

Helping customers engage confidently in the retail energy market

Draft decision

18 December 2018



An appropriate citation for this paper is:

Essential Services Commission 2018, Helping customers engage confidently in the retail energy market: Draft decision, 18 December

Copyright notice

© Essential Services Commission, 2018



This work, Helping customers engage confidently in the retail energy market, is licensed under a Creative Commons Attribution 4.0 licence [creativecommons.org/licenses/by/4.0/]. You are free to re-use the work under that licence, on the condition that you credit the Essential Services Commission as author, indicate if changes were made and comply with the other licence terms.

The licence does not apply to any brand logo, images or photographs within the publication.

Contents

Executive summary	4
New rules to support customer decision making	4
Avoiding bill shock from estimated bills	4
Our draft decision	4
Consultation and timeframes	7
1. Context	8
1.1. Independent Review into the Electricity and Gas Retail Markets	8
1.2. The Victorian Government response	9
1.3. Energy fairness plan	10
1.4. Relevant developments within the national framework	10
1.5. Our work program	11
2. New rules for marketing and information disclosure	13
2.1. The diversity of energy plans and marketing styles causing customer confusion	13
2.2. Current information disclosure and marketing rules	14
2.3. A new fact sheet to support customer decision making	16
2.4. Design and content of the new fact sheet	17
2.5. New rules defining when and how customers access the fact sheet	19
3. Other changes arising from the independent review	22
3.1. Personalisation of marketing and information disclosure	22
3.2. Presentation of discounts	23
4. Estimated meter reads and customer entitlement to request an adjusted bill	24
4.1. Background to estimated meter reads	24
4.2. Analysis of the Australian Energy Market Commission's final determination	25
4.3. Our draft decision	26
5. Amending the Energy Retail Code	27
5.1. Summary of amendments	27
5.2. Customer read estimates	27
5.3. Marketing and information disclosure	28
6. Next steps	29
6.1. How to make a submission	29
6.2. Indicative timelines	30
6.3. Final decision	30
6.4. Commencement of new requirements	30
Appendix A: Terms of reference	31

Terms of Reference to the Essential Services Commission	31
Appendix B: Draft code amendments	34
Amendments to Part 2, Division 4 – Customer retail contracts	34
Appendix C: Role of the commission	38
Role of the Essential Services Commission	38

Executive summary

New rules to support customer decision making

This draft decision proposes new rules for energy retailers' information disclosure and marketing, designed to ensure customers can more confidently assess and compare plans in the retail energy market.

We are proposing a new Victorian energy fact sheet. The fact sheet will include a comparison tool that will help customers to easily compare plans on the basis of the average yearly cost for a range of typical customers. The new fact sheet will be provided to customers at critical points in their decision making process, and will also be referenced in marketing material.

The rules arise from our work to implement recommendations of the Independent Review into the Electricity and Gas Retail Markets, which concluded in August 2017. In March 2018, the Victorian Government referred recommendation 3 of the review to the Essential Services Commission to implement. This draft decision is to give effect to specific sub-recommendations of recommendation 3.

Some details in relation to the final design of the fact sheet, including how our decisions are to be reflected in the Energy Retail Code, will be addressed through a separate technical consultation.

Avoiding bill shock from estimated bills

This draft decision also proposes to clarify the rules around when a customer is entitled to have their bill adjusted on the basis of a self-read of their meter. The new rules make it clear that customers can provide their retailer with a customer read estimate when receiving an estimated bill, subject to certain requirements. They also require retailers to provide information to assist the customer in doing this. This will help customers receiving estimated bills to avoid bill shock. The new rules will bring Victoria into alignment with the national framework.

Our draft decision

Our draft decisions are set out below.

Draft decision 1: A new Victorian energy fact sheet

A new Victorian energy plan fact sheet will replace the existing price and product information statements and offer summaries.

Draft decision 2: Form and content of new Victorian energy fact sheet

The form and content of the fact sheet will be based on the requirements of the Australian Energy Regulator's (AER) energy fact sheets, drawing on the research undertaken to support document design.¹

Draft decision 3: Victorian energy fact sheet to include a comparison mechanism

The Victorian energy fact sheet will include a comparison tool that uses typical customer usage profiles to estimate annual costs under the plan to help consumers compare alternatives.²

Draft decision 4: Incorporation of typical customer usage profiles that align with AER equivalents

The typical customer usage profiles that will be used in the Victorian energy fact sheet will align the AER's methodology for calculating typical usage profiles.³

Draft decision 5: Making the Victorian energy fact sheet available to customers

The Victorian energy fact sheet must be made available to customers:

- on request by a customer (electronically or postage)
- on retailers' website
- on third party comparator websites
- as an initial step in any online search or sign up process
- for any telemarketing activity.

These rules are aligned with equivalent rules within the national framework.

Draft decision 6: Fact sheets to be referenced in marketing material

If a retailer or its agent markets energy plans, using mass or social media channels including magazines, the internet, newspaper or billboards that reference prices, discounts, or the value of existing or potential plans, the following statement must be made in clear and easily readable text:

'[Fact sheet(s) for plan(s) available at [insert link to the retailer/agent website where the fact sheet is located]'

¹ The AER fact sheet referred to in this draft decision is the Basic Plan Information Document (BPID), the requirements for which are set out in the AER's Retail Pricing Information Guideline (RPIG).

² In keeping with the content of the BPID.

³ Referred to by the AER as the Electricity and gas bill benchmarks for residential customers 2017 <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/electricity-and-gas-bill-benchmarks-for-residential-customers-2017>

In circumstances where character limitations prevent the prescribed text (above) to be included, a retailer must include the text in a prominent location on the first webpage linked to the advertisement.

These rules are aligned with equivalent rules within the national framework.

Draft decision 7: Consultation on technical matters

We will initiate a separate technical consultation on the code amendments required to give effect to draft decisions 2, 5 and 6, and to develop the methodology for the usage profiles in draft decision 4.

Draft decision 8: Meter read provisions

The Energy Retail Code is to be aligned with the Australian Energy Market Commission's (AEMC) final determination on estimated meter reads.

Draft decision 9: Commencement date of marketing and information disclosure code amendments

The anticipated commencement date for the new marketing and information disclosure code amendments is 1 July 2019.

Draft decision 10: Commencement date of customer read estimate code amendments

The new customer read estimate requirement is to take effect from 1 July 2019.

Consultation and timeframes

The key dates relating to this draft decision are summarised below. The consultation process is detailed in **Chapter 6**.

Date	Activity
18 December 2018	Draft decision released
Late January 2019	Workshop on the draft decision (subject to stakeholder interest)
5 February 2019	Submissions close
February 2019	Workshop on submissions (subject to stakeholder interest)
March 2019	Final decision released and code amended
1 July 2019	Proposed commencement date for code amendments

1. Context

Our work in this draft decision represents the second round of changes arising from the Independent Review into the Electricity and Gas Retail Markets in Victoria. Our decision builds on our earlier reforms by continuing to focus on rebuilding trust in the retail energy market through clear information entitlements that support customers to engage confidently in the market.⁴ The following sections outline the commission's task and our work program in the context of the independent review, our terms of reference and developments in the national framework. The role of the commission is set out in appendix C.

1.1. Independent Review into the Electricity and Gas Retail Markets

In November 2016, the Victorian Government appointed an independent panel to conduct a review of electricity and gas retail markets in Victoria. The government announced the independent review following a number of public reports suggesting Victorians were paying too much for energy.⁵

The independent review focused on the operation of the Victorian retail energy market for residential and small business customers and considered:

- characteristics of the electricity and gas retail markets, including consumer engagement, market structure, regulation and pricing, with a focus on retail costs and margins
- key drivers of electricity and gas retail pricing, with a focus on retail costs and margins
- whether the electricity and gas retail markets are operating in the interests of consumers
- the competitiveness of the electricity and gas retail markets and potential constraints
- whether electricity retailers took advantage of the impending closure of Hazelwood Power Station in terms of their price offerings to consumers
- consumer awareness and understanding of the retail markets, including potential barriers for customer participation
- a review of relevant policies and practices in other jurisdictions, to identify best practice in regulatory frameworks.

In August 2017, the independent panel's final report was released and concluded the market was not working for consumers. In reaching this conclusion, the independent review found Victorians were paying 'unusually high' electricity prices compared to other jurisdictions.

⁴ Essential Services Commission, Building trust through new customer entitlements in the retail energy market: Final Decision, October 2018.

⁵ Victorian Government, 'Terms of Reference for Independent Review of the Electricity and Gas Retail Markets in Victoria', November 2016.

The independent review determined that there were three main reasons why the market was not working for Victorian consumers: the cost of competition, the structure of the market, and the practices of the industry. Specifically, the independent review found that the marketing practices of energy companies were not supporting customers in choosing the best price.

The independent review proposed 11 overarching reforms, which contained 29 detailed recommendations. The recommendations aim to improve energy market outcomes for consumers, including changing retailer marketing practices, improving market monitoring, establishing a regulated basic service offer and abolishing standing offer contracts.⁶

1.2. The Victorian Government response

The Victorian Government released its final response to the independent review in October 2018, which supported all recommendations, subject to some refinements.⁷ As part of its interim response in March 2018, it referred terms of reference to the Essential Services Commission under section 10(g) of the Essential Services Commission Act 2001.⁸

These terms of reference are for the commission to review the Energy Retail Code to give effect to:

- customer outcomes in the energy market, relating to recommendations 3 and 9
- efficient pricing in the energy market, relating to recommendation 8.⁹

In doing so, the commission must have regard to its objectives (outlined in appendix C) under the Essential Services Commission Act 2001, Electricity Industry Act 2000, and Gas Industry Act 2001, as well as:

- the findings from the review
- the approaches being used by other regulators such as the Australian Energy Regulator (AER)
- the information needs of Victoria's rich and diverse community, including our culturally and linguistically diverse (CALD) and aged population
- other matters it deems relevant.

The terms of reference (outlined in appendix A) specify that the commission is not required to assess the merits of the independent review's findings and recommendations. Our role is limited to

⁶ *ibid*, pp. ix-xiii.

⁷ The final government response can be found at <https://www.energy.vic.gov.au/about-energy/policy-and-strategy>.

⁸ See appendix C for further information about the role of the Essential Services Commission.

⁹ Section 20(2) of the Electricity Industry Act 2000 and section 28(2) of the Gas Industry Act 2001 set out the licence conditions requiring energy retailers to comply with the Energy Retail Code.

identifying the most timely and cost-effective ways to implement the findings and recommendations.

1.3. Energy fairness plan

In November 2018, the Victorian Government announced its Energy Fairness Plan, which included a number of new initiatives, including the bolstering of the commission's enforcement role and a number of specific changes to market rules. The changes are:

- banning 'win-back' marketing
- banning door-to-door sales and cold-call telemarketing
- changing the period for which retailers may 'back bill' in the event of a billing error from nine months to four months.

1.4. Relevant developments within the national framework

The Victorian energy retail market has its own state-based regulatory framework which is managed by the commission. The Australian Capital Territory, New South Wales, Queensland, South Australia and Tasmania all operate within a national framework administered by the Australian Energy Market Commission (AEMC) and regulated by the AER. Some rule changes implemented within the national framework by the AER and AEMC overlap with the work we are undertaking as part of the independent review in Victoria. We continue to review the relevance of each of these rule changes in considering whether these requirements should be mirrored in the Victorian framework.

There have been two recent developments in the national framework that we are considering the relevance of in the Victorian framework, which include the AER's work with regard to use of a comparison tool on energy fact sheets (and underlying usage profiles) and the AEMC's final determination on estimated meter reads.

In April 2018, the AER released its Retail Pricing and Information Guideline, which sets out how retailers must provide information about their plans. The guideline established requirements to standardise key information presented in an energy price fact sheet. From 31 August 2018, retailers in the national framework have been required to use these fact sheets when they present, market or advertise pricing information to customers.

To identify the best form of a marketing and product disclosure instrument for energy customers, the AER undertook extensive customer testing to develop a fact sheet that reduced the complexity

of the energy plan information and simplified energy plan comparisons.¹⁰ We consider that the AER's research and customer testing of energy price fact sheets will help inform our development of fact sheets in support of recommendations 3D and 3E (set out in Table 1.1).

One of the technical inputs to the AER's fact sheets are typical customer usage profiles for different sized households.¹¹ These are used to display estimated annual costs for the different household types on the fact sheet. We will draw upon these inputs in our implementation of recommendation 3C, which is to develop similar usage profiles.

During October 2018, the AEMC also determined a change to the energy rules enabling small customers to submit evidence to amend estimated meter reads. This means that if a small customer receives an estimated bill and the customer considers it to be based on an inaccurate estimate, the customer can request that the retailer adjust the bill, by providing their own reading of the meter. In addition, the rule change requires retailers to inform relevant small customers of their right to request an adjustment, while providing retailers with grounds for rejecting a customer read estimate in certain circumstances (for example, in cases where the read does not comply with the retailer's requirements or is late).

1.5. Our work program

Recommendation 3 from the independent review provided a series of remedies to assist customers to overcome the complexity of the market. The terms of reference (in appendix A) requested that the commission take a staged approach to implementing recommendation 3.

On 30 October 2018, we released our final decision on the first round of changes to the Energy Retail Code relating to recommendations 3F-H. We created three new customer entitlements that require electricity and gas retailers to provide their customers with assistance in finding the most suitable energy deal. Additionally, retailers must present all prices inclusive of GST to make it easier to compare offers between retailers. This draft decision considers our proposed approach for recommendations 3A-E. It also addresses how the commission intends to implement changes to align with the AEMC's rule change on estimated meter reads.

The status of each item within our work program is set out in Table 1.1.

¹⁰ Australian Energy Regulator, Notice of Final Instrument: AER Retail Pricing Information Guidelines Version 5, April 2018, pp. 12.

¹¹ The AER refers to these usage profiles as the Electricity and gas bill benchmarks for residential customers 2017.

Table 1.1 Status of items within the work program

Item	Status
Enable small customers to be able to submit their own estimated meter reads (AEMC rule change)	Draft decision: 18 December 2018 <i>Open for consultation</i>
3A - Require retailers to market their offers in dollar terms, rather than as percentages or unanchored discounts	<i>To be addressed through a separate process (see chapter 3)</i>
3B - Where the retailer knows the actual usage profile for a specific customer, the marketing to that customer to be based on the estimated annual costs of the offer for that customer, and the \$ costs if conditions attached are not met	Final decision: 30 October 2018 Effective: 1 July 2019
3C - The Essential Services Commission to develop a small number of typical customer usage profiles (3–4) for use in standardised marketing material (for 2,000 kWh, 4,000 kWh, 6,000 kWh per year)	Draft decision: 18 December 2018 <i>Open for consultation</i>
3D - Marketing of prices to appear in a standardised format and display the actual annual cost for the 3–4 standardised customer usage profiles. Annual energy costs for the standardised customer usage profiles to be the comparison rates in marketing materials	Draft decision: 18 December 2018 <i>Open for consultation</i>
3E - The Essential Services Commission to develop a standardised format for retailer information disclosure and marketing material	Draft decision: 18 December 2018 <i>Open for consultation</i>
3F - Require retailers to notify a customer of the best offer available by that retailer, and reference the Victorian Energy Compare website, in advance of any price or benefits change	Final decision: 30 October 2018 Effective: 1 July 2019
3G - Require retailers to include the following information on customer bills: <ul style="list-style-type: none"> • How the customer can access the Victorian Energy Compare website • How the customer can access the Basic Service Offer (see recommendation 1) • The retailer’s best offer for that customer based on their usage patterns • The total annual bill for that customer based on the customer’s current offer and usage patterns 	Final decision: 30 October 2018 Effective: 1 July 2019
3H - Require marketing material and bills to provide GST-inclusive pricing	Final decision: 30 October 2018 Effective: 1 July 2019

2. New rules for marketing and information disclosure

The independent review found it has become too difficult for customers to meaningfully assess and compare offers in the Victorian retail energy market. This has been driven by an increasingly complex array of offers from retailers, and a lack of effective mechanisms to support customers in choosing between them.

In this chapter, we explain our proposal to give effect to recommendations 3C, 3D, and 3E, which will improve and streamline the existing information disclosure requirements in line with behavioural principles. To do this, we propose to use primary research recently undertaken directly with customers by the Australian Energy Regulator (AER) in developing fact sheets.

We intend to replace two existing information disclosure mechanisms – the price and product information statement (PPIS) and the offer summary – with a new fact sheet. The fact sheet will include a comparison tool that will help customers to easily compare plans on the basis of how much they would cost per annum for range of typical customers.

We also propose new rules governing when customers receive or are alerted to the availability of the fact sheet, including a requirement that all marketing material make reference to it. These new rules will ensure customers can access the fact sheet when it is most relevant to them.

The new rules for marketing and information disclosure using fact sheets will align closely with requirements in the national framework.

2.1. The diversity of energy plans and marketing styles causing customer confusion

The independent review found that marketing practices by energy companies were not supporting customers to choose the best price. Customers find it difficult to choose between different energy deals in the market, as these offers can look very different from each other.

The substantial number of different retail contracts confuses consumers. The market contains a complex array of prices, tariffs, discounts and contract terms. Most consumers have difficulty making an informed decision. They resort to simplistic evaluation tools such as the discount on offers.¹²

¹² Independent Review into the Electricity & Gas Retail Markets in Victoria, op. cit. pp. 26

Other changes arising from the independent review

The wide variety of offers - combined with the various methods that retailers market these offers - creates a complex environment in which consumers are required to assess, understand and select the deal best suited to them. The presentation of discounts, prices, incentives, length of contract and bundling of offers makes it difficult to consider and compare different deals between retailers.

This echoes similar sentiments expressed by the AER in their work on changes to retail pricing information. The AER noted that the complexity and range of information in the market was preventing customer engagement.

Many customers feel overwhelmed and confused by the range of energy plans available, and perceive that scanning the market and comparing offers is time-consuming and difficult.¹³

The AER argued that simplifying the process of comparing offers using a comparison tool within a fact sheet could reduce barriers to customers engaging with the market.¹⁴ The AER proceeded to undertake extensive and detailed research into how information disclosure tools, such as a fact sheet, can be designed to deliver on this objective. This included behavioural research undertaken directly with electricity customers. Consequently, we have placed significant focus on the AER's recent work in this space.

2.2. Current information disclosure and marketing rules

Under the current rules in Victoria, information disclosure is standardised through a number of statements and documents prescribed via the Energy Retail Code.

Price and product information statement (PPIS)

Division 2A of the code outlines energy price and product disclosure requirements that include PPIS which provide customers with information on the details of the disaggregated fees and charges associated with a product, contract terms, rebates, incentives and any applicable tariffs relevant to a customer.

Retailers are required to make the PPIS accessible to customers on their website without the need for the customer to provide any personal or technical information.

Offer summary

The energy price and product disclosure requirements in Division 2A also include an offer summary requirement which provides customers with same key information presented in PPIS and

¹³ Australian Energy Regulator, Customer price information, Issues Paper, September 2017, pp. 6.

¹⁴ op. cit. pp. 9.

Other changes arising from the independent review

additional information about any fixed fees or charges that relate to the supply of energy and the number of days in the period to which the charge relates.

An offer summary must be provided to a customer in writing if requested by the customer, or when new retail contract terms are presented to the customer, including as part of marketing activities. The offer summary is separate to any document outlining full contractual terms and conditions.

Detailed information provided in relation to the contract

Division 10 outlines the specific information retailers are required to provide customers in relation to retail contracts when carrying out marketing. The information must be provided either before or as soon as practicable after the formation of the contract and includes information on:

- all applicable fees and charges
- contract length
- compliance with electronic transactions if required.

Marketing code of conduct

The code of conduct for marketing retail energy in Victoria promotes consumer confidence through information disclosure in the retail energy industry by identifying the standards of behaviour expected by representatives that market energy. The code of conduct also sets out the pre-contractual information and clear language requirements a retailer must provide to a consumer before entering a contract, which includes:

- details of all applicable prices, charges, tariffs and service levels that will apply to the consumer
- the type, frequency of bills and payment methods the consumer will receive
- the retailer's contact details
- information on cancellation rights and charges that would apply
- all relevant information about the contract's terms and conditions.

The existing information disclosure requirements for energy contracts described in the PPIS, offer summary, detailed contract information and marketing code of conduct set out requirements that can support a customer in understanding the product features of a contract.

The existing information requirements however do not address the challenge faced by customers in assessing and easily comparing offer information at a high level. By presenting information in a consistent format, we consider that customers would have more confidence and ability to compare products in the market.

Changes to the requirements of how key information is presented to customers could better assist them navigate the complexity of product information to compare and easily understand key offer features across products.

Other changes arising from the independent review

2.3. A new fact sheet to support customer decision making

We propose to revise and streamline the current information disclosure requirements, to support customers to interpret marketing materials, assess options and make choices about energy plans. We propose to replace the existing PPIS and offer summary with a new information tool – a Victorian energy fact sheet – using evidence-based consumer research.

The new energy fact sheet will assist consumers to compare options when assessing energy plans. The fact sheet will include a comparison mechanism that uses typical customer usage profiles to estimate the annual cost of the plan. This will enable customers to review product information in a more efficient manner, and assess which offer best suits their household needs. We will also be considering whether potential market reforms such as a Victorian default offer will impact the presentation of the fact sheet.

In developing a new fact sheet, we consider that the key information presented to consumers should be designed based on insights from evidence-based research to support consumers to make decisions. During the AER's consultation on its Retail Pricing and Information Guideline, stakeholders welcomed the proposal to introduce a concise document (fact sheet) as it provided a clear purpose of assisting customers compare different plans at a high level.

Submissions received by the AER indicated this change would help customers engage in the market by highlighting points of difference between retailers and their plans.¹⁵ We propose to adopt the principles and evidenced research used by the AER in the design of the Victorian energy fact sheet.

The following sections outline our approach to the form and content of the energy fact sheets and the circumstances in which retailers must present this information.

Draft decision 1: A new Victorian energy fact sheet

A new Victorian energy plan fact sheet will replace the existing price and product information statements (PPIS) and offer summaries.

¹⁵ Australian Energy Regulator, Notice of Final Instrument: AER Retail Pricing Information Guidelines Version 5, April 2018, pp.12.

Other changes arising from the independent review

2.4. Design and content of the new fact sheet

To develop our proposed approach to the design and content of the energy price fact sheets, we have considered the existing requirements in the Energy Retail Code against examples of current best practice, insight and evidence-based research to understand how information disclosure can help consumers make decisions. The terms of reference require that we give consideration to approaches being used by other regulators such as the AER. We have therefore given particular attention to the work undertaken by the AER during 2017-18 in their research on fact sheet design.¹⁶

Summary of the AER's energy price fact sheets: the Basic Plan Information Document (BPID)

The AER recently reviewed its energy fact sheet information requirements to develop energy price fact sheets that allow customers to easily compare and assess key features of contracts. The AER considered that by:

specifying the manner and form in which information is presented by retailers, we aim to create a clear and consistent form of presenting important information to customers, giving them confidence in the accuracy and comparability of this information.¹⁷

The energy price fact sheets developed by the AER summarise important contract information for an energy plan. It also includes a comparison pricing table that estimates the annual price of the plan for three household usage profiles with and without discounts.

The AER's energy price fact sheet provides a summarised overview of the:

- estimated annual cost for a one-person, 2-3 people and 4-5+ people household
- energy plan features
- fees and charges
- discounts
- contract length
- retailer's contact details.

The design and key product features represented in the AER's energy price fact sheet are the product of extensive consumer testing and behavioural insights. This has helped to identify the

¹⁶ Australian Energy Regulator, Notice of Final Instrument: AER Retail Pricing Information Guidelines Version 5, April 2018

¹⁷ Op cit, pp. 4.

Other changes arising from the independent review

best form of product disclosure for energy customers to reduce the complexity of plan information, and simplify energy plan comparisons.

We propose to adopt the same presentation requirements in Victoria because we consider Victorian consumers would achieve the same benefits found by the AER if energy plan information was presented in this consistent format.

The AER has also developed requirements for presenting consumers with a separate, more detailed product information tool called a Detailed Plan Information Document (DPID). We consider the information requirements contained in the existing Division 10 of the Victorian Energy Retail Code equivalent to those required in the AER's document. We therefore do not perceive a need to emulate the AER's more detailed product information tool.

Draft decision 2: Form and content of new Victorian energy fact sheet

The form and content of the fact sheet will be based on the requirements of the Australian Energy Regulator's (AER) energy fact sheets, drawing on the research undertaken to support document design.¹⁸

One of the key features of the AER's energy fact sheets is the ability to compare the price of the plan across different products using the estimated annual costs for typical usage profiles. The annual cost estimates in the usage profile comparison tables in the AER's energy price fact sheets is based on typical customer usage profiles developed by the AER.

To help customers compare the plan against alternatives, we propose the Victorian energy fact sheet will also include a comparison tool that uses typical customer usage profiles to estimate annual costs of the plan. The AER methodology produces usage profiles for Victoria, along with other Australian jurisdictions. We seek to align the typical customer usage profiles used in the Victorian energy fact sheet with the methodology used by the AER for calculating equivalent usage profiles used in the AER's equivalent. This fulfils recommendation 3C, to develop typical customer usage profiles for use in marketing material.

Draft decision 3: Victorian energy fact sheet to include a comparison mechanism

The Victorian energy fact sheet will include a comparison tool that uses typical customer usage profiles to estimate annual costs under the plan to help consumers compare alternatives.¹⁹

¹⁸ The AER fact sheet referred to in this draft decision is the Basic Plan Information Document (BPID), the requirements for which are set out in the AER's Retail Pricing Information Guideline (RPIG).

Other changes arising from the independent review

Draft decision 4: Incorporation of typical customer usage profiles that align with AER methodology

The typical customer usage profiles that will be used in the Victorian energy fact sheet will align with the Australian Energy Regulator's (AER) methodology for calculating typical usage profiles.²⁰

2.5. New rules defining when and how customers access the fact sheet

To support customers in assessing the suitability of energy products, we consider the fact sheet must be readily available and prominent in retailers' marketing materials. This means that at a minimum, all marketed offers must point to the existence of a corresponding fact sheet.

The AER has set out obligations that extend to all types of marketing and publishing of energy plans to small customers. This includes energy retailers and any agents marketing or providing information about energy plans on their behalf, such as comparison websites and telemarketing or door-to-door sales agents.²¹

Consistent with the AER's requirements, we consider the Victorian fact sheet should be provided by a retailer:²²

- upon any request by a customer about the offer being marketed to them (electronically or postage)
- on retailers' own website in a way that is readily identifiable and easily accessible to customers
- on third party comparator websites in a way that is readily identifiable and easily accessible to customers
- as an initial step in any online search or sign up process
- for any telemarketing activity.

¹⁹ In keeping with the content of the BPID.

²⁰ Referred to by the AER as the electricity and gas bill benchmarks for residential customers 2017 <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/electricity-and-gas-bill-benchmarks-for-residential-customers-2017>

²¹ AER Retail Pricing and Information Guideline, Version 5.0 April 2018.

²² The Retail Pricing Information Guideline (RPIG) also sets out how Basic Plan Information Documents (BPID) are made available to customers via the AER's comparator website, Energy Made Easy. We don't propose that the fact sheets be made available to customers via Victoria's equivalent, Victoria Energy Compare (VEC). This is because VEC already has a more advanced feature that provides plan information and a comparison tool that is personalised to the customer. VEC provides this level of personalised information even if the customer has not provided their smart meter data, by estimating the customer's usage profile on the basis of a series of questions the customer answers when navigating the site. In other words, the information disclosure and comparison tool provided by VEC is already superior to the fact sheet we have developed.

Other changes arising from the independent review

Draft decision 5: Making the Victorian energy fact sheet available to customers

The Victorian energy fact sheet must be made available to customers:

- on request by a customer (electronically or postage)
- on retailers' website
- on third party comparator websites
- as an initial step in any online search or sign up process
- for any telemarketing activity.

If a retailer or its agent markets plans on mass media channels including magazines, the internet, newspaper or billboards that reference prices, discounts, or the value of existing or potential plans, the following statement must be made in clear and easily readable text:

'[Fact sheet(s) for plan(s) available at [\[insert link to the retailer/agent website where the fact sheet is located\]](#)']

In circumstances where character limitations prevent the prescribed text (above) to be included, a retailer must include the text in a prominent location on the first webpage linked to the advertisement.

These requirements are consistent with the rules implemented in the national framework and give effect to recommendation 3D which is for a comparison mechanism, which forms part of the fact sheet, to be linked to retailer marketing material. This also gives effect to recommendation 3E, which is to standardise the format for marketing material and information disclosure.

Draft decision 6: Standardised format for referencing fact sheets in marketing material

If a retailer or its agent markets plans using mass media channels including magazines, the internet, newspaper or billboards that reference prices, discounts, or the value of existing or potential plans, the following statement must be made in clear and easily readable text:

'[Fact sheet(s) for plan(s) available at [\[insert link to the retailer/agent website where the fact sheet is located\]](#)']

In circumstances where character limitations prevent the prescribed text (above) to be included, a retailer must include the text in a prominent location on the first webpage linked to the advertisement.

Technical consultation

To develop the requisite code amendments that give effect to draft decisions 2, 4, 5 and 6, we will consult with stakeholders via a separate technical consultation. At this stage we are seeking

Other changes arising from the independent review

stakeholders' feedback on the factors that should be considered in translating our draft decisions into code amendments in relation to draft decisions 2, 4, 5 and 6.

Draft decision 7: Consultation on technical matters

We will initiate a separate technical consultation on the code amendments required to give effect to draft decisions 2, 5 and 6, and to develop the methodology for the usage profiles in draft decision 4.

3. Other changes arising from the independent review

This chapter discusses two further recommendations of the independent review, and how we are proposing to address them:

- increasing the personalisation of marketing and information disclosure (recommendation 3B)
- the presentation of discounts (recommendation 3A).

3.1. Personalisation of marketing and information disclosure

A key development in the Victorian retail energy market has been the universal rollout of advanced metering infrastructure (smart meters). Accompanying this rollout is the expectation that customers will receive the benefit of increasingly personalised services, due to the increased availability of energy usage data.

Accordingly, the independent panel's recommendation 3B requires that retailers make greater use of the data they hold on customers. Specifically, the independent review recommended that where a retailer knows the usage profile for a specific customer, they use that data to inform interactions with the customer. This includes making reference to the estimated annual costs of the new plan, as well as the dollar implications of failing to fulfil any conditions associated with the offer (such as a pay-on-time discount).

Role of the clear advice entitlement

In October 2018, we introduced new rules that result in significantly higher levels of service and transparency to the process by which retailers promote and sell energy plans. The centrepiece of these rules is a new mechanism called the 'clear advice entitlement'. This new entitlement requires retailers to be upfront with customers about the likely costs associated with any offer they are contemplating entering. This includes the costs associated with not meeting any conditions associated with the offer, including pay on time discounts.²³

Importantly, the new entitlement extends to requiring retailers to personalise this information where they know the customer's actual usage. This means when retailers estimate the costs associated

²³ Essential Services Commission, Building trust through new customer entitlements in the retail energy market: Final Decision, October 2018, pp. 59.

with the contract for these customers, they will rely on the customer's actual usage data to make the estimates.

We consider these reforms fulfil recommendation 3B of the independent review. We will continue to consider further opportunities to enhance the personalisation of retailer services and marketing through additional reforms to the market rules.

3.2. Presentation of discounts

The independent review identified retailers' discounting practices as a major source of customer confusion. The review made a number of recommendations in response to this issue, all of which have been supported by the Victorian Government, namely:

- **3A** – Require retailers to market their offers in dollar terms, rather than as percentages or unanchored discounts.
- **4D** – Any conditional discount or other benefit offered for paying on-time or on-line billing should be evergreen. Customers should not lose the discount or other benefit when the contract ends.
- **4E** – Costs incurred by customers for failing to meet offer conditions are to be capped and not be higher than the reasonable cost to the retailer.

In October 2018, the government also indicated it intended to introduce a new, price regulated default offer, known as the Victorian default offer. We consider this offer could provide a useful common point of reference to which discounts can be compared.

To ensure an orderly implementation of new rules relating to discounts, we propose to consult on their implementation as a package once the remaining discount-related recommendations have been formally referred to us.

4. Estimated meter reads and customer entitlement to request an adjusted bill

This chapter explains our draft decision to introduce a new rule in Victoria in relation to a customer's entitlement to request an adjusted bill on the basis of a self meter read. This new requirement mirrors a rule recently determined by the Australian Energy Market Commission (AEMC).

4.1. Background to estimated meter reads

Since the introduction of smart meters in Victoria in 2009, electricity bills with estimated meter reads have fallen to approximately 1.43 per cent a year. The estimation of gas bills is far more common, with around 18 per cent of consumer bills being estimated each year.²⁴

Historically, estimated meter reads have been used as a means for both customers and retailers to resolve the difficulties of access constraints which limit in-person meter reading. On occasion customer bills are issued based on estimated reads that are inaccurate, and require billing adjustments at the next actual read.

A consumer's ability to influence an estimated bill is currently limited to ensuring appropriate access arrangements are available for distributors and meter data providers, as prescribed for customer billing and market settlement. The alternative for consumers is to request their retailer arrange for a check of the meter reading or metering data.

The Energy Retail Code stipulates that where estimations are permitted to be used as the basis for a small customer's bill, the estimations may be based on: historical metering data, an average use of energy by a comparable customer, or the customer's reading of the relevant meter.²⁵ The code and the National Energy Retail Rules both already allow retailers to produce a bill based on a customer's reading of the meter. However, there is currently no requirement on retailers to accept a customer's meter reading (if provided) as the basis for an estimate of energy usage at the customer's premises.²⁶

²⁴ Data sourced from the Essential Services Commission.

²⁵ The Energy Retail Code, Clause 21(2)

²⁶ Australian Energy Market Commission Rule Determination, National Electricity Amendment (Estimated Meter Reads) Rule 2018, National Gas Amendment (Estimated Meter Reads) Rule 2018, National Energy Retail Amendment (Estimated Meter Reads) Rule 2018, pp. 31.

Estimated meter reads and customer entitlement to request an adjusted bill

Through our draft decision, our intention is to clarify the circumstances in which a customer can provide a customer read estimate, the timing of customer read estimates, and the obligation for retailers to inform customers about customer read estimates.

4.2. Analysis of the Australian Energy Market Commission’s final determination

Under a determination by the AEMC made on 25 October 2018, when a small customer who has an electricity accumulation meter or gas meter has been issued an estimate, retailers must inform customers of their entitlement to request an adjusted bill, by providing a self-read of their meter before the due date of the bill.²⁷

Under this new entitlement, retailers must:

- make clear any changes to the customer’s payment obligations
- provide clear, simple and concise guidance to the customer on how to read their meter and the methods through which the customer can lodge the customer read estimate
- outline the types of information the customer should provide when lodging the customer read estimate
- set out a process under its complaints and dispute resolution procedures for a customer to attempt to rectify a reading of their meter that is not accepted by the retailer
- inform the customer they may also lodge a dispute with the energy ombudsman or request the retailer review the bill if the customer is dissatisfied with the retailer’s decision
- inform customers it can reject a customer read estimate where it has not been provided in accordance with instructions by the retailer, or was received after the bill due date
- if rejecting a customer read estimate, the retailer must notify the customer of the reason for its decision²⁸
- as part of the billing adjustment process, maintain any existing benefits the customer would otherwise receive under the terms of their retail contract with respect to the new payment date.²⁹

The AEMC’s determination allows customers the right to provide a customer read estimate, while providing retailers with grounds for rejecting an estimate in cases where the read does not comply with the retailer’s requirements or is late.

²⁷ Australian Energy Market Commission Rule Determination, National Electricity Amendment (Estimated Meter Reads) Rule 2018, National Gas Amendment (Estimated Meter Reads) Rule 2018, National Energy Retail Amendment (Estimated Meter Reads) Rule 2018.

²⁸ *op. cit.* pp. 36.

²⁹ *op. cit.* pp. iv.

Estimated meter reads and customer entitlement to request an adjusted bill

4.3. Our draft decision

Our draft decision is to adopt the AEMC's determination on estimated meter reads, to strengthen consumer entitlements associated with retailers informing customers about requests for adjusted bills.

In its final determination, the AEMC proposed that the Australian Energy Regulator (AER) consider requiring retailers to report on the use of estimated meter reads for small customer billing, as well as the proportion of adjusted bills that have been provided to customers as a result of this new entitlement.

As part of the Victorian compliance performance and reporting requirements, retailers are currently already obliged to self-report the number of estimated bills issued.³⁰

We recognise the value in measuring customer read estimates in Victoria, as well as the proportion of customers receiving adjusted bills. We will consider expanding and refining our retailer reporting requirements in relation to estimated meter reads and adjusted bills through our routine reviews of the commission's compliance performance and reporting guideline (which sets out the data that retailers must submit to us on a regular basis).

We will also monitor retailer performance with this obligation and consider the necessary application of enforcement action under our compliance and enforcement policy, where we identify any non-compliance with these obligations.

In line with the AEMC's final determination, we propose a period of at least three months between the publication of our anticipated final decision and the commencement of this new obligation. Consistent with the AEMC, we consider this to be sufficient for retailers to implement any necessary changes to their systems and processes required by our final decision. Our draft decision is therefore that the entitlement will come into effect on 1 July 2019.

Draft decision 8: Meter read provisions

The Energy Retail Code is to be aligned with the AEMC's final rule on estimated meter reads.

³⁰ Under the commission's Compliance and Performance Reporting Guideline v.3, Performance Indicator Schedule, retailers are required to maintain monthly data on the number of estimated bills issued during the reporting period; for example, where a customer's meter was not accessible on the day of a scheduled meter read. If a retailer has obtained explicit and informed consent from a customer to use estimated accounts, for example, for the purpose of monthly billing (bill-smoothing), these bills are not counted.

Estimated meter reads and customer entitlement to request an adjusted bill

5. Amending the Energy Retail Code

In Victoria, energy retailers are required to comply with the Energy Retail Code as a condition of their energy licence.³¹ This chapter introduces proposed amendments to the Energy Retail Code to give effect to new rules that entitle customers to submit customer read estimates of their meter in order to request a bill adjustment (see chapter 4).

It also outlines at a high level the areas of the code that are likely to require amendment in order to give effect to the commission's decisions relating to marketing and information disclosure rules (as set out in chapter 2).

5.1. Summary of amendments

To give effect to the customer read estimate rule we propose a number of changes to Division 4 of Part 2 of the Energy Retail Code, which sets out the market rules in relation to billing.

To give effect to the new information disclosure and marketing rules, we anticipate amending Division 2A of Part 2, which sets out the rules for price and product disclosure, along with consequential amendments to individual schedules. We intend to locate the new marketing and disclosure rules within Part 2A of the code. Part 2A has the wider purpose of establishing entitlements to measures that assist customers to engage confidently in the energy market.

The amendments to the code will be made under the provisions of the Essential Services Commission Act 2001, the Electricity Industry Act 2000 (in particular sections 25, 35C and 36A), and the Gas Industry Act 2000 (in particular sections 31, 42C and 43A).

5.2. Customer read estimates

Chapter 4 set out our draft decision in relation to circumstances in which customers can submit a customer read estimate of their meter to request a bill adjustment. The consequential changes centre on Division 4 of Part 2. We have created new sub clauses within clause 21 of that Division, which sets out the terms on which estimates of usage can be used as the basis for bills. The new subclauses 3A-H mirror the equivalent sections of the AEMC rule change, and cover matters such as:

- the circumstances in which a customer can request a bill adjustment following an estimated bill

³¹ The licence conditions requiring retailers to comply with the code are made under Section 20(2) of the Electricity Industry Act 2000 and Section 28(2) of the Gas Industry Act 2001.

- the steps the retailer must take to support customers to provide a meter read
- the requirement for the retailer to provide an adjusted bill following a customer's meter read
- circumstances in which the retailer may reject a customer's meter read
- complaint and dispute resolution
- how discounts and benefits should be managed in relation to an adjusted bill.

Separately, we have amended clause 29, which deals with billing disputes. This amendment simply clarifies the pre-existing rules that prohibit retailers from requiring advance payment when a customer requests a test of the meter.

The draft code amendments are set out in appendix B.

5.3. Marketing and information disclosure

As set out in chapter 2, our draft decision is to replace the existing price and product information statements (PPIS) and offer summary documents with a new Victorian energy fact sheet. Our proposal is to base the form and content of the new fact sheet on the Australian Energy Regulator's (AER) Basic Plan Information Document (BPID).

We also propose to base the requirements around how and when a customer is provided with or notified about the new fact sheet on the equivalent rules within the AER's Retail Pricing Information Guideline (RPIG).

We will consult separately on the code changes associated with the change, including matters such as:

- how best to technically incorporate the form and content requirements that apply to the BPID
- the potential role, if any, that could be played by Victorian Energy Compare.

We anticipate the following broad changes:

- removal or revision to clauses 15A to 15F, and schedules 4 and 5
- the introduction of new clauses in Part 2A that set out the entitlement to a Victorian energy fact sheet, as well as the objective of the new requirement.

We anticipate commencing this technical consultation early in 2019, with an anticipated commencement date of the new requirements of 1 July 2019, subject to the outcome of stakeholder consultation.

6. Next steps

6.1. How to make a submission

We will continue to consult with interested stakeholders and invite you to contribute your views by making a submission in response to this draft decision in writing by **5pm 5 February 2019**. Given the consultation is occurring across the holiday period, we have allowed an extended submission period of seven weeks.

Submissions marked 'Submissions to Helping customers engage confidently in the retail energy market,' should be sent by

email to: RetailEnergyReview@esc.vic.gov.au

mail to: Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne, Victoria 3000

To promote an open and transparent decision-making process, all submissions will be made available on the commission's website, except for any information that is commercially sensitive or confidential. Submissions should clearly identify information that is sensitive or confidential.

If you have any questions, please contact us on (03) 9032 1300.

Our approach to consultation is set out in our updated Stakeholder Engagement Framework.³²

³² Essential Services Commission, 'Stakeholder engagement framework – Charter of Consultation and Regulatory Practice', June 2018.

Next stage

6.2. Indicative timelines

The key dates relating to this draft decision are as follows:

Target date	Activity
18 December 2018	Draft decision released
Late January 2019	Workshop on the draft decision (subject to stakeholder interest)
5 February 2019	Submissions close
February 2019	Workshop on submissions (subject to stakeholder interest)
March 2019	Final decision released and code amended
1 July 2019	Amendments to come into effect

6.3. Final decision

Once we have received and considered the submissions, we intend to make a final decision in March 2019.

6.4. Commencement of new requirements

The terms of reference propose that the new rules implementing recommendations 3B-E of the independent review will take effect from 1 July 2019.

We also propose the customer read estimate code change will take effect from 1 July 2019.

Draft decision 9: Commencement date of marketing and information disclosure code amendments

The anticipated commencement date for the new marketing and information disclosure code amendments is 1 July 2019.

Draft decision 10: Commencement date of metering customer read estimate code amendments

The new customer read estimate requirement will take effect from 1 July 2019

Next stage

Appendix A: Terms of reference

Customer outcomes in the energy market

Terms of Reference to the Essential Services Commission

The Essential Services Commission is requested to conduct a review under section 10(g) of the *Essential Services Commission Act 2001* on the appropriate amendments to the Energy Retail Code -to efficiently give effect to recommendations 3A to 3H and 9A of the Independent Review of the Electricity and Gas Retail Markets in Victoria (the independent review), released on 13 August 2017.

Background

The independent review, commissioned by the Victorian Government in November 2016, found the deregulated energy market was not delivering the anticipated benefits to consumers. It made 29 recommendations designed to place consumers back on a level playing field, including changing retailer marketing practices, introducing a basic service offer and abolishing standing offer contracts.

In February 2018, the Government provided its support to the recommendations from the independent review, except for two recommendations - introducing a Basic Service Offer (BSO) and abolishing standing offer contracts (recommendations 1A and 2A). The Government will undertake further analysis on the application and scope of the BSO and abolishing standing offers and their effect on Victoria's energy sector. The Government will consult further with stakeholders regarding the design of a BSO and any alternatives to the BSO.

Request

The Government is now requesting the Essential Services Commission to give effect to recommendations 3A to 3H and 9A.

Recommendations 3A to 3H propose changes to the information provided by energy companies to customers, including marketing material and information on bills. To give effect to these changes, the Commission is required to review the Energy Retail Code (the Code).

Recommendation 9A requires the Commission to review its regulatory codes to ensure a focus on customer outcomes and to account for new business models of service provision.

The Code is issued under Part 2 of the *Essential Services Commission Act 2001*.

All licensed energy retailers must comply with the Energy Retail Code in accordance with their retail licences.

The review is to be conducted in two phases. While undertaking its review, the ESC may consider early adoption of any measures, including those introduced in other Australian jurisdictions, that it considers necessary in the context of its statutory objectives.

First phase

In conducting its review of the Code for the purposes of giving effect to recommendations 3A to 3H, the Commission is required to have regard to its objectives under the *Essential Services Commission Act 2001*, *Electricity Industry Act 2000*, *Gas Industry Act 2001* and the following:

- findings from the independent review;
- approaches being used by other regulators, such as the Australian Energy Regulator;
- information needs for Victoria's rich and diverse community, including our culturally and linguistically diverse and aged population; and
- other matters it deems relevant.

For the avoidance of doubt, the Commission is not required to assess the merits of the independent review's findings and recommendations. Its role is limited to identifying the most timely and cost-effective opportunities for implementing these findings and recommendations through amendments to the Energy Retail Code.

The Commission is required to complete and publish its review that gives effect to recommendation 3G, specifically relevant Code changes relating to information published on customer bills, by 1 October 2018. These changes are to take effect from 1 July 2019.

The Commission is required to complete and publish its review that gives effect to recommendations 3A to 3F and 3H, including relevant Code changes, by 30 January 2019. Unless otherwise determined by Government, changes made by the Commission to the Code relating to marketing information

(recommendations 3A-3F and 3H) will take effect no later than 1 July 2019 so that the marketing of energy retail offers in a standardised format (including incorporation of annual energy costs for standardised customer usage profiles) can commence from that date.

Second phase

The Commission is required to review its codes and guidelines, for the purposes of establishing an energy market code (recommendation 9A). In developing the energy market code, the Commission should have regard to developing a principles-based, consumer-focused framework that can account for new business models of service provision.

Appendices

The Commission should also have regard to its objectives under the *Essential Services Commission Act 2001*, *Electricity Industry Act 2000* and *Gas Industry Act 2001*.

The Commission is required to complete this stage of the review, including relevant Code changes, by 31 December 2019.

Consultation

In undertaking this review, the Commission is required to consult widely, including with consumers, consumer advocacy groups, energy businesses, relevant experts, government departments and other regulators.

Reporting

Throughout the review, the Commission will advise the Minister for Finance and Minister for Energy, Environment and Climate Change regarding its progress and its final approach.

Appendix B: Draft code amendments

Amendments to Part 2, Division 4 – Customer retail contracts

AMENDMENTS TO THE ENERGY RETAIL CODE: ESTIMATED METER READS

18 December 2018

Amendments made by the Essential Services Commission on 18 December 2018

1 Nature and commencement of this instrument

- (1) This instrument amends the *Energy Retail Code*.
- (2) This instrument comes into operation on 1 July 2019.

2 Table of amendments

- (1) In subclause 20(1)(a)(i), omit “and clause 21”.
- (2) After subclause 20(1)(a)(i), insert:
 - (ii) on an estimation of the *customer’s* consumption of *energy*, as provided by clause 21;
or
- (3) Renumber existing subclause 20(1)(a)(ii) to (iii).
- (4) In subclause 21(1), after “A *retailer* may”, insert “only”.
- (5) In subclause 21(2), after “the estimations”, omit “may” and substitute “must”.
- (6) In subclause 21(2)(a), omit “;” and substitute “(which may be a customer read estimate, as defined in subclause (3A));”
- (7) In subclause 21(3), after “on an estimation”, insert “, and (if applicable) that the estimation is based on the *customer’s* reading of the relevant *meter* under subclause (2)(a)”.
- (8) After subclause 21(3), insert:

- (3A) If:
- (a) a *small customer* receives a bill based on an estimate, other than a *customer's* reading of the relevant *meter*; and
 - (b) where the bill under paragraph (a) is for the supply of electricity, the consumption of electricity at the *customer's* premises is not recorded by an interval *meter*, being a *meter* that records consumption derived from interval *metering* data,
- the *small customer* may request an adjusted bill based on the *customer's* reading of the relevant *meter* (a **customer read estimate**) by providing the *retailer* with the customer read estimate before the due date for payment of the bill under paragraph (a).
- (3B) On each occasion when the conditions in subclauses (3A)(a) and, as applicable, (b) are met, the *retailer* must inform the *small customer* in writing:
- (a) that the *customer* may request an adjusted bill in accordance with subclause (3A); and
 - (b) of any changes to the *customer's* payment obligations if the *customer* makes such a request; and
 - (c) how the *customer* can obtain the information under subclause (3C).
- (3C) A *retailer* must make available to *small customers* at no charge and in clear, simple and concise language for the purposes of subclause (3A):
- (a) guidance on how to read the *customer's meter*; and
 - (b) the types of information the *customer* is required to provide when lodging the customer read estimate; and
 - (c) instructions on the methods by which the *customer* can lodge the customer read estimate.
- (3D) Where:
- (a) a *small customer* requests an adjustment to a bill based on an estimate in the circumstances set out in subclause (3A) by providing the *retailer* with a customer read estimate; and

- (b) the *retailer* receives the customer read estimate before the due date for payment of the bill; and
- (c) the customer read estimate is provided in accordance with the guidance and requirements provided by the *retailer* under subclause (3C),

the *retailer* must, promptly and at no extra charge, provide the *small customer* with an adjusted bill based on the customer read estimate.

(3E) If:

- (a) the customer read estimate was received on or after the due date for the payment of the bill;
- (b) the customer read estimate is not provided in accordance with the guidance and requirements provided by the *retailer* under subclause (3C),

the *retailer* may reject the customer read estimate and, if it does so, must promptly notify the *small customer* in writing of the specific reasons for its decision.

Note:

For example, specific reasons that a *retailer* might provide for rejecting a customer read estimate for the purposes of subclause (3E)(b) include:

- the number value of the customer read estimate provided for cumulative *energy* consumed is smaller than a previous actual read of the *meter*; or
- where the customer read estimate is provided in the form of a photograph of the *meter*, that the *meter* display is not clearly visible or the photograph does not show the correct *meter* installed at the *small customer's* premises.

(3F) The *retailer* must set out a process under its standard complaints and dispute resolution procedures for a *small customer* to attempt to rectify a customer read estimate that is not accepted under subclause (3E)(b).

(3G) If the *retailer* does not accept the customer read estimate under subclause (3E), the *retailer* must inform the *small customer* in the same notice required to be provided under that subclause, that the *customer* may:

- (a) lodge a dispute with the *energy ombudsman* where the *customer* is not satisfied with the *retailer's* decision after the *customer* has followed the process under subclause (3F); and
- (b) separately, request the *retailer* to review the bill under clause 29.

- (3H) If under subclause (3B)(b) a *retailer* has advised a *small customer* of changes to the *customer's* payment obligations, and those changes include a new date for payment of the *customer's* bill, any benefits provided under the *retailer's* contract with the *customer* for payments made by the due date must be applied with respect to the new date for payment.
- (9) Omit subclause 29(5)(b) and substitute:
- (b) the *retailer* may require the *customer* to pay for the cost of the check or test if the check or test shows that the *meter* or *metering data* was not faulty or incorrect.
- (10) Omit subclause 29(5)(c).
- (11) After subclause 29(5) insert:
- (5A) For the purposes of subclause (5), a *small customer* request made under subclause 21(3A) is not to be treated as a request for the *meter* reading or *metering data* to be checked or the *meter* tested.

Appendix C: Role of the commission

Role of the Essential Services Commission

The commission is Victoria's independent economic regulator of essential services. Primary legislation passed by the Victorian Parliament sets out the objectives and expectations for the commission in the regulation of retail energy markets.

The *Essential Services Commission Act 2001 (Vic)* (ESC Act) sets out the commission's overarching objective to promote the long-term interests of Victorian consumers.³³ The commission is also guided by objectives under the *Electricity Industry Act 2000 (Vic)* and *Gas Industry Act 2001 (Vic)* to promote the protections for customers, including in relation to customers who are facing payment difficulty.³⁴

The legislation establishing the regulatory framework for the energy industry in Victoria assigns the commission a range of functions and powers, including the power to grant licences to energy market participants and to create codes and guidelines.

The principle instrument used to set out retailers' obligations is the Energy Retail Code. After being established in 2002,³⁵ the commission released the first version of the Code, of which version 11b is in force today.

³³ Section 8 Essential Services Commission Act 2001 (Vic).

³⁴ Section 10(c) Electricity Industry Act 2000 (Vic) and section 18(c) Gas Industry Act 2001 (Vic).

³⁵ The commission replaced the Office of the Regulator-General (ORG), which was established to oversee regulation of electricity and gas industries during the privatisation of the industry and accompanying establishment of markets in generation, distribution and retail segments of the industry. The legislative objective for the ORG in relation to consumers was expressed as: "to ensure that users and consumers benefit from competition and efficiency" (Office of the Regulator-General Act 1994 (Vic), s7(1)(e)).