair

The Australian Energy Council (the '***AEC'***) welcomes the opportunity to make a submission to the Essential Services Commission (the '***ESC'***) on the Ensuring Energy Contracts are Clear and Fair Draft Decision (the '**Draft Decision'**).

The AEC is the industry body representing 23 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

The AEC acknowledges that the ESC has not been empowered to consider the policy objectives underpinning the reforms discussed in the Draft Decision. Being presented with the findings and recommendations of the 2017 Thwaites review, and tasked with giving effect to their intent, creates challenges for an economic regulator required to only change the regulatory framework where evidence suggests it will enhance the long term interest of consumers.

That notwithstanding, the AEC remains extremely concerned with the Draft Decision, in particular the failure of the ESC to appropriately consider the genuine costs these reforms will place on consumers benefiting from the competitive energy market today.

The Thwaites review contended that the Victorian energy market was broken, and fundamental reforms were required to fix it. The AEC has not avoided the fact that the market was not delivering positive outcomes for all consumers, and regulatory change was needed to redefine the boundaries, and refocus the market on delivering simple, fair, and beneficial energy products.

But, the Thwaites review failed to undertake any analysis of the likely impacts of their recommendations, and despite the aforementioned limitations placed on the ESC by the Victorian Government, it is incumbent on the ESC given its legislated obligations to consider the long term interests of consumers and the costs and benefits of regulatory reform, to properly analyse and consider the likely effect of any changes it proposes to implement into its regulatory framework.

In addition, the AEC does not consider the ESC has adequately considered the role of the Victorian Default Offer (VDO) in *giving effect* to the Thwaites recommendations. In its Terms of Reference to the ESC, the Victorian Government expressly described the VDO as a simple, trusted, and reasonably priced electricity option that safeguards consumers unable or unwilling to engage in the retail electricity market without impeding the consumer benefits experienced by those who are active in the market.[1]

[1] https://www.esc.vic.gov.au/sites/default/files/documents/retatil-market-review-victorian-default-offer-terms-of-reference-20181221.pdf

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Yet the ESC avoids linking the intended outcome of the VDO with the effect of the recommendations in this Draft Decision. For example, the ESC considers that for Recommendation 4A, it is necessary to mandate a fixed price market offer that only changes on the VDO change date, even though the VDO is available to all customers who are seeking a reasonably priced offer with price certainty, and for customers unable or unwilling to enter into a market contract.

Instead, retailers will be limited from offering the types of offers that are benefiting customers today, including 12 month fixed price offers and variable offers with cheaper rates. The rationale provided at the ESC's workshop on 14 January was that customers who were unable, or unwilling, to engage needed appropriate consumer protections. Clearly this would be seen as *impeding the benefits experienced by those active in the market today,* and begs the question: what is in fact the role of the VDO?

Clear principles for regulatory change

In its submission to the Issues Paper, the AEC recommended the ESC assess the impacts of incremental changes to the regulatory framework by considering two questions:

1. Does the change *encourage* energy consumers to actively participate in the market and to *benefit* from that engagement?

2. Without the change, are energy consumers *unfairly disadvantaged* for failing to engage?

In response to the Draft Decision, the AEC considers a third question should be added to the assessment.

3. Does the change *preserve* the *benefits* already enjoyed by customers today?

The AEC remains of the view that the ESC has not adequately considered these important questions in reaching the Draft Decision, nor has it attempted to genuinely consider the benefits and costs that will arise due to the reform.

Given this, the ESC is unable to meet the requirement of the Terms of Reference to *give effect* to the Thwaites recommendations, because it has not considered what the effect of their Draft Decision might be.

The AEC would like to see the ESC clearly set out in its Final Decision the objective of the each proposed reform, the evidence that suggested the reform would increase the long term interests of consumers, the rationale for the approach taken, and the expected outcome of the reform.

The Draft Decision fails to clearly inform stakeholders why certain decisions were made, and how the ESC intended them to affect the operation of the retail market. As a result, it appears that the ESC has failed to consider the outcomes of each Draft Decision as a package, and instead taken each recommendation individually. This results in decisions that appear contradictory – for example customers on high discounts today will be locked into continuing to receive high conditional discounts into perpetuity even if it is not in their interests,[2] whereas customers entering into new offers will be unable to opt into energy deals with discounts higher than the ESC's maximum rate.[3]

The AEC does not consider that the ESC has proven in their Draft Decision the necessary hurdles to recommending regulatory change. The Victorian Government's own Guide to Regulation sets out the expectation on regulators to ensure that regulation is not excessive or poorly developed.

[2] Recommendation 4D
[3] Recommendation 4E

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To avoid the problems caused by poorly designed regulation, the Victorian Government has given a high priority to regulatory reform. This is based on the premise that government should not resort to explicit regulation unless it has clear, continuing evidence that:

- *a problem exists;*
- *government action is justified; regulation (i.e. in the form of primary or subordinate legislation) is the best option available to government; and*
- *(where regulation is justified) the regulatory model chosen addresses the policy objectives at least cost (relative to other options) to businesses and the community.*[4]

Whilst the AEC accepts that competition has not always resulted in positive outcomes for all energy consumers, there are clearly instances where the competitive market has resulted in improved customer experience, greater choice, and lower prices, than would otherwise be present. Whilst competition might mean customers need to engage to obtain a particular outcome, variation in the products and protections retailers offer does not in itself indicate a market failure.

The second hurdle is particularly important in this instance. While the ESC state that further changes are necessary (over and above the changes implemented on 1 July 2019) to *give effect to the Thwaites recommendations,* there is no evidence to suggest that further action is justified, particularly given the incentives on retailers to deliver the outcomes sought through competition.

Unnecessary, or overly prescriptive regulations often come at a price of simplicity. An example of this might be an obligation on a retailer to provide a customer the prices of all its available offers as part of the clear advice entitlement, rather than just the one the retailer believes would be best. Whilst such a requirement would enhance the information available at the time of contracting, it would likely be difficult to comprehend and may deliver unintended outcomes. There are many examples in the Draft Decision where engaging in the market will be more, rather than less complicated.

Finally, the ESC must continue to challenge itself in only recommending changes where it can be satisfied that the benefits of the change outweigh the costs. As part of this process, the AEC would like the ESC to consider alternative proposals that might deliver similar outcomes, at a lower cost (or risk of potential detriment).

Making change absent all these hurdles being met risks negative outcomes for consumers. For this Draft Decision, the AEC expects that these negative outcomes might include:

- Decreased switching rates
- Lower customer engagement
- Higher average prices paid
- Less customer agency
- Fewer, or no choice of offers – particularly for gas
- Diminished role for explicit informed consent
- A need to increase the VDO to cover off increased retailer costs

Whilst some stakeholders may not consider these outcomes to be detrimental, it is incumbent on the ESC as a prudent economic regulator to consider the overall outcome on all consumers, not merely on those who are unable, or unwilling to engage.

[4] Department of Treasury and Finance, Victorian Guide to Regulation, Toolkit 1 – Purposes and types of regulation, July 2014

The remainder of this submission provides specific comments regarding issues raised in the Draft Decision. Whilst the AEC does not consider the merits of each recommendation to have been proven, we accept that the ESC does not consider it is in a position to altogether recommend no further changes are made to the regulatory framework at this time. As such, we are keen to provide constructive suggestions to improve the ESC's reforms, and achieve their objectives at least cost to both consumers and retailers.

Recommendation 3A – Ensuring customers can easily compare offers

The AEC support the key components of the ESC's approach to giving effect to this recommendation. Utilising the existing reference price for electricity, and providing greater clarity as to how retailers should publish and promote their offers is a welcome development. Further, we welcome the approach of the ESC in draft decisions 2, 3, and 4 to harmonise retailer obligations with those in the Federal Government's Electricity Industry Code, and the ACCC's accompanying guidance.

As the AEC has noted on many previous occasions, harmonisation of retailer obligations is critical to minimise unnecessary compliance costs, and benefit consumers more broadly through improved customer service, greater clarity, and ultimately, lower prices.

But, the AEC cannot support elements of Draft Decision 1, in particular, the ESC's decision to 'mirror' obligations already contained in the Australian Consumer Law (ACL). This decision is clearly at odds with the Victorian Guide to Regulation, and more importantly, the 2009 Intergovernmental Agreement for the Australian Consumer Law (the IGA). At the ESC's public workshop help on 14 January, ESC staff were unable to provide any justification of the need to duplicate the misleading and deceptive conduct provisions in the ERC, suggesting that the ESC merely wanted to 'remind retailers of their obligations under the ACL'. This need is unfounded. There is no suggestion whatsoever that retailers are unaware of their obligations under the ACL, nor that the ACCC is failing in its duty to enforce it.

Irrespective of the ESC's intention, duplication of the ACL creates risks of unnecessary regulation and/ or confusion. As noted in the Victorian Governments own Guide to Regulation:

> "***Duplicative provisions*** *are those that replicate the equivalent ACL-provision (with no divergence), or which are perhaps framed in a different way, or only concern certain industries but provide identical obligations and/or protections to the ACL.*
>
> *These are not inconsistent per se but can cause confusion among suppliers and consumers. Such laws can also become inconsistent over time if amendments to the ACL or the law in question are passed at different times."*

Given the presence of the IGA, and the Victorian Government's own policy that consideration be given to whether the issues being addressed are covered by the ACL and, if so, whether additional industry specific provisions are necessary in light of the ACL provisions, the AEC strongly suggests the ESC remove the duplicative provisions from the Final Decision.

Fixing market contract prices

Recommendation 4A

Recommendation 4A was proposed by the Thwaites review as a means to avoid customers experiencing a price increase immediately after signing up to a new retail offer. Thwaites suggested that this practice was damaging confidence in the switching process, however presented no evidence as to why a 12 month ban on

price changes was the optimal solution. The challenge, as noted in the Draft Decision and by Byrne and Leslie in their report to the ESC,[5] that fixed prices increase the risks a retailer is going to be unable to recover its costs, and is likely to result in a risk premium being paid by consumers.

As noted in the AEC's submission to the issues paper, this trade-off presents a challenge to policy makers, and evidence is required to determine whether consumers value certainty, or lower prices. To that end, the AEC was disappointed that the ESC's engagement of the Behavioural Insights Team failed to ask customers the important question – would you be prepared to pay a premium in return for price certainty?

Unfortunately, the BIT analysis relied upon in the Draft Decision provides no particular value in assessing whether this change is justified, and if it is being implemented in the least cost way. Naturally, customers (who have historically associated price changes with price increases) would prefer these price changes to occur less frequently. It was therefore not surprising to find out that approximately 74% of customers preferred some form of price certainty, given they were not warned that such certainty might result in them paying more for their energy bills.

The Terms of Reference

As the ESC is aware, the Terms of Reference (ToR) from the Government gave express advice as to how it considered this recommendation should be implemented.

> *The ESC must interpret 4A as requiring retailers to fix prices for a minimum of 12 months for new customers. It is expressly not intended to prevent retailers from updating price offers available to other customers in the market.*

In the Draft Decision, the ESC appears to have disregarded the ToR and developed an alternative interpretation to the Thwaites Inquiry, and the Government. The AEC accepts that this draft decision came as a result of stakeholders and academics noting that such an interpretation would in fact increase the costs for energy consumers, and would likely have detrimental impacts.

As noted in the ToR, the ESC was not the source of these recommendations. They arose out of the Thwaites review, and the ESC was required to *give effect* to them, provided that was in line with their legislated obligations, including to ensure that all changes are in the long term interests of consumers. Once this recommendation was found to be detrimental, the ESC should have discontinued any consideration of its implementation.

Draft Decision 5

Instead, the ESC undertook to develop an alternative formulation of the Thwaites recommendation, in contrast to the manner in which it was intended, and with a vastly greater scope.

Draft Decision 5 not only fixes prices for customers seeking to engage in the market, but also fixes prices for all existing customers. This was not considered by the Thwaites review, and as noted above, there is no evidence that suggests customers would be willing to pay for a change to the status quo.

The ESC's draft decision to limit price changes to the VDO change date will likely have additional impacts on how customers interact with the market. As seen in market for health insurance, a single change date is likely to focus marketing and switching efforts to that date. This may be beneficial from a behavioural economics perspective, as customers may be more likely to periodically engage. On the other hand though, it may limit

[5] Byrne, D & Leslie, G: Market Design Considerations in Implementing Recommendation 4A from the Independent Review into the Electricity and Gas retail Markets in Victoria, October 2019

the availability of good offers throughout the year if customers do not engage at other times. Given the likely implementation of the Government's energy fairness plan, retailers will be less able to promote offers to customers proactively, and will rely on customers contacting retailers directly. Consideration needs to be given to the impacts of customers being encouraged to only engage at a particular time of the year, especially given the advice of Byrne and Leslie that contract prices will likely be highest in January given retailers will have to lock in their pricing for the entire year.

Practically, this Draft Decision creates a number of other issues for retailers. The AEC welcomed discussions at the January workshop about the potential for a price change 'period', to enable retailers to make price changes over a month, rather than on a single day. Requiring all customers in Victoria to receive a price change on a single day, with Bill Change Notifications required to be sent on or before Christmas Day, is both administratively cumbersome, and a poor customer experience. As such, a price change period represents a more pragmatic approach that will mitigate retailer costs to an extent. The AEC considers to achieve the benefits sought, this period should be at least one month.

The new status quo

The retail market today is vastly different to that which was seen by Thwaites. Retailers are required to notify customers through the clear advice entitlement prior to gaining explicit informed consent about any planned price changes, and their quantum. At the same time, retailers are required to notify customers about the availability of alternative offers that may be more appropriate to the customer's needs.

Following an intense period of scrutiny on the retail market, and concerns from customers that engagement was too complex, retailers have taken a number of voluntary steps to simplify their offers. This evolution has resulted in the number of offers with conditional discounts available in the market decreasing significantly, and importantly in the context of 4A, a marked increase in the number of offers containing a fixed price period. If, as the ESC's behavioural evidence highlights, is what customers are seeking, then fixed price offerings, and more simple products, represent a competitive advantage for retailers who chose to develop them.

These changes have been lauded by regulators, consumer representatives, and governments as extremely beneficial for consumers, and with the development of the reference price, have gone some way to reduce the complexity in the market.

When Thwaites investigated the offers available in 2017, the Inquiry found that offers were by and large variable, other than a few offers which contained short "price freeze periods". Recommendation 4A was developed based on a market were prices could change at any time without prior notice, without the benefit of the clear advice entitlement, and without the presence of the VDO or the reference price.

A key component of the new status quo is the VDO. The VDO is an offer in which prices can only change once per year. It is reasonably priced, and represents a 'safe-harbour' for customers who do not wish to, or are unable to, go to the effort of actively engaging in the market. In combination with the clear advice entitlement, if a customer is seeking price certainty, and a retailer does not offer a product with fixed pricing, the retailer would be required to inform the customer of the availability of the VDO.

Meeting the hurdles for regulatory change

As noted above, the Government's guide to regulation requires the ESC to meet three key hurdles before implementing regulatory change.

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Firstly, the ESC must prove that a problem exists. Given the Thwaites Inquiry found that customers were being unfairly disadvantaged by being unable to avoid entering into variable price contracts for an essential service, it could be argued that there is a problem that needs to be solved.

The second hurdle is that government action needs to be justified, and that regulation is the best option available to the government. This is more challenging. The competitive market has developed products for customers seeking certainty, and the VDO represents a regulated solution for customers who don't want to go to the effort of seeking out a fixed price offer from another retailer. Given the problem identified has been mitigated by the competitive market, and the incentives placed on retailers by other obligations such as the Best Offer message, the Clear Advice Entitlement, and the Bill Change notification should continue to encourage retailers to solve the problem itself.

The final hurdle requires the ESC to prove (where regulation is justified) that the regulatory model chosen addresses the policy objectives at least cost (relative to other options) to businesses and the community. Even if the ESC asserts that a problem exists in 2020 that can only be solved through government intervention, the AEC cannot see how the ESC has proven the benefits outweigh its costs. At the very least, there is a genuine risk that this approach will increase prices for customers, and will disadvantage customers who are willing and able to engage in the market to find the cheapest deals.

Draft decision 6: incompatible energy products

Draft Decision 6 states that retailers who offer energy products that are not compatible with once a year price changes will be able to continue to offer these products, provided they obtain EIC from the customer that the prices are variable, and that they notify the ESC of the products offered, and report to the ESC the number of customers on the offers, and the prices they pay.

This draft decision is inconsistent with the technical application of the reform. Clause 46AA of the ERC requires retailers to apply for an exemption rather than merely notifying the ESC as suggested in the Draft Decision.

Neither the ERC, nor the Draft Guideline included in appendix D gives any insight as to the criteria the ESC might use to determine whether or not an exemption is granted. There is no timelines for decisions, other than a broad statement that the ESC will '*endeavour to process applications in a timely manner'.* The ESC should commit to a timeframe to approve exemption applications within a defined period to not stifle competition any further than this process otherwise will.

Publication of ESC decisions is another concerning factor. The AEC expects that retailers developing new products will need to apply for an exemption very early in its development cycle to determine if the product will receive an exemption. If the ESC then published a decision detailing the type of product that had been exempted prior to its launch, there would clearly be detrimental outcomes to the competitive market. The AEC encourages the ESC to make exemption decisions confidential until such a time as the product is launched.

Link between Draft Decision 5 and 6

The AEC questions the rationale of prohibiting a retailer from giving a customer the choice to enter into a variable priced contract, unless that contract is non-traditional. When the contract is non-traditional, the ESC appear comfortable that a customer could give EIC to enter into what is likely a more complex pricing arrangement, but if the retailer wished to offer a 'traditional' variable offer, the customer cannot be empowered to make a decision between that variable priced offer and the VDO (or another fixed price offer).

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The AEC has continually argued that retailers should be required to provide customers with clear information about their products, and that customers should be trusted to consider the information presented, and given the agency to make a decision that best suits their needs. For some customers who value price over certainty, this choice is unlikely to lead to a decision to enter into an agreement with a fixed, higher price.

Allowing customers to make some choices, but not others, merely because the product is non-traditional, appears counterintuitive.

The AEC encourages the ESC to reconsider the likely outcomes of Draft Decision 5, particularly in light of the fact that it requires a complementary exemptions process to try and avoid that decision unreasonably inhibiting innovation.

AEC preferred position

The AEC does not consider the case has been made to reject recommendation 4A, and implement Draft Decision 5.

There is insufficient evidence to prove that competition, in conjunction with the vast suite of changes implemented on 1 July 2019, will not deliver the outcomes sought.

Given that, the AEC strongly encourage the ESC to avoid prohibiting variable price contracts at this time, and instead, expand the application of the new clause 52D to all non-fixed price contracts. This will ensure that the benefits sought, and valued, by customers today are not lost unnecessarily.

Changing the back-billing rules

The AEC understands that the Government has issued a ToR directing the ESC to implement its election commitment to reduce the period a retailer is able to back-bill a customer from 9 months, to 4 months.

As the ESC is aware, customers are undercharged for a number of reasons. Some of these reasons relate to matters within a retailers control, however the majority are caused by other parties, such as distributors, meter data providers, and customers themselves.

Given this, the AEC is keen to see this reform implemented in the manner that does not unreasonably increase costs on retailers alone.

The AEC encourages the ESC to consider methods to limit the 4 month limitation to scenarios where the undercharging occurred as a result of the retailers fault or omission. For other scenarios where the customer or another party is at fault, the existing limitations on undercharging should remain.

The AEC suggest the following amended drafting to clause 30 of the ERC would deliver the Government's intent, without unnecessarily increasing costs on retailers and consumers.

> **30 Undercharging**
>
> (2) Where a retailer proposes to recover an amount undercharged the retailer must:
>
> **(AA) limit the amount to be recovered to the amount undercharged in the 4 months before the date the customer is notified of the undercharging, if the amount was undercharged as a result of the retailer's fault or omission; and**
>
> (a) **To the extent that it is not limited by other regulatory instruments**, unless the amount was undercharged as a result of the **subclause (AA) or the** small customer's fault or unlawful act or omission, limit

the amount to be recovered to the amount undercharged in the 9 months before the date the customer is notified of the undercharging; and

(b) not charge the customer interest on that amount; and

(c) state the amount to be recovered as a separate item in a special bill or in the next bill, together with an explanation of that amount; and

(d) offer the customer time to pay that amount by agreed instalments, over a period nominated by the customer being no longer than:

(i) the period during which the undercharging occurred, if the undercharging occurred over a period of less than 12 months; or

(ii) 12 months, in any other case.

Complementary changes to the Distribution Code

During the development of the National Energy Customer Framework (NECF), a clause was inserted into the National Electricity Rules (NER) to ensure that retailers weren't financially responsible for distributor charges that they were unable to recover from their customers.

At the time, Victoria intended to enact the NECF, so NER clause 6B.A3.1a was drafted to only preclude a Distributor from billing a retailer for network charges that the retailer was prohibited from recovering under the National Energy Retail Law and Rules. Whilst Victorian Distributors are regulated by the NER, the decision to link the obligation to the NECF rules and not the ERC means it does not have any effect in Victoria.

The AEC considers this regulatory inconsistency should be rectified as soon as possible, either in this Draft Decision, or through the ongoing reform of the Distribution Code.

Protecting customers at the end of benefit and contract periods

Draft Decision 8

The AEC considers this Draft Decision will effectively render the practice of offering fixed benefit periods (FBP) obsolete. There is no incentive to offer these products if retailers are forced to maintain any discount into perpetuity.

It must be noted that this decision will not change the customer outcome, as the retailer would have been free to change the base price, even if the discount itself was unable to be changed.

The AEC opposes the decision to require retailers to retain a pay on time discount for FBPs that expire after 1 July 2020. This scenario is counter to Draft Decision 10, which caps pay on time discounts to an amount determined by the ESC. The rationale for Draft Decision 10 is that customers should not be required to risk paying a significant price premium merely for failing to pay a bill on time. This is understandable. Yet draft decision 8 effectively locks that customer into the high discount (and therefore, the higher risk) into perpetuity.

For a customer who periodically fails to pay a bill on time, this might mean they pay significantly more than they need to for energy. In addition, given the methodology retailers use to calculate the best offer includes any conditional discounts, the retailer will likely have to continue informing a customer who fails to pay their

bill on time that they are on the best offer, even when there might be other offers that better suit that customers.

The AEC encourages the ESC to reconsider this transitional provision giving this clearly unintended consequence, and limit the application of clause 46B to new contracts entered into after the implementation date.

Draft decision 8

The AEC opposes the Draft Decision for gas customers on existing fixed term contracts to be placed on the retailers best offer at the conclusion of their contract period. As the ESC has not advised stakeholders about the mechanism in which this change will be made, the AEC is concerned that unintended consequences will likely arise, given the inability of stakeholders to provide comments on the technical drafting of any regulatory change.

The AEC urge the ESC to ensure that any decision to roll customers off gas fixed term contracts do not unintentionally damage the concepts of deemed customer retail contracts, explicit informed consent, and market contract terms and conditions.

In almost all scenarios, a retailers best offer will be their market offer. Previously, it has been broadly accepted that a customer cannot enter into a market retail contract without EIC. This creates challenges for the drafting of this obligation. Either the customer is given market retail contract pricing on deemed contract terms and conditions, or the customer is "forced" onto an MRC absent EIC. Neither alternative is preferable, given MRC's often place further obligations on customers, including conditional discounts, payment fees, and shortened billing cycles.

Further, given the AEC expects the number of gas customers currently to be on fixed term contracts to be very low, this places a greater onus on the ESC to ensure that any change is proportional, and in fact whether it even resolves a problem that exists in the market.

The AEC requests the ESC publish the intended implementation approach as soon as possible to allow stakeholders to appropriately consider its ramifications.

Regulating conditional discounts

The AEC accepts that the Government is committed to regulating the maximum conditional discount retailers are able to offer their customers in a market retail contract.

That being said, as noted in our submission to the issues paper, it is incumbent on the ESC to seek to harmonise with the national framework, or clearly set out why such harmonisation would be detrimental to consumer outcomes. There is no rationale presented in the draft decision.

The AEC considers there are three approaches that could be taken in determining the maximum conditional discount allowed.

1. Retailers could determine the maximum based on their reasonable costs (the AEMC approach)

2. The Regulator could set an arbitrary cap based on what it considers reasonable (eg, 5%)

3. The Regulator could attempt to calculate a proxy for reasonable costs to set the cap (the ESC approach)

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The AEC does not consider the customer outcome is materially different from any of these approaches. In all scenarios, the cap is a maximum, so the retailer can offer a discount lower than the cap – a regulator determined cap for example does not enable customers to compare apples with apples any more than a retailer determined cap.

The only instance in which a customer outcome might differ is in option 1 if a retailer was able to prove that their costs were materially higher than the regulator's model retailer in option 2 or 3. This might be the case for a very small retailer with higher debt costs, or a retailer offering a special product to customers experiencing payment difficulty that incentivised them to make their payments on time.

Option 3 creates additional complexity for little benefit. The Draft Decision suggests that retailers would be notified of the annual number in Mid-June each year, for application from 1 July. This is an inadequate timeframe for retailers to be able to develop and market new energy products. As such, there is likely to be a period in early July where retailers are unable to make offers with conditional discounts.

Unless the ESC can provide specific rationale for not harmonising with the national rules, the AEC encourages the ESC to change Draft Decision 10 to align with the AEMC approach. If the ESC continues to utilise a methodology in line with the Draft Decision, retailers should be advised on the new rate at least two months prior to it taking effect.

For any questions about our submission please contact me by email at [redacted] or on [redacted]

Yours sincerely,

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