

Technical consultation on the Victorian energy fact sheet

Draft decision

12 March 2019



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Executive summary

This draft decision sets out the technical detail that we propose will underpin the new Victorian energy fact sheet we are introducing. 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 cost 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 draft decisions

Our draft decisions are set out below.

Draft decision 1: Scope of the Victorian energy fact sheet

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

Draft 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 offers for small customers.

Draft 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).

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. A draft version has been published alongside this document.

Draft 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.

Draft 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 offers where customer usage data is needed to price the offer.

Draft decision 6: Fact sheet terminology to be consistent with the Victorian Energy Compare website

The terminology used in the Victorian energy fact sheet will be consistent with language used on the Victorian Energy Compare (VEC) website.

Draft 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 offer becoming available to customers.

Draft 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.

Draft 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.

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.

Draft 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.

Consultation and timeframes

Date	Activity
12 March 2019	Technical draft decision released
March 2019	Workshop on the technical draft decision (subject to stakeholder interest)
9 April 2019	Submissions close
May 2019	Technical final decision released and Energy Retail Code amended
1 July 2019	Proposed commencement date for Energy Retail Code amendments

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

1. Context

Our work in this technical draft 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 Our December 2018 draft decision built on these reforms with proposals to further support customers to engage confidently in the market. As part of this we proposed to introduce a new Victorian energy fact sheet.⁸ This technical draft decision now provides further detail on the proposed Energy Retail Code changes and associated guidelines required in order to give effect to the new fact sheet.

This chapter provides a brief overview of our work program in the context of the independent review and our terms of reference.⁹ 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 price.

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.¹⁰

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

⁸ Essential Services Commission, Helping customers engage confidently in the retail energy market: Draft decision, December 2018.

⁹ Our December 2018 draft decision contains more detail on the context of this work.

¹⁰ Victorian Government, 'Terms of Reference for Independent Review of the Electricity and Gas Retail Markets in Victoria', November 2016.

The Victorian Government released its final response to the independent review in October 2018, which supported all recommendations, subject to some refinements.¹¹ As part of its interim response in March 2018, it referred terms of reference to the Essential Services Commission under section 10(g) of the Essential Services Commission Act 2001.¹²

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 8.¹³

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 terms of reference for the commission to review the Energy Retail Code to give effect to recommendation 4, relating to ensuring contracts are clear and fair.

1.2. Our December 2018 draft decision

On 18 December 2018, we released a draft decision setting out our proposed approach to implementing recommendations 3A-E.¹⁴

We proposed to introduce a new Victorian energy fact sheet to give effect to recommendations 3C, 3D and 3E in our December draft decision. This would replace two existing information disclosure mechanisms – the price and product information statement (PPIS) and the offer summary. We proposed that the content and design of the fact sheet and rules around when customers will receive or be alerted to the availability of the fact sheet would generally mirror the national framework.

This technical draft decision and Energy Fact Sheet Guidelines set out the requisite Energy Retail Code amendments to give effect to the new Victorian energy fact sheet.

¹¹ The final government response can be found at <https://www.energy.vic.gov.au/about-energy/policy-and-strategy>.

¹² See appendix D for further information about the role of the Essential Services Commission.

¹³ 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.

¹⁴ It also addressed how the commission intends to implement changes to align with the Australian Energy Market Commission's (AEMC) rule change on estimated meter reads.

2. New rules for marketing and information disclosure

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

We have proposed to introduce a Victorian energy fact sheet to help consumers compare and select energy offers. This chapter sets out the detailed requirements we are proposing in order to give effect to the fact sheet. These requirements largely mirror the equivalent national framework obligations.

Our draft 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 offers 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 (VEC).

We consider the introduction of the Victorian energy fact sheet to be an additional tool that can help customers confidently assess and compare energy offers. The new Victorian energy fact sheet will display key information about available energy offers 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 VEC. However the fact sheet would provide a benchmark cost to help a customer identify if one plan would be significantly cheaper for them than another.

The specific changes we have proposed in this technical draft decision will improve and streamline the existing information disclosure requirements. We also propose 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 set out in our December 2018 draft decision that we are proposing to adopt 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, BPID). Our proposed requirements for the Victorian energy fact sheet are therefore aligned closely with the national framework. There are certain areas where we consider it is appropriate that the requirements for the Victorian energy fact sheet differ slightly from the AER's equivalent BPID requirements. In the rest of this chapter we set out the key features of our proposed requirements.

2.1. Overarching requirements

Scope of the new rules

We propose that retailers must have fact sheets available for all offers 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 draft decision 5.

Draft decision 1: Scope of the Victorian energy fact sheet

Retailers must ensure fact sheets are available for all offers for small customers.¹⁵

Fact sheets for generally available and restricted plans

Aligned with the AER's approach, we are proposing that 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 as per the AER's guidelines.¹⁶ 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).

¹⁵ 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.

¹⁶ 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.

Exempt sellers

We propose that exempt sellers would not be subject to the requirements relating to Victorian energy fact sheets. Last year our Energy Retail Code review 2018 (obligations for exempt sellers) looked at whether customers receive adequate protections in the absence of easily participating in the retail market.¹⁷ As part of the review, we made amendments to the Energy Retail Code to clarify the obligations of exempt sellers selling to small customers within embedded networks, such as residential apartment buildings, shopping centres, caravan parks or retirement homes. Requirements on exempt sellers 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.

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 the format requirements of the PPIS could not be applied directly to the prices of exempt sellers. Consistent with this position, we do not propose that exempt sellers would be subject to requirements relating to Victorian energy fact sheets. However we will consider whether this exemption is required, particularly in light of the AEMC's ongoing review of the national regulatory framework for embedded networks.

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

Exempt sellers¹⁸ are not subject to the requirement to have a Victorian energy fact sheet available for all offers for small customers.

Process for generating the fact sheet

The AER's energy price fact sheet is generated via the AER's comparator website, Energy Made Easy. We propose that the Victorian energy fact sheet will be generated via Victoria's equivalent, the Victorian Retailer Portal which is the retailer interface for the VEC website.

Retailers operating in Victoria already upload information to the Victorian Retailer Portal. We expect that the Victorian energy fact sheet can be generated from the information that retailers already upload.

¹⁷ Essential Services Commission 2018, Energy Retail Code review (obligations for exempt sellers): Final decision, 19 September.

¹⁸ 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 currently upload information to the Victorian Retailer Portal for generally available plans, which are then published on VEC. Under our proposal in draft 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 VEC website.

Alongside this draft decision we have published a draft of the Energy Fact Sheet Guidelines that accompany the new Energy Retail Code obligations (outlined in chapter 3). These set out the process by which fact sheets should be generated and provided to customers. They largely follow the AER's equivalent guidelines (Retail Pricing Information Guidelines).

Retailers should also continue to follow the Victorian Retailer Portal user manual for requirements on the information they upload to the portal. This is a document produced by the Department of Environment, Land, Water and Planning (DELWP) that sets out how retailers should use the portal to upload offers to the VEC website.

Retailers will be responsible for ensuring that the data and information they upload to the Victorian Retailer Portal website is accurate and designed to be readily understandable by customers.

Draft 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 website¹⁹ in accordance with the Energy Fact Sheet Guidelines²⁰ in order for the fact sheet to be generated.

Draft 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.

2.2. Fact sheet specifications

Typical customer usage profiles

In our December 2018 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 offer.

¹⁹ 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.

²⁰ Guidelines issued by the commission. A draft version has been published alongside this document.

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 2019.²¹

The full report by ACIL Allen has been made available alongside this draft decision.²²

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 offers. 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.

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 offers from retailers, generally referred to as 'controlled load' or 'dedicated circuit' offers. 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, we propose 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.

²¹ 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

²² Full ACIL Allen report available on our website: <https://www.esc.vic.gov.au/sites/default/files/documents/victorian-energy-usage-profiles-report.pdf>

- **Household size (consumption levels):** ACIL Allen found that the number of occupants in a house significantly affects a customer's energy consumption. Therefore, three different consumption levels will be developed for use in the energy bill comparison table of the fact sheet. These profiles align 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 offers. For simplicity and consistency with the AER, we propose 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 recognise that there will be limitations in providing meaningful prices in the comparison table for certain offers, particularly for specific types of offers as follows:

- **Offers 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.
- **Offers 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.
- **Offers where customer usage data is needed to price the offer:** Some offers 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 propose, for now, to align with the AER and exempt the requirement of a comparison table to be included in fact sheets for offers for small businesses, demand charges and offers where customer usage data is needed to price the offer.

Draft 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 offers where customer usage data is needed to price the offer.

Accommodating different types of offers

Through our December 2018 draft decision process, several stakeholders have highlighted the importance of the fact sheet specifications being flexible enough to accommodate a range of offers, including new or more complex tariff or discount structures. This may be particularly relevant given our proposal that retailers must have fact sheets available for their restricted plans (as these may be more likely to have non-standard structures or features than generally available plans).

We have considered this as we have developed the proposals for the fact sheet set out in this draft decision. We are mindful of balancing the need for a consistent format for fact sheets across offers, as this is key to ensuring that customers can compare different offers, with the ability to represent different products in a meaningful way.

We have therefore proposed that the comparison table would not be required on the fact sheet for offers where customer usage is needed to price the offer. This should provide some flexibility for more innovative tariff offerings.

We have also considered the merits of adding an additional free text field to the fact sheet, to give retailers space to communicate any unique aspects of the offer. At this stage we are not convinced that this would be beneficial enough to justifying adding further information to the fact sheet, so we have not included it in the example fact sheet in appendix B.

We would welcome stakeholder views on whether our proposals in this draft decision provide sufficient flexibility to accommodate a range of offers, and any specific suggestions for minor changes that could be made to improve this.

Other fact sheet content, layout and terminology

Appendix B contains an 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 initiation workshop.

We are also mindful of the experience for customers in Victoria who may access the new fact sheet while also viewing offers on VEC. To ensure a consistent experience and minimise potential confusion for customers, we propose to align with certain formatting features used on VEC's website, such as using iconography to display key offer features. We also propose to align with terminology used by VEC. In practical terms, this only requires two changes from the table of language requirements the AER set out in their Retail Pricing Information Guidelines, as follows.

AER required term in BPID	ESC proposed required term in Victorian energy fact sheet
Guaranteed discount	Unconditional discount
No contract term	No lock-in contract

Draft decision 6: Fact sheet terminology to be consistent with the Victorian Energy Compare website

The terminology used in the Victorian energy fact sheet will be consistent with language used on the Victorian Energy Compare (VEC) website.

2.3. Customer access to fact sheets

Making fact sheets available to customers

In our December 2018 draft decision, we proposed that the Victorian energy fact sheet should be made available to customers on request by a customer (electronically or postage), on retailers' websites, third party comparator websites, as an initial step in any online search or sign up process, and for any telemarketing activity. We also proposed standard wording that retailers and their agents will have to use when marketing offers using mass media channels. 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 are made available to customers.

Retailers would be required to provide the Victorian energy fact sheet directly on their websites, having downloaded the fact sheet from the Victorian Retailer Portal. It would be up to the contractual arrangements between retailers and third parties to 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.

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 are not proposing that the fact sheets would be available from the VEC website. The Victorian energy fact sheet has a distinct purpose from the output a customer would get if they compared offers using VEC. The fact sheet is intended to provide a means for customers to compare different offers without having to disclose more than a minimum level of personal information. Should they wish to answer further questions, the VEC comparison tool will provide customers with a more personalised comparison and a more accurate estimate of their costs on a given offer.

New rules for marketing and information disclosure

We are also proposing an addition to the standardised wording retailers and their agents would be required to use when mass marketing offers. We think this is an important opportunity for consumers to be made aware of their rights under the new clear advice obligations. Therefore following the statement 'Fact sheets available at [insert link to the retailer/agent website where the fact sheet is located]', we are proposing to require the following statement to be 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].

Timing requirements for fact sheets for retailer and third party websites

The obligations relating to publishing fact sheets for offers 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.²³ This would require retailers and third parties to make updated fact sheets available on their websites within two business days of an offer becoming available to customers.

Draft 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 plan²⁴ is available on their website within two business days of the offer 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, to be able to compare offers. Therefore in cases where more than one fact sheet may be relevant to a customer, we are proposing to require retailers to ensure that the fact sheet that is applicable to a customer's circumstances is readily identifiable by that customer.

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, meaning fact sheets will vary by climate zone. Retailers will need to consider this when ensuring that customers get the right fact sheet.

²³ 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).

²⁴ 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.

Draft 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.

We propose 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).

Draft 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 are proposing 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.

Offer IDs are already shown on the consumer facing VEC website, so this requirement will ensure a positive consumer experience for any consumers who see an offer on VEC and call up their retailer to find out more about the offer and/or sign up to it.

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

Retailers must be able to use the offer ID²⁵ to identify the offer a customer is referring to when communicating with customers.

2.4. Implementation of the new rules

Our December 2018 draft decision foreshadowed our intention for the new marketing and information disclosure Energy Retail Code amendments to commence on 1 July 2019. We are still proposing that the new obligations would take effect from this date. We are working 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.

We do not expect that retailers will need to upload any new information to the Victorian Retailer Portal website in order for the Victorian energy fact sheet to be generated for offers that are already on VEC, except where they have existing offers with incorrect information (e.g. text fields). 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 offers is uploaded to the portal so that they can obtain fact sheets in time to meet their obligations relating to restricted plans, the Victorian Retailer Portal team will be undertaking the system changes required to create the new fact sheets for all offers on behalf of retailers.

Following the publication of this draft decision, DELWP will contact users of the Victorian Retailer Portal with more information about their implementation plans and timelines. We encourage retailers to raise any concerns at an early stage.

²⁵ An offer-specific identification code generated by the Victorian Retail Portal website.

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.²⁶ This chapter introduces proposed 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 summaries.

3.1. Summary of amendments

To give effect to the proposals contained in this draft decision, we propose making a number of changes to Parts 2 and 2A of the Energy Retail Code. To summarise, we are proposing to:

- 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 draft Energy Retail Code amendments can be seen in appendix C. The draft guidelines have been published alongside this document.²⁷

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 propose to remove are:

- **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.

²⁶ 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.

²⁷ Essential Services Commission, Energy Fact Sheet Guidelines – draft guidelines for consultation, March 2019.

- **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 propose to 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 (VEC). This rule is important to ensure the ongoing cross-functionality between VEC and retailer websites. We propose to move this rule 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 propose to retain a modified version of 15D(2), to enable 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 propose to 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 are proposing to keep plain English requirements in the new fact sheet rules (cl 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.

We are proposing to locate Victorian energy fact sheet requirements 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 propose to 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 are proposing 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 (cl 70V).

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

As discussed in chapter 2, we do not intend that the fact sheet requirements would apply to exempt sellers. We therefore propose to introduce a rule to clarify this (cl 70W).

We are proposing to 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 offer, 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.

Energy Fact Sheet Guidelines

Alongside this draft decision we have published a draft of the new guidelines (Energy Fact Sheet Guidelines) that would be 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 AER's equivalent guidelines (Retail Pricing Information Guidelines).

4. Next steps

4.1. How to make a submission

We will continue to consult with interested stakeholders and invite you to contribute your views by making a submission in response to this draft decision in writing by **5pm Tuesday 9 April 2019**.

Submissions marked ‘Submissions to technical consultation on the Victorian energy fact sheet,’ should be sent by

email to: RetailEnergyReview@esc.vic.gov.au

mail to: Essential Services Commission

Level 37, 2 Lonsdale Street

Melbourne, Victoria 3000

To promote an open and transparent decision-making process, all submissions will be made available on the commission’s website, except for any information that is commercially sensitive or confidential. Submissions should clearly identify information that is sensitive or confidential.

If you have any questions, please contact us on (03) 9032 1300.

Our approach to consultation is set out in our updated Stakeholder Engagement Framework.²⁸

4.2. Indicative timelines

The key dates relating to this draft decision are as follows:

Date	Activity
12 March 2019	Technical draft decision released
March 2019	Workshop on the technical draft decision (subject to stakeholder interest)
9 April 2019	Submissions close

²⁸ Essential Services Commission, Stakeholder engagement framework – Charter of Consultation and Regulatory Practice, June 2018.

May 2019	Technical final decision released and Energy Retail Code amended
1 July 2019	Proposed commencement date for Energy Retail Code amendments

4.3. Final decision

Once we have received and considered the submissions, we intend to make a final decision in May 2019.

4.4. Commencement of new requirements

As set out in our December 2018 draft decision, the anticipated commencement date for the new marketing and information disclosure Energy Retail Code amendments is 1 July 2019.

Next steps

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 Australian Energy Regulator;
- 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.

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*.

Appendices

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

Below is an example of the proposed new Victorian energy fact sheet. This is for illustrative purposes only. The final fact sheet will be more closely aligned with the style of the VEC website.



Example Electricity Offer

- No lock-in contract
- 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

Discounts and incentives

Conditional discounts

Pay on time discount

Percentage of usage: 26%

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

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.

Contract terms		
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	
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
<i>Climate zone 6: Mild temperate</i>		

Appendix C: Draft Energy Retail Code amendments

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

[Insert date]

Amendments made by the Essential Services Commission on [insert date]

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* or *restricted plan*

- (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* or a *restricted plan*

- (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* may 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 *customer retail contract*.

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* and *restricted plan*, 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.

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* and *restricted plan* is available to relevant *customers* within two *business days* of the plan becoming available to *customers*.
- (2) A *retailer* will not contravene clause (1) if 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 clear and easily readable text:
- “Fact sheets available at [insert link to the website where the energy fact sheet is available]. 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].”
- (8) Where a plan is advertised using a medium with character limitations that prevents the text required by clause (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* or *restricted plan*, 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 any 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 *customers*.

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* or a *restricted plan* 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.²⁹ 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.³⁰

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 2002,³¹ the commission released the first version of the Energy Retail Code, of which version 12 is in force today.

²⁹ Section 8 Essential Services Commission Act 2001 (Vic).

³⁰ Section 10(c) Electricity Industry Act 2000 (Vic) and section 18(c) Gas Industry Act 2001 (Vic).

³¹ 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)).