

Ensuring Contracts are Clear and Fair

Terms of Reference to the Essential Services Commission

The Essential Services Commission (ESC) is requested to conduct a review under section 10(g) of the *Essential Services Commission Act 2001* on the appropriate amendments to the Energy Retail Code (the Code) to give effect to recommendations 4A to 4E of the *Independent Review of the Electricity and Gas Retail Markets in Victoria* (the Review).

Background

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

On 26 October 2018, the government released its final response to the Review. The final response gave full support for all 11 recommendations and in particular:

- supported recommendations 1 and 2 by proposing to require electricity retailers to offer a fairer price for energy, to be called the “Victorian Default Offer” (VDO), and replace standing offers; and
- supported recommendation 4, noting the government will direct the ESC to review the *Energy Retail Code* (the Code) to give effect to the recommendation.

Recommendation 4 is concerned with contract periods, practices and variations being clear and fair, and comprises 5 sub-recommendations:

4A Require retailers to commit to fix any prices they are offering for a minimum of 12 months. During this period, the market contract prices cannot change. Retailers may request an exemption from the ESC to address unforeseen changes in network costs;

4B Require retailers to disclose the length of time any offered prices will be available without change;

4C Require retailers to roll customers onto the nearest matching offer, generally available offer at the end of a contract or benefit period, unless the customer opts for another offer;

4D Any conditional discount or other benefit offered for paying on-time or on-line billing should be evergreen. Customers should not lose the discount or other benefit when the contract ends; and

4E Costs incurred by customers for failing to meet offer conditions are to be capped and not be higher than the reasonable cost to the retailer.

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Request

The government is now requesting the ESC to review the Code to give effect to Review sub-recommendations 4A to 4E. The ESC is also asked to advise of any implementation issues arising from these Terms of Reference.

The ESC is advised to interpret recommendation 4A, requiring retailers to fix prices for a minimum of 12 months, as applying from the date an individual customer enters into a new contract. This recommendation is not intended to prevent retailers from updating price offers available to other customers in the market.

In conducting its review, the ESC is required to have regard to its objectives under the *Essential Services Commission Act 2001*, *Electricity Industry Act 2000*, and *Gas Industry Act 2001*, findings from the Review, the Government's published response to the Review, advice from relevant experts, and other matters it deems relevant.

While undertaking its review, the ESC may consider early adoption of any measures it considers necessary in the context of its statutory objectives, including those introduced in other Australian jurisdictions.

The ESC should engage in its work with an expert panel including the Secretary of DELWP and members nominated by the Minister for Energy, Environment and Climate Change.

Consultation

In undertaking this review, the ESC is required to publicly consult.

Reporting

Throughout the review, the ESC will advise the Assistant Treasurer and the Minister for Energy, Environment and Climate Change about its progress and final approach.

Completion

The ESC is required to complete and publish its review, so that changes to relevant instruments can take effect from 1 July 2020.