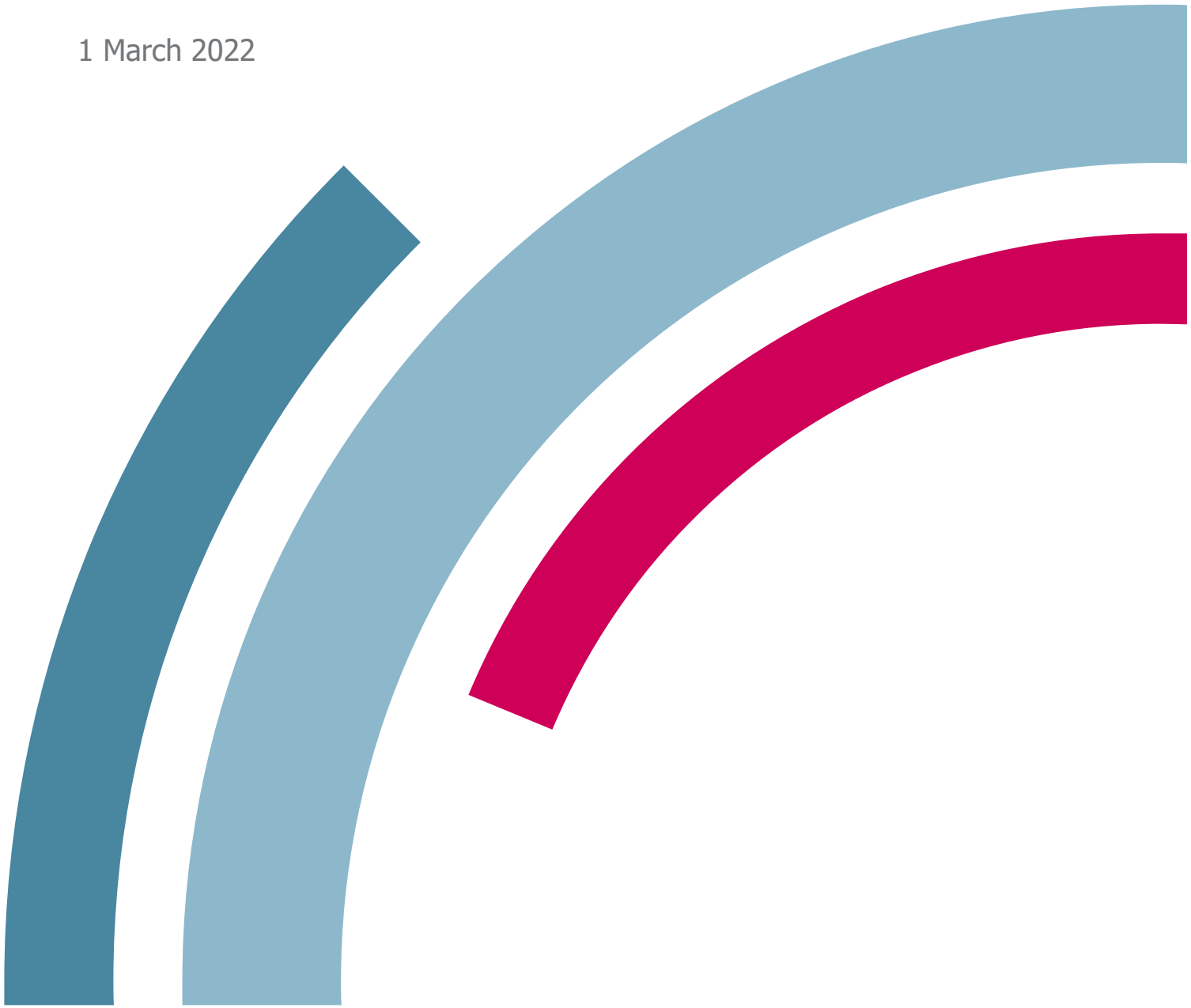
ESSENTIAL SERVICES COMMISSION

Guideline: Exemptions from complying with Energy Retail Code of Practice requirements to restrict market retail contract price increases to once a year

1 March 2022



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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Guideline: Exemptions from complying with Energy Retail Code of Practice requirements to restrict market retail contract price increases to once a year

Version 2

Revisions to this guideline

Version no.	Date	Nature of amendments
1	28 February 2020	Guideline published, to support the introduction of new exemption process from 1 July 2020.
2	1 March 2022	Guideline updated to reflect the Energy Retail Code being remade as a code of practice (primarily updates to clause references).

Purpose of this guideline

1. The purpose of this guideline is to provide information to energy retailers and other interested parties about how a licensee can apply to the Essential Services Commission (the commission) for an exemption for the purposes of clause 117(c) of the Energy Retail Code of Practice (the code of practice).

2. Clause 117(c) of the code of practice allows the commission to grant exemptions so that licensees can offer exempt market retail contracts. These are contracts which do not comply with provisions in clause 94 of the code of practice which limits price increases to once a year.

Nature of exemptions

3. Clause 94 of the code of practice gives customers an entitlement to price certainty, by ensuring that retailers can only increase prices once a year. For many customers this will occur on the date one month after network tariff prices change. For customers on fixed-price contracts, price increases can only occur on the anniversary of the fixed-price period expiring.

4. This rule was introduced to ensure small customers have certainty that their prices will only increase once a year at most once they have contracted with a retailer, in line with

recommendation 4A of the Independent Review of the Electricity and Gas Retail Markets in Victoria.1

5. The code of practice contains provisions for licensees to offer exempt market retail contracts – contracts which are not limited to once-a-year price increases – in certain cases. The rules relating to these contracts are set out in Division 7 of Part 5 of the code of practice.

6. The intent of the exempt market retail contract rules is to allow licensees to offer innovative products that are not compatible with limiting price increases to once a year. A licensee wanting to offer such a product must clearly demonstrate an innovative approach that better meets specific customer needs, enhances the efficiency of the energy system, or is otherwise part of a Victorian government program or policy. The exempt market retail contract rules ensure additional protections for customers who enter into contracts where prices can increase more than once a year.

7. We expect that the majority of customers will be on contracts that are compliant with clause 94, and exempt market retail contracts will only exist for a limited number of innovative products offered by licensees.

8. There are two ways in which licensees can offer exempt market retail contracts, via either:

   a) Category 1 – standing exemption
   b) Category 2 – commission-granted exemption.

Category 1 – Standing exemptions

9. Standing exemptions allow a licensee to offer a product that is automatically exempt from once a year price increases, without needing to apply for an exemption.

10. Standing exemptions only apply to specific categories, as set out in clause 117 of the code of practice. These are market retail contracts:

    a) that include a tariff that continually varies in relation to the prevailing spot price of energy, or
    b) under which a customer pre-purchases a specified quantity of energy.

11. The commission may update the categories that are eligible for a standing exemption over time.

[1] Further information about the background to these rules is available on our website.

Retailer reporting obligations for products under standing exemptions

12. A licensee offering a product that falls into one of these categories must notify the commission before it starts to offer the product, by emailing exemptionregister@esc.vic.gov.au and providing the following information:

    a) the name of the product
    b) the standing exemption category under which the product is being offered
    c) a brief description of how the product works
    d) the Victorian energy fact sheet for that product
    e) the terms and conditions for that product.

13. Any licensee offering a product before 1 July 2020 that would be classified as an exempt market retail contract from 1 July 2020 must also notify the commission in the same manner prior to 1 July 2020 if they intend to continue offering the product under a standing exemption.

14. Licensees offering products under a standing exemption must comply with the conditions set out in clauses 118, 119 and 120 of the code of practice (set out in section 5 of this guideline).

Category 2 – Applying for a commission-granted exemption

When the commission would consider granting an exemption

15. The commission is able to grant exemptions for products which are not compatible with limiting price increases to once a year and do not fall under a category that is eligible for a standing exemption. Licensees must submit and seek approval from the commission for the exemption of such a product in order to be able to offer it from 1 July 2020.

16. A licensee must not make an energy offer to customers that does not comply with clause 94 of the code of practice, and is not eligible for a standing exemption, before the commission has made a decision to grant or refuse an exemption to a licensee. In this case the licensee may be non-compliant with its licence conditions and obligations under the code of practice.

17. The commission will exercise its discretion to decide on an exemption to a licensee, for an energy offer that does not comply with clause 94, on a case-by-case basis and include conditions where it deems appropriate.

The exemption process

18. Licensees interested in submitting an application for a commission-granted exemption are invited to engage with us before submitting a formal application. Please email us on exemptionregister@esc.vic.gov.au.

19. Early engagement helps increase the efficiency of the exemption application process. It allows us to discuss the potential exemption with the licensee. While we encourage early engagement, the onus is on the licensee to demonstrate the merits of their case.

20. When submitting a formal application, licensees must provide the information outlined in sections 4.10 to 4.13 of this guideline, as well as anything else they consider supports their request for an exemption. We will acknowledge receipt of applications within 5 business days.

21. When assessing applications, the commission will consider the extent to which the proposed product meets the objectives of Division 7 of Part 5 of the code of practice. The commission will consider each application on a case-by-case basis, taking into account rationale and evidence submitted by the licensee to demonstrate that compliance with clause 94 of the code of practice would lead to an outcome that is inconsistent with our policy intent (as outlined in section 2 of this guideline) and would have substantial negative unintended consequences for customers.

22. Decisions will be guided by the commission's overarching statutory objective to promote the long-term interests of Victorian consumers, as set out in the Essential Services Commission Act 2001, and objectives set out in the Electricity Industry Act 2000 and Gas Industry Act 2001 to promote protections for customers, including in relation to customers who are facing payment difficulty.

23. Once the commission has made a decision on an exemption, the licensee will be notified of the commission's decision. If an exemption is granted, the decision will be published on the commission's website when the licensee starts offering the product for which the exemption was granted.

How to apply for an exemption

24. Applications for exemptions must address the information requirements listed below and must be submitted to the commission in writing either by emailing or writing to:

    exemptionregister@esc.vic.gov.au

    Energy Division

    Essential Services Commission

    Level 8, 570 Bourke Street

    Melbourne VIC 3000

25. The commission requires the following information from licensees:

    a) the legal name of the applicant
    b) the licence details of the applicant
    c) details of what the licensee is proposing to do, including comprehensive information about the product attributes, and why the product would not be compatible with clause 94 of the code of practice
    d) details of the proposed timeframes for implementation of the product into the market
    e) the licensee needs to demonstrate to the commission how it meets the objectives of Part 5, Division 7of the code of practice, and what the benefits are for customers of the product they are proposing.

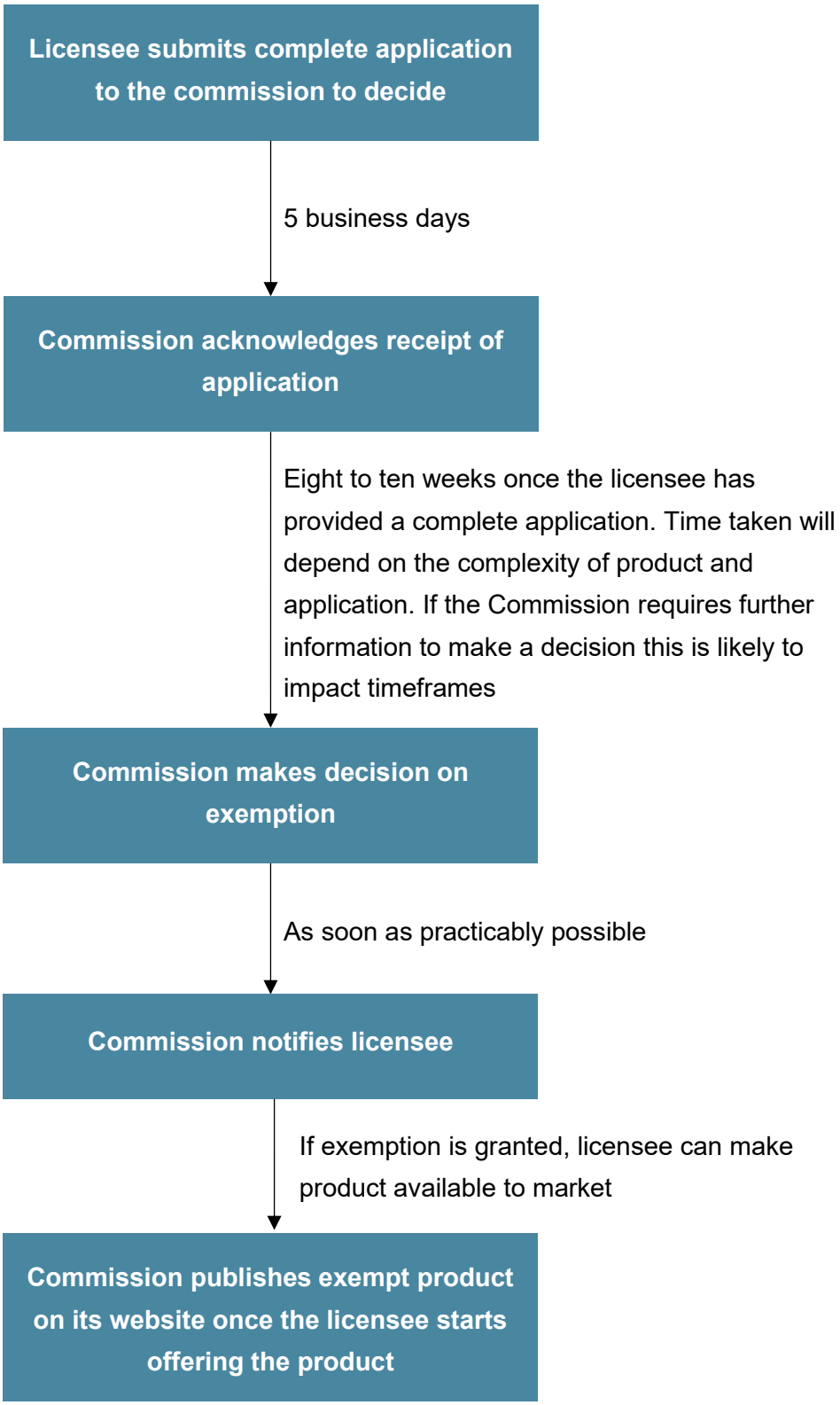
26. Applicants should ensure they provide all relevant information and material to the commission to allow sufficient time for the application to be assessed.

27. The commission will endeavour to process applications in a timely manner, being mindful that we do want to support retailers to consider innovation in the market. As per timeframes associated with licence applications, the time that we will take to process an application is usually from eight to ten weeks once the application is complete.

28. It is important to note that assessment and decision timeframes can be affected by the details and circumstances of the application and the quality and standard of the material provided. Applications will be assessed on a case-by-case basis having regard to the requirements of the relevant legislation. We may engage external consultants (for example accountants or lawyers) to assist in assessing the information provided to us.

29. Important note: the information requirements set out in this guideline is not intended to be an exhaustive list of the information that may ultimately be required by the commission in determining the application for an exemption. The commission may request further information at any stage prior to making a final decision on the application for an exemption.

Summary of exemptions process



Conditions for licensees offering exempt market retail contracts

30. Licensees who are offering or supplying energy to customers under an exempt market retail contract must comply with the conditions set out in clauses 118, 119 and 120 of the code of practice. These conditions apply to exempt products under both the standing exemptions and commission-granted exemptions.

31. The conditions are to:

    a) make customers signing up to the product aware that:

        i. the tariff(s) for that product may increase more than once a year, including the basis on which tariff(s) may change (i.e. the reasons for or conditions on which retailers would change tariff(s)) and the estimated frequency of changes. Together this information is intended to help a customer understand the nature of the product they are considering signing up to

        ii. the retailer offers other contracts (including the VDO for electricity) where the prices will only increase when network tariff prices change

    b) complete a tariff review for customers who are eligible for tailored assistance to establish whether there is another plan more appropriate to that customer's circumstances. If another contract may minimise costs for the customer, the licensee must inform the customer and seek consent to transfer the customer to that contract

    c) report to the commission regarding that product, as set out in sections 5.3 to 5.7 of this guideline.

Reporting requirements

32. Licensees supplying gas and/or electricity under an exempt market retail contract from 1 July 2020 must report to the commission in the following manner.

33. Licensees are required to report separately on each product that is subject to a standing exemption or has been granted an exemption by the commission. For each product, licensees must report:

34. the number of customers being supplied on that product (reported as the count of NMIs for electricity and MIRNs for gas)

35. the number of these customers that are receiving tailored assistance (reported as the count of residential accounts, separated by gas and electricity and broken down by customers who can pay at least their on-going usage and customers who cannot pay at least their on-going usage).

36. Definitions of these terms are included in the reporting template and are consistent with the commission's Compliance and Performance Reporting Guideline.

37. Licensees must report this data to the commission quarterly, at the same time as they report performance indicator data required by the Compliance and Performance Reporting Guideline.

38. All reports on exempt market retail contracts must be sent by email to compliance.reporting@esc.vic.gov.au. Reporting must be made using the reporting template located on our website, as amended from time to time.