

Building trust through new customer entitlements in the retail energy market

Final Decision

30 October 2018



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Executive summary

Historically, the retail energy market has received less public attention than energy networks or the generation sector. This is despite being the part of the energy supply chain most directly experienced by consumers. This has changed in the past year, following a series of high profile reviews that have drawn attention to customers' negative experiences of this market, and the surprisingly high costs associated with the retail component of customer bills.

A central theme of these reviews has been the loss of customer confidence and trust in the retail market. Such findings have spurred the reviewers to propose a suite of changes to make retailer conduct fairer and more transparent, and the customer experience clearer and easier. This background has shaped our approach to implementing the new entitlements outlined in this final decision, which are intended to encourage and support a culture of shared responsibility within the retail sector.

Independent Review into the Electricity and Gas Retail Markets in Victoria

This final decision follows the Independent Review into the Electricity and Gas Retail Markets in Victoria that was completed in August 2017.¹ Similar to other recent assessments, the review found that the benefits promised when competition was implemented have not been realised and that consumers were paying more for the same service. It also identified that the market had become so complex that even motivated customers were easily confused, and that this was eroding trust and confidence. It made 29 detailed recommendations, including a number of recommendations intended to reinstate trust and confidence in the market by requiring retailers to do more to help customers understand, compare and switch energy plans.

In March 2018, the Victorian Government issued its interim response to the review. As part of its response, it requested the Essential Services Commission review our codes for the purposes of giving effect to selected recommendations of the review.²

¹ John Thwaites, Patricia Faulkner and Terry Mulder, 'Independent Review into the Electricity and Gas retail Markets in Victoria', Final Report, August 2017.

² Victorian Government, 'Terms of reference for Independent Review of the Electricity and Gas Retail Markets in Victoria', November 2016.

Implementing the recommendations of the review

This final decision outlines how we will be implementing the first tranche of recommendations from the review. We released a draft decision in September and we have spent the last two months consulting with energy retailers and consumer representatives to refine our proposed amendments to the Victorian regulatory framework.

We have carefully considered the concerns stakeholders have raised in our draft decision. Many of these concerns could be addressed quite simply by providing greater clarity in the regulatory framework. Other matters were less straightforward, and consequently we have made adjustments to our proposal to ensure the final rules are pragmatic and deliver on our intent.

In seeking to implement these recommendations, we encountered concerns from energy retailers that some elements of the proposed reforms would be difficult to implement given current market arrangements. In some instances, these concerns related to providing industry sufficient time to transition to the new arrangements. Elsewhere the concerns were more fundamental, with energy retailers concerned about how the proposed reforms could alter how they structure and present their market offers.

While we acknowledge these concerns, we note that these reforms are precisely intended to alter how offers are made to customers in the retail energy market. As outlined in our draft decision, the traditional principles adopted in regulatory design, of transparency and disclosure, have failed to engender the trust customers require to ensure the market works effectively and efficiently. It is for this reason that our reforms focus on requiring retailers to take greater responsibility for the outcomes customer experience. **In other words, we are requiring retailers to take responsibility for helping customers navigate their way to the retailer's most suitable energy plan.** Accordingly, we describe our new approach as 'responsibility based regulation'.

We trust that retailers will rise to the challenge entailed by our new approach and will demonstrate to the community their capacity to shoulder this responsibility. We note it is in their interests to help restore community trust and confidence in the retail energy market.

We recognise these reforms might impose additional costs on some retailers, but it is worth noting these costs are in large part proportional to the complexity of the different plans the retailer has on offer. Retailers with simple, stable and low-priced offers will find our new framework imposes minimal ongoing costs. Conversely, retailers who offer a multitude of plans or plans containing confusing terms and conditions will need to work harder to assist to customers understand their different plans. In other words, we have internalised the cost of complexity with the retailers who create it. We consider this is the correct regulatory, economic and social outcome. It leaves retailers with full discretion over the design of their marketing and pricing strategies but makes them accountable for providing clear information that supports customer outcomes.

New entitlements for customers

In practical terms, we have created three new entitlements for Victorian customers to cut through the complexity of the market and make it easier for customers to understand when a better deal is available to them.

Customer bills to include their retailer's 'best offer'

Retailers will be required to regularly display their 'best offer' on customers' bills, along with advice on how to access it. This information will be displayed prominently on bills every three months for electricity, and every four months for gas. Retailers will be required to personalise the information by using the customer's actual meter data to calculate the savings that may be available.

We consider customers will be able to use this personalised information to assess the level of service they are receiving from their retailer. This will help customers decide whether to stay with their retailer or move to another.

Customers to receive prior notice of any changes that could affect their bill

We have created a new 'bill change notice' that retailers must send to customers ahead of price changes, as well as changes to benefits (such as discounts) associated with their contracts. Retailers are also required to display their best offer for customers on these bill change notices.

These notices will need to arrive at least five business days prior to any change taking effect, which will allow customers to consider their options before their energy prices increase. The best offer notice on bills will give customers a head start in assessing whether there could be better plans to switch to.

Customers entitled to clear advice about the offers they select

We have also established a new 'clear advice entitlement' that will require retailers to be upfront with customers about any terms within the contract that could lead to the customer paying more than they expect. This could include conditional discounts, or discounts that expire after a period of time. This will help manage the risk that customers may be tempted by large savings only to end up on plans that are not appropriate to their circumstances. The clear advice entitlement will also require retailers to tell customers about other deals that might suit them.

This entitlement will operate whenever a retailer (or their agent) is signing a customer up to an energy plan, irrespective of who initiated the contact or whether it was triggered by the best offer message. The clear advice entitlement ensures all customers will be clearly provided with the key information they need to assess their options prior to signing onto a new plan. This includes the

dollar impact of missing out on any conditional discounts associated with the plan they're looking at, or information about better plans the customer may not have realised were available.

Finally, in addition to these entitlements we have clarified the rules around how goods and services tax (GST) is accounted for in prices to bring the retail energy market into line with the rest of the economy. To promote transparency and ease of comparisons between offers, the rules now ensure that all tariffs, fees, prices and charges are to be expressed in GST inclusive terms only. This applies to bills and related notices, all marketing material and any verbal exchange between retailers and customers or prospective customers.

The full suite of final decisions that establish the new entitlements are set out below, while the code amendments that give them effect are contained in appendix B.

How the new rules work

When enshrining these new rules within the Victorian Energy Retail Code, we have incorporated provisions that clearly explain the objectives we are seeking, and which require retailers to take account of these objectives when discharging their obligations.

In effect, our framework imposes a three part test on retailers' conduct. Is the retailer complying with the minimum standards set out in the Energy Retail Code? Is the retailer complying in a way that honours the new customer entitlements established by the code? And, in doing so, is the retailer assisting the customer to engage confidently with the market as required by the code?

This new approach to regulating consumer protections will pose challenges for retailers. A tick-the-box approach to regulatory compliance will no longer guarantee retailers a clean bill of health from the regulator — and nor should it.

Commencement

The reforms outlined in this final decision will come into effect on 1 July 2019. We expect the benefits will begin accruing soon after as retailers respond to the new entitlements and support their customers in finding more suitable energy plans. We have established transitional arrangements for some elements of the new requirements.

Audit and monitoring

We will monitor and audit the impact of the new framework and how retailers have responded. This is likely to include auditing recordings of their interactions with customers to ensure they are fulfilling their new responsibilities towards customers. Our monitoring activities will commence soon after the new framework comes into effect on 1 July 2019. We will report our findings publicly to

ensure the community is well-informed about how retailers have responded to their new responsibilities and take enforcement action where necessary.

Consultation on our decision

Throughout the process of developing these new entitlements, we consulted extensively with stakeholders through workshops, one-on-one meetings, and reference group meetings.

We released a draft decision on 7 September 2018, to which we received 19 submissions – 13 from retailers (including one confidential submission), five from consumer groups and a submission from the Energy and Water Ombudsman, Victoria (EWOV).

Following receipt of submissions, we held sessions with stakeholders to discuss the feedback we received and to ensure we had heard and captured it appropriately.

We would like to thank stakeholders for their involvement and contributions to the process.

Our final decision

This section contains our final position on the 19 changes we proposed in our draft decision.

Table ES1 sets out the changes we have made between draft and final decisions.

Table ES1: Summary of changes between draft and final decision

Element	#	Decision	Status	Description
Best offer entitlement	1	Best offer entitlement	Unchanged	
	2	Offers captured by the best offer requirements	Modified	Excluded offers requiring paid membership
	3	Calculation methodology	Unchanged	
	4	Presentation on bill	Modified	Amended wording of best offer message
	6	Scope of entitlement	Modified	Excluded multi-site customers, clarified application to bill summaries
	7	Frequency and timing of message	Modified	Removed requirement to issue the message at certain times of year, message to appear on bills at least every three months for electricity, or four months for gas
	8	Dollar threshold	Unchanged	
	9	How long a 'best offer' is valid for	Modified	Removed minimum validity requirement
	10	Victorian Energy Compare (VEC) info to appear on bills	Unchanged	
Clear advice entitlement	5	Clear advice entitlement	Modified	Removed prescription around retailer use of knowledge of customer, delinked from explicit informed consent.
Bill change notice	11	Bill change notices	Unchanged	
	12	Minimum information on notices	Modified	Clarified information required on the notice
	13	Manner and form of notice	Unchanged	
	14	Delivery of notices	Unchanged	
	15	Scope of notices	Unchanged	
	16	Notice period	Unchanged	
	17	Exemptions for issuing notice	Modified	Added exemptions in line with the Australian Energy Market Operator (AEMO) final determination
GST	18	Prices in GST	Unchanged	
Implementation	19	Commencement of new requirements	Unchanged	Transitional arrangements added

Final decision 1: Best offer entitlement

Customers are entitled to be informed via their bill, of the best offer available to them from their retailer. The best offer is determined and presented in accordance with the specifications set out in this final decision.

Final decision 2: The definition of best offer

‘Best offer’ is to be defined as the cheapest offer that is:

- generally available
- does not require paid membership or affiliation as an eligibility criteria

with the retailer having discretion to present cheaper plans from their non-generally available offers.

Final decision 3: Estimating a customer’s usage and the application of discounts and concessions when determining the best offer

The best offer is determined using the customer’s previous 12 months metering data, or if that is not available, the retailer’s best estimate of the customer’s 12 months metering data.

When determining the best offer, the retailer is to apply all unconditional and conditional discounts to the estimates of the customer’s current, and any alternative, offers from the retailer.

When undertaking the best offer calculation, the retailer should not account for savings available on alternative offers if those savings require the customer to bundle their gas and electricity together, or bundle their energy service with another type of service, such as telecommunications services.

When determining the best offer, the retailer is to apply all concessions that currently apply to the customer’s account to the estimates of the customer’s current, and any alternative, offers from the retailer.

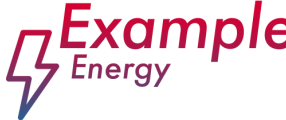
Final decision 4: Presentation of the best offer on bills


Where the customer is not on the retailer’s best offer, customer bills are to include a simple message, including a savings estimate, located immediately adjacent to the bill due amount using the words: ‘Could you save money on another plan? Based on your past usage, our [plan name] may cost you up to \$X less per year than your current plan.’ The message must also include information on how to contact the retailer to switch.

Where the customer is already on an offer that is as cheap or cheaper than the retailer's best offer (within the meaning given to that term in the code), customer bills are to include a message confirming this for the customer and referencing the option to visit Victorian Energy Compare (VEC) to compare offers from other retailers.

Figure ES1 contains an example bill containing the best offer message.

Figure ES1. Example bill mock up containing best offer message









0042
JANE CITIZEN
1 STATION ST, MELBOURNE VIC 3000

Your electricity bill

4 Mar 18 – 5 June 18


<p>COULD YOU SAVE MONEY ON ANOTHER PLAN?</p> <p>Based on your past usage, our Anytime Saver may cost you up to \$485 less per year than your current plan.</p> <p>To switch plans,  call 13 XX XX, or go to  www.exampleenergy.com.au</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="background-color: #0056b3; color: white;">DUE DATE</th> </tr> <tr> <td>5 Jul 18</td> </tr> </table> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="background-color: #0056b3; color: white;">AMOUNT DUE</th> </tr> <tr> <td>\$320.01 if paid by 5 Jul 18 Or \$365.01 if paid after the due date</td> </tr> </table>	DUE DATE	5 Jul 18	AMOUNT DUE	\$320.01 if paid by 5 Jul 18 Or \$365.01 if paid after the due date	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="background-color: #0056b3; color: white;">YOUR ACCOUNT DETAILS</th> </tr> <tr> <td> Account number 300 033 XXX XXX Tax invoice 180 000 XXX XXX Issue date 6 Jun 18 Total amount due See the Account Summary on pg. 2 </td> </tr> </table>	YOUR ACCOUNT DETAILS	Account number 300 033 XXX XXX Tax invoice 180 000 XXX XXX Issue date 6 Jun 18 Total amount due See the Account Summary on pg. 2
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Account number 300 033 XXX XXX Tax invoice 180 000 XXX XXX Issue date 6 Jun 18 Total amount due See the Account Summary on pg. 2								


YOUR ENERGY PLAN	YOUR USAGE SUMMARY
<p>Easy Saver plan ending 24 Oct 18</p> <p>Your estimated bill over the next 12 months is \$1730.</p> <p>Benefits available on this energy plan</p> <p>Guaranteed usage discount (10%)</p>	<p>Average cost per day \$3.57</p> <p>Average daily usage 9.06 kWh</p> <p>Same time last year 9.01 kWh</p> <div style="display: flex; justify-content: space-around; align-items: center; margin-top: 20px;"> <div style="text-align: center;">  \$3.57 <small>COST PER DAY</small> </div> <div style="text-align: center;">  9.06 kWh <small>DAILY USAGE</small> </div> </div>


Need to get in touch


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
Faults & emergencies: 13 XX XX
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Register online at exampleenergy.com.au/myaccount or call 13 XX XX to arrange automatic payment of future accounts*

 **MAIL**
Send this slip with your cheque made payable to: Example Energy Holdings Limited, Private Bag XXXXX Melbourne Vic 3001

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Final decision 5: Clear advice entitlement

Customers are to receive a clear advice entitlement to ensure they are made aware of, at the point of entering a contract, the dollar cost implications of all terms and conditions that influence the costs they will face over the term of the contract, and of any other offers the retailer believes may be more suitable for the customer.

Final decision 6: Scope of the new best offer obligation

The best offer obligation applies to:

- bills supplied to small customers (domestic and small business)³
- electricity and gas bills
- bills in all formats, including paper and electronic
- communications that accompany a new bill and summarise its key content (bill summaries, in any form), including the amount owing and due date
- bills supplied by holders of a retail licence, but not to bills from holders of an exemption from a retail licence.

The best offer obligation does not apply to multi-site customers.

Final decision 7: Frequency at which the best offer appears on bills

For electricity accounts, the best offer messages are to appear on bills at a minimum every three months. For gas accounts, best offer messages are to appear on bills a minimum of every four months.

Final decision 8: Dollar threshold for determining best offer

To be determined a 'best offer', an offer must result in an estimated saving of least \$22 (including GST) per year when compared to the customer's current offer.

Final decision 9: How long a best offer must be valid for

The commission has not prescribed a minimum period for which the best offer must be valid.

Final decision 10: Additional information to appear on bills

All customer bills must also include information about how the customer can access the government comparator website, VEC.

³ Clause 3 of the Energy Retail Code states 'small customer has the same meaning given to domestic or small business customer under section 3 of the Electricity Industry Act or section 3 of the Gas Industry Act.

Final decision 11: Bill change notices

The existing requirement for retailers to issue benefit change notices is to be replaced by a new requirement to issue bill change notices that are triggered by any price or benefit change.

Final decision 12: Minimum requirements for information to appear on bill change notices

Bill change notices are to include the following information:

- the small customer's metering identifier
- that the small customer may use the price comparator to compare offers that are generally available to classes of small customers in their area
- the name and web address of the price comparator
- that the customer can request historical billing data (and, if they are being sold electricity, energy consumption data) from the retailer that will assist the customer to use the price comparator to compare offers that are generally available to classes of small customers in their area
- any early termination charges payable under the market retail contract
- the retailer's best offer for that customer, defined, calculated and presented in the same manner as set out in final decision 2 to 4, 8 and 9
- the retailer's estimate of the annual dollar impact of the benefit or price change (where the benefit is financial in nature)
- information specific to the customer's account to assist the customer to complete the fields necessary to compare offers on VEC
- that a benefit change will occur and the benefit change date (benefit changes only)
- that the customer's tariffs and charges are being varied (price changes only)
- the date on which the variation will come into effect (price changes only)
- the customer's existing tariffs and charges inclusive of GST (price changes only)
- the customer's tariffs and charges as varied inclusive of GST (price changes only)
- clearly indicate that the tariffs and charges are GST inclusive (price changes only).

Final decision 13: Manner and form of bill change notices

Retailers should present bill change notices in a manner and form consistent with the objective of the notice.

Final decision 14: Delivery of bill change notices

Bill change notices are to be delivered by the customer's preferred form of communication where this has been communicated to the retailer, or otherwise by the same method as that used for delivery of the customer's bill.

Final decision 15: Scope of bill change notices

Bill change notices apply to both standing offer and market offer contracts, gas and electricity contracts, and price increases and decreases. The notices are not to be applied to exempt sellers at this time.

Final decision 16: Notice period

Retailers must notify customers of a bill change a minimum of five business days before a benefit or price change takes effect.

Final decision 17: Exemptions from the need to issue a bill change notice

Retailers are exempt from issuing a bill change notice under the following circumstances:

- where the customer has entered into a retail contract with the retailer within 10 business days before the price change, and the retailer has already informed the customer of the change
- with respect to a tariff or charge that continually varies in relation to the prevailing spot price of energy
- where the variations to the tariffs and charges are a direct result of a change to, or withdrawal or expiry of, a government funded energy charge rebate, concession or relief scheme
- where the variations to the tariffs and charges are a direct result of a change to any bank charges or fees, credit card charges or fees, or payment processing charges or fees applicable to the customer
- where the change in tariffs or charges is a result of a network business reclassifying the customer and placing them in a different network tariff class, (the retailer is not required to provide advance notice but rather to provide notice as soon as practicable, but in any event no later than the customer's next bill, of the new tariffs and charges)
- in relation to a benefit change relating to a benefit that is a one-off gift or sign-up credit provided to a customer as a result of entering the market retail contract
- in relation to a benefit change where a benefit change date occurs within 40 business days of the commencement of the market retail contract, or
- in relation to a benefit change where the benefit is rolled over on the same terms and conditions after the expiry of the existing benefit.

Final decision 18: Prices to be expressed in GST inclusive terms only

All tariffs, fees, prices and charges are to be expressed in GST inclusive terms only on bills and related notices, in all marketing material and in any verbal exchange between retailers and customers or prospective customers.

Final decision 19: Commencement date for the new requirements

The Energy Retail Code amendments outlined in this final decision are to commence on 1 July 2019.

1. Background to this decision

Historically, the retail energy market has received less public attention than energy networks or the generation sector. This is despite being the part of the energy supply chain most directly experienced by consumers. In the past year, this has changed following a series of high profile reviews that have drawn attention to customers' negative experiences of this market and the surprisingly high costs associated with the retail component of customer bills.

A central theme of these reviews has been the loss of customer confidence and trust in the retail market. Such findings have spurred the reviewers to propose a suite of changes to make retailer conduct fairer and more transparent, and the customer experience clearer and easier. This background has shaped our approach to implementing the new entitlements outlined in this final decision, which are intended to encourage and support a culture of shared responsibility within the retail sector.

1.1. An emerging consensus on the state of the retail energy market

Over the past year, a series of high profile reports have expressed concerns about the operation of Australia's competitive retail energy markets. These reports have been consistent in their findings about the state of the market and of consumers' experience.

The Independent Review into the Electricity and Gas Retail Markets in Victoria, released in August 2017, found that the benefits promised when competition was implemented have not been realised. The review identified the practices of the industry as a contributing factor, noting that retailers' approaches to marketing, pricing and contracting had left customers unwilling or unable to navigate the market.

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. Consumers, especially those who are vulnerable and disadvantaged, tend to defer more difficult decisions entirely.⁴

⁴ John Thwaites, Patricia Faulkner and Terry Mulder, op cit, p 26.

Our Victorian Energy Market Report 2016-17, published in November 2017, also expressed concerns about the confusing state of the market and the adverse consequences this could have for customers.

[F]inding the right offer can be a daunting task. The complexity created by so many offers means customers may choose discounts they can't afford.⁵

The report highlighted how this could cause significant bill shock for customers which, when combined with rising prices, could see increasing numbers of customers struggling to pay for their energy.

In June 2018, the Australian Energy Market Commission's (AEMC) 2018 Retail Energy Competition Review drew attention to the lack of consumer trust and confidence that increasingly characterises the market. The AEMC found that in the past year, consumer trust in the energy sector had dropped to 39 per cent, from an already low rate of 50 per cent in 2017.⁶ This lack of trust is correlated with increased confusion.

... in the past year consumers have become less confident that there is easily understood information about the electricity and gas markets available to them.... Further, there has been an increase in the average percentage of consumers that are not confident about their ability to easily understand information across the [National Energy Market].⁷

The AEMC said that retailers' discounting practices, and the way energy offers are presented and marketed, were contributing to the decline in consumer trust and confidence. The AEMC drew attention to the difficulty customers face finding an attractive energy plan. 'Consumers tend to only get a better deal if they leave or threaten to leave a retailer.'⁸

In July 2018, the Australian Competition and Consumer Commission (ACCC) released the final report of its Retail Electricity Pricing Inquiry. In a detailed report spanning all elements of the electricity supply chain, the ACCC emphasised many of the same concerns articulated by the review and the AEMC.

Retail electricity services should be relatively simple for consumers to understand and engage with. However, the behaviour of retailers in marketing and advertising electricity

⁵ ESC, 'Victorian Energy Market Report 2016-17', November 2017, p.5.

⁶ AEMC, Retail Energy Competition Review, June 2018, p vii.

⁷ Ibid, p 89.

⁸ Ibid, p i.

offers has resulted in the market becoming exceptionally complex and impenetrable for many consumers.⁹

The reports echo data from surveys conducted by Energy Consumers Australia (ECA) in December 2017 that indicated only one in five Victorians now believe the market is working in their long term interests.¹⁰ Even fewer customers surveyed thought the market will deliver better value for money in the future.¹¹ Overwhelmingly, customers believe they receive better value for money from their bank than from their energy provider.¹²

The remainder of this chapter looks at how the various reviews have responded. It also explores how regulatory design must adapt to these circumstances.

1.2. Restoring trust through reciprocity

The retail market review made a number of recommendations in August 2017 designed to support customers engaging with the retail energy market. Likewise, the ACCC's final report in July 2018 made recommendations seeking the same objective. The two sets of recommendations had the common goal of enabling consumers to participate confidently when engaging with the retail energy market.

To date, the most prominent recommendations made by the two reviews have related to the introduction of a regulated price. The Victorian retail market review recommended an obligation on all retailers to provide a Basic Service Offer that would be available as-of-right to all small customers, with the price to be regulated by the Essential Services Commission. The ACCC recommended the introduction of a regulated retail Default Offer that would serve as a price cap on all standing offers.

Notably, while both reports contemplate the reintroduction of a regulated price, neither suggests that the regulated price should be the cheapest offer in the market.

Retailers would be free to continue to offer additional offers at different prices, which may be lower than the 'no frills' option.¹³

⁹ ACCC, Retail Electricity Pricing Inquiry, Final Report, July 2018, p 234.

¹⁰ ECA, 'Energy Consumer Sentiment Survey December 2017', 2018, p 18.

¹¹ Ibid, p 19.

¹² Ibid, p 42.

¹³ John Thwaites, Patricia Faulkner and Terry Mulder, op cit, p x.

In other words, the retail market review and the ACCC upheld the underlying principle that has been in place since the introduction of full retail competition: that customers must play some role in promoting competitive outcomes by shopping around. This principle clearly informed many of the other recommendations made by these reviews, particularly as they related to the information retailers should be obliged to make available to customers on bills and through their marketing material.

Both reviews can be read as being motivated by the notion of reciprocity: if customers continue to be expected to shop around for their energy, then retailers should be obliged to act in ways that support the expectation being placed on customers.

It is...of utmost importance that consumers receive information they can use from retailers and that this information enables them to make good decisions and engage in the market.¹⁴

The confusion of offers, and the potential of that confusion to either disenfranchise customers or cause them to make poor choices, appears to have been deemed by both reviews as a sign that retailers and regulators were not upholding this principle of reciprocity. This failing was leading to a collapse in consumers' confidence that the market was serving their interests. And it is unlikely a market can operate efficiently if consumers do not trust the market to serve their interests.

No regulatory set of obligations can re-establish trust in their own right. Likewise, no market participant can just declare itself trustworthy and expect to be believed by its counterparties. So how might trust be restored?

1.3. Building trust by going beyond compliance

The review and the ACCC both sought to compensate for the 'trust deficit' in the retail energy market by proposing new regulatory obligations for energy retailers. What is evident, furthermore, is that the retail market review was focussed not just on laying down new sets of obligations, but on delivering customer outcomes. This sentiment is captured by recommendation 9 of its report, subsequently supported by the Victorian Government, which is:

Require the ESC to review its regulatory codes to ensure they focus on customer outcomes and can account for new business models of service provision.¹⁵

¹⁴ ACCC op cit, p 269.

¹⁵ John Thwaites, Patricia Faulkner and Terry Mulder, op cit, p 59.

This suggests that the review recognised that regulatory obligations that merely encouraged a compliance culture among retailers would not lead to the restoration of consumer confidence and trust. Requiring retailers to ensure they ticked each of these new boxes would not be sufficient to overcome the trust deficit and the inefficient market outcomes it causes.

The message from the review is that trust would only be restored if, in addition to meeting the basic compliance obligations, retailers adapted their conduct to meet the expectations of customers. This includes sharing a greater degree of responsibility for the outcomes experienced by those customers.

By implication, the regulatory framework must also adapt to these customer expectations – that is, it must do more than promote ‘tick box’ compliance. As a regulator we have been charged with finding ways to construct a regulatory framework that points retailers towards the types of conduct that will build the trust of customers.

1.4. Conclusion

Since 2016, our regulatory reform efforts have sought to reorientate our frameworks in a manner consistent with the recommendations of the review. For example, our new payment difficulty framework is constructed precisely along these lines by creating new customer entitlements and supporting objectives, expressed in terms of customer outcomes.¹⁶

We have continued to apply this formula to developing our approach to Energy Retail Code amendments discussed in this final decision, which continues the processes of reorienting the Victorian framework towards customers and customer outcomes, rather than retailers and regulatory compliance. It ensures that our work to implement recommendations 3F and 3G in this round of code amendments is consistent with recommendation 9 from the review.

¹⁶ The framework is established by a new Part 3 of the Energy Retail Code, which consists of cascading objectives which are expressed in terms of customer outcomes. These objectives frame the minimum standards with which retailers must comply, while leaving retailers scope to innovate and excel by exceeding these minima. The new payment difficulty framework comes into operation on 1 January 2019 and will be in version 12 of the Energy Retail Code.
<https://www.esc.vic.gov.au/electricity-and-gas/electricity-and-gas-codes-guidelines-policies-and-manuals/energy-retail-code/energy-retail-code-review-2016-customers-facing-payment-difficulties>

2. The commission's task

This final decision forms part of the commission's wider work program following the Independent Review into the Electricity and Gas Retail Markets in Victoria.

We have been requested to give priority to implementing recommendation 3G of the retail market review, which is for retailers to put their best offer on customer bills. We are also taking this opportunity to progress recommendations in relation to price change notifications (recommendation 3F) and displaying prices in GST inclusive terms (recommendation 3H). This chapter also relates our current work program to the changes within the national framework.

2.1. Independent Review into the Electricity and Gas Retail Markets in Victoria

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 review following a number of public reports suggesting Victorians were paying too much for energy.¹⁷

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

- the characteristics of the electricity and gas retail markets, including consumer engagement, market structure, regulation and pricing – with a particular focus on retail costs and margins
- key drivers underlying 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
- whether the electricity and gas retail markets are competitive and whether there are potential constraints on competitiveness
- whether electricity retailers were taking 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 particular groups of customers to engage in the markets
- a review of relevant policies and practices in other jurisdictions, nationally and internationally, to identify best practice in regulatory frameworks governing energy retail markets.

¹⁷ Victorian Government, 'Terms of reference for Independent Review of the Electricity and Gas Retail Markets in Victoria', November 2016.

To support its analysis, the review drew upon specially commissioned reports from the CSIRO,¹⁸ KPMG,¹⁹ CME,²⁰ Jacobs,²¹ and Newgate Research.²²

In August 2017, the review released its final report and concluded the market was not working for consumers. In reaching its conclusion, the review found Victorians were paying ‘unusually high’ electricity prices compared to other jurisdictions. It also reported a 200 per cent increase in energy prices since 2000, with retail charges – the component of the bill that covers the retailer’s costs and profits – being a major contributor to the overall energy price. The review considered competition has added to retail costs without delivering the retail price reductions generally attributed to rivalrous behaviour in a competitive market.²³

The review concluded 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 review found that marketing practices by energy companies were not supporting customers to choose the best price. The review made 29 detailed recommendations, under eleven headings, aimed at improving energy market outcomes for consumers, including changing retailer marketing practices, improving market monitoring, establishing a regulated basic service offer and abolishing standing offer contracts.²⁴

2.2. The Victorian Government response

Interim government response

In March 2018, the government released its interim response, announcing support for the recommendations from the review, except for recommendation 1 (introducing a basic service offer

¹⁸ CSIRO, ‘Exploring the drivers and barriers of consumer engagement in the Victorian retail energy market’, April 2017.

¹⁹ KPMG, ‘Energy retail markets: An international review’, April 2017.

²⁰ CME, ‘The retail electricity market for households and small businesses in Victoria: Analysis of offers and bills’, July 2017; CME, ‘Victorian retail gas market for residential and small business customers: Description and analysis of commonly available offers’, July 2017.

²¹ Jacobs, ‘Retail price review’, August 2017.

²² Newgate Research, ‘Consumer research for the Victorian government’s review of the state’s energy market’, May 2017.

²³ *ibid*, p.ix-xiii.

²⁴ *ibid*, p.ix-xiii.

(BSO)), and recommendation 2 (abolishing standing offer contracts), which it proposed to consider further.²⁵

As part of its interim response, the government referred terms of reference to the Essential Services Commission under section 10(g) of the Essential Services Commission Act 2001. These terms of reference are:

- customer outcomes in the energy market, relating to recommendations 3A–H and 9
- efficient pricing in the energy market, relating to recommendation 8.

The second terms of reference, relating to recommendation 8, is addressed via a separate work stream and is not discussed further in this paper.²⁶

The first terms of reference request the commission to consider reviewing its Energy Retail Code in order to give effect to recommendations 3A–H and 9 of the review.²⁷ Recommendation 3A–H propose changes to the information provided by energy companies to customers, including marketing material and information on bills. Recommendation 9 proposes the commission conduct a broader review of regulatory codes to ensure they focus on customer outcomes and account for new business models.

In considering these recommendations, the commission has been asked to have regard to its objectives under the Essential Services Commission Act 2001 (Vic), Electricity Industry Act 2000 (Vic) and Gas Industry Act 2001 (Vic), 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, and
- other matters it deems relevant.

The terms of reference specify that the commission is not required to assess the merits of the review's findings and recommendations. Our role is limited to identifying the most timely and cost-effective ways to implement the findings and recommendations through amendments to the Energy Retail Code. We have incorporated our assessment of timeliness and cost-effectiveness into our

²⁵ Victorian Government, 'Victorian Government Interim Response: Bipartisan Independent Review of the Electricity and Gas Retail Markets in Victoria', March 2018, p.2.

²⁶ See our work to monitor and report on competitiveness and efficiency <https://www.esc.vic.gov.au/electricity-and-gas/electricity-and-gas-tariffs-benchmarks-inquiries-and-reviews/electricity-and-gas-retail-markets-review-implementation-2018/electricity-and-gas-retail-markets-review-implementation-2018-competitiveness#tabs-container1>

²⁷ 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.

exploration of the various options for implementing the review's recommendations discussed in chapters 3-5.

Final government response

On 26 October 2018, the Victorian Government released its final response to the review, which supported all recommendations, subject to some refinements.²⁸

2.3. Our work program

The terms of reference request the commission takes a staged approach to considering and implementing the recommendations. As stated, we are requested to give priority to recommendation 3G, which is for retailers to put their best offer on customer bills. We also considered that recommendation 3H – which proposes prices are quoted in GST inclusive terms only, could be implemented in this tranche of amendments because there is only one way to implement that recommendation.

To better balance the workload between the two rounds of code amendments, we have also proceeded with implementing recommendation 3F (requiring retailers to notify customers of the best offer in advance of any price or benefits change).

The details of our timelines for the work program are set out in table 2.1, while the full list of recommendations is set out in the box 2.1.

Table 2.1 Anticipated timelines for implementation of key recommendations

Recommendation	Code changes	Commencement
Recommendation 3F–H	October 2018	July 2019
Recommendation 3A–E	February 2019	July 2019
Recommendation 9A	December 2019	To be determined

²⁸ The final government response can be found at <https://www.energy.vic.gov.au/about-energy/policy-and-strategy>.

Box 2.1 Recommendations 3A-H of the review

Recommendations 3A–H

3A: Require retailers to market their offers in dollar terms, rather than as percentages or unanchored discounts.

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.

3C: The ESC 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).

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.

3E: The ESC to develop a standardised format for retailer information disclosure and marketing material.

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.

3G: Require retailers to include the following information on customer bills:

- How the customer can access the Victorian Energy Compare website
- How the customer can access the Basic Services 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.

3H: Require marketing material and bills to provide GST-inclusive pricing.

Recommendation 9A

9A: Require the ESC to review its regulatory codes to ensure they focus on customer outcomes and can account for new business models of service provision.

2.4. Relevant developments within the national framework

The Victorian energy market sits within its own, state-based regulatory framework. However, other states operate within a 'national' framework that is administered by the Australian Energy Market Commission (AEMC) and regulated by the Australian Energy Regulator (AER). The AEMC is

responsible for the National Energy Retail Rules (NERR), which it updates from time to time in response to rule change requests it receives from stakeholders and the public. Rule change requests can be submitted by anyone, but are routinely received from industry, community groups and governments.

Over the past 12 months, the AEMC has received a number of rule change requests from the Commonwealth Minister for Environment and Energy aimed at improving outcomes for customers in the retail energy market. We review each of these rule changes on a case by case basis and, where necessary, seek to mirror them in the Victorian framework. Some of these rule changes overlap with work we are undertaking in relation to the review. For the purposes of clarity, this section outlines the rule changes in this category and explains how we are responding to each of them, both in relation to our review work, and our wider regulatory reform work program.

As table 2.2 shows, a number of the AEMC rule changes have either already been mirrored in the Victorian framework or are being picked up via our work on the review's recommendations. In the discussion below, we take this opportunity to very briefly set out the commission's intentions with regard to the estimated meter reads rule change request, which we anticipate will be the next focal point (after the price change notification rule change) to progress to a final determination.

Table 2.2 Summary of AEMC rule changes initiated by the Commonwealth Government

Rule change	Status with the AEMC	ESC action
Notification of end of fixed benefit periods	Completed: November 2017 Effective: February 2018	Implemented in Victoria, effective February 2018.
Preventing discounts on inflated energy rates	Completed: May 2018 Effective: July 2018	Will be considered during our work on marketing and discounting rules (recommendations 3A-E).
Advance notice of price changes	Initiated: April 2018 Draft determination: July 2018 Final determination: September 2018 Implementation: February 2019	This final decision largely mirrors this rule change in the Victorian framework.
Estimated meter reads	Initiated: 17 May 2018 Draft determination: August 2018 Final determination: 25 October 2018	In our draft decision we indicated we would review the AEMC's final determination when it was released with a view to emulating it, if it was appropriate to the Victorian context. Following its release on 25 October we are now reviewing it.
Metering installation timeframes	Initiated: May 2018 Draft determination: September 2018 Final determination: December 2018	Of less relevance to Victoria due to the roll out of smart meters being complete.
Long term standing offer notice	Initiation pending Rule change request received 13 June 2018	To be considered once the rule change process is initiated.

2.5. Information provision vs ‘nudging’ customers to engage

In considering the various ways the recommendations of the review might be implemented, we have been mindful of different ways of conceiving the role the new information may play. Input from stakeholders has been helpful in distinguishing between a conventional information provision approach and what can be labelled a ‘nudge based’ approach.²⁹

Focusing on information provision has been the approach typically used by regulators, and by the energy industry. This approach seeks to drive engagement of customers by providing them with more information in order to overcome the information asymmetries between suppliers and customers. This approach assumes that customers have the time, knowledge and motivation to carefully consider and weigh information relating to their energy plan, and therefore, that more information is better. However, the information based approach has resulted in the overly detailed and complex fact sheets and energy bills that have now been criticised for being confusing and unhelpful.³⁰

Evidence from disciplines such as psychology and behavioural economics has called into question the effectiveness of responding to information asymmetries in this manner. As the Consumer Protection Research Centre notes in a recent report

[E]vidence shows that simply providing consumers with more information – regardless of its quality, placement or relevance – can result in negative outcomes by overwhelming decision making, and giving rise to behavioural biases and the use of heuristics.³¹

Increasingly, regulators are turning to alternative approaches to encourage customer engagement, including those that draw more from behavioural disciplines. The intention of these newer approaches is to use insights about human behaviour to design more effective interventions, or ‘nudges’, that make it easier for customers to engage in the market.

A ‘nudge based’ approach attempts to ‘go with the grain’ of human behaviour.³² It leads to concepts and designs that consciously respond to known behavioural tendencies. One such tendency is status quo bias, which manifests in the energy market as customers remaining on

²⁹ The use of the term ‘nudge’ in such contexts was originally popularised by a 2008 book, *Nudge: Improving Decisions about Health, Wealth, and Happiness*, by Richard H. Thaler and Cass R. Sunstein.

³⁰ The review notes this issue and responded to it with recommendation 3E, among others, which invites us to make the item clearer.

³¹ Consumer Protection Research Centre, ‘Five preconditions of effective consumer engagement – a conceptual framework’, 2018, p 6.

³² Behavioural Economics Team of the Australian Government (BETA) 2018, *Saying more with less: Simplifying energy fact sheets*, March 2018, p 1.

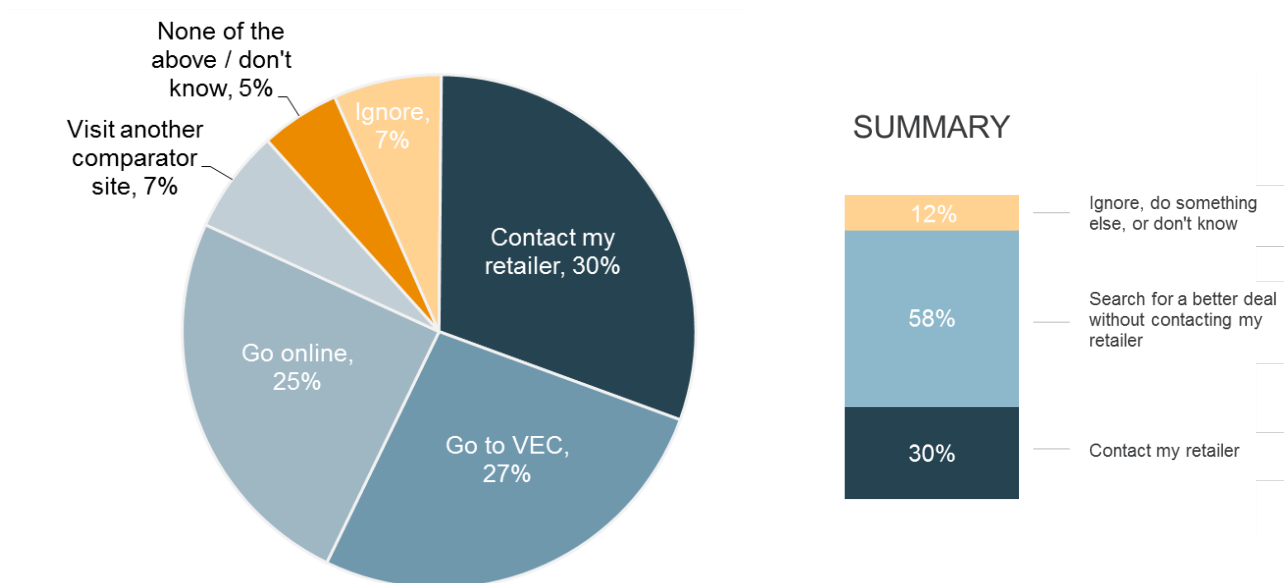
energy plans long after more suitable plans have become available. Another known bias is an aversion to choosing from a large number of complex options.

The review clearly developed their recommendations in acknowledgement of these issues. Recommendation 3G, for instance, seeks to counteract customers' status quo bias by prompting them to consider the suitability of their energy plan at a critical juncture in their relationship with that plan (when they are paying for it). It also seeks to simplify and streamline the customer experience, by requiring the retailer to navigate some of the search process on the customer's behalf.

In our approach to implementing the recommendations, we have sought to align with the behaviourally informed, or 'nudge based', approach. In practice, this translates to minimising the amount of new information presented to customers and ensuring that information is presented in a way that is most likely to prompt their engagement. To test our preferred approach we conducted customer testing in order to better understand how well customers comprehend the new information we have added to bills, and what they might do in response.

As part of the testing, we presented a representative sample of Victorian customers with versions of a bill containing a retailer's 'best offer', including the estimate of the annual savings available in the event the customer switched. We asked customers how they would likely respond. Around 30 per cent said they would contact their retailer in order to seek out the quoted offer. Around twice as many customers said that after receiving such a bill, they would engage with the broader energy market, either via a comparator website or their own research. The results are contained in figure 2.1.

Figure 2.1 Stated intentions of customers after reviewing a bill containing their retailer's 'best offer'



Source: Behavioural Insights Team (BIT)

These results confirm the assumptions we have made in approaching our initial draft decision: that the new information on bills is valuable primarily as a prompt, or 'nudge', to customer engagement, and that the engagement may take a number of forms. A fuller discussion of the test results is found in section 3.4, Appendix C and in our consultant report that has been released along with this final decision.

The best offer requirements may also nudge energy retailers. We consider a retailer will not want to repeatedly advise its customers that they are not on the retailer's best offer. Doing so would signal to the customer that their retailer is not pursuing the customer's best interests and therefore may not be worthy of the customer's trust. We expect retailers will rise to this challenge in ways that rebuild and uphold customers' confidence and trust.

2.6. Consultation in the development of our final decision

In developing the final decision, we consulted extensively with a wide range of stakeholders through a series of workshops, meetings with consumer groups, retailers and other stakeholders, reference group meetings and submissions on our draft decision.

Our program of consultation is set out in table 2.3. To assist us in our work, we also established a reference group consisting of energy retailers, consumer groups, the Energy and Water Ombudsman (Victoria), industry bodies and academics. This forum has been instrumental in helping us understand the key issues from a variety of perspectives. We have published reference group meeting materials on our website.

Our key stakeholder interactions are outlined below in table 2.3.

Table 2.3 Workshops and reference group meetings

Date	Stakeholder interaction
20 March 2018	Project launch Presentation outlining the project and the major work streams including key dates.
26 April 2018	First reference group meeting Discussion of Terms of Reference and approach to the reference group.
27 April 2018	First stakeholder workshop Stakeholders gave feedback on the meaning of key terms and how to make changes to bills to deliver the most benefit to customers. Stakeholders were invited to submit their responses to the questions raised at the workshop.
22 May 2018	Second reference group meeting Reference group gave feedback on the definition of 'best offer' and how to mitigate the risk of the additional information requirements on bills confusing customers.
19 June 2018	Third reference group meeting Reference group gave feedback on the scope of the new requirements including how they will apply to non-paper bills, how to mitigate the risk of confusing customers with the additional information requirements on bills, the definition of 'best offer' and how often the best offer information should be provided to customers.
17 July 2018	Fourth reference group meeting Presentation by our behavioural insights consultant on how the consumer trial would test different options for including new information on bills.
21 August 2018	Fifth reference group meeting Stakeholders gave feedback on the meaning of key terms and how to implement recommendations relating to changes to marketing material and information disclosure (recommendations 3A-F) to deliver the most benefit to customers. Stakeholders were invited to submit their responses to the questions raised at the workshop.

7 September 2018	Stakeholder briefing for release of draft decision Presentation on the key aspects of the draft decision on recommendations 3F-H of the Retail Market Review. Submissions invited with due date 5 October 2018.
18 September 2018	Sixth reference group meeting Presentation of results of second consumer trial. Discussion of reference group member's responses to draft decision.
27 September 2018	Stakeholder workshop on feedback on draft decision Presentation of results of second consumer trial. Discussion of key areas of feedback in relation to the best offer on bills, clear advice entitlement and implementation.
8 October 2018	Stakeholder forum on key categories of feedback raised in submissions Forum to discuss the key categories of feedback we received in each draft decision.
16 October 2018	Seventh reference group meeting Further discussion of feedback and remaining issues in relation to the final decision.

In addition to the engagements listed above, between our project launch on 20 March 2018 and the release of our draft decision, we held 20 one-on-one meetings with stakeholders.

Following release of our draft decision on 7 September 2018, we held a further 21 meetings with our stakeholders to understand key issues in relation to the draft proposal.

We received 19 submissions on our draft decision that included feedback from 13 retailers (including one confidential submission), 5 consumer groups and the Energy and Water Ombudsman (Victoria). The parties who made non-confidential submissions are listed below. Their submissions are available on our website:

- AGL
- Alinta Energy
- Australian Energy Council
- Community Information & Support Victoria (CISVic)
- Consumer Action Law Centre
- Consumer Policy Research Centre
- Energy and Water Ombudsman (Victoria)
- EnergyAustralia
- ERM Power
- Momentum Energy

- Onsite Energy Solutions
- Origin Energy
- Powershop
- Red Energy and Lumo Energy
- Renew (Alternative Technology Association)
- Sumo Power
- Victorian Council of Social Service.

3. Putting the 'best offer' on bills

The retail market review found that many Victorian customers are paying more than is necessary for their energy, and that the complexity of the market makes customers disinclined to shop around, even when they could make significant savings.

We have established new customer entitlements to cut through this complexity and make it easier for customers to understand when a better deal is available from their retailer. Under our final decision, retailers are required to regularly display their 'best offer' on customers' bills, along with advice on how to access it. Retailers are required to personalise the information by using the customer's actual meter data to calculate the savings that may be available.

To accompany the new entitlements, we have also created a new transparency rule – a 'clear advice entitlement' (see section 3.5) – that will require retailers to be upfront with customers about any terms within the contract that could lead to the customer paying more than they expect. This could include conditional discounts, or discounts that expire after a period of time. This will help manage the risk that customers would be tempted by large savings only to end up on plans that are not appropriate to their circumstances. The clear advice entitlement would also require retailers to tell customers about other deals that might suit them.

3.1. Purpose of the retail market review's recommendation

The review found that many Victorian customers are paying more than is necessary for their energy. This is in part due to customers finding it difficult to identify the energy deal that is most appropriate to their circumstance. Contributing to this difficulty is the variety and complexity of the offers available in the market place. In response to this complexity, a large portion of the customer base simply does not engage with the market. A study conducted for the review by Newgate Research estimates that around half of Victorian energy customers had not switched their plan or provider in the previous three years.³³ Our own customer trial for this final decision found similar results. More than 40 per cent of the customers in our sample reported not switching within the past four years.³⁴

³³ Newgate Research, op cit, p 21.

³⁴ The Behavioural Insights Team, 'Testing the impact of including the provider's best offer on energy bills – first trial report', 2018.

We have sought to cut through the complexity of the market for customers, by requiring retailers to notify customers of savings that would be available to them if they were on their retailer's best offer. It reflects an ethos that customers, including customers who by choice or circumstance do not actively engage with the market, should be provided greater assistance to navigate its complexity. As the review noted:

The retail energy market should deliver benefits to all consumers, not just to those who are capable, interested, and able to navigate its complexity.³⁵

By putting the best offer on bills, we are providing a 'nudge' for customers to consider the suitability of their current energy plan. This is achieved by making it easier for customers to assess whether their retailer may have a better offer for them. The receipt of a bill is an ideal moment for this to occur because it represents a point at which customers are highly likely to consider their energy plan.

Stakeholder views in response to the best offer entitlement

Stakeholders supported this high level draft decision and its intent. Stakeholders provided feedback about specific elements of our approach to implementing it, which we discuss in the remainder of this chapter.

Our response

We have made no changes in respect to this decision between draft and final.

Final decision 1: Best offer entitlement

- Customers are entitled to be informed, via their bill, of the best offer available to them from their retailer.
- The best offer is to be determined and presented in accordance with the specifications set out in this final decision.

3.2. Our approach

Implementing this recommendation required the commission to work through a range of practical questions, the most prominent of which were how to define and present the 'best offer' to customers. This chapter outlines the options and considerations we took into account to define and

³⁵ John Thwaites, Patricia Faulkner and Terry Mulder, op cit, p 13.

present best offers to customers. It also steps through a range of other matters related to the implementation of the changes.

3.3. Determining the 'best offer'

To identify the options for how the best offer could be defined, we worked with stakeholders and examined regulatory interventions in other jurisdictions. Through this process we identified five distinct options for thinking about best offer. We needed to address three questions that apply regardless of which option is pursued:

- What energy consumption data should inform the best offer calculation?
- How are discounts managed when calculating the best offer?
- How are concessions managed when calculating the best offer?

The next section discusses our approach to defining 'best offer', starting with the pool of offers that retailers must consider when assessing whether they can present a better offer to their customer, and followed by our decisions in relation to the three questions outlined above.

The definition of best offer

Our draft decision contained an extensive discussion of five options for defining the pool of relevant offers that retailers will select from when determining the best offer. We have summarised that discussion in table 3.1.

We carefully considered these options, noting that none are free of potential drawbacks. Ultimately, the commission faced a choice about how to balance benefits and risks, and the extent to which the risks can be managed.

We formed the view that option 2 – the retailer's cheapest generally available offer – struck the best balance between benefits and drawbacks, and is most consistent with finding a cost effective, timely approach to implementing the recommendation. The term 'generally available' is drawn from the national framework and means 'all plans that are available to any customers in the appropriate distribution zone with the appropriate metering configuration are generally available unless they are a restricted plan.'³⁶ Under the AER's definition, restricted plans are those that are specifically targeted at an individual or exclusive group, such as concession card holders or hardship customers.³⁷ We consider the requirement to present the retailer's cheapest generally available

³⁶ AER, 'AER Retail Pricing Information Guidelines – Version 5.0', April 2018, p 15.

³⁷ Other examples include plans restricted to customers in a pilot program, 'save' or 'retention' plans, which are offered by retailers in response to a customer signalling they intend to switch to another retailer, 'win-back' plans, which are offered by retailers after the customer has switched to a new retailer to persuade the customer to return.

offer as a minimum standard. This allows retailers to present lower cost, non-generally available offers to their customers through the best offer message if they choose to do so.

Table 3.1. Summary of options for defining best offer and associated opportunities and challenges

Option	Description	Opportunities/benefits	Challenges/risks
1. Cheapest possible offer	Includes all possible offers, including non-public 'bottom draw' offers	<ul style="list-style-type: none"> • Conceptual simplicity • Customers see absolute cheapest offers available from their retailer 	<ul style="list-style-type: none"> • The offer may not be available to the customer • No ability for customers to verify the offer using publicly available information • Difficult for the commission to enforce due to 'bottom draw' offers not being public
2. Cheapest generally available	Only includes offers that are generally available	<ul style="list-style-type: none"> • Conceptual simplicity • Low risk of offer being unavailable to the customer • Customer sees one of the cheapest possible offers from their retailer 	<ul style="list-style-type: none"> • The offer may not be suitable for the customer due to its terms and conditions, particularly vulnerable or disadvantaged customers • Excludes the absolute cheapest offers that may not be made generally available in the market by retailers
3. Cheapest equivalent offer	Offers that are 'equivalent' to the customer's current offer	<ul style="list-style-type: none"> • Low risk of offer being unavailable to the customer • Low risk of offer being unsuitable for the customer 	<ul style="list-style-type: none"> • Elevated conceptual complexity • Higher risk the offer presented is not the cheapest the customer would accept • Need to define 'equivalence', requiring either the commission or retailers to make judgements about how customers weight the value and importance of different plan attributes
4. Two best offers	For example, cheapest generally available + cheapest equivalent	<ul style="list-style-type: none"> • Avoids the need to establish a single definition • Could provide customers with richer information to aid decision making 	<ul style="list-style-type: none"> • Additional elevated conceptual complexity • May still require definition of 'equivalence' • Adds complexity to the presentation of material on the bill, which may erode the efficacy of the 'nudge' to engage
5. At retailer's discretion	Let the retailer decide how to define 'best offer'	<ul style="list-style-type: none"> • Avoids the need to establish a single definition • Allows the retailer to flexibly apply the definition, potentially accounting for customers preferences 	<ul style="list-style-type: none"> • Elevated risk of inconsistent customer outcomes, within retailers, between retailers and across time • Management of elevated risks require additional mechanism (e.g. a retailer policy), adding regulatory complexity, potentially simply shifting around definitional issues

Stakeholder views on the definition of best offer

While many stakeholders supported this definition, some proposed that offers that required a customer to belong to a club with paid membership should be excluded.³⁸ For example, this would include offers that only apply to customers who are members of a football club or the RACV. The rationale for this is that customers may find it frustrating to be informed about a 'best offer' only to find they are required to make financial outlay in order to access the offer. Another option would be for the annual cost of any such qualifying memberships to be added to the retailer's estimate of the annual cost of the customer's current plan. However, it was noted that this may be difficult for retailers to estimate, given that membership prices may vary over time or be tiered based on the type of membership purchased.

Other stakeholders suggested we exclude offers that had *any* form eligibility criteria, whether financial outlay was involved or not.³⁹ This would include offers that were restricted to new customers. Meanwhile, Powershop suggested we go in the opposite direction and mandate that retailers include all their offers, not just their generally available offers.⁴⁰ This would extend to win back and retention offers – the so-called 'bottom draw' offers – that retailers do not presently publish, but which are usually their cheapest offers.

Our response

As we noted in our draft decision, we have focused on identifying a simple approach to defining which offers retailers should consider when determining the 'best offer' for one of their customers. Accordingly, we chose the simple category of 'generally available', which excluded win back offers and other non-public offers.⁴¹ We retain our view that this simple overall approach is best.

However, we are persuaded that including offers that customers can only obtain if they make a financial outlay – by joining a football club, for instance – may lead to negative customer outcomes. For instance, if these offers were commonly the cheapest the retailer can offer their customers (by virtue of the club-based discounts associated with them), then it may become commonplace for customers to contact their retailer about a 'best offer', only to be disappointed when they discover they need to 'pay in order to save'. This has the potential to gradually degrade the efficacy of the new rules over time if customers find they can't access the offers and become disengaged with the best offer message.

³⁸ Submissions made by AGL; Australian Energy Council; Momentum Energy; Renew; October 2018.

³⁹ Submissions made by AGL; EnergyAustralia; Consumer Policy Research Centre; Energy and Water Ombudsman, Victoria; Simply Energy; October 2018.

⁴⁰ Powershop submission, October 2018.

⁴¹ Based on the AER's definition of generally available.

On this basis, we have decided to exclude offers requiring paid membership or affiliation of an entity from the offers that retailers must consider when determining best offer.

By contrast, we do not see a case for excluding offers with eligibility criteria that do not require a financial outlay. The main example of such offers in the current market are those that are restricted to new customers. Throughout our consultation it has been argued that these offers should be excluded on the basis that it may irritate customers to contact their retailer about a 'best offer' they are unable to access by virtue of being an existing customer.⁴²

However, while we recognise this may be a frustrating experience, we see it as one that the retailer, rather than the regulatory framework, is imposing. The decision to create new-customer-only offers is a commercial decision by retailers and is not compelled by the regulatory framework. For that reason, we do not see a case for excluding these offers.

Final decision 2: The definition of best offer

'Best offer' is to be defined as the cheapest offer that is:

- generally available
- does not require paid membership or affiliation as an eligibility criteria

with the retailer having discretion to present cheaper plans from among their non-generally available offers.

Data used to determine the best offer

Our changes require retailers to decide, at various intervals, whether they have a better offer for each of their customers. To make this determination, retailers will need to compare the cost of the customer's current offer with the cost of the other offers the retailer has available. To be meaningful, this comparison will necessarily rely on the customer's energy metering data. It is therefore necessary to clarify how the retailer should use the customer's energy metering data when making this comparison.

The recommendation in the review provides guidance on how this question should be approached. The recommendation points towards annual comparisons, as opposed to comparisons on the basis of, for example, an individual billing period. Consequently, we have adopted a simple approach – the data used to inform the best offer calculation should be the customer's most recent 12 months metering data. Where 12 months metering data is not available, we require retailers to make their best estimate of the customer's 12 months metering data.

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For the avoidance of doubt, this means that the data used to determine the best offer will include both consumption and export data,⁴³ which we have included as part of our code amendments (see appendix 2). Customers with solar panels may generate excess electricity, which is then exported back into the grid. In this way, the best offer determination accounts for both the cost to the customer of the energy consumed, and any credit received from the feed-in tariffs associated with the offers being compared.⁴⁴

Stakeholder views on source data and our response

Simply Energy suggested we prescribe a methodology for estimating the customer's usage where 12 months meter data is not available.⁴⁵ The main rationale for this was to ensure consistency across the industry and to mitigate the risk that the retailer will mislead the customer about the difference in cost between the two plans. However, we also received submissions that supported our proposal to use a retailer's best estimate of consumption if a customer has less than 12 months of meter data.⁴⁶ On balance, we consider retailers to be best placed to make these estimates, given their expertise and knowledge of their customers. We also consider that the discretion provided to retailers in this respect is sufficient for them to manage any risk of misleading the customer.

Origin suggested that solar export data not be included in the calculation, on the basis that this introduced complexity into the calculation.⁴⁷ We consider it is important that both consumption and export data are included in the calculation of the customer's 'best offer'. An increasing proportion of Victorian households have solar photovoltaics (PV), and the way retailers price the tariffs they pay on those exports can be material to the customer's bill over a year. We have therefore maintained our position in the final decision.

How discounts are managed when calculating best offer

Another key question relates to how discounts are managed when calculating the best offer. In the current market, many energy plans come with conditional discounts, which are often sizable,

⁴³ Clause 2A(2)(1) of Energy Retail Code defines annual usage history as 'the consumption or export of electricity or gas by a customer at the customer's current premises over the 12 month period preceding the bill issue date (or the date of the bill change alert, if applicable), based on meter readings. Where the retailer does not have 12 months of meter readings for the customer at the customer's current premises, the retailer must estimate the customer's consumption and export of electricity or gas during a 12 month period having regard to any relevant information that is available to the retailer (and must have regard to any meter readings obtained during the 12 month period preceding the bill issue date (or the date of the bill change alert, if applicable)).'

⁴⁴ A feed-in tariff is the rate payable for electricity exported to the grid from eligible generation sources, such as solar panels.

⁴⁵ Simply Energy submission, October 2018.

⁴⁶ Submissions made by Origin Energy; Sumo Power, October 2018.

⁴⁷ Origin Energy submission, October 2018.

whereas other offers have unconditional discounts. The question then arises: when retailers compare the customer's current plan and an alternative, should the comparison assume the discounts are applied?⁴⁸

We considered it a straightforward decision that unconditional discounts should be applied during the comparison. This discount will be applied to the customer's bill regardless of what actions the customer takes. The more difficult question is in relation to whether conditional discounts should be applied during the comparison because the benefits of such discounts depend on actions taken by the customer.

Our analysis of offers in the market indicates that if conditional discounts are not applied when determining the best offer, then customers may not be presented with a 'best offer' as frequently as they would if discounts were applied. This is because of retailers' current practice of using discounts as the means of differentiating their offers from one another. When discounts are not applied, the costs of these plans are similar if not identical.

To demonstrate this, figure 3.1 sets out the estimated annual cost for an average customer for offers from a selection of eight retailers, among them retailers who currently use discounting in this manner. The offers were drawn from Victorian Energy Compare (VEC) on 17 July 2018, and apply in the Jemena distribution zone.⁴⁹ The charts show that the costs of these retailers' current offers are very similar if discounts are not applied.⁵⁰ In fact, for four retailers – Alinta Energy, Click Energy, Dodo, and Powerdirect – if discounts are not applied then their best current market offer is no better than the retailer's standing offer.⁵¹

Current discounting practices mean that if conditional discounts were not applied in the determination of best offer, many customers would not be advised that potential savings were available. In some instances, customers on high priced market offers could be told that their best offer is a standing offer. For this reason, in our draft decision we proposed that unconditional and conditional discounts must be applied to the customer's current and any alternative offers from the retailer. This is represented by the dark blue bars in the offers shown in figure 3.1.

⁴⁸ In working through this question, we operate on the assumption that whatever calculation is applied to a customer's current plan should be applied to the alternatives, and vice versa, to ensure a like for like comparison.

⁴⁹ Victorian Energy Compare (<https://compare.energy.vic.gov.au/>) is the government energy price comparator website.

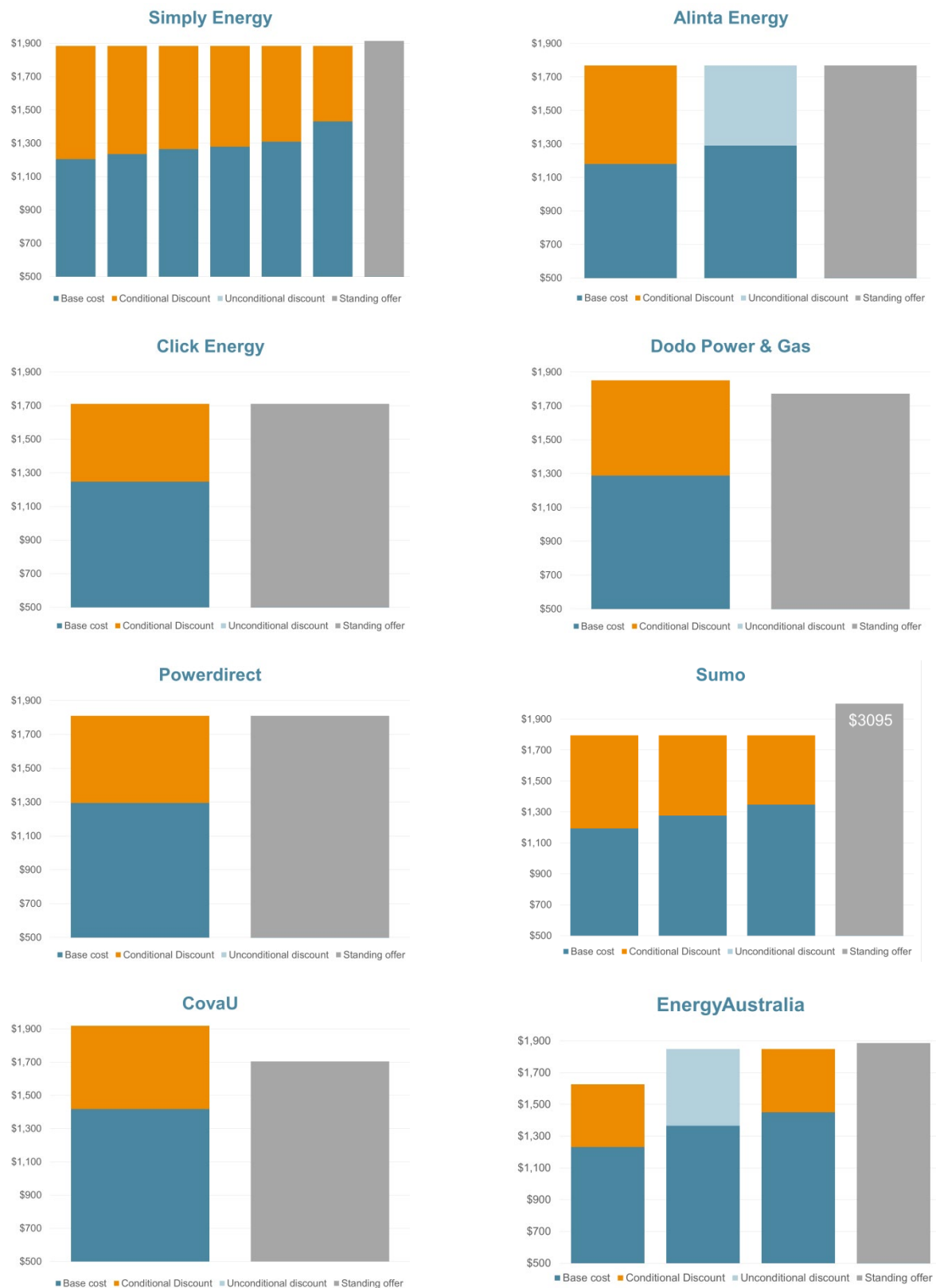
⁵⁰ The charts indicate that in relation to two retailers – Dodo and CovaU – the annual bill for a typical 4000kWh customer in this distribution zone would be higher on their market offer than their standing offer. The commission is currently considering this matter further.

⁵¹ In drawing attention to this, we also note that a number of retailers have moved in another direction and have developed low cost, 'no discount' plans to which this description does not apply. These retailers include AGL, Origin Energy, Lumo Energy, Powershop and Globird Energy. Furthermore, there are now two retailers – Momentum Energy and Tango Energy – whose offers in Victorian Energy Compare are all 'no discount' plans.

Further, we note that VEC and commercial comparator websites typically allow customers to choose to display offers with conditional discounts applied. This means that there is broad consistency between the approach we proposed and the way offers are presented elsewhere in the market.

Figure 3.1. Comparison of offers from selected retailer as at 17 July 2018

Estimated annual cost for a 4000kWh/annum customer, Jemena distribution zone



Stakeholder views on application of discounts and our response

Momentum Energy noted that our approach to accounting for discounts in the best offer calculation (i.e. assuming they are fully applied) may understate the actual costs for customers of each plan because not all customers pay on time all of the time.⁵² However, Momentum Energy also noted that resolving this by having the calculation account for the actual payment history of the customer ‘could add significant complexity’.

We agree that taking this alternative approach would add significant complexity and have decided to maintain the simpler approach in our final decision.

Bundled or blended plans

The exception to our general position on applying discounts is the case of ‘bundled’ offers. Some retailers offer deals whereby a customer can save money off either their gas and/or electricity rates by ‘bundling’ both services together with the same retailer. Energy services may also be bundled with other products, such as telecommunication services.

Our view is that, unlike other discounts, the best offer calculation should not account for bundled deals when considering the alternative offers. That is, the calculations should not assume that any discounts associated within bundling are applied to those offers. The calculation should be made independently for each fuel type. If the best offer calculation allowed for discounts associated with bundled offers, the true nature of the savings will be opaque because they may be offset by higher costs associated with the other, bundled service. For instance, a retailer may offer a very low electricity price only if it is bundled with a high priced gas offer.

Stakeholder views on application of bundled and blended plans and our response

Origin Energy noted that the best offer calculation becomes more complex and difficult when a customer is on a bundled or blended offer.⁵³ We acknowledge this observation.

Our draft decision sought to manage this situation by allowing the discounts associated with blending or bundling to be applied to the calculation of the annual cost of the customer’s current offer, but not to the annual cost of any alternative offers.

That is, if the customer was already on a bundled or blended offer that provided them with a low cost rate, then this would be reflected in the calculation of the annual cost of their current offer. However, the annual cost of any alternative rate would be calculated without any bundling/blending discounts being applied. This is to avoid a situation whereby a customer is presented with a very

⁵² Momentum Energy submission, October 2018.

⁵³ Submission made by Origin Energy; October 2018.

low cost electricity offer, for example, but only on the condition they sign up to a more expensive gas offer.

This approach balances the need to recognise the realised savings associated with any existing plan the customer is on against the need to avoid the customer being enticed onto a plan that, when considered in combination with the bundled/blended offers, may not be a good offer.

In other words, we consider this issue has been appropriately managed and have not changed our position for the final decision.

How concessions are managed when calculating best offer

Customers holding concession cards may be eligible for concessions (state funded deductions) on their energy bill as part of schemes administered by the Department of Health and Human Services (DHHS).⁵⁴ These concessions can reduce the cost of their energy bills.

Our view is that when the best offer calculation is undertaken, that the retailer should apply any concessions that are currently applied to the customer's account when calculating their current annual cost and the annual cost of any alternative offers. This will ensure the comparison is like-for-like.

Stakeholder views on the application of concessions and our response

Powershop proposed that concessions not be applied.⁵⁵ This was on the basis that when a customer compares the costs of their current offer with the cost of competing offers from other retailers, concessional discounts may not have been applied to those competing offers, thereby making their own retailer's offers appear more attractive than they really are.

While this seems intuitively correct, the manner in which the best offer information is displayed on the bill means this scenario is unlikely. The dollar information displayed in the best offer message represents the difference in potential annual cost between the customer's current offer (after any applicable concessions have been applied) and the retailer's lowest cost generally available offer (again, including after any applicable concessions have been applied). In other words, the message does not provide an annual cost of either plan that customers would compare against the annual cost of plans from alternative retailers.

Consequently, we have not changed our decision on this matter.

⁵⁴ For further information, see <https://services.dhhs.vic.gov.au/energy>.

⁵⁵ Powershop submission, October 2018.

Final decision 3: Estimating a customer's usage and the application of discounts and concessions when determining the best offer

- The best offer is to be determined using the customer's previous 12 months metering data, or if that is not available, the retailer's best estimate of the customer's 12 months metering data.
- When determining the best offer, the retailer is to apply all unconditional and conditional discounts to the estimates of the customer's current, and any alternative offers from the retailer.
- When undertaking the best offer calculation, the retailer should not account for savings available on alternative offers if those savings require the customer to bundle their gas and electricity together, or bundle their energy service with another type of service, such as telecommunications services.
- When determining the best offer, the retailer is to apply all concessions that currently apply to the customer's account to the estimates of the customer's current, and any alternative offers from the retailer.

Acknowledging the risks for customers

We have decided to include (nearly) all generally available offers within the definition of best offer, and also decided that discounts should be applied during the calculation. In making these decisions, we are mindful that they create a material risk that customers may be alerted to a 'best offer' on the basis of savings that, due to their individual circumstances, they may not be well placed to realise. For example, a best offer with savings primarily driven by pay-on-time discounts may not be 'best' for a customer who regularly misses their bill payment due date, even if only by one or two days. In other words, the methodology to determine the best offer potentially increases the risk that customers will shift onto plans that they find, in the long run, are not in their interests because of complexity associated with the terms of the contract.

We believe this risk can be partially mitigated by requiring the information to be presented in such a way that indicates 'conditions may apply' or other caveats added by retailers. However, given the recognised complexity of energy offers and the way this complexity is contributing to the trust deficit in the market, such a measure is likely to be insufficient on its own, meaning there is residual risk to manage. We discuss our means of responding to this residual risk in section 3.5.

Section 6.3 explains how we have translated our definition of 'best offer' into code amendments, including a discussion of the terminology we have adopted to avoid misunderstandings about the meaning of 'best'.

3.4. Design and presentation of the new information

Including this new information with bills requires the commission to make decisions about how this new information should be presented. Our approach to this task was to work with stakeholders and behavioural specialists⁵⁶ to map out and then narrow down design options.

During the design phase, we worked closely with stakeholders – through workshops, regular reference group meetings and one-on-one meetings – to understand the key issues and potential options for resolving them. This process allowed us to screen out options that appeared unlikely to deliver the anticipated benefits, or which could produce adverse consequences for customers or retailers, or which would be potentially costly to implement. We then conducted a round of consumer testing to test the efficacy of different design options. Our first trial indicated that a best offer message (with savings) on a bill was likely prompt a customer to take action. We concluded this minimalist approach provided the right balance of benefits and costs.⁵⁷

In our draft decision, we proposed the message should include the following words: We could offer you a cheaper plan. On our [plan name] you could save up to \$X per year. Contact us to switch.⁵⁸ We determined the best offer message should be located immediately adjacent to the bill due amount to ensure it was readily visible to customers.

During the draft decision consultation period, we conducted a second round of testing to assess the impact of how framing the difference between a customer's current plan and the best offer could impact efficacy. We found that a greater portion of consumers responded to the best offer message when it was framed as a payment (that is, 'You are paying up to \$X more than you need to,' rather than 'you could save \$X'). This is consistent with the behavioural economics concept of loss aversion – that is people prefer to not lose \$5 than find \$5.

A summary of the results of our two trials is contained in appendix C.

Stakeholder views on legal risks associated with certain wording

In response to our proposed wording, some retailers raised concerns that the wording (or the wording in combination with the presentation of a dollar figure), may expose them to being in breach of consumer protection legislation.⁵⁹ Some retailers argued that by combining a dollar

⁵⁶ The Behavioural Insights Team (BIT)

⁵⁷ We also tested options that included a 'bill insert' to provide the customer with additional information. The consumer testing revealed the inserts did not materially impact the efficacy for customers, we didn't pursue design options with inserts due to the additional cost they would cause to retailers.

⁵⁸ See appendix C for details.

⁵⁹ Australian Energy Council, AGL, EnergyAustralia, Origin Energy, Momentum Energy, Powershop, Red Energy and Lumo Energy submissions, 2018.

figure with the text we prescribed for the best offer message would leave them exposed to charges of misleading or deceptive conduct. This is because of the level of uncertainty about what level of savings the customer may achieve by switching. Others noted that the information could be considered a form of marketing, and that they may be in breach of laws that prevent them sending such material to customers who had exercised their entitlement to opt out of marketing, such as the Spam Act 2003 (Cth).

Our response

In response to these issues, we have modified the prescribed language to provide more qualifiers around the dollar figure, and more information about how the dollar figure was arrived at.

The new form of words for the best offer message is: 'Could you save money on another plan? Based on your past usage, our [plan name] may cost you up to \$X less per year than your current plan.' The message must also include information on how to contact the retailer to switch.

We have also clarified that retailers may use of disclaimers on the bill, if they consider this necessary in order discharge their responsibilities under other consumer protection schemes.

Other stakeholder views on presentation and design and our responses

Stakeholders generally acknowledged and supported our 'nudge' based approach to presenting the new information on bills. In particular, community stakeholders were pleased with the use of behavioural testing to support how the intervention was presented.

Onsite Energy Solutions suggested that the commission's decision 'is likely to incentivize retailers to seek to ensure that consumers are on their "best available offer" in an effort to minimize the risk of loss of market share'.⁶⁰

Beyond the legal risk discussed above, stakeholders raised two other issues that required consideration. We discuss each of these issues in turn.

Using visual cues/infographs

One stakeholder, VCOSS, suggested we consider supplementing the message with visual cues or infographs.⁶¹ We see merit in this, particularly for the purposes of reaching customer segments with more limited English language abilities. However, there has not been time to perform any customer testing on such options, so we will consider this as part of any future reviews of the new requirements.

⁶⁰ Onsite Energy Solutions, submission to the Essential Services Commission consultation paper 'Draft decision on building trust through new customer entitlements in the energy retail market', October 2018.

⁶¹ Victorian Council of Social Service submission, October 2018.

No positive best offer message

A positive best offer message is intended to provide customers with confirmation they are already on a retailer's best offer. EnergyAustralia proposed removing the need for a positive best offer message entirely (that is, removing the message, if it confirms the customer is already on their retailer's best product).⁶² We recognise the slight reduction in regulatory burden, that removing this requirement may provide some retailers, depending on the configuration of their systems. However, we also consider there are trust and confidence benefits for customers to receive the positive best offer message. Consequently, we have not changed our position on this in the final decision.

Final decision 4: Presentation of the best offer on bills

- Where the customer is not on the retailer's best offer, customer bills are to include a simple message, including a savings estimate, located immediately adjacent to the bill due amount using the words: 'Could you save money on another plan? Based on your past usage, our [plan name] may cost you up to \$X less per year than your current plan.' The message must also include information on how to contact the retailer to switch.
- Where the customer is already on an offer that is as cheap or cheaper than the retailer's best offer (within the meaning given to that term in the code), customer bills are to include a message confirming this for the customer and referencing the option to visit Victorian Energy Compare to compare offers from other retailers.

3.5. Clear advice entitlement

As outlined in the analysis above, the main risk associated with presenting the 'best offer' on the bill is that it may not be suitable for the customer, particularly vulnerable customers, because of potential complexities associated with the contract terms and conditions. Some customers may even be disadvantaged by a 'best offer'. This risk is more pronounced for vulnerable customer cohorts, such as those from CALD backgrounds, who may be less well placed to interrogate and comprehend the fine print of the contract. The government's terms of reference requires the commission to have regard to the informational needs of Victoria's rich and diverse community, including our culturally and linguistically diverse and aged population. We consider it incumbent upon the commission, as the regulator responsible for promoting protections for energy customers

⁶² EnergyAustralia submission, October 2018.

in Victoria, to respond adequately to this risk.⁶³ This in turn provided further grounds for the commission to consider the introduction of the clear advice entitlement.

In order to switch to an alternative offer in response to receiving a best offer message, the customer must contact the retailer (even if this contact is made online) to provide explicit informed consent.⁶⁴ This interaction between the customer and the retailer therefore provides an opportunity to manage the risk we have identified. We noted in our draft decision our views that this risk is amenable to being managed using an outcomes-based mechanism or obligation that requires retailers to assist customers during this interaction to avoid inadvertently switching to a plan that is not appropriate to their circumstances.

We see such a mechanism as originating from a principle of shared responsibility for the effectiveness of the retail energy market. In this context, the notion of shared responsibility implies a reciprocal obligation on retailers to assist customers to navigate the complexity of the retailer's offers, with a particular view to avoiding conditions or contract terms that may not be in that customer's interests (see chapter 1). It also responds directly to the issues of declining consumer trust and confidence in the market.

The remainder of this section outlines how we have developed the clear advice mechanism, the stakeholder feedback we received, along with our response and final decision.

Outline of the clear advice entitlement

The clear advice entitlement applies to interactions between retailers and customers ahead of the commencement of new energy contracts. The intended outcome is to make customers more aware of the way the contract terms will affect their bills. In practical terms, the obligation requires retailers to communicate with the customer in clear and easily understood terms:

- the estimated dollar cost implications of terms and conditions (including tariff structures) that influence the costs they will face over the term of the contract, and
- any of that retailer's alternative offers that, on the basis of their interaction with the customer, the retailer believes might be better suited to the customer.

Stakeholder views on the outline of the entitlement

Stakeholders generally supported the intent of the clear advice entitlement. However, retailers sought clarification about how the entitlement would operate in practice, and raised issues with certain elements of our proposal, namely the requirement for retailers to consider their knowledge

⁶³ The relevant Industry Acts enshrine an objective for the commission to promote protections for consumers. See section 10(c) *Electricity Industry Act 2000* (Vic) and section 18(c) *Gas Industry Act 2001* (Vic).

⁶⁴ As required by clause 3C of the Energy Retail Code.

of a customer when discharging their obligation. They also sought a number of changes to the drafting within the Energy Retail Code drafting to avoid unintended consequences. We discuss these points and our response in more detail throughout this section.

Consumer groups were strongly supportive of the new entitlement.

Scope of the clear advice entitlement

We define the scope of the obligation in terms of:

- the information the retailer must communicate to the customer
- when and how the retailer must communicate the information,
- what the retailer should take into account when communicating that information.

Information the retailer must communicate

Under our proposal, the scope of what the retailer should communicate to the customer was defined by the contract itself. Specifically, the retailer would be required to advise the customer about any terms, conditions or attributes of the contract (including fees and charges) it establishes that could influence the costs faced by the customer over the term of the contract. If the proposed contract contained three terms or conditions that could influence the bill faced by the customer, the retailer must communicate those three items to the customer. If the contract contained no terms or conditions that influence the cost faced by the customer – that is, if the tariffs and charges established at the start of the contract were constant and unalterable for the length of the contract – then the retailer would have nothing to advise the customer apart from the fact that all tariffs and charges were fixed for the duration of the contract.

Examples of contract attributes that would need to be highlighted in complying with the clear advice entitlement are conditional discounts (such as pay-on-time discounts), or additional fees and charges for switching to paper billing. If the contract entitled the retailer to change prices during the term of the contract, then this would need to be disclosed as well. Relevant contract attributes would also include the nature of the tariff structure – for instance, if a customer was contemplating an offer that included more complex tariff structures, such as flexible pricing or a demand charge, then the potential impact of these structures should be explained to the customer.

We proposed that, unless it is not feasible to do so, the retailer must communicate the potential impact of these terms and conditions in dollar terms computed on the customer's previous (or estimated) usage, even if it is only possible to provide broad estimates. For example, if a contract included a condition whereby an initial 20 per cent discount expired after one year, the retailer would be obliged to communicate the estimated dollar impact of the discount expiring (as opposed to simply noting the expiration date). Similarly, for pay-on-time discounts, the retailer would be obliged to communicate the estimated dollar impact for that customer of not paying on time.

By contrast, a case in which it may not be reasonably possible to communicate the dollar impact is if the contract conditions allowed for a price rise during the contract term. This is because retailers would not reasonably be expected to estimate the price changes that may occur many months in advance. However, the converse would be true if the retailer was aware of a scheduled price change during the contract period, such as one that was occurring within a few weeks of signing up a customer. In this instance, the retailer is expected to advise the customer that a price change was scheduled, what the price change will be, and the likely dollar impact of the price change. Other examples of the information a retailer should provide include (subject to the contract terms) the dollar cost of switching to paper billing or simply the retailer's entitlement to change prices during the course of the contract.

Stakeholder views on the information retailers must communicate, and our response

Stakeholders broadly supported our intent with respect to this element of the decision. However, some retailers noted the potential for this requirement to 'over capture' terms and conditions that a retailer cannot reasonably avoid including in a customer contract, such as those established by the distributor.⁶⁵ Retailers stressed, furthermore, that some of these costs would not be borne by the customer in the normal course of events.⁶⁶

One example of this is the costs associated with extraordinary meter reads that confirm a customer's meter is operating correctly. A customer will bear a cost if they request an extraordinary meter read (in the course of disputing a bill, for instance), and the inspection of the meter indicates it is operating correctly. However, the cost of this service is determined by the relevant distributor, whose agents carry out the inspection. In other words, the potential for this cost exists in the customer's contract, but the amount is not set by the retailer, and the likelihood of it being incurred is contingent on a number of factors. Retailers suggested there was a large number of costs in this category – that is, unlikely to be incurred in the normal course of supplying energy, and not set by the retailer. Retailers queried whether it was our intent for these costs to be captured by the clear advice entitlement.

We consider that it may indeed be appropriate for some costs in this category to be communicated to customers prior to them entering a contract. However, we recognise that the costs within the category identified by retailers are not within the control of the retailer. We also recognise that if the clear advice entitlement captured all such costs, it may require the retailer to provide customers with a large amount of information about scenarios that are unlikely to occur in the normal course of a billing relationship (such as the costs of an extraordinary meter read).

⁶⁵ Submissions made by Australian Energy Council; EnergyAustralia; Momentum Energy; Origin Energy, October 2018

⁶⁶ Submissions made by Simply Energy; Sumo Power, October 2018.

This is contrary to our intent, which is to create an obligation that scales in proportion to the level of complexity that retailers themselves introduce, as opposed to complexity that is inherent in the market by virtue of the decisions of other entities, such as distributors. That is, our intent is to establish the entitlement in such a way that retailers have the opportunity to minimise or even eliminate their obligations under the rule by virtue of the way they design their products. We do not intend that the consequence of this clear advice entitlement results in customers being provided with information that overcomplicates their assessment of whether to change to another plan with their retailer.

Accordingly, we have revised the drafting of the code to better align with our intent. The new drafting makes it clear that the terms and conditions that are captured are those that are determined by the retailer and which mean:

- actions the customer takes that can influence the cost of their bill (such as missing a bill due date on a contract with pay-on-time discounts), or
- actions the retailer can take that could influence the cost of the bill (such as changing the price during the term of the contract).

We also clarified the wording to ensure it extends to requiring retailers to inform the customer about the potential implications of changing tariff structures, if the new plan is a different tariff structure to the customer's existing plan.

Separately, Alinta Energy noted that our proposed drafting of this requirement effectively required the 'dollar information' to be expressed in terms of a given bill, rather than simply in dollar terms.⁶⁷ We have simplified the drafting to reflect our intent that the information be expressed in dollar terms, where reasonable.

When and how the retailer communicates the information

We proposed that the retailer be required to communicate the information prior to obtaining explicit informed consent from the customer.⁶⁸ The legal link between the clear advice entitlement and explicit informed consent is discussed in section 6.4. We also proposed that the information be communicated in clear, plain language and given due prominence in the exchange between the retailer and the customer. Giving 'due prominence' means drawing attention to the relevant terms

⁶⁷ Alinta Energy, submission to the Essential Services Commission consultation paper 'Draft decision on building trust through new customer entitlements in the energy retail market', October 2018.

⁶⁸ Explicit informed consent from a customer is required before the formation of a contract for the supply energy. See clause 3C and clause 3E of the Energy Retail Code.

and conditions, as opposed to including them within a recital of the full terms and conditions of the contract.

Stakeholders broadly accepted this and our views did not change between our draft and final decision.

What the retailer should take into account when communicating information

When fulfilling the obligation, our draft decision proposed the retailer should take into account any information it already possesses in relation to the customer that relates to the relevant terms and conditions. For a contract condition that establishes a pay-on-time discount, this information could include a payment history in which the customer has missed bill due dates. For the avoidance of doubt, we did not propose the retailer be obliged to seek new information from the customer in order to discharge the obligation. (Although we noted that best practice would suggest the retailer should use its judgement in assessing the need to gather relevant information from the customer.)

Stakeholder views and our response

Some retailers were concerned about how to fulfil this aspect of the requirement when their third party agents, or ‘channels’, transact sales on their behalf. Examples of such channels include third party comparator websites, or door knockers. Retailers were focused on a scenario in which one of their own customers was engaged by a third party agent. This could happen, for instance, if one of Retailer A’s customers was browsing a comparator website and decided to sign up to another of Retailer A’s deals.

In this scenario, retailers noted that the clear advice entitlement would require them to consider the information they hold about the customer when explaining the details of the plan. Depending on how the retailer had structured their relationship with the third party, this may imply the third party would need access to the customer’s information. Retailers raised principled and pragmatic concerns about this scenario.

The key principled concern was that this may expose customers to privacy risk, on the basis that the customer’s information would be transmitted to the third party. In responding to this concern we observe that no element of the proposed framework compels retailers to share information with third parties. The scenario in which this becomes necessary is one established by, and governed through, the retailer’s own commercial relationships. It is therefore incumbent upon retailers who strike these relationships that the underpinning agreements are suitably robust to ensure retailers remain compliant with all relevant obligations, including those related to privacy. On this basis, we do not consider this objection to be reasonable.

Retailers’ other concerns were of a more pragmatic nature. They were focused on the practical steps involved in ensuring their third party sales agents were able to integrate information from the retailers’ databases during their interactions with customers. (This would become relevant in

circumstances where the retailer's commercial arrangements included a requirement that their third party sales agents fulfil the clear advice entitlement on their behalf.⁶⁹) Retailers commented that this would be complex and difficult from an IT systems perspective.

A similar concern was raised by retailers in relation to integrating this element of the entitlement with digital platforms. In this instance, the focus was on scenarios in which the customer of Retailer A is browsing Retailer A's website and decides to switch to another one of Retailer A's offers. For Retailer A to discharge this element of the clear advice entitlement, it must identify that the 'shopper' is a pre-existing customer, then access that customer's information in order to shape how to communicate information about the new offer. To ensure privacy, this would necessitate some form of identity verification process. This would require integration with the retailers' customer database, and development of conditional logic to determine the resulting content of the user interface (i.e. what appears on the screen). More importantly, it may introduce additional friction to the online sign up process in the form of an identity verification process that would occur earlier than would otherwise be the case. We appreciate the importance of reducing friction to the success of online transactions, and the higher rate at which customers might drop out of the 'funnel' that steps them through an online sale if the experience is not straightforward. In other words, we recognise that friction could degrade the customer experience in online environments.

While noting these challenges, we consider that they could be resolved with sufficient time, innovation and product refinement. We also note work arounds exist, such as having third parties transfer customers to the retailer in order to fulfil the clear advice entitlement and obtain explicit informed consent. However, we recognise that these work arounds may be cumbersome to implement and detract from the customer experience, and we also note the challenge involved in delivering more substantive solutions before July 2019. But more importantly, we note that a key driver of the challenges faced by retailers is the level of prescription we settled on for this element of the new entitlement. We remain open to finding more flexible means of delivering the outcome we are seeking through this element of the new entitlement. We have therefore resolved to reshape the way retailers are required to take account of their knowledge of the customer when discharging the clear advice entitlement.

The discussion of practical challenges outlined by retailers also led us to be concerned that the prescriptive nature of this requirement might inadvertently limit the approach retailers take when providing customers information to assist them to 'assess the suitability of, and select, a customer retail contract' — as required by the Division's objective in clause 70G.

⁶⁹ According to stakeholder reports, some retailers require their third party sales channels to do this, whereas others have the third party transfer the customer to the retailer for the explicit informed consent stage of the transaction.

The new Part 2A of the code establishes a regulatory environment where retailers bear a greater responsibility for customer outcomes, as expressed by a series of customer entitlements. The clear advice entitlement is established by Division 2 of Part 2A. We therefore consider that, at least for now, retailers should take responsibility for determining the information about the customer they consider when providing information to help the customer to assess the suitability of the retailer's various offers. In some instances, this may see retailers relying on the information they hold about a customer. At other times, the retailer may consider information provided by the customer during any given exchange to be sufficient for the purposes of honouring the customer's entitlement.

Changes in the final decision

In light of these considerations, we have retained the new entitlement largely as described in our draft decision, as this is a critical measure to rebuild and uphold customer confidence in the market. However, we have removed the prescriptive element addressing the information the retailer must consider in supporting this entitlement.

As part of our ongoing reform of the Energy Retail Code, we will continue to explore how energy retailers might be expected to use their knowledge of their customers to tailor the information and assistance they provide. From 1 July 2019, we will also monitor how retailers apply the clear advice entitlement without this level of prescription. If we find it in customers' interests to do so, we will reintroduce these additional information requirements into the clear advice entitlement.

Effect of the clear advice entitlement on retailers

We expect the clear advice entitlement will encourage high quality customer service from retailers. We would hope that many retailers are already engaged in providing this sort of service in the normal course of their interactions with customers. For those retailers, the clear advice entitlement would have no additional effect on their business.

We also note that the extent of any burden associated with complying with the obligation is directly proportionate to the level of complexity that a retailer has included in their contract terms and their market offerings. That is to say, retailers would be largely in control of the size of the impact the obligation has on their business. For example, retailers with few offers in the market, and with offers containing simple contract terms and conditions, may find the obligation imposes no significant burden. This means the obligation creates an incentive for retailers to take into account the cost of complex and confusing contracts. Our reforms internalise this cost in the retailers' decision making without regulating the structure of the offer.

In this context, we note that a number of retailers have already begun reorienting their offers towards simplicity. Both Momentum Energy and Tango Energy are notable for having done away with discounting entirely. We also note that AGL, Origin Energy, Lumo Energy, Powershop and Globird Energy now have low cost, 'no discount' offers in the market. Figure 3.3 shows offers from

these retailers drawn from Victorian Energy Compare on 17 July 2018 (Jemena distribution zone).⁷⁰

With the exception of Lumo Energy, the best offers for the retailers shown in figure 3.3 are those on the left of each diagram. All these offers include simple plans with no discounts. Lumo Energy's best offer would have been its second offer from the left which includes a conditional discount.

The obligation we have developed will apply regardless of which platform the transaction takes place through. As such, we have aimed to design the obligation to be platform agnostic. This is to allow retailers scope to innovate in how they meet the obligation across the various digital mediums they may use to transact sales, while complying with the relevant objectives and purposes described in Part 2A.

Through stakeholder consultation we have taken submissions from retailers on the practical implications of the new requirement and, where necessary, adjusted its final form accordingly as demonstrated by the changes detailed above.

Further details about how we have constructed the clear advice entitlement in the Energy Retail Code is found in section 6.4.

⁷⁰ Victorian Energy Compare is the government energy price comparator website.

Figure 3.3. Comparison of no discount offers from selected retailers as at 17 July 2018
 Estimated annual cost for a 4000kWh/annum customer, Jemena distribution zone



Interaction between the clear advice entitlement and third parties

One potential development within retail energy markets in Australia is the emergence of third party switching or brokerage services. This model has been pioneered by companies such as Flipper in the United Kingdom⁷¹ and more recently the Transformer service released by Choice in Australia.⁷² These services operate as agents of their customers, switching the customer between energy deals as better offers become available in the market. Another form of third party arrangement takes place when retailers engage sales agents, or ‘channels’, who promote energy plans on their behalf.

In developing our proposal for a clear advice entitlement, we have turned our mind to how such an obligation would interact with these third party arrangements. To the extent third party switching services have established a legally sound capacity to act as the customer’s agent (including providing explicit informed consent on behalf of their customer), then it is reasonable to expect they can represent the customer while the retailer discharges its clear advice entitlement. This includes reflecting the customer’s preferences in respect of terms and conditions of the contract that may affect the customer’s bill.

With regard to third party sales agents, we consider it reasonable that any firm representing a retailer to customers should be able to meet the customer protection obligations of the retailer. Assuming the third party agent was responsible for securing the customer’s explicit informed consent, it is therefore expected that third party sales agents should be able to also meet the new clear advice obligations on the retailer’s behalf. This would include, for example, door to door sales agents. As discussed above, we have modified our final decision in relation to retailers’ need to incorporate the information they hold on customers in such a way that will make it simpler for retailers to fulfil the new requirement while working with third parties.

Interaction between the clear advice entitlement and code existing provisions

The Energy Retail Code currently contains existing information disclosure requirements for retail energy offers.⁷³ These provisions require retailers to make information disclosure documents (i.e Price and Product Information Statements (PPIS) and offer summaries) available to customers.

These rules set out certain format and content requirements of the documents and how they must be made available to customers. PPIS documents must be clearly accessible through the retailer’s own website, while offer summaries must be provided to customers upon request and:

⁷¹ See <https://flipper.community/>.

⁷² See <https://transformer.choice.com.au/>.

⁷³ For example, Part 2 of the Energy Retail Code sets out the minimum terms and conditions of customer retail contracts, while Division 2A of the Code sets out the rules for energy price and product disclosure.

When providing the customer the terms or information about the terms of any new retail contract, including when engaging in any marketing activity.⁷⁴

Under these existing rules, retailers are able to take a relatively passive role in information disclosure (i.e. simply providing written documents with terms and conditions), while the onus is on customers to seek out the relevant features of the plan and understand their impacts. The clear advice entitlement requires retailers to go further than these current requirements, and to take a more proactive role in clearly outlining the relevant specific features of the energy offer and their bill impact for the customer in dollar terms wherever possible.

Other stakeholder feedback and points of clarification

More generally, retailers expressed concerns about having sufficient time to implement the changes within their businesses before 1 July 2019. Retailers were particularly focused on challenges associated with the requirement to incorporate their knowledge of the customer when providing information to the customer, specifically in the case of digital and third party sales channels, such as price comparator websites. Having made changes to that aspect of the requirement, our expectation is that these concerns will now be greatly reduced.

Retailers questioned whether the new clear advice entitlement overrode existing rules around when a retailer is legally obliged to offer supply to a customer. These existing rules oblige the retailer who is the financially responsible market participant (FRMP) in relation to a customer to supply energy to that customer, at the very least on the terms of the retailer's standing offer. The FRMP for any given customer is the most recent retailer to have supplied electricity to the customer's address.

Retailers were concerned that the requirement within the clear advice entitlement to tell customers about alternative plans might imply that retailers were now obliged to offer supply to any customer that contacted them, on the terms of any offer they maintained.

We confirm that the existing rules about obligation to supply remain unchanged. The operation of the clear advice entitlement is in the nature of information disclosure, not an obligation to supply. That is, the entitlement obliges retailers to provide information about its offers to the customer with whom it is engaged, but does not imply an obligation to supply under the terms of that offer.

Another question raised by retailers was around the level of accountability they would hold, if any, for customers' decisions. A particular focus in this respect was the wording of the objective of the clear advice entitlement, and the reference to providing information for the purposes of assisting

⁷⁴ Energy Retail Code, clause 15C(1)(b)

the customer to assess the suitability and select a new plan.⁷⁵ Retailers asked whether they would be held responsible if customers selected a plan that ultimately proved to not be in their best interests.

We can confirm that retailers are not responsible for the decisions of customers under the new requirement. We have consciously established a clear line to distinguish between the provision of information *for the purpose of assisting* the customer to select a plan, and the act of *assisting the customer to select a plan*. The objective of the new requirement falls in the former category. Under our approach, the customer retains the agency to make decisions on their own behalf, and is accordingly accountable for those decisions. By contrast, the retailer is accountable for providing the relevant information to the customer in a way, consistent with the objective, which enables the customer to exercise its agency in a confident and informed manner. It is through these corresponding accountabilities that we give effect to the shared responsibility principle that lies at the heart of the new requirement.

Retailers also asked whether they would be obliged to *collect* information from customers through the course of their sales exchanges, in order to build up a knowledge base regarding the customer. They speculated they would be required to build this knowledge base to discharge their obligation to take account of their knowledge about the customer when providing information. Some retailers suggested this could introduce additional steps to digital exchanges, degrading the customer experience. We consider that retailers should take responsibility for providing information to help the customer to assess the suitability of the retailer's various offers. In some instances, this may see retailers relying on the information they hold about a customer. At other times, the retailer may use information provided by the customer during any given exchange for the purposes of meeting the customer's entitlement.

Final decision 5: Clear advice entitlement

Customers are to receive a clear advice entitlement to ensure they are made aware of, at the point of entering a contract, the dollar cost implications of all terms and conditions that influence the costs they will face over the term of the contract, and of any other offers the retailer believes may be more suitable for the customer.

⁷⁵ See new 70G: The objective of this Division is to give small customers an entitlement to clear, timely and reliable information to assist the small customer to assess the suitability of, and select, a customer retail contract.

3.6. Other matters relating to best offer

This section outlines a range of operational matters about how the new best offer requirement might function in practical terms.

Scope of the new requirements

In the context of ‘best offer’, the question of scope concerns:

- customer type
- whether the new requirement applies to bills that are provided in non-traditional formats
- whether the requirement applies to all fuel types
- whether the requirement applies only to retailers or also to holders of an exemption from a retail licence.

We proposed the new best offer obligation and associated clear advice entitlement apply to domestic and small business customers. That is, customers defined as ‘small customers’ in the Energy Retail Code.⁷⁶

We also proposed the best offer entitlement apply to bills in whatever format they are provided to the customer, whether paper or electronic.

When issuing bills electronically, retailers commonly present a bill summary in the accompanying email or SMS that can include click-through-to-pay options. In these instances, customers may have no need to open the attached bill and would therefore miss the best offer message unless that message was also included in the bill summary.

Consequently, we consider that the new best offer message requirement should apply equally to bill summaries – that is, associated material that sets out the key elements of the bill such as the due date and amount owing – that accompany a new bill. The reference to ‘new’ bill is to clarify that this requirement does not extend to other communications that might contain due dates and amount owing such as reminder notices and disconnection warning notices.

For the avoidance of doubt, the new requirement applies to both gas and electricity.

Persons who sell energy in Victoria are required to hold a licence, or alternatively, an exemption from holding a licence. Exempt suppliers can include operators of caravan parks, retirement homes, or embedded networks (such as those that exist in some shopping centres and apartment blocks).

⁷⁶ Clause 3 of the Energy Retail Code states ‘small customer has the same meaning given to domestic or small business customer under section 3 of the Electricity Industry Act or section 3 of the Gas Industry Act.

One of the key issues for customers who are supplied by exemption holders is the limited options they have for participating in the retail energy market. Typically, these customers do not have a choice of plan from their provider (and don't have a choice of provider unless they are willing to fund their own connection to the distribution system). As a result, we do not consider it appropriate to apply this new requirement to exemption holders because it is not clear these customers will have sufficient alternatives for a best offer message to be meaningful.⁷⁷

Stakeholder views on the scope of the new requirements and our responses

Stakeholders broadly supported the proposed scope of the new best offer requirement. However, there were a number of specific items of feedback, which we discuss below.

Multi-site customers

Both ERM Power and Origin Energy suggested that bills to multi-site customers be exempt from the new requirement.^{78 79} Multi-site customers are those where a single customer relationship applies to multiple physical premises. This can occur, for instance, when a single company negotiates an energy contract that encompasses many shop fronts.

ERM Power noted that these customers are typically on a negotiated arrangement that takes account of the aggregated load provided by the multiple sites. Within the national framework, there is provision for these sites to be exempt from rules that apply to a 'small customer' if the aggregated load passes certain thresholds. However, there are no equivalent exemptions in Victoria, meaning these sites would still receive 'best offer' messages. ERM Power noted that providing these individual sites with the best offer message was less justified because they do not engage in the market themselves.

Separately, Origin Energy raised the example of combined bills where, for example, a residential home and a holiday house owned by a single customer would both be on the same bill.

In the case raised by ERM Power, we can see the merit in excluding multi-site customers. This is on the basis that, when aggregated, these customers are often not small businesses of the sort targeted by these changes. The fact they receive individual bills is largely a function of the existing legal framework in Victoria, rather than the commercial reality.

⁷⁷ In September 2018, our Energy Retail Code review 2018 (obligations for exempt sellers) looked at whether customers receive adequate protections in the absence of easily participating in the retail market. As part of the review, we made amendments to the Code to clarify the obligations of exemption holders.

⁷⁸ Origin Energy, submission to the Essential Services Commission consultation paper 'Draft decision on building trust through new customer entitlements in the energy retail market', October 2018.

⁷⁹ ERM Power, submission to the Essential Services Commission consultation paper 'Draft decision on building trust through new customer entitlements in the energy retail market', October 2018.

As a result, we have created an exclusion for small business premises where the contract for the supply of energy covers multiple premises under a single commercial relationship between a multi-site business and their energy supplier.

In the case raised by Origin Energy, we see less of a principled argument for the exclusion of these premises because such small residential customers are likely to derive the same benefit from the best offer message than a residential customer with only one property. However, we accept the technical and regulatory challenges that need to be overcome in order to adapt the best offer message to such circumstances, and we have not identified a means of applying the new requirement to customer bills of the type described by Origin Energy.

Consequently, we have opted for a pragmatic approach and have excluded all bills that apply for more than one NMI.

However, we are conscious of the fact that exemptions can, over time, come to be used in ways that were unconnected to their original intent. We will monitor the way in which this exemption is used, and if it comes to contradict the purpose of Part 2A we will look to revise this decision.

Incorporating the best offer entitlement into the payment difficulty framework

VCOSS suggested we consider including the entitlement to best offer information within all levels of the payment difficulty framework (PDF).⁸⁰

We note that the clear advice entitlement will apply to all customers, including those who are seeking assistance under the payment difficulty framework.

In terms of more formally enshrining the entitlement within the payment difficulty framework, while we accept the principle behind this idea, the PDF is close to being implemented by retailers, having been enshrined in code amendments that were finalised in October 2017. We consider it appropriate to allow the PDF to be bedded down by retailers and may consider whether the clear advice entitlement has a larger role to play in the PDF when we review the framework in the future.

Technical issues with the definition of bill summary

Separately to the points on policy positions discussed above, we also received some technical feedback in relation to our decision to include bill summaries in the scope of the new requirement.

AGL noted that our definition of bill summary was too broad and would capture communications that did not, in fact, summarise key elements of the bill.⁸¹

⁸⁰ Victorian Council of Social Service, submission to the Essential Services Commission consultation paper 'Draft decision on building trust through new customer entitlements in the energy retail market', October 2018.

We accept the point made by AGL and have amended the definition so it better aligns with our intent.

EnergyAustralia noted that the definition of bill summary – including our refined definition – will capture SMS alerts about the bill.⁸² However, the manner in which we have prescribed how the best offer message must be presented (which includes placing it in a border, and making it adjacent to the bill due amount) cannot be practically translated into an SMS format because that format does not accommodate designs of this form.

We also accept the feedback from EnergyAustralia and have adjusted the code to accommodate for SMS and other formats where it would not be feasible to comply with the manner and form requirements.

Final decision 6: Scope of the new best offer obligation

The best offer obligation applies to:

- bills supplied to small customers (domestic and small business)⁸³
- electricity and gas bills
- bills in all formats, including paper and electronic
- communications that accompany a new bill and summarise its key content (bill summaries, in any form), including the amount owing and due date
- bills supplied by holders of a retail licence, but not to bills from holders of an exemption from a retail licence.

The obligation does not apply to multi-site customers.

How frequently the best offer message should appear on bills

The new requirement could be designed to apply to every bill, or it could be designed to apply at intervals, such as every quarter or every six or 12 months. Our consultation on this topic revealed some stakeholders view that the effectiveness of the intervention may become muted if customers become overly accustomed to, and therefore desensitised to, the best offer message. Other

⁸¹ AGL, submission to the Essential Services Commission consultation paper 'Draft decision on building trust through new customer entitlements in the energy retail market', October 2018.

⁸² EnergyAustralia, submission to the Essential Services Commission consultation paper 'Draft decision on building trust through new customer entitlements in the energy retail market', October 2018

⁸³ Clause 3 of the Energy Retail Code states 'small customer has the same meaning given to domestic or small business customer under section 3 of the Electricity Industry Act or section 3 of the Gas Industry Act.

stakeholders held a counter view - that more frequent messaging will reinforce the customer's comprehension of the intervention, and actually increase its effectiveness.

We considered this argument to be finely balanced, and saw merit on both sides. In our draft decision, we proposed it occur at a minimum interval of every six months, and prescribed the time of year at which it should appear (on the first bills following 1 January and 1 July).

We originally opted for a six month interval because, relative to one or three months, we saw there was a greater likelihood the difference between a customer's current offer and the best offer will have materially changed over this period. The more time passes, the greater the likelihood the retailer will have increased the customer's tariff, and/or put a lower price offer into the market.

We proposed this frequency be set as a minimum period, meaning retailers would be free to present the information more frequently, recognising this may help minimise costs in the event that a retailer finds it less costly from an IT systems perspective to include the new information with each bill (as opposed to at intervals).

Stakeholder views on frequency and timing

This draft decision received a mixed response from stakeholders.

Some community groups wanted the message to appear more frequently, with several suggesting it feature on bills at least quarterly.⁸⁴ For example VCROSS noted the following:

We suggest notifications must occur at least once during each calendar quarter, to align with existing quarterly payment instalments and help prevent payment difficulties. VCROSS members providing frontline services consider six months too long to wait for the next notification. People paying too much can build up significant debts over six months, particularly during high-usage summer and winter periods.⁸⁵

Conversely, Sumo Power noted that as most energy plans have a duration of 12 months, the objective could be achieved by delivering the best offer message on an annual basis.⁸⁶

EnergyAustralia and the Australian Energy Council suggested it should be de-coupled from the bill entirely and simply communicated twice a year by a method of the retailers' choosing.⁸⁷

⁸⁴ Submissions to, the Essential Services Commission consultation paper 'Draft decision on building trust through new customer entitlements in the energy retail market', October 2018: Community Information and Support Victoria; Energy and Water Ombudsman, Victoria; Victorian Council of Social Service,

⁸⁵ Victorian Council of Social Service submission, 2018

⁸⁶ Sumo Power, submission to the Essential Services Commission consultation paper 'Draft decision on building trust through new customer entitlements in the energy retail market', October 2018

⁸⁷ Australian Energy Council, EnergyAustralia submissions, October 2018

Our consultation also indicated that many retailers considered that prescribing the period of the year in which the best offer must appear on bills (ie the first bill after 1 January and 1 July) would lead to a surge of customer calls at those times of year. This could create higher call volumes for retailer call centres and lead to poor customer outcomes in the form of long wait times.

Whilst noting this scenario is only likely to unfold if large proportions of a retailer's customers are not on that retailer's best offer, we nonetheless accept the argument that there may be drawbacks by concentrating the messages at certain points in the year. One such drawback is that retailers may decide to keep low priced offers out of the market at that time. Holding back low priced offers so they do not appear on retailer bills would not be possible if the message appeared on a more rolling basis.

Our response

After considering the many perspectives on this issue, we see merit in the arguments outlined above that prescribing the time of year at which the message appears on bills may limit the effectiveness of the new requirement. Consequently, we have decided to remove prescription around the time of year the best offer message appears on bills.

In regard to frequency, we are persuaded that moving from six monthly to quarterly is warranted as this will provide more even coverage across the year for customers. In other words, customers will be made aware sooner of any alternative offers that could benefit them.

We make this decision having credited the argument from some stakeholders that seeing the message more frequently than every six months may help improve the efficacy of the message because customers will become better accustomed to using it as a check. If evidence emerges that the contrary is true and customers are becoming desensitised to the message, then we may look at the question of frequency again.

We have adjusted the final decision accordingly.

Final decision 7: Frequency at which the best offer appears on bills

For electricity accounts, the best offer messages are to appear on bills at a minimum every three months. For gas accounts, best offer messages are to appear on bills a minimum of every four months.

Minimum dollar threshold for the new requirement

During the consultation that lead up to the draft decision, stakeholders invited us to consider whether there should be a minimum dollar threshold after which the new requirement is activated. That is, should customers be told there is a better offer from their retailer if there is only a small saving available?

Research shows that for many customers, relatively significant savings are required to prompt them to switch. Our testing for this project indicates that 90 per cent of customers would require a saving of \$50 or more to consider switching.⁸⁸ On this basis, we see merit in a minimum dollar threshold for best offer messages when only trivial savings are available.

We initially proposed that this threshold be set at \$22 (including GST) per year on the basis that this is the maximum exit fee retailers may charge, and that most customers will therefore need to save at least this amount to make switching worthwhile.

Stakeholder views on the dollar threshold

Stakeholders were split on this issue. Retailers sought to have the dollar threshold increased.⁸⁹ A number of them pointed to research done by the commission that indicated 90 per cent of customers would need savings of \$50 or more in order to switch, and argued that we should therefore set the threshold at \$50.

Meanwhile, a number of consumer groups⁹⁰ argued that the threshold should remain at \$22. They argued, on the basis of advice provided by frontline staff of service organisations, that \$22 could be a material sum for a vulnerable customer.

We acknowledge the arguments of retailers, and the fact that our testing indicated that for many Victorian customers \$22 may not be a material enough sum to justify switching. However, our legislation compels us to consider customers at large, including low income and vulnerable customers.

Separately, a confidential submission argued that a separate threshold should apply to business customers, reflecting their (assumed) different capacity to absorb costs. However, on this point we find we are unable to identify the rationale we would use to justify one threshold over another. In fact, this issue is more pronounced in the small business market, where the customer base is significantly more diverse than the residential market. It is not clear to the commission how we can adjudicate what should be considered a material amount of money to small businesses.

⁸⁸ The Behavioural Insights Team, op cit, 2018.

⁸⁹ AGL, Alinta Energy, EnergyAustralia, and Sumo Power submissions, October 2018.

⁹⁰ Community Information and Support Victoria, Consumer Action Law Centre, Consumer Policy Research Centre, Energy and Water Ombudsman Victoria, and Victorian Council of Social Service submissions, October 2018.

Our response

While we acknowledge the matters raised by retailers, we have retained the threshold at \$22.

Final decision 8: Dollar threshold for determining a best offer

To be determined a 'best offer', an offer must result in an estimated saving of least \$22 (including GST) per year when compared to the customer's current offer.

How long should a 'best offer' be valid for after it is presented on bill?

In our draft decision, we noted that over time, retailers revise their offers. It was therefore relevant to consider how long a best offer should be available after it has been listed on a customer's bill. This was in anticipation of a scenario whereby a customer contacts their retailer in the days after receiving their bill but is advised the offer is no longer available. We noted that, subject to how that interaction unfolded, such an outcome may not be consistent with the objective of building customer trust and confidence in the market. Conversely, if retailers are required to maintain the offer for an excessive period of time, this may unreasonably impact their pricing strategy, including potentially preventing them from offering lower prices sooner.

One option we considered in our draft decision was to avoid specifying a defined day count and instead specify that the offer had to be valid for 'a reasonable period'. However, while this approach appeared attractive for its apparent flexibility, our concern was that it would prove problematic for enforcement and dispute resolution purposes. It is likely we would eventually be required to effectively define 'reasonable period' over time as cases came to our attention.

Consequently, our draft decision proposed the best offer presented on the bill be valid for 13 business days after the bill issue date. This period was selected because it aligned with the minimum period for a bill due date specified in the code.

Stakeholder views on the validity period

This draft decision was a major point of contention for stakeholders. Retailers submitted that they issue bills on a rolling basis (ie daily), and that this requirement effectively applied a 'rolling prohibition' on withdrawing offers from the market.⁹¹ While they noted the problem the commission was seeking to address, they argued that by imposing this rolling prohibition, our approach would have unintended consequences on their ability to operate that were disproportionate to the problem at hand.

⁹¹ Australian Energy Council, EnergyAustralia, Simply Energy submissions, October 2018.

Retailers said that commercial incentives were in place to mitigate the risk the commission had identified.⁹² Specifically, they argued that if a retailer was no longer able to offer the customer the deal that was presented on the bill, it was in their interests to offer the customer an alternative, similarly good offer from their current product suite, lest they lose the customer to a competitor.

Consumer groups, by contrast, were sceptical that these incentives would be strong enough to avoid poor customer outcomes.⁹³

Our response

Having balanced the various considerations, we have decided to remove this requirement and rely upon the incentives for retailers to deliver positive customer outcomes. In instances where the named plan is no longer available, we would expect the retailer to offer the customer a plan that delivers features that are as close as possible to those that the customer would have been provided under the named plan in the best offer message.

Final decision 9: How long a best offer must be valid for

The commission has not prescribed a minimum period for which the best offer must be valid for.

3.7. Other information to appear on bills

The Independent Review into the Electricity and Gas Retail Markets in Victoria also proposed the following information to be added to the bill, in addition to the retailer's best offer for that customer:

- how the retailer can access the Basic Services Offer (BSO)
- how the customer can access Victorian Energy Compare (VEC), the government comparator website, and
- the total annual bill for that customer based on their current offer and usage patterns.

The Victorian government issued its final response to the review in the week prior to the release of our final decision on 30 October 2019. In its response, the government indicated its intention to proceed with a mechanism that is similar to BSO.⁹⁴ In due course we may consider whether the new mechanism has a role to play in best offer messages.

⁹² Energy Australia, Red Energy and Lumo Energy submissions, October 2018

⁹³ Consumer Action Law Centre, Renew, Victorian Council of Social Service submissions, October 2018

⁹⁴ Described by the government as a Victorian Default Offer (VDO).

We are also mindful of the quantity of information that currently appears on the bill. We initially proposed not to include the total annual bill for the customer on the bill. We will consider the best approach for introducing this information in the context of our work to implement the remaining recommendations of the retail market review.

However, we proposed that information about how the customer can access VEC should appear on all bills, regardless of whether the customer is on the best offer or not. We also noted that the requirement to place the customer's average daily usage in kilowatt hours and megajoules on the bill will also remain unchanged, as this information is important when customers are comparing offers on VEC. These requirements were to apply to all bills, not just bills with the best offer message.

Stakeholder feedback views on including VEC information on bills

Stakeholders largely supported this requirement.

ERM Power proposed that this information be excluded from bills that are sent to multi-site customers.⁹⁵ Multi-site customers are those where a single customer relationship applies to multiple physical premises. This can occur, for instance, when a single company negotiates an energy contract that encompasses many shop fronts. ERM Power noted that VEC doesn't accommodate offers tailored to multi-site customers, so argued that VEC info should therefore be excluded from bills sent to these companies.

Powershop suggested VEC information could be left off bills, given the amount of information already included on bills, and the fact VEC information already appears on factsheets.⁹⁶

Our response

We see the logic behind ERM power's argument. However, we also consider that VEC will continue to contain relevant information for these businesses, including information about prices elsewhere in the market. This would help multi-site customers, and the individual premises within them, better assess their existing energy deal.

We consider VEC information important to empower customers to engage with the market, and therefore don't consider Powershop's arguments to be strong enough to justify removing it.

Accordingly, we have made no change in the final decision.

⁹⁵ ERM Power submission, October 2018.

⁹⁶ Powershop submission, October 2018.

Final decision 10: Additional information to appear on bills

All customer bills must also include information about how the customer can access the government comparator website, Victorian Energy Compare (VEC).

3.8. Prescription and flexibility

Examined as a whole, our final position on the changes that introduce the best offer entitlement are broadly in line with that described in our draft decision. However, we have amended some of our decisions in light of feedback from stakeholders, including concerns from retailers about how some of the changes could be practically implemented. Specifically, we have reduced the level of prescription in some areas, including around the clear advice entitlement as well as the validity period of the offers that appear on bills. The intention of these modifications is to provide retailers more flexibility to deliver on the objective of the new requirements.

We consider this is new approach to regulating consumer protections will necessarily require retailers to change their practices and approach to compliance beyond a check-box approach to regulatory compliance.

The effect of removing some prescription in our final decision has not changed the overarching purpose of Part 2A or the nature of a customer's entitlements. If we find retailers adopt practices that have the effect of undermining the purpose of Part 2A or the objectives of the new entitlements, we will consider the full suite of regulatory tools available to us, which may include reintroducing prescription to the framework.

4. Price and benefit change notices

The retail market review highlighted that the existing regulatory framework allows retailers to change a customer's energy prices without prior notice.

We have proposed a new 'bill change notice' that retailers must send to customers ahead of price changes, as well as changes to benefits (such as discounts) associated with their contracts. This chapter outlines our decision for the information the notices should contain, how they should be presented, and a range of practical and operational matters related to the new notices.

4.1. Purpose of the retail market review's recommendation

The review raised concerns with the current regulatory framework that allows retailers to change a customer's energy prices without prior notice.⁹⁷ The review observed that this discretion was inconsistent with community expectations and should be rectified.

*The current ability of retailer to change energy prices without notice at any time during a contract must be addressed for fairness and to increase consumer confidence.*⁹⁸

The Independent Review into the Electricity and Gas Retail Markets in Victoria also considered the issues around 'benefit periods'. Benefit periods are used by retailers to place an expiration date on benefits associated with the contract – that is, an expiration date that occurs prior to the end of the contract itself. In this context, benefits can include movie tickets or magazine subscriptions, but more commonly they are discounts that apply to the customer's bill. This means that a customer may sign up to a new two year energy plan on the basis of, for example, a 20 per cent discount, but that discount may expire after the first year, making the plan significantly more expensive. The review proposed that retailers be required to give prior notice of benefit changes, just as they proposed should apply to price changes.⁹⁹

When prices change and/or benefit periods end without prior notice, customers may find themselves on a pricing schedule that no longer resembles the one when they signed up. This risk

⁹⁷ Clause 46 of the Energy Retail Code stipulates retailers must advise customers as soon as practicable and otherwise no later than their next bill of any price changes. Retailers have full discretion on the form and content of these notices.

⁹⁸ John Thwaites, Patricia Faulkner and Terry Mulder, op cit,p56.

⁹⁹ At the time the review's report was finalised, retailers were not obliged to provide notice to customers ahead of the expiration of a benefit period. However, the commission has since amended the Energy Retail Code, requiring retailers to provide prior notice of changes to benefits. The new requirements are set out in section 47A of the Energy Retail Code and explained in detail below.

is particularly pronounced for customers who, by choice or circumstances, do not regularly engage with the market. As previously noted, the review was focused on ensuring the market worked for these customers, not just those who are highly engaged.

This sentiment is echoed in a recent green paper on the future of consumer markets, including utility markets, from the UK's Department of Business, Energy and Industrial Strategy:

[We] ... want people to feel confident that they are not being exploited for their loyalty to what they may think of as a trustworthy supplier. Competition should drive the best deals, but no one should be exploited if they lack the time or capacity to engage and the vulnerable should be protected.¹⁰⁰

The purpose of the changes to ensure that customers' trust in their supplier is reciprocated by the retailer keeping the customer informed, in a clear and timely manner, about changes to their energy plan. It will also assist the customer to navigate the complexity of the market by providing a low effort means of identifying whether they could access a better offer from their retailer.

4.2. Our approach

Implementing changes to for retailers to notify a customer ahead of any price or benefit change requires us to step through the following questions:

- what information should appear on the benefit and price change notices?
- in what manner and form should the notices be presented?
- how should the new requirement manage practical and operational matters, including the amount of notice retailers must give customers of the price changes, and the interaction between the different notices?

In working through these questions, we have had regard to the existing provisions relating to benefit change notifications within the Victorian framework, as well as work undertaken by the Australian Energy Market Commission (AEMC) and the Australian Energy Regulatory (AER) within the national framework.

4.3. Current requirements

In Victoria, retailers are currently required to provide customers with advance notice of the end of benefit periods. However, they are not required to notify customers of price changes until their next bill.

¹⁰⁰ UK Department of Business, Energy and Industrial Strategy, 'Modernising consumer markets: Consumer Green Paper', April 2018, p 7.

Price change notification requirements

Clause 46 of the Energy Retail Code requires energy retailers to give notice to the customer of any variation to the tariffs and charges that affect the customer. The notice must be given as soon as practicable and otherwise no later than the customer's next bill. The requirements in their current form do not require prior notification to customers of price changes. This means customers can experience bill shock as a result of unanticipated higher prices.

Benefit change notification requirements

Clause 47A of the Energy Retail Code requires retailers to notify small customers of any benefit changes to their market retail contract. This notice must be made in writing and provided to the customers between 20 and 40 business days before the benefit change date. The Energy Retail Code specifies the minimum information that must appear on the notice.¹⁰¹

4.4. Relevant developments within the national framework

The national framework, established through the National Energy Retail Rules (NERR), does not apply in Victoria.¹⁰² However, two recent pieces of work within the national framework address price and benefit changes and are therefore relevant to our work.

AEMC price change notifications rule change

The AEMC has recently concluded a rule change that amended the NERR to require energy retailers to notify their small customers in advance of any price changes. Its work on the rule change has informed our proposed design for the new requirement in Victoria.

In its final decision, the AEMC anticipates price change notices will produce significant benefits to consumers, outweighing the costs associated with the change.

Significant benefits are expected from the rule in the short and long term, both direct to the customer and more indirectly via the impact on the efficient operation of the market. In particular:

- consumers are less likely to be surprised by the amount of their bill and face payment difficulties from lack of adequate budgeting
- consumers have more time to switch earlier to a retail plan or new retailer that better serves their needs

¹⁰¹ See section 4.5 below for more information.

¹⁰² The National Energy Customer Framework, which comprises the National Energy Retail Law and the NERR applies in Queensland, New South Wales, the Australian Capital Territory, Tasmania and South Australia. In Victoria, energy retailers are required to comply with the Energy Retail Code as a condition of their energy licence.

- consumers have more timely information to implement other actions that may help them to save money in the short and long term.

In the process, consumers should gain greater confidence in the market and retailers should be incentivised to develop products and tariff structures that better meet consumer needs. The costs of the final rule are likely to be minimised by the simple and concise prescription of the final rule and the limited amount of information required in notices. Costs are also expected to be better managed under the more flexible notice period required in the final rule.¹⁰³

Benefit change notice guidelines

Both the Victorian Code and the NERR require retailers to give customers prior notice of changes to the benefits they receive as part of their energy contract. The NERR also provides for the AER to issue a guideline outlining the required form and content of the notices.¹⁰⁴

The AER recently issued the guideline that applies to benefit change notices in the national framework, which commenced from 1 October 2018.¹⁰⁵ In developing our thinking on price change notices, we have drawn upon the AER's work in developing its guideline.

4.5. New notice requirements for Victoria

Our decision is to streamline the notice requirements for Victoria and establish a single 'bill change notice' that can be triggered by either benefit or price changes. The content of the bill change notice would vary depending on which type of change triggered the notice.

Stakeholder views on the introduction of a streamlined bill change notice

Stakeholders unanimously supported draft decision 11. Consequently, we have made no changes in our final decision.

Final decision 11: Bill change notices

The existing requirement for retailers to issue benefit change notices is to be replaced by a new requirement to issue bill change notices that are triggered by any price or benefit change.

¹⁰³ AEMC, 'National energy retail amendment (advance notice of price changes) rule', September 2018, p 39.

¹⁰⁴ AER, 'AER Benefit Change Notice Guidelines – version 1', June 2018, pp 2-4.

¹⁰⁵ *Ibid*, p 5.

Minimum information to be included

The minimum information to be included on the bill falls into three categories:

- *common information* - information that appears regardless of the trigger
- *benefit change information* - information applicable only to benefit changes and
- *price change information* - information applicable only to price changes.

Table 4.1 summarises the information requirements, and the source of the requirement. In summary, the common information is based on the existing information requirements for benefit notices in clause 47A of the code, with the addition of the retailer's best offer. Additionally, the price change notice includes information about the estimated dollar impact of the change and information to help the customer use Victorian Energy Compare, drawn from new requirements under the AER's benefit change notice guideline. The *common information* for all price change notices is therefore:

- the small customer's metering identifier
- that the small customer may use the price comparator to compare offers that are generally available to classes of small customers in their area
- the name and web address of the price comparator
- that the customer can request historical billing data (and, if they are being sold electricity, energy consumption data) from the retailer that will assist the customer to use the price comparator to compare offers that are generally available to classes of small customers in their area,
- any early termination charges payable under the market retail contract
- the retailer's best offer for that customer, defined, calculated and presented in the same manner as set out on best offer messages for bills
- the retailer's estimate of the annual dollar impact of the benefit or price change (where the benefit is financial in nature),¹⁰⁶ and
- information to assist the customer complete the fields necessary to use Victorian Energy Compare.

The *benefit change information* has also been drawn from the existing code, with the addition of the information required by the AER's benefit change notice guideline, namely:

- that a benefit change will occur and the benefit change date.

¹⁰⁶ Consistent with our draft decision on recommendation 3G, the annual dollar impact should be calculated on the basis of the customer's most recent 12 months of metering data. If the retailer does not have the most recent 12 months metering data for a customer, we propose that the retailer use its best estimate to determine the dollar impact.

For the *price change information* we drew upon the AEMC's final determination on price change notifications and included the following information:

- that the customer's tariffs and charges are being varied
- the date on which the variation will come into effect
- the customer's existing tariffs and charges
- the customer's tariffs and charges as varied.

Table 4.1. Minimum information to appear on bill change notifications

Type of information	Item of information	Source
Common information	The small customer's metering identifier	The existing benefit change notification requirement
	That the small customer may use the price comparator to compare offers that are generally available to classes of small customers in their area	
	The name and web address of the price comparator	
	That the customer can request historical billing data (and, if they are being sold electricity, energy consumption data) from the retailer that will assist the customer to use the price comparator to compare offers that are generally available to classes of small customers in their area	
	Any early termination charges payable under the market retail contract	Recommendation 3G of the retail market review
	The retailer's best offer for that customer, defined, calculated and presented in the same manner as set out under recommendation 3G	
	The retailer's estimate of the annual dollar impact of the benefit or price change (where the benefit is financial in nature)	The review's emphasis on communicating to the customer in dollar terms, and the AER's benefit change notification guideline ¹⁰⁷
	Information to assist the customer complete the fields necessary to use Victorian Energy Compare	The AER's benefit change notification guideline
Where a benefit is changing	That a benefit change will occur and the benefit change date	The existing benefit change notification requirement
Where a price is changing	That the customer's tariffs and charges are being varied	AEMC final rule change
	The date on which the variation will come into effect	
	The customer's existing tariffs and charges inclusive of GST	
	The customer's tariffs and charges inclusive of GST as varied	
	Clear indication that the tariffs and charges are GST inclusive	

¹⁰⁷ The AER's Benefit Change Notice Guidelines requires retailers to include the dollar impact of doing nothing in response to a benefit change.

Stakeholder views on the information requirements

Stakeholders largely supported draft decision 12.

Powershop argued that some of this information was not necessary, for example, the customer's metering identifier, which they noted already appears on the bill, and the name and address of the price comparator.¹⁰⁸

Separately, Origin Energy noted that one item – information to assist the customer complete the fields on Victorian Energy Compare (VEC)– was a more complex task in Victoria than in the national jurisdiction from which this requirement was derived.¹⁰⁹

Within the national framework, the equivalent comparison website, Energy Made Easy is managed by the AER. The AER requires retailers to add information to certain notices that customers can use to easily complete the fields on this website. By applying the above mentioned requirement to our bill change notices, we were seeking to emulate that customer experience in Victoria.

However, as Origin Energy notes, the user interface of the Victorian comparison website, VEC, is not structured in the same way as Energy Made Easy. It includes questions about the number of people in the customer's household, and the appliance mix – questions the retailer will not be in a position to help the customer answer. Origin Energy suggested our proposed requirement would therefore not be straightforward for retailers to comply with because it may imply that retailers should assist the customer to complete these fields that are unrelated to the customer's energy account.

Our response

To address Origin Energy's concern about the information required to assist the customer complete the fields on VEC, we amended the requirement to refer only to information the retailer can draw from its customer's account.

Consistent with the AEMC's final decision to express tariffs and charges inclusive of GST, and the notice to clearly indicate prices are GST inclusive, we have also added the term, 'inclusive of GST' to these clauses of the Code, along with the requirement that the notice clearly indicate the GST inclusive nature of the figures. This will bring information on a change notice into line with the GST inclusive requirements for energy bills discussed in chapter 5.

Final decision 12: Minimum requirements for information to appear on bill change notices

¹⁰⁸ Powershop submission, October 2018.

¹⁰⁹ Origin Energy submission, October 2018.

Bill change notices are to include the following information:

- the small customer's metering identifier
- that the small customer may use the price comparator to compare offers that are generally available to classes of small customers in their area
- the name and web address of the price comparator
- that the customer can request historical billing data (and, if they are being sold electricity, energy consumption data) from the retailer that will assist the customer to use the price comparator to compare offers that are generally available to classes of small customers in their area
- any early termination charges payable under the market retail contract
- the retailer's best offer for that customer, defined, calculated and presented in the same manner as set out in final decision 2 to 4, 8 and 9
- the retailer's estimate of the annual dollar impact of the benefit or price change (where the benefit is financial in nature)
- information specific to the customer's account to assist the customer to complete the fields necessary to compare offers on Victorian Energy Compare
- that a benefit change will occur and the benefit change date (benefit changes only)
- that the customer's tariffs and charges are being varied (price changes only)
- the date on which the variation will come into effect (price changes only)
- the customer's existing tariffs and charges inclusive of GST (price changes only),
- the customer's tariffs and charges as varied inclusive of GST (price changes only)
- clearly indicate that the tariffs and charges are GST inclusive (price changes only).

Manner and form of the notices

The manner and form of the benefit change notification is not specified in the Energy Retail Code.

Under the national framework, the NERR defers consideration of manner and form, among other practical considerations, to a guideline produced by the AER. The AER's Benefit Change Notice Guideline – Version 1 was released on 1 July 2018 and took effect from 1 October 2018.

The manner and form of price change notifications is not prescribed in the AEMC's final rule. In considering the manner and form in which the bill change notices should be presented, one approach we considered was to adopt the relevant sections of the AER's guideline via the Energy Retail Code, either by replicating the requirements in the code itself or by referring in the code to specific parts of the AER guideline. However, this approach introduces some complexity due to the need to specify which elements of the AER guideline would be relevant to Victoria and which would not apply. We would also need to adapt the requirements to apply to price changes.

Instead we have opted for a simpler, outcomes based approach that requires retailers to prepare and present the notices in a manner and form that is consistent with the objective of the notice. To support this, we have clarified this objective in the Energy Retail Code. The objective we plan to adopt is:

To assist customers to evaluate the ongoing suitability of their energy contract by giving them an entitlement to be informed in a clear, timely manner regarding:

- any changes that will affect their bill, before those changes occur
- the likely bill implications of the changes, and
- the steps customers can take to seek out alternative offers in the market.

We will monitor retailers' bill change notices and consider adding more prescription in future if it appears necessary.

Stakeholder views on manner and form

Stakeholders unanimously supported draft decision 13. Consequently, we have made no changes in our final decision.

Final decision 13: Manner and form of bill change notices

Retailers should present bill change notices in a manner and form consistent with the objective of the notice.

Method of delivery

The AEMC's final determination is that the price change notice be delivered by the customer's preferred form of communication where this has been communicated to the retailer, or otherwise by the same method as that used for delivery of the customer's bill.

We propose the same requirement apply in Victoria for bill change notices.

Stakeholder views on method of delivery

Stakeholders unanimously supported draft decision 14. Consequently, we have made no changes in our final decision.

Final decision 14: Delivery of bill change notices

Bill change notices are to be delivered by the customer's preferred form of communication where this has been communicated to the retailer, or otherwise by the same method as that used for delivery of the customer's bill.

Scope

In keeping with the AEMC's decisions regarding price change notices, we propose the bill change notice apply to both standing offer and market offer contracts, and also to both gas and electricity.

The AEMC also proposes the price change notice be applied to both price increases and decreases. In taking this position on including price decreases, the AEMC notes

Consistent treatment of price increases and decreases has benefits in terms of the ease of implementing the rule due to the difficulty of affirming whether a price decrease is in fact a decrease. A customer may see fixed rate charges fall, but variable charges increase. Whether their overall bill will increase, in unit volume terms, as a result of these changes may vary depending on the consumer's existing and future consumption pattern. Making the rule consistent for price increases and decreases removes this complication and requires the retailer to issue advance notice in the event of a price change, regardless of whether it results in an increase or decrease in the customer's bill.

This requirement removes the difficulty of forecasting the likely impact on the consumer. It removes the complication for the retailer of assessing whether there has only been a change in one component and whether the change in that single component is likely to increase the customer's bill. Similarly, where consumer tariffs differ for usage at different times of the day,

it removes the need for the retailer to assess whether this results in an increase or decrease in the customer's bill.¹¹⁰

We accept the arguments set out by the AEMC and propose adopting identical coverage in Victoria. That is, the price change trigger for the bill change notice would include price decreases.

Additionally, we have considered whether the requirement should apply to holders of a licence exemption to sell energy. Our view is that this requirement should not yet be applied to exempt sellers as it is not yet clear how material the problem is in this segment of the community. We will reconsider this view in due course based on our assessment of the experience of customers supplied by exempt sellers.

Stakeholder views on scope

Stakeholders broadly supported our draft decision on the scope of bill change notices. The exception was a stakeholder who proposed that we expand the scope to apply to exempt sellers.¹¹¹

Our response

We see some merit in this idea, and will consider it when we next review the rules that apply to exempt sellers. However, our review of the rules that apply to exempt sellers concluded in September 2018, just prior to issuing this final decision, making it impractical to incorporate the outcomes of this regulatory process into the framework for exempt sellers. We therefore have not changed the scope of the final decision 15.

Final decision 15: Scope

Bill change notices are to apply to both standing offer and market offer contracts, gas and electricity contracts, and price increases and decreases. The notices are not to be applied to exempt sellers at this point in time.

Notice period

Currently, the notice period for benefit change notices is between 40 and 20 business days. The AEMC's final determination on price change notices is that retailers should notify customers a minimum of five business days before a price change takes effect.¹¹² This relatively short notice period is largely due to constraints around the timing of the release of network costs, which may

¹¹⁰ AEMC, 'National energy retail amendment (advance notice of price changes) rule', September 2018, p 28. '

¹¹¹ ERM Power submission, October 2018.

¹¹² AEMC, 'National energy retail amendment (advance notice of price changes) rule', September 2018, p ii

occur quite soon prior to a retailer price change, and administrative issues with coordinating a mass mail out to customers.

In the interests of operational simplicity and national consistency, we are aligning the bill change notice period with the AEMC's notice period for price changes. Consistent with the AEMC final decision, the bill change notice period in Victoria should be five business days. In other words, this involved bringing the current notice period for benefit change notifications in line with the AEMC's proposed notice period for price change notifications.

In making this final decision, we note that advice provided to us by the Department of Premier and Cabinet's (DPC) Behavioural Insights Unit (BI Unit) is that timeliness is a key principle of effective behavioural approaches. According to behavioural research, a prompt to take action is most likely to be effective if it is provided as close as practical to the time the consumer is required to make and act on a decision. For example, a recent OECD report based on the telecommunications market suggests that information be provided just in time, such that it is available in the context of the critical decision point.¹¹³ Consequently, we consider the shortening of the notice period associated with the current benefit notice requirement may increase its effectiveness as a prompt for customers to engage with the market.

Stakeholder views on notice period and our responses

Stakeholders broadly supported our decision on the notice period.

CISVic proposed we make the notice period 13 business days to allow customers more time to consider switching.¹¹⁴ However, we consider the potential benefit of this additional time did not warrant introducing the complexity of introducing two different notice periods for the same notice (i.e. one applying when a price was changing, the other when a benefit was expiring).

EnergyAustralia and Powershop suggested that for the expiry of benefit periods, we retain the notice period that currently applies to benefit change notices (which is for the notice to be supplied within a window of between 20 to 40 business days before the benefit expires).^{115 116} Again, we see value in the simplicity of maintaining consistent notice periods for all forms of bill change notice. And on the basis of our review of the behavioural science literature, we are comfortable that 5 business days provides a sufficient notice period. We also note that this period is a minimum, and

¹¹³ OECD, Protecting Consumers through Behavioural Insights: Regulating the Communications Market in Colombia, 2016, OECD Publishing, Paris.

¹¹⁴ Community Information and Support Victoria submission, October 2018.

¹¹⁵ EnergyAustralia submission, October 2018.

¹¹⁶ Powershop submission, October 2018

retailers would still be able to maintain their existing practices of notifying customers of benefit period changes within the 40 to 20 business day window.

Final decision 16: Notice period

Retailers must notify customers of a bill change a minimum of five business days before a benefit or price change takes effect.

Exemptions

In its draft determination, the AEMC identified a number of circumstances in which a retailer would be exempt from providing customers a price change notice:

1. where the customer has entered into a market retail contract with the retailer within 10 business days before the price change, and the retailer has already informed the customer of the change
2. where the variations to the tariffs and charges are a direct result of a benefit change and the retailer has provided the customer with a benefit change notice
3. with respect to a tariff or charge that continually varies in relation to the prevailing spot price of energy, and
4. where the variations to the tariffs and charges are a direct result of a change to, or withdrawal or expiry of, a government funded energy charge rebate, concession or relief scheme.¹¹⁷

In our draft decision, we considered these exemptions reasonable and proposed to adopt the same in Victoria for bill change notices, with the exception of the second exemption criteria which would not apply because the bill change notice combines benefit changes notices and price change notices.

Separately, the AER has identified a number of contract attributes that should not be considered 'benefits' for the purposes of retailers' obligation to send benefit change notices.¹¹⁸ These include where:

1. a benefit change relating to a benefit is a one-off gift or sign-up credit provide to a customer as a result of entering the market retail contract
2. a benefit change with a benefit change date within 40 days of the commencement of the market retail contract¹¹⁹
3. a benefit change where the benefit is rolled over on the same terms and conditions after the expiry of the existing benefit.

¹¹⁷ AEMC, Advance notice of price changes, Draft rule determination, 5 July 2018, p iii

¹¹⁸ See the list of excluded changes on page 8 of the AER's Benefit Change Notification Guideline.

¹¹⁹ Based on our analysis of the AER's Notice of Final Instrument, we interpret this to mean 40 business days.

Similarly, we agree that these items should not be considered benefits for the purpose of triggering the obligation to send a bill change notice and propose adopting these exemptions in the Victorian framework.

Stakeholder feedback on exemptions

Broadly speaking, stakeholders supported the exemptions we set out.

Some consumer groups suggested we not proceed with the exemption for variations that are a direct result of a change to, or withdrawal or expiry of, a government funded energy charge rebate, concession or relief scheme.¹²⁰ They argued that customers are not always aware when their concessions expire, and retailers should advise customers when this has occurred.

We acknowledge that it would be helpful for customers to be advised in advance when their government concessions are due to expire. However, we consider this to be a matter to be managed through the concession agreements struck between the Department of Health and Human Services (DHHS) and the retailers who disperse the concessions. We have clarified that the exemptions provided within our framework do not override any obligations that retailers may have under other rules, regulations or agreements.

One retailer, Powershop, proposed we not proceed with the exemption for benefit changes that occur within the first 40 days of the contract.¹²¹ Powershop argued that this could see the emergence of very short benefit periods that are used to entice customers onto offers, only for those benefits (such as discounts) to lapse before the 40 days were over. The outcome for the customer in this scenario would be to have their energy costs increase very soon after starting their contract.

We acknowledge that this is a technical possibility, and that it would be outside the spirit of the new requirement. However, we consider the benefit of national consistency in this instance to outweigh the drawbacks associated with allowing this hypothetical scenario. If we observe practices like those described by Powershop, we will revisit this decision.

Other retailers encouraged us to follow the AEMC in declaring two additional exemption categories:¹²²

- where the customer's price change is as a result of a change in bank or credit card fees, or payment processing charges or fees, no notice is required. (This applies to market and standing offer customers)

¹²⁰ Community Information and Support Victoria; Victorian Council of Social Service; submissions, October 2018.

¹²¹ Powershop submission, October 2018.

¹²² AGL and Origin Energy submissions, October 2018.

- where the change in tariffs or charges is a result of a network business reclassifying the customer and placing them in a different network tariff class, the retailer is not required to provide advance notice but rather to provide notice as soon as practicable, but in any event no later than the customer's next bill, of the new tariffs and charges. (This applies to market and standing offer customers).

Our response

In keeping with the AEMC's final decision, we have decided to apply the same exemptions in Victoria.

Final decision 17: Exemptions from the need to issue a bill change notice

Retailers are to be exempt from issuing a bill change notice under the following circumstances:

- where the customer has entered into a retail contract with the retailer within 10 business days before the price change, and the retailer has already informed the customer of the change
- with respect to a tariff or charge that continually varies in relation to the prevailing spot price of energy
- where the variations to the tariffs and charges are a direct result of a change to, or withdrawal or expiry of, a government funded energy charge rebate, concession or relief scheme
- where the variations to the tariffs and charges are a direct result of a change to any bank charges or fees, credit card charges or fees, or payment processing charges or fees applicable to the customer
- where the change in tariffs or charges is a result of a network business reclassifying the customer and placing them in a different network tariff class, (the retailer is not required to provide advance notice but rather to provide notice as soon as practicable, but in any event no later than the customer's next bill, of the new tariffs and charges)
- in relation to a benefit change relating to a benefit that is a one-off gift or sign-up credit provided to a customer as a result of entering the market retail contract
- in relation to a benefit change where a benefit change date occurs within 40 business days of the commencement of the market retail contract, or
- in relation to a benefit change where the benefit is rolled over on the same terms and conditions after the expiry of the existing benefit.

Commencement date

The AEMC proposes the new price change notice requirement commence on 1 February 2019.

In Victoria, our proposed streamlined bill change notice will include the retailer's best offer for that customer, which goes beyond that required by either notice within the national framework.

Determining the best offer will involve IT system changes for retailers, meaning it is reasonable that more time is provided for the commencement of the equivalent requirement in Victoria. The new bill change notice requirement commences on 1 July 2019, which is consistent with expectations of the Victorian Government for the commencement of code amendments associated with the Independent Review into the Electricity and Gas Retail Markets in Victoria. The existing benefit change requirements under clause 47A would remain in force until 1 July 2019.

5. GST inclusive pricing

5.1. Moving to GST inclusive pricing

The Independent Review into the Electricity and Gas Retail Markets in Victoria proposed retailers make all pricing on bills and marketing material GST inclusive. The review noted that there was inconsistency in how retailers presented GST exclusive and inclusive pricing on all bills.¹²³ This recommendation will make it simpler for customers to understand energy price information by ensuring that GST is presented and communicated consistently, bringing energy bills and marketing material into line with GST price disclosure in the rest of the economy.

The benefit of this recommendation is threefold:

- making it simpler for customers by reducing the calculations required to understand GST exclusive prices and also reducing the number of prices presented in their bill, information disclosure documents or in marketing material (including verbal transactions with customers)
- making it easier to compare prices and understand total costs or charges on a bill and other documents that outline prices in information disclosure or marketing material by ensuring all retailers adopt the same approach and on all customer facing material
- stopping practices where some retailers quote or present GST exclusive tariffs to customers, which can make retail products seem more attractive and may lead customers to making incorrect conclusions about the retailer's prices.

Although the effect of this amendment is to prohibit GST exclusive pricing, retailers will still be able to itemise GST as a component of the total price on bills. This recommendation does not change the requirement for tax invoices to specify enough information to clearly determine the GST amount payable.

In the draft decision we released in September, we proposed this new requirement take effect from 1 July 2019.

Chapter 6 describes our amendments to the Energy Retail Code to give effect to this requirement.

Stakeholder views on the GST requirements

Stakeholders broadly supported this draft decision, particularly as it relates to price information communicated to customers via marketing channels. However, some retailers perceived there

¹²³ John Thwaites, Patricia Faulkner and Terry Mulder, op cit, p 56.

would be difficulties when applying the rule to the information that appears on bills.¹²⁴ This was on the basis that concessions are calculated on a GST exclusive basis. Similarly, solar FiT rates are often expressed on a GST exclusive basis too. They argued that requiring all information on the bill to be GST inclusive would cause confusion. Specifically, retailers were concerned that customers may not be able to easily use the bill to cross check the calculation of these items.¹²⁵

Our response

Contrary to retailer concerns, we consider there are well established techniques for overcoming the challenges retailers perceive in relation to displaying information on bills in a manner that allows customers to track and cross check the application of their concessions. One such method is ‘grossing up’ the concessional discount to account for GST, such that the grossed up concession amount in a summary table represents the percentage of the total bill that aligns with the expected concessional discount. The net impact amount payable by the customer would remain unchanged as would the amount of GST the retailer must remit for taxation purposes. Likewise, the funds the retailer receives from DHHS would remain unchanged.

Additionally, we also note that retailers also have the discretion to use their bills to explain elements of the calculation as necessary.

We have included an example of GST exclusive and GST inclusive bill breakdowns in figure 5.1 to demonstrate. Note this information is provided for illustrative purposes only and does not constitute guidance from the commission.

Accordingly, we have not amended this decision between draft and final.

Final decision 18: Prices to be expressed in GST inclusive terms only

All tariffs, fees, prices and charges are to be expressed in GST inclusive terms only on bills and related notices, in all marketing material and in any verbal exchange between retailers and customers or prospective customers.

¹²⁴ Momentum Energy, submission to the Essential Services Commission consultation paper ‘Draft decision on building trust through new customer entitlements in the energy retail market’, October 2018.

AGL; Australian Energy Council; Origin Energy; Red Energy and Lumo Energy; Simply Energy; submissions, October 2018

¹²⁵ Australian Energy Council; Momentum Energy; Origin Energy; Red Energy and Lumo Energy; Simply Energy; submissions, October 2018,

Figure 5.1 Illustrative example of grossing up concessional discount on a customer bill

INPUT DATA											
Usage:		1000	kWh	Usage charge <u>excl</u> GST:		0.25	\$/kWh	Usage charge <u>incl</u> GST:		0.275	\$/kWh
Number of days:		30		Supply charge <u>excl</u> GST:		0.95	\$/day	Supply charge <u>incl</u> GST:		1.045	\$/day
Concession as % ¹²⁶		17.5%									
BILL WHERE PRICES ARE <u>GST EXCLUSIVE</u> (i.e. <u>CURRENT</u> BILLS)											
Your usage	1000	kWh	at	0.25	\$/kWh	Your total usage charge	\$250.00				
Your supply	30	days	at	0.95	\$/day	Your total supply charge	\$28.50				
Sub-total						\$278.50					
less the value of your				17.5%	concession	\$48.74					
Sub-total						\$229.76					
plus GST						\$22.98					
AMOUNT DUE						\$252.74					
BILL WHERE PRICES ARE <u>GST INCLUSIVE</u> (i.e. <u>NEW</u> BILLS)											
Your usage	1000	kWh	at	0.275	\$/kWh	Your total usage charge	\$275.00				
Your supply	30	days	at	1.045	\$/day	Your total supply charge	\$31.35				
Sub-total						\$306.35					
less the grossed up value of your				17.5%	concession	\$53.61					
AMOUNT DUE						\$252.74					
						This amount includes:		\$22.98 of GST			

¹²⁶ This percentage is used for illustrative purposes only. The formula for applying concessions to bills is typically more complex than a straightforward percentage discount.

6. Amending the Energy Retail Code

To translate our final decision into the Energy Retail Code, we will make a series of code amendments. The amendments centre on a new Part 2A of the code, which is focused on assisting customers to engage with the energy retail market. In developing the amendments, we have applied a similar formula as in the amendments we made to give effect to our payment difficult framework: a combination of objectives, customer entitlements and minimum standards, along with provisions that clarify how we will interpret the new clauses. The code amendments are listed in full in appendix B.

6.1. Summary of amendments

To give effect to this final decision, we have amended the Energy Retail Code. In Victoria, energy retailers are required to comply with the code as a condition of their energy licence.¹²⁷

In summary, the changes we have made are to:

- streamline the notice requirements to create a single ‘bill change notice’ requirement that can be triggered by either a benefit or price change
- introduce the concept of ‘best offer’ and clarified the circumstances in which it must appear on the customer bills and the bill change notices
- introduce an outcomes based transparency obligation – the ‘clear advice entitlement’
- group the above amendments into a new part (Part 2A)
- make a series of consequential technical amendments associated with streamlining the customer notices, and
- clarify that all prices must be GST inclusive.

The amendments to the code are made under section 25 of the Electricity Industry Act 2000 and section 31 of the Gas Industry Act 2001.

Update since our draft decision

Following our draft decision, and in response to stakeholder feedback, we looked for opportunities to streamline the code amendments. The final code amendments reflect the outcome of this process.

¹²⁷ 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.

6.2. Our approach

Approach

To make the substantive changes to the code, we have applied a formula developed through our work on the new payment difficulty framework.¹²⁸ This approach is intended to establish a set of objectives, entitlements and minimum standards. The formula encompasses:

- a new Part with its own purpose (new Part 2A)
- interpretative provisions – to clarify the approach the commission will take to interpreting the new provision
- objectives – to clarify the objective of the new provision, with reference to the customers' entitlement to a specific outcome
- minimum standards – to clarify the minimum detailed requirements that retailers must adhere to in order to give effect to the entitlements.

We have modelled the interpretative provision on the equivalent provision within the new Part 3 of the Energy Retail Code, developed for the purposes of the new payment difficulty framework which commences on 1 January 2019. The interpretive provision sets out the matters the commission will consider when interpreting the clause for the purposes of determining compliance, which includes guidance the commission may issue under its compliance and enforcement policy.¹²⁹

New part 2A

We have placed the main code changes together in a new part of the code (Part 2A), to reflect their common objective of promoting market integrity by assisting customers to engage with the market.

We have defined the purpose of the new Part 2A as being 'to establish that small customers have an entitlement to measures that assist them to engage confidently with the energy market' (70CA). As we continue to implement recommendations associated with the review we expect to continue expanding Part 2A to include other customer outcomes focused provisions. We expect it will be possible to scale back or remove requirements in the current code as they are superseded by new provisions within Part 2A.

¹²⁸ See <https://www.esc.vic.gov.au/electricity-and-gas/electricity-and-gas-codes-guidelines-policies-and-manuals/energy-retail-code/energy-retail-code-review-2016-customers-facing-payment-difficulties>

¹²⁹ In our Energy Compliance and Enforcement Policy, we state we will consider publishing guidance notes where we consider there is a need to provide further details of the standards we expect. Essential Services Commission 2016, Energy Compliance and Enforcement Policy, July, p. 4.

6.3. Bill change notices

To give effect to the new bill change notice requirement, we have created a new clause that largely combines elements of the existing benefit change notification requirement and the AEMC final determination on price change notices. We have also developed an objective for the notice, that retailers must consider when deciding how to meet (or exceed) the minimum standards, including when designing and presenting the notices.

We have also repealed the pre-existing price and benefit change notice requirements to clarify that they will no longer apply to licensed retailers from 1 July 2019.¹³⁰

The key amendments are:

- A new Division 3 in new Part 2A to establish a customer entitlement to be given prior notice of changes to price or benefits that will impact a customer's bill, and to require retailers to at that time advise the customer of their best offer.
- Consequential technical amendments to Division 7 of Part 2, including to clauses 46 and 47A, to clarify that the pre-existing benefit and price change notification requirements will only apply to exempt sellers, as per the commission's draft decision on requirements for these entities.¹³¹

The consequential technical amendments to Division 7 of Part 2 are lengthy but are in fact minor in terms of their impact on either retailers or customers (see the final section of appendix B). The previous title indicated the division of the code only applied to market contracts. Our changes to the division would have contained provisions that applied only to exempt sellers the title needed to be changed to reflect the wider application. Consequently, it would have been necessary to clarify the application of each clause to specify whether each one applied to market contracts, standard contracts, or exempt person arrangements. This would require additional 'application' clauses to be added throughout the division. The end result would equate to approximately five pages of amendments. Instead, we have opted to simply clarify that parts of clause 46 and clause 47A of Division 7 no longer apply to licensed retailers.

6.4. Best offer on bills

To enact the obligation for retailers to place the best offer on bills, we created a new Division 4 within the new Part 2A. The amendments set the objective of the division as being "to provide to

¹³⁰ They continue to apply to exempt sellers, following our final decision on the review of the requirements for these entities.

¹³¹ In September 2018, our Energy Retail Code review 2018 (obligations for exempt sellers) looked at whether customers receive adequate protections in the absence of easily participating in the retail market. As part of the review, we made amendments to the Code to clarify the obligations of exemption holders

small customers an entitlement to prominently displayed, helpful information that enables them to easily identify whether they are on their retailer's best offer, understand how to access their retailer's best offer, and understand how to access offers from other retailers via the Victorian Government energy price comparison website" (see clause 70O).

The objective requires retailers complying with their obligations under this clause do so in a way that is conducive to the intent of the new entitlement. This includes using their discretion around the design and presentation of the best offer on the bills in such a way that is consistent with the objective, as well as the purpose of Part 2A.

It is an inevitable outcome of using a superlative adjective such as 'best' in this context that the offer that appears on bills will in some instances not be 'best', in the everyday meaning of that word. As such, we have deliberately avoided creating an obligation for retailers to use the term 'best offer' in their communication with the customer (and in the code we have used the term 'deemed best offer' to clarify we are not using the term in the sense of its ordinary meaning). The term only appears in the code, where its meaning is defined for the specific purpose of giving effect to the new entitlement. Beyond potentially leading to misunderstandings, requiring a retailer to advise their customer, for example, that they are 'on the best offer' may, in some circumstances, raise questions of misleading and deceptive conduct under consumer protection legislation.

Consequently, where a customer is already on a retailer's 'best offer' (within the meaning defined in the code), we have provided retailers with discretion about how they communicate this message to customers. In these circumstances, the retailer will just be required to communicate the meaning we have assigned the term 'best offer' via the code (see clause 70S(5)). This approach allows the retailer the latitude required to meet its obligations under the consumer law.

The amendments also set out the minimum standards associated with:

- how the retailer must determine the deemed best offer
- how frequently the retailer must put the best offer on bills
- the content of the best offer message, and some basic rules around how it is presented on the bill
- a requirement for retailers to maintain records to demonstrate compliance.

Other information to be added to bills

As outlined in chapter 3, we have added one new piece of information to bills beyond the best offer message, namely how the customer can access the government comparator website, Victorian Energy Compare (VEC).

This change is enacted by adding an extra item to those listed in existing clause 25, which outlines the content that must be included on bills.

6.5. Clear advice entitlement

New division: Supporting customer choices

We have established the clear advice entitlement in the new Part 2A. The objective of the division is to give small customers an entitlement to clear, timely and reliable information to assist them to assess the suitability of, and select, customer retail contracts (clause 70G). Since the draft decision, we have clarified the objective to be clear that the information should be provided in a respectful manner.

The division also outlines minimum standards that require retailers to provide the following information to customers, in a readily understandable form, prior to obtaining explicit informed consent to enter a contract:

- any contractual term or conditions that may influence the amount payable that depend on the actions of the customer (for example, conditional discounts) or that depend on the actions of the retailer (clause 70H(1)(a-c))
- any of the retailer's other generally available energy offers that the retailer believes would be more suitable to the customer (clause 70H(1)(d)).

The minimum standards also clarify that the retailer must:

- insofar as possible, communicate the information by reference to the retailer's estimate of the dollar impact on the customer (clause 70H(4)(a))
- emphasise any information the retailer reasonably believes may be of particular relevance to that customer (clause 70H(4)(b)).

As with the new best offer on bills requirements outlined above, the amendments for the clear advice entitlement include a requirement for retailers to maintain records to demonstrate compliance (see clause 70I).

Stakeholder views on links to explicit informed consent and our response

In our draft decision, the clear advice entitlement was related to explicit informed consent in two ways. The first way was operational, in that the retailer was required to fulfil the clear advice entitlement prior to obtaining explicit informed consent. The two requirements were also connected in a legal sense, with a failure to fulfil the clear advice entitlement requirements being deemed a failure to obtain explicit informed consent.

Retailers generally accepted the first of these two relationships, but several retailers requested the commission reconsider the second. The AEC noted that the remediation of a failure to obtain explicit informed consent included transferring the customer back to their previous retailer and plan. It examined a potential scenario in which, say, a year after a customer is transferred, their

new retailer is found to have failed to properly fulfil the clear advice entitlement requirements. In this instance, the customer would be transferred back to their previous retailer and plan, and is then obligated to pay that previous retailer for the energy the customer consumed since switching, at the rates of that original plan. In other words, assuming the previous rates were higher, this means the customer would end up not only back with a retailer they had attempted to leave, they would owe that retailer money.

We consider this issue to be rooted in the remediation arrangements associated with improperly obtained explicit informed consent. These arrangements operate effectively within the current code, but do not integrate smoothly with our new clear advice entitlement. However, there has not been sufficient time to reconfigure those remediation arrangements for the purposes of streamlining this interaction prior to finalising this decision. Consequently, we have decided not to proceed with the legal relationship between the clear advice requirement and explicit informed consent (while retaining the operational one) until such time that we have had an opportunity to review the remediation arrangements for explicit informed consent.

6.6. GST inclusive pricing amendments

As outlined in chapter 6, we amended the Energy Retail Code to ensure that all prices displayed by retailers must be GST inclusive by default. This involved:

- amending the existing references to GST to clarify that prices (including amount payable, tariffs, fees, charges or other costs) should be displayed in GST inclusive format (including references contained in schedule 1 of the code)
- introducing a new requirement to clarify that the communication of prices should be displayed as GST inclusive by default, regardless of the context in which they are being displayed (that is, to include marketing, information disclosure and bills) (new 3G).

6.7. Enforcement of the new provisions

We propose to monitor retailers' compliance with the new requirements, including through our audit program. Compliance with the best offer obligation will be readily assessable by reviewing customer bills, while compliance with the clear advice entitlement will be assessable by reviewing call recordings and assessing the conduct against the new requirements, among other means. Where we identify potential non-compliance, we will promote compliance or consider taking enforcement action in line with our compliance and enforcement policy.

7. Next steps

7.1. Commencement of new requirements

Our draft decision proposed a commencement date for the new code requirements of 1 July 2019, as set out in the Government's terms of reference.

Stakeholder feedback

While consumer groups supported this timetable, most retailers sought more time to implement the new requirements, or for transitional arrangements to be applied.

The three main areas in relation to which retailers sought additional implementation time were the best offer entitlement, the presentation of GST and the application of the clear advice entitlement to their digital and third party marketing channels. Some retailers also considered the 1 July 2019 timeline should not apply to the clear advice entitlement because this entitlement was not strictly referred to as part of the recommendations of the retail market review.

Our response

We acknowledge retailer concerns about the challenges involved in implementing these changes by 1 July 2019. However, we also note that the broad possibility of these changes has been a matter of the public record since August 2017 when the Independent Review into the Electricity and Gas Retail Markets in Victoria handed down its findings. More relevantly, the broad outline and timing of the changes was established via terms of reference issued in March 2018, roughly 15 months before the commencement of the new rules.

While we appreciate that specific system enhancements cannot realistically commence until details of the new requirements have been settled, we also note that business planning can and routinely does take uncertainty into account. For instance, we are aware of a number of retailers who made provisions within their operation planning to account for this implementation challenge. We also consider that our decisions in relation to GST inclusive prices and bill change notices have been made in October 2018 (rather than in January 2019, as provided for in the terms of reference), thereby providing a longer implementation time period for retailers than would otherwise have been the case.

We have also made the following refinements to our proposal between draft and final, which, based on our engagement with stakeholders, we understand will make it easier to implement the new requirements:

- in relation to the clear advice entitlement, reducing prescription around how retailers incorporate their knowledge of a customer when they discharge their obligations

- in relation to the issuing of best offer messages with bills, removing the prescription about the time of year the messages are issued and the period for which they must be valid

However, in recognition of the challenges faced by retailers, we have decided to apply once-off transitional arrangements to the best offer message provisions to facilitate the implementation of the new requirements while ensuring customers do not experience any unreasonable delays in accessing their benefits.

The transitional arrangements require all customers to receive a best offer message by 30 September 2019, but provide flexibility about how the message is provided. That is, during the period between 1 July 2019 and 30 September 2019, instead of placing the best offer message on bills or on bill change notices, the best offer message may be provided by an alternative form of written communication, such as a letter or an email, as long as it is received by 30 September 2019. The effect of transitional requirement is that all Victorian customers will receive a best offer message by some means by 30 September 2019.

Final decision 19: Commencement date for the new requirements

The Energy Retail Code amendments outlined in this final decision are to commence on 1 July 2019.

7.2. Monitoring outcomes from the new framework

We will monitor compliance with the new requirements and review their effectiveness. This necessitates making changes to our Compliance and Performance Reporting Guideline (CPRG) under which we collect the data we use to inform our Victorian Energy Market Report (VEMR). We will consult on these changes separately in due course. Some of the ways we may monitor and audit the impact of the new framework could include gathering data from community groups and the energy ombudsman, and listening to recordings of retailers' interactions with customers to understand how they are fulfilling their new responsibilities to assist customers choices. We will report our findings publicly to ensure the community is well-informed about how retailers have adopted their new responsibilities.

Our monitoring and review process may also include looking at how many customers receive different forms of best offer messages on their bills and bill change notices, and how these rates change over time. We may also look at how effectively the best offer message prompts comprehension and behaviour change, with a view to revising the level of prescription around how these messages are presented, if necessary.

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.

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: Final code amendments

New part 2A – clear advice entitlement, bill change notice, best offer on bills

AMENDMENTS TO THE ENERGY RETAIL CODE: MARKET INTEGRITY

30 October 2018

Amendments made by the Essential Services Commission on
30 October 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) Insert the following definitions in clause 3, after *AMI retail tariff*:

annual total cost of current plan means the minimum possible amount payable by a *small customer* under the *customer's* current *customer retail contract* excluding the value of any one-off gift or sign-up credit, calculated on the basis of the *small customer's* annual usage history and the tariff, charges and discount rates current at, as relevant, the date a bill or bill summary will be issued, the date that a *price change* or *benefit change* becomes effective, or the date immediately prior to this effective date, with all discounts applied including any discount the *customer* receives because the *customer* buys another good or service, and including any amounts deducted, credited, or received by the *retailer* under a government funded *energy* charge rebate, concession or relief scheme;

annual total cost of deemed best offer means the minimum possible amount payable by the *small customer* under the *deemed best offer* excluding the value of any one-off gift or sign-up credit, calculated on the basis of the *small customer's* annual usage history and the tariff, charges and discount rates of the *deemed best offer* current at, as relevant, the date a bill or summary bill will be issued or the date that a *price change* or *benefit change* becomes effective, with all discounts applied (except any discount which applies to a *customer retail contract* because the *customer* buys another good or service) and including

any amounts deducted, credited, or received by the *retailer* under a government funded *energy* charge rebate, concession or relief scheme;

annual usage history means the consumption or export of electricity or gas by a *customer* at the *customer's* current premises over the 12 month period preceding, as relevant, the *bill issue date*, the date a *bill summary* will be issued, or the date of the *bill change alert*, based on *meter* readings. Where the *retailer* does not have 12 months of *meter* readings for the *customer* at the *customer's* current premises, the *retailer* must estimate the *customer's* consumption and export of electricity or gas during a 12 month period having regard to any relevant information that is available to the *retailer* (and must have regard to any *meter* readings obtained during the 12 month period preceding the, as relevant, *bill issue date*, the date a *bill summary* will be issued, or the date of the *bill change alert*);

- (2) Insert the following definitions in clause 3 after *associate*:

benefit change means a change to, or the expiry of, a benefit (such as a price discount) provided to a *customer* for a minimum period or a *fixed benefit period* under a *customer retail contract* during the term of that contract (whether or not as a result of a variation of the contract) or under an *exempt person arrangement*;

bill change alert means a notice given under clause 70L;

bill summary means a communication from the *retailer* to the *customer* that:

- (a) informs the *customer* that the *retailer* has issued a new bill; and
- (b) includes the bill due date and the amount due;

- (3) Insert the following definitions in clause 3 after *de-energisation or disconnection*:

deemed best offer means the *customer retail contract* identified in accordance with clause 70P:

deemed best offer check means a comparison between the *customer's annual total cost of current plan* and *annual total cost of deemed best offer*, as set out in clause 70Q;

deemed best offer check result means the amount determined in accordance with the formula set out in clause 70Q;

deemed best offer message means either a *positive deemed best offer message* or a *negative deemed best offer message*;

- (4) Insert the following definition in clause 3 after *financially responsible retailer*:

fixed benefit period means a period of a *market retail contract* (where the end date of that period is specified or ascertainable at the beginning of that period) during which a benefit to the *customer* (such as a price discount) is available.

- (5) Insert the following definition in clause 3 after *General Exemption Order*:

generally available plan means any plan that is available to any *customer* in the relevant distribution zone unless it is classified as a *restricted plan*;

- (6) Insert the following definition in clause 3 after *move-in customer*:

negative deemed best offer message means a message which conforms with the form and content requirements set out in clause 70S(4);

- (7) Insert the following definition in clause 3 after *payment plan*:

positive deemed best offer message means a message which conforms with the form and content requirements set out in clause 70S(3); and

- (8) Insert the following definitions in clause 3 after *Price and Product Information Statement*:

price change means a change to any of the tariffs or charges payable by a *small customer* under a *customer retail contract*;

price comparator means a facility available on a website to assist a *small customer* to compare:

- (a) the tariffs available to a *customer* under a *standing offer*; and
- (b) the tariffs that are generally available to classes of *small customers* under *market retail contracts*,

in accordance with guidelines issued by the *Commission* under section 36A(2) of the *Electricity Industry Act* or section 43A(2) of the *Gas Industry Act*;

- (9) Insert the following definition in clause 3 after *responsible person*:

restricted plan means a plan specifically targeted to an exclusive individual or group and tailored to the specific circumstances of that *customer* and their need(s), including:

- (a) family and friends plans, including *retailer* staff plans and staff plans for employees of companies with whom the *retailer* has a commercial relationship;

- (b) plans targeted to a specific *customer*, with traits and characteristics that cannot be easily acquired – for example, where the *customer* negotiates a specific plan with a *retailer* based on having multiple sites serviced by the same *retailer*;
 - (c) obsolete plans;
 - (d) *standing offer* plans that are not readily available to *small customers* in a particular location but which *retailers* publish to satisfy their financial responsible Market Participant requirements;
 - (e) plans for *customers* in residential embedded networks where the *retailer* acts as the embedded network operator, or provides retail-only plans to an embedded network customer;
 - (f) plans restricted to *customers* in a pilot program;
 - (g) plans restricted to concession *customers*;
 - (h) plans restricted to hardship *customers*;
 - (i) ‘save’ plans which are offered by *retailers* in response to a *customer* signaling they intend to switch to another *retailer*;
 - (j) ‘win-back’ plans, which are offered by *retailers* after the *customer* has switched to a new *retailer* to persuade the customer to return.
- (10) In subclause 25(1)(y)(iv), delete "." and insert ";".
- (11) Insert the following new subclauses after subclause 25(1)(y):
- (z) clear and simple information about the *price comparator* and how to access it, including a hyperlink on electronic bills.
- (12) In subclause 25(5) delete "(v) and (w)" and replace with "(v), (w) and (z)".
- (13) Insert the following new Part 2A, after Part 2:

Part 2A Market Integrity

Division 1 Operation of this Part

70C Requirement

A retailer is required to perform its obligations under this Part in a way that promotes the purpose of this Part.

70CA Purpose

The purpose of this Part is to establish that *small customers* have an entitlement to measures that assist them to engage confidently with the *energy* market.

70D Application of this Part

Except where otherwise provided, this Part applies to *customer retail contracts*.

70E Interpretation of this Part

The approach that the *Commission* will take to the interpretation of this Part is as follows:

- (1) clear words will be given their natural and ordinary meaning; and
- (2) where this Part appears to be capable of having more than one meaning, the *Commission* will have regard to the following, in the following order, in seeking to discover the intended meaning of the Part:
 - (a) first, the objective of the relevant Division(s);
 - (b) secondly, the purpose of this Part;
 - (c) thirdly, any guidelines published by the *Commission* under section 13 of the *Essential Service Commission Act 2001* (Vic);
 - (d) fourthly, any relevant guidance notes published by the *Commission* under its Energy Compliance and Enforcement Policy; and
 - (e) fifthly, any written information issued by the *Commission* regarding a *small customer's* entitlement to supporting measures under this Part.

Division 2 Customers entitled to clear advice

70F Requirement

A *retailer* is required to perform its obligations under this Division in a way that promotes the objective of this Division.

70G Objective

The objective of this Division is to give *small customers* an entitlement to clear, timely and reliable information, provided in a respectful manner, to assist the *small customer* to assess the suitability of, and select, a *customer retail contract*.

70H Minimum standards – clear advice

- (1) Prior to obtaining a *small customer's explicit informed consent* to enter a *customer retail contract*, a *retailer* must communicate to the *small customer* in a readily understandable manner information about:
 - (a) any terms pursuant to which the amounts payable by the *small customer* may vary depending on the actions of the *small customer* (for example, any conditional discounts);
 - (b) any terms pursuant to which the amounts payable by the *small customer* may vary depending on the actions of the *retailer* (for example, any terms pursuant to which the *retailer* may make *price changes*, or any specific *price changes* that will apply to that *customer retail contract*);
 - (c) any terms pursuant to which a *benefit change* may occur;
 - (d) the *retailer's* other *generally available plans* that the *retailer* reasonably believes may be more suitable for the *customer* having regard to any information the *retailer* has regarding the *customer* wherever it is practicable to do so; and
 - (e) if switching to the *customer retail contract* involves moving the *small customer* to a new tariff structure, the cost impact that the new tariff structure may have for the customer.
- (2) Subclause (1) does not apply to charges payable for distribution services other than standard control services (electricity) and ancillary reference services (gas).
- (3) The reference to “any information the *retailer* has” in subclause (1)(d) is a reference to any relevant information the *customer* provides during the communication required by subclause (1) including in response to any relevant inquiries by the *retailer*, or any other information the *retailer* has about the *customer* and which the *retailer* considers relevant in providing the advice.
- (4) In communicating the information required by subclause (1), the *retailer* must do so in a manner that:
 - (a) insofar as possible, is done by reference to the *retailer's* estimate of the dollar impact on the *customer*; and
 - (b) emphasises any information the *retailer* reasonably believes may be of particular relevance to that *customer*.

70I Compliance

- (1) A *retailer* must maintain records that are sufficient to evidence its compliance with this Division.
- (2) The *retailer* must ensure that the records required to be maintained pursuant to subclause (1) are retained:
 - (a) for at least 2 years; or

- (b) where a *small customer* has within that period made a complaint or referred a dispute to the *energy ombudsman* in relation to the provision of advice by the *retailer* in connection with a *customer retail contract*—for the period the complaint or dispute remains unresolved.

Division 3 – Customers entitled to notification of change

70J Requirement

A *retailer* is required to perform its obligations under this Division in a way that promotes the objective of this Division.

70K Objective

The objective of this Division is to give *small customers* an entitlement to clear, timely, easily understood information to allow them to evaluate the ongoing suitability of their *customer retail contract*, before any changes that will affect their bill occur, and the steps the *small customer* can take to find an alternative *customer retail contract*.

70L Minimum standards - Notice of price or benefit change to be given

- (1) If a *benefit change* or a *price change* is to take effect, the *retailer* must provide the *small customer* who is party to the relevant *customer retail contract* with a *bill change alert* in accordance with this Division 3.
- (2) The *bill change alert* must be given to the *small customer*:
 - (a) in writing;
 - (b) using the *customer's* preferred method of communication (if nominated, for example by post or by email to a specified address);
 - (c) at least 5 *business days* before the *benefit change* or *price change* will take effect.
- (3) The *bill change alert* must state:
 - (a) the customer's metering identifier;
 - (b) that the *customer* may use a *price comparator* to compare offers that are generally available to classes of *small customers* in their geographical area;
 - (c) the name and web address of the *price comparator* including a hyperlink to the *price comparator* website on notices provided electronically;
 - (d) that the *customer* may request historical billing data from the *retailer* that will assist the *customer* to compare offers that are generally available to similar classes of *small customers* in their geographical area;
 - (e) the nature of the *price change* or *benefit change* and the date on which the *price change* or *benefit change* will take effect;
 - (f) any early termination charges payable under the *customer retail contract*;

- (g) the *retailer's* estimate of the annual dollar impact of the *price change* or *benefit change* to the *customer*, determined by the *retailer* calculating the difference in dollars between the *customer's annual total cost of current plan* calculated from the effective date of the *price change* or *benefit change* and the *customer's annual total cost of current plan* calculated immediately prior to the effective date of the *price change* or *benefit change*;
 - (h) any information the *retailer* has regarding the *customer's* account that will assist the *customer* to use the *price comparator* and which is practicable to provide as part of the *bill change alert*; and
 - (i) a *deemed best offer message*.
- (4) For the purposes of subclause (3)(i):
- (a) the *retailer* must identify the *deemed best offer* for the *customer* in accordance with clause 70P as at the effective date of the *price change* or *benefit change*;
 - (b) using this *deemed best offer*, the *retailer* must perform the *deemed best offer check* for the *customer* in accordance with clause 70Q with *annual total cost of current plan* and *annual total cost of deemed best offer* determined as at the date the *price change* or *benefit change* becomes effective;
 - (c) if the *deemed best offer check result* is negative, the *retailer* must include a *negative best offer message* in accordance with clause 70S(4) on the *customer's bill change alert*;
 - (d) if the *deemed best offer check* is positive, the *retailer* must include a *positive best offer message* in accordance with clause 70S(3) on the *customer's bill change alert*;
 - (e) a *deemed best offer message* must:
 - (i) be on the front page of the *bill change alert*; and
 - (ii) be contained in a border;
 - (f) a *deemed best offer message* is not required to use the words "best offer", but must be written in a way which clearly and simply conveys the meaning of *deemed best offer*;
- (5) Where a *retailer* provides a *small customer* with a *bill change alert* in relation to a *price change*, in addition to the requirements of subclauses (3) and (4) the *bill change alert* must:
- (a) identify the *customer's* existing tariffs and charges inclusive of GST;

- (b) identify the *customer's* tariffs and charges as varied by the *price change* inclusive of GST; and
 - (c) specify that the tariffs and charges identified in subclauses (a) and (b) are inclusive of GST .
- (6) A *retailer* is not required to comply with this clause in respect of a *benefit change*:
 - (a) relating to a benefit that is a one-off gift or sign-up credit provided to a *customer* as a result of entering the *customer retail contract*;
 - (b) that occurs within 40 *business days* of the commencement of the *customer retail contract*; or
 - (c) where the benefit is rolled over on the same terms and conditions after the expiry of the existing benefit.
- (7) A *retailer* is not required to comply with this clause in respect of a *price change* where:
 - (a) a *small customer* enters a *customer retail contract* less than 10 *business days* prior to a *price change* taking effect, and the *retailer* notified the *small customer* of the *price change* prior to *small customer* entering the *customer retail contract*;
 - (b) the *price change* is a result of a tariff or charge that continually varies in relation to the prevailing spot price of *energy*. For the avoidance of doubt, this exemption does not apply with respect to *price changes* to any remaining tariffs and charges that form part of the same *customer retail contract* and which do not vary in relation to the spot price of *energy*;
 - (c) the *price change* is a direct result of a change or withdrawal or expiry of a government funded *energy* charge rebate, concession or relief scheme;
 - (e) the *price change* is a direct result of a change to any bank charges or fees, credit card charges or fees, or payment processing charges or fees applicable to the customer.
- (8) Despite subclause (2)(c), a *retailer* must provide the *bill change alert* as soon as practicable, and in any event no later than the *customer's* next bill, where the variations to the tariffs and charges are a direct result of a tariff reassignment by the distributor. For the purposes of providing a notice under this subclause (8), the reference to:
 - (a) “is to take effect” in subclause (1) is taken to be “is to take effect or has taken effect (whichever is applicable)”; and
 - (b) “will take effect” in subclause (3)(e) is taken to be “will take effect or has taken effect”.
- (9) A *retailer* is not required to comply with subclause (3)(i) where:

- (a) the *customer* is or would be a *small customer* in relation to at least one of the relevant premises; and
- (b) the aggregate of the actual or estimated annual consumption level of the relevant premises is higher than:
 - (i) in the case of electricity—the upper consumption threshold provided for in an Order made under section 35(5) of the *Electricity Industry Act*;
 - (ii) in the case of gas—the upper consumption threshold provided for in an Order made under section 42(5) of the *Gas Industry Act*.
- (10) A *retailer* is not required to comply with subclause (3)(i) where the *customer* receives a single bill in respect of the provision of *customer retail services* at two or more premises.
- (11) Nothing in subclauses (6) and (7) limits or otherwise affects the application of any other requirement in relation to the provision of information by a *retailer* to a *small customer*.

70M Compliance

- (1) A *retailer* must maintain records that are sufficient to evidence its compliance with this Division.
- (2) The *retailer* must ensure that the records required to be maintained pursuant to subclause (1) are retained:
 - (a) for at least two years; or
 - (b) where a *small customer* has within that period made a complaint or referred a dispute to the *energy ombudsman* in relation to the provision of notice of a *benefit change* or *price change*, including that such notice was not provided—for the period the complaint or dispute remains unresolved.

Division 4 - Customers entitled to deemed best offer information on bills and bill summaries

70N Requirement

A *retailer* is required to perform its obligations under this Division in a way that promotes the objective of this Division.

70O Objective

The objective of this Division is to give *small customers* an entitlement to prominently displayed, helpful information that enables them to easily:

- (1) identify whether they are on their *retailer's deemed best offer*;
- (2) understand how to access their *retailer's deemed best offer*, if they are not already on the *retailer's deemed best offer*; and
- (3) understand how to access offers from other *retailers* via the *price comparator*.

70P Identification of deemed best offer

- (1) Where a *retailer* is required to carry out a *deemed best offer check* for a *customer*, the *retailer* must identify the relevant *deemed best offer* for that customer.
- (2) The *deemed best offer* must be either:
 - (a) the *customer retail contract* that the *retailer* offers which:
 - (i) is the lowest cost *generally available plan* having regard to the *customer's annual usage history*; and
 - (ii) does not have as a precondition or condition that the *customer* have or maintain a paid affiliation or membership with an entity that is unrelated to the *retailer*; or
 - (b) a *customer retail contract* that has a lower cost than the lowest cost *generally available plan*.
- (4) Where the *customer* is party to a *customer retail contract* that provides a discount on condition that the *customer* buys another good or service, the *deemed best offer* identified in accordance with subclause (2) must be determined without any such discount.

70Q Deemed best offer check

- (1) A *retailer* must carry out the *deemed best offer check* by calculating the *deemed best offer check result* in accordance with the following formula:

$$\text{deemed best offer check result} = A - B$$

Where:

A = annual total cost of current plan

B = annual total cost of deemed best offer

- (2) If the *deemed best offer check result* is less than or equal to \$22, the *deemed best offer check result* is positive.
- (3) If the *deemed best offer check result* is greater than \$22, the *deemed best offer check result* is negative.

70R Retailers to give customers deemed best offer message

- (1) A *retailer* must provide a *deemed best offer message* on a bill or *bill summary* to a *small customer*:
- (a) at least once every 3 months (electricity);
 - (b) at least once every 4 months (gas); or
 - (c) where a *retailer* and a *small customer* have agreed to a billing cycle with a regular recurrent period that differs from the *retailer's* usual recurrent period and that period is 3 months or longer, once in each billing cycle.
- (2) A *retailer* must, before providing a *deemed best offer message*:
- (a) determine the *deemed best offer* for the relevant *customer* in accordance with clause 70P as at the date the bill or *bill summary* containing the *deemed best offer message* will be issued; and
 - (b) using this *deemed best offer*, perform the *deemed best offer check* for the *customer*.
- (3) If the *deemed best offer check result* is negative, the *retailer* must include:
- (a) a *negative deemed best offer message* on the *small customer's* bill; and
 - (b) a *negative deemed best offer message* on any *bill summary* of the bill that it sends to the *small customer*.
- (4) If the *deemed best offer check result* is positive, the *retailer* must include:
- (a) a *positive deemed best offer message* on the *small customer's* bill; and

- (b) a *positive deemed best offer message* on any *bill summary* of the bill it sends to the *small customer*.
- (5) The requirement in subclause (1) is in addition to the requirement to provide a *deemed best offer message* on a *bill change alert* in clause 70L.
- (6) A *retailer* is not required to comply with this clause where:
 - (a) the *customer* is or would be a *small customer* in relation to at least one of the relevant premises; and
 - (b) the aggregate of the actual or estimated annual consumption level of the relevant premises is higher than:
 - (i) in the case of electricity—the upper consumption threshold provided for in an Order made under section 35(5) of the *Electricity Industry Act*;
 - (ii) in the case of gas—the upper consumption threshold provided for in an Order made under section 42(5) of the *Gas Industry Act*.
- (7) A *retailer* is not required to comply with this clause where the *customer* receives a single bill in respect of the provision of *customer retail services* at two or more premises.

70S Form and content requirements of deemed best offer message

- (1) The requirements in this clause 70S apply to any bill or *bill summary* that contains a *deemed best offer message*.
- (2) A *deemed best offer message* must:
 - (a) if included on a bill, be on the front page of the bill;
 - (b) be contained in a border; and
 - (c) be located adjacent to and no less prominently than the amount due.
- (3) A *retailer* has discretion over what to include in a *positive deemed best offer message*, provided that the *retailer*:
 - (a) ensures that it is clear to the *small customer* that they are on one of the *retailer's* lowest cost *customer retail contracts* available to the *customer* having regard to the *customer's annual usage history*; and
 - (b) includes the name and web address of the *price comparator* and how to access it, including a hyperlink on electronic bills.
- (4) A *negative deemed best offer message* must:
 - (a) contain a title using the exact words “Could you save money on another plan?”;

- (b) contain the exact words “Based on your past usage, our ” followed by the name of the *deemed best offer* plan, followed by the exact words “may cost you up to”, followed by the dollar amount of the *deemed best offer check result*, followed by the exact words “less per year than your current plan.”;
 - (c) must contain clear and simple instructions on how to switch to the *deemed best offer*.
- (5) A *deemed best offer message* is not required to use the words “best offer”, but must be written in a way which clearly and simply conveys the meaning of *deemed best offer*, having regard to the objective of this Division.
- (6) Nothing in subclauses (3) and (4) otherwise limits a *retailer* in providing other information to *customers* in connection with a *best offer message* in a manner and form that promotes the objective of this Division.
- (7) Despite subclause (1), a *deemed best offer message* on a *bill summary* is not required to comply with subclause (2) only to the extent it is not practicable to do so because of the method by which the *bill summary* is communicated to the *customer*.

70T Compliance

- (1) A *retailer* must maintain records that are sufficient to evidence its compliance with this Division.
 - (2) The *retailer* must ensure that the records required to be maintained pursuant to subclause (1) are retained:
 - (a) for at least 2 years; or
 - (b) where a *small customer* has within that period made a complaint or referred a dispute to the *energy ombudsman* in relation to the provision of information about a *deemed best offer*, including that such information was not provided—for the period the complaint or dispute remains unresolved.
- (14) Insert the following after item 2 of Schedule 3 (Transitional Provisions):

3. Best offer message

- (a) A *retailer* may comply with the requirements of clause 70R(1) during the period 1 July 2019 to 30 September 2019 by providing the *customer* with a *deemed best offer message* other than on a bill or *bill summary*.
- (b) For the purposes of (a):
 - (i) subclause 70R(2)(a) is to be read as requiring the *deemed best offer* to be determined as at the date the *deemed best offer message* will be issued;

- (ii) subclause 70R(3) is to be read as requiring the *negative deemed best offer* to be provided to the *customer* in writing and not necessarily on a bill or *bill summary*;
 - (iii) subclause 70R(4) is to be read as requiring the *positive deemed best offer message* to be provided to the *customer* in writing and not necessarily on a bill or *bill summary*;
 - (iv) the requirements of subclause 70S apply other than subclause (2);
 - (v) in the definition of *annual total cost of current plan*, the relevant date is to be read as the date the *deemed best offer message* will be issued; and
 - (vi) in the definition of *annual total cost of deemed best offer*, the relevant date is to be read as the date the *deemed best offer message* will be issued.
- (c) A *retailer* is not required to comply with the requirements of subclause 70L(3)(i) until after 30 September 2019.

GST inclusive pricing

AMENDMENTS TO THE ENERGY RETAIL CODE: AMOUNTS TO BE INCLUSIVE OF GST

30 October 2018

Amendments made by the Essential Services Commission on 30 October 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.

3 Table of amendments

- (1) Insert the following definition in clause 3 after *General Exemption Order*:

GST has the meaning given in the *GST Act*;

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

- (1) Insert the following new clause 3G after clause 3F:

3G GST inclusive pricing

- (1) Except where expressly provided to the contrary in this Code, where a *retailer* in a communication (whether oral or written and including, without limitation, a bill, *bill summary*, *bill change alert*, offer, advertisement, notice or information statement) to a *customer* refers to an amount in respect of which *GST* is or would be payable the *retailer* must:
 - (a) identify that amount inclusive of *GST*; and
 - (b) specify that the amount is inclusive of *GST*.
- (2) Any communication described in subclause (1) must not state an amount described in subclause (1) exclusive of *GST* except:
 - (a) where required to comply with *GST Act*; or
 - (b) where expressly permitted in this Code.

(3) Subclause (2) does not limit the *retailer's* obligations under subclause (1)—if the retailer is required to state an amount as exclusive of *GST*, it must also state that amount inclusive of *GST*.

(3) Replace clause 15B(7)(c) with the following:

all monetary amounts must be shown on a *GST*-inclusive basis;

(4) Replace clause 15C(4) with the following:

All monetary amounts presented on the *offer summary* must be shown on a *GST*-inclusive basis.

(5) Replace clause 8.6 in Schedule 1 with the following:

GST

Amounts specified in the standing offer prices from time to time and other amounts payable under this contract are inclusive of *GST*.

(6) In Schedule 4, in each table, delete each column with the header "Ex *GST*".

(7) In Schedule 5 replace the Electricity section with the following:

Electricity Tariffs	Including <i>GST</i>
As set out in Schedule A	XX.xxx
Supply Charge (\$/Day) (or how billed and calculated)	XX.xxx

(8) In Schedule 5 replace the Gas section with the following:

Gas Tariffs	Including <i>GST</i>
As set out in Schedule A	XX.xxx
Supply Charge (\$/Day) (or how billed and calculated)	XX.xxx

Consequential technical amendments

AMENDMENTS TO THE ENERGY RETAIL CODE: CONSEQUENTIAL AMENDMENTS

30 October 2018

Amendments made by the Essential Services Commission on 30 October 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) Rename Division 7 of Part 2 "Particular requirements for contracts and exempt person arrangements"
- (2) Before section 45A insert new section:

45AA Application of this Part

- (1) This Division does not apply to *standard retail contracts*.
 - (2) This Division applies to *market retail contracts* unless otherwise expressly provided.
 - (3) This Division applies to *exempt persons* in particular *categories* where a clause in this Part specifies that the clause applies to *exempt persons* in that *category*.
- (3) In clause 45A, delete the definition of *benefit change*, *benefit change date*, *benefit change notice*, *fixed benefit period*, *price comparator* and *relevant benefit period*.
 - (4) Replace clause 46 with the following:

46 Tariffs and charges

- (1) This clause sets out some minimum requirements that are to apply in relation to the terms and conditions of *market retail contracts* and *exempt person arrangement*.
- (2) A *retailer* must set out in a *market retail contract* or an *exempt person arrangement* with a *small customer* all tariffs and charges payable by the *customer*.

- (3) The *retailer* must give notice to the *customer* of any variation to the tariffs and charges that affects the *customer*.
- (4) The notice must be given as soon as practicable, and otherwise no later than the *customer's* next bill.
- (5) The *retailer* must set out in the *market retail contract* the obligations with regard to notice that the *retailer* must comply with where the tariffs and charges are to be varied.
- (6) Any variation of the terms and conditions of a *market retail contract* must not be inconsistent with the requirements of this Code in relation to the variation of *market retail contracts*.

(7) **Application of this clause to market retail contracts**

Subclauses (3) and (4) do not apply in relation to *market retail contracts*.

(8) **Application of this clause to exempt persons**

Subclauses (1), (2), (3) and (4) of this clause applies to *exempt persons* in the following *categories*:

VD1, VD2, VD7, VR1, VR2, VR3 and VR4.

(5) Replace clause 47A with the following:

47A Notice of benefit change (EPA)

- (1) If an *exempt person arrangement* provides for a benefit change, the *retailer* must, in accordance with this clause, notify the *small customer* of each benefit change.
- (2) The notice of *benefit change* must be given:
 - (a) in writing; and
 - (b) no earlier than 40 *business days* and no later than 20 *business days* before the date the *benefit change* takes effect.
- (3) The notice of the *benefit change* must state:
 - (a) the *small customer's metering* identifier; and
 - (b) that a *benefit change* will occur and the date *benefit change* will take effect; and

(4) **Application of this clause to market retail contracts**

This clause does not apply in relation to *market retail contracts*

(5) **Application of this clause to exempt persons**

this clause applies to *exempt persons* in the following *categories*:

VD1, VD2, VR1, VR2, VR3 and VR4.

Appendix C: Summary of consumer testing

This appendix contains a summary of the key findings of our consumer testing. The testing was conducted on our behalf by the Behavioural Insights Team (BIT). A full report from BIT has been released along with this final decision.

Trial 1 - Approach

We ran a framed field experiment involving a representative sample of around 2,400 Victorian consumers, using a randomised control trial method. We tested three versions of a new bill plus a bill insert, which we compared with a control for which there was no bill insert. This corresponds to the four arms of the trial, which were:


- Arm 1: Control – a new box on the front page of the bill alerting the customer to the fact their retail could have a better offer for them, a dollar estimate of the annual savings, and information about what steps to take to access the offer. The last page of the bill also included more detailed plan information about the alternative offer.
- Arm 2: Bill insert (marketing style) – a bill insert containing information about two alternative, cheaper offers, designed to be eye catching and non-traditional.
- Arm 3: Bill insert (letter style – bill amount) – a bill insert containing broadly the same information, but presented in a letter format and with the alternative total bill amounts (as opposed to the alternatives being expressed as savings). The back page of the bill insert included more detailed plan information about the alternative offer. The front page of the underlying bill is the same design as in the control arm.
- Arm 4: Bill insert (letter style – savings amount) – Identical to arm 3 but the dollar amounts were expressed as savings rather than total bill amounts.

The front page seen by consumers for each of the arms is contained in figure C.1.

The testing provided insight into the potential efficacy of the options by focusing on four main things:

- the customer's comprehension of whether or not they are on the best deal (comprehension)
- the customer's comprehension of the steps required to access the alternative offer (comprehension)
- the customer's stated intentions upon receiving the information (intention), and
- the potential that the consumer would find the new information confusing (confusion).

Figure C.1. Front page seen by trial participants, all four arms



0042
[NAME]
1 SAMPLE ST VIC 3057

Your electricity bill **4 Mar 18 – 5 June 18**

WE COULD PUT YOU ON A CHEAPER PLAN

On our Anytime Saver Plan you could save:

\$485 each year

To switch plans, call 13 25 71, or go to www.boltenergy.com.au

DUE DATE
5 Jul 18

AMOUNT DUE
\$320.01 if paid by 5 Jul 18
Or
\$365.01 if paid after the due date

YOUR ACCOUNT DETAILS

Account number
300 033 393 200

Tax invoice
180 000 596 420

Issue date
6 Jun 18

Total amount due
See the Account Summary on pg. 2

YOUR ENERGY PLAN

Easy Saver plan ending 24 Oct 18

Your estimated bill over the next 12 months is \$1,730

Benefits available on this energy plan

Guaranteed usage discount (10%)

YOUR USAGE SUMMARY

Average cost per day \$3.57

Average daily usage 9.06 kWh


Same time last year 9.01 kWh

\$3.57

COST PER DAY

9.06 kWh

DAILY USAGE



Need to get in touch

Enquiries & moving address: 13 24 61
7 am - 9 pm local time Mon - Fri
9 am - 5 pm local time Sat

Faults & emergencies: 13 12 80
Call Melbourne Power 24 hrs


TELEPHONE & INTERNET BANKING - BPAY®
Contact your bank or financial institution to make this payment from your cheque, savings, debit, credit card* or transaction account. More info: www.bpay.com.au

DIRECT DEBIT
Register online at boltenergy.com.au/myaccount or call 13 24 61 to arrange automatic payment of future accounts*

MAIL
Send this slip with your cheque made payable to: Bolt Energy Holdings Limited, Private Bag 14625 Melbourne Vic 8001

VISA OR MASTERCARD®
Call 1300 698 783 or visit boltenergy.com.au/paynow

* Visa or MasterCard payments may incur a processing fee of 0.37% (incl GST) of the total payment amount. This will be shown on your next bill. Some exemptions and payment limits may apply. ** Payment processing fee of \$2.00 (incl GST) may apply. Bolt Energy Ltd ABN 10 071 082 287



0042
[NAME]
1 SAMPLE ST VIC 3057

[NAME], we could put you on a cheaper plan.

We now regularly check if we can offer you a cheaper plan based on your energy usage.* New rules in Victoria require us to do this. Here are two cheaper plans for you.

The **yearly cost** of your current plan is

\$1,730

Or \$1,557 with discounts

The potential **yearly saving** on a plan with similar features is

\$406


Or \$300 with discounts


The potential **yearly saving** on our cheapest plan is


\$485

Or \$312 with discounts


It's easy to switch to a cheaper plan. Simply:


Email switch@boltenergy.com.au


Call 13 24 61


Visit www.boltenergy.com.au

* Based on your usage patterns over the last 12 months



0042
[NAME]
1 SAMPLE ST VIC 3057

[NAME], we could put you on a cheaper plan

Dear [NAME],

We now regularly check if we can offer you a cheaper plan based on your energy usage.* New rules in Victoria require us to do this. Here are two cheaper plans for you.


	Your current plan "Easy Saver Plan"	Our cheapest similar plan "Flexi Saver Plan"	Our cheapest plan "Anytime Saver Plan"
Yearly bill without discounts	\$1,730	\$1,324	\$1,245
Yearly bill with discounts	\$1,557	\$1,257	\$1,245

It's easy to switch to a cheaper plan. Simply:


- ✓ call 13 25 71 or email switch@boltenergy.com.au
- ✓ or visit www.boltenergy.com.au

Your account number is 300 033 393 200. You can find details about the plans on the back of this letter, or on our website.

John Smith
Bolt Energy CEO



* Based on your usage patterns over the last 12 months



0042
[NAME]
1 SAMPLE ST VIC 3057

[NAME], we could put you on a cheaper plan

Dear [NAME],

We now regularly check if we can offer you a cheaper plan based on your energy usage.* New rules in Victoria require us to do this. Here are two cheaper plans for you.


	Your current plan "Easy Saver Plan"	Our cheapest similar plan "Flexi Saver Plan"	Our cheapest plan "Anytime Saver Plan"
Without discounts	You pay \$1,730 per year	You could save \$406 per year	You could save \$485 per year
With discounts	You pay \$1,557 per year	You could save \$300 per year	You could save \$312 per year

It's easy to switch to a cheaper plan. Simply:

- ✓ call 13 25 71 or email switch@boltenergy.com.au
- ✓ or visit www.boltenergy.com.au

Your account number is 300 033 393 200. You can find details about the plans on the back of this letter, or on our website.

John Smith
Bolt Energy CEO



* Based on your usage patterns over the last 12 months

Trial 1 - Results

Comprehension measure 1 – identifying I am not on the best offer

This question was designed to test respondents' comprehension of a key message that the best offer message was conveying—that the customer was not on their retailer's best offer. The question that respondents were asked was as follows:

Based on this bill, I am on the best plan for energy for me with this provider;

- Yes
- No
- I don't know

Figure C.2 below shows the proportion of those in each of the four trial arms who were able to correctly “no” to the question. The results indicate that arm 4 (Bill insert, letter style – savings amount) was marginally more effective at driving comprehension, but that all three other arms, including the control, performed similarly.

Comprehension measure 2 – identifying how to access the alternative offer

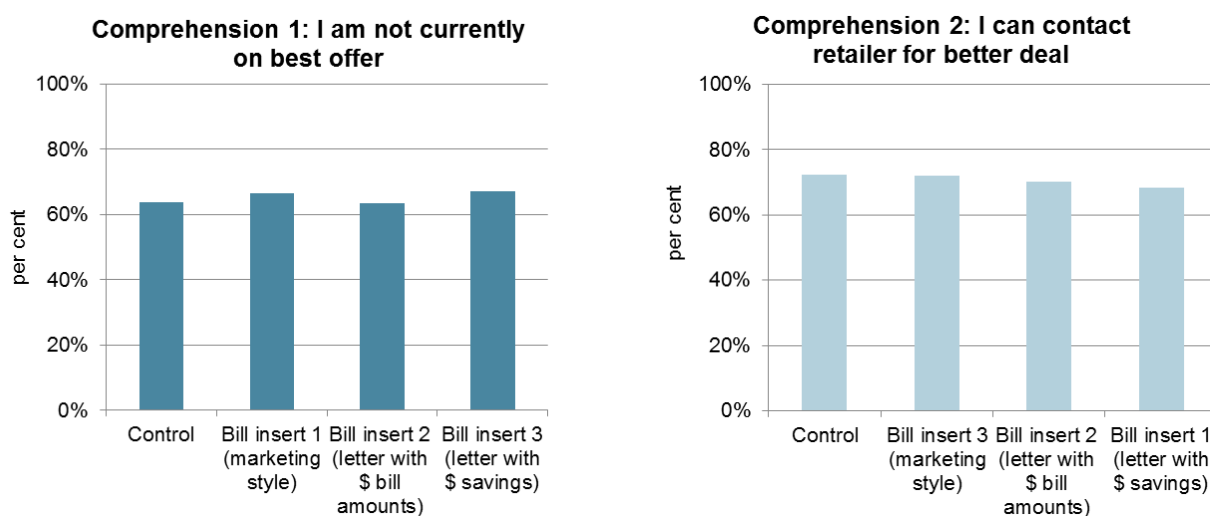
This question focused on the customer's comprehension of what they needed to do next in order to access the offer presented on their bill. The question that respondents were asked was as follows:

To access the best for me with my provider:

- I don't need to do anything; I'm already on the cheapest plan
- I can call my provider or visit their website
- I have to go to the Victorian Energy Compare website
- I don't need to do anything; I will get put on the best deal automatically
- Something else
- I don't know

Figure C.2 also shows the proportion who correctly answered 'I can call my provider or visit their website'. The results indicate that the control was the more effective than any of the other arms at driving this measure of comprehension.

Figure C.2. Results of comprehension measures 1 and 2, all trial arms



Source: Behavioural Insights Team (BIT)

Intention

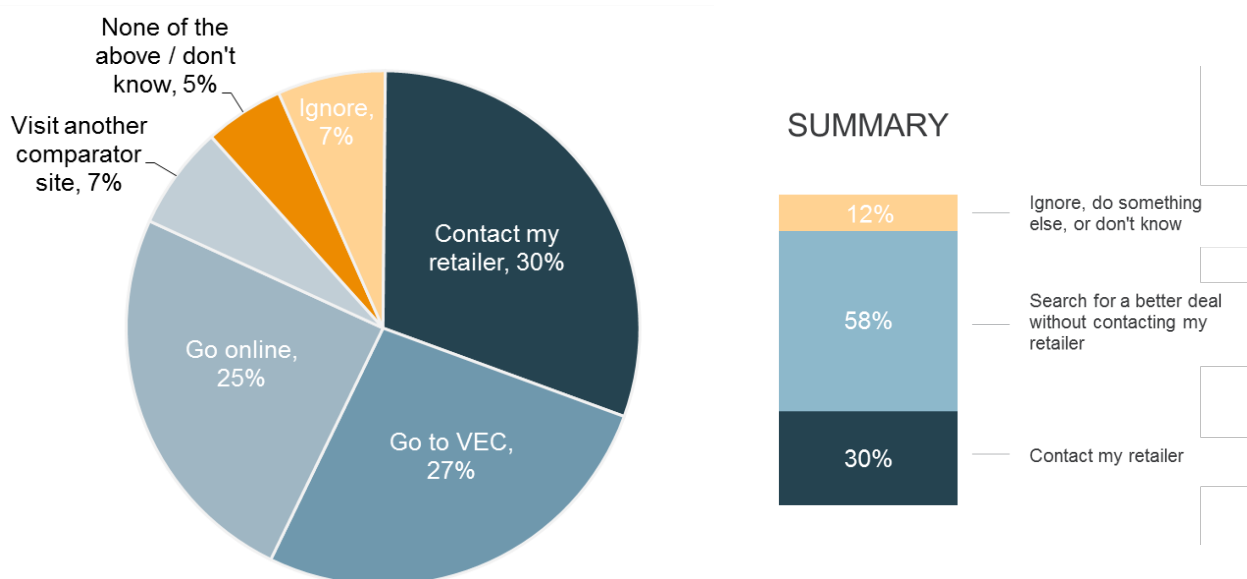
This question sought to gauge what, if anything, the best offer message on the bill would prompt customers to do upon receiving it. It is important to note that this question can only reveal intentions, which are only indicative of likely real world outcomes. The question that respondents were asked was as follows:

On receiving a bill like this, what do you think your response would be?

- *I would pay it and do nothing else/I have a direct debit set up for it to get paid, so would do nothing else*
- *I would visit the Victorian Energy Compare website to try and find a better deal*
- *I would visit a comparison website (but not the Victorian Energy Compare website) to try and find a better deal*
- *I would call my energy provider or go on their website to get a better deal that's mentioned*
- *I would go online and do some research to try and find a better deal*
- *Don't know/none of the above*

Figure C.3 below shows the percentage breakdowns of stated intentions across all four trial arms.

C.3 Stated intentions upon receiving a bill containing the retailers best offer



Source: Behavioural Insights Team (BIT)

Confusion

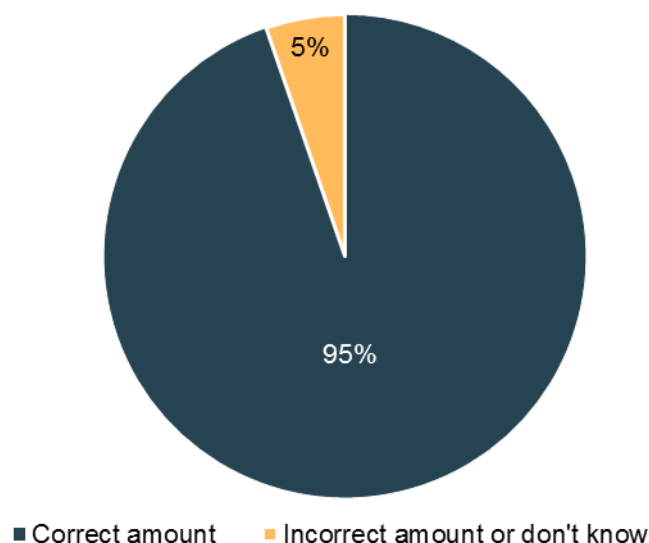
This question was seeking to determine whether the addition of the dollar amount in the best offer message confused respondents as to which amount on the bill they were supposed to pay to meet the conditions of the pay-on-time discount. The question that respondents were asked was as follows:

Please take a look at the image of the bill above, and select the amount you would need to pay by 5 July if you want to get a pay on time discount.

- \$365.01
- \$320.01 (correct answer)
- \$485.00
- Some other amount
- Don't know.

Figure C.4 below shows the percentage breakdown of those who were able to identify the correct amount versus those who could not.

C.4 Stated intentions upon receiving a bill containing the retailers best offer



Source: Behavioural Insights Team (BIT)

Trial 2 - Approach

Similar to Trial 1, we used a framed field experiment involving a representative sample of 2,013 Victorian consumers. Using a randomised control trial methodology, we tested three versions of a new best offer bill message, which we compared with a control bill message. The arms were designed to test the impact on consumers when the headline was framed as a *statement* or *question*, and the offer was framed as a *saving* or *payment*. The front page seen by consumers for each of the arms is contained in figure C.5. The four arms of the trial were:

- Arm 1: Statement + Saving (Control) – the bill message on the front page of the bill frames the retailer's better offer as a statement in the headline box, and the difference between offers is presented as annual savings.
- Arm 2: Question + Saving – the bill message on the front page of the bill frames the retailer's better offer as a question in the headline box, and the difference between offers is presented as annual savings.
- Arm 3: Statement + Payment – the bill message on the front page of the bill frames the retailer's better offer as a statement in the headline box, and the difference between offers is presented as a payment amount
- Arm 4: Question + Payment – the bill message on the front page of the bill frames the retailer's better offer as a question in the headline box, and the difference between offers is presented as a payment amount.

The testing provided insight into the potential efficacy of the options by focusing on four main things:

- the customer's comprehension of whether or not they are on the best deal (comprehension) - contained in figure C.6
- the customer's comprehension of the steps required to access the alternative offer (comprehension) - contained in figure C.6
- the customer's stated intentions upon receiving the information (intention), contained in figure C.7 and
- the potential that the consumer would find the new information confusing (confusion), contained in figure C.8.

Figure C.5. Best offer message seen by trial participants, all four arms



Trial 2 - Results

Comprehension measure 1 – identifying I am not on the best offer

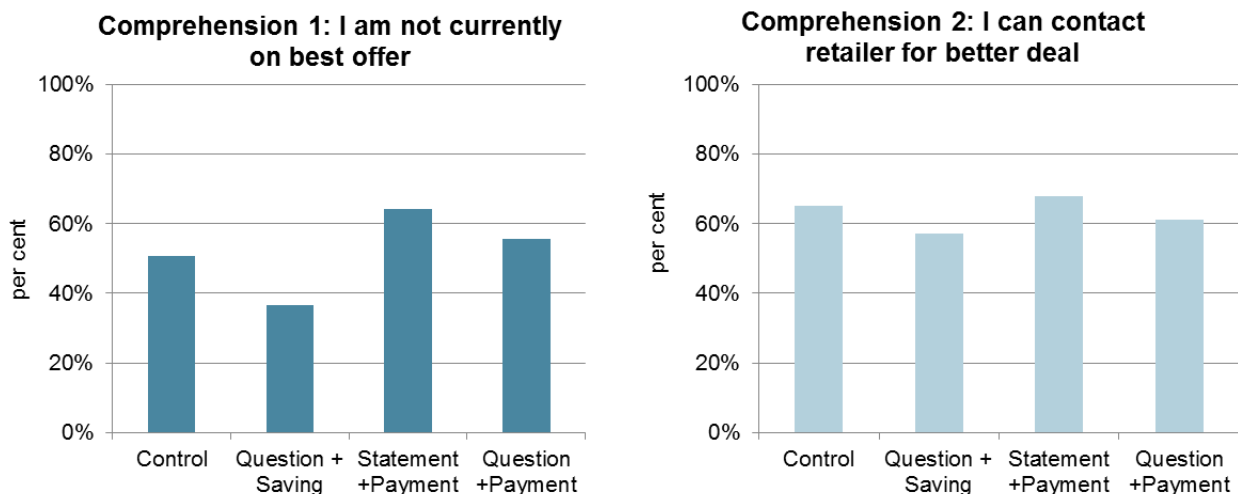
This question was designed to test respondents' comprehension of a key message that the best offer message was conveying—that the customer was not on their retailer's best offer. The question that respondents were asked was as follows:

Based on this bill, I am on the best plan for energy for me with this provider;

- Yes
- No
- I don't know

Figure C.6 shows the proportion of those in each of the four trial arms who were able to correctly answer “no” to the question. The results in comprehension were varied and indicated that arm 3 (Statement +Payment) was most effective at driving comprehension.

Figure C.6. Results of comprehension measures 1 and 2, all trial arms



Comprehension measure 2 – identifying how to access the alternative offer

This question focused on the customer's comprehension of what they needed to do next in order to access the offer presented on their bill. The question that respondents were asked was as follows:

To access the best for me with my provider:

- I don't need to do anything; I'm already on the cheapest plan
- I can call my provider or visit their website
- I have to go to the Victorian Energy Compare website
- I don't need to do anything; I will get put on the best deal automatically

- *Something else*
- *I don't know*

Figure C.6 also shows the proportion who answered 'I can call my provider or visit their website'. The results indicate that the majority recognised they could contact their retailer for the better deal. Similar to comprehension measure 1, arm 3 (Statement +Payment) was the most effective at driving comprehension.

Intention

This question sought to gauge what, if anything, the best offer message on the bill would prompt customers to do upon receiving it. It is important to note that this question can only reveal intentions, which are only indicative of likely real world outcomes. The question that respondents were asked was as follows:

On receiving a bill like this, what do you think your response would be?

- *I would pay it and do nothing else/I have a direct debit set up for it to get paid, so would do nothing else*
- *I would visit the Victorian Energy Compare website to try and find a better deal*
- *I would visit a comparison website (but not the Victorian Energy Compare website) to try and find a better deal*
- *I would call my energy provider or go on their website to get a better deal that's mentioned*
- *I would go online and do some research to try and find a better deal*
- *Don't know/none of the above*

Figure C.7 below shows the percentage breakdowns of stated intentions across all four trial arms.

Figure C.7. Intention

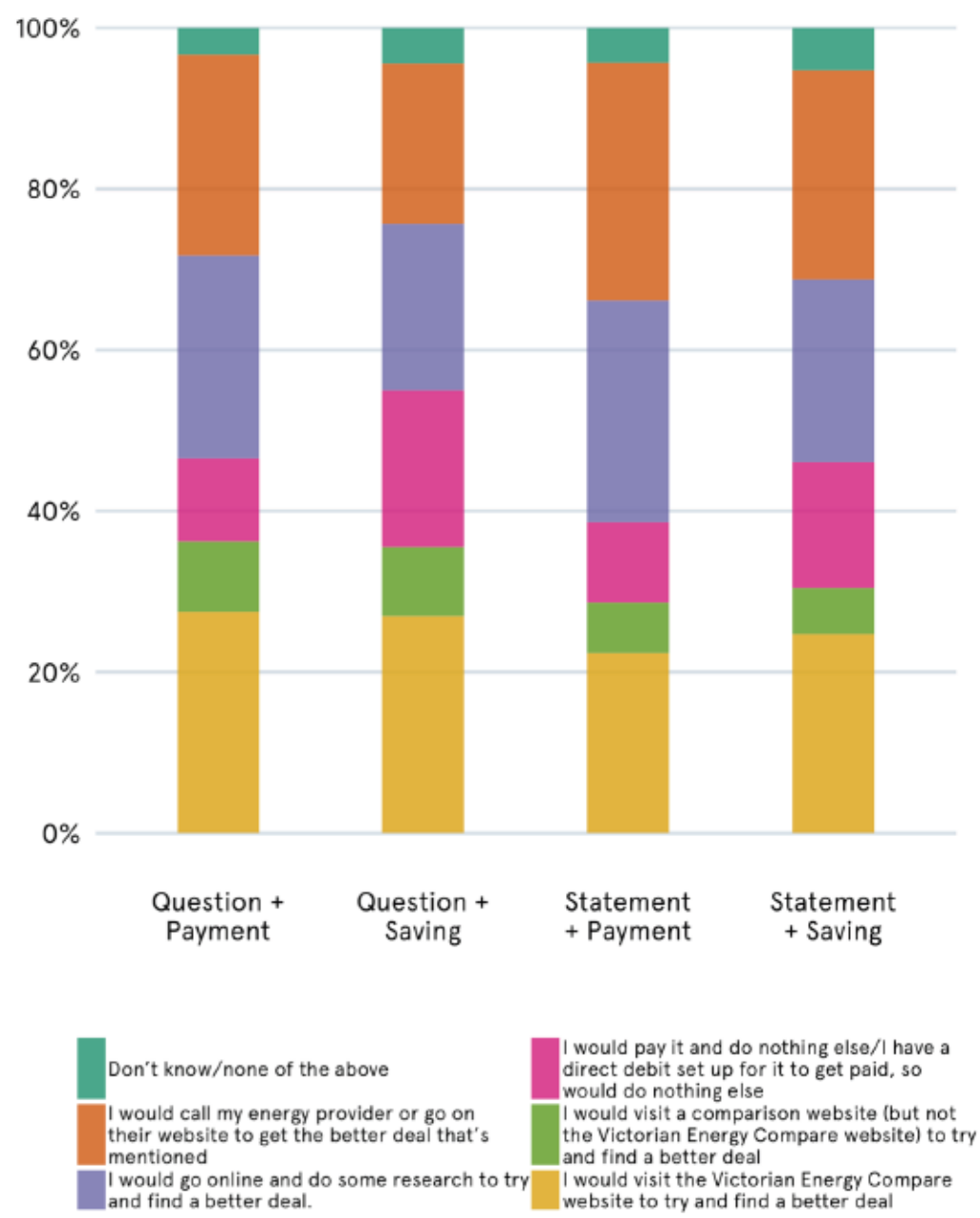
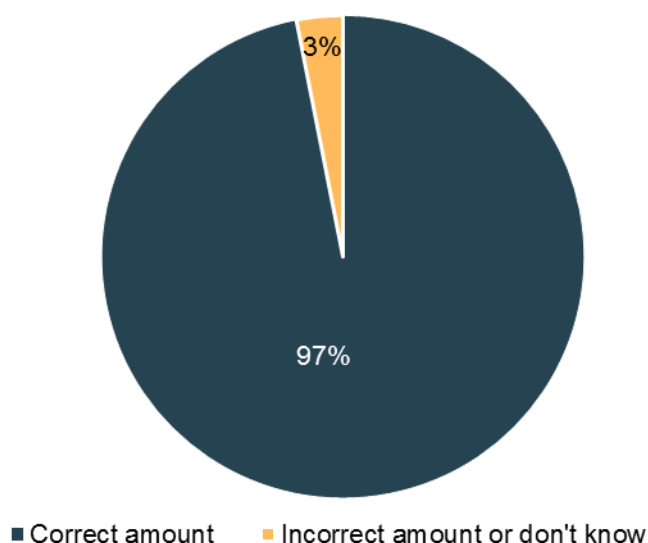


Figure C.8. Confusion



Confusion

This question was seeking to determine whether the addition of the dollar amount in the best offer message confused respondents as to which amount on the bill they were supposed to pay to meet the conditions of the pay-on-time discount. The question that respondents were asked was as follows:

Please take a look at the image of the bill above, and select the amount you would need to pay by 5 July if you want to get a pay on time discount.

- \$365.01
- \$320.01 (*correct answer*)
- \$485.00
- *Some other amount*
- *Don't know.*

Figure C.8 shows the percentage breakdown of those who were able to identify the correct amount versus those who could not. Our results indicated that 97 percent of respondents were able to identify the correct payment amount.

Source: Behavioural Insights Team (BIT)

Appendix D: 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.¹³² 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.¹³³

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 2002,¹³⁴ the commission released the first version of the Code, of which version 11b is in force today.

¹³² Section 8 Essential Services Commission Act 2001 (Vic).

¹³³ Section 10(c) Electricity Industry Act 2000 (Vic) and section 18(c) Gas Industry Act 2001 (Vic).

¹³⁴ 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)).