ESSENTIAL SERVICES COMMISSION

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REVIEW OF REGULATORY INSTRUMENTS: STAGE 1

FINAL DECISION

OCTOBER 2008

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1 INTRODUCTION

1.1 Background to the Review

The Essential Services Commission (the Commission) is responsible for regulating Victoria's distribution and retail energy markets.[1] The Commission has exercised this responsibility since 2001, when it was established by the *Essential Services Commission Act 2001* (Vic) (ESC Act). Its establishment coincided with the introduction of full retail competition for domestic and small business customers. Before then, small customers purchased their energy from the franchised energy businesses regulated by the Office of the Regulator-General (the ORG).[2]

In preparation for full retail competition, the ORG put in place a suite of regulatory protections to ensure that small customers continued to access essential energy supply on fair and reasonable terms and that licensed retailers and distributors operated efficiently and effectively in the competitive market. Since that time, the Commission has amended the regulatory framework. These amendments included new guidelines concerning service standards and conduct of the licensed energy businesses, because of requirements under industry legislation or because of a perceived market failure.

The Commission recognises that competition in the Victorian energy market has evolved significantly since 2001. The recent review of the effectiveness of competition by the Australian Energy Market Commission (AEMC) concluded that there is effective competition in Victoria.[3] Further, national market regulation and general consumer protection law now embodies many of the protections that were considered necessary when the Victorian market first opened to competition.[4]

Consequently, the Commission has undertaken a comprehensive review of its non-economic distribution and retail regulatory framework to assess its efficiency and effectiveness and whether it accords with the objectives of the ESC Act and relevant industry legislation.

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[1] Gas Distribution economic regulation was transferred to the Australian Energy Regulator (AER) on 1 July 2008 and Electricity Distribution economic regulation will be transferred to the AER on 1 January 2009.

[2] The Essential Services Commission succeeded the Office of the Regulator-General, which was established in 1995.

[3] AEMC 2008*, AEMC's Review of the Effectiveness of Competition in the Electricity and Gas Retail Markets in Victoria*, Second Final Report, 29 February, Sydney,

[4] For example, general consumer regulation oversighted by the Victorian *Fair Trading Act* 1999 or national regulation oversighted by the National Electricity Market Management Company (NEMMCO)

The Review also provided an opportunity to identify and reduce the regulatory burden on businesses, consistent with the Victorian Government's *Reducing the Regulatory Burden* initiative.[5]

1.2 Legislative framework

The broad objectives of the Commission, as set out in the ESC Act, are to promote the long term interests of Victorian consumers and to have regard to price, quality and reliability when regulating essential services.

Further, the ESC Act requires the Commission to have regard to relevant matters in seeking to achieve this objective including the financial viability of the industry, the degree of, and scope for, competition within the industry and the benefits and costs of regulation on consumers and users of products or services (including low income and vulnerable consumers) and the regulated entities. The ESC Act also requires the Commission to have regard to the need for consistency in regulation between States and on a national basis.

The Commission's functions are provided for by section 10 of the Act, which include the performance of functions conferred by the Act and relevant industry legislation, namely the *Electricity Industry Act 2000* (Vic.) (EI Act) and the *Gas Industry Act 2001* (GI Act).

The EI Act and GI Act empower the Commission to licence Victorian energy businesses[6] and specify Orders in Council, industry codes, standards, rules and guidelines which must be observed by the licensee.[7]

The Commission has exercised its powers under Section 11 of the ESC Act to do all things necessary or convenient to be done for or in connection with the performance of its functions and to enable it to achieve its objectives. The codes and guidelines under review in this final decision arise from these legislative powers.

1.3 Approach to the Review

Licences, codes and guidelines are the instruments used by the Commission to regulate the Victorian energy market. All instruments, including guidelines, contain regulatory obligations, and there is both duplication between instruments and inconsistency between the obligations. Consequently, in this Review, the Commission decided to streamline the regulatory framework by reviewing its codes and guidelines and consolidating all its regulatory obligations into the codes.

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[5] Department of Treasury and Finance 2008, *Reducing the Regulatory Burden,* accessed at www.dtf.vic.gov.au..

[6] Division 3 of Part 2 of the *Electricity Industry Act 2000* and Division 2 of Part 3 of the *Gas Industry Act 2001.*

[7] Section 21(1) of the *Electricity Industry Act 2000* and section 29 (c) of the *Gas Industry Act 2001.*

As outlined in the draft decision, the Review is being conducted in two stages. Stage 1, which this final decision deals with, reviewed the Energy Retail Code (ERC), Code of Conduct for Marketing Retail Energy (MCC), the Electricity Customer Metering Code (ECMC), 4 energy guidelines and one operating procedure.. Stage 2 addresses the Electricity Customer Transfer Code, Guideline no.19: Price disclosure, interval metering billing and the Electricity System Code. Stage 2 commenced in September 2008 and is scheduled to be completed by March 2009. Further detail is provided in chapter 4.

1.4 National developments

The Commission notes that the Ministerial Council of Energy (MCE) is currently developing a National Framework for Regulating Electricity and Gas (Energy) Distribution and Retail Services to Customers.[8] The MCE's Standing Committee of Officials released a Policy Response Paper and Table of Recommendations – National Energy Customer Framework in June 2008.

The Commission has taken account of the proposed national framework recommendations in this Review and, where appropriate, has attempted to achieve consistency with the national framework in the Victorian regulation. However, the Review is not intended to significantly change the necessary customer protections in Victoria. The Commission expects that any substantive changes to the customer protection regulation for Victorian customers will be implemented in accordance with the MCE's decision on the national framework.

1.5 Consultation during the Review

The Commission undertook extensive consultation during the Review, commencing with an open letter calling for submissions in February 2008. Since then, the Commission released an issues paper and seven working papers, and held five workshops and one public forum.

A draft decision was published in August 2008. Twelve submissions were received, from retailers, distributors, the Consumer Utilities Advocacy Centre (CUAC) and Consumer Action Law Centre (CALC), the Energy and Water Ombudsman (Victoria) (EWOV) and one consumer (Mrs Kingston).[9] All submissions have been considered in this final decision.

1.6 Purpose of this Final Decision

This final decision sets out the proposed amendments to the regulation subject to Stage 1 of the Review, specifically the Energy Retail Code (ERC), Code of

[8] Retail and non-economic distribution functions are scheduled to be transferred to the national regulators in 2010.

[9] Mrs Kingston's submission addressed a number of issues related to bulk hot water policy issues, which are outside the scope of this Review. The Commission will consult with the Department of Primary Industries on the way forward with respect to matters within the Victorian jurisdiction.

Conduct for Marketing Retail Energy (MCC) and the Electricity Customer Metering Code (ECMC). Further, the final decision provides for the repeal of 4 guidelines and 1 operating procedure and outlines the amendments to the Compliance Policy Statement for Victorian Energy Businesses.

1.7 Code amendments

Attached to this final decision are the proposed amendments to the relevant codes. Submissions on these amendments are sought by Friday 14 November 2008 and should be sent to

Email: EnergyRegulatoryReview@esc.vic.gov.au

Mail: Review of Regulatory Instruments

Level 2, 35 Spring Street

Melbourne Vic 3000

Fax: (03) 9651 3688

The final codes will be published by 30 November and will take effect from 1 January 2009.

1.8 Structure of this paper

The paper is structured as follows:

- Chapter 2 provides the conceptual framework under which issues identified by the review were considered and addressed.
- Chapter 3 sets out the draft decision, the submissions received and the Commission's final decision
- Chapter 3 summarises the final decision and sets out the next steps.
- Appendix A shows a diagrammatic overview of the existing and stage 1 regulatory framework.
- Appendix B sets out the draft decision on all the regulatory obligations, submissions received and the final decision.
- Appendices C – F include the redrafted codes and Compliance Policy Statement

2 OBJECTIVES & FRAMEWORK FOR THE REVIEW

This section sets out the objectives of the Review and the framework used by the Commission to determine which regulation would be addressed and the reasons for the approaches adopted.

2.1 Objectives

The objectives of the Review, as set out in the open letter published in February 2008, were to:-

1. Remove regulatory provisions that may have become redundant over time.
2. Modify regulation obligations to facilitate the orderly implementation of the Government's advanced interval metering program from 2009-12.
3. Assess the obligations relating to the provision of information to customers to improve their access to the competitive market, in view of the increasing effectiveness of energy retail competition in Victoria.
4. Examine whether the obligations in regulatory guidelines would be better placed in existing codes and whether existing obligations are appropriately drafted or unnecessarily duplicate other regulation.
5. Consider the compliance and reporting requirements arising from the existing framework and whether improvements can be made to reduce or remove unnecessary administrative burden, consistent with the Victorian Government's policy initiative.

The reasons for these objectives are explained more fully below.

2.1.1 Remove regulatory provisions that may have become redundant over time

The Commission considered it necessary to repeal regulation that has become redundant in the energy market over time, through legislative reform or other factors. For example, the Victorian Government removed price oversight for small business customers from 1 January, 2008 because of the effectiveness of retail competition in that sector.[10] Hence, the Commission examined whether some non-

[10] Department of Primary Industries 2008, "Energy: Pricing", *Department of Primary Industries website,* accessed at www.dpi.vic.gov.au.

price protections could be repealed because the competitive market will sufficiently protect small business customers.

All regulatory instruments under review were considered against this objective.

2.1.2 Modify regulation obligations to facilitate the orderly implementation of the Government's advanced interval metering program from 2009-12

In 2006, the Victorian Government announced a decision to roll-out advanced interval meters to all Victorian consumers, commencing 2008. The Commission wished to facilitate the implementation of the advanced interval metering program by ensuring that the regulation was relevant. However, recent developments in the implementation of the advanced interval meter roll-out to Victorian consumers have prompted the Commission to defer its review of the regulatory instruments in this regard. Consideration will be given to amending the regulatory instruments to support the remote interval metering functionalities in stage 2 of the Review.

2.1.3 Assess the obligations relating to the provision of information to customers to improve their access to the competitive market

This review sought to ensure customers have accessible and accurate information in order to make informed choices in the increasingly competitive market.

The capacity of customers to access sufficient information on which to base their decisions has been acknowledged in the AEMC review (and previous effectiveness reviews in Victoria) as important for customers to gain equitable access to the competitive market

There have been a number of initiatives in Victoria to increase the level of information to customers, including a legislative requirement for retailers to publish certain market offer information on their websites and regulatory requirements for retailers to provide certain offer and contractual information to customers.

The Commission considers that this Review provides an opportunity to improve and build on these tools to enhance customers' access to market information to customers and therefore improve the effectiveness of a customer's engagement with the energy market.

2.1.4 Examine whether the obligations in regulatory guidelines would be better placed in existing codes and whether existing obligations are appropriately drafted or unnecessarily duplicate other regulation

A key component of this Review is streamlining the regulatory framework by removing unnecessary duplication or by redrafting regulation.

A number of the Commission's regulatory instruments duplicate other regulation and legislation. For example, the MCC duplicates some aspects of the *Fair Trading Act 1999* (FTA) and the Guideline No 10: Confidentiality and Informed

Consent both duplicates and expands the National Privacy Principles under the federal *Privacy Act 1988.*

This regulation was considered necessary at the onset of full retail competition in Victoria because the general consumer law did not sufficiently address the potential market failure perceived to exist at that time. However, the market has significantly matured since 2001 and customers are now participating actively in the competitive market by exercising choice not only among available retailers but also price and service offerings.[11]

Therefore, this Review has determined whether regulation which duplicates other regulation or legislation can either be repealed or placed more appropriately in another instrument.

2.1.5 Reduce or remove unnecessary administrative burden

The Review identifies regulation that imposes on businesses or other entities an unnecessary administrative burden to determine whether it can be removed or reduced. This analysis informed the Commission's internal administrative burden review, which is being undertaken as part of the Victorian Government's *Reducing the Regulatory Burden* initiative.[12]

2.2 Framework

A framework was developed to guide the Commission and inform stakeholders on the approach to the Review.

The framework established three categories of regulation:

1. *Regulation which will not be addressed in the review*, because it is mandated through legislation and therefore considered necessary to protect small customers. For example, regulation dealing with disconnection, information provision about rights and entitlements, access to a customer's premises and confidentiality of customer information.

2. *Regulation which may be addressed in the review* because the detriment is considered small if the protection is removed. The assessment will rely on there being sufficient confidence that the competitive market will act to serve the interests of small customers. Further, the decision to remove the regulation in Victoria will not negatively impact on retailers if the regulation is retained by the national framework for regulating energy distribution and retail services.

3. *Regulation which may be addressed in the review, but about which the Commission's decision will be informed by the national framework.* There may

[11] AEMC 2007*, AEMC's Review of the Effectiveness of Competition in the Electricity and Gas Retail Markets in Victoria*, First Final Report, 19 December, Sydney

[12] *Identification of Administrative Burden: Evaluation of administrative burden imposed on businesses regulated by the Essential Services Commission.*

be regulation which the Commission would consider amending or repealing because it no longer appears necessary in the Victorian competitive market. However, the Commission would not want to impose unnecessary costs on retailers or customers if the national framework retained that regulation

3 SUBMISSIONS AND FINAL DECISION

3.1 Draft Decision

The Commission released its draft decision in August 2008, proposing amendments to the Energy Retail Code (ERC), Code of Conduct for Marketing Energy in Victoria (MCC) and the Electricity Customer Metering Code (ECMC).

The draft decision also proposed the repeal of the Electricity Industry Guideline No.4 – Credit Assessment and the Gas Industry Guideline No.1 – Credit Assessment (Electricity and Gas Credit Assessment Guidelines), Guideline No.10 – Confidentiality and Informed Consent Electricity and Gas (Confidentiality and Explicit Informed Consent Guideline), the Energy Industry Guideline No.20 – Bulk Hot Water Charging Guideline and the Operating Procedure: Compensation for Wrongful Disconnection (the Operating Procedure).

Twelve submissions were received to the draft decision from retailers, consumer representatives and EWOV.

3.2 Overview of submissions

Most submissions focused on a few of the proposed amendments to the ERC. Views were mixed, with all stakeholders supporting some amendments, but not others. The retailers and consumer groups often held conflicting views.

Overall, the consumer groups were generally supportive of the intent of the proposed amendments, but indicated that they would provide further views once the redrafted codes were available for comment.

EWOV was generally supportive of most changes proposed by the Commission's draft decision, with the qualification that small businesses should not adversely be affected by the proposed amendments. The distributors primarily restricted their submissions to the ECMC and overall supported the proposed amendments.

The retailers questioned the overall objectives and approach to the Review. AGL submitted that the Commission appears to have been selective in considering which obligations should be aligned with the draft national framework, which

> *"…may lead to the unsatisfactory situation whereby the Victorian regulatory framework is amended, only to be amended relatively soon afterwards as a result of the National Energy Customer Rules coming into force."*[13]

[13] AGL 2008, *Review of Energy Regulatory Instruments – Stage 1,*September, p.1

Further, Australian Power & Gas suggested that the Commission should delay the implementation of amendments to take account of any prospective legislative changes and developments in the national framework.

The Commission acknowledges that it has been 'selective' in the approach taken to national consistency. The framework and approach, as outlined in chapter 2, was foreshadowed early in the review process and reiterated in all consultations during the review. [14] Specifically, the Commission indicated that it would review regulation that is not considered fundamental to protect small customers in the competitive market. However, amendments would not be proposed to other regulation that would impose unnecessary costs on the industry and consumers if there was a strong possibility that the existing regulation would be retained in the national framework.

Overall, the Commission considers that the final decision is consistent with the framework set out in chapter 2.

The Commission notes that, in anticipation of proposed amendments to the EI Act and the GI Act, it has delayed consultation on *Guideline No 19: Product Information Disclosure*. This consultation will commence later in October 2008. It is considered that these are the only substantive legislative amendments which impact on the existing regulatory instruments.

The draft decision set out 81 pages of proposed amendments to the regulatory instruments. Appendix B sets out the draft decision on each obligation considered in the Review, submissions received and the final decision.

The substantive issues raised in the submissions and the Commission's final decision are set out below.

3.3 Energy Retail Code

The ERC sets out the minimum terms and conditions that energy retailers must meet in their contractual arrangements with customers. The draft decision proposed substantive amendments to the obligations relating to:

- Information on bills, particularly distributors' information (clause 4.2(o))
- The capacity of customers to negotiate smoothed billing arrangements (clause 5.3)
- The rules applying to how undercharging accounts are to be remedied (clause 6.2)
- Security deposits or refundable advances (clause 8.2)
- The agreement of customers to variations of market contracts (clause 20).

Submissions on these matters are discussed below.

[14] Essential Services Commission 2008, *Customer Protection Working Paper 1,* 10 June.

The draft decision also proposed an amendment to enable customers to enter direct debit arrangements over the telephone. EWOV, CUAC and CALC supported the amendments in principle, but were concerned to ensure sufficient safeguards so that customers gave adequate consent to enter the arrangements. The proposed new regulation explicitly requires customers' informed consent to enter the arrangements (see Appendix C, ERC, clause 7.2).[15]

3.3.1 Bill information (clause 4.2)

Draft Decision

The distributor's name must be included against the faults and emergencies number on customer bills.

There were two reasons for proposing the amendment:

1. To support the distributors' submissions that customers were confused as to which entity to contact for information about faults and emergencies

2. To increase customers' awareness about distributors in the competitive market, particularly as the obligation to offer to supply is increasing placed on all retailers and the point of contact to locate retailer information is placed on the distributors.

In regard to objective 2 above, the Victorian Government has recently introduced legislation to the Parliament which will place the obligation to offer to supply on all retailers. This proposal is consistent with the draft national framework and aligns with the approach in the newly competitive Queensland energy market. In the Queensland market distributors are the initial contact point for customers who move-in to premises without knowing who their retailer is, and this may be the approach in Victoria. The draft decision canvassed stakeholder views as to whether requiring a distributor's name on the bill against the fault number would increase customers' familiarity with the distributors.

The Commission therefore sought stakeholder submissions on whether this approach will assist in meeting the intended objective and on the cost implications for retailers, to inform its final decision.

Submissions

In general, retailers were opposed to the proposed requirement and the distributors, EWOV and consumer groups were in favour.

Most retailers did not support placing the distributor's name against the faults and emergencies number because it is inconsistent with the draft national framework, it

[15] The Commission notes EWOV's and consumer groups' concerns that retailers may not be complying with direct debit arrangements to date or that enabling direct debit arrangements may increase the potential for fraudulent behaviour by the retailers. The Commission notes that verbal direct debit arrangements are allowed for generally. Further, we have not received substantive complaints on the current arrangements, but will place the issue on the audit and compliance program for 2009 as necessary.

will require costly bill system changes (although no information on the cost implications was provided) and it is not an effective way of informing customers regarding the role of the distributor. Further, many of the retailers considered that it should be the responsibility of the distributor and not retailer to inform customers on the distributor's role or to promote the distributor's brand.

To this end, TRUenergy proposed that the Electricity Distribution Code be amended to require distributors to provide customers with a copy of their customer charter every 12 months, instead of 5 years.

Conversely, Dodo, a new licensee in the Victorian retail energy market, acknowledged that there can be some confusion for customers when dialling the faults telephone number. However, Dodo proposed that a more generic statement be used such as "To report faults or emergencies, call your Local Distributor on X". Dodo suggested that the name of the local distributor could then be provided in the information panel of the bill.

All electricity distributors supported the proposed amendment, but SP AusNet and Jemena/UED/Multinet recommended that retailers be given flexibility in meeting the obligation. Jemena/UED/Multinet suggested that the incremental cost of this bill amendment should be minimal if retailers make the change at the time they are making other bill print changes.

Gas distributor Envestra opposed the specific proposal and considered that *"due to the identity of the legal entity that may own a network and the fact that the name or ownership can change over this time, this may confuse customers rather than improve matters"*.[16] Further, Envestra submitted that the name of the distributor is not always relevant since the distributor usually outsources call centre operations to other entities. However, Envestra concurs with Dodo's proposal that a generic statement be included on the bills.

EWOV, CUAC and CALC supported the inclusion of the distributor's name against the faults number on the bill. In particular, CUAC and CALC considered that the identification of the relevant distributor on the bill would assist customers during outages.

Discussion

The Commission notes the retailers' submissions that the proposed amendment will not meet the objective to increase customers' awareness of a distributor's identity. It further acknowledges the concern that it may unduly place the responsibility upon the retailers to achieve this objective, rather than the distributors.

The Commission recognises that further work needs to be undertaken to increase the capacity of customers to identify their financially responsible retailer, if the obligation to offer to supply is placed on all retailers and the point of contact to locate retailer information is placed on the distributors. However, it agrees that the

[16] Envestra 2008, *ESC Review of Regulatory Instruments – Draft Decision August 2008,* p.1.

original proposal to identify the distributor on the bill will only minimally meet the intended objective.

However, it is considered that the proposal to require a generic reference to the local distributor against the faults and emergencies number will reduce customers' confusion as to which entity is responsible during faults and emergencies. For example, this may have assisted in information provision during the April 2008 significant storm events.

The Commission supports that the retailers should only be required to include this additional information when other bill changes are being implemented. Consequently all retailers will be required to advise the Commission of their intended date of implementation of the new requirement, once the date of the new regulation comes into effect.

Final Decision

The Commission will require retailers to amend their bills to include the following statement alongside the faults and emergencies number:

"On electricity bills

To report faults or emergencies, call your local distributor on …"

"On gas bills

To report leaks or emergencies, call your local distributor on…"

3.3.2 Bill smoothing (clause 5.3)

Draft Decision

In bill smoothing arrangements, the reconciliation period should be increased to 9 months, rather than 12 months, given that this is the maximum amount that retailers are allowed to recover if their bills to customers are inaccurate. Variations would be allowed for market contracts.

The ERC requires that at the 6th month of the 12 month bill smoothing period, the retailer must re-estimate the amount of energy consumed by the customer. If there is a difference of 10% between the initial estimate and the re-estimate, the amount payable for the remaining months in the 12 month period should be reset. If at the end of the 12 month when the meter has been read, it is deemed that there is an undercharged amount, the retailer will be able to recover up to 12 months.

The Commission proposed to increase the re-estimation period from 6 to 9 months in order to align it with the undercharging recovery period set within the ERC and to allow for seasonal variations.

Submissions

EWOV supported the proposed amendment. AGL, Origin Energy and TRUenergy submitted that the reconciliation period should be increased from 9 to 12 months to better allow for seasonal variations. AGL nevertheless noted that the

Commission's proposal was inconsistent with the draft national framework, which provided for reconciliation after 6 months.

TRUenergy submitted that the Commission was incorrect to attempt to align the reconciliation timeframe for bill smoothing purposes with the undercharging recovery period. Reconciliation for bill smoothing does not equate to an error in the retailer's billing system. This means that at the 12 month (and final) reconciliation of the bill smoothing arrangement, the retailer should be able to recover an undercharged amount for 12 months (rather than the 9 months provided for when the undercharged amount occurs due to an error in a retailer's billing system).

CUAC and CALC strongly opposed the proposal, believing retailers' product development should not take priority over ensuring that consumers do not experience high and unexpected bills.

Origin Energy supported the proposal to allow variations in market contracts.

Discussion

The main reasons the Commission proposed an increase to the re-estimation period were:

1. In response to a submission from Simply Energy that the prescriptive regulation of bill smoothing is prohibiting them from offering this product to their customers in the competitive market, and
2. To achieve alignment with the undercharging recovery period.[17]

The Commission accepts TRUenergy's submission that the obligations governing undercharged amounts relating to a bill smoothing arrangement and that arising from a failure of a retailer's billing system are intended to achieve different outcomes. Therefore, the goal to achieve regulatory consistency is not appropriate in this instance as proposed in 2 above.

The Commission therefore has reconsidered Simply Energy's original submission to increase the reconciliation period from 6 to 12 months and notes that the initial bill smoothing arrangements may quite imprecise, to the extent that customers are significantly undercharged over a 12 month period. The Commission consequently accepts the consumer group's joint submission that if the re-estimation requirement was increased to 12 months, financial hardship may be experienced by customers when the undercharged amount is recovered.

Coupled with the fact that an initial reconciliation period at the end of 6 months is proposed in the draft national framework, the Commission now considers that the existing ERC obligation should be retained. However, the ERC will be amended to enable retailers to vary this requirement with agreement with the customer.

Final Decision

[17] For undercharged amounts which result from a failure of a retailer's billing system, attributable to the retailer.

The 6 month reconciliation threshold is retained for bill smoothing arrangements, but the obligation is included in Appendix 1, Variation by Agreement.

3.3.3 Undercharging (clause 6.2)

Draft Decision

The retailers may only recover up to 9 months for amounts undercharged if the reason for the undercharging is due to a fault in the retailers' billing systems. In all other circumstances, they may recover up to 12 months undercharged, unless the undercharging arises as a result of meter access being blocked, or unlawful action, by the customer. In these circumstances, there is no limitation to the amount able to be recovered.

Submissions

AGL, Origin Energy and TRUenergy considered that a 12 month undercharging recovery period should be permitted, regardless of whether the billing error is caused by the retailer or distributor. In addition, Origin Energy considered that this obligation should be able to be varied by agreement, as proposed in the draft national framework.

CUAC and CALC submitted that the proposed amendments could exacerbate customer hardship by increasing the bill recovery period a customer may be subject to. Further, the new requirement added complexity to the obligation, stating that it would be impossible for a customer to verify whether the billing system failed due to the retailer or distributor.

EWOV did not support the proposal to require retailers to only be responsible for their billing errors and that it would be a fairer outcome for customers if the retailers were required to recover undercharged amounts from distributors for their errors, noting that the regulatory arrangements would be difficult to put into place.[18]

Discussion

The Commission notes that the proposed national framework is for retailers to recover up to 12 months in all circumstances, but that no limitation should apply if the undercharging arises as a fault or unlawful action of the customer. However, the Commission does not consider that the submissions lead to different conclusions than the draft decision, that is:

- Retailers' capacity to recover undercharged amounts due to faults in either the retailers' or the distributors' systems or processes should continue to be restricted.
- The Commission notes that, whilst isolated incidents still occur, the 2004 regulatory decision to reduce the amount that can be recovered due a fault in the retailers' billing systems to 9 months should be retained. The

[18] EWOV also proposed a cross-referencing of two obligations in the ERC, which are drafting matters outside the scope of the Review. The Commission will discuss these issues separately with EWOV.

reduction to 9 months was to provide an added incentive for retailers to ensure their billing systems were efficient and accurate.[19]

However, the Commission now considers that the restriction on billing should only apply to faults in the retailers' systems, not where distributors have not provided relevant meter information to retailers. Retailers may recover up to 12 months in those circumstances.

- No limitations should apply if the undercharging arises as a result of meter access being blocked, or unlawful action, by the customer.

The Commission acknowledges EWOV's submission that a possible outcome is for the current obligations to remain, that is, for the retailers to be responsible for all billing errors, including those caused by the distributors. It would then be incumbent upon the retailer to recover relevant monies from the distributors. However, as also acknowledged by EWOV, these commercial arrangements are difficult to regulate. In the Commission's views, the focus should be regulatory obligations on the distributors to provide relevant and accurate data to the retailers and enforcement actions undertaken as necessary. It is also noted that EWOV can conciliate disputes and make determinations requiring distributors to compensate customers where appropriate.

Final Decision

Retailers may only recover up to 9 months for amounts undercharged if the reason for the undercharging is due to a fault in the retailers' billing systems. In all other circumstances, they may recover up to 12 months undercharged, unless the undercharging arises as a result of meter access being blocked, or unlawful action, by the customer.

3.3.4 Refundable advances –Business customers (8.2)

Draft Decision

If a security deposit is imposed on small business customers, the amount of the deposit must be fair and reasonable having regard to related costs incurred by the retailers.

Guidance to retailers on how fair and reasonable security deposits for small business customers may be assessed will be included in the Compliance Policy Statement.

Submissions

AGL did not support the proposed amendment on the basis that there should be no regulation for small business customers in this regard. Both EWOV and TRUenergy supported the proposal, although TRUenergy reserved its final position until it had the opportunity to consider the redrafted obligation.

Discussion

[19] ESC May 2004: *Final Decision, Gas and Electricity Retail Codes – Energy Retail Code.*

The Commission acknowledges that small businesses are required more regularly to negotiate commercial arrangements with a range of suppliers and that regulating for energy suppliers alone may be unnecessary. However, recognising that electricity is an essential service and small business customers may face similar financial stress to domestic customers, the Commission considers that some regulatory oversight on security deposits for small business customers should be retained.[20]

Final Decision

If a security deposit is imposed, the amount of the deposit must be fair and reasonable having regard to related costs incurred by the retailers. Guidance to retailers on how fair and reasonable security deposits for small business customers may be assessed will be included in the Compliance Policy Statement for Victorian Energy Businesses.

3.3.5 Variations requiring customer's agreement (clause 20)

Draft Decision

The obligation requiring a customer's agreement for variations in the tariff or any terms and conditions of an energy contract between a retailer and customer is amended to ensure that agreement is explicit and transparent.

Consumer Affairs Victoria has previously advised the Commission that agreement by the consumer through this clause is unfair if the agreement is provided in an obscure clause in the contract. CALC also submitted that the overall impact of the clause appears to be unfair to consumers.

Based on these submissions, the Commission's draft decision is that the obligation in the ERC be redrafted to ensure that customer's agreement with contractual variations must be explicit and transparent.

Submissions

AGL, TRUenergy and Origin Energy submitted that the current obligation was sufficient. However, any consideration of this matter should be deferred to stage 2 of the Review, on the basis that it is related to price disclosure and may be impacted by the Government's current legislative amendments. Australian Power & Gas did not consider the current obligations could lead to unfair contractual terms, particularly given that its practice is to ensure variation clauses are transparent in their contractual documents.

CUAC and CALC agreed in principle to a redrafted obligation, noting that all obligations must comply with the relevant provisions of the FTA. EWOV was

[20] The Commission notes that under the draft national framework, a similar approach to the existing Victorian regulation has been proposed. However, the approach to security deposits can be negotiated in market contracts.

concerned that the current obligation could be confusing to customers, and cited experience of customers where the actual contractual price is not what was originally quoted.

Discussion

The Commission considers that this contractual clause is not contingent on the price disclosure requirements, which relate to generally available offers. It is cognisant of Consumer Affairs Victoria's previous advice that agreement by consumers through the existing clause would be unfair if the agreement is provided in an obscure clause in the contract. Therefore, the Commission considers that the clause requires redrafting to ensure clarity and transparency.

Final Decision

The obligation in the ERC will be redrafted to ensure that customer's agreement with contractual variations must be explicit and transparent.

3.4 Code of Conduct for Marketing Retail Energy in Victoria

Draft Decision

The MCC sets out the pre-contractual rights and obligations of retailers and consumers and duplicates significant sections of the FTA.

In the draft decision, the Commission concluded that there is still a need for some level of energy-specific market conduct regulation, specifically relating to training and product knowledge, the maintenance of no contact lists for door-to-door marketing and the information required for explicit informed consent.[21]

However, the Commission proposed to:

- repeal sections of the MCC that directly duplicate the FTA or are no longer considered necessary in the Victorian energy market and
- rationalise the consent and cooling-off provisions.

Submissions

EWOV, CUAC and CALC generally supported the retention of the MCC on the basis that there continues to be a need for energy-specific marketing conduct regulation. CUAC and CALC however were concerned to review the redrafted Code.

Conversely, AGL and TRUenergy submitted that there is no justification at all for energy-specific regulation in this area.

Other submissions raised the following specific matters.

[21] It is noted that the national framework proposes to include these obligations in the national rules.

a. Telephone contact (clause 5.3)

Clause 5.3 sets out what marketing representatives must do when they are conducting negotiations with a consumer on the telephone.

The Commission proposed to retain those obligations which provide a higher level of protection than the FTA, but repeal the following obligations:

- the immediate cessation of contract negotiations at the request of the customer as well as prohibiting the retailer to contact the customer for 30 days afterwards for the purpose of contract negotiations because these provisions duplicate 67B of the FTA.
- marketing representative at the earliest opportunity to provide the retailer's telephone number for enquiries, verification and complaints because this was considered normal business practice. The code also prescribes staffing requirements for the telephone number.

EWOV, CUAC and CALC expressed concern that repealing the obligation for the marketing representative to provide the retailer's telephone number was not supported by evidence that normal business practice would ensure that this information was provided. EWOV also cited a small number of complaints where the customers could not successfully contact the retailers.

TRUenergy considered that all the requirements were unnecessarily prescriptive in the light of the prohibitions in the FTA and *Trade Practices Act 1974* (Cth.) (TPA).

b. Conduct (clause 6.2)

Clause 6.2 sets out specific behaviours which retailers must manifest in the market (for example, not engage in misleading or deceptive conduct and ensure that all relevant information is disclosed). The Commission proposed to repeal this clause on the basis that it duplicated obligations in the FTA and retail licences.

EWOV considered that, while it understood the Commission's rationale, the obligations represent good marketing practice and duplication in the MCC would focus retailers' compliance.

CUAC and CALC disagreed with the proposal, noting that it is proposed to retain a similar clause in the draft national framework

c. Sales to minors and 'authorised consumers' (clause 7.4)

This clause places the onus on retailers to ensure that the consumer who enters into the contract is authorised to do so. The Commission proposed to repeal this clause and place it in the Compliance Policy Statement, because it provides guidance on how retailer compliance would be assessed if necessary.

CUAC, CALC and EWOV strongly opposed the repeal of this clause because in their view, it places an obligation on retailers to take reasonable steps to conduct a

transaction with an authorised customer and sets retailer responsibility for transactions with minors.[22]

Discussion

The Commission retains the view that there is significant duplication in the energy-specific marketing conduct regulation, which is now unnecessary. However, it does agree with the consumer and EWOV submissions that there are elements of the MCC which facilitate good marketing behaviour in the Victorian energy market and there is not sufficient evidence that this behaviour will continue if the obligations are removed. The Commission also notes that, while the incidence of marketing complaints is very low compared to marketing activity, reported marketing issues increased by 52 per cent from 2005-06 to 2006-07[23] and EWOV continues to report increased marketing complaints to its scheme.[24]

Consequently, the MCC will be retained as a Victorian regulatory instrument.

Based on the submissions, the following is also decided:

a. Telephone contact. The Commission notes that the draft national framework proposes that all marketers provide the customer with *"the name of the retailer on whose behalf the marketing contact is being made and contact details for the retailer."* In the Commission's view, this ensures that customers are provided with a contact point, whilst at the same time removing some of the prescription in the current provisions.

b. Conduct. The Commission notes that the draft national framework proposes a simplified clause to the existing Victorian regulation, outlining the retailers' obligations with respect to marketing conduct.

> *Marketers must, and retailers must ensure that marketers, comply with all applicable Commonwealth and State and Territory laws in relation to:*
>
> *(a) misleading, deceptive or unconscionable conduct;*
>
> *(b) undue pressure, harassment or coercion; and*
>
> *(c) the quality, form and content of marketing information.*
>
> *Marketers must have, and retailers must ensure that marketers have, adequate product knowledge. Adequate product knowledge covers knowledge of matters such as tariffs, billing procedures and the availability of rebates and concessions.*

This clause duplicates existing consumer law. However, given the submissions from EWOV and the consumer groups and the fact that the obligation is proposed

[22] The Commission recognises that a minor may between 16-18 years who is living independently and requiring energy supply.

[23] ESC, 2007, *Energy Retail Business: Comparative Performance Report 2006-07,* p.viii.

[24] Energy and Water Ombudsman (Victoria), Resolution, Issue number 26, September 2008

to be included in the national framework, the Commission will retain the obligation in the MCC. The proposed national framework draft will be adopted.

c. Sales to minors and 'authorised consumers'

The Commission accepts EWOV and the consumer groups' submissions that the existing provision places obligations on retailers in regard to sales to authorised persons. The obligation will therefore be retained.

Final Decision

The Code of Conduct for Marketing Retail Energy in Victoria is retained and that the clauses as set out in the draft decision are repealed with the following exceptions:

- existing clause 5.3 (telephone contact) and clause 6.2 (conduct) are redrafted to reflect the draft national framework obligations
- existing clause 7.4 (sales to minors and "authorised customers") will be retained

3.5 Electricity Customer Metering Code

Draft decision

The ECMC regulates standards of metering for the sale of electricity to customers that were not specified in the National Electricity Rules (NER) or the National Electricity Market Metrology Procedure (NEM Metrology Procedure) published by the National Electricity Market Management Company (NEMMCO).

The Commission proposed to remove from the ECMC technical and market issues that are contained in the NER and the NEM Metrology Procedure and to restructure the ECMC to combine the metering installation requirements for the first and second tier customers.

The Commission also proposed to amend the existing ECMC clause for the testing of franchised unmetered loads to require distributors to conduct tests in accordance with clauses 3.10 of the Metrology Procedure.

Submissions

Origin Energy supported the proposed approach.

However, the distributors submitted that their existing practice for handling franchise unmetered supplies be allowed to continue until the National Metrology Procedure provides direction on this matter, because:

- this type of loads are not covered by the NEM Metrology Procedure
- inventory and load tables for this type of loads have not been developed
- current practices differ from those specified in the Metrology Procedure for other unmetered loads, such as public lighting.

Discussion

The Commission considers that the testing of all unmetered loads, including franchise unmetered loads, should follow the requirements of the NEM Metrology Procedure as much as possible. However, in recognition that distributors may have some difficulties in achieving this, the proposed draft decision allowed for other testing methods. The Commission is not aware of substantive problems regarding testing of franchise unmetered loads since privatisation in 1994. Hence, the Commission considers that the draft decision is appropriate.

Nevertheless, in response to the concerns raised by distributors, an explanatory note will be added. That is, where distribution businesses are unable to test in accordance with the NEM Metrology Procedures, it is expected that they would approach the Commission to seek approval for alternative methods that would produce a fair and reasonable outcome.

Final decision

The ECMC is amended to remove duplication and achieve national consistency. The Commission will also add an explanatory note in relation to franchise unmetered loads.

3.6 Guidelines No. 1& 4: Gas and Electricity Credit Assessment Guidelines

Draft Decision

That the Gas and Electricity Credit Assessment Guidelines be repealed.

These guidelines define the circumstances under which a retailer may require a refundable advance. They prohibit the consideration of non-utility related debt for the purposes of requiring a refundable advance and provide the minimum amount of outstanding debt that must apply for credit reporting or disconnection purposes.

The Commission proposed to repeal the guidelines, but retain in the ERC any clauses which regulate the businesses, including circumstances in which a retailer may not require a refundable advance.

Submissions

Submissions to the draft decision supported the repeal of the guidelines. However, some stakeholders commented on the proposed regulation to be retained in the ERC.

a. Information to a credit default agency

The existing guideline prescribes when a retailer must not provide information to a credit reporting agency about a customer with a relevant default. The Commission proposed to repeal this obligation because there is duplication between this regulation and the *Privacy Act 1988* (Cth.) (Privacy Act).

CUAC and CALC strongly objected to this proposal, citing that the energy-specific regulation had higher standards than the Privacy Act. For example, they

considered that this general consumer law does not prevent retailers from reporting defaults in circumstances where the customer has made a complaint about the bill, an instalment plan has been agreed upon or the customer has applied for a Utility Relief Grant. CUAC and CALC considered that these are important consumer protections, asserting that customers should be able to query a bill or access hardship assistance measures without the threat of being registered with a credit reporting agency.

The Commission notes that the CUAC and CALC concerns apply to existing customers of the retailers and, given their circumstances, customers experiencing some financial difficulties. There may be circumstances in which these customers may be treated harshly by the retailers, but hardship regulation and the competitive market should mitigate this behaviour. The Commission therefore does not consider that it is necessary for the energy regulator to set higher standards than the privacy regulator in this regard, noting that the telecommunications and water sectors are not subject to industry-specific privacy regulation. The draft national framework also does not propose any regulation in this area. Nevertheless, complaints will continue to be monitored to determine whether the consumer groups' concerns are realised.

b. Minimum disconnection amount

Draft Decision

That the threshold amount below which a customer cannot be disconnected is increased to $120 and published in the ERC.

A confidential version of the guidelines provides that a retailer must not disconnect a customer for non-payment of a bill where the amount payable is less than the approved amount in the Credit Assessment Guidelines. The current amount is $100.

The draft decision was that this clause duplicated a provision in the ERC and should be repealed. However, the Commission proposed that the threshold amount should be increased to $120 to achieve consistency with the water utilities and published in the ERC.

Submission

Australian Power & Gas strongly opposed the publication of the disconnection threshold amount asserting the information would not add to the protection nor serve the interests of small consumers and will only serve to undermine retailers' credit management.

Discussion

The threshold amount has been published for some time by the water utilities in the *Water Customer Service Code for Metropolitan and Regional Water Businesses*. The Commission is not aware that this publication has impacted negatively on the water businesses' credit management processes. Further, the amount is small in

the context of average bills and therefore, it is unlikely that most customers would or could exploit the information.[25]

Final Decision

The minimum debt amount before disconnection of supply is increased to $120 and published in the Energy Retail Code.

3.7 Guideline No 10: Confidentiality and Explicit Informed Consent Guideline

Draft decision

That the Confidentiality and Explicit Informed Consent Guideline, which regulates the use and disclosure of customer information and explicit informed consent for contracts for the Victorian energy market, is repealed.

Relevant regulation on informed consent will be retained and placed in the MCC of Conduct. Information which may be helpful to consumers and retailers, for example, the operation of the Privacy Act in regard to the use and disclosure of information, will be provided on the Commission's website as fact sheets.

Submissions

AGL and Origin Energy supported the overall approach. EWOV noted the repeal of the energy-specific regulation for small business customers and considered the fact sheets published on the website will be an important substitute for regulation.

Final decision

The Confidentiality and Explicit Informed Consent Guideline is repealed. However, the guideline's explicit informed consent provisions have been retained in the MCC.

3.8 Guideline No.12: Metering Reversion and Contract Termination

Draft decision

That the Metering Reversion and Contract Termination Guideline, which applied from the period January 2002 to 1 July 2002, be repealed.

Discussion

There were no stakeholder submissions received.

Final Decision

[25] The average quarterly bill of a residential customer based on 4000 kWh peak consumption (low consumption) was estimated to be $185 in 2006-07. Source: Energy Retail Businesses Comparative Performance Report for the 2006-07 Financial Year, ESC.

The Metering Reversion and Contract Termination Guideline is repealed

3.9 Guideline No 20: Bulk Hot Water Charging

Draft Decision

That Guideline No 20: Bulk Hot Water Charging Guideline, which specifies the requirements for energy retailers charging for the delivery of electric bulk hot water or gas bulk hot water to customers from gas or electrical distribution systems, is repealed.

The guideline prescribes the formulas which must be used by retailers to calculate the energy used by customers consuming bulk hot water. The Commission proposed to repeal this guideline because the responsibility for setting the formula was transferred to the Department of Primary Industries (DPI) in 2008. The remaining obligations, which include how retailers should detail bulk hot water charges on bills, would be retained in the ERC.

Submissions

AGL, Origin Energy and EWOV supported the proposal. Mrs Kingston provided a long submission, primarily on policy matters.[26] However, in relation to the regulation, Mrs Kingston submitted that information on the bills for bulk hot water should include additional information, such as the frequency of meter reads and how water volume consumption is calculated.

Discussion

Since the publication of the draft decision, the Commission has been advised that there is no legislative mechanism that the DPI can use to publish the bulk hot water pricing formulas at this time. Therefore, to ensure that the obligations for bulk hot water charging are transparent, it has been agreed that the information will continue to be published by the Commission in its regulatory instruments (the ERC). The Commission and the Department of Primary Industries will review this issue in 2009.

The Commission considers that the information proposed by Mrs Kingston is already required on relevant customers' bills. However, it is understood that this may not be clear in the drafting. Therefore, further submissions will be sought on the drafting and this proposal reconsidered, if necessary.

Final Decision

The ERC will be amended to incorporate the bulk hot water information to be included on the bill, and the publication of the pricing formula.

[26] Mrs Kingston 2008, *ESC Review of Regulatory Instruments – Draft Decision – August 2008,* p.6.

3.10 Operating Procedure: Compensation for Wrongful Disconnection

Draft Decision

That the Operating Procedure: Compensation for Wrongful Disconnection (Operating Procedure) is repealed, but key provisions are retained in the Compliance Policy Statement and the ERC.

The Operating Procedure was issued to provide clarity to retailers and customers regarding their legislative and regulatory rights and obligations in relation to compensation for wrongful disconnection. The procedure set out the process for dealing with disputes and to provide guidance where the obligation in the ERC was ambiguous or unclear.

Submissions

AGL, Origin Energy and TRUenergy supported the repeal of the Operating Procedure, but raised concerns about incorporating regulatory guidance in the Compliance Policy Statement. Origin Energy posited that the policy statement *"appears to be a new regulatory instrument that may not achieve the previously understood benefits of removing procedures and guidelines"*.[27] TRUenergy considered that further clarity was required to ensure that wrongful disconnection compensation cases are assessed for compliance against the requirements of the ERC rather than the provisions of the Compliance Policy Statement. AGL submitted that there is a *"need for there to be a degree of flexibility in the way in which the information contained in the Compliance Statement is interpreted and used by relevant stakeholders".*[28]

EWOV supported providing guidance through the Compliance Policy Statement as *"we find it [the guidance] invaluable in our detailed consideration of cases that may involve a wrongful disconnection payment."*[29]

Discussion

The legislative requirement for retailers to compensate customers for wrongful disconnection arises from retailers breaching their contracts with small customers. The regulation setting out these contractual terms and conditions is found in the ERC. The information previously provided in the Operating Procedure and to be now contained in the Compliance Policy Statement is to provide guidance only as to how this regulation may be interpreted in the case of a complaint or dispute, depending on the circumstances of the case. This approach to providing guidance to the industry as to how compliance may be assessed is in accordance with good regulatory practice.

Final Decision

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[27] Origin Energy 2008, *Review of Regulatory Instruments – Stage 1 Draft Decision*, p 1

[28] AGL, op cit, p.2.

[29] EWOV 2008, *Review of Energy Regulatory Instruments – Stage 1:Draft Decision (August 2008),*, p 10

The Operating Procedure: Compensation for Wrongful Disconnection will be repealed. Any necessary regulation will be placed in the Energy Retail Code and guidance as to how compliance may be assessed, depending on the circumstances of the case, will be incorporated in the Compliance Policy Statement for Victorian Energy Businesses.

4 NEXT STEPS

Consultation will be undertaken on the drafting of the amended codes during October. The final revised codes will be published by 30 November and will take effect from 1 January 2009.

Stage 2 of this review commenced in October 2008 and is scheduled to be completed in March 2009. Stage 2 will address:

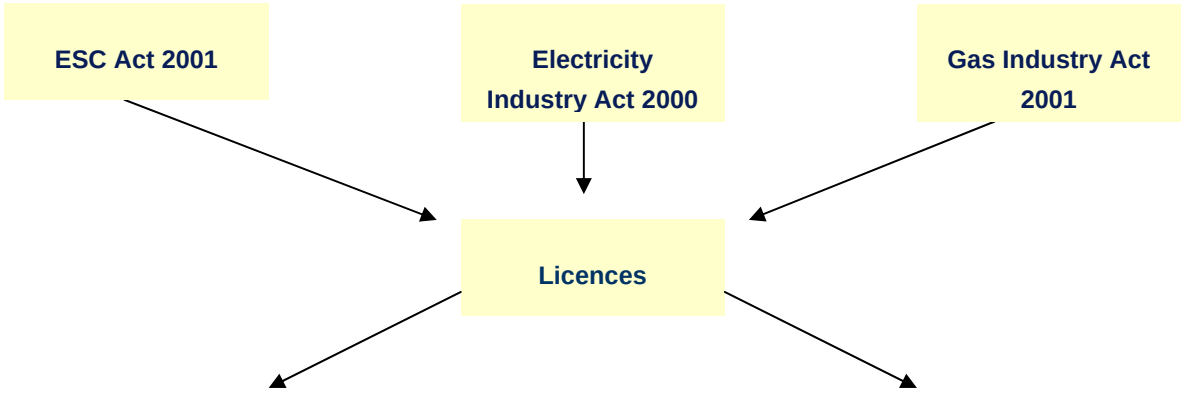
- Guideline No 19: Price Disclosure, specifically to take account of the Victorian Government's relevant amendments to the *Electricity Industry Act 2000* and the *Gas Industry Act 2001*.
- Interval metering billing, particularly to address the relevant ERC requirement to provide relevant information on a customer's bill to enable the customer to reconcile their billing periods.
- Electricity Customer Transfer Code, to remove duplication with the national customer transfer procedures
- Electricity System Code, which will be repealed.

Stakeholders will be separately consulted on the Stage 2 review timetable and process.

APPENDIX A

Review of Victorian Energy Regulatory Instruments

Stage 1 – August 2008 – Current Framework



Retail:
•Retail Code
•Customer Transfer Code
•Marketing Code of Conduct

Distribution:
•Distribution Code
•Customer Metering Code
•Public Lighting Code

Generation/Transmission
•System Code

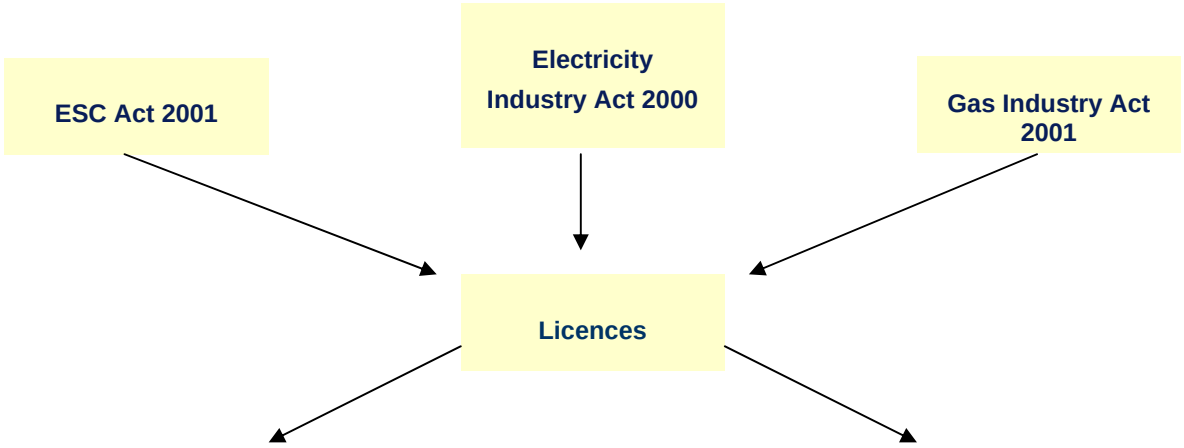
Retail:
•Guideline No 1: Gas Industry - Credit Assessment
•Guideline No 4: Electricity Industry – Credit Assessment
•Guideline No 8: Gas Industry – Operational and Compliance Audits
•Guideline No 9: Electricity Industry – Regulatory Audits of Retail Businesses
•Guideline No 10: Confidentiality & Explicit Informed Consent – Electricity & Gas
•Guideline No 13: Greenhouse Gas Disclosure on bills
•Guideline No 19: Energy Product Disclosure
•Guideline No 20: Bulk Hot Water Charging
•Guideline No 21: Energy Financial Hardship Policies Wrongful Disconnection Operating Procedure

Distribution:
•Guideline No 15: Electricity Industry – Connection of Embedded Generation
•Guideline No 18: Electricity Industry – Augmentation and Land Access
•Guideline No 17: Gas Industry – Regulatory Accounting Information Requirements
•Guideline No 14: Electricity Industry – Provision of Services by Electrical Distributors
•Guideline No 16: Energy Industry – Regulatory Audits of Distribution Businesses
•Guideline No 11: Voltage Variation Compensation
•Guideline No 12: Metering Reversion & Contract

APPENDIX A

Review of Victorian Energy Regulatory Instruments

Stage 1 – August 2008 – New Framework



Retail:
•Retail Code
•Customer Transfer Code
•Marketing Code of Conduct

Distribution:
•Distribution Code
•Customer Metering Code
•Public Lighting Code

Generation/Transmission:
•System Code

Retail:
•Guideline No 8: Energy Industry – Operational and Compliance Audits
•Guideline No 13: Greenhouse Gas Disclosure on bills
•Guideline No 19: Energy Product Disclosure
•Guideline No 21: Energy Financial Hardship Policies

Distribution:
•Guideline No 15: Electricity Industry – Connection of Embedded Generation
•Guideline No 18: Electricity Industry – Augmentation and Land Access
•Guideline No 17: Gas Industry – Regulatory Accounting Information Requirements
•Guideline No 14: Electricity Industry – Provision of Services by Electrical Distributors
•Guideline No 16: Energy Industry – Regulatory Audits of Distribution Businesses
•Guideline No 11: Voltage Variation Compensation
•Guideline No 12: Metering Reversion & Contract

APPENDIX B

ENERGY RETAIL CODE			
Existing Obligations	**Draft Decision**	**Submissions**	**Final Decision**
2. Retailer's obligation to connect A retailer must connect a customer at the customer's supply address as soon as practicable after the customer applies for connection in accordance with clause 1. Without limiting clause 36.1, by no later than the next business day after the application is made or their energy contract commences to be effective (whichever occurs last), the retailer must make a request to the relevant distributor to connect the customer's supply address to the distributor's distribution system.	**Retain with minor redrafting**. The Commission clarify that the obligation to connect only applies if the retailer has agreed to offer a market contract or the obligation to supply applies. That is "If a retailer has an obligation to connect…'.	**EWOV** It is not straightforward for a community worker or layperson to work out which retailer is subject to an obligation to connect. It might assist if 'obligation to connect' were made a defined term so that this information could be made available in the *Energy Retail Code*.	**Draft decision confirmed as the final decision.** The Commission understands EWOV's proposal. However, there is still some lack of clarity with respect to how customers will locate their financially responsible retailer. It may be more useful for a fact sheet to be posted on the website once this clarity is provided.
3.1 Retailer to issue bills A retailer must issue bills to a customer for energy consumed at the customer's supply address. .A retailer must issue a bill to a customer:* (a) in the case of an electricity contract, at least every three months; * (b) in the case of a gas contract, at least every two months; and(c) in the case of a dual fuel contract, at least as often as the retailer and the customer have agreed. That agreement is not 3.2 Billing cycles	**Collapse clauses 3.1 and 3.2.** That is, "A retailer must issue a bill to a customer for energy consumed at the customer's supply address…"	EWOV Agrees with proposed change	**Draft decision confirmed as the final decision.**

ENERGY RETAIL CODE

Existing Obligations		Draft Decision	Submissions	Final Decision
	effective unless the customer gives explicit informed consent.			
3.3 Bulk Hot Water charging	A retailer must issue bills to a customer for the charging of the energy used in the delivery of bulk hot water in accordance with the Commission's Energy Industry Guideline No 20 – Bulk Hot Water Charging.	**Retain and redraft to reflect repeal of Guideline No.20.** This clause deals with billing, not pricing.	**TRUenergy** Clause 3.3 is a duplication of Clause 2.3 of *Guideline No. 20: Bulk Hot Water Charging*. As the ESC is proposing to move clause 2.3 of Guideline 20 into the Retail Code, clause 3.3 of the Code can be repealed	**The Commission will retain responsibility for the pricing formula for Bulk Hot Water Charging. The pricing formula will be attached as an appendix to the ERC. Clause 3.3 will be appropriately amended.**
4.2 Information	A retailer must include at least the following information in a customer's bill: ▪ the customer's name and account number, each relevant supply address and any relevant mailing address; ▪ each relevant assigned meter identifier and checksum or, if any case there is no assigned meter identifier, the customer's meter number or another unique identifying mark assigned to the customer's metering installation; ▪ the period covered by the bill; ▪ the relevant tariff or tariffs applicable to the customer; ▪ whether the bill is based on a meter reading or is wholly an	**Retain and amend clause 4.2(o). Refer consideration of clause 4.2(h) to stage 2 of the Review.** All the existing Victorian obligations for information on the bill (with the exception of 4.2(h)) are included in the proposed draft national framework. Therefore, no changes will be made to the existing obligations, with the following exceptions: 4.2(h) – this obligation applies to customers with interval meters. This will	See discussion under section 3.3.1 in Final Decision paper	**The Commission will require retailers to amend their bills to include the following statement alongside the faults and emergencies number:** **"On electricity bills** **To report faults or emergencies, call your local distributor on …"** **"On gas bills** **To report leaks or emergencies, call you local distributor on…"** **The Commission supports that the retailers should only be required to include this additional information when other bill changes are being implemented. Consequently all retailers will be required to advise the Commission**

estimated bill; ▪ whether the bill is based on any substituted data (consistent with the retailer's obligations under clauses 17.2 and 23.2 of the Electricity Customer Metering Code); ▪ the total amount of electricity (in kWh) or of gas (in MJ) or of both consumed in each period or class of period in respect of which a relevant tariff applies to the customer and, if a customer's meter measures and records consumption data only on an accumulation basis, the dates and total amounts of the immediately previous and current meter readings, estimates or substitutes; ▪ if the retailer elects to include meter readings or accumulated energy usage from an interval meter on the bill, the meter readings or accumulated energy usage based on quantities read or collected from the corresponding meter accumulation register(s); ▪ if the retailer directly passes through a network charge to the customer, the separate amount of the network charge; ▪ for an electricity contract the	be addressed in stage 2 of the Review. 4.2(o) -The Commission proposes to amend clause 4.2(o) to require retailers to include the distributors' names on bills		**of their intended date of implementation of the new requirement, once the date of the new regulation comes into effect.**

	amount payable for electricity and for a gas contract the amount payable for gas; ▪ the pay by date; ▪ the amount of arrears or credit and the amount of any refundable advance provided by the customer; ▪ *a summary of payment methods and payment arrangement options; ▪ if the customer is a domestic customer, details of the availability of concessions; ▪ a telephone number for billing and payment enquiries and a 24 hour contact telephone number for faults and emergencies; ▪ if the customer is a domestic customer, in relevant languages, details of interpreter services; and ▪ if the bill is a reminder notice, contact details for the retailer's complaint handling processes.			
4.3 Bundled charges	On request, a retailer must provide a customer with reasonable information on network charges, retail charges and any other charges relating to the sale or supply of energy comprised in the amount payable under the customer's	**Retain.** The Commission will retain this obligation in light of proposed national	**EWOV** It is sensible to retain this clause in the light of the proposed national framework.	**The draft decision is confirmed as the final decision.** The Commission will retain this obligation in light of proposed national framework.

ENERGY RETAIL CODE

Existing Obligations		Draft Decision	Submissions	Final Decision
	bill.	framework.		
4.5 Payments for electricity and gas	A retailer must apply a payment received from a customer to charges for the supply or sale of electricity and charges for the supply or sale of gas respectively as directed by the customer. If the customer gives no direction, the retailer must apply the payment in proportion to the relative value of those charges	**Repeal for small business customers.**	**AGL** AGL supports the draft decision on the basis that small businesses do not require this level of industry specific consumer protection. **EWOV** EWOV does not anticipate adverse consequences from repealing this clause for small business customers.	**The draft decision is confirmed as the final decision.**
4.6 Payments for other goods or services	If beyond the supply or sale of energy, a retailer supplies other goods or services to a customer, the retailer may bill for those other goods or services separately. If the retailer chooses not to bill separately, the retailer must: (a) include the charge for the other goods or services as a separate item in its bill, together with a description of the other goods or services supplied; and (b) apply payments received from the customer as directed by the customer or, if the customer gives no direction, apply the payment to the charges for the	**Repeal for small business customers.**	**AGL** As above. Furthermore, this type of issue need not be regulated between two commercial entities that should be able to negotiate their own arrangements. **EWOV** EWOV accepts the removal of small business customers from the coverage of this clause – so long as the fourth dot point of clause 14(a) is to be retained.	**The draft decision is confirmed as the final decision.** Clause 4.6 is repealed for small business customers.

Existing Obligations		Draft Decision	Submissions	Final Decision
	supply or sale of energy before applying any part of it to the other goods or services.			
5.3 Bill smoothing	Despite clause 5.1, in respect of any 12 month period a retailer may provide a customer with estimated bills under a bill smoothing arrangement if and only if: (a) the following requirements are met: • the amount payable under each bill is initially the same and is set on the basis of the retailer's initial estimate of the amount of energy the customer will consume over the 12 month period; • that initial estimate is based on the customer's historical billing data or, where the retailer does not have that data, average consumption at the relevant tariff calculated over the 12 month period; • in the sixth month: o the retailer re-estimates the amount of energy the customer will consume over the 12 month period, taking into account any meter readings and relevant	**Retain and simplify and enable variations for market contracts (*).** The reconciliation period will be 9 months to be consistent with the existing obligation for retailers only be able to recover up to 9 months if undercharging is due to a retailer's error (refer to clause 6.2).	See discussion in section 3.3.2 of Final Decision paper	**The 6 month reconciliation threshold is retained for bill smoothing arrangements, but the obligation is included in Appendix 1, Variation by Agreement.** **.**

Existing Obligations	Draft Decision	Submissions	Final Decision
seasonal factors; and o ***if there is a difference between the initial estimate and the re-estimate of greater than 10%, the amount payable under each of the remaining bills in the 12 month period is to be re-set to reflect that difference; and*** • ***at the end of the 12 month period, the meter is read and any undercharging or overcharging is adjusted for under clause 6.2 or 6.3; and*** (b) the retailer has obtained the customer's explicit informed consent to the retailer billing on that basis.			
5.6 Unmetered supplies for electricity Despite clause 5.1, if there is no electricity meter in respect of the customer's supply address, the retailer must base the customer's bill on energy data which is calculated in accordance with applicable regulatory instruments.	**Retain and amend in accordance with the proposed amendments to the ECMC.**	**EWOV** EWOV agrees with the decision of the ESC to retain the application of this clause to small business customers. Residential customers are unlikely to have unmetered supplies so it would not make much sense to exclude small business customers from the clause.	**The draft decision is confirmed as the final decision.**

ENERGY RETAIL CODE

Existing Obligations		Draft Decision	Submissions	Final Decision
6.2 Undercharging	If a retailer has undercharged or not charged a customer, whether this becomes evident as a result of a review under clause 6.1 or otherwise, the retailer may recover the amount undercharged from the customer but, in doing so, the retailer must: (a) limit the amount to be recovered as follows: • if the undercharging results from a failure of the retailer's billing systems, the retailer may recover no more than the amount undercharged in the 9 months prior to the date on which the retailer notifies the customer that undercharging has occurred. To avoid doubt, a retailer's billing	**Retain and redraft to reflect more directly the proposed national approach.** • retain the 9 months obligation if the reason for the undercharging is directly related to the retailers' billing problems • apply a 12 month limitation for all other reasons • provide that no limitation applies, if the undercharging arises as a result of meter access being blocked, or unlawful action, by the customer.	See discussion in section 3.3.3. in the Final Decision	**The draft decision is confirmed as the final decision.** **Retailers may only recover up to 9 months for amounts undercharged if the reason for the undercharging is due to a fault in the retailers' billing systems. In all other circumstances, they may recover up to 12 months undercharged, unless the undercharging arises as a result of meter access being blocked, or unlawful action, by the customer.**

system fails if the retailer does not receive relevant billing data from a distributor, no matter whether it is the retailer or the distributor at fault in respect of that failure; and • otherwise, the retailer may recover no more than the amount undercharged in the 12 months prior to that date. To the extent necessary, the amount undercharged is to be calculated in proportion to relevant periods between dates on which the customer's meter has been read; o list the amount to be recovered as a separate item in a special bill or in the			

Existing Obligations		Draft Decision	Submissions	Final Decision
	customer's next bill together with an explanation of the amount; o not charge the customer interest on the amount undercharged; and o offer the customer time to pay the amount undercharged in a payment arrangement covering a period at least equal to the period over which the recoverable undercharging occurred.			
6.3 Overcharging	Where a retailer has overcharged a customer, whether this becomes evident as a result of a review under clause 6.1 or otherwise, the retailer must inform the customer within 10 business days of the retailer becoming aware of the error and repay the amount in accordance with the customer's reasonable instructions or, if no reasonable instructions are given, by crediting the amount on the customer's next bill.	**Retain and redraft to reflect more directly the proposed national approach.** "A retailer must promptly inform the customer within 10 business days of becoming aware of an overcharge that exceeds the relevant threshold amount and must repay any amount overcharged. If the amount overcharged is less than the threshold amount, the retailer must	**AGL** As retailers usually only become aware of overcharging at billing time, AGL believes that it would be more appropriate for a retailer to credit and notify the customer of the overcharge on their next bill. For those customers whose credit is over the threshold amount they could still be given the right to contact their retailer to ask for the credit to be reimbursed. **Australian Power & Gas** Australian Power & Gas supports the move to introduce a threshold to inform customers of overcharging within 10 business days. However, Australian Power & Gas would be	**The draft decision is confirmed as the final decision.** The amendment requires the retailer to only inform the customer within 10 business days, when the overcharged amount is over the threshold amount. Given that $50 can be significant for some customers, it is considered that this obligation should remain. Further, the Commission is of the view that amounts greater than $50 can be of significance to low income customers. At this time, consistency will the national regulation will be promoted.

Existing Obligations		Draft Decision	Submissions	Final Decision
		credit that amount to the next bill. If the amount overcharged exceeds the relevant threshold, the retailer must credit the customer's next bill unless otherwise directed by the customer." The proposed threshold amount is $50.	supportive of a threshold of $75 as being reasonable to suggest the customer may want action other than a credit on the next bill. In the case of where the threshold has been exceeded, we believe the regulation should also stipulate that if no direction has been received from the customer within 10 business days of the notice of overcharge, the retailer will credit the overcharge to the customer's account. **EWOV** The proposed approach whereby amounts overcharged below a threshold will be automatically credited to the customer's account is sensible. **Origin Energy** Origin supports the intent to align with the NECF and amend clause 6.3 of the ERC…	
7.2 (b) Payment methods (Direct Debit)	Clause 7.2 (b) prescribes key terms which the customer and retailer must agree on in writing before a direct debit arrangement is established.	**Repeal the regulation to require direct debit arrangements in writing.** The obligation will be	**AGL** AGL supports the draft decision. While enabling direct debits arrangements to be made over the phone provides greater flexibility for	**The draft decision is confirmed as the final decision.** The changes proposed do not lessen customer protection standards,

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Existing Obligations		Draft Decision	Submissions	Final Decision
		amended to enable direct debit arrangements by phone, rather than just in writing, which provides considerably more flexibility to the retailers. The obligations which are consistent with the proposed national framework will be retained.	retailers, it is also of benefit to customers. **CUAC & CALC** Originally supported the proposal when initially proposed by the ESC in March 2007. Subsequently, we have a number of concerns with the way direct debit agreements are used by retailers, including lack of informed consent and broad terms and conditions. We consider that a compliance review should be undertaken prior to amendments being put into place **EWOV** EWOV could see reason to support the proposal given appropriate safeguards. We believe that energy retailers should send written confirmation of the arrangement made. There is also merit in the phone calls being recorded, both to verify consent and to help resolve any subsequent disputes.	rather, provide customers and retailers with another avenue in which to enter a direct debit arrangement. Further, it provides an alignment with industry standards, such as the Bulk Electronic Clearing System Procedures. However, the drafting requires the customer's explicit informed consent to be given, and the retailer to follow up with written advice. The compliance review will also be placed on the audit and compliance program for 2009.
7.4 Late Payment Fees	Clause 7.4 details when a retailer may charge or waive a late payment fee for a customer.	**Repeal redundant regulation** Clauses 7.4(b) – (d) proscribe the imposition of late payment fees by	**AGL** Supports the draft decision. **EWOV** EWOV is uncertain as to which sub-clauses of this clause are considered to be redundant. The text in Appendix	**The draft decision is confirmed as the final decision.** The intent of clauses 7.4 (b) to (d) is to provide protections to small retail customers. The Commission is of the view that small business

Existing Obligations		Draft Decision	Submissions	Final Decision
		retailers under certain circumstances. The Victorian Government legislated that late payment fees cannot be imposed on small retail customers, which are the customers the regulation was intended to protect. Therefore, the regulation is largely redundant. However, where late payment fees are allowed to be imposed, the requirement for fair and reasonable fees will be retained. Retain obligation that: 7.4. The amount of any late payment fee must be fair and reasonable having regard to related costs incurred by the retailer	B suggests that 7.4(b), &.4(c) and &.4(d) are all considered redundant. EWOV considers that in particular 7.4(c) contains some valuable protections which could be of significant value to customers other than small retail customers, both residential and small business. EWOV agrees that 7.4(e), establishing that late payment fees should be fair and reasonable, must be retained. **TRUenergy** TRUenergy supports the proposal. Further, we recommend that the ESC re-draft clause 7.4(a) to achieve consistency with the national framework proposal. Clause 7.4(a) should state: *"A retailer must not impose a late payment fee on any customer unless the retailer publishes a late payment fee with the standing offer tariff. Where a customer is a hardship customer (whether that customer is taking supply under a standard or market retail contract) a retailer must waive late payment fees."*	customers have different characteristics to small retail customers and therefore demand a different level of protection. In the case of clause 7.4, the Commission, believes small businesses do not require energy-specific regulation beyond the extent that any late payment fee imposed is fair and reasonable. The Commission notes that late payment fees statutorily cannot be imposed on customers <20MWh/pa. Therefore, whilst TRUenergy's proposal may have merit, it is not currently in accordance with the Victorian legislative framework.
7.5 Fees and charges for	(a) If a customer pays the retailer's bill and through fault of the customer the	**Repeal for small**	**AGL** AGL supports the draft decision given	**The draft decision is confirmed as the final decision.**

Existing Obligations		Draft Decision	Submissions	Final Decision
dishonoured payments and merchant service fees	payment is dishonoured or reversed, resulting in the retailer incurring a fee, the retailer may recover the fee from the customer. An amount may also be payable by the customer under an agreed damages term. (b) If a customer pays the retailer's bill using a method which results in the retailer incurring a merchant service fee, the retailer may only recover the amount of that fee from the customer if their energy contract is a market contract.	**business customers.**	the commercial nature of the arrangement between retailers and small businesses. **EWOV** EWOV notes the effect of repealing this 7.5(a) for small business customers may be that they incur fees even when the mistake has not been theirs.	The Commission notes EWOV's concerns, but remains of the view that these fees are incurred from a business as usual activity. It is assumed that, if a business customer considers that the fees are imposed unfairly, they will make complaints to their retailers.
7.6 Vacating a supply address	Clause 7.6 requires customers to notify their retailer of the date of their departure from their supply address. This clause seeks to ensure customers are not held liable for energy they did not consume.	**Retain and simplify** The Commission considers the drafting of the obligation is cumbersome and therefore intends to simplify the regulation.	**AGL** AGL supports the need to simplify clause 7.6 and suggests that the Commission refer to the wording used in the SA Energy Retail Code in relation to this issue. **EWOV** Simplifying the wording is a good idea. **TRUenergy** TRUenergy supports the principle of simplifying the clause. We recommend that the ESC provide a draft of the new wording to industry participants. This will allow industry participants to consider the proposed new wording for any unintended consequences.	**The draft decision is confirmed as the final decision.** **The drafting is incorporated in the attached code.**

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Existing Obligations		Draft Decision	Submissions	Final Decision
8.1 Refundable advances – Domestic customers	(a) A retailer may only require a domestic customer to provide a refundable advance if: • the customer has left a previous supply address or has transferred to the retailer and still owes the retailer or former retailer more than an amount the Commission nominates in any relevant guideline; • within the previous two years the customer has used energy otherwise than in accordance with applicable laws and codes; • the customer is a new customer and has refused to provide acceptable identification; or • the retailer decides the customer has an unsatisfactory credit rating, but only if the retailer has first offered the customer an instalment plan and the customer has not accepted the offer.	**Include relevant regulation from Guideline Nos 1 and 4, which are to be repealed.** Include the following obligations: A retailer may only require a domestic customer to provide a refundable advance if: • the customer has left a previous supply address or has transferred to the retailer and still owes the retailer or former retailer more than $120. • within the previous two years the customer has used energy otherwise than in accordance with applicable laws and codes;	**AGL** AGL does not support the draft decision and considers the Commission's drafting to be overly prescriptive and inconsistent with the approach taken in the draft national regulatory framework. **EWOV** EWOV supports the inclusion of the detail that was in Guidelines 1 and 4 in this clause of the *Energy Retail Code.* EWOV notes that there have been minimal complaints to EWOV about refundable advances for a considerable time and that energy retailers in Victoria are generally not seeking them from residential customers.	**Draft Decision is confirmed as the final decision.** The Commission considers that the proposed clause 8.1 is appropriately drafted to reflect the requirements of the current framework. Further, the Commission considers that any substantive redrafting should be deferred to the SCO process.

[30] The period is expressed in calendar days so as to accord with section 18(b)(vi) of the *Privacy Act 1988*.

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Existing Obligations	**Draft Decision**	**Submissions**	**Final Decision**
	• the customer is a new customer and has refused to provide acceptable identification; or • the retailer decides the customer has an unsatisfactory credit rating, but only if the retailer has first offered the customer an instalment plan and the customer has not accepted the offer. Despite clause xxx, a retailer must not require a domestic customer to provide a refundable advance if the retailer's decision that that customer's credit rating is unsatisfactory is based on a relevant default: (a) where the domestic customer has made a complaint in good faith about the relevant default and the complaint has not been resolved; (b) relating to that portion of an electricity bill		

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Existing Obligations	**Draft Decision**	**Submissions**	**Final Decision**
	which the domestic customer has requested the relevant retailer to review; or (c) relating to an electricity bill where: • the retailer has not undertaken an assessment of, or provided assistance to, the domestic customer as contemplated by clause 11.2 of the Code; or • in respect of the electricity bill, the domestic customer has formally applied for a Utility Relief Grant and a decision on the application has not been made. Unsatisfactory credit rating will be defined in the ERC and will include the following: Where a domestic customer 1. Has failed within the		

	past five years to pay a bill for the domestic customer's water, electricity or gas consumption, where: (i) the amount outstanding is or is more than $120 (ii) the payment is at least 60 calendar days[30] overdue; and (iii) the water, electricity or gas provider has taken steps to recover the whole or any part of the amount of credit outstanding. 2. has had a court judgment within the past five years in relation to a debt 3. where a bankruptcy order against the domestic customer has not been discharged Amount outstanding will be		

		defined as: An amount is not overdue in respect of an electricity or gas bill on the pay by date included in the bill if the retailer offers, or the domestic customer and the retailer enter into an arrangement, for the domestic customer to pay the amount or an instalment on a new date later than the pay by date. If the amount or the instalment is not paid by the new date then whether the amount or the instalment is overdue is to be determined from the new date.		
8.2 Business customers	A retailer may only require a business customer to provide a refundable advance if the business customer does not have a satisfactory energy account payment record or the retailer decides the customer has an unsatisfactory	**Redraft obligation to allow more flexibility for retailers, but that advances must be fair**	See discussion under section 3.3.4 of the Final Decision paper	**The draft decision is confirmed as the final decision.** The Commission considers that it is reasonable to ensure refundable advances are fair and reasonable, considering the diversity of small

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Existing Obligations		Draft Decision	Submissions	Final Decision
	credit rating.	**and reasonable**		businesses.
8.3 Credit management guideline	In making decisions about a customer's credit rating and in dealing with credit management issues generally, a retailer must comply with any relevant guideline.	**Repeal.**	**AGL** AGL supports the repeal of the Credit Management Guideline given that the requirements of the Guideline are duplicated in other regulatory and legislative instruments. **EWOV** The repeal of this clause is logical.	**Draft decision confirmed as the final decision**. Repeal clause 8.3.
9.3 Transitional provision for gas	For gas, references to reminder notices and disconnection warnings in clause 9.1 are to reminder notices and disconnection warnings given to a customer both: (a) after the FRC date (as defined in the Retail Rules); and (b) after notice of an intention to invoke shortened collection cycles for applicable customers has been given generally on bills for all customers in three consecutive billing cycles and in customer charters distributed during and after those cycles by the retailer.	**Repeal.** This obligation was intended as a transitional provision to full retail competition and is now redundant.	**AGL** Agreed	**Draft decision confirmed as the final decision**. Repeal clause 9.3.

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Existing Obligations		Draft Decision	Submissions	Final Decision
10.2 Former franchise customers	(a) An electricity customer who was a franchise customer on 31 December 2000 and on a monthly billing cycle continues on and from that date with the same billing cycle terms until such time as the deemed contract between the customer and a retailer which commenced on 1 January 2001 terminates. (b) A gas customer who was a franchise customer on 31 August 2001 and on a monthly or two month billing cycle continues on and from that date with the same billing cycle terms until such time as the deemed contract between the customer and a retailer which commenced on 1 September 2001 terminates.	**Repeal.** This obligation was intended as a transitional provision to full retail competition and is now redundant.	**AGL** Agreed.	**Draft decision confirmed as final decision.** Repeal clause 10.2.
12.2 Requirements for instalment plans	A retailer offering an instalment plan must (amongst other obligations):… (d) provide the customer with energy efficiency advice and advice on the availability of an independent financial counsellor.	**Repeal.** There are other obligations in the ERC which require retailers to provide relevant customers with this advice. It is agreed that the obligation in this clause is	**AGL** Agreed **CUAC & CALC** In principle we agree there are other obligations in the Code dealing with this matter, however the relevant Clause 11.2 would need to be amended as it currently only relates to where the retailer and the	**Draft Decision confirmed as the final decision.** The Commission considers that it is too onerous to require retailers to provide information on financial counsellors and energy efficiency advice to all customers seeking instalment plans (given that some customers may simply be seeking a

Existing Obligations		Draft Decision	Submissions	Final Decision
		unnecessary.	customer cannot agree on a payment plan, or the retailer believes the customer has repeated payment difficulties. Our concern is that by simply repealing Clause 12.2 fewer customers that would benefit from this information may not actually receive it. As such, Clause 11.2 would need to state that customers asking for an instalment plan must receive information about financial counsellors and energy efficiency advice in order to repeal Clause 12.2.	more flexible payment arrangement). Further, there is considerable regulation on retailers with respect to assisting customers with payment difficulties and in hardship, and increasing attention to energy efficiency. Nevertheless, the CUAC and CALC submission that some customers who require assistance may not be receiving (despite the regulation) it is noted and will be followed up in consultation with consumer groups.
12.3 Business customers (Instalment Plans)	A retailer must consider any reasonable request from a business customer for, and may impose an additional retail charge on the business customer if they enter into, an instalment plan.	**Retain.** The current Victorian approach is consistent with the proposed national approach (that is, that the obligation is discretionary). Therefore, retaining the clause for the present is proposed, particularly as it allows for retailers to charge a small business customer for such an arrangement on a default contract.	**AGL** AGL does not consider that the obligation is currently discretionary, given that the wording in the Code is that a retailer must consider a request for an instalment plan. Again, this is an issue that should be left to a commercial negotiation between the parties, rather than being subject to a regulation. **EWOV** EWOV notes the reasoning for the retention of this provision and that other provisions of the *Energy Retail Code* have the effect of requiring the additional retail charge to be reasonable.	**Draft decision is confirmed as the final decision.** The retailers' views are noted. However, the Commission considers that the requirement to consider requests for instalment plans is not an onerous obligation for retailers to comply with.

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Existing Obligations		Draft Decision	Submissions	Final Decision
			TRUenergy Removing the requirement will not impact on small businesses ability to request and be offered an instalment plan regardless of whether the small business customer is on a market or default contract. The clause does not provide any additional regulatory protection for small business customers and therefore repealing the clause is consistent with the ESC's review objective of removing regulatory provisions that may have become redundant over time regulation.	
13.3 Denying access to the meter	A retailer may disconnect a customer if, due to acts or omissions on the part of the customer, the customer's meter is not accessible for the purpose of a reading for three consecutive bills in the customer's billing cycle but only if: (a) the retailer or the relevant meter reader has: used its best endeavours, including	**Retain.** Current time period is consistent with draft national framework.	**AGL** Agreed, based on consistency with the timeframe articulated in the draft national framework. **EWOV** EWOV understands that this clause should be retained, but notes that the retailers do not always use this provision constructively to assist customers. **Mrs Kingston** submitted that this provision is not fair for customers, in that many tenants do not have control over their metering arrangements.	**Draft decision confirmed as the final decision.** **EWOV and Mrs Kingston's concerns are noted, but the provision appears to reach a balance between the statutory requirement for customers to provide access and provide safeguards for customers.**

by way of contacting the customer in person or by telephone, to give the customer an opportunity to offer reasonable access arrangements; each time the customer's meter is not accessible, given or ensured the retailer's representative has given the customer a notice requesting access to the customer's meter; and given the customer a disconnection warning including a statement that the retailer may disconnect the customer on a day no sooner than seven business days after the date of receipt of the notice; and (b) due to acts or omissions on the part of the customer, the customer's meter			

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Existing Obligations	Draft Decision	Submissions	Final Decision
continues not to be accessible.			
13.4 Refusal to provide acceptable ID or refundable advance A retailer may disconnect a customer if the customer refuses when required to provide acceptable identification (if the customer is a new customer of the retailer) or a refundable advance but only if: (a) the retailer has given the customer a disconnection warning including a statement that the retailer may disconnect the customer on a day no sooner than 10 business days after the date of receipt of the notice; and (b) the customer has continued not to provide the acceptable identification or the refundable advance.	**Retain.** The proposed national approach is that the retailers do not have to connect a customer if they do not provide acceptable identification. This is significantly different to the current Victorian regulation, which requires retailers to connect and then disconnect if acceptable identification is not provided. In light of this, it is proposed to retain the obligation in the Victorian jurisdiction.	**AGL** AGL strongly disagrees with the Commission's draft decision. It is clearly inconsistent with the national approach and fails to take into consideration the risks incurred by retailers when they have to connect customers who have not provided verifiable personal details. **EWOV** EWOV is pleased to see that the ESC intends to retain its current obligation which makes the requirement to provide acceptable identification a 'condition subsequent'. **Origin Energy** Origin cannot understand why the NECF's pragmatic approach to this issue is not adopted in Victoria. It is not unreasonable to request identification from a customer upon the establishment of an account and if requested, at this time, any eligible concession details can also be promptly processed. **TRUenergy** TRUenergy recommends that the ESC adopt the proposed national framework approach for this clause. The ID acceptable requirements to	**Draft decision is confirmed as the final decision.** The Commission notes the submissions and also notes that this matter is the subject of consideration in the national framework. Given that there has been no identifiable market failure under the current regulation (credit risk does not seem to be linked with the lack of acceptable identification), the Commission intends to retain the current rules.

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Existing Obligations	**Draft Decision**	**Submissions**	**Final Decision**
		set up an account are not overly onerous… **Madeleine Kingston** The Victorian recommendation (as opposed to the NECF TOR) is supported that connection take place then disconnection if no acceptable identification is provided, except in the case of those receiving heated water that is communally heated with a single energization point serving a communal water tank on the common property infrastructure of Landlords..	

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Existing Obligations	Draft Decision	Submissions	Final Decision
14 (a). No disconnection	Despite clause 13, a retailer must not disconnect a customer: (a) for non-payment of a bill: i. where the amount payable is less than any amount approved by the Commission for this purpose in a relevant guideline; ii. if the customer has made a complaint directly related to the non-payment of the bill, to the Energy and Water Ombudsman Victoria or another external dispute resolution body and the complaint remains unresolved; iii. if the customer has formally applied for a Utility Relief Grant and a decision on the application has	**Partially repeal for small business customers**. It is agreed that (a)(i) should not apply to small business customers as the relevant amount is likely to be much less than their account, and that (a)(iii) would not apply in any event. However, (a) (ii) must be retained as this is a broader right for consumers. It is understood that a(iv) is intended to be retained in the national framework. The obligations therefore will be redrafted to apply differently to residential and small business customers.	**AGL** Agreed **EWOV** EWOV agrees that the proposed re-drafting should not have an adverse effect on small businesses.	**Draft decision confirmed as the final decision.** Partially repeal for small business customers.

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Existing Obligations		Draft Decision	Submissions	Final Decision
	not been made; or iv. if the only charge the customer has not paid is a charge not for the supply or sale of energy;			
16 (b). No limitation of liability	(b) Clause 16(a) does not prevent the inclusion of a term or condition in an energy contract: of the sort contemplated by section 68A of the Trade Practices Act 1974 (Cth) or section 97 of the Goods Act 1958 or any other similar statutory provision;	**Editorial** Delete 'S97 of the Goods Act 1958' no longer applies.	There were no stakeholder submissions	**Draft Decision confirmed as the final decision.** Delete 'S97 of the Goods Act 1958' no longer applies.
19.1 No inconsistency with the Code	If a retailer and a customer agree to: (a) a term or condition to be included in a new energy	**Repeal from ERC and include in Marketing Code.** This obligation is more	**AGL** As noted in its previous submission relating to this review, AGL is of the view that the Marketing Code of Conduct is now largely redundant.	**Draft decision confirmed as the final decision.** Repeal clause 19.1 from ERC and include in Marketing Code.

	contract; or (b) a new term or condition in addition to the terms and conditions of their existing energy contract or instead of one of those terms and conditions, and the agreed term or condition is inconsistent with a term or condition set out in this Code marked with an asterisk (*), their agreement is effective, and is deemed to result in a term or condition which is not inconsistent with this Code, only if and from when the customer has given explicit informed consent.[31]	appropriately placed in the Marketing Code as it applies to pre-contractual arrangements	While this opinion remains unchanged, given that the Commission is clearly of the view that the Marketing Code is to be retained, AGL does not object per se to the transfer of this obligation from the Retail Code to the Marketing Code. **EWOV** EWOV supports the logic of the ESC in making the *Energy Marketing Code* apply to pre-contractual situations and the *Energy Retail Code* apply to the situation after the contract has been entered into.	
19.2 Creation of a new market contract	If a retailer and a customer have: (a) an existing deemed contract; or	**Repeal (explicit informed consent) from ERC and refer in Marketing Code.** Elements which deal with	**AGL** As above **EWOV** As above	**Draft decision confirmed as the final decision.** Repeal (explicit informed consent) from ERC and include in MCC**.**

[31] A list of asterisked (*) terms and conditions appears in appendix 1.

(b) an existing energy contract which resulted from the acceptance by the customer of the retailer's relevant standing offer, and: (1) they agree to a new term or condition in addition to the terms and conditions of their existing energy contract or instead of one of those terms and conditions; and (2) the new term or condition is inconsistent with a term or condition set out in this Code marked with an asterisk (*) and the customer has given explicit informed consent, their existing energy contract terminates and they enter into a new market contract on new terms and conditions including the inconsistent term or condition.	explicit informed consent are pre-contractual and will be placed in the Marketing Code. Retain elements which deal with the inclusion of a varied provision in an existing deemed and standing offer contracts.		

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Existing Obligations		Draft Decision	Submissions	Final Decision
19.3 Quarterly billing cycles for gas contracts	Despite clauses 3.2(b) and 19.2, if in the case of a gas contract a retailer and a customer agree that the retailer must issue a bill to the customer at least every three months, rather than at least every two months, their existing gas contract does not terminate and they do not enter into a new market contract.	**Repeal.** This obligation was intended as a transitional provision to full retail competition and is now redundant.	**AGL** Agreed	**Draft decision confirmed as the final decision.** Repeal clause 19.3.
20. Variation requirements customer's agreement	(a) The tariff and any terms and conditions of an energy contract between a customer and a retailer may only be varied by agreement in writing between the customer and the retailer.[32] (b) For the avoidance of doubt, if the amount of the tariff changes in accordance with some term or condition of an energy contract previously agreed between the customer and the retailer, no further agreement is required.	**Redraft to increase clarity of obligation.**	See discussion under 3.3.5 of the Final Decision paper	**Draft decision confirmed as the final decision** Clause drafted to require customers to give explicit informed consent
21.1 Gazetted tariffs and gazetted terms and conditions	This clause provides that customer agreement is not required for the variation of terms and conditions under a standing offer contract that are	**Review in Stage 2.** The obligations will be impacted by amendments	**AGL** Agreed	**Draft decision confirmed as the final decision.** Review clause 21.1 in Stage 2. The obligations will be impacted by

[32] In the case of the variation of some terms and conditions of an ***energy contract***, the ***customer's explicit informed consent*** may also be required if an agreement between the ***customer*** and the ***retailer*** to vary the term or condition is to be effective. See clauses 5.1 and 10.1 and the list of asterisked (*) terms and conditions in appendix 1.

Existing Obligations		Draft Decision	Submissions	Final Decision
	contemplated by legislation.	to the EIA & GIA (late 2008) – review in Stage 2 of the review.		amendments to the EIA & GIA (late 2008.
22.1Commencement	(a) A retailer and a customer may agree on a date when their energy contract commences to be effective. (b) Despite clause 22.1(a): • before the customer has given explicit informed consent.if the energy contract is to include a term or condition which is inconsistent with a term or condition set out in this Code marked with an asterisk (*); • the energy contract is a market contract; or • if the customer is transferring from another retailer (with whom the customer had an energy contract for the relevant supply address) to the retailer, the energy contract is not made and therefore cannot commence to be effective before the customer has	**Repeal.** Provisions appear to imply a customer can vary a standard contract by explicit informed consent. This is not intended.	**AGL** Agreed	**Draft decision confirmed as the final decision.** Repeal clause 22.1.

Existing Obligations		Draft Decision	Submissions	Final Decision
	given explicit informed consent.			
23.1 Customer's right to cancel an energy contract	(a) Beyond any right a customer may have to cancel an energy contract under the FT Act, the customer may cancel the energy contract if the energy contract is a market contract or arises from the acceptance of a standing offer. (b) Unless the customer has a longer cancellation period under the FT Act, to cancel an energy contract a customer must give a cancellation notice to the retailer within: • if the energy contract is for electricity and it is an energisation contract or it is for gas and is in respect of a supply point which requires only unplugging or installation of a meter to allow the flow of gas, 5 business days from and including the relevant date; and	**Repeal from ERC and refer to Marketing Code.** The *Fair Trading Act 1999* does not provide coverage for all contracts.	**AGL** AGL requests that the Commission clarify in its final decision which energy contracts are not provided coverage under the FTA. **EWOV** EWOV agrees with the proposal to move this provision to the *Energy Marketing Code.* **TRUenergy** We are unsure which contracts the ESC is concerned are not covered by the provisions of the FTA as the FTA covers both door to door sales contracts and contracts made through telemarketing. TRUenergy believes the rights in the FTA are sufficient to ensure that a customer receives the appropriate 10 day cooling off period and believes this clause could be deleted from the ERC without being replicated in the Marketing Code. In any event, a customer is not prohibited from cancelling a contract if they wish to and change retailers.	**Draft decision confirmed as the final decision.** The *Fair Trading Act 1999* does not provide coverage for all contracts, that is if a customer: • enters into an energy contract at a retailer's business premises; or • visits a retailer's business premises to discuss options for energy supply and later mails an application form to the retailer, the resulting energy contracts would not be regulated under Part 4 of the FTA. Therefore, these contracts continue to be provided for in the ERC

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Existing Obligations		Draft Decision	Submissions	Final Decision
	• otherwise, 10 business days from and including the relevant date.			
23.2 No right to cancel deemed contract	No right to cancel deemed contracts A customer has no right under this Code to cancel a deemed contract.	**Repeal** Repeal of this clause would not impact customers as clause 23.2 does not confer any rights on customers.	**AGL** Agreed **EWOV** Agreed	**Draft decision confirmed as the final decision.** Repeal clause 23.2.
23.3 Effect of cancellation	Effect of cancellation Appendix 2 applies in respect of the cancellation of an energy contract which is neither a door-to-door agreement nor a non-contact sales agreement.	**Repeal from ERC and refer to Marketing Code.** This clause will be consolidated as part of the cooling-off provisions in the Marketing Code.	**AGL** Agreed (subject to AGL's earlier comments with regard to the Marketing Code) **EWOV** EWOV agrees that this provision is better placed in the *Energy Marketing Code.*	**Draft decision confirmed as the final decision.** Repeal clause 23.3 from ERC and refer to MCC.
23. 4 Documenting energy contracts and customers' cancellation rights	On or before the second business day after the relevant date in respect of their energy contract, a retailer must give a customer: • a copy of the energy contract or other document evidencing the energy contract which sets out the tariff and all of the terms and	**Repeal from ERC and refer to Marketing Code.** The Fair Trading Act 1999 does not provide coverage for all contracts.	**AGL** Agreed (subject to AGL's earlier comments with regard to the Marketing Code) **EWOV** EWOV agrees that this provision is better placed in the *Energy Marketing Code* but notes that customers often say that they did not receive the contract documents until after the	**Draft decision confirmed as the final decision.** EWOV proposes to increase the regulation regarding the dissemination of information. However, the Commission is of the view that this is a compliance issue in relation to the providing/sending the contract documentation within two

	conditions of the energy contract including: • ***the total consideration to be paid or provided by the customer under the energy contract or, if the total consideration is not ascertainable at the time the energy contract is entered into, the manner in which it is to be calculated; and*** • ***any additional retail charges or other charges or fees to be paid by the customer or which the customer may become liable to pay, including any payable on cancellation.*** The retailer must comply with any relevant guideline in preparing this document; and • if the customer has a right to cancel the energy contract, a notice advising the customer of the customer's right to cancel the energy contract, accompanied by a further form of notice which sets out the name and address of the retailer and the date and details of the energy contract which may be used by the customer to cancel the		expiry of the ten day period. EWOV considers that that retailers should record the date on which contract documents were mailed or given to the customer and that the cooling off period should be 10 days from that date. **TRUenergy** A clause of this nature appears in section 6.3 of the Marketing Code and does not need to be further replicated in the Marketing Code. Furthermore, the requirement to provide the contract documentation within 2 days is more stringent than the requirement to provide the documentation within 5 days for telephone sales under clause 67E of the FTA. TRUenergy submits that there is nothing inherently different in the provision of energy retail services compared to other services that should require energy retailers to provide contractual information to customers in a shorter timeframe.	business days. TRUenergy's submission is noted. However, this submission changes a fundamental obligation for consumers and it is not considered appropriate for the Commission to consider such an amendment without proper consultation. Given the opportunity for the issue to be raised over the 7 months of consultation, the Commission does not intend to make such an amendment through the final decision.

ENERGY RETAIL CODE

Existing Obligations		Draft Decision	Submissions	Final Decision
	energy contract. A retailer will be taken to have given the document and notices required by clause 23.4(a) on the second business day after the relevant date if by then the retailer has posted the document and notices to the energy customer.			
26.2 Retailer's charter	This clause requires retailers to provide its customers with a copy of its charter, which is to include details of the customer's rights, entitlements and obligations.	**Retain.** This clause addresses a necessary obligation regarding information of the rights and entitlements of customers.	No stakeholder submissions.	**Draft decision confirmed as the final decision.** Retain clause 26.2.
26.6 Energy efficiency advice	On request, a retailer must provide energy efficiency advice to a customer.	**Repeal for small business customers.**	**AGL** Agreed **EWOV** EWOV notes that this is another provision from which it is intended that small business customers will no longer benefit. Given that the energy efficiency advice only has to be provided when requested, its continued applicability to small business does not seem to be a particularly onerous obligation for retailers.	**Draft decision confirmed as the final decision.** .
28.1 Complaint handling	A retailer must handle a complaint by a customer in accordance with the relevant Australian Standard on	**Editorial.** References in clause to be	**EWOV** While the reference to the Australian Standard is being updated, the	**Draft decision confirmed as the final decision.** The update of reference will adopt

ENERGY RETAIL CODE

Existing Obligations		Draft Decision	Submissions	Final Decision
	Complaints Handling or the 'Benchmark for Industry Based Customer Dispute Resolution Schemes' published by the Department of Industry, Tourism and Resources (Cth). The retailer must include information on its complain handling processes in the retailer's charter.	updated.	reference to the Benchmarks for Industry Based Customer Dispute Resolution Schemes could be deleted. The Benchmarks set standards for external dispute resolution schemes and are not directly relevant to the complaint handling standards of energy retailers.	EWOV's recommendation.
29. Privacy and Confidentiality	A retailer must comply with any condition of its retail licence, and with any relevant guideline, concerning the use or disclosure of personal information about a customer.	**Repeal.** This is not a contractual matter and therefore will be repealed from the ERC.	**AGL** Agreed **EWOV** Agreed	**Draft decision confirmed as the final decision.** Repeal clause 29.

CODE OF CONDUCT FOR MARKETING RETAIL ENERGY IN VICTORIA

Existing Obligations		Draft Decision	Submissions	Final Decision
Code in general	Marketing Code of Conduct	**Retain.** The Marketing Code is a necessary consumer protection which will benefit from review and simplification, but repeal is not warranted.	See discussion in section 3.4 in Final Decision paper	**Draft decision confirmed as the final decision.**
4.1 Training	Clauses 4.1 provides for the training of retailers' marketing representatives.	**Retain and simplify.** This clause will be retained because it is not included in the *Fair Trading Act 1999.*	**EWOV**. EWOV is pleased that the ESC intends to retain the clause about the training of sales representatives. We consider that it is valuable to have these expectations set out. **TRUenergy** Regarding Marketing Code clauses 4.1 to 4.3, while these clauses are not specifically replicated in the FTA, they specifically regulate inputs rather than …Further, the requirement to comply with general conduct standards renders redundant obligations 4.1 – 4.3. In TRUenergy's view, training requirements should not be prescribed. There are also strong sanctions under the TPA to mitigate such behaviour.	**Clauses 4.1, 4.2 and 4.3 will be collapsed into one clause. Duplication with the FTA will be removed**.
4.2 Product and Code knowledge	Clause 4.2 prescribes what retailers should include as part of their training and testing of their marketing representatives.	**Remove duplication.** Remove clauses which duplicate the *Fair Trading Act 1999* and *Trade Practices Act 1974.*	**EWOV** EWOV considers that the removal of duplication is sensible, as long as there is a clear reference, at least in a footnote, to where the relevant legislation is to be found.	**As above** **Drafting matters can be commented on in further submissions**

CODE OF CONDUCT FOR MARKETING RETAIL ENERGY IN VICTORIA

Existing Obligations		Draft Decision	Submissions	Final Decision
4.3 Training Records	Clause 4.3 requires retailers to maintain and make accessible training manuals and records. Further, that they shall be made available for independent audit as required.	**Retain and simplify.** This clause will be retained because it is not included in the *Fair Trading Act 1999.*	**EWOV** EWOV supports the retention of this clause.	**As above.**
5.1 Contact Hours	Clause 5.1 prescribes the times when retailers must not contact a consumer at the consumer's home for the purpose of marketing**.**	**Repeal.** The obligations duplicate the *Fair Trading Act 1999.*	**Dodo** Dodo Power & Gas has noted the Commissions attempt to repeal obligations that are duplicated in other regulatory instruments, and as such we are surprised to see that the telephone marketing times in section 5.1, and the telephone marketing information requirements in section 5.3 of the Marketing Code of Conduct have not been repealed in favour of the National Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007. The Telecommunications Industry Standard establishes prohibited calling times for Marketers, as well as comprehensively defining information provision requirements for marketing calls. **EWOV** Repeal is sensible since this clause duplicated the *Fair Trading Act.*	**Draft decision confirmed as the final decision.** The Commission does not consider that clause 5.3 duplicates the National Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007, because clause 5.3 places an obligation on retailers to immediately take steps to ensure that further marketing contacts by telephone cease, at the customers request. While customers can register with the Do Not Call Register, possible delays in this process may result in further unwanted telephone contacts from retailers in the interim.
5.2 Personal contact	Clause 5.2 prescribes what a marketing representative must do when they are undertaking negotiations in person and in the presence of a consumer which may lead to a contract for the sale of energy or related	**Repeal the elements of clause 5.2 which address the presence of marketing representatives on**	**EWOV** The comments in the Draft Decision column do not make clear whether the ESC intends to act on EWOV's suggestion that marketing representatives should be	**Draft decision confirmed as the final decision.** The Commission's amendments provide that a marketing representative must state the purpose of their visit, however does not prescribe at what

Existing Obligations		Draft Decision	Submissions	Final Decision
	purpose and is not being carried out at the retailer's business premises.	**customers' premises.** These elements are duplicated by the *Fair Trading Act 1999*. **The requirements regarding identification of marketing representatives will be redrafted to reflect the draft national framework.**	obliged to state the purpose of their visit at the start of any door-to-door sales contact.	stage of the contact that this information should be given. This is consistent with the draft national framework.
5.3 Telephone contact	Clause 5.3 provides what a marketing representative must do when they are conducting negotiations with a consumer on the telephone which may lead to a consumer entering a contract or for a related purpose.	**Repeal bullet point 1.** Duplicated in s 67B of the *Fair Trading Act 1999*. **Repeal the fourth sub-bullet point of bullet point 2** Requires what is usual business practice. **Retain remaining clauses.** These clauses provide a higher level of protection to consumers than the *Fair Trading Act 1999* and are considered necessary to	**CUAC & CALC** The ESC argues that it is usual business practice that a marketing representative informs the potential customer about who he/she is representing. We are not under the impression that this is usual business practice and strongly recommend that the ESC investigate this claim in order to demonstrate that this actually occurs. In our view, the disclosure of the market representative's field agency improves transparency and the customers' understanding of the transaction process – including who benefits from a customer's acceptance of an offer. In the absence of evidence we strongly recommend that the fourth sub-bullet point of bullet point 2 is retained. **EWOV** EWOV supports the repealing of bullet point 1 given that it is a duplication of the	**Draft decision confirmed as the final decision**. The Commission has received no data to date that would indicate that there is a systemic failure of any retailer's sales representatives to display the required identification. The Commission's compliance monitoring activities will be sufficient to address any individual retailer non-compliance that arises. The Commission notes EWOV's suggestion for sales representatives to leave a card, but considers this should be at the discretion of the retailer rather than a regulatory obligation.

Existing Obligations		Draft Decision	Submissions	Final Decision
		retain	*Fair Trading Act*, but has some reservations about the plan to repeal the fourth sub-bullet point of bullet point 2. We have had cases, not many, where the customer's efforts to get in touch with the retailer have been unsuccessful. All the sales representative has to do is to leave a card. EWOV does not think this requirement is onerous. **TRUenergy** These requirements are unnecessarily prescriptive in the light of the prohibitions in the FTA and TPA on misleading or deceptive conduct, false and misleading representations and unconscionable conduct and should be repealed.	
5.4 No contact lists	Clause 5.4 requires retailers to maintain a record of consumers who do not wish to be contacted for marketing purposes.	**Retain and redraft for simplicity.** This protection applies specifically to 'do not call' for door-knocking purposes.	**EWOV** EWOV is pleased that the ESC will retain these provisions, applying them to sales visits. We find it is often helpful in resolving a dispute that an energy retailer can put a customer on its internal 'do not contact' list.	**Draft decision confirmed as the final decision.** Clause will be renumbered.
5.5 Visit records	Clause 5.5 requires retailers to maintain marketing records which include information relating to personal visits made by marketing representatives.	**Retain.** Considered a necessary protection for both retailers and consumers.	**EWOV** As EWOV made clear at one of the workshops, we find this provision to be valuable and so are pleased that it is to be retained	**Draft decision confirmed as the final decision. Clause will be renumbered.**

CODE OF CONDUCT FOR MARKETING RETAIL ENERGY IN VICTORIA

Existing Obligations		Draft Decision	Submissions	Final Decision
5.6 Telephone records	Clause 5.6 requires retailers to maintain marketing records in relation to telephone contacts made by marketing representatives with consumers.	**Retain and simplify**	**EWOV** As above.	**Draft decision confirmed as the final decision. Clause will be renumbered.**
6.2 Conduct	Clause 6.2 regulates the marketing conduct of retailers.	**Repeal** Obligations provided by *Fair Trading Act 1999* and retail licences.	**CUAC & CALC** We do not support the repeal of the conduct provision. We also note that the Ministerial Council on Energy's Standing Committee of Officials has recommended the inclusion of a provision relating to the conduct of retailers in its recent position paper on the National Energy Customer Framework.4 The recommendation is that marketers must, and retailers must ensure that marketers comply with all applicable Commonwealth and State and Territory laws in relation to: (a) misleading, deceptive or unconscionable conduct; (b) undue pressure, harassment or coercion; and (c) the quality, form and content of marketing information. Marketers also must have, and retailers must ensure that marketers have, adequate product knowledge. Adequate product knowledge covers knowledge of matters such as tariffs, billing procedures and the availability of rebates and concessions. We strongly support such a requirement. **EWOV** EWOV understands the reasons for repealing this provision, but these conduct provisions are at the heart of good marketing practice and it is important that the *Fair Trading Act* be clearly referenced	The Commission has redrafted and simplified this clause retaining the key provisions regarding misleading and deceptive conduct, harassment and coercion and adequate product knowledge. Clause will be renumbered.

Existing Obligations		Draft Decision	Submissions	Final Decision
			in the Code.	
6.3 Contract Information	Clause 6.3 prescribes the information that a retailer must give the consumers before the consumer enters into a contract.	**Rename clause to 'Pre-contractual information'.** Clause to be renamed to reflect more appropriately reflect the purpose of clause. **Repeal bullet points 2 to 4** These are addressed by the *Fair Trading Act 1999.* **Retain remaining bullet points** These issues are not addressed by the *Fair Trading Act 1999* and are considered necessary to retain in this market	**CUAC & CALC** We do not believe the FTA adequately covers the issue of pre-contractual information to repeal bullet points 2 to 4. The FTA does not require this information for all contracts. For example, for contact sales agreements (door-to-door sales), certain information is required to be provided on the agreement, but there is no requirements as to what information is required to be provided before a consumer signs this agreement.5 For telephone marketing agreements, the FTA requires a supplier to 'clearly, fully and adequately disclose all matters', but is not clear about what precise information should be given precontractually. 6 A primary benefit of listing precisely what information has to be provided precontractually is in the context of resolving disputes – a clear list of required disclosures can overcome disputes about whether all relevant matters have been disclosed. **EWOV** EWOV understands that the bullet points that are not duplicated in the *Fair Trading Act* will be retained, but is unsure of the status of parts of this clause that are not in the bullet points, specifically the part that reads, '*A retailer must provide the consumer with a reasonable opportunity to*	The Commission will separate the provisions of the existing clause into two new clauses. Clause 6.2 Pre-contractual information will retain the existing provisions up to an including "A retailer must provide the consumer with a reasonable opportunity to consider this information before entering into the contract". The remainder of the existing Clause 6.3 will be incorporated into the newly drafted Clause 6.4 Contract Information.

Existing Obligations	Draft Decision	Submissions	Final Decision
		consider this information before entering into the contract'. This sentence relates to the period *before* the contract is formed and the cooling-off period commences. EWOV continues to receive complaints from consumers who state they were pressured into agreeing to a contract, or had just agreed to receive materials but subsequently found their account had been transferred. As such, EWOV considers it is important that the *Energy Marketing Code* retains this\practical statement of a customer's pre-contractual entitlement to consider information. **TRUenergy** These requirements are unnecessarily prescriptive in the light of the prohibitions in the FTA and TPA on misleading or deceptive conduct, false and misleading representations and unconscionable conduct and should be repealed. With regard to the second set of bullet points in clause 6.3, see comments in relation to clause 23.4 of the ERC.	

CODE OF CONDUCT FOR MARKETING RETAIL ENERGY IN VICTORIA

Existing Obligations		Draft Decision	Submissions	Final Decision
7.1 Consumer transfer	Clause 7.1 deals with consumer consent to retailer transfer.	**Retain and simplify** This clause will be simplified to include the consent requirements for the incorporation of varied provisions into energy contracts (clauses 19.1 and 19.2 of the ERC).	**EWOV** EWOV is concerned that changes to this clause may mean it is harder to find what is meant by *explicit informed consent.* The definition of this term in both the *Energy Retail Code* and the *Energy Marketing Code* is unhelpful, referring the reader to energy retailers' licence conditions. EWOV strongly believes that if Guideline 10 on Confidentiality and Explicit Informed Consent is to be repealed, there needs to be a fuller definition of *explicit informed consent* in the *Energy Marketing Code* and the *Energy Retail Code.* This definition should incorporate the major elements of the discussion of the term in Guideline 10.	**Draft decision confirmed as the final decision.** The Commission will clearly define 'explicit informed consent' having regard to the existing Guideline 10 and this definition will be placed in both the Energy Retail Code and the Code of Conduct for Marketing in Victoria.
7.2 Consent audit – audit process	Clause 7.2 prescribes the retailer's audit process which seeks to ensure customers understand that they have entered and consented to the contract and is aware of their cooling-off period.	**Repeal.** This obligation is more appropriately placed in the Commission's Audit Guidelines.	**EWOV** EWOV agrees that much of the detail in clause 7.2 is more appropriately placed in the ESC's Audit Guidelines. However, we believe there is an argument for retaining the first part of the clause, that is up to and including the bullet point, '*he or she understands the cooling-off period that exists on entering into a contract'.*	**Draft decision confirmed as the final decision.** The Commission considers that a retailer by ensuring that it has received explicit informed consent to any contractual arrangement will have addressed the issue raised in EWOV's submission.
7.3 Consent audit - records	Clause 7.3 requires retailers to maintain records of their consent audit	**Repeal** This obligation is more appropriately placed in the Commission's Compliance Policy Statement.	**EWOV** EWOV agrees that this could be placed in the ESC's Compliance Policy Statement. .	**Draft decision confirmed as the final decision**

CODE OF CONDUCT FOR MARKETING RETAIL ENERGY IN VICTORIA

Existing Obligations		Draft Decision	Submissions	Final Decision
7.4 Sales to minors and 'authorised' consumers	Clause 7.4 seeks to ensure that the consumer who enters into the contract is authorised to do so.	**Repeal.** This obligation is more appropriately placed in the Commission's Compliance Policy Statement.	**CUAC & CALC** We query why the ESC believes this obligation is more appropriately placed in the ESC's Compliance Policy Statement. There must be a direct obligation on retailers to only conduct transactions with authorised consumers, and we believe Clause 7.4 of the Marketing Code produces the current obligation. **EWOV** As stated earlier, EWOV has misgivings about the effect of repealing this section. Nowhere in the *Energy Marketing Code* does it say that marketing efforts ought to be directed towards the account holder wherever possible. If clause 7.4 is repealed, it will not even say that retailers should be trying to conduct negotiations with authorised persons. The issue of 'who is marketed to' is very important – and a continued source of complaint to retailers and EWOV. As such, it should be regulated in the *Energy Marketing Code*, not relegated to the Compliance Policy Statement. EWOV suggests that if the current clause 7.4 is repealed, it should be replaced by one that says, '*the retailer will endeavour to conduct contract negotiations with the account holder. Where that is not possible, the retailer should take reasonable steps to obtain the account holder's verbal consent to conduct negotiations with another person who has the authority to enter into a contract for electricity and/or gas supplied to the actual site'.*	**See discussion in section 3.8 of Final Decision paper** **The clause will be retained in its present form. Clause will be renumbered.**

Existing Obligations		Draft Decision	Submissions	Final Decision
8. Commencement of Retail Services	Clause 8 provides for retailer communication to consumers regarding the commencement of retail service to the supply address.	**Retain.** This clause relates to provision of information regarding a customer's connection of service.	**EWOV** EWOV agrees that it is sensible to retain this clause.	**Draft decision confirmed as the final decision**
11. Definitions		**To be completed on conclusion of review.**	**EWOV** EWOV considers that the Code should define *explicit informed consent* fully, and not by reference to another regulatory instrument.	Explicit informed consent is defined in the ERC and MCC**.**

Guideline No 1: Gas Industry – Credit Assessment
Guideline No 4: Electricity Industry – Credit Assessment

Existing Obligations	Draft Decision	Submissions	Final Decision
. The Commission reviewed the provisions for relevancy and necessary regulation.	***Draft Decision*** Repeal. The guidelines will be repealed and the necessary regulation incorporated in the ERC or other relevant regulatory instrument as set out below.	**AGL** Supports repeal, largely for reasons of duplication and streamlining **Australian Power & Gas** While we do not have an objection to the proposed increase in the minimum debt amount we strongly oppose publishing this amount in the Retail Energy Code. Publishing this information will not add to the protection nor "serve the interests" of small customers, but will only serve to undermine retailers' credit management. **EWOV** EWOV notes the ESC's intention to repeal this guideline, incorporating relevant parts of it into either the *Energy Retail Code* or other relevant instruments. We are pleased to see that the present definition of relevant default will be retained. Otherwise, we have no comment on the proposals for these guidelines. **Origin Energy** Origin supports the revocation of Guidelines No 1 and 4.	**Draft Decision confirmed as the final decision.** Repeal. The guidelines will be repealed and the necessary regulation incorporated in the ERC or other relevant regulatory instrument as set out below.
2.1 Relevant defaults Meaning of relevant default A relevant default in respect of a domestic customer means: (a) default: a failure by the domestic	*Draft Decision* **Repeal (b) and (e).** **Include remaining regulation in Clause 8.1 ERC.**	No stakeholder submissions.	**Repeal (b) and (e).** **Include remaining regulation in Clause 8.1 ERC.**

[33] The period is expressed in calendar days so as to accord with section 18(b)(vi) of the *Privacy Act 1988*.

Existing Obligations	Draft Decision	Submissions	Final Decision
customer within the past five years to pay a bill for the domestic customer's water, electricity or gas consumption, where: (1) the amount outstanding is or is more than the amount specified in item A of the schedule; (2) the payment is at least 60 calendar days[33] overdue; and (3) the water, electricity or gas provider has taken steps to recover the whole or any part of the amount of credit outstanding.			
(b) address vacated without notice:[34] a failure by a domestic customer to give a retailer notice of the date on which the domestic customer intends to vacate their supply address and a forwarding address to which a final bill may be sent, where: ▪ that failure continues for at least 10 business days after the date the final bill for the vacated supply address is issued;[35] and			

[34] This clause reflects what constitutes a "serious credit infringement" under section 18E 1(b)(x) of the *Privacy Act 1988*.

[35] If a ***domestic customer*** notifies the retailer within 10 business days but does not pay the ***final bill*** within this time because of an incapacity to pay, the ***retailer*** must act in accordance with clause 11.2 of the ***Electricity Retail Code***.

Existing Obligations	Draft Decision	Submissions	Final Decision
▪ the domestic customer has not paid the final bill within 10 business days after the date the final bill for the vacated supply address is issued. (c) court judgment: a court judgment within the past five years against the domestic customer in relation to a debt; (d) bankruptcy: the bankruptcy of the domestic customer where the bankruptcy order against the domestic customer has not been discharged; or (e) dishonoured cheque: a cheque provided by the domestic consumer in payment of a bill for their water, electricity or gas consumption for an amount not less than the amount specified in item A of the schedule has twice been presented and dishonoured and the second dishonouring of the cheque occurred within the past five years.			
2.1 Definition of 'Amount Outstanding'	An amount is not overdue in respect of an electricity bill on the pay by date included in the bill if the retailer offers, or the domestic customer and the retailer enter into an agreement or arrangement, for the domestic customer to pay the amount or an instalment on a new date later than the pay by date. If the amount or the instalment is not paid by the new date then whether the amount or the instalment is overdue is to be determined from the new date.	Include in Definitions of the ERC.	No stakeholder submissions.	**Draft decision confirmed as final decision.** Include in Definitions of the ERC. **Include in Definitions of the ERC.**
3.2 Domestic customer dealing with the relevant	Despite clause 3.1, a retailer must not require a domestic customer to provide a refundable advance if the retailer's decision	Include in clause 8 of the ERC.	**No stakeholder submissions.**	**Draft decision confirmed as final decision**. Include in clause 8 of the ERC **Include in clause 8 of the ERC**

Existing Obligations		Draft Decision	Submissions	Final Decision
default	that that customer's credit rating is unsatisfactory is based on a relevant default: (a) where the domestic customer has made a complaint in good faith about the relevant default and the complaint has not been resolved; (b) relating to that portion of an electricity bill which the domestic customer has requested the relevant retailer to review; or (c) relating to an electricity bill where: • the retailer has not undertaken an assessment of, or provided assistance to, the domestic customer as contemplated by clause 11.2 of the Code; or • in respect of the electricity bill, the domestic customer has formally applied for a Utility Relief Grant and a decision on the application has not been made.			
4 Information about an unsatisfactory credit rating	If a retailer requires a refundable advance from a customer because it has decided that the customer has an unsatisfactory credit rating, the retailer must inform the customer: (a) that the retailer has decided that the customer has an unsatisfactory credit rating; (b) the reasons for the	**Repeal because covered by S18M of the *Privacy Act 1988*, with the exception of (c.)**	No stakeholder submissions	**Repeal because covered by S18M of the *Privacy Act 1988*, with the exception of (c.)** **Draft decision confirmed as final decision**

Existing Obligations		Draft Decision	Submissions	Final Decision
	decision under clause 2.1; of their rights to raise a complaint in accordance with clause 28.2 of the Electricity Retail Code; (c) if the decision: ▪ was based wholly or partly on information provided by a credit reporting agency, the name and address and telephone number of the credit reporting agency and that the customer has the right to obtain access to the credit information file maintained by the credit reporting agency; and ▪ was based wholly or partly on information in the possession, custody or control of the retailer, that that is so and that the customer has the right to obtain relevant details of the information.			
5. Complaints about an unsatisfactory credit rating	5.1 A customer may make a complaint about a matter dealt with in this guideline to a retailer, which must handle the complaint in accordance with clause 28 of the Code. 5.2 The EWOV Charter sets out its functions in receiving, investigating and facilitating the resolution of billing disputes and the administration of credit and payment services. EWOV may consider any complaint made by a customer in relation to a matter dealt with in this	**Repeal.**	No stakeholder submissions	**Draft decision confirmed as final decision** **Repeal.**

Guideline No 1: Gas Industry – Credit Assessment
Guideline No 4: Electricity Industry – Credit Assessment

Existing Obligations		Draft Decision	Submissions	Final Decision
	guideline.			
6. Reporting of defaults to a credit reporting agency	6.1 A retailer may only provide information about a relevant default by a domestic customer to a credit reporting agency if the relevant default relates to an electricity (or gas) bill issued by that retailer. If a domestic customer remedies the relevant default the retailer must inform the credit reporting agency immediately of that fact.	**Repeal.**	No stakeholder submissions	**Repeal.**
6.2	Despite clause 6.1, a retailer must not provide information about a relevant default: (a) where the domestic customer has made a complaint in good faith about the relevant default and the complaint has not been resolved; (b) relating to that portion of an electricity bill which the domestic customer has requested the relevant retailer to review; or (c) relating to an electricity bill where: ▪ the retailer has not undertaken an assessment of, or provided assistance to, the domestic customer as contemplated by clause 11.2 of the Electricity Retail Code; or ▪ in respect of the electricity bill, the	**Repeal**	See discussion in section 3.6 of Final Decision paper	**Draft decision confirmed as final decision** **Repeal.**

Existing Obligations		Draft Decision	Submissions	Final Decision
6.3	domestic customer has formally applied for a Utility Relief Grant and a decision on the application has not been made. Where a domestic customer with a relevant default under clause 2.1(b) remedies, or enters into an agreement or arrangement with the retailer to remedy the relevant default after it was reported to the credit reporting agency, and demonstrates to the retailer that extenuating circumstances meant that a forwarding address could not be provided and that the final bill could not be paid within the 10 business day period in accordance with clause 2.1(b), the retailer must request the credit reporting agency to remove the information about that relevant default from the domestic customer's record.			
7. Domestic customer leaves supply address or transfers without paying	For the purpose of clause 8.1(a) of the Electricity Retail Code the amount owing to a retailer or former retailer (as the case may be) must be more than that specified in item A of the schedule to this guideline. A retailer must offer an instalment plan before requiring a refundable advance.	**Repeal.** This regulation duplicates the regulation in the ERC	No stakeholder submissions.	**Repeal.**
8. Minimum disconnection amount	A retailer must not disconnect a customer for non-payment of a bill where the amount payable is less than the approved amount specified in item A of the schedule to this guideline.	**Repeal.**	See discussion in section 3.10 of Final Decision paper	**Repeal. Draft decision confirmed as final decision.**

Guideline No 10: Confidentiality and Informed Consent Electricity and Gas

Existing Provision		Issue	Final Decision
Some retailers submitted that Guideline No.10 should be repealed because it duplicated legislation including the *Privacy Act 1988.* The Commission reviewed the provisions for relevancy and necessary regulation.			**Repeal.** The guidelines will be repealed and the necessary regulation incorporated in the ERC or other relevant regulatory instrument as set out below.
Part 1. Introduction	Part 1 provides Guideline No.10's introduction, which includes the commencement, purpose, relationship with other requirements and process for review.	No substantive issues	**Repeal.**
Part 2. Confidentiality	Part 2 sets out the National Privacy Principles and in particular, details how it applies to the Victorian energy market.	See discussion in section 3.7 of this Final Decision paper	**Repeal.**
Part 3. Explicit Informed Consent	Part 3 provides for the use and definition of explicit informed consent.	No substantive issues	
4.1 Entering into a *contract*	The explicit informed consent of a customer is required by virtue of clause 22.19 of the relevant Retail Code, in connection with a contract between the customer and a retailer commencing to be effective, if: · the contract includes a term or condition which is inconsistent with a term or condition set out in the Retail Codes marked with an asterisk (*); or · the customer is transferring to the retailer	No substantive issues	**Retain and include in Marketing Code.**
4.2 Estimated bills and different billing cycles	The explicit informed consent of a customer is also required by virtue of:	No substantive issues	**Repeal**

Guideline No 10: Confidentiality and Informed Consent Electricity and Gas

Existing Provision	Issue	Final Decision
· clause 5.1 of the Retail Codes, if a retailer wants to base the customer's bill other than on a reading of the customer's meter; and · by virtue of clause 10.1 of the Retail Codes, if a retailer and the customer want to agree a billing cycle other than that specified in the relevant Retail Code.		

Guideline No 12: Metering Reversion and Contract Termination

Existing Provision	Issue	Final Decision
There were no stakeholder submissions on these guidelines. The Commission reviewed the provisions for relevancy and necessary regulation.		**Repeal.** Guideline no. 12 was transitionary at the commencement of full retail competition and is no longer required.

Guideline No 19: Energy Product Disclosure

Existing Provision	Issue	Final Decision
3.1 Offer summary to be provided A retailer must provide an offer summary in writing to a small retail customer: (a) on request by the customer and (b) when providing the customer the terms or information about the terms of a new retail contract.		**Defer until stage 2 and consider against amended industry legislation.**

Guideline No 20: Bulk Hot Water Charging

Existing Provision		Issue	Final Decision
1. Introduction	(Includes Purpose, Authority and Application Date).	See discussion in section 3.9 of Final Decision paper	**Draft decision confirmed as the final decision**
2.1.1	Where a retailer charges for energy in delivering gas bulk hot water to a relevant customer, the gas bulk hot water rate, supply charge and final customer billing for the provision of the gas bulk hot water are to be determined in accordance with Appendix 1.		**Retain and include in the ERC (clause 3.3).** **As the Commission will retain responsibility for regulation of bulk hot water charging, the relevant formula will be placed in the appendices of the ERC.**
2.1.2	Appendix 1 will not change before 31 December 2007. The Victorian Government will determine the gas bulk hot water pricing formulae from 1 January 2008 as part of any gas pricing arrangements applicable from that time		**Draft decision confirmed as the final decision.**
2.1.3	A retailer must publish its gas bulk hot water rate (in cents per litre), any applicable supply charge (in cents) and the conversion factor (MJ per litre) used to determine those prices and charges whenever any of the above components change.		**Retain in ERC.** **As the Commission will retain responsibility for regulation of bulk hot water charging, the relevant formula will be placed in the appendices of the ERC.**
2.2.1	Where a retailer charges for energy in delivering electric bulk hot water to a relevant customer, the electric bulk hot water charges are to be based on the appropriate tariff rate(s) applicable to the bulk hot water storage unit and are to be determined in accordance with Appendix 2.		**As above.**
2.2.2	Appendix 2 will not change before 31 December 2007. The Victorian Government will confirm the electric bulk hot water pricing formulae from 1 January 2008 as part of any electricity pricing arrangements applicable for that period.		**Draft decision confirmed as the final decision.**
2.3 Information to be included on bills	Where a retailer charges for energy in delivering either gas bulk hot water or electric bulk hot water to a relevant customer, the retailer must include at least the following information in the customer's bill: • the relevant gas bulk hot water rate applicable to the customer in cents per litre; • the relevant electricity rate(s) being charged to the customer for the electricity consumed in the electric bulk hot water unit in cents per kWh; • the relevant electric bulk hot water conversion factor for electric bulk hot water in kWh/kilolitre;		**Draft decision confirmed as the final decision** Retain and include in the ERC.

Guideline No 20: Bulk Hot Water Charging

Existing Provision		Issue	Final Decision
	• the total amount of gas bulk hot water or electric bulk hot water in kilolitres or litres consumed in each period or class of period in respect of which the relevant gas bulk hot water rate or electricity tariffs apply to the customer and, if a customer's meter measures and records consumption data only on an accumulation basis, the dates and total amounts of the immediately previous and current meter readings or estimates; • the deemed energy used for electric bulk hot water (in kWh); and • separately identified charges for gas bulk hot water or electric bulk hot water on a customer's bill.		
3.1 Definitions	electric bulk hot water" means water centrally heated by electricity and delivered to a number of customer supply addresses where the customer's consumption of hot water is measured with a meter and where an energy bill is issued by a retailer. "electric bulk hot water conversion factor" is the conversion factor detailed in this guideline used to convert the measured bulk hot water consumption of a customer (in kilolitres) to a deemed electricity usage (in kWh). "gas bulk hot water" means water centrally heated by gas and delivered to a number of customer supply addresses where the customer's consumption of hot water is measured with a meter and where an energy bill is issued by a retailer. "gas bulk hot water conversion factor" is a conversion factor detailed in this guideline used to convert the gas bulk hot water tariff (in cents per MJ) to the gas bulk hot water rate (cents per litre). "gas bulk hot water rate" means the gas price in cents per litre that is used by a retailer to charge customers for energy in delivering gas bulk hot water. "gas bulk hot water tariff" has the relevant meaning set out in Appendix 1. "meter" means the device which measures and records consumption of bulk hot water consumed at the customer's supply address. Other terms in bold and italics which are not defined in this guideline have the meaning given in the ERC.		**Draft decision confirmed as the final decision** Where a defined term has been transferred to the ERC, its definition will be included in the ERC's definition section.
3.2 Interpretation	Clause 3.2 provides guidance regarding how to interpret Guideline No.20.		**Draft decision confirmed as the final decision.** **Repeal.**
Appendix 1: Gas bulk hot water pricing formulae	Appendix 1 sets out the formula for calculating gas bulk hot water prices.		**Appendix 1 will be retained in the ERC.** **Repeal.**
Appendix 2: Electricity bulk hot water billing	Appendix 1 sets out the formula for calculating electric bulk hot water price		**Appendix 2 will be retained in the ERC.** **Repeal.**

Guideline No 20: Bulk Hot Water Charging

Existing Provision	Issue	Final Decision
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Operating Procedure
Compensation for Wrongful Disconnection

Existing Provision		Issue	Final Decision
The purpose of the Operating Procedure: Compensation for Wrongful Disconnection was to assist retailers meet their obligations under the wrongful disconnection provisions of the Energy Acts and to address any ambiguities in the ERC created as a result of these legislative provisions. While the Operating Procedure was not intended to set new regulation, it has often been treated as such. Most of the Operating Procedure is descriptive, rather than regulatory, so only those elements which will be contained in the rules or compliance policy are discussed in the Draft Decision.			**Draft Decision confirmed as final decision.** Repeal Operating Procedure. The Compliance Policy Statement is to be treated as a guidance document (see final decision for further discussion).**Repeal.**
1.2 Legislative intent and context	This procedure and the practices it promotes in Appendix A should be regarded as corporate behaviour minimums and not necessarily best practice. Retailers should strive to attain best practice in their handling of disconnections and maintain existing practices where they are more favourable to customers than those in this procedure.		**Retain and include in the Commission's Compliance Policy Statement.**
2.3 Disconnection by a retailer	Consistent with clause 36.1 of the ERC, a reference in the relevant provisions or this procedure to a disconnection by a retailer means a disconnection procured by a retailer. Accordingly: • if a disconnection performed by a distributor occurs where the distributor is acting strictly on the retailer's instructions, the retailer has "disconnected" the customer. if a disconnection performed by a distributor occurs not in accordance with the instruction to disconnect given by the retailer, the retailer has not disconnected the customer.		**Retain and include in ERC.**
3.2 Standards of proof	Where a clause of the ERC or the applicable interpretative guidance in Appendix A refers to requirements to give notices or similar documents to a customer or to make contact by telephone, or in person, it will be necessary for a retailer to establish such requirements have been met by demonstrating the matters set out in Appendix B.		**Retain and include in Compliance Policy Statement.**
4. Enquiries and complaints	The Commission will refer any enquiries or complaints received from a customer directly to the retailer concerned[36] or, if the retailer has dealt with a complaint, to EWOV. The		**Retain and include Compliance Policy Statement.**

[36] The referral will be to a retailer's "higher level contact" (within the meaning given to those terms by EWOV).

Operating Procedure
Compensation for Wrongful Disconnection

Existing Provision		Issue	Final Decision
handling by Commission	Commission will give brief particulars to the retailer or EWOV (as the case may be) of the contact made by the customer. Recording The Commission will keep a record of brief particulars of each complaint received and to whom it has been referred		
5. Enquiries and complaints handling by Retailers	A retailer must handle a complaint by a customer in accordance with the relevant Australian Standard on Complaints Handling or the "Benchmark for Industry Based Customer Dispute Resolution Schemes' published by the Department of Industry, Tourism and Resources (Cwth).		**Repeal.**
	Referral to Commission for advice A retailer may seek guidance from the Commission on any questions of interpretation of the ERC. The Commission will send a copy to EWOV and each retailer, and will publish details of all guidance provided in its annual compliance report.		**Retain and include in Compliance Policy Statement.**
	Advice on customer's rights When a retailer responds to a customer's complaint, the retailer must inform the customer: ▪ that the customer has a right to raise the complaint to a higher level within the retailer's management structure; and ▪ if, after raising the complaint to a higher level the customer is still not satisfied with the retailer's response, the customer has a right to refer the complaint to EWOV or other relevant external dispute resolution body. That information must be given in writing and include details on how to contact EWOV.		**Repeal.**
6 Enquiries and complaints handling by EWOV	Enquiries EWOV should refer all wrongful disconnection enquiries to a retailer's "higher level contact" (within the meaning given to those terms by EWOV). The retailer must ensure that the		**Repeal.**

Operating Procedure
Compensation for Wrongful Disconnection

Existing Provision		Issue	Final Decision
	customer is contacted in accordance with EWOV's case handling procedures for discussion of the matter.		
	Complaints EWOV should handle all wrongful disconnection complaints (including unresolved enquiries) as "level 1 complaints" (within the meaning given to that term by EWOV). As such, EWOV will require the retailer to reconnect the customer in accordance with EWOV's current procedure for disconnection complaints, pending the outcome of EWOV's investigation. EWOV will endeavour to resolve complaints to the satisfaction of both parties[37].		**Repeal.**
	Referral to Commission for advice Consistent with clause 6.4 of the EWOV Charter, EWOV should seek guidance from the Commission on any questions of interpretation of the ERC or retailers' terms and conditions of supply. The Commission will send a copy to each retailer and publish details of guidance provided in its annual Compliance Report.		**Repeal**
7. Commission Decision	Clause 7 details how the Commission considers wrongful disconnection cases.		**Retain and include in Compliance Policy Statement.**
8. Enforcement Orders	Without limiting the Commission's powers under section 53 of the Essential Services Commission Act 2001, the Commission will serve a provisional order requiring a retailer to satisfy its *wrongful disconnection compensation obligation* if the retailer does not promptly give the Commission the confirmation which the Commission seeks under clause 7.4 of this procedure, or if the retailer does not fulfil its commitment to rectify the breach, the		**Retain and include in Compliance Policy Statement.**

[37] Consistent with the usual application of EWOV's normal case-handling procedures, EWOV's ability to do so quickly and efficiently will be assisted by the retailer promptly returning all completed documentation required by EWOV.

Operating Procedure
Compensation for Wrongful Disconnection

Existing Provision		Issue	Final Decision
	Commission may use the powers available to it under sections 53 and 54 of the Essential Services Commission Act 2001 to ensure that *wrongful disconnection compensation* obligations are met.		
9. Reporting	Clause 9 prescribes the reporting requirements for retailers, EWOV and the Commission in relation to wrongful disconnection.		**Retain and include in Compliance Reporting Manual.**
10. Auditing of Retailers' Response to Enquiries and complaints	The Commission will audit each retailer's compliance with its *wrongful disconnection compensation obligations* generally and the reports received under clause 9.1 in particular as part of the Commission's normal regulatory audit program. The Commission may also conduct other such audits on an ad hoc basis if the Commission believes the audit is warranted, in which case it would take place in accordance with the Commission's usual procedures for a regulatory audit.		**Retain and include in Compliance Policy Statement.**
11. Interpretation	Terms defined in the relevant provisions or in the ERC will have the same meanings when used in this procedure. Also: relevant provision means section 40B of the Electricity Industry Act 2000 or section 48A of the Gas Industry Act 2001. wrongful disconnection compensation obligation means an obligation on a retailer to make a payment to a customer under a relevant provision.		**To be reviewed at completion of Review.**
Appendix A Interpretation of ERC	Appendix A provides interpretative guidance regarding relevant clauses of the ERC regarding wrongful disconnection cases.		**Retain and include in Compliance Policy Statement.**
Appendix B Proof of Dispatch of Notices, Phone Contacts and visits	Appendix B details the customer contact required by retailers to satisfy the requirements of the ERC.		**Retain and include in Compliance Policy Statement.**
Appendix C Flow Chart – ERC	Appendix C seeks to diagrammatically capture how a retailer should assess a customer's capacity to pay without advice from an independent financial counsellor.		**Retain and include in Compliance Policy Statement.**

Operating Procedure
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Existing Provision		Issue	Final Decision
Appendix D Sample Call Centre Scripts	Appendix D seeks to provide guidance to retailers on how to write their call centre scripts in order to optimise the receipt of useful and meaningful information about a customer's capacity to pay.		**Retain and include in Compliance Policy Statement.**

Electricity Customer Metering Code			
Existing Provision		**Duplicated by**	**Final Decision**
2.1 (b)	Access to Metering Equipment	Metrology Procedure S1-3.5A, S2-1.5A and S3-1.5 (3).	**Repeal**
2.3	Location of Metering Equipment	NER clause 7.3.2 and Metrology Procedure S1-3.5, S2-1.5 and S3-1.5	**Repeal**
2.5	Summation Metering	NER clause 7.3.1 (b) (14) and Metrology Procedure S1-1.4	**Repeal**
2.6 (b) and (c)	Impulse Output	Metrology Procedure clauses 2.3.9, S1-3.3A and S2-3.2A.	**Repeal**
2.7 (c)	Check Metering	NER clauses 7.3.3, 7.3.4 and 7.9.4 and by NER S7.2.4.	**Repeal**
3.2	Time Keeping	Metrology Procedure S3-3.1B, S1-4.10B and S2-4.8A	**Repeal**
4.1	Security of Metering Equipment	NER clause 7.8.1 (a) and Metrology Procedure S1-3.7, S1-4.7, S1-5.7, S2-3.6, S2-4.6, S3-3.6, S4-2.10, S5-2.10 and S6-3.8. NEMMCO's Service Level Requirements38 clauses 4.1.4 and 4.16.	**Repeal**

38 Service Level Requirements: Metering Provision Services for the Provision, Installation and Maintenance of Metering Installation Types 1 – 6, available on NEMMCO's website at www.nemmco.com.au.

Electricity Customer Metering Code

Existing Provision		Duplicated by	Draft Decision
4.2 (b), (c) and (d)	Broken Seals	NER clause 7.8.1	**Repeal**
5.2	Method of Testing	NER S7.2.3, S7.3.1 and S7.4.3. Metrology Procedure S2 and S3.It should also be noted that provisions for existing first tier sites are 'grandfathered' under NER clause 11.20 and Metrology Procedure clause 2.3.7.	**Repeal**
5.4	Active Energy Meters	NER S7.2.3 and Metrology Procedure clause 2.6.3, S3-3.1, S3-3.2 and S5-1.5.	**Repeal**
5.5	Current Injection	NER clause 7.8.4.	**Repeal**
5.7 (c)	Notice, Presence and Records	Metrology Procedure clause 3.10.1 (b).	**Repeal**
6.1	Repair or Replace	NER clause 7.11.2.	**Repeal**
6.2	Costs	NER clauses 7.3.6 (a) and (f).	**Repeal**
7A.1	Responsibility for metering: Distributor or Retailer	as NER clauses 7.2.1, 7.2.2 and 7.2.3 are considered as being suitable for determining the Responsible Person role	**Repeal**
7A.2	Consumption Level	Metrology Procedure S2-1.2.	**Repeal**
7.1 (a), (b), (d), (e) and (f)	Obligation to Provide	NER clauses 7.2.1, 7.2.2, 7.2.3, 7.2.5 and S7.2.3 Item 5Metrology Procedure clause 2.7.4 and 14.2.1.	**Repeal**
7.2 (a) and (b)	Embedded Networks	Metrology Procedure clause 2.4.2.	**Repeal**
7.3	Non-Reversion	Metrology Procedure clause 2.5.1.	**Repeal**
8	Minimum standards for metering equipment	Technical standard now specified by the NER and Metrology Procedure	**Repeal**
9	Installation and testing of metering equipment	Technical standard now specified by the NER	**Repeal**

Electricity Customer Metering Code

Existing Provision		Duplicated by	Draft Decision
		and Metrology Procedure	
10	Accuracy assurance	Technical standard now specified by the NER and Metrology Procedure	**Repeal**
11	Repair or replacement of metering equipment	Technical standard now specified by the NER and Metrology Procedure	**Repeal**
12	Installation	Technical standard now specified by the NER and Metrology Procedure	**Repeal**
13	Meter reading for customer transfer	Metrology Procedure clause 3.3.12.	**Repeal**
14.1 (a)	Access to Data	NER clause 7.7 (a).	**Repeal**
15A	Satisfaction of Obligations	NER clause 7.2.5 (a) (1).	**Repeal**
15.1A	Interval Metering	Metrology Procedure clause 3.3.	**Repeal**
15.1	General Obligation	NER clause 7.11.1 and Metrology Procedure clause 3.3.	**Repeal**
15.2	First Tier Interval Energy Data	NER clause 7.11.1 and Metrology Procedure clause 3.3.	**Repeal**
15.3	Alteration to Original Metering Data	a reference to the relevant clause in the NER.	**Repeal**
15.5	Data Security	NER clauses 7.8.2 (a) and 7.10.	**Repeal**
15.6	Discrepancies	NER clause 7.6.3 (c) and Metrology Procedure clauses 3.10.3 and 3.10.5.	**Repeal**
16	Estimation of Energy Data	NER Table S7.2.3.1 Item 4 and Metrology Procedure clause 3.5.	**Repeal**
17.1 and 23.1	Validation and Substitution	These clauses simply provide a reference to requirements contained in the Metrology Procedure	**Repeal**
18	Calculation of Energy Data for Unmetered Loads	Metrology Procedure clause 3.6.	**Repeal**
19	Storage of Energy Data	NER clause 7.9.1.	**Repeal**
20	Access to Energy Data	NER clause 7.7 (a) and Metrology Procedure	**Repeal**

Electricity Customer Metering Code			
Existing Provision		**Duplicated by**	**Draft Decision**
		clauses 3.81 to 3.8.4.	
21	Transfer of Energy Data	NER clause 7.3.5 (b) and Metrology Procedure clauses 3.11.6 and 3.11.7 and S4-1.7, S4-1.8, S4.1.9 and S4-15.	**Repeal**
22	Audits of Energy Data	NER clause 7.6.1 (f)	**Repeal**
23A	Access to Energy Data	NER clause 7.7 (a) and Metrology Procedure clauses 3.8.1 to 3.8.4 and S4-1.11, S4-1.12 and S6.2.9.	