

Technical final decision on the Victorian energy fact sheet

Final decision

9 May 2019



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Executive summary

This final decision sets out the technical detail that underpins the new Victorian energy fact sheet. The purpose of the fact sheet is to enable customers to more confidently assess and compare offers in the retail energy market.

The new fact sheet will include a comparison table that will help customers to easily compare offers on the basis of the average yearly costs for a range of typical customers. The fact sheet will be provided to customers at critical points in their decision making process, and will also be referenced in marketing material.

Our final decisions

Submissions to our technical draft decision were largely supportive of our proposed decisions to streamline existing information disclosure requirements and introduce the new Victorian energy fact sheet. Therefore, the commission's final decision for nine of the ten decisions is unchanged from our draft decision. Final decision 6 now aligns fact sheet language with the national framework.

Final decision 1: Scope of the Victorian energy fact sheet

Retailers must ensure fact sheets are available for all plans for small customers.¹

Final decision 2: Exemption from fact sheet requirements for exempt sellers

Exempt sellers² are not subject to the requirement to have a Victorian energy fact sheet available for all plans for small customers.

Final decision 3: Fact sheets will be generated from information retailers upload to the Victorian Retailer Portal

Retailers must upload information to the Victorian Retailer Portal website³ in accordance with the Energy Fact Sheet Guidelines⁴ in order for the fact sheet to be generated.

¹ Clause 3 of the Energy Retail Code states 'small customer' has the same meaning given to domestic or small business customer under section 3 of the Electricity Industry Act or section 3 of the Gas Industry Act.

² Clause 3 of the Energy Retail Code states an 'exempt person' is a person who is exempt from holding a licence under section 16 of the Electricity Industry Act to engage in certain activities as set out in clauses 4 and 5 of the General Exemption Order (deemed exemption of retailers and exemption of registered retailers).

Final decision 4: Ensuring fact sheet information is accurate and understandable

Retailers must ensure that data and information uploaded to the Victorian Retailer Portal website is accurate and designed to be readily understandable by customers.

Final decision 5: Exemption from requirement to include comparison mechanism in the fact sheet

The comparison table on the Victorian energy fact sheet will not be required for small businesses, demand charges or plans where customer usage data is needed to price the plan.

Final decision 6: Fact sheet terminology to be consistent with the national framework

The terminology used in the Victorian energy fact sheet will be consistent with language used in the national framework.

Final decision 7: Timing requirements for displaying fact sheets on retailer and third party websites

Retailers and third parties must ensure a link to the fact sheet for a generally available plan⁵ is available on their website within two business days of the plan becoming available to customers.

Final decision 8: Assisting customers to find the relevant fact sheet

Retailers must ensure that the fact sheet that is applicable to a customer's circumstances is readily identifiable by that customer.

Final decision 9: Customer access to fact sheet without providing technical or personal information

Retailers must not require a customer to provide technical or personal information for the customer to obtain a fact sheet, other than information required to determine if a customer is eligible for a particular plan, for example:

³ The retailer interface for the Victorian Energy Compare website, via which retailers are required to upload information, including for the purposes of generating an energy fact sheet.

⁴ Guidelines issued by the Commission have been published alongside this document.

⁵ A generally available plan is any plan that is available to any customer in the relevant distribution zone unless it is classified as a restricted plan.

- the minimum level of information necessary to allow the retailer to determine the customer's distribution zone (electricity), distribution supply area (gas) or climate zone, and/or
- metering configuration information.

Final decision 10: Using the offer ID to identify energy offers

Retailers must be able to use the offer ID⁶ to identify the offer a customer is referring to when communicating with customers.

Commencement

The commencement date for the new marketing and information disclosure Energy Retail Code amendments is 1 July 2019.

⁶ An offer-specific identification code generated by the Victorian Retail Portal website.

1. Context

Our work in this technical final decision forms part of the second round of changes arising from the Independent Review into the Electricity and Gas Retail Markets in Victoria. Our first round of reforms focused on rebuilding trust through clear information entitlements in the retail energy market.⁷

This chapter provides a brief overview of our work program in the context of the independent review and our terms of reference. The role of the commission is set out in appendix D.

1.1. Independent Review into the Electricity and Gas Retail Markets

In November 2016, the Victorian Government appointed an independent panel to conduct a review of electricity and gas retail markets in Victoria. In August 2017, the independent panel's final report was released and concluded the market was not working for consumers.

The independent review determined that there were three main reasons why the market was not working for Victorian consumers: the cost of competition, the structure of the market, and the practices of the industry. Specifically, the independent review found that the marketing practices of energy companies were not supporting customers in choosing the best deal.

The independent review proposed 11 overarching reforms, which contained 29 detailed recommendations. The recommendations aim to improve energy market outcomes for consumers, including changing retailer marketing practices, improving market monitoring, establishing a regulated basic service offer and abolishing standing offer contracts.⁸

The Victorian Government released its final response to the independent review in October 2018, which supported all recommendations, subject to some refinements.⁹ As part of its interim response in March 2018, it referred a terms of reference to the commission under section 10(g) of the Essential Services Commission Act 2001.¹⁰

⁷ Essential Services Commission, Building trust through new customer entitlements in the retail energy market: Final Decision, October 2018.

⁸ Victorian Government, 'Terms of Reference for Independent Review of the Electricity and Gas Retail Markets in Victoria', November 2016.

⁹ The final government response can be found at <https://www.energy.vic.gov.au/about-energy/policy-and-strategy>.

¹⁰ See appendix D for further information about the role of the Essential Services Commission.

These terms of reference (outlined in appendix A) are for the commission to review the Energy Retail Code to give effect to:

- customer outcomes in the energy market, relating to recommendations 3 and 9
- efficient pricing in the energy market, relating to recommendation 8.¹¹

The terms of reference specify that the commission is not required to assess the merits of the independent review's findings and recommendations. Our role is limited to identifying the most timely and cost-effective ways to implement the findings and recommendations.

In December 2018, the Victorian Government also referred a terms of reference for the commission to review the Energy Retail Code to give effect to recommendation 4, which relates to ensuring contracts are clear and fair.

1.2. Our work program

Recommendation 3 from the independent review provided a series of remedies to assist customers to overcome the complexity of the market. The terms of reference (in appendix A) requested that the commission take a staged approach to implementing recommendation 3.

On 12 March 2019 we published our technical draft decision and Energy Fact Sheet Guidelines which set out the requisite Energy Retail Code amendments to give effect to the new Victorian energy fact sheet.¹²

1.3. Consultation in the development of our final decision

We consulted with stakeholders through a workshop and our regular reference group meeting to develop our approach to the new information disclosure and marketing requirements.

Our technical draft decision received 8 submissions. All submissions were from retailers. Their submissions are available on our website:

- AGL
- EnergyAustralia
- ERM Power
- Powershop

¹¹ Section 20(2) of the Electricity Industry Act 2000 and section 28(2) of the Gas Industry Act 2001 set out the licence conditions requiring energy retailers to comply with the Energy Retail Code.

¹² Essential Services Commission, Technical consultation on the Victorian energy fact sheet: Draft decision, March 2019.

- Onsite Energy Solutions
- Origin
- Red Energy and Lumo Energy
- Simply Energy

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

2. New rules for marketing and information disclosure

The independent review found it has become too difficult for customers to meaningfully assess and compare plans in the Victorian retail energy market. This has been driven by an increasingly complex array of plans from retailers, and a lack of effective mechanisms to support customers in choosing between them.

Our technical draft decision proposed to introduce a Victorian energy fact sheet to help consumers compare and select energy plans. This chapter confirms the detailed requirements to give effect to the fact sheet. These requirements largely mirror the equivalent national framework obligations.

Our final decision builds on our earlier reforms by continuing to focus on rebuilding trust in the retail energy market through clear information entitlements that support customers to engage confidently in the market.

In Victoria we have established new customer entitlements to support customers in navigating through the complexity of plans in the market, including:

- best offer information on bills, and
- requirements for retailers to provide clear advice about terms and conditions of offers when a customer is signing up to a plan.

Customers can also access personalised cost estimates for different plans through the Victorian price comparison website, Victorian Energy Compare.

The new Victorian energy fact sheet will replace the two existing information disclosure requirements – the price and product information statement (PPIS) and the offer summary.

We consider the introduction of the Victorian energy fact sheet to be an additional tool that can help customers confidently assess and compare energy plans. The fact sheet will display key information about available energy plans in a consistent format across retailers. It will include a comparison table that will help customers to easily compare plans based on an average yearly cost for a range of typical customers.

The fact sheet will help customers compare plans without having to answer a series of questions or provide granular smart meter data to generate an estimate of the annual plan cost. Customers will be able to obtain a more personalised estimate via Victorian Energy Compare. However the fact

sheet would provide a benchmark cost to help a customer identify if one plan would be significantly cheaper than another.

The specific changes in this technical final decision will improve and streamline the existing information disclosure requirements. We also introduce new rules governing when customers receive or are alerted to the availability of the fact sheet, including a requirement that all marketing material make reference to it. These new rules will ensure customers can access the fact sheet when it is most relevant to them.

We adopted the behavioural principles and evidenced research used by the Australian Energy Regulator (AER) in the development of its equivalent fact sheets, the Basic Plan Information Document. The requirements for the Victorian energy fact sheet are aligned closely with the national framework, however there are certain areas where we considered it was appropriate that the requirements for the Victorian energy fact sheet differ slightly from the national framework. This chapter sets out the key features of our requirements, taking into account stakeholder views.

2.1. Scope of the new rules

Our technical draft decision proposed that retailers must have fact sheets available for all plans that are available to small customers. This includes small business customers, who will get a fact sheet without a comparison table. This is explained further in final decision 5.

Stakeholder views and our response

Stakeholders were supportive of the introduction of a new fact sheet for all plans for small customers.¹³ Many retailers commended the removal of existing PPIS and offer summary requirements and identified the new energy fact sheets as an improved customer experience.¹⁴

Powershop supported the draft decision noting that the scope of the new requirements for fact sheets has not been tested to confirm that they result in benefits to Victorian customers.¹⁵ As set out in the high level final decision¹⁶ and this technical final decision, we have adopted the

¹³ Simply Energy, Powershop and Onsite Energy Solutions submissions to the Essential Services Commission consultation paper 'Technical consultation on the Victorian energy fact sheet', March 2019

¹⁴ EnergyAustralia, Origin, Simply Energy and ERM Power submissions to the Essential Services Commission consultation paper 'Technical consultation on the Victorian energy fact sheet', March 2019

¹⁵ Powershop, submission to the Essential Services Commission consultation paper 'Technical consultation on the Victorian energy fact sheet', March 2019

¹⁶ Essential Services Commission, Helping customers engage confidently in the retail energy market: Final decision, March 2019.

behavioural principles and evidence based research used by the AER in developing a fact sheet as an information tool that can reduce barriers to customer engagement with the market.

Final decision

Final decision 1 remains unchanged.

Final decision 1: Scope of the Victorian energy fact sheet

Retailers must ensure fact sheets are available for all plans for small customers.¹⁷

Fact sheets for different types of plans

Consistent with the national framework, the requirements for when fact sheets should be provided to customers will vary depending on whether a plan is generally available or restricted.

Our use of the term 'generally available' is aligned with the national framework and the AER's guidelines.¹⁸ This means that 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 are defined as plans that are specifically targeted at an individual or exclusive group and tailored to the specific circumstances of that customer and their need(s).

Consistent with our draft decision on consequential amendments, retailers are also expected to produce a fact sheet for the Victorian Default Offer in accordance with clause 15A(2).¹⁹

Exempt sellers

Our technical draft decision proposed that exempt sellers would not be subject to the requirements relating to Victorian energy fact sheets (clause 70W). Last year our Energy Retail Code review 2018 (obligations for exempt sellers) looked at whether customers in embedded networks receive adequate protections in the absence of easily participating in the retail market.²⁰ As part of the review, we made amendments to the Energy Retail Code to clarify the obligations of exempt

¹⁷ Clause 3 of the Energy Retail Code states 'small customer' has the same meaning given to domestic or small business customer under section 3 of the Electricity Industry Act or section 3 of the Gas Industry Act.

¹⁸ These definitions of 'generally available' and 'restricted' plans will come into the Energy Retail Code from 1 July 2019, as part of our October 2018 Final Decision: Building trust through new customer entitlements in the retail energy market.

¹⁹ Essential Services Commission, Consequential amendments related to the Victorian Default Offer: Draft decision, 8 May 2019

²⁰ Essential Services Commission, Energy Retail Code review (obligations for exempt sellers): Final decision, 19 September 2018.

sellers selling to small customers within embedded networks, such as residential apartment buildings, shopping centres, caravan parks or retirement homes. We noted at the time that the General Exemption Order requires exempt sellers to provide information relating to electricity tariffs and charges (among others) in plain English before a customer enters into an agreement for the sale of electricity, once a year, and at any other time at the request of the customer or the commission.

At that time, we decided that exempt sellers in Victoria would not be required to comply with the Energy Retail Code requirements relating to PPIS (clause 15B). This is because of exempt sellers' alternative pricing information requirements and because requiring exempt sellers to maintain a website where they did not already have one was likely to impose costs on them. Consistent with this position, we did not propose that exempt sellers would be subject to requirements relating to Victorian energy fact sheets.

Stakeholder views and response

Simply Energy and Onsite Energy Solutions supported the exemption from fact sheet requirements for exempt sellers.²¹

Powershop considered the exempt sellers exclusion would not provide adequate disclosure opportunities to all customers connected to the National Electricity Market such as small customers within embedded networks, noting that almost 150,000 Victorians that will be impacted.²²

At this stage, we have developed this exemption because of the alternative pricing information requirements that exempt sellers are subject to which include providing information before a customer enters into an agreement for the sale of electricity, once a year, and at any other time at the request of the customer. We also note that most exempt sellers only have one offer available for embedded network customers. Additionally to support exempt sellers to provide information in a consistent format, we are developing a downloadable agreement template resource for exempt sellers and suppliers that will enable them to easily fill out information specific to their embedded network. This will include pricing information that will be provided to customers before entering the sale or supply agreement, annually, and when requested by a customer or the commission. However, we will continue to closely monitor the Australian Energy Market Commission's ongoing

²¹ Simply Energy and Onsite Energy Solutions submissions to the Essential Services Commission consultation paper 'Technical consultation on the Victorian energy fact sheet', March 2019.

²² Powershop, submission to the Essential Services Commission consultation paper 'Technical consultation on the Victorian energy fact sheet', March 2019.

review of the national regulatory framework for embedded networks, and consider its relevance to information disclosure in the Victorian context.

Final decision

Final decision 2 remains unchanged.

Final decision 2: Exemption from fact sheet requirements for exempt sellers

Exempt sellers²³ are not subject to the requirement to have a Victorian energy fact sheet available for all plans for small customers.

2.2. Process for generating the fact sheet

The Victorian energy fact sheet will be generated by Victoria's comparator website, the Victorian Retailer Portal. The Victorian Retailer Portal is the retailer interface for the Victorian Energy Compare website. The Department of Environment, Land, Water and Planning (DELWP) is undertaking the system changes to the Victorian Retailer Portal required to create the new fact sheets for all plans on behalf of retailers.

Retailers operating in Victoria already upload information to the Victorian Retailer Portal, and the system changes proposed have a minimal impact on these existing offer maintenance processes. Retailers are already able to review existing information they have uploaded to the Victorian Retailer Portal website to ensure the information submitted is accurate.

Retailers currently upload information to the Victorian Retailer Portal for generally available plans, which are then published on Victorian Energy Compare. Under final decision 1, fact sheets are required to be available for restricted plans. Retailers will be required to upload information on restricted plans to the Victorian Retailer Portal, so that the relevant fact sheets can be generated and then be available to customers on request. Restricted plans will not be published on the Victorian Energy Compare website.

The Energy Fact Sheet Guidelines that accompany the new Energy Retail Code obligations (outlined in chapter 3) set out the process by which fact sheets should be generated and provided to customers. The guidelines follow the equivalent guidelines in the national framework (Retail Pricing Information Guidelines).

²³ Clause 3 of the Energy Retail Code states an 'exempt person' is a person who is exempt from holding a licence under section 16 of the Electricity Industry Act to engage in certain activities as set out in clauses 4 and 5 of the General Exemption Order (deemed exemption of retailers and exemption of registered retailers).

Retailers should continue to follow the Victorian Retailer Portal user manual for requirements on the information they upload to the portal. The user manual is produced by DELWP and sets out how retailers should use the portal to upload offers to the Victorian Energy Compare website.

Retailers will be responsible for ensuring that the data and information they upload to the Victorian Retailer Portal website is accurate (clause 70X(1)) and designed to be readily understandable by customers (clause 70X(3)).

Stakeholder views and response

Retailers generally supported the requirement to upload information to the Victorian Retailer Portal in accordance with our draft Energy Fact Sheet Guidelines.²⁴

Some retailers sought to clarify the circumstances in which clause 70Y(2) of the Energy Retail Code applies.²⁵ For example, Powershop sought to confirm retailers would not be held accountable for a technical issue with the Victorian Retailer Portal. We have clarified that the intent of the clause is to address such situations. We have amended clause 70Y(2) and our Energy Fact Sheet Guidelines to reflect that the retailer will not contravene clause 70Y to the extent it has been unable to obtain the relevant energy fact sheet from the Victorian Retailer Portal website through no fault of its own.

Final decision

Retailers broadly supported our intent with respect to the process for generating the fact sheet. Therefore final decision 3 and 4 remain unchanged.

Final decision 3: Fact sheets will be generated from information retailers upload to the Victorian Retailer Portal

Retailers must upload information to the Victorian Retailer Portal website²⁶ in accordance with the Energy Fact Sheet Guidelines²⁷ in order for the fact sheet to be generated.

²⁴ Simply Energy, Red Energy and Lumo Energy, Powershop, Onsite Energy Solutions and EnergyAustralia submissions to the Essential Services Commission consultation paper 'Technical consultation on the Victorian energy fact sheet', March 2019.

²⁵ Powershop, Simple Energy, Red Energy and Lumo Energy submissions to the Essential Services Commission consultation paper 'Technical consultation on the Victorian energy fact sheet', March 2019.

²⁶ The retailer interface for the Victorian Energy Compare website, via which retailers are required to upload information, including for the purposes of generating an energy fact sheet.

²⁷ Guidelines issued by the commission have been published alongside this document.

Final decision 4: Ensuring fact sheet information is accurate and understandable

Retailers must ensure that data and information uploaded to the Victorian Retailer Portal website is accurate and designed to be readily understandable by customers.

2.3. Fact sheet specifications

Typical customer usage profiles

In our technical draft decision we proposed to include a comparison table on the Victorian energy fact sheet that uses typical customer usage profiles to estimate annual costs of the plan. We proposed to align with the methodology the AER used to calculate their equivalent usage profiles.

We engaged ACIL Allen Consulting to develop a methodology for developing energy usage profiles for typical Victorian consumers. The methodology is similar to that used in the national framework, using the same underlying Victorian-specific survey and energy usage data. Specific considerations regarding this methodology were also discussed with stakeholders at a technical consultation workshop on 22 January 2019.²⁸

The full report by ACIL Allen was published at the time our technical draft decision was released.²⁹

To develop the methodology for Victorian energy usage profiles, ACIL Allen considered how a range of factors such as typical household products, household size, and geographical location affects consumption. In summary, the following factors have been accounted for in the energy usage profiles:

- **Household equipment:** ACIL Allen considered whether energy usage profiles should differ by whether a household has certain types of equipment. However, it was found that equipment such as rooftop solar PV, swimming pools, or mains gas heating were not significant enough to affect a customer's comparison of energy plans. Therefore, similar to the AER's methodology, we propose that no particular household equipment would be used to differentiate the energy usage profiles for the Victorian energy fact sheet.

²⁸ Slides from this workshop are available on our website:

www.esc.vic.gov.au/sites/default/files/documents/RMR%20recommendation%203%20technical%20consultation%20workshop%20slides%2020190122.pdf

²⁹ Full ACIL Allen report available on our website: <https://www.esc.vic.gov.au/sites/default/files/documents/victorian-energy-usage-profiles-report.pdf>

A small number of electricity customers also have appliances, such as a water heater, that are separately metered from their main electricity meter. This allows these customers to access specific electricity plans from retailers, generally referred to as ‘controlled load’ or ‘dedicated circuit’ plans. ACIL Allen found that controlled load customers had very similar electricity consumption profiles on their main electricity meter to customers without controlled load appliances. For simplicity, our technical draft decision proposed that the Victorian energy fact sheets only account for the electricity usage from an average household’s main electricity meter. Unlike the AER, controlled load electricity usage will not be factored into the comparison pricing table. However, the separate rates for controlled loads or dedicated circuits will continue to be shown on the Victorian energy fact sheet.

- **Household size (consumption levels):** ACIL Allen found that the number of occupants in a house significantly affects a customer’s energy consumption. Therefore, we proposed to develop three different consumption levels for use in the energy bill comparison table of the fact sheet. These profiles aligned with those used by the AER:
 - Low energy usage, for a representative one person household.
 - Medium energy usage, for a representative two to three person household.
 - High energy usage, for a representative household of more than four persons.
- **Geographical differences:** ACIL Allen found that the location of a household will affect a customer’s energy consumption. However, for gas profiles this difference is not significant enough to affect a customer’s comparison of energy plans. For simplicity and consistency with the AER, we proposed that only electricity usage profiles will be divided into three Victorian climate zones as per the Australian Building Codes Board.

Consistent with the AER’s approach, we also recognised that there will be limitations in providing meaningful prices in the comparison table for certain plans, particularly for specific types of plans as follows:

- **Plans for small business customers:** Small businesses are likely to have very specific energy usage each year, depending on the industry and work conducted by that business. This limits the ability to develop a Victorian-wide representative customer usage for small businesses. There is also a lack of available benchmark energy usage data for small business customers.
- **Plans with demand charges:** The peak energy demand of a customer is highly dependent on an individual customer’s energy pattern. This limits the ability to develop a representative consumption profile that takes into account the peak energy demand of a customer.

- **Plans where customer usage data is needed to price the plan:** Some plans from retailers are priced in a way that an annual energy bill for a customer is highly dependent on a customer's personal energy usage profile.

We therefore proposed to align with the AER and exempt the requirement of a comparison table to be included in fact sheets for plans for small businesses, demand charges and plans where customer usage data is needed to price the plan.

Stakeholder views and response

No comments were received on the methodology for developing energy usage profiles for typical Victorian consumers. Our energy usage profiles methodology remains unchanged.

However, AGL recommended that the commission consider reassigning two Jemena and five AusNet postcodes to align distribution and climate zones in overlapping areas, which will considerably reduce the on-going maintenance of fact sheets across the industry. For example, if postcodes 3430 (Clarkefield) and 3429 (Sunbury) were reassigned to its neighbouring climate zones it would greatly reduce the production of fact sheets for a retailer operating in the Jemena distribution area.

We have considered the suggestion of reassigning postcodes using the criteria ACIL Allen developed in the methodology for energy use profiles, specifically the balance of maintaining accuracy and interpretability for customers. In our view, such changes would not compromise the accuracy of the profiles created or impede interpretability of the fact sheet for customers. Therefore, we have consolidated the overlapping postcodes to reduce the production of fact sheets retailers are required to manage. We have also updated the excel file mapping postcodes to climate zones referred to in our Energy Fact Sheet Guidelines.

Simply Energy supported our decision to exempt the requirement of a comparison table for plans for small businesses, demand charges and plans where customer usage data is needed to price the plan.³⁰

Final decision

Retailers broadly supported our intent to exempt the requirement of a comparison table for plans for small businesses, demand charges and plans where customer usage data is needed to price the plan. Final decision 5 therefore remains unchanged.

³⁰ Simple Energy, submission to the Essential Services Commission consultation paper 'Technical consultation on the Victorian energy fact sheet', March 2019.

Final decision 5: Exemption from requirement to include comparison mechanism in the fact sheet

The comparison table on the Victorian energy fact sheet will not be required for small businesses, demand charges or plans where customer usage data is needed to price the plan.

Accommodating different types of plans

At our technical consultation workshop, several stakeholders highlighted the importance of the fact sheet specifications being flexible enough to accommodate a range of plans, including new or more complex tariff or discount structures. This is particularly relevant given decision 1 will require retailers to have fact sheets available for their restricted plans (which may be more likely to have non-standard structures or features than generally available plans).

Having considered this, we developed proposals for the fact sheet in our technical draft decision. These proposals were mindful of balancing the need for a consistent format for fact sheets across plans, as this is key to ensuring that customers can compare different plans, with the ability to represent different products in a meaningful way.

Therefore, our technical draft decision proposed that the comparison table would not be required on the fact sheet for plans where customer usage is needed to price the plan. This should provide some flexibility for more innovative tariff offerings.

Stakeholder views and response

In our technical draft decision, we asked stakeholders for their views on whether our proposals provide sufficient flexibility to accommodate a range of plans, and if there were any minor changes that could be made to improve this. We received responses from Onsite Energy Solutions and ERM Power.

Onsite Energy Solutions raised concerns around how prices could be presented clearly in a fact sheet for plans with different structures such as a monthly pricing cap or no fixed charge. Such circumstances may result in the production of a confusing fact sheet that is little benefit to the customer.

Onsite Energy Solutions' plans include customised retail prices (\$/month) uniquely determined for individual customer sites and tailored for specific circumstances.³¹ Onsite Energy Solutions

³¹ Onsite Energy Solutions, submission to the Essential Services Commission consultation paper 'Technical consultation on the Victorian energy fact sheet', March 2019.

proposed that it should not be mandatory for retailers to generate fact sheets for its individual restricted plans.

ERM Power proposed that multi-site customers be exempt from the scope of the energy fact sheet requirements.³² Multi-site customers are those where a single customer relationship applies to multiple physical premises. This can occur, for instance, when a single company negotiates an energy contract that encompasses multiple sites.

ERM Power noted that these customers are typically on a negotiated arrangement that takes account of the aggregated load provided by the multiple sites. It suggested that multi-site customers would require the manual creation of hundreds of fact sheets to match the hundreds of individual sites that they may contract to, and that it is not feasible or practical to comply.

ERM Power also noted that the AER recognises that selling to a multi-site customer is akin to selling to a large customer and that the Basic Plan Information Document requirements do not apply for such sites.³³

The commission has carefully considered how best to balance the consistency and flexibility of energy fact sheets to enable effective comparison of plans and ensure information provided by retailers with innovative plans is meaningful. We have therefore provided additional flexibility in clause 70X(5) so that a retailer is not prevented from supplementing the energy fact sheets in a way that effectively communicates the plan for the specific circumstances of their customers or the nature of the plan. However, when supplementing the energy fact sheet we expect that retailers meet our overarching objective, which is to provide a mechanism to compare features and prices of energy plans (clause 70U).

We note that clause 70X(5) does not relieve retailers from their duty to produce a fact sheet, and that it is the responsibility of retailer to ensure its fact sheets are consistent with the overarching objective of the fact sheet requirements.

In order for retailers to communicate any unique aspects of the offer (such as membership fees and pricing structures that are different from the standard pricing approach), we have ensured there is space for this information to be displayed clearly on the front page of the fact sheet.

³² ERM Power, submission to the Essential Services Commission consultation paper 'Technical consultation on the Victorian energy fact sheet', March 2019.

³³ Within the national framework, there is provision for these sites to be exempt from the rules that apply to a small customer if the aggregate load passes certain thresholds.

Other fact sheet content, layout and terminology

Appendix B contains an updated illustrative example of the proposed Victorian energy fact sheet. The content of the fact sheet aligns with the AER's fact sheet, with some minor layout, formatting and terminology changes based on stakeholder input from our technical consultation workshop and submissions.

Our technical draft decision was mindful of the experience for customers in Victoria who may access the new fact sheet while also viewing plans on Victorian Energy Compare. To ensure a consistent experience and minimise potential confusion for customers, we proposed to align with certain formatting features used on the Victorian Energy Compare website, such as iconography to display key plan features. We also proposed to align with terminology used by Victorian Energy Compare. In practical terms, this would require two changes from the table of language requirements the AER set out in its Retail Pricing Information Guidelines, as follows.

AER required term in Basic Plan Information Document	ESC proposed required term in Victorian energy fact sheet
Guaranteed discount	Unconditional discount
No contract term	No lock-in contract

Stakeholder views and response

Aligning the terminology of the Victorian energy fact sheet with the language used on the Victorian Energy Compare website would improve the consumer experience in Victoria. However, retailers raised a number of operational and compliance concerns around this draft decision.³⁴

For retailers operating in multiple jurisdictions, inconsistent terminology with the AER's Basic Plan Information Document may lead to a need to develop different compliance and operational practices. Though we note that we differed on two phrases, we consider because the fact sheet will be on the retailer's website, we will align the terminology of the Victorian energy fact sheet with the AER's Basic Plan Information Document.

Final decision

Fact sheet terminology will be consistent with the language used in the AER's Basic Plan Information Document. We have updated our Energy Fact Sheet Guidelines to reflect this change.

³⁴ Powershop, AGL, Origin Red Energy and Lumo Energy, and Simply Energy submissions to the Essential Services Commission consultation paper 'Technical consultation on the Victorian energy fact sheet', March 2019.

Final decision 6: Fact sheet terminology to be consistent with the national framework

The terminology used in the Victorian energy fact sheet will be consistent with language used in the AER's Basic Plan Information Document.

2.4. Customer access to fact sheets

Making fact sheets available to customers

In our technical draft decision, we proposed that the Victorian energy fact sheet should be made available to customers on request by a customer (electronically or by post) (clause 70Y(10)), on retailers' websites and third party comparator websites (clause 70Y(3)), as an initial step in any online search or sign up process (clause 70Y(4)), and for any telemarketing activity (clause 70Y(6)). We also proposed standard wording that retailers and their agents will have to use when marketing plans using mass media channels (clause 70Y(7)). These proposals are aligned with the AER's approach.

The retailer obligations in Victoria align with the national framework, but the purpose of the fact sheet is different in Victoria, so there is a difference in how the Victorian fact sheets should be made available to customers.

In our technical draft decision, we proposed retailers be required to provide the Victorian energy fact sheet directly on their websites, having downloaded the fact sheet from the Victorian Retailer Portal. The contractual arrangements between retailers and third parties determine whether third parties would also host the fact sheet directly on their website, or link to the relevant fact sheet on a retailer's website. In contrast, the AER's fact sheets are hosted on Energy Made Easy. Retailers and third parties are required to link to a HTML version of the fact sheet, which redirects customers to Energy Made Easy.

We did not propose that the fact sheets would be available from the Victorian Energy Compare website. This is because the Victorian energy fact sheet has a distinct purpose from the output a customer would get if they compared plans using Victorian Energy Compare. The fact sheet is intended to provide a means for customers to compare different plans without having to disclose more than a minimum level of personal information. The Victorian Energy Compare website provides customers with a more personalised and accurate estimate of the costs of an offer through answering a series of questions.

We also proposed an addition to the standardised wording retailers and their agents are required to use when mass marketing plans (clause 70Y(7)). These standard words represent an important opportunity for consumers to be made aware of their rights under the new clear advice obligations.

New rules for marketing and information disclosure

Therefore following the statement ‘Fact sheets available at [insert link to the retailer/agent website where the fact sheet is located]’, we proposed the following statement is added:

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].

If a retailer advertises a plan online using a medium with character limitations that prevent the standardised wording from being included, we proposed that the retailer include the text in a prominent location on the first webpage linked to the advertisement (clause 70Y(8)).

Stakeholder views and response

EnergyAustralia argued that the reference to clear advice in the standard wording used by retailers and their agents when mass marketing plans was open to subjective interpretation and potential exposure to misleading conduct.³⁵ This includes a scenario where a customer may not consider the advice to be clear even if it met all the regulatory requirements. As a result, EnergyAustralia proposed to remove the reference to clear advice.

Clear advice is central to our information disclosure reforms. It provides small customers an entitlement to clear, timely and reliable information to assess the suitability of a contract. We therefore have kept its reference in the standardised wording retailers and their agents are required to use when mass marketing plans.

AGL argued that the reference to contact the retailer for clear advice in the standard wording is somewhat redundant because retailers include a call to action when mass marketing plans.³⁶ It proposed shortening the standard wording to:

Fact sheets available at [insert link]. For clear advice on the right plan for you, call us or visit [insert link].

We have considered AGL’s proposed standard wording and made amendments in the Energy Retail Code. The standard wording in clause 70Y(7) now reads:

Fact sheets available at [insert link to the website where the energy fact sheet is available].
For clear advice on the right plan for you, contact us on [insert contact details].

³⁵ EnergyAustralia, submission to the Essential Services Commission consultation Paper ‘Technical consultation on the Victorian energy fact sheet’, March 2019.

³⁶ AGL, submission to the Essential Services Commission consultation Paper ‘Technical consultation on the Victorian energy fact sheet’, March 2019.

This change is also reflected in our Energy Fact Sheet Guidelines.

EnergyAustralia and AGL raised concerns that there may be situations where they are unable to use the standard words due to character, time and space limitations.

AGL proposed a clause that enables retailers to amend the standardised wording statement if character limits prevent the full statement from appearing, for example for social media and billboards.³⁷

EnergyAustralia proposed that that we amend clause 70Y(8) so retailers include the text in a prominent location on the first webpage linked to the advertisement if they advertise a plan using a medium with character, time and space limitations.³⁸

We have considered both proposals and have amended clause 70Y(7) and 70Y(8) to provide sufficient ability for retailers to fulfil obligations for mediums with character, time and space limitations. Clause 70Y(7) now requires retailers to ensure the standard wording is included in any advertisements in clear manner and (as relevant for the medium) easily readable text or audible language.

Timing requirements for fact sheets for retailer and third party websites

The obligations relating to publishing fact sheets for plans on retailer and third party websites only apply to generally available plans. For these obligations, we propose to move from the current PPIS timing requirements to align with the national timing requirements.³⁹ This would require retailers and third parties to make updated fact sheets available on their websites within two business days of a plan becoming available to customers (clause 70Y(1)).

Submissions did not provide any additional comments on timing requirements for fact sheets for retailers and third party websites. Therefore final decision 7 remains unchanged.

³⁷ AGL, submission to the Essential Services Commission consultation paper 'Technical consultation on the Victorian energy fact sheet', March 2019.

³⁸ EnergyAustralia, submission to the Essential Services Commission consultation paper 'Technical consultation on the Victorian energy fact sheet', March 2019.

³⁹ The PPIS must be updated within five business days of any change to the information in the statement (subclause 15B(8) of the Energy Retail Code).

Final decision 7: Timing requirements for displaying fact sheets on retailer and third party websites

Retailers and third parties must ensure a link to the fact sheet for a generally available plan⁴⁰ is available on their website within two business days of the plan becoming available to customers.

Helping customers find the relevant fact sheet

It is important that customers are able to find the fact sheet that applies to them, in order to compare plans. Therefore, in cases where more than one fact sheet may be relevant to a customer, we proposed to require retailers to ensure that the fact sheet that is applicable to a customer's circumstances is readily identifiable by that customer (clause 70Y(5)).

We also note that the methodology used to develop the typical customer usage profiles for the comparison table takes account of a customer's climate zone. This means that fact sheets will vary by climate zone and retailers will need to ensure that customers get the right fact sheet.

Stakeholder views and response

Simply Energy requested clarification of how this draft decision is intended to align with draft decision 9 (about customers not being required to provide technical or personal information to obtain a fact sheet, other than the minimum required to determine eligibility for a plan), particularly in the context of generally available plans with eligibility criteria.⁴¹

The intent of these draft decisions is that if more than one fact sheet may be relevant to a customer, the customer is able to easily identify which one is relevant to them based on providing the minimum information necessary. This information would then produce a fact sheet that is relevant to the customer's climate and distribution zone.

In the case of a plan with eligibility criteria, retailers should ensure that a customer can easily identify what the eligibility criteria are, so they can determine whether the plan is relevant to them. If the customer requires assistance in identifying whether the criteria apply to them, the retailer should provide this in a way that requires the minimum additional information possible from the customer.

⁴⁰ A generally available plan is any plan that is available to any customer in the relevant distribution zone unless it is classified as a restricted plan.

⁴¹ Simply Energy, submission to the Essential Services Commission consultation paper 'Technical consultation on the Victorian energy fact sheet', March 2019.

We consider that the intent of draft decision 8 is aligned with draft decision 9. Final decision 8 therefore remains unchanged.

Final decision 8: Assisting customers to find the relevant fact sheet

Retailers must ensure that the fact sheet that is applicable to a customer's circumstances is readily identifiable by that customer.

Our technical draft decision also proposed to align with national requirements that fact sheets should be accessible to customers without needing to provide technical or personal information, other than information required to determine if a customer is eligible for a particular plan. This could include a customer's postcode or other information needed to identify the customer's distribution zone (electricity), distribution supply area (gas) or climate zone, and/or metering configuration information.

Where additional information is required, retailers must provide customers with an explanation about how to obtain that information, including where that information can be found on the customer's current bill and meter (if relevant).

Stakeholders did not raise additional issues to this decision, therefore final decision 9 remains unchanged. A new clause (clause 70Y(12)) has been included in the Energy Retail Code to reflect this decision.

Final decision 9: Customer access to fact sheet without providing technical or personal information

Retailers must not require a customer to provide technical or personal information for the customer to obtain a fact sheet, 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), distribution supply area (gas) or climate zone, and/or
- metering configuration information.

As required in the national framework, we proposed to introduce requirements relating to the offer ID (an offer-specific identification code generated by the Victorian Retail Portal). Under this requirement retailers (including their call centres or other agents) will have to be able to use the offer ID to identify the offer a customer is referring to (clause 70Y(11)).

Offer IDs are already used on the consumer facing Victorian Energy Compare website, so this requirement will ensure a consistent consumer experience for any consumers who see a plan on Victorian Energy Compare and call up their retailer to find out more about the plan and/or sign up to it.

Stakeholder views and response

Retailers generally supported the proposed requirements relating to use of offer IDs.⁴²

EnergyAustralia sought further clarification on the drafting of clause 70Y(11) in relation to whether offer IDs need to be referenced when plans are marketed.⁴³ We confirm that the drafting is not intended to require this.

The intent of the requirement is aligned with the AER's approach – that if a customer references an offer ID when communicating with a retailer, the retailer should be able to identify that offer without requiring further information from the customer. We have amended the drafting to clarify this.

AGL supported the use of offer IDs but commented that without the functionality for both retailers and customers to search for offer IDs on Victorian Energy Compare, as is available on Energy Made Easy, retailers would be required to build a database themselves to deliver this functionality.⁴⁴

We note that since retailers can already search for plans via the offer ID on the Victorian Retailer Portal they would not need to develop individual systems to comply with these new requirements. However, if consumers reference an offer ID, we expect a retailer could provide customers with the ability to search for offer IDs on the retailer's own website.

Therefore final decision 10 remains unchanged.

⁴² Simply Energy and Onsite Energy Solutions submissions to the Essential Services Commission consultation Paper 'Technical consultation on the Victorian energy fact sheet', March 2019

⁴³ EnergyAustralia, submission to the Essential Services Commission consultation Paper 'Technical consultation on the Victorian energy fact sheet', March 2019.

⁴⁴ AGL, submission to the Essential Services Commission consultation Paper 'Technical consultation on the Victorian energy fact sheet', March 2019.

Final decision 10: Using the offer ID to identify energy offers

Retailers must be able to use the offer ID to identify the offer a customer is referring to when communicating with customers.⁴⁵

2.5. Implementation of the new rules

New marketing and information disclosure Energy Retail Code amendments will commence on 1 July 2019.

Several stakeholders indicated concern with timeframes to implement the new rules.⁴⁶ Retailers sought staged or delayed commencement of the energy fact sheet requirements to allow for additional lead time and consideration of interplay with other requirements also taking effect from 1 July 2019.

We can confirm that we are continuing to work with DELWP to ensure that the necessary system changes to the Victorian Retailer Portal website will be made and tested with retailers ahead of the obligations taking effect.

On 15 April 2019 DEWLP's Victorian Energy Compare team held a Victorian energy fact sheet forum. The forum was attended by retailers and focussed specifically on system changes to the Victoria Retailer Portal.

The forum clarified that DELWP are seeking to keep system changes as minimal as possible. Retailers are already able to review existing information they have uploaded to the Victorian Retailer Portal website to ensure the information submitted is accurate. While retailers will need to ensure that information on other plans is uploaded to the portal so that they can obtain fact sheets in time to meet their obligations relating to restricted plans, the Victorian Energy Compare team are undertaking the system changes required to create the new fact sheets for all plans on behalf of retailers.

2.6. Other feedback

Some stakeholders made comments on matters broadly related to the energy fact sheet requirements.

⁴⁵ An offer-specific identification code generated by the Victorian Retail Portal website.

⁴⁶ EnergyAustralia, Simply Energy, Origin, Red Energy and Lumo Energy and AGL submissions to the Essential Services Commission consultation paper 'Technical consultation on the Victorian energy fact sheet', March 2019.

Origin noted that the proposed Energy Retail Code changes will also require changes to the related Compliance and Performance Reporting Guideline.⁴⁷ We acknowledge the need to review our compliance framework for all requirements taking effect from 1 July 2019. We are giving further consideration to this matter and will review the retailer compliance reporting obligations in this context.

Red Energy and Lumo Energy requested we provide further information on how the Victorian Default Offer will impact the presentation of the energy fact sheet and advise of any consequential amendments that are likely to be made to the Energy Retail Code in the next round of updates.⁴⁸ On 7 May, the commission released a draft decision on the consequential amendments related to the Victorian Default Offer to be made to the Energy Retail Code.

AGL requested further information regarding governance structures and regulatory process in place to manage changes to mandatory fields' information retailers must provide to generate fact sheets.⁴⁹ AGL was concerned that new mandatory fields for fact sheets could be made without retailers being given the opportunity to consult on the changes.

The commission and DELWP have a strong working relationship. The commission has commenced discussions with DELWP to establish a memorandum of understanding (MOU). The MOU will formalise our existing relationship with DELWP regarding our respective roles in setting the obligations for retailers and supporting retailers with the functionality to produce fact sheets. This MOU will also ensure there is an agreed process to address future changes to fields related to the energy fact sheet, and that decisions are made in collaboration with the commission and consider impacts on retailers and consumers.

⁴⁷ Origin, submission to the Essential Services Commission consultation paper 'Technical consultation on the Victorian energy fact sheet', March 2019.

⁴⁸ Red Energy and Lumo Energy, submission to the Essential Services Commission consultation paper 'Technical consultation on the Victorian energy fact sheet', March 2019.

⁴⁹ AGL, submission to the Essential Services Commission consultation paper 'Technical consultation on the Victorian energy fact sheet', March 2019.

3. Amending the Energy Retail Code

In Victoria, energy retailers are required to comply with the Energy Retail Code as a condition of their energy licence.⁵⁰ This chapter translates our final decision into amendments to the Energy Retail Code to give effect to the new marketing and information disclosure rules, and to remove rules that will no longer be required relating to the PPIS and offer summary.

3.1. Summary of amendments

To give effect to the new marketing and information disclosure rules contained in this final decision, we are making a number of changes to Parts 2 and 2A of the Energy Retail Code. To summarise, these rules will:

- remove clauses 15B to 15E and schedule 5 of Division 2A of part 2 of the Energy Retail Code, which contain current PPIS and offer summary requirements
- create a new Division 5 in part 2A of the Energy Retail Code to house the fact sheet requirements, including the objective of the fact sheet and obligations about when and how retailers must provide it
- introduce new retailer guidelines to provide detail underpinning the new Energy Retail Code obligations, including the information retailers must upload to the Victorian Retailer Portal website so the fact sheet can be generated.

The amendments to the Energy Retail Code are made under section 25 of the Electricity Industry Act 2000 and section 31 of the Gas Industry Act 2001. The final Energy Retail Code amendments are included in appendix C. The final guidelines have been published alongside this document.⁵¹

3.2. Removing PPIS and offer summary requirements

The Victorian energy fact sheet will replace two existing information disclosure mechanisms – the PPIS and offer summary. The PPIS and offer summary rules that we will remove are:

⁵⁰ The licence conditions requiring retailers to comply with the Energy Retail Code are made under Section 20(2) of the Electricity Industry Act 2000 and Section 28(2) of the Gas Industry Act 2001.

⁵¹ Essential Services Commission, Energy Fact Sheet Guidelines: Version 1, May 2019.

- **Schedule 5 of Division 2A.** This contains the template for the PPIS. As a consequential amendment we would also remove the reference to schedule 5 in clause 15A.
- **Clause 15B – Relevant published offers (Price and Product Information Statements).** This sets out requirements about when and how retailers must provide the PPIS, and the information the PPIS must contain. We will retain 15B(4), which requires retailers to co-operate with the relevant parties to operate a system to create and sustain reliable links from the internet site nominated by the Minister (Victorian Energy Compare). This rule is important to ensure the ongoing cross-functionality between Victorian Energy Compare and retailer websites. This rule will move to clause 70X in Division 5 of Part 2A.
- **Clause 15C – Offer summary.** This sets out the equivalent requirements as 15B for offer summary documents.
- **Clause 15D – Relevant Published Offers (Energy Price Fact Sheets).** This clause enables retailers to provide customers with the AER’s energy price fact sheet instead of a PPIS. We will retain a modified version of 15D(2), to require retailers to publish a Victorian energy fact sheet for their standing offers instead of publishing information in accordance with schedule 4 of Division 2A. We will move this rule to clause 15A.
- **Clause 15E – Relevant Offer Summaries (Disclosure Statements).** This clause enables retailers to provide customers with a disclosure statement instead of an offer summary.
- **Clause 15F – Other requirements.** This sets out requirements for PPIS and offer summary information to be in plain English, and for retailers to comply with all other applicable legislative requirements when providing the PPIS and offer summaries. We will keep plain English requirements in the new fact sheet rules (clause 70ZF).

3.3. Adding Victorian energy fact sheet requirements

In codifying the new fact sheet obligations, we have retained the intent of the equivalent requirements in the national framework, but made some adjustments to ensure the new requirements operate effectively in the context of the Victorian framework.

The Victorian energy fact sheet requirements will be located in a new division in part 2A of the Energy Retail Code, alongside other requirements aimed at promoting market integrity by assisting customers to engage with the market.

We also introduce an overarching objective to the fact sheet requirements. This is consistent with our recent decisions on best offer and clear advice entitlements, and is intended to focus on the outcomes that the rules in the division are aimed at achieving. For the new fact sheet, we proposed

that the objective would be to provide small customers with a mechanism to consider and compare the features and prices of different energy plans so as to assist them to assess the suitability of, and select, a contract (clause 70V).

Retailers would be required to act in a way that promotes the objective (clause 70U). This should ensure retailers comply with their obligations under Division 5 in a way that is conducive to the intent of the new requirements.

As discussed in chapter 2, the fact sheet requirements will not apply to exempt sellers. We have therefore included a clause to clarify this (clause 70W).

We will also add clauses 70X to 70Z to set out key retailer obligations relating to providing the fact sheet. These cover the requirement to have a fact sheet available for every plan, when and how fact sheets need to be made available to consumers including requirements when retailers are marketing to consumers, and a requirement for retailers to maintain records to enable it to evidence compliance with these obligations.

AGL proposed that we remove the requirement for retailers to maintain records. It noted that retaining all fact sheets is an unnecessary obligation.⁵² Having considered the proposal, we believe that the current requirement to maintain records should be retained. We note that these provisions are critical to our ability to manage compliance with fact sheet requirements, and that the current drafting in the Energy Retail Code is consistent with that used for other rules being introduced on 1 July 2019 (such as the best offer requirements). We considered retailers will need to determine how to best manage their regulatory compliance with these provisions.

Energy Fact Sheet Guidelines

Alongside this final decision we have published the new guidelines (Energy Fact Sheet Guidelines). These have been issued under sections 35C and 36A of the Electricity Industry Act and sections 42C and 43A of the Gas Industry Act. These guidelines provide guidance to retailers relating to their Energy Retail Code obligations. They largely follow the equivalent guidelines in the national framework (Retail Pricing Information Guidelines). Some minor amendments have been made to the guidelines to reflect this technical final decision.

⁵² AGL, submission to the Essential Services Commission consultation Paper 'Technical consultation on the Victorian energy fact sheet', March 2019.

Appendix A: Terms of reference

Customer outcomes in the energy market

Terms of Reference to the Essential Services Commission

The Essential Services Commission is requested to conduct a review under section 10(g) of the *Essential Services Commission Act 2001* on the appropriate amendments to the Energy Retail Code to efficiently give effect to recommendations 3A to 3H and 9A of the Independent Review of the Electricity and Gas Retail Markets in Victoria (the independent review), released on 13 August 2017.

Background

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

In February 2018, the Government provided its support to the recommendations from the independent review, except for two recommendations - introducing a Basic Service Offer (BSO) and abolishing standing offer contracts (recommendations 1A and 2A). The Government will undertake further analysis on the application and scope of the BSO and abolishing standing offers and their effect on Victoria's energy sector. The Government will consult further with stakeholders regarding the design of a BSO and any alternatives to the BSO.

Request

The Government is now requesting the Essential Services Commission to give effect to recommendations 3A to 3H and 9A.

Recommendations 3A to 3H propose changes to the information provided by energy companies to customers, including marketing material and information on bills. To give effect to these changes, the Commission is required to review the Energy Retail Code (the Code). Recommendation 9A requires the Commission to review its regulatory codes to ensure a focus on customer outcomes and to account for new business models of service provision. The Code is issued under Part 2 of the Essential Services Commission Act 2001.

All licensed energy retailers must comply with the Energy Retail Code in accordance with their retail licences.

The review is to be conducted in two phases. While undertaking its review, the ESC may consider early adoption of any measures, including those introduced in other Australian jurisdictions, that it considers necessary in the context of its statutory objectives.

First phase

In conducting its review of the Code for the purposes of giving effect to recommendations 3A to 3H, the Commission is required to have regard to its objectives under *the Essential Services Commission Act 2001, Electricity Industry Act 2000, Gas Industry Act 2001* and the following:

- findings from the independent review;
- approaches being used by other regulators, such as the AER;
- information needs for Victoria's rich and diverse community, including our culturally and linguistically diverse and aged population; and
- other matters it deems relevant.

For the avoidance of doubt, the Commission is not required to assess the merits of the independent review's findings and recommendations. Its role is limited to identifying the most timely and cost-effective opportunities for implementing these findings and recommendations through amendments to the Energy Retail Code.

The Commission is required to complete and publish its review that gives effect to recommendation 3G, specifically relevant Code changes relating to information published on customer bills, by 1 October 2018. These changes are to take effect from 1 July 2019.

The Commission is required to complete and publish its review that gives effect to recommendations 3A to 3F and 3H, including relevant Code changes, by 30 January 2019. Unless otherwise determined by Government, changes made by the Commission to the Code relating to marketing information (recommendations 3A-3F and 3H) will take effect no later than 1 July 2019 so that the marketing of energy retail offers in a standardised format (including incorporation of annual energy costs for standardised customer usage profiles) can commence from that date.

Second phase

The Commission is required to review its codes and guidelines, for the purposes of establishing an energy market code (recommendation 9A). In developing the energy market code, the Commission should have regard to developing a principles-based, consumer-focused framework that can account for new business models of service provision.

Appendices

The Commission should also have regard to its objectives under the *Essential Services Commission Act 2001*, *Electricity Industry Act 2000* and *Gas Industry Act 2001*.

The Commission is required to complete this stage of the review, including relevant Code changes, by 31 December 2019.

Consultation

In undertaking this review, the Commission is required to consult widely, including with consumers, consumer advocacy groups, energy businesses, relevant experts, government departments and other regulators.

Reporting

Throughout the review, the Commission will advise the Minister for Finance and Minister for Energy, Environment and Climate Change regarding its progress and its final approach.

Appendix B: Example Victorian energy fact sheet

On the following page is an example of the new Victorian energy fact sheet. We note it is closely aligned with the style of the Victorian Energy Compare website.



Example Electricity Offer

- No contract term
- Single rate with controlled load tariff

Call 13 00 00

www.exampleenergy.com.au

Estimated electricity cost

1 person

LOW

7.2 kWh/day

\$1,430/year

\$1,930 if you do not meet your discount conditions

2 to 3 people

MEDIUM

11.8 kWh/day

\$1,500/year

\$2,030 if you do not meet your discount conditions

4+ people

HIGH

15.5 kWh/day

\$1,820/year

\$2,460 if you do not meet your discount conditions

Features

- No direct debit payment required
- Pay on time discount
- Green Power options
- No fixed price contract
- No paper bills available

Estimated costs are based on typical usage in your postcode, with regular usage on weekday afternoons and evenings. Your household's usage may vary. Costs exclude controlled load charges, solar payments, concessions and bonuses.

A more personalised estimate can be found on the Victorian Energy Compare website at <https://compare.energy.vic.gov.au>.

Retailers must provide clear advice to help customers find the offer that best suits their circumstances.

Contact the retailer by calling 13 00 00 and quote this Offer ID EE000000MR.

Offer details

Distributor	Jemena
Offer type	Market offer
Release date	10-Oct-2018
Expiry date [optional field]	30-Jun-2019

Offer eligibility

This product is only available for Victorian customers in the Jemena distribution area.

Other criteria may apply, contact Example Energy for details.

Discounts and incentives

Conditional discounts

Pay on time discount

A 26% discount on the usage charges will apply for the benefit period when you pay on time.

Percentage of usage: 26%

Incentives

Online Welcome Credit

A \$50 credit will be applied to the first electricity bill received after accepting this plan. Credit only applies if you sign up online via the Example Energy's website, will be applied prior to GST and is not redeemable for cash.

This fact sheet is presented in accordance with the requirements of the Essential Services Commission (ESC) - the independent regulator of the retail energy industry in Victoria.

Appendices

Contract details		
Contract term	No lock-in contract	
Cooling off period	10 business days	
Eligibility criteria	This product is only available for Victorian customers in the Jemena area. Other criteria may apply, contact Example Energy for details.	
Price are not fixed	The rates and charges are subject to change. We will notify you of any changes as per your contract terms and conditions	
Contract expiry details	The benefit period is for 12 months. Before the end of your benefit period we will let you know what your options are. Your contract is ongoing and will continue until one of us ends it.	
Full terms and conditions	For further details on this information, or for full terms and conditions visit www.exampleenergy.com.au or call Example Energy on 13 00 00.	
Fees		
<i>Disconnection fee</i>	Flat rate: \$71.99	
Disconnection visit. This fee includes a retailer administration fee.		
<i>Reconnection fee</i>	Flat rate: \$25	
Reconnection (Normal hours). This fee includes a retailer administration fee.		
<i>Credit card payment processing fee</i>	Percentage of bill: 0.6%	
0.6% charge may apply to credit card payments by VISA or MasterCard.		
<i>Additional fee information</i>		
Additional fees may apply. For more information, please visit www.exampleenergy.com.au .		
Billing details		
Bill frequency	3 months	
Payment options	Direct debit or e-billing	
Offer rate and details		
Local time		
Electricity charges – all year		
	Tariff (incl. GST)	
Daily supply charge	122.08 c/day	
Flat	23.17 c/kWh	
All consumption		
Controlled load charges		
	Tariff (incl. GST)	
Controlled load consumption	21.22 c/kWh	
Solar feed-in tariff options		
	Tariff	
Current retailer feed-in tariff	10.89 c/kWh	
Premium feed-in tariff	66.00 c/kWh	
GreenPower options		
When you choose to buy a GreenPower product from an energy retailer, the retailer then invests the additional charge in the renewable energy industry. These purchases are audited by a group of government agencies.		
Option	Description	Price (incl. GST)
50% GreenPower	GreenPower option of 50% charged at 2.81 cents per kWh	2.81 cents per kWh

Climate zone 6: Mild temperate

Appendix C: Final code amendments

AMENDMENTS TO THE ENERGY RETAIL CODE: MARKET INTEGRITY – ENERGY FACT SHEETS

8 May 2019

Amendments made by the Essential Services Commission on 8 May 2019

1 Nature and commencement of this instrument

- (1) This instrument amends the *Energy Retail Code*.
- (2) This instrument comes into operation on 1 July 2019.

2 Table of amendments

- (1) Insert the following definitions in clause 3, after *energy*:

energy fact sheet means the document generated by the *Victorian Retailer Portal website* that contains key information in relation to a *generally available plan*, a *restricted plan* or the *Victorian default offer*.

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

Victorian Retailer Portal website means the retailer interface for the Victorian Energy Compare website, via which retailers are required to upload information, including for the purposes of generating an *energy fact sheet* for a *generally available plan*, a *restricted plan* or the *Victorian default offer*.

- (3) In subclause 3B(3):

- (a) in the first sentence after “Division 2A” insert “of Part 2 and Division 5 of Part 2A”;
and
- (b) delete the second sentence.

- (4) In the heading of Division 2A delete “Energy Price and Product disclosure” and insert “Standing offer tariffs”.

- (5) In subparagraph 15A(1)(a) delete “or Schedule 5”.

- (6) After subparagraph 15A(2) insert the following subparagraph:
 - (3) An *energy fact sheet* must be published by a *retailer* on its internet site in satisfaction of the requirement set out in clause 15A(1)(a).
- (7) In clause 15B delete the heading and the text of the clause and insert “[Not used]”.
- (8) In clause 15C delete the heading and the text of the clause and insert “[Not used]”.
- (9) In clause 15D delete the heading and the text of the clause and insert “[Not used]”.
- (10) In clause 15D delete the heading and the text of the clause and insert “[Not used]”.
- (11) In clause 15E delete the heading and the text of the clause and insert “[Not used]”.
- (12) In clause 15F delete the heading and the text of the clause and insert “[Not used]”.
- (13) In Part 2A insert the following new Division 5 after Division 4:

Division 5 – Customers entitled to access information on the features and prices of energy plans

70U Requirement

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

70V Objective

The Objective of this Division is to provide *small customers* with a mechanism to consider and compare the features and prices of different *energy plans* so as to assist the *small customer* to assess the suitability of, and select, a plan.

70W Application of this Division

This Division does not apply to *exempt persons*.

70X Requirement to provide information via the Victorian Retailer Portal website and obtain an energy fact sheet

- (1) A *retailer* must input into the *Victorian Retailer Portal website* accurate details of each current *generally available plan*, *restricted plan* and the *Victorian default offer*, including all relevant details in the form required by that internet site.

- (2) A *retailer* must obtain from the *Victorian Retailer Portal website* an *energy fact sheet* for each current *generally available plan* and *restricted plan*.
- (3) All information uploaded to the *Victorian Retailer Portal website* must be written in plain English and be designed to be readily understandable by *customers*.
- (4) A *retailer* must co-operate with relevant parties in implementing a system to create and sustain reliable links from the internet site nominated by the Minister so that a *customer* can:
 - (a) easily view the same or more offer information on the *retailer's* website; and
 - (b) potentially accept that offer or another offer.
- (5) If the available input fields of the *Victorian Retailer Portal website* does not enable the terms of a plan to be accurately represented, a *retailer* must supplement any fact sheet obtained in subclause 70X(2) with information to ensure that a *customer* is able to consider and compare the features and prices of the plan to assess the suitability of, and select a plan.

70Y Retailers to make energy fact sheets accessible to relevant customers

- (1) A *retailer* must ensure that an *energy fact sheet* for each current *generally available plan*, *restricted plan* and the *Victorian default offer* is available to relevant *customers* within two *business days* of the plan becoming available to *customers*.
- (2) A *retailer* will not contravene clause 70Y to the extent that it has been unable to obtain the relevant *energy fact sheet* from the *Victorian Retailer Portal website* through no fault of the *retailer*.
- (3) Where a *retailer* provides, either directly or via arrangements with another person, information about a current *generally available plan* on a website, the *retailer* must ensure:
 - (a) a clear link to the *energy fact sheet* relevant to that *generally available plan* is published in a prominent position on that website; and
 - (b) the link is labelled “energy fact sheet”.
- (4) Where a *generally available plan* is available through an online sign-up process, the *retailer* must ensure that a clear and prominent link to the relevant *energy fact sheet* is provided in close proximity to where the *customer* signs up to the plan.

- (5) A *retailer* must 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*.
- (6) When marketing a *generally available plan* by any means, and regardless of whether the marketing is done by the *retailer* directly or another person, a *retailer* must ensure that the *customer* is:
 - (a) informed that an *energy fact sheet* containing the key details of that plan is available; and
 - (b) provided with the location of the relevant *energy fact sheet* for that plan on the *retailer's* website.
- (7) When marketing a *generally available plan* on mass media channels, and regardless of whether the marketing is done by the *retailer* directly or another person, a *retailer* must ensure that the following statement is included in any advertisements in a clear manner and (as relevant for the medium) easily readable text or audible language:

“Fact sheets available at [insert link to the website where the energy fact sheet is available]. For clear advice on the right plan for you, contact us on [insert contact details].”
- (8) Where a plan is advertised using a medium with inherent limitations that prevents the text required by subclause (7), a *retailer* must ensure that the text is included in a prominent location on the first webpage linked to the advertisement.
- (9) Where a *retailer* provides information about a *restricted plan* to a customer, or when marketing a *restricted plan* by any means, and regardless of whether the information is provided or the marketing is done by the *retailer* directly or via arrangements with another person, a *retailer* must ensure that the *customer* is informed that an *energy fact sheet* containing the key details of the plan is available and will be provided on request.
- (10) A *retailer* must ensure that, if a *customer* requests an *energy fact sheet* for a *generally available plan*, a *restricted plan* or the *Victorian default offer*, the *customer* is sent, either by post or electronically, the relevant *energy fact sheet* within five *business days* of contact with the *customer*.
- (11) When marketing a plan, and regardless of whether the marketing is done by the *retailer* directly or by another person, a *retailer* must ensure that the offer ID

generated by the *Victorian Retailer Portal website* is able to be identified and referred to in communications with a *customer* about that plan.

- (12) A *retailer* must not require a *customer* to provide technical or personal information in order for the *customer* to obtain an *energy fact sheet* other than information required to determine if a *customer* is eligible for a particular plan.

70Z Compliance

- (1) A *retailer* must maintain records that are sufficient to evidence its compliance with this Division.
- (2) The *retailer* must ensure that the records required to be maintained pursuant to subclause (1) are retained:
 - (a) for at least 2 years; or
 - (b) for as long as the *retailer* has at least one *customer* on a *generally available plan*, a *restricted plan* or the *Victorian default offer* for which it has an obligation to provide an *energy fact sheet* under this Division.

Appendix D: Role of the commission

Role of the Essential Services Commission

The commission is Victoria's independent economic regulator of essential services. Primary legislation passed by the Victorian Parliament sets out the objectives and expectations for the commission in the regulation of retail energy markets.

The *Essential Services Commission Act 2001* (Vic) sets out the commission's overarching objective to promote the long-term interests of Victorian consumers.⁵³ The commission is also guided by objectives under the *Electricity Industry Act 2000* (Vic) and *Gas Industry Act 2001* (Vic) to promote the protections for customers, including in relation to customers who are facing payment difficulty.⁵⁴

The legislation establishing the regulatory framework for the energy industry in Victoria assigns the commission a range of functions and powers, including the power to grant licences to energy market participants and to create codes and guidelines.

The principal instrument used to set out retailers' obligations is the Energy Retail Code. After being established in 2002,⁵⁵ the commission released the first version of the Energy Retail Code, of which version 12 is in force today.

⁵³ Section 8 Essential Services Commission Act 2001 (Vic).

⁵⁴ Section 10(c) Electricity Industry Act 2000 (Vic) and section 18(c) Gas Industry Act 2001 (Vic).

⁵⁵ The commission replaced the Office of the Regulator-General (ORG), which was established to oversee regulation of electricity and gas industries during the privatisation of the industry and accompanying establishment of markets in generation, distribution and retail segments of the industry. The legislative objective for the ORG in relation to consumers was expressed as: "to ensure that users and consumers benefit from competition and efficiency" (Office of the Regulator-General Act 1994 (Vic), s7(1)(e)).