

OFFICIAL



Energy Consumer Reforms

Discussion paper

24 October 2024

Acknowledgement

We acknowledge the Traditional Owners of the lands and waterways on which we work and live.

We acknowledge all Aboriginal and Torres Strait Islander communities, and pay our respects to Elders past and present.

As the First Peoples of this land, belonging to the world's oldest living cultures, we recognise and value their knowledge, and ongoing role in shaping and enriching the story of Victoria.

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Summary

Introduction

We began our review of the Energy Retail Code of Practice with the release of an issues paper on 6 June 2024. The paper sought feedback from stakeholders and the public on key areas for reform. The six-week consultation period closed on 19 July 2024.

On the same day our consultation closed, the Energy and Climate Change Ministerial Council (ECMC) agreed to progress a package of consumer reforms. The Commonwealth Minister for Climate Change and Energy, as Chair of the ECMC, submitted rule change requests to the Australian Energy Market Commission (AEMC) in August 2024.¹

The rule change requests seek to amend the National Energy Retail Rules. In Victoria, these rule changes would need to be implemented through our Energy Retail Code of Practice, which we are currently reviewing.²

The objectives of the ECMC's consumer reforms align with what we heard from stakeholders in submissions to our Energy Retail Code of Practice issues paper. We explored a wider range of topics and received feedback supporting prioritising protections for consumers experiencing payment difficulty.

Supporting consumers experiencing payment difficulty

The aim of the ECMC's energy consumer reforms is to:

- help households access cheaper energy deals
- increase support for people experiencing payment difficulty
- deliver more protections for consumers.

¹ Energy and Climate Change Ministerial Council, [Meeting Communiqué](#), 19 July 2024. The [rule change requests](#) have been published by the Australian Energy Market Commission.

² The National Energy Customer Framework (NECF), of which the National Energy Retail Rules are part of, only applies in a limited manner in Victoria. The key energy retail consumer protections Victoria are in the [Energy Retail Code of Practice](#).

Community groups told us that we should consider ways to require retailers to lower the cost of energy for households struggling with bills.³ We also heard that we should explore options for automating concessions and best offers.⁴

Commission response

Given the feedback we received in submissions to our issues paper and the rule changes proposed by the ECMC, we will divide our review of the Energy Retail Code of Practice into two stages:

- **Stage one** will consider the energy consumer reforms proposed by the ECMC. We expect to make a final decision for this first stage by June 2025.
- **Stage two** will address other issues raised in response to our issues paper. We expect to make a final decision for the second stage of our review by early 2026.

Independent dispute resolution awareness

We are also prioritising improving consumers' awareness of independent dispute resolution services. We will assess options for including the contact details of the Energy and Water Ombudsman Victoria (EWOV) on bills.

We will not consider further alignment with the Australian Energy Regulator's (AER) Better Bills Guideline at this time. Most stakeholders did not support such alignment, noting that the AER has not yet completed a post-implementation review.⁵

Proposed priority reforms

Some of the reforms proposed by the ECMC have already been implemented in Victoria. The Victorian Government has prohibited late payment fees and exit fees.⁶ We implemented other rule changes as part of our 'Ensuring contracts are clear and fair' reforms. From 1 July 2020, retailers

³ Brotherhood of St Laurence, submission to 'Energy Retail Code of Practice review: Issues paper', 19 July 2024, p. 1; Consumer Action Law Centre, submission to 'Energy Retail Code of Practice review: Issues paper', 26 July 2024, p. 13.

⁴ Energy and Water Ombudsman Victoria, submission to 'Energy Retail Code of Practice review: Issues paper', 31 July 2024, p. 5; Financial Counselling Victoria, submission to 'Energy Retail Code of Practice review: Issues paper', 19 July 2024, p. 5; Uniting, submission to 'Energy Retail Code of Practice review: Issues paper', 22 July 2024, p. 24.

⁵ Essential Services Commission, [Consultation summary – Energy Retail Code of Practice review: Issues Paper](#), 17 August 2024, p. 6.

⁶ Sections 40C and 40D of the *Electricity Industry Act 2000* and sections 48B and 48C of the *Gas Industry Act 2001*. Exit fees are prohibited for all contracts except for some fixed-term contracts.

are only allowed to increase prices once a year, pay-on-time discounts are capped, and benefits must last the entire length of a contract.⁷

This discussion paper addresses the remaining reforms proposed by the ECMC that have not yet been implemented in Victoria. We discuss the assumptions behind the proposed reforms, our starting points and present options we are seeking input on. We will use feedback received during our engagement to refine the options we will assess in a Regulatory Impact Statement.

We are consulting on the following proposed rule changes:

Proposed rule change	Summary
Automatic best offer for customers experiencing payment difficulty	We discuss what options to facilitate automated switching could look like, who we should target, and safeguards for customers, including options maintaining customer agency. We consider options for crediting customers in payment difficulty instead of switching them to other plans, or unilaterally lowering tariffs while keeping other contract terms and conditions the same.
Improving the ability to switch to the best offer	We consider how retailers could improve the process for switching to the best offer. We discuss the different means of switching (phone, websites, apps) and how retailers could improve the time and effort it takes for a customer to switch to their retailer's best offer. We consider whether an outcomes-based approach or a more prescriptive approach would be best. We ask whether there are alternative ways to improve retailer incentives so that more customers are on contracts with lower prices.
Improving the application of concessions to bills	We discuss potential requirements for retailers to proactively seek information about customers' eligibility for concessions. We consider existing obligations, system limitations, and options to reduce the number of customers who are eligible for concessions but are not receiving them.

⁷ Essential Services Commission, [Ensuring energy contracts are clear and fair: Final decision](#), 28 February 2020.

• Extending protections for customers on legacy contracts	We consider the effects of our 'Ensuring contracts are clear and fair' 2019 reforms, such as the number of customers who are still on legacy contracts with high conditional pay-on-time discounts. We discuss extending those reforms to contracts entered into before 1 July 2020.
• Improving awareness of independent dispute resolution services	We discuss the feedback we received to our issues paper on potential alignment with the AER's Better Bills Guideline. We consider options for increasing consumers' awareness of independent dispute resolution services through the inclusion of EWOV's contact details on bills.

Next steps and how you can participate in our process

There will be multiple ways to provide input into this reform process. We will run workshops, public forums and individual meetings. These sessions will be the best opportunities to provide input on matters we should consider in relation to these proposed reforms.

Online information session

On the 6th November 2024, we will hold an online information session to discuss this first stage of our review. We will share information on how to register for this session on our [project webpage](#).

Workshops

To ensure that the proposed rule changes are informed by diverse perspectives and experiences, we will conduct workshops with representatives from industry, consumer groups, and community stakeholders. These workshops will provide a platform for open dialogue and discussion, allowing participants to share their insights, concerns, and suggestions for achieving the desired outcomes of the proposed rule changes.

Consumer engagement

Throughout November and December, we will also test assumptions, options and preferences related to these reforms with consumer focus groups. Our goal is to better understand the lived experience of energy consumers, and especially of consumers experiencing vulnerability, to inform our decisions.

Providing feedback

You are invited to submit written feedback via [Engage Victoria](#) by **5.00pm on 26 November 2024**.

We will publish written submissions on our website, except for any information deemed commercially sensitive or confidential. This is in accordance with our [submissions policy](#). Submissions should clearly identify which information you consider sensitive or confidential, and the basis for the classification.

Individual meetings

We are open to meeting with individual stakeholders to discuss specific feedback. If you would like to arrange a meeting, please contact us at energyreform@esc.vic.gov.au.

General comments

You can also provide your feedback by making general comments over mail or phone:

- **Mail:** Essential Services Commission, Level 8, 570 Bourke Street, Melbourne Victoria 3000
- **Phone:** +61 3 9032 6290

If English is not your first language, please contact TIS National on 131 450 and ask to talk to the Essential Services Commission on 1300 664 969.

Regulatory Impact Statement

The feedback we receive through our engagement will inform a Regulatory Impact Statement. This statement will accompany draft amendments to the Energy Retail Code of Practice.

We are aiming to publish the draft amendments for consultation in the first quarter of 2025, with a final decision by June 2025.

Proposed priority reforms

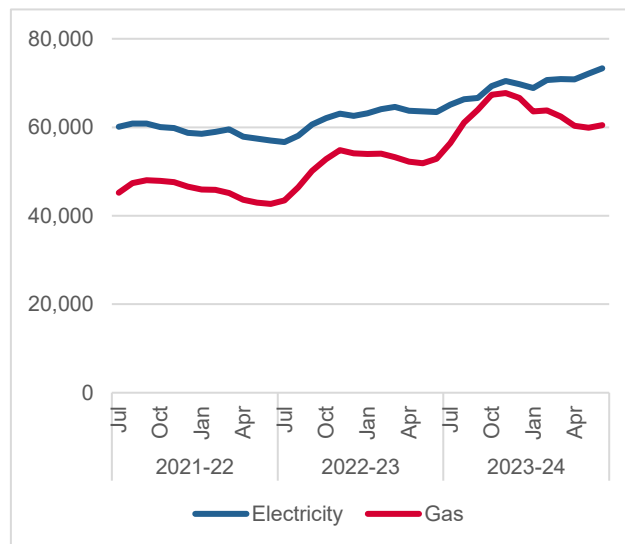
1. Automatic best offer for customers experiencing payment difficulty

In this section we discuss what automated switching could look like, who we should target, and potential safeguards for customers. We consider options for crediting customers in payment difficulty instead of switching them to other plans, or unilaterally lowering tariffs while keeping other contract terms and conditions the same.

Why do we need to act?

An increasing number of Victorians are having trouble paying their energy bills. We noted a 16 per cent increase in the number of electricity customers accessing tailored assistance from their retailer compared to last year. For gas customers, there was a 14 per cent increase.⁸

Figure 1: Number of customers accessing tailored assistance, by fuel



Disclaimer: This chart represents all Victorian retailers excluding Engie (previously trading as Simply Energy) due to reporting issues.

Our analysis of actual prices paid by customers between October and December 2023 shows that on average, customers receiving payment difficulty assistance pay lower effective prices than customers not receiving assistance. However, many customers receiving assistance are part of

⁸ Essential Services Commission, [Victorian Energy Market Report](#), September 2024, p. 10.

households that consume more energy from the grid than other households. This results in higher bills, even when charged at lower effective prices.⁹

We also know that most customers receiving assistance pay prices below the Victorian Default Offer (VDO). But a small minority of these customers are estimated to be paying prices above the VDO, and some well above it.¹⁰

More assistance needed to help customers switch to the best offer

Retailers tell us that they are trying their best to switch customers receiving assistance onto better plans. They tell us that the task of communicating information and providing various forms of assistance is complex, and that it can be overwhelming for customers.¹¹

We have heard concerns from consumer groups that many customers receiving or seeking payment assistance are on high-priced plans and are not offered a switch to their retailer's best offer. For example, the Victorian Council of Social Services noted that retailers are not consistently checking that customers experiencing payment difficulty are on the most affordable energy offer available.¹² The Consumer Action Law Centre highlighted cases where retailers confirm payment arrangements without first offering tariff checks or reductions.¹³

In addition, consumer advocates have reported that households receiving assistance through the Victorian Government's Energy Assistance Program are expressing frustration that they bear responsibility of contacting their retailer to switch to their retailer's best offer, when the retailer already knows their customer is experiencing payment difficulty. Out of all participants who were supported by the Energy Assistance Program to find a cheaper offer, 58 per cent were identified as not on their retailer's best offer, with many participants being unaware of or not trusting best offer notifications.¹⁴

⁹ Essential Services Commission, 'Usage vs price: supporting households who are struggling with their electricity bills', [Victorian Energy Market Report](#), March 2024, pp. 5-10.

¹⁰ Analysis based on a sample of ACCC billing data for Victorian residential customers between October and December 2023.

¹¹ AGL, submission to 'Energy Retail Code of Practice review: Issues paper', 19 July 2024, pp. 4-5; Alinta Energy, submission to 'Energy Retail Code of Practice review: Issues paper', 19 July 2024, p. 4.

¹² Victorian Council of Social Service, submission to 'Energy Retail Code of Practice review: Issues paper', 19 July 2024, p. 9.

¹³ Consumer Action Law Centre, submission to 'Energy Retail Code of Practice review: Issues paper', 26 July 2024, pp. 12-13.

¹⁴ Department of Energy, Environment and Climate Action, *Energy Assistance Program Quarterly Report*, February 2024, slide 10.

What outcomes do we want to achieve?

Our goal is for customers receiving payment difficulty assistance to be on the best price their current retailer can offer while they are receiving this assistance. They would then be in a better position to pay debts faster.

A related outcome would be improving customers' confidence to engage with their retailer when facing payment difficulty. Knowing a retailer has taken a proactive step to help the customer from the start could affect customers' confidence in further engagement.

Our longer-term goal is to improve the assistance provided to customers experiencing payment difficulty. This would:

- reduce the risk these customers will go into debt
- reduce the amount of time customers are indebted
- minimise the transaction costs of customers engaging with their retailer to switch to the best offer while receiving assistance.

What options are we considering?

Methods of switching

We are considering three initial options for moving customers receiving assistance to the best offer:

- **Crediting the difference between the current plan and the best offer:** this would require retailers to credit eligible customers the difference between the cost of their energy usage on their current plan and the cost of their energy usage on the retailer's deemed best offer.
- **Reducing tariffs to match the best offer:** this would require retailers to lower the tariffs of an existing customer's energy plan to align them with the tariffs of the retailer's deemed best offer. Other terms and conditions of the customer's plan would remain the same.
- **Automated switching to the best offer:** this would require retailers to switch eligible customers to the deemed best offer. The deemed best offer is calculated as the cheapest generally available offer based on the customer's previous 12 months of energy usage.

We consider potential advantages and disadvantages of each of these options below.

Crediting or reducing tariffs while keeping other terms and conditions

Crediting or reducing tariffs while keeping other terms and conditions would avoid switching customers to new plans without their explicit informed consent. These options would allow eligible customers to keep the non-monetary benefits of their current energy plans while being protected from paying higher prices.

Crediting the difference between the current plan and the best offer would present challenges related to calculating the deemed best offer and the credits to be added to eligible customers' bills. For example, we may need to specify the frequency with which credits need to be calculated and added to bills. This could be avoided if the tariffs were changed to match the best offer as soon as a customer becomes eligible for this type of assistance.

However, changing a customer's tariffs to align with the best offer may be difficult if the best offer has a different tariff structure (flat rate vs time of use) to the customer's current energy plan. It could have unintended consequences if the customer is unable to understand or adapt their energy usage to the new tariff structure.

Both these options would also require retailers to match the price of best offers without considering other terms and conditions which may justify cheaper prices (for example, payment methods and frequency, contract length). This would add costs to retailers that are likely to be recovered through other means or from other customers.

We are interested to hear from stakeholders about the potential costs and benefits of implementing these options, as well as alternatives that could achieve similar outcomes for customers receiving assistance.

Automated switching to the best offer

The AER's Game Changer report recommended requiring retailers to automatically place customers in hardship programs on the best offer.¹⁵ The report identified three options to implement the automatic application of best offers:

Option	Summary	Key strengths	Key risks
1. Automated switch with post-switch reversal	Retailer notifies customer that automated switch has taken place and the customer can choose to reverse the switch during the existing 10-day cooling-off period.	Creates the strongest default for maximum impact on the outcome.	Consumers experiencing vulnerability may not be able to notify retailer of desire to reverse switch within the cooling-off period.
2. Automated switch with pre-switch opt-out and post-switch reversal	Retailer notifies the customer of an upcoming automated switch and the customer can choose to opt out beforehand or reverse	Balances consumer control with stronger default.	Consumers experiencing vulnerability may not be able to notify retailer of desire to

¹⁵ Australian Energy Regulator, [Game changer: A package of reforms to improve outcomes for consumers in energy hardship](#), November 2023, p. 21.

	the switch during the cooling-off period.		reverse switch within the cooling-off period.
3. General consent for automated switch in future	Customer provides consent for retailer to automatically switch them to a deemed better offer in the future. Customers can choose to reverse the switch during the cooling-off period.	Maximises consumer flexibility and control.	Requires consumers to opt in, thereby retaining onus on consumer and decreasing potential impact.

Source: Australian Energy Regulator, *Game Changer: a package of reforms to improve outcomes for consumers in energy hardship*, November 2023, p. 22.

All these options would require a retailer to change the customer's energy plan to the best offer. This would require modifying or removing explicit informed consent requirements currently provided for in the Energy Retail Code of Practice for automatically switching customers.

Explicit informed consent

Explicit informed consent is a critical requirement to protect energy consumers. It is a process where a consumer voluntarily agrees to a specific energy plan or service after understanding the terms and conditions. This includes clear information about the energy tariff, pricing structure, contract length, and any additional fees or charges. By providing explicit informed consent, the consumer is actively making a decision about their energy usage and costs.¹⁶

Key challenges of automated switching

Our main concern with this option is that removing explicit informed consent could reduce a customers' ability to choose plans that may be more suitable for them. For example, the best offer may be a plan that requires direct debit payments and paperless bills – terms and conditions that might not suit some customers' preferences.

Previous research suggests that different consumers value different aspects of an energy plan.¹⁷ For those who consider price to be their main concern when having trouble paying their bills, this

¹⁶ The requirements related to explicit informed consent are in clause 7 of the [Energy Retail Code of Practice \(version 3\)](#). Requirements to obtain a small customer's explicit informed consent are imposed by clauses 10(1)(a)(iii), 26(4), 57(1)(a)(iii), 57(1)(b)(iv), 59(1)(a), 61(2), 62(2), 72(3)(b), 93(2), 113(1)(a), 120(1)(c)(ii), 139(2), 146(5), 166(7)(b) and 171(6)(b) of the code of practice.

¹⁷ Uniting, [Game Changer Consumer Exploration Workshops](#), August 2023, p. 13.

option may save them time and effort. But others may value environmental and social responsibility more than the cheapest tariff, or place greater value on specific benefits of an energy plan.¹⁸

The risk of reducing a customers' ability to choose a plan that suits them could be lowered by an opt-in requirement. For example, a retailer could be required to offer a switch to the retailer's best offer when a customer starts receiving payment assistance, subject to the customer agreeing to the switch.

Another difficulty with this option would be determining how often automated switching must happen. This could be a one-off switch, when customers enter payment assistance, or automated switching at a minimum every few months or yearly. A general consent for automated future switches would need to be limited or have safeguards to prevent undesired outcomes.

Key benefits of automated switching

The key benefit of automated switching would be its effectiveness in delivering our desired outcome. In other words, a requirement to automatically switch a group of customers experiencing payment difficulty to the best offer is likely to be more effective than options that would require the customer's consent to be switched.

For example, in the banking sector over 200,000 low-income customers have been moved from high-fee to low-fee accounts. A key aspect of this change has been banks embracing the Australian Securities and Investment Commission's recommendation to migrate customers on an 'opt-out' rather than 'opt-in' basis. Participating banks have carefully developed approaches to migrating customers on an opt-out model, for example by excluding customers who have special features attached to their accounts.¹⁹

Eligibility for automatic switching

We are also considering which customers would be eligible to receive this support from retailers. The AER's Game Changer report and the ECMC rule change request suggest that automated switching should apply to customers in a hardship program.²⁰ However, under Victoria's Payment

¹⁸ Ibid., 'for example, being able to throw a birthday party for your children even in times of hardship, using movie tickets purchased using 'points' accrued through your energy plan. These consumers are willing to pay extra for such benefits even in times of hardship, and do not want to be automatically "forced" onto a cheaper plan'.

¹⁹ Australian Securities and Investment Commission, [Better banking for Indigenous consumers](#), Report 785, July 2024.

²⁰ Australian Energy Regulator, [Game changer: A package of reforms to improve outcomes for consumers in energy hardship](#), November 2023, p. 21; Energy and Climate Change Ministerial Council (ECMC), [Rule change request: Assisting hardship customers](#), 12 August 2024.

Difficulty Framework all residential customers facing payment difficulty are entitled to assistance (not just those on hardship programs).²¹

Our Payment Difficulty Framework consists of two forms of assistance:

- **Standard assistance** is offered to help customers avoid getting into arrears.
- **Tailored assistance** is required to be provided if the customer is in arrears:
 - Customers who *can pay their on-going usage* can access some tailored assistance options.
 - Customers who *cannot pay their on-going usage* can access further forms of tailored assistance.

Other entitlements in our framework depend on the amount of arrears a customer has accumulated. For example, a residential customer who has arrears of more than \$55 is entitled to be contacted by the retailer and given information about the assistance that must be offered.²²

These thresholds could be used to determine eligibility for an automatic switch. We would need to balance the potential cost impacts on retailers and the broader energy market with targeting a group of customers that would benefit the most.

A potential starting point would be to target customers receiving tailored assistance who cannot pay for on-going usage. These customers are currently entitled to receive assistance about the tariff that is most likely to minimise their energy costs.²³ We could amend this existing obligation to require retailers to credit or change the tariffs of these customers to align prices with the best offer. Based on our latest data, 29,764 electricity and 24,463 gas residential customers would meet this criterion (1.13% and 1.21% of total customers respectively).²⁴

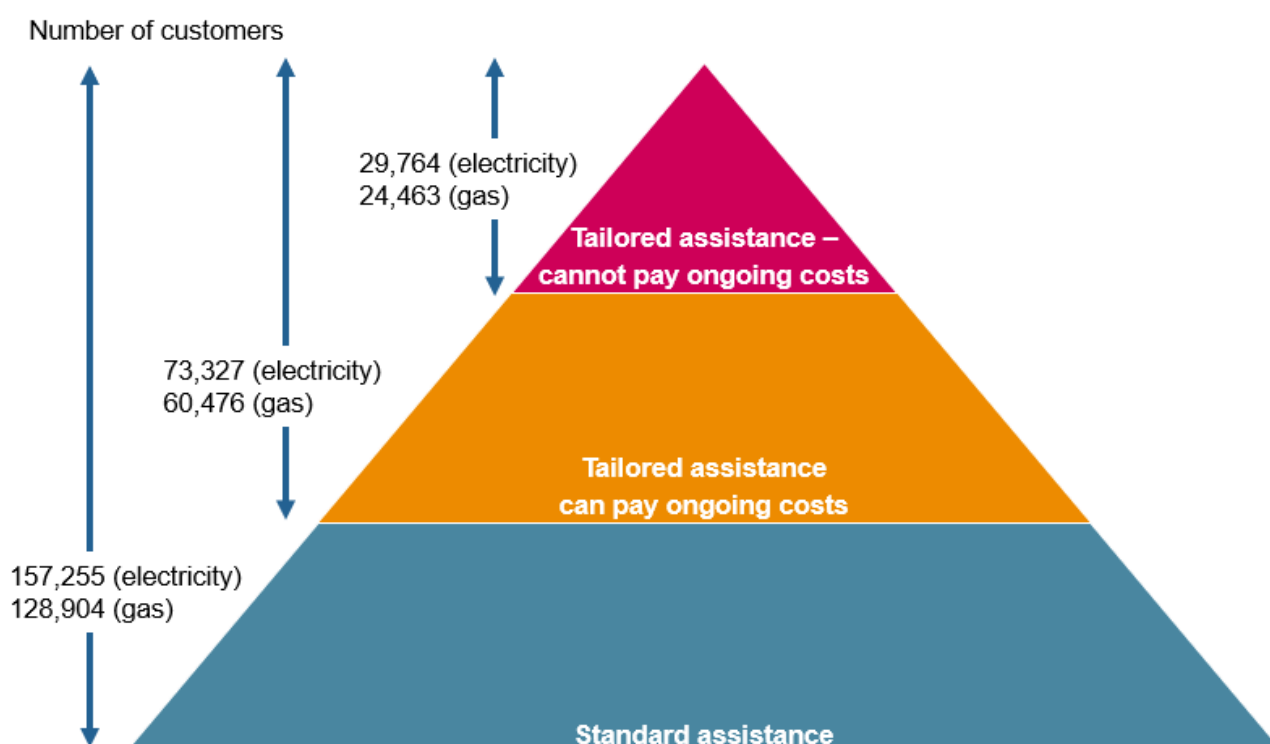
Extending eligibility to include customers receiving tailored assistance who can pay for on-going usage would increase the number of eligible customers to 73,327 electricity and 60,476 gas residential customers (2.78% and 2.99% of total customers respectively).

²¹ Part 6 of the [Energy Retail Code of Practice \(version 3\)](#).

²² Clause 129(2) of the [Energy Retail Code of Practice \(version 3\)](#).

²³ Clause 128(1)(f)(i) of the [Energy Retail Code of Practice \(version 3\)](#).

²⁴ Data from January to March 2024, excluding Engie (formerly Simply Energy) due to reporting issues. Data taken from our [Victorian Energy Market Dashboard](#).

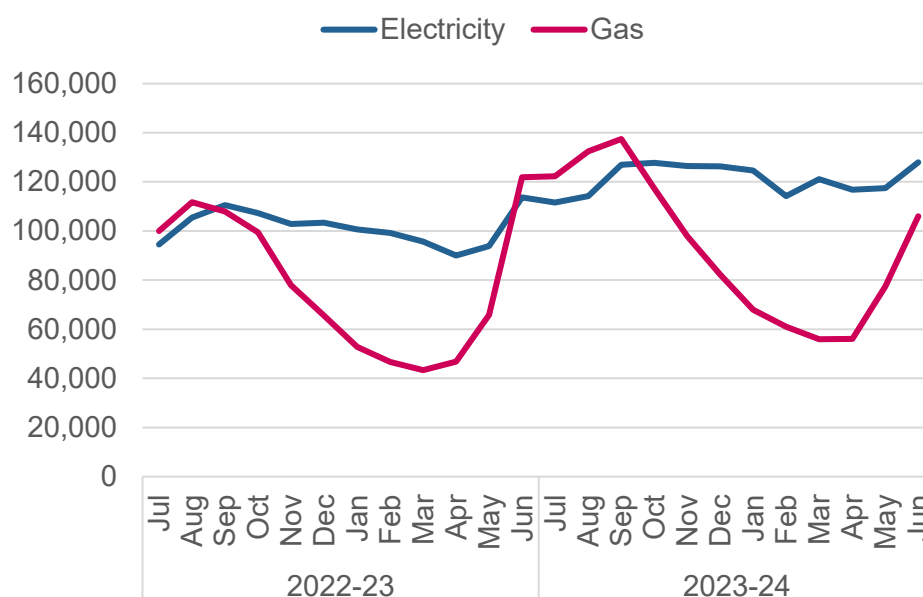
Figure 2: Who should be eligible for automatic switch to the best offer?

Source: data from the Victorian Energy Market Dashboard (April to June 2024) excluding Engie (previously trading as Simply Energy) due to reporting issues.

An alternative eligibility threshold for automated switching could be customers with arrears above a certain amount. For example, retailers could be required to switch customers who owe over \$300 to their best offer.²⁵ This approach would also target customers who have accumulated debt but are not accessing assistance from their retailer. On the other hand, a portion of these customers may be in debt but not experiencing payment difficulty.

Under this alternative approach, we would need to determine a minimum level of debt for customers to be eligible for automated switching. This could be combined with other criteria such as the time a customer has been in debt or the number of bills a customer has missed.

²⁵ We note that \$300 is the threshold of arrears for when a retailer can disconnect a customer.

Figure 3: Total number of customers with arrears above \$300 not accessing assistance

Disclaimer: This chart represents all Victorian retailers excluding Engie (previously trading as Simply Energy) due to reporting issues.

We are interested to hear from stakeholders what threshold would be appropriate for customers to be switched to the best offer or best tariff, or to be credited the difference between their current plan and the best offer.

What options are outside the scope of our review?

We are not considering:

- options for automated switching between retailers. Switching retailers may involve systems such as the [Victorian Energy Compare](#) website or initiatives such as the [Consumer Data Right](#) for energy.
- other aspects of the Payment Difficulty Framework. We will consider other suggestions for improving the Payment Difficulty Framework in the second stage of our review.

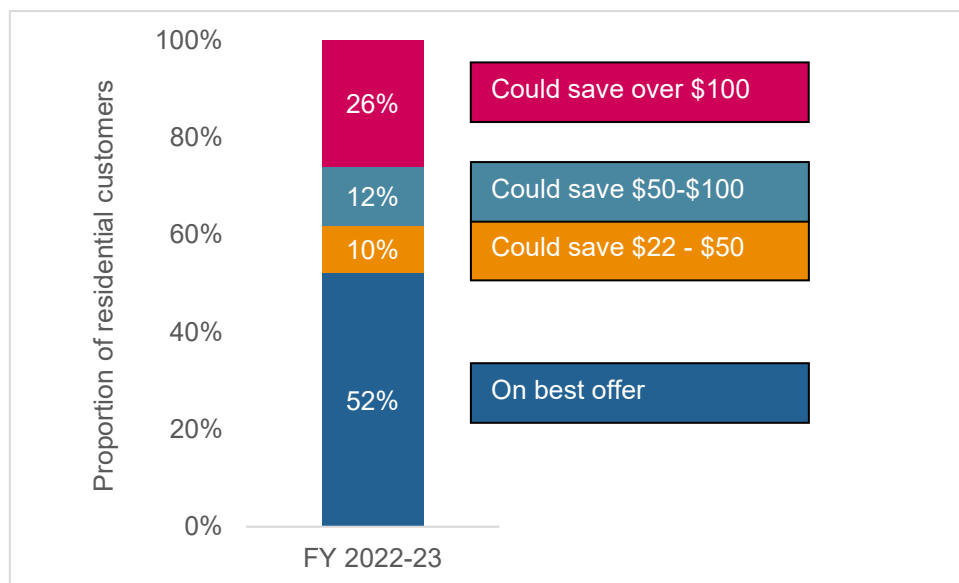
2. Improving the ability to switch to the best offer

In this section we consider how retailers could improve the process for switching to the best offer. We discuss the different means of switching (phone, websites, apps) and how retailers could improve the time and effort it takes for a customer to switch to the best offer. We ask questions about whether an outcomes-based approach or a more prescriptive approach would be best. We ask whether there are alternative ways to improve retailer incentives so that more customers are on contracts with lower prices.

Why do we need to act?

Many Victorians are not on their retailer's best offer. One in two residential electricity customers are not on their retailer's best offer, while 30 per cent of residential gas customers are not on the best offer.²⁶

Figure 4: Share of Victorian residential electricity consumers, by saving amount from being on the best offer in 2022-23



Source: Compliance and Performance Reporting Guideline (CPRG) data

Our analysis also found that 26 per cent of residential electricity consumers and 16 per cent of residential gas consumers could have saved over \$100 per year if they were on the best offer.

²⁶ Based on Compliance and Performance Reporting Guideline (CPRG) data. See also: Essential Services Commission, [Victorian Energy Market Report: September 2023](#), 26 September 2023, p. 7.

The Australian Competition and Consumer Commission's (ACCC) Inquiry into the National Electricity Market report released in December 2023 echoes our analysis. Its analysis showed that customers on newer plans were paying less for energy than those on older plans. The ACCC found that:

- customers may achieve better price outcomes if they switch regularly
- customers need to continually re-engage in the market to obtain the benefits of competition
- customers who have not switched are more likely to pay higher prices.²⁷

Requirements for best offer messaging

When we introduced the best offer reforms in Victoria in 2019, our goal was to encourage customers to engage with the energy market. Retailers are required to include a best offer message on a customer's bill once every three months for electricity and once every four months for gas. The best offer message currently must include clear and simple instructions on how to switch to the best offer.²⁸ However, customer action is still required to make the switch.

Barriers to switching plans

A key barrier to more consumers switching to their retailer's best offer may be the high perceived cost of switching. In other words, some consumers may decide the time and effort it takes to switch are not worth it.²⁹

This is supported by Energy Consumers Australia's latest Energy Consumer Sentiment Survey. It found that consumers under financial pressure were more likely to say they had considered switching energy retailer or plan but ultimately decided not to. They reported it was too confusing, time consuming or complicated to switch plans.³⁰

There are several reasons why customers do not switch to their retailer's best offer:

- Some consumers may be risk averse, while others are happy with their current plan due to benefits such as one-off gifts or sign-up credits.
- Some consumers do not look at their bills, and some struggle to understand key components of their bills.

²⁷ Australian Competition and Consumer Commission, [Inquiry into the National Electricity Market: December 2023 Report](#), 1 December 2023, p. 69.

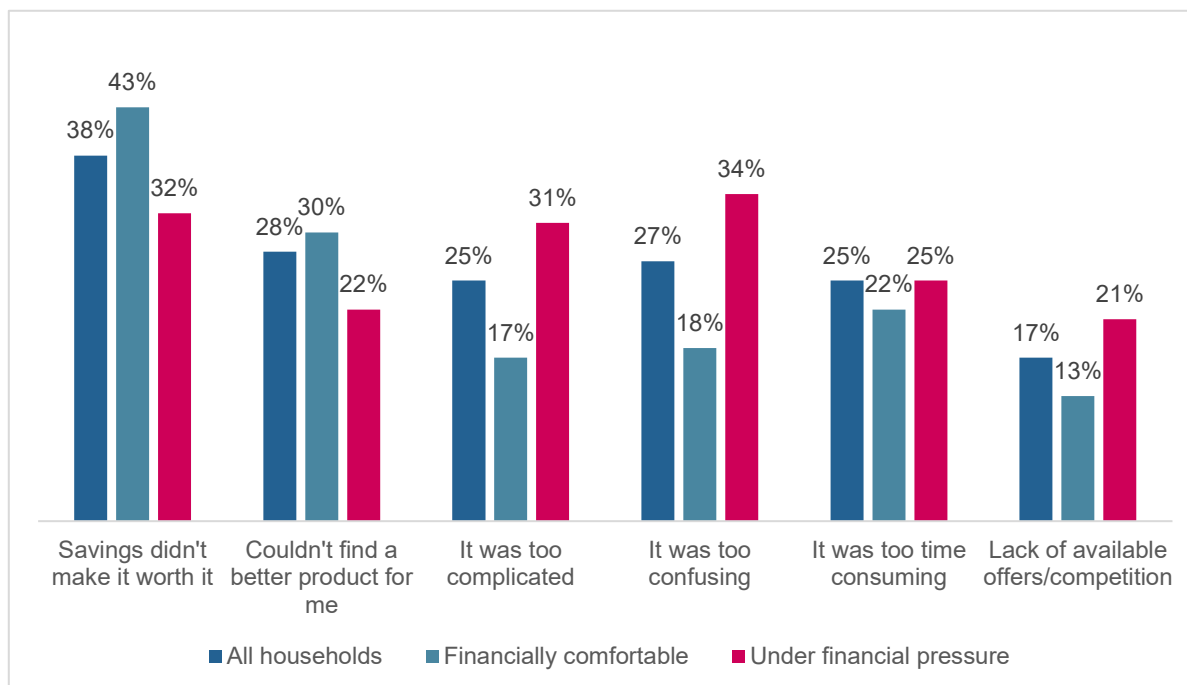
²⁸ Clauses 110(1) and 111(4)(d) of the [Energy Retail Code of Practice \(version 3\)](#).

²⁹ Essential Services Commission, [Victorian Energy Market Report: September 2023](#), 26 September 2023, p. 9.

³⁰ Energy Consumers Australia, [Energy Consumer Sentiment Survey: June 2024](#), p. 10.

- Energy bills are often a lower priority for most households, after rent or mortgage, food, transport, and education.³¹

Figure 5: Reasons why customers did not switch plans when they last considered changing retailers or switching to a better offer



Source: Energy Consumers Australia, Energy Consumer Sentiment Survey June 2024

What outcomes do we want to achieve?

Our goal is to reduce the barriers for consumers to switch to their retailer's best offer. In particular, we aim to reduce the time and effort associated with switching to the best offer.

The desired outcome is for the process of switching to the best offer to be as streamlined, short, and safe as possible. This would result in a higher number of customers considering that the benefits of switching plans outweigh the transaction costs of doing so.

We are also seeking feedback on whether there are better ways to improve incentives for retailers so that more customers are likely to be on their best deals. For example, this could be achieved by stopping retailers from offering deals only to new customers.³² Such a rule could increase

³¹ Essential Services Commission and Honeycomb, [Energy Market Insights: Research report](#), July 2021, p. 7.

³² The energy regulator in the United Kingdom has introduced such a rule by banning acquisition-only offers. See: Office of Gas and Electricity Markets, [Decision on the Future of the Ban on Acquisition-only Tariffs \(BAT\)](#), 30 July 2024.

consumers' trust in the energy market and benefit more loyal customers. However, it could also reduce the number of competitive offers in the market.

Incentives for retailers may also be improved by placing obligations on retailers who use utility connection services to switch customers using these services to their best offer. This could benefit tenants in particular, as real estate agents commonly have arrangements in place to promote the use of these services.

What options are we considering?

Options to improve consumers' ability to switch to the best offer should:

- consider different technologies and consumer groups
- allow flexibility for retailer implementation.

The options we are considering range from an outcomes-based approach to more prescriptive process requirements.

Figure 6: Band of options for regulating processes for switching to the best offer



Outcomes-based approach

An outcomes-based approach could require retailers to have an effective mechanism for customers to switch to the best offer. This would be in addition to the existing requirement to include 'clear and simple instructions on how to switch to the deemed best offer' on bills.³³ This approach would give retailers greater flexibility on how to improve their existing mechanisms or create new mechanisms for customers to switch energy plans. It would also allow us to monitor the performance of retailers in implementing effective mechanisms for customers.³⁴

³³ Clause 111(4)(d) of the [Energy Retail Code of Practice \(version 3\)](#).

³⁴ An outcomes-based obligation could be accompanied by continuous monitoring and performance-testing of retailers' mechanisms to ensure they are achieving the desired outcome. See: Laura E. Willis, 'Performance-Based Consumer Law', *University of Chicago Law Review*, 2015, 82:1309-1409.

Minimum requirements to facilitate switching

An alternative option would be to prescribe minimum requirements for how customers can switch to the best offer. For example, we could require retailers to have processes in place to enable their customers to switch over the phone, through the retailer's website, hyperlinks on bills or on email summaries with bills attached, or through apps. We could further prescribe the user-friendliness or ease of each method.

We could also improve the visibility and awareness of best offer messages by requiring retailers to place them in the body of emails as well as on bills. We understand that some retailers are currently sending bills to customers with a summary and payment link in the email, and a customer may not see the best offer message unless they open the attached bill.³⁵

We are interested to hear from stakeholders about:

- what would be an appropriate level of prescription
- what minimum requirements should we expect from retailers' systems and processes to facilitate switching to the best offer.

What options are outside the scope of our review?

We are not considering redefining what is a best offer and how it is calculated. For example, we are not considering introducing 'like-for-like best offers', which would consider things such as how much of an energy plan is sourced from renewable energy, or particular tariff structures. We consider this would require substantial changes to retailers' systems and could make best offer messages more complex and difficult to understand.

³⁵ Energy and Water Ombudsman Victoria, submission to 'Energy Retail Code of Practice review: Issues paper', 31 July 2024, p. 35.

3. Improving the application of concessions to bills

In this section we discuss potential requirements for retailers to proactively seek information about customers' eligibility for concessions. We consider existing obligations, processes, system limitations, and how to reduce the gap between customers who are eligible for concessions and customers who are effectively receiving concessions.

Why do we need to act?

There are customers who are eligible for energy concessions who are not claiming a concession on their bill. A conservative estimate by the Consumer Policy Research Centre indicated that 7 per cent of eligible Victorians did not receive a concession on their electricity bill and 12 per cent do not receive a concession on their gas bill.³⁶

There are currently no requirements for retailers to proactively check if their customers are eligible for concessions.

Barriers to receiving energy concessions

The Victorian Council of Social Services suggests that approximately 14 per cent of households who are eligible for energy concessions from their electricity retailer are not claiming them.³⁷ While Victoria's rates of eligible customers receiving energy concessions compare favourably with other jurisdictions, there remains a considerable gap on the application of this key affordability tool.

There are several reasons that may contribute to this issue:

- lack of awareness about available concession schemes
- lack of awareness about the need for the consumer to take action to apply concessions to bills, or update details when a new card arrives
- language barriers
- complexity of forms and procedures
- process errors between retailer and government systems
- stigma attached to claiming assistance and concessions.³⁸

³⁶ Consumer Policy Research Centre, [Mind the Gap: identifying the gap between energy concession eligibility and concessions received](#), November 2022, p. 4.

³⁷ Victorian Council of Social Services, [The Missing 14%: why so many Victorians are missing out on energy concessions](#), May 2023, p. 9.

³⁸ Ibid., pp. 4-5; Financial Counselling Victoria, submission to 'Energy Retail Code of Practice review: Issues paper', 19 July 2024, p. 9.

Lack of consumer awareness

A recent national survey highlighted that lack of awareness is a key reason customers are not claiming concessions on their bills. Only about a third of Australians who have a concession card were aware that they may be eligible for energy bill concessions.³⁹

Retailers have obligations to provide customers information about concessions, eligibility criteria and how to claim a concession under agreements with the Department of Families, Fairness and Housing. However, retailers could be doing more to proactively check if their customers are eligible for concessions.

Approaches for retailers to seek concession information

There are three scenarios where a retailer could seek concession information:

- A person switches retailers while eligible for an energy concession.
- A person becomes eligible for an energy concession while holding an energy account.
- A person becomes a first-time energy consumer while eligible for an energy concession.⁴⁰

Addressing these scenarios could reduce the gap between consumers who are eligible for concessions and those effectively claiming concessions on their energy bills.

What outcomes do we want to achieve?

Our aim is to ensure more consumers who are eligible for energy concessions are claiming a concession on their bill.

We are particularly concerned with addressing low consumer awareness of eligibility for energy concessions. We want to reduce the burden on consumers of ensuring they are receiving concessions they are eligible for, by promoting more proactive engagement between retailers and consumers to close the eligibility/application gap.

What options are we considering?

We are considering options to improve consumer awareness of energy concession eligibility and in turn to increase the application of concessions to bills in the short to medium term. This excludes longer-term solutions such as system changes that would allow for automation and portability.

³⁹ Ferdi Botha and Kushneel Prakash (Melbourne Institute Applied Economic & Social Research and Energy Charter), [*Insights into energy concession awareness and energy-related behaviours among concession card holders in Australia*](#), June 2024, p. iv.

⁴⁰ Australian Energy Market Commission, [*Rule change proposal: Improving the application of concessions to bills*](#), 12 August 2024.

Proactively seeking eligibility for concessions

Retailers could be required to proactively seek information about customers' eligibility for concessions at different points of contact with a customer. For example, some retailers already seek information about a customer's eligibility for concessions when they first sign up. We are considering options requiring collection of this information at the first point of contact with the customer or by requiring retailers conduct regular checks on a customer's eligibility. This would involve retailers seeking concession information from:

- **New customers:** for example, this could be via electronic forms if a customer signs up via a website, or by asking if a customer is eligible for concessions on the phone. This option could also address the scenario where an eligible customer switches retailers, as the new retailer would need to seek concession information from the customer.
- **Existing customers:** we could require retailers to proactively check within a certain period (for example, within six months of a rule change) if their existing customers who are not receiving concessions may be eligible for one. This could also be an ongoing requirement for a retailer to check or remind customers to update their eligibility for concessions. Such a requirement could be for checks every few months, yearly, or when a retailer is aware of a customer's eligibility period being close to expiring or having expired without action by the customer.

What options are outside the scope of our review?

The AER's Game Changer report called for concession system upgrades to allow automation, portability and proactive support to ensure more consumers receive the concessions to which they are entitled.⁴¹ While automation and portability could be optimal solutions, we consider these are longer-term solutions that would require significant changes to government and retailer information technology systems. They would also involve consideration of issues related to data sharing, privacy and explicit informed consent.

Energy Ministers have asked Senior Officials to work with Services Australia on options for supporting Commonwealth concession card holders to access state-based energy rebates.⁴² These changes are beyond the scope of our review.

We consider that other changes for automating information sharing, such as tying concession eligibility status to customers' National Metering Identifiers (NMIs) could overlap with the work on facilitating automation and portability.

⁴¹ Australian Energy Regulator, [Game changer: A package of reforms to improve outcomes for consumers in energy hardship](#), November 2023, p. 18.

⁴² Energy and Climate Change Ministerial Council, [Meeting Communiqué](#), 19 July 2024.

4. Extending protections for customers on legacy contracts

In this section we consider the effects of our ‘Ensuring contracts are clear and fair’ 2019 reforms, such as the number of customers who are still on legacy contracts with high conditional pay-on-time discounts. We discuss extending those reforms to contracts before 1 July 2020.

Why do we need to act?

Some customers are on contracts that are four years or older with large discounts that only apply if the customer meets certain conditions (for example, direct debit or pay-on-time discounts). If the customer does not meet these conditions, they could be subject to large costs.

Customers on legacy contracts could also have discounts, credits or rebates that expire before the end of the contract. If those benefits expire, this could leave those customers exposed to unreasonably high costs.

Pay-on-time discounts capped

In our ‘Ensuring contracts are clear and fair’ reforms, we capped pay-on-time discounts at a level we set annually so that customers who miss a bill payment do not face a large increase in costs.⁴³ We also made changes so that any customer signing up to a new offer with a discount, credit or rebate would continue to receive that benefit for the entire duration of the contract. However, these protections only apply to contracts from 1 July 2020.⁴⁴

Our analysis indicates that these reforms were successful in limiting conditional discounts post 1 July 2020.

Figure 7: Proportion of customers on plans with a conditional discount, by offer start date and customer type

Customer type	Offer start date	
	Before 1 July 2020	After 1 July 2020
Receiving payment difficulty support	33%	1%
Not receiving payment difficulty support	47%	2%
All customers	46%	2%

⁴³ The cap is in our [Guideline: maximum cap for pay-on-time discounts](#). For contracts entered into from 1 July 2024 to 30 June 2025, the maximum pay-on-time discount cap is 6.62%.

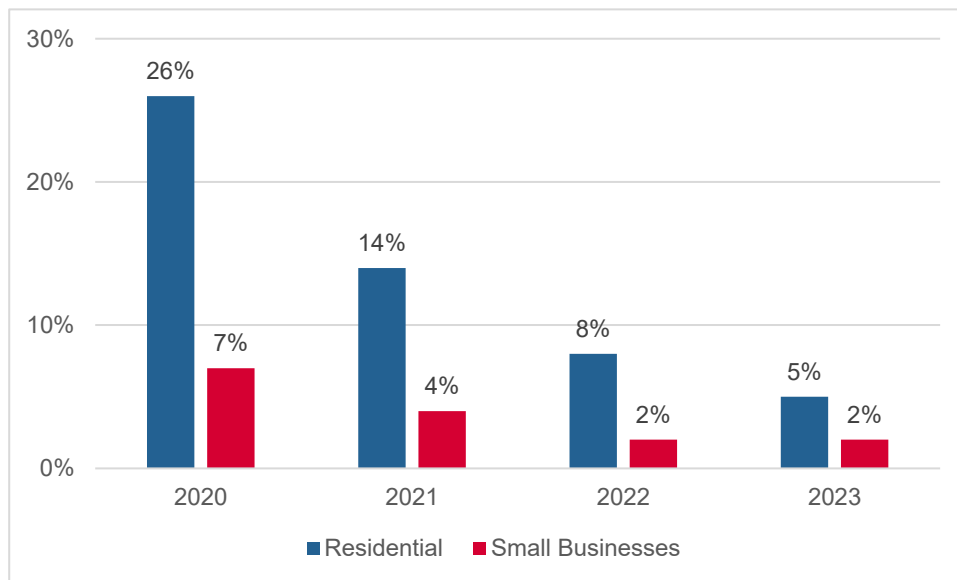
⁴⁴ Essential Services Commission, [Ensuring energy contracts are clear and fair: Final decision](#), 28 February 2020.

Source: Analysis of customer billing data between October and December 2023 from Victoria's top nine electricity retailers.

In 2023, the ACCC found that despite these reforms a significant number of customers remain on plans with large conditional discounts and high underlying prices. One of its findings was that higher prices correlate with large conditional discounts, indicating that customers on higher priced contracts have often not changed plans in the last four years (since the introduction of rules on pay-on-time discounts and the continuation of benefits).⁴⁵ It recommended that policy makers investigate how best to reduce the number of customers on legacy plans with large conditional discounts as a matter of priority.⁴⁶

Our analysis indicates that around five per cent of Victorian residential electricity consumers in our sample were still on legacy contracts with conditional pay-on-time discounts greater than five per cent in 2023. This is down from nine per cent in 2022 and 20 per cent in 2021.

Figure 8: Legacy contract electricity consumers with conditional pay-on-time discounts greater than five per cent



Source: ACCC billing data.

Despite this trend, some Victorian consumers remain on legacy contracts with high conditional pay-on-time discounts. These customers are exposed to high costs if they do not meet conditional discounts or if the benefits in their contracts expire before the end of the contract.

⁴⁵ Australian Competition and Consumer Commission, [Inquiry into the National Electricity Market: December 2023 Report](#), 1 December 2023, p. 39.

⁴⁶ Ibid., p. 9.

What outcomes do we want to achieve?

Our aim is to remove the risk that customers may be exposed to high costs due to large conditional discounts or the expiry of benefits mid-way through the duration of an electricity or gas contract.

This risk may be largely limited to customers on legacy contracts, being contracts entered into prior to 1 July 2020 which are not protected by our 'Ensuring contracts are clear and fair' reforms.

What options are we considering?

We are seeking feedback on the following options to address the risk of customers being exposed to large conditional discounts or benefits that may expire:

- **Removing the grandfathering arrangements in our 'Ensuring contracts are clear and fair' reforms.** We could require that pay-on-time discounts for all contracts (including those prior to 1 July 2020) are limited to the caps set by the commission. We could also extend the rule that benefits must last the entire duration of a contract to contracts prior to 1 July 2020. We could implement these changes by providing a transitional period after which pay-on-time discounts for all contracts would be capped and benefits that could still expire would be kept for the entire duration of the contract. Alternatively, we could work with retailers or require them to move customers on those legacy contracts to new contracts.
- **Limiting other conditional discounts and conditional fees to reasonable costs.** In addition to removing the grandfathering arrangements, we could require retailers to limit other conditional discounts or fees (such as for paying through direct debit, or dual fuel discounts) to the reasonable costs the retailer is likely to incur when conditions are not met. This would incorporate the approach adopted by the AEMC in its 'Regulating conditional discounting' rule determination.⁴⁷
- **Prohibiting conditional discounts and conditional fees which discriminate between payment methods.** An additional approach would be to prohibit contract terms that discriminate between payment methods. For example, discounts or fees that are triggered as a consequence of using or failing to use a specific payment method (for example, direct debit or over the counter payment). This alternative would help address the 'poverty premium' faced by low-income Victorians, where they are charged more if they choose not to use certain payment methods.⁴⁸

⁴⁷ Australian Energy Market Commission, [National Energy Retail Amendment \(Regulating conditional discounting\) Rule](#), 27 February 2020.

⁴⁸ Anglicare Australia, [The Poverty Premium: the high cost of poverty in Australia](#), September 2023; Financial Counselling Victoria, submission to 'Energy Retail Code of Practice review: Issues paper', 19 July 2024, p. 6.

What options are outside the scope of our review?

We are not considering reforms that would limit the underlying price paid by customers on legacy contracts (for example, price capping).

5. Improving awareness of independent dispute resolution services

In this section we discuss the feedback we received in response to our issues paper on potential alignment with the AER's Better Bills Guideline. We consider options for increasing customers' awareness of independent dispute resolution services through the inclusion of EWOV's contact details on bills.

Why do we need to act?

Many energy consumers are not aware of the free and independent dispute resolution services provided by the Energy and Water Ombudsman Victoria (EWOV). Energy Consumers Australia's June 2024 Energy Consumer Sentiment Survey identified that 66 per cent of consumers in Victoria were either not very familiar or not at all familiar with EWOV.⁴⁹ Uniting's Consumer experience report in June 2024 similarly found that even participants skilled at finding information did not know about the energy ombudsman or its role.⁵⁰

Aligning Victoria with other states

Victoria is currently the only state in the National Electricity Market where the ombudsman's contact details are not required on the front page of energy bills. In other states, the AER's Better Bills Guideline requires the first page of bills to have phone numbers for the customer to make account enquiries and complaints and to contact the relevant energy ombudsman.⁵¹

We understand that many retailers already voluntarily include EWOV's contact details on bills. The fact that others do not, however, leads to a significant number of customers not having access to this information.

Billing-related issues

Data also indicates that billing-related issues take up a significant proportion of consumer enquiries and complaints to ombudsman schemes.⁵² For example, out of 1,952 electricity and gas cases EWOV received in August 2024, 1,251 were related to billing.⁵³

⁴⁹ Energy Consumers Australia, [Energy Consumer Sentiment Survey](#), June 2024.

⁵⁰ Uniting, submission to 'Energy Retail Code of Practice review: Issues paper', 22 July 2024, p. 18.

⁵¹ Australian Energy Regulator, [Better Bills Guideline \(Version 2\)](#), 30 January 2023, p. 15.

⁵² Australian Energy Regulator, [Notice of Final Instrument of Better Bills Guideline \(Version 1\)](#), 31 March 2022, p. 21.

⁵³ [Trend over time](#), Energy and Water Ombudsman Victoria, accessed 18 September 2024.

Evidence from other jurisdictions further indicates that lack of consumer awareness of independent dispute resolution services may be a key reason why these services are not used more frequently. In the period since the AER's Better Bills Guideline took effect (September 2023), both the Energy and Water Ombudsman of South Australia (EWOSA) and the Energy and Water Ombudsman of New South Wales (EWON) identified significant increases in the proportion of complaints where customers heard about the ombudsman scheme through their bill or invoice.⁵⁴

What outcomes do we want to achieve?

Our goal is to increase consumers' awareness of independent dispute resolution services through the Energy and Water Ombudsman Victoria.

We consider that increasing consumer's awareness of these services will also likely assist to resolve complaints more efficiently and fairly, given the option and availability of external dispute resolution. Research indicates that a substantial proportion of consumers use information on bills to assist them to resolve complaints. For example, the Australian Government's Behavioural Economics Team (BETA) found that 26 per cent of consumers use their energy bill to find contact details to make a complaint.⁵⁵

Equal access to information

A further goal is to provide equal access to information about independent dispute resolution services for all Victorian energy consumers, regardless their energy retailer. The equal provision of information would also allow for better comparison of complaints data and analysis of trends.

What options are we considering?

We are considering the following options to increase consumers' awareness of external dispute resolution through the Energy and Water Ombudsman Victoria:

- **Requiring the inclusion of EWOV's phone number on the front page of bills.** This would be the same requirement that exists in other National Electricity Market states under the AER's Better Bills Guideline.
- **Requiring the inclusion of EWOV's website on the front page of bills.** We could require retailers to include a weblink to the ombudsman's website for customers to submit a complaint.

⁵⁴ Energy and Water Ombudsman Victoria, submission to 'Energy Retail Code of Practice review: Issues paper', 31 July 2024, p. 33.

⁵⁵ Behavioural Economics Team of the Australian Government, [Improving energy bills: Final report](#), October 2021, p. 19.

- **Requiring additional information related to ombudsman services on bills.** For example, there could be value in providing clarity on bills about when a customer should contact EWOV (after first contact with their retailer when an issue has not been resolved).
- **Requiring the inclusion of EWOV's contact details in the body of emails with bills or invoices.** Consumers who receive only electronic bills may miss information that is more easily noticed on paper bills. For example, if a customer's plan is on direct debit and the customer does not normally open the electronic bill. In such cases, there may be value in requiring EWOV's contact details to be included in the body of emails with bills or invoices.

What options are outside the scope of our review?

We are not considering reviewing other bill information requirements at this stage. Given the feedback we received on our issues paper, we consider it will be beneficial to wait until the AER has concluded its review of the costs and benefits of implementing the Better Bills Guideline.

Next steps

We will hold an online information session on 6th November 2024. We will share information on how to register for this session on our [project webpage](#).

Following our information session, we will engage with stakeholders through workshops, public forums and individual meetings. These sessions will be the best opportunities to provide input on matters we should consider in relation to these proposed reforms.

You are also invited to submit written feedback via [Engage Victoria](#) by **5.00pm on 26 November 2024**.

Regulatory Impact Statement

The feedback we receive through our engagement will inform a Regulatory Impact Statement. This statement will accompany draft amendments to the Energy Retail Code of Practice.

We are aiming to publish the draft amendments for consultation in the first quarter of 2025, with a final decision by early 2026.