

Energy Fact Sheet Guidelines

Draft guidelines for consultation

12 March 2019



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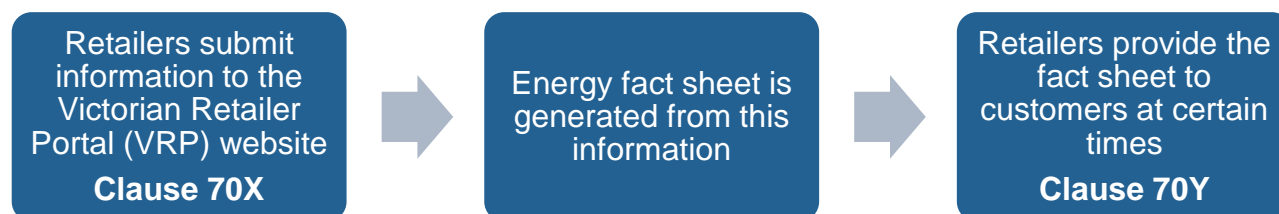
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Introduction

Background

- 1.1. In March 2018, the Victorian Government referred recommendation 3 of the Independent Review into the Electricity and Gas Retail Markets to the Essential Services Commission to implement. To give effect to recommendations 3C, 3D and 3E of this review, we are introducing a new Victorian energy fact sheet ('the fact sheet').
- 1.2. The purpose of the fact sheet is to display key information about available energy offers, presented in a consistent format across retailers, to assist small customers in considering, comparing and selecting offers. The fact sheet will replace the existing Price and Product Information Statements and offer summaries.
- 1.3. Figure 1 summarises the process by which the fact sheet will be generated and provided to small customers, and how this relates to retailer obligations set out in the Energy Retail Code (the 'Code').

Figure 1 Fact sheet process and related Code obligations



Purpose and status of this document

- 1.4. The purpose of this document ('the Guidelines') is to provide energy retail licensees (retailers) with guidance relating to their obligations to make fact sheets available to consumers. These obligations are set out in Division 5 of Part 2A of the Code. These guidelines are intended to be read as a whole, in conjunction with the Code.
- 1.5. These guidelines are issued under sections 35C and 36A of the Electricity Industry Act and sections 42C and 43A of the Gas Industry Act. They constitute written information issued by the Commission regarding a small customer's entitlement to supporting measures under Part 2A, for the purposes of clause 70E(2) of the Code.

Application of the guidelines

- 1.6. The Guidelines apply to all types of marketing and publishing of energy offers to small customers. This includes energy retailers and any agents marketing or providing information about energy offers on their behalf, such as comparison websites and telemarketing or door-to-door sales agents. Small customers will be referred to as customers for the remainder of this document.
- 1.7. References to retailer obligations throughout this document should be interpreted as including any third party involved in marketing, publishing or advertising energy offers.
- 1.8. The obligations in the Code will take effect from 1 July 2019.
- 1.9. The commission may amend or replace these Guidelines in the future, subject to consultation with stakeholders.

Scope of fact sheet obligations

- 1.10. As set out in the Code, retailers must have a fact sheet available for each offer, including restricted plans.¹
- 1.11. Exempt sellers are not subject to requirements relating to Victorian energy fact sheets.

Definitions and interpretation

- 1.12. In these Guidelines words and phrases have the meaning given to them in the Glossary, or if not defined in the Glossary, the Code.

¹ Requirements are set out in Division 5 of Part 2A of the Energy Retail Code.

Uploading information to the Victorian Retailer Portal website – clause 70X

- 2.1. This section of the Guidelines addresses the requirements on retailers under clause 70X of the Code to upload energy offer data and information to the Victorian Retailer Portal (VRP) website, the retailer interface for the Victorian Energy Compare (VEC) website. It also describes the requirements on retailers with respect to terminology and display of energy offer information.

Inputting offer information to the VRP website

- 2.2. The Code (clause 70X(1)) requires retailers to input accurate details of each of their offers into the VRP website.²
- 2.3. Retailers are required to upload information and data to the VRP website in the manner and form provided for by the VRP website and in accordance with the VRP user manual.
- 2.4. Retailers must obtain fact sheets for each offer from the VRP website (clause 70X(2)). These are generated by the VRP website once retailers have uploaded the necessary offer information.

Quality control of data and information submitted

- 2.5. The Code (clause 70X(1)) provides that retailers must ensure that the data and information uploaded to the VRP website is accurate.

Language requirements

- 2.6. All information uploaded to the VRP website must be written in plain English and be designed to be readily understandable by customers (clause 70X(3)).
- 2.7. Language requirements (table 1) also apply to information uploaded to the VRP website for use in the fact sheet and in other advertising and/or marketing by retailers or their agents.
- 2.8. Terminology should be consistent across information uploaded to the VRP website and in marketing and advertising.

² As set out in clause 70W of the Energy Retail Code, this requirement does not apply to exempt persons.

- 2.9. The language requirements prescribe required terms for certain components of an offer and prohibit the use of other terms for fact sheets and in advertising and/or marketing. Retailers cannot use a synonym to a prohibited term to avoid the prohibition.
- 2.10. The language requirements do not extend to contracts or to bills. However, retailers should seek to maintain consistency across these documents wherever possible.

Table 1 Language requirements

Prohibited terms	Required terms
Guaranteed discount Non-conditional discount Base discount	Unconditional discount
Termination fee Early termination fee	Exit fee
Consumption	Usage
Standing charge Fixed charge	Supply charge
Fixed Fixed term (except where the price is fixed, in which case 'fixed' may be used in relation to price)	Contract term, Contract length, or [number] month contract If there is no contract term: 'no lock-in contract'
Evergreen	Ongoing contract with benefit period, or Ongoing contract with [number] month(s) benefit period
Fixed benefit period	[number month(s)] benefit period, or Benefit period
Off-peak to refer to controlled load usage	Controlled load
Capacity charge or other term to describe demand	Demand charge
Any term other than 'general usage' to describe the general consumption element of a single rate tariff offer	General usage

Key offer information

- 2.11. The Code requires retailers to provide information and data for all relevant offer fields contained within the VRP website.
- 2.12. Paragraphs 2.13 to 2.40 below provide additional information relating to the retailer's obligations concerning price information, discounts, incentives, fees and other additional information to be provided when a retailer uploads an offer to the VRP website.

Price information

- 2.13. The VRP website will require retailers to provide:
- the unit price for electricity and/or gas, expressed in cents per kWh or cents per MJ as appropriate
 - any demand charges, where relevant, labelled as cents per kW
 - any fixed or standing charge, expressed in 'cents per day'.

Discounts

- 2.14. For an offer that includes a discount, the VRP website will require a retailer to provide information on those discounts including:
- type of discount
 - discount description
 - discount amount
 - category of discount
 - what the discount is applied to
 - any eligibility or conditions associated with the discount.

Unconditional discounts

- 2.15. An unconditional discount is any discount that does not require a particular action or behaviour on the part of the customer. The discount is automatic and no conditions are attached.

Conditional discounts

- 2.16. Conditional discounts are discounts that only apply if a customer satisfies certain requirements or conditions. Examples of conditional discounts include but are not limited to:
- pay on time discounts
 - bundling discounts (when a customer signs up to both electricity and gas with a retailer)

- direct debit discounts.

2.17. The VRP website will require a retailer to clearly state in the data and information uploaded, the condition(s) the customer must satisfy to receive the discount, for example, paying the bill by the due date.

Incentives

2.18. An incentive is a benefit to the customer other than a discount that includes non-price benefits, one-off price benefits or physical gifts that are provided to a customer upon entry to a contract. Examples of non-price incentives include but are not limited to:

- vouchers for use in energy retail stores
- magazine subscriptions
- cinema tickets
- tickets to sporting events.

2.19. The VRP website will require a retailer to provide details of non-price incentives that form part of the offer when they upload offer information.

2.20. Benefits that have a one-off application, including price benefits, must be clearly and simply explained in the information uploaded to the VRP website.

2.21. In the event of early exit from a contract, if a customer is required to pay the retailer the value of the incentive, the VRP website will require the retailer to provide this information and it will be stated in the fact sheet.

Fees

2.22. The VRP website will require a retailer to provide the key fees applicable to an offer when uploading offer information. A 'key fee' is any fee applying to an offer that will be incurred by:

- all customers or
- a significant portion of customers.

2.23. Key fees include but are not limited to:

- connection/move-in fees
- account establishment fees
- annual fees/membership fees
- exit fees
- disconnection fees
- reconnection fees

- payment processing fees, such as credit card fees, direct debit fees, and fees for paying in person at the post office
 - metering fees.
- 2.24. The amount of each fee displayed in the fact sheet is to be specified in dollars (inclusive of GST) or as a percentage of the bill amount (inclusive of GST).
- 2.25. If a retailer applies any further fees to an offer that are not key fees, they will be required to include a reference to where a customer can access additional information on these fees in the information uploaded to the VRP website. An example of such fees may be a fee or charge that relates to a special meter read or meter inspection fee. The reference must be to a specific URL where details of these fees can be found.
- 2.26. A retailer will be required to name any fees relating to the disconnection or reconnection of a customer as 'disconnection fees' and 'reconnection fees' respectively. In the description of these fees, it must be clearly stated when the fee will be charged. For example, if a disconnection fee will be charged when the customer moves property, this must be clearly stated.

Additional information to be provided

- 2.27. The VRP website will also require a retailer to upload the following information for publication in the fact sheet:
- the distribution area that the offer applies to
 - the billing period and frequency
 - the length of the contract or, where applicable, the fact the contract has no specified length
 - the length of the benefit period
 - the arrangements that will take place at the expiry of the contract or benefit period
 - whether a retailer may vary the prices that apply to an offer and, if the price may vary, how and when customers will be notified of price variations
 - how and where customers can access information on the full terms and conditions of the offer
 - a retailer's contact information, including contact phone number and website details
 - if an offer is priced as an estimate based on the customer's previous usage and any conditions associated with these offers.
- 2.28. If the electricity or gas charges of an offer are not able to be expressed as a unit price, the retailer will not be required to provide the price information as detailed in paragraph 2.13.

- 2.29. Where the retailer is not able to provide prices due to the design of the offer, a Comparison Pricing Table (see paragraphs 3.4-3.8) will not be displayed on the fact sheet.

Eligibility criteria

- 2.30. The VRP website will require a retailer to provide details of any specific eligibility restrictions that would prevent a customer accessing a generally available plan. Examples of specific eligibility restrictions include access to the offer being conditional on the customer:
- being a member of a particular club – for example: a motoring club, sporting club, or business or leisure association
 - purchasing a particular product or service, which could be from the retailer themselves or another company partnering with the retailer – for example, purchasing a smart meter or battery, signing on to a retailer rewards program or purchasing an internet/mobile phone contract from the retailer or another company partnering with the retailer
 - purchasing the offer through sign up channels other than the retailer – for example a comparison website, partner company or connection service
 - purchasing the offer online only through the retailer
 - being an existing customer of the retailer
 - being a new customer to the retailer
 - being a concession card or seniors card holder
 - having solar panels, a smart meter, battery storage unit or swimming pool at the property
 - being located in a limited geographic area as specified by the retailer
 - having sufficient previous usage data at the premises to allow the retailer to calculate an estimate for the customers usage and price the offer accordingly.
- 2.31. Specific eligibility criteria apply to generally available plans and are separate from criteria for restricted plans, as described in paragraph 4.4.
- 2.32. Incentives are not the same as eligibility criteria and should be treated as incentives as described in paragraphs 2.18-2.21.

Solar, GreenPower and other options

- 2.33. The VRP website will require a retailer to specify information on additional options that a customer may select, such as solar or GreenPower.

- 2.34. Where a particular offer has a number of GreenPower options associated with it, a retailer will be required to provide information on each of the associated GreenPower options as one offer.
- 2.35. A retailer will be required to specify if an offer is limited to customer with solar photovoltaic systems only.
- 2.36. They will also be required to indicate the solar feed-in tariff (or solar feed-in tariffs if there are more than one) available to customers entering into the offer.
- 2.37. If an additional option changes any element of the rest of the offer, the VRP website will require a retailer to create a separate offer. For example, if a higher daily supply charge will apply for solar customers this would constitute a separate offer.

Metering configurations and tariff type

- 2.38. The VRP website will require a retailer to specify if the offer's availability is subject to the customer's property having a particular metering system or configuration.
- 2.39. Each tariff type is considered a separate offer and the VRP website will generate separate fact sheets for each metering configuration.

Dual fuel offers

- 2.40. 'Contingent fuel offers' are offers where the prices or conditions offered are contingent on customers accepting the supply of both electricity and gas from the retailer. If an offer is a contingent fuel offer, that information should be provided by retailers in the eligibility section of the offer.

Generating the fact sheet

- 3.1. This section of the Guidelines details the process by which the fact sheet will be generated from information uploaded by retailers to the VRP website.

Generating the fact sheet

- 3.2. The VRP website will generate the energy fact sheet for each offer retailers upload to the website, using the information and data provided by the retailer. Retailers must use this fact sheet generated by the VRP website as prescribed in the Code.
- 3.3. Retailers' obligations with respect to the publication and distribution of the fact sheet vary according to whether the plan is generally available or restricted. These obligations are set out further in paragraphs 4.8-4.26.

Comparison pricing table

- 3.4. The VRP website will automatically generate a Comparison Pricing Table for display on the fact sheet.
- 3.5. The Comparison Pricing Table will include an estimate for three household usage profiles:
- 1 person
 - 2-3 people
 - 4+ people.
- 3.6. Two estimates will be displayed for each profile:
- A price estimate, excluding conditional discounts and
 - An estimate that includes all available discounts.
- 3.7. For both electricity and gas offers, the estimate will be for an annual period.
- 3.8. The Comparison Pricing Table will not be displayed on the fact sheet for:
- small business customer offers
 - residential customer offers with demand charges
 - offers where customer usage data is required to price the offer.

Providing the fact sheet to customers – clause 70Y

- 4.1. This section of the Guidelines addresses the requirements on retailers under clause 70Y of the Code to provide the fact sheet to customers.

Terms used throughout clause 70Y

Generally available plans

- 4.2. All plans that are available to any customers in the relevant distribution zone with the appropriate metering configuration are generally available unless they are a restricted plan.

Restricted plans

- 4.3. Restricted plans are specifically targeted at an individual or exclusive group and tailored to the specific circumstances of that customer and their need(s).
- 4.4. Restricted plans are typically not actively marketed, but negotiated by the retailer or its agent with the customer. Examples of restricted plans include, but are not limited to:
- family and friends plans, including retailer staff plans and staff plans for employees of companies with whom the retailer has a commercial relationship
 - plans targeted to a specific customer, with traits and characteristics that cannot be easily acquired - for example - where the customer negotiates a specific plan with the retailer based on having multiple sites serviced by the same retailer
 - obsolete plans
 - standing offer plans that are not readily available to small customers in a particular location but which retailers are obliged to offer only to satisfy their Financially Responsible Market Participant (FRMP) requirements under the Code
 - plans for customers in residential embedded networks where the retailer acts as the embedded network operator, or provides retail-only plans to an embedded network customer
 - plans restricted to customers in a pilot program
 - plans restricted to concession customers
 - plans restricted to hardship customers
 - 'save' plans, which are offered by retailers in response to a customer signalling they intend to switch to another retailer
 - 'win-back' plans, which are offered by retailers after the customer has switched to a new retailer to persuade the customer to return.

Marketing

- 4.5. Where requirements refer to the marketing of generally available and/or restricted plans by any means (e.g. clauses 70Y(6) and 70Y(9)), this includes but is not limited to door-to-door sales or other in-person marketing activity, telemarketing activity, telephone queries, or other internet sales channels that relate directly or indirectly to:
- a retailer explaining offers in circumstances where the discussion relates to prices or discounts
 - a retailer attempting to retain customers
 - a retailer attempting to gain customers
 - a retailer attempting to offer an additional energy type to customers – for instance marketing or discussions relating to bundled offers with customers that the retailer currently supplies with one fuel.
- 4.6. During any door-to-door sales or other in-person marketing activity to a customer for any offer a retailer or its agent does not need to provide the customer with the fact sheet if the door-to-door sales or other marketing activity ends promptly without any conversation in relation to prices or offers. For example, if the customer refuses to engage with the retailer or third party representing the retailer.

Third parties

- 4.7. Where requirements refer to information being provided by or marketing being done by a person other than the retailer, this includes agents such as third party comparator websites, sales websites and utilities connection services.

Timing requirements

- 4.8. The Code (clause 70Y(1)) requires retailers to ensure that an energy fact sheet for each generally available and restricted plan is available within two business days of the plan becoming available to customers.
- 4.9. In the event a retailer updates an offer, it must ensure that an appropriate energy fact sheet for any such updated offer is available, in order to be compliant with consumer protection obligations. Where a retailer removes an offer it should also ensure it remains compliant with consumer protection obligations and does not provide misleading information.
- 4.10. The Code (clause 70Y(10)) also requires that if a customer requests a copy of a fact sheet, a retailer must send this either by post or electronically within five business days of contact with the customer.

Requirements for generally available plans

Displaying fact sheets on retailer and third party websites (clause 70Y(3))

- 4.11. Where a retailer provides, either directly or via arrangements with another person, information about a generally available plan on a website, the retailer must ensure
- a clear link to the energy fact sheet that is relevant to that plan is published in a prominent position on that website, and
 - the link is labelled 'energy fact sheet'.
- 4.12. Retailers must ensure that this link is live within two business days of the generally available plan becoming available to customers.

Requirements for online sign-up (clause 70Y(4))

- 4.13. If a customer is able to sign up to a generally available offer online, retailers are required to refer to the relevant fact sheet and provide a clear and prominent link to the fact sheet in close proximity to where customers are signing up to the offer.

Helping customers find the relevant fact sheet (clause 70Y(5))

- 4.14. The Code requires a retailer to ensure that the energy fact sheet for a generally available plan that is applicable to a customer's circumstances is readily identifiable by a customer.
- 4.15. In circumstances where more than one fact sheet may be relevant to a customer, the retailer should ask additional questions to establish the specific fact sheet relevant to the customer before providing that specific fact sheet to the customer.

Marketing generally available plans (clause 70Y(6))

- 4.16. In relation to the marketing of generally available plans, retailers are required to advise the customer that a fact sheet containing all the key details about the offer sheet is available on the retailer's website (noting the relevant URL) or upon request.

Publication requirements on mass media and social media (clauses 70Y(7) and (8))

- 4.17. If a retailer or its agent markets generally available plans that reference prices, discounts, or the value of existing or potential offers for customers on mass media channels including magazines, the internet, newspaper or billboards, a retailer is required to include the following statement in any advertisements in clear and easily readable text:

Fact sheets available at [insert link to the retailer/agent website where the fact sheet is located]. For clear advice to help you decide if this is a suitable plan for you, contact [us/the name of the relevant retailer] on [insert contact details for the relevant retailer].

- 4.18. The requirement in paragraph 4.17 extends to the promotion of offers through social media and advertisements on social media.
- 4.19. If a retailer advertises an offer online using a medium with character limitations that prevents the text required in paragraph 4.17 to be included, a retailer is required to include the text in a prominent location on the first webpage linked to in the advertisement.

Requirements for restricted plans

- 4.20. Retailers are required to upload offer information for restricted plans to the VRP website to generate fact sheets for those plans. However retailers are not required to publish links to fact sheets for restricted plans on their website.
- 4.21. The Code (clause 70Y(9)) requires that where retailers provide information about a restricted plan to a customer, or when marketing a restricted plan by any means, retailers must inform customers that a fact sheet is available upon request.

Access to fact sheet without providing technical or personal information

- 4.22. Customers must be able to obtain a fact sheet for a generally available or restricted plan without providing technical or personal information, other than information required to determine if a customer is eligible for a particular plan. For example:
- the minimum level of information necessary to allow the retailer to determine the customer's distribution zone (electricity), supply area (gas) or climate zone, and/or
 - metering configuration information.
- 4.23. Where additional information is required to determine the customer's eligibility for a plan, retailers should assist the customer in understanding how to obtain that information.

Using the offer ID

- 4.24. The VRP website generates a unique reference code or offer ID for each offer. When marketing offers, the Code (clause 70Y(11)) provides that retailers must be able to identify and refer to the VRP-generated offer ID in communications with customers.
- 4.25. This means that if a customer contacts or is contacted by a retailer or its agent about an offer and the customer refers to an VRP-generated offer ID, the retailer or agent must be able to cross reference and identify the offer the customer is referring to based only on the offer ID.
- 4.26. The retailer or agent should not have to ask for any additional information from the customer to identify the relevant offer.

Evidence of compliance – clause 70Z

- 5.1. The Code requires retailers to maintain records evidencing compliance with their obligations relating to fact sheets, as set out in division 5 of part 2A of the Code. The commission may require retailers to provide those records to the commission.

Glossary

Term	Definition
Base level	refers to the tariff level from which a discount is offered. For example, where a retailer has a market offer plan that provides a 10% discount off the standing offer plan rates, the standing offer plan rates are the base level.
Benefit period	has the meaning given to the term 'fixed benefit period' in the Code and means a period of a market retail contract (where the end date of that period is specified or ascertainable at the beginning of that period) during which a benefit to the customer (such as a price discount) is available.
Business day	has the meaning given in the Code, meaning a day that is not a Saturday or Sunday; or a public holiday appointed under the <i>Public Holidays Act 1993</i> (Vic).
Capped offer	is an offer where the customer is charged a fixed amount over the billing period, capped at an amount agreed by the retailer and customer.
Code	is the Energy Retail Code.
Comparison Pricing Table	is a table generated for each offer entered into the Victorian Retailer Portal website. It includes a price estimate for three household usage profiles: 1- person, 2-3 people and 4+ people as calculated by the Victorian Retailer Portal website.
Conditional discount	means any discount that only applies if a customer satisfies certain requirements or conditions (for example, by paying on time).
Contract length	refers to the period of time from commencement until expiry. Specifically, it is the period during which any exit fees are payable. See also 'Contract term' and '[number] month contract'.
Contract term	refers to the period of time from commencement until expiry. Specifically, it is the period during which any exit fees are payable. See also 'Contract length' and '[number] month contract'.

Customer	means a person to whom energy is sold for premises by a retailer; or who proposes to purchase energy for premises from a retailer.
Dual fuel	refers to offers where prices and/or conditions offered are contingent on customers accepting the supply of both electricity and gas from the retailer. An offer can be a dual fuel offer even if the customer enters two separate contracts.
Energy fact sheet	means the document generated by the Victorian Retailer Portal website that contains key information in relation to a standing offer or market offer
Exit fee	means a sum of money charged (or any other penalty imposed) on the early termination of a contract before the end of the contract term or benefit period.
Fixed benefit period	see Benefit period.
Generally available plan	means any plan that is available to any customer in the relevant distribution zone unless it is classified as a restricted plan.
Incentive	means a benefit to the customer, other than a discount, that includes non-price benefits, one-off price benefits or physical gifts that are provided to a customer upon entry to a contract.
Key fee	is any fee applying to an offer that will be incurred by: <ul style="list-style-type: none"> • all customers or • a significant portion of customers.
Market offer plan	is a plan that is provided to a customer, for or in connection with the sale and supply of energy, under a market retail contract. ³
No contract term	refers to a feature of a contract where the contract does not have a specific length or end date, and for which the benefits are not fixed for a period of time.
[number] month contract	refers to the period of time from the commencement until the expiry of a contract. Specifically, it is the period during which any exit fees are payable. When referring to a particular offer, [number] is replaced by

³ A market retail contract is a customer retail contract as referred to in the Energy Retail Code.

	the applicable period of time, usually 12, 24 or 36 months. See also 'Contract length' and 'Contract term'.
Ongoing contract	means a contract without a specified contract length or end date.
Ongoing contract with benefit period	means a contract without a specific contract length or end date that includes a provision for the customer to receive a benefit for a certain period (see 'benefit period').
Plan	means a standing offer plan or market offer plan that a retailer offers to a customer.
Restricted plans	are plans specifically targeted to an exclusive individual or group and tailored to the specific circumstances of that customer and their need(s). They are also typically not actively marketed, but negotiated on the spot by the customer with the retailer or its agent.
Retailer	has the meaning in the Code, being a person who holds a retail licence under the <i>Electricity Industry Act 2000</i> (Vic) or the <i>Gas Industry Act (2001)</i> (Vic).
Small customer	has the meaning in the Code.
Standing offer plan	is a plan that is provided to a customer, for or in connection with the sale and supply of energy, under a standard retail contract. ⁴
Social media	means websites and applications that enable users to create and share content or participate in social networking.
Unconditional discount	is any discount that does not require a particular action or behaviour on the part of the customer. The discount is automatic and no conditions are attached.
Usage	refers to the energy that is consumed at a property.

⁴ A standard retail contract is a customer retail contract that is as defined in the Energy Retail Code.

Appendix – Mapping postcodes to climate zones

The excel file published alongside this document⁵ contains a mapping of Victorian postcodes to climate zones. Retailers should use this to ensure that customers receive the fact sheet with comparison table estimates that are relevant to them.

⁵ Available at <https://www.esc.vic.gov.au/sites/default/files/documents/mapping-postcodes-climate-zones-20190312.xlsx>