

Consequential amendments related to the Victorian Default Offer

Final decision

13 June 2019

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Executive summary

This final decision marks the end of our work to implement recommendation 3 of the Independent Review into Electricity and Gas Retail Markets in Victoria.¹ Over the last year we have implemented a range of new customer entitlements, requiring retailers to do more to help customers understand, compare and switch energy plans. This final decision clarifies the intent of these entitlements in the context of the Victorian Default Offer (VDO).

The independent review found that it is hard for customers to navigate the complexity of the market and be confident that they are getting a good deal. Our new rules will require retailers take responsibility for helping customers navigate their way to the retailer's most suitable energy plan.

From 1 July 2019 customers can expect to be regularly told by their energy retailer whether they have a better offer that they could move to. This will be the retailer's lowest cost generally available offer (having regard to the customer's annual usage history) that does not require paid membership or affiliation, including the VDO. The retailer could also choose to show a restricted offer if it were cheaper than both other options.

Customers will be given advanced notice of any price or benefit changes and will also be told about their retailer's best offer at these times. These notices will make it easier for customers to know about any changes affecting what they will pay and take action to avoid them if they choose.

Customers who want to compare energy plans also benefit from improved information that is standardised across all retailers. Customers will be able to access a Victorian energy fact sheet for any plan. These fact sheets will display key information about any energy plan in a consistent format across all retailers, including a comparison table with an average yearly cost for a range of typical customers.

Customers considering signing up to a new plan will be entitled to clear, upfront advice from the retailer about any terms within the contract that could lead to the customer paying more than they expect. Retailers will also be required to tell customers about other deals that might suit them. This includes the VDO, which has prices set independently by government. The VDO may also appeal to customers who are unwilling or unable to engage in the market on an ongoing basis.

Retailers will need to strike a balance between ensuring customers have the information they need to make an assessment about the most suitable offer for them without being overwhelmed. Our

¹ Other than recommendation 3A, which we are considering alongside other recommendations relating to discounting under recommendation 4.

rules provide retailers flexibility in how they go about achieving this, while ensuring retailers will be held to account if they do not deliver a positive customer experience.

We thank stakeholders for their involvement and contributions to the consultation process over the last year as we have delivered recommendation 3. We look forward to continuing this constructive engagement as we start to focus on the implementation of recommendation 4.

Consultation on our decision

Following the release of our draft decision on 10 May 2019, we consulted with stakeholders through seeking responses on the three draft decisions. We received 13 submissions on our draft decision, including 9 from retailers, 3 from consumer groups, and the Energy and Water Ombudsman Victoria as set out below:

- Australian Energy Council (AEC)
- AGL Energy
- EnergyAustralia
- Momentum Energy
- Powershop (MEA Group)
- amaysim energy
- Simply Energy
- Alinta Energy
- Red Energy and Lumo Energy (Red and Lumo)
- Consumer Action Law Centre (CALC)
- Victorian Council of Social Service (VCOSS)
- Brotherhood of St Laurence (BSL)
- Energy and Water Ombudsman Victoria (EWOV)

These submissions are available on our website. We would like to thank stakeholders for their involvement and contributions to the consultation process.

Our final decision and commencement date

This document contains our final position on the three draft decisions. Two of the three draft decisions (draft decisions 1 and 2) have been adopted by the commission. One draft decision (draft decision 3) has been slightly amended.

The amendments to the Energy Retail Code (the code), being made under section 25 of the Electricity Industry Act 2000, are found in the appendix to this report. The amendments to the code will commence on 1 July 2019. It should also be noted that minor typographical errors in version 12 of the code will also be addressed.

Executive summary

1. Our decision

1.1. Several reforms are underway in the Victorian retail energy market

Newly passed Victorian energy legislation states that from 1 July 2019, every Victorian residential and small business electricity customer will be able to access a VDO from their energy retailer.

We are in the process of implementing various recommendations from the independent review. We have already given effect to recommendations 3B to 3H via two rounds of the code changes, which will take effect from 1 July 2019.² These rule changes will require retailers to:

- make energy fact sheets available for each of their offers, to help customers compare offers
- include their 'best offer' on customer bills
- express tariffs, fees, prices and charges in GST inclusive terms only
- provide customers signing up to a plan with clear advice about terms and conditions of offers
- provide advanced notice of changes to prices and benefits that impact a customer's bill.

On 30 May 2019, an Order in Council was issued by the Victorian government to implement the VDO, including a requirement on retailers to provide information on energy bills for how a customer can access the VDO.³

The purpose of this decision is to clarify how the VDO will interact with new rules coming into effect on 1 July 2019. This decision was foreshadowed in October 2018, when we signalled our intention to provide guidance on how the VDO would interact with recommendations 3B to 3H.

Stakeholders' responses to our December 2018 staff working paper on the VDO also noted interest in how the VDO would interact with other regulatory changes.⁴

1.2. Clarifying the intent of the 'best offer' requirement and the VDO

We are introducing the 'best offer' requirement to help customers assess the suitability of their energy plan. Retailers will be required to regularly display their 'best offer' on customers' bills, along with information on how to access it. Retailers will also be required to personalise the 'best offer' by using the customer's actual meter data to calculate the savings that may be available. The

² Essential Services Commission, Building trust through new customer entitlements in the retail energy market: Final Decision, October 2018 / Helping customers engage confidently in the retail energy market: Final decision, March 2019.

³ Victoria Government Gazette, Order under section 13 of the Electricity Industry Act 2000, May 2019.

⁴ Essential Services Commission, Victorian Default Offer for domestic and small business electricity customers: Staff working paper, December 2018.

'best offer' must either be the retailer's lowest cost generally available offer (having regard to the customer's annual usage history) that does not require paid membership or affiliation as an eligibility criteria, or the retailer can choose to show a cheaper restricted offer.

1.2.1. Draft decision 1

Draft decision 1 proposed to make it clear that a retailer should consider the VDO as well as generally available plans when determining which plan is to be included in the best offer message to a customer. This draft decision clarifies that the VDO should be included in a retailer's best offer message, if it is that retailer's best offer for their customer. This aligns with the final Order published by the Victorian government that retailers are required to make the VDO available to their customers.

Stakeholder views

The majority of stakeholders supported draft decision 1.⁵ AEC and Red and Lumo Energy thought it was already clear that the best offer message should incorporate the VDO, but supported making the code amendments in line with this draft decision for clarity.⁶

Final decision

We consider this amendment to the code is required to promote clarity in our framework and have made no changes to our draft decision. This results in an amendment to clause 70H(1) of the code, as set out in the appendix of this document.

Final decision 1

The deemed 'best offer' must be the lowest cost of a generally available plan or VDO applicable to the customer.

1.3. Clarifying the intent of the clear advice entitlement and the VDO

In October 2018, we introduced requirements for retailers to provide clear advice to a customer when seeking a better energy offer. The clear advice entitlement requires retailers to be upfront with customers about any terms within the contract that could lead to the customer paying more than they expect. It will ensure all customers are clearly provided with the key information they

⁵ AEC, AGL Energy, Momentum Energy, Powershop, Simply Energy, Alinta Energy, Red and Lumo, CALC, VCOSS, BSL, EWOV, submissions to the Essential Services Commission consultation paper 'Draft decision on consequential amendments related to the Victorian Default Offer', May 2019.

⁶ Red and Lumo, submission to the Essential Services Commission consultation paper 'Draft decision on consequential amendments related to the Victorian Default Offer', May 2019.

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 a plan they are reviewing, or information about better plans the customer may not have realised were available.

1.3.1. Draft decision 2

Draft decision 2 proposed that where a retailer reasonably believes that the VDO may be a better option for that customer, the retailer must tell that customer about the VDO and how to access it. This also aligns with the final Order published by the Victorian government, that requires retailers to make the VDO available to their customers.

Stakeholder views

Several stakeholders supported this draft decision.⁷ In particular, the Brotherhood of St Laurence agreed that retailers should provide clear advice about the “costs and terms” of offers, including the VDO, if it is a better offer for a customer.⁸

Some stakeholders raised concerns with how this obligation would apply to customers contacting retailers who are not their current retailer (a non-designated retailer). Momentum Energy and Alinta Energy were concerned that non-designated retailers will be required to provide information regarding a plan which may affect their financial viability.⁹ Additionally, Powershop, Alinta Energy and AEC requested a distinction between designated and non-designated retailers where they are obligated to discuss the availability of the VDO.

Final decision

We recognise retailers’ minimum obligations to only supply the VDO to their existing customers. However, we also recognise the importance of all Victorian customers having access to clear information about the VDO and how to access it. We also understand that retailers could choose to offer the VDO to new customers. We note that in a situation where a retailer chooses not to offer the VDO to new customers, if a new customer signs up to a market offer with that retailer, the VDO will subsequently appear on the best offer message on that customer’s bill if it is a better priced offer.

⁷ AGL Energy, Simply Energy, Red and Lumo, CALC, VCOSS, BSL, EWOV, submissions to the Essential Services Commission consultation paper ‘Draft decision on consequential amendments related to the Victorian Default Offer’, May 2019.

⁸ BSL, submissions to the Essential Services Commission consultation paper ‘Draft decision on consequential amendments related to the Victorian Default Offer’, May 2019, p1.

⁹ Momentum Energy, Alinta Energy, submissions to the Essential Services Commission consultation paper ‘Draft decision on consequential amendments related to the Victorian Default Offer’, May 2019.

Our decision

We have decided that where a retailer reasonably believes that the VDO may be a better option for a customer, the retailer must tell that customer about the VDO and how to access it. This also means that non-designated retailers are expected to provide information about how the customer can access the VDO. The commission will not be prescriptive about the information retailers are required to provide about the VDO. However we expect retailers to ensure that information provided to all customers, including new customers, is transparent and clear.

We have made a minor change to draft decision 2 and the corresponding code drafting, by changing 'generally available plans *and* a VDO' to 'generally available plans *or* a VDO' (emphasis added). This is to clarify our intent that the retailer is required to communicate information about either another applicable generally available plan or the VDO, if the retailer reasonably believes either may be more suitable for the customer, rather than being required to provide information about both options.

Draft decision 2 has otherwise been left unchanged and confirmed as our final decision.

Final decision 2

A retailer, under the clear advice entitlement, must communicate to a customer information about the retailer's other applicable generally available plans or a VDO that it reasonably believes may be more suitable for the customer.

1.3.2. Draft decision 3

Draft decision 3 proposed that retailers provide information on the VDO to any customer prior to signing a customer onto any electricity contract. To give effect to this, we proposed an additional obligation be made under the clear advice entitlement (clause 70H). Retailers would be given discretion on how to carry out the proposed obligation, so long as a customer is made aware of the VDO and how to access it.

Stakeholder views

Consumer groups and EWOV supported the draft decision.¹⁰ VCOSS noted that the proposed obligation could be useful in informing customers about other features of the VDO, such as having

¹⁰ CALC, VCOSS, BSL, EWOV, submissions to the Essential Services Commission consultation paper 'Draft decision on consequential amendments related to the Victorian Default Offer', May 2019.

fixed annual pricing, no conditions, and having a price recommended by an independent regulator¹¹, though this view was not shared by all stakeholders.¹²

All retailers expressed concerns about the draft decision.¹³ Powershop, AGL Energy and AEC considered draft decision 3 as not being consequential and needing longer timeframes for consultation.¹⁴ Retailers were also generally concerned that the draft decision could create customer confusion if a retailer were obliged to outline the VDO where it reasonably believes it is not a suitable offer for the customer.¹⁵ Retailers also suggested this confusion may lead to customers being unwilling to switch between energy plans.

AEC and AGL also suggested that the draft Order from the Victorian government would require retailers to disclose the availability of the VDO on all customer energy bills, making draft decision 3 unnecessary.¹⁶ We note that the final Order requires a retailer's electricity bill on or after 1 October 2019 to include information about how the customer may access the VDO from the retailer.¹⁷

Final decision

We have considered stakeholders' views and recognise the importance of customers being provided with clear information about energy offers that are available from retailers, including the VDO. However, we also seek to implement changes that do not negatively affect the customer experience when communicating with retailers, and we acknowledge stakeholder views that draft decision 3 would be more than a consequential amendment to the code.

Therefore, we have decided to amend this decision. Our final decision makes clear that if a new or existing customer enquires about the VDO, a retailer will be required to tell that customer about the VDO and how to access it. We consider this amended decision is a consequential amendment

¹¹ VCOSS, submission to the Essential Services Commission consultation paper 'Draft decision on consequential amendments related to the Victorian Default Offer', May 2019.

¹² AEC, submission to the Essential Services Commission consultation paper 'Draft decision on consequential amendments related to the Victorian Default Offer', May 2019.

¹³ AEC, AGL Energy, Energy Australia, Momentum Energy, Powershop, amaysim energy, Simply Energy, Alinta Energy, Red and Lumo, submissions to the Essential Services Commission consultation paper 'Draft decision on consequential amendments related to the Victorian Default Offer', May 2019.

¹⁴ Powershop, AGL Energy, AEC, submissions to the Essential Services Commission consultation paper 'Draft decision on consequential amendments related to the Victorian Default Offer', May 2019.

¹⁵ AEC, AGL Energy, Energy Australia, Momentum Energy, Powershop, amaysim energy, Simply Energy, Alinta Energy, Red and Lumo, submissions to the Essential Services Commission consultation paper 'Draft decision on consequential amendments related to the Victorian Default Offer', May 2019.

¹⁶ AEC, AGL Energy, submissions to the Essential Services Commission consultation paper 'Draft decision on consequential amendments related to the Victorian Default Offer', May 2019.

¹⁷ Victoria Government Gazette, Order under section 13 of the Electricity Industry Act 2000 – clause 8(2), May 2019.

Our decision

following on from the requirement in the final Order for retailers to include information about the VDO on all customer bills. If a customer enquires about the VDO after seeing this information on their electricity bill, we would expect a retailer to provide that customer (whether they are an existing or prospective new customer) with information to help them decide if they think the VDO might be a suitable option for them.

We note that these expectations are in line with the broader intent of the clear advice entitlement, where the overarching objective is to ensure that customers receive clear, timely and reliable information to assist them in assessing the suitability of, and select, a customer retail contract. Under these entitlements, we would also expect retailers to describe the features of the VDO as needed to enable a customer to assess the suitability of the VDO for themselves.

We also note that other obligations currently exist in the code that requires retailers to provide information to customers about the VDO (and standing offers):

- clause 16(2)(b) requires designated retailers to advise existing customers of the availability of a retailer's standing offer and
- clause 16(3)(b) requires non-designated retailers to provide information to a customer to find out who their designated retailer is that can supply them with the VDO, but only where a retailer does not choose to offer the customer a market contract.

Our final amendments provide further clarity on retailers' obligations to provide customers with information about the VDO when a customer enquires about it.

Following our monitoring of the recent reforms and of the Victorian energy retail market from 1 July 2019, we will consider whether our original proposals in the form of draft decision 3 or other changes may be required.

Final decision 3

Under the clear advice entitlement, if the customer enquires about the VDO, a retailer is to communicate information about the availability of the VDO and how the customer may access the VDO.

1.4. Other proposed changes suggested by stakeholders

Some stakeholders also submitted other suggestions to our recent reforms:

- VCOSS suggested retailers should be obliged to provide an information sheet specific for the VDO, with energy bills at least twice a year. This obligation would further support the communication of the specific features of the VDO to customers.

Our decision

- amaysim suggested that certain energy retail products, such as subscription plans, should be excluded from the best offer message and clear advice entitlement requirements. Alternatively, the methodology in calculating a retailer's best offer could be adjusted to account for the potential value of energy products with different pricing structures.
- Alinta Energy suggested amending the definition of win-back plan as a restricted plan to have an expiry period of 30 days from the date a customer switched to a new retailer. This suggestion was out of concern that the obligation allows retailers to market win-back plans as exclusive to customers who switched to a new retailer at any time in the past, potentially avoiding the obligations associated with the clear advice entitlement and best offer message.

The commission considers these currently outside the scope of this decision. However, following our monitoring of these reforms and of the Victorian energy retail market from 1 July 2019, we will consider whether these proposals or other changes may be required.

Appendix: Final Energy Retail Code amendments

AMENDMENTS TO THE ENERGY RETAIL CODE: CONSEQUENTIAL AMENDMENTS RELATED TO THE VICTORIAN DEFAULT OFFER

13 June 2019

Amendments made by the Essential Services Commission on 13 June 2019

1 Nature and commencement of this instrument

- (1) This instrument amends the *Energy Retail Code* and the Amendments to the Energy Retail Code: Market Integrity approved on 30 October 2018 to the extent of any inconsistency.
- (2) This instrument comes into operation on 1 July 2019.

2 Table of amendments

- (1) Replace the following definition in clause 3, after *de-energisation or disconnection*:

Deemed best offer means the plan identified in accordance with clause 70P;

- (2) Insert the following definition in clause 3, after *telemarketing call*:

Victorian default offer means any offer to supply or sell electricity that is subject to a regulated price pursuant to the Order made under section 13 of the *Electricity Industry Act* published in Special Gazette No. S 208, on Thursday 30 May 2019.

- (3) In subclause 70H(1), replace paragraph (d):

(d) the *retailer's* other *generally available plans* or a *Victorian default offer* available to the *customer*, which 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 practical to do so;

- (4) Add new subclause (1A):

(1A) If requested by the *customer*, the *retailer* must provide the *customer* with information about the availability of the *Victorian default offer* and how the *customer* may access the *Victorian default offer*.

- (5) In clause 70P, replace subclause (2):

- (2) The *deemed best offer* must be either:
- (a) the plan that the *retailer* offers which:
 - (i) is the lowest cost of a *generally available plan* or *Victorian default offer* applicable to the *customer* 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 plan that has a lower cost than the lowest cost of a *generally available plan* or *Victorian default offer* applicable to the *customer*.