

Draft Energy Retail Code (Version 11)

July 2013 - Footnoted Code

This version of the Code contains footnotes to assist the reader to understand the reasoning behind the drafting decisions in the new Code.

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Part 1 Preliminary

Division 1 Introduction and definitions

1 Citation

This Code may be cited as the *Energy Retail Code*.

2 Commencement

This Code comes into operation on [insert date].

3 Definitions¹

In this Code—

acceptable identification, in relation to:

- (a) a *residential customer*—includes any one of the following:
 - (i) a driver licence (or driver’s licence) issued under the law of a State or Territory, a current passport or another form of photographic identification;
 - (ii) a Pensioner Concession Card or other entitlement card, issued under the law of the Commonwealth or of a State or Territory;
 - (iii) a birth certificate; or
- (b) a *business customer* that is a sole trader or partnership—includes one or more of the forms of identification for a *residential customer* for one or more of the individuals that conduct the business or enterprise concerned; or
- (c) a *business customer* that is a body corporate—means Australian Company Number or Australian Business Number of the body corporate;²

agreed damages term means a term or condition of an *energy contract* under which a *customer* and a *retailer* have agreed the amount, or a basis for determining the amount, that will be payable by the *customer* to the *retailer* for the *customer's* breach of their *energy contract*;³

associate of a *retailer* includes –

¹ Definitions in clause 3 that are not accompanied by a footnote are in the same form as the equivalent definitions in the NERR.

² This definition is substantially equivalent to the definition of acceptable identification in the ERC v10.

³ This definition is taken from the ERC v10 and has been inserted in response to the Consumer Groups’ submission that a definition of ‘*agreed damages term*’ should be included in the draft ERC v11.

- (a) an employer or agent of the *retailer*; and
- (b) a person contracted by the *retailer*; and
- (c) a person who receives or is contracted to receive commissions from the *retailer*;⁴

best endeavours in relation to a person, means the person must act in good faith and do what is reasonably necessary in the circumstances;⁵

bill issue date means the date, included in a bill under clause 25 (1) (e), on which the bill is sent by the *retailer* to a *small customer*;

business customer means a *small customer* who is not a *residential customer*;⁶

carry-over customer means a *small customer* who continues consuming *energy* at premises after the *customer's* previously current *customer retail contract* expires or terminates –

- (a) without provision in that contract for the terms and conditions to apply after the expiry or termination for the continued provisions of those services; and
- (b) without applying to a *retailer* for the provision (after that expiry or termination) of those services;⁷

Commission means the *Essential Services Commission* under the *Essential Services Commission Act 2001(Vic)*;⁸

connection means a physical link between a distribution system and a *customer's* premises to allow the flow of *energy*;⁹

cooling off period—see rule 47(2);

customer means a person:

- (a) to whom *energy* is sold for premises by a *retailer*; or
- (b) who proposes to purchase *energy* for premises from a *retailer*;¹⁰

customer connection service for premises means any or all of the following:

- (a) a service relating to a new *connection* for the premises;

⁴ This definition is taken from the NERL but excludes references to distributors.

⁵ This definition is taken from ERC v10 and has been inserted following consideration of submissions from the Consumer Groups and the Energy and Water Ombudsman (Victoria) Ltd (EWOV).

⁶ This definition is substantially equivalent to the definition of business customer in the ERC v10.

⁷ This definition is taken from the NERL.

⁸ This definition has been inserted to address EWOV's submission that a definition of 'Commission' should be inserted so that it is clear that it refers to the Essential Services Commission.

⁹ This definition is taken from the NERL.

¹⁰ This definition is based on the definition in section 5 of the NERL.

- (b) a service relating to a *connection* alteration for the premises;
- (c) a supply service for the premises, including (but not limited to) the *energisation, de-energisation* or *re-energisation* of the premises;¹¹

customer retail contract means a contract between a *small customer* and a *retailer* for the provision of *customer retail services* for particular premises;¹²

customer retail services means the sale of *energy* by a *retailer* to a *customer* at premises;¹³

de-energisation or disconnection of premises means:

- (a) in the case of electricity—the opening of a *connection*; or
- (b) in the case of gas—the closing of a *connection*,

in order to prevent the flow of *energy* to the premises;¹⁴

deemed customer retail arrangement means a deemed contract for the supply and sale of *energy* arising under section 39 of the *Electricity Industry Act* or section 46 of the *Gas Industry Act*;¹⁵

designated retailer means:

- (a) in relation to premises and the supply of electricity, the relevant licensee in relation to the supply of electricity from the supply point for the premises determined in accordance with an Order in Council made under section 35 of the *Electricity Industry Act*; and
- (b) in relation to premises and the supply of gas, the specified licensee in relation to the supply of gas from the supply point or ancillary supply point for the premises determined in accordance with an Order in Council made under section 42 of the *Gas Industry Act*;¹⁶

disconnection—see the definition of *de-energisation*;

disconnection warning notice—see clause 110;

¹¹ This definition is taken from the NERL, with the deletion of subclause (d).

¹² This definition is taken from the NERL, with the deletion of the words '*and may include a dual fuel contract*'. It is the equivalent of the term '*energy contract*' in the ERC v10.

¹³ This definition is based on the equivalent term in the NERL.

¹⁴ This definition is taken from the NERL.

¹⁵ Deemed customer retail arrangements are dealt with in Division 9 of the NERL. The provisions are broadly similar to section 39 of the *Electricity Industry Act* and section 46 of the *Gas Industry Act*. However, as the existing Victorian requirements are statutory, retailers and the *Commission* will continue to comply with the requirements of the *Electricity Industry Act* and the *Gas Industry Act* in addition to the requirements of the Code.

¹⁶ This definition is taken from the NERL but has been amended to adopt the Victorian requirements under the *Electricity Industry Act* and the *Gas Industry Act*.

electric bulk hot water means water centrally heated by electricity and delivered to a number of *customer* premises where the *customer's* consumption of hot water is measured with a *meter* and where an *energy bill* is issued by a *retailer*;¹⁷

electric bulk hot water conversion factor means the conversion factor used by *retailers* to bill *electric bulk hot water customers*. The *electric bulk hot water conversion factor* will have a maximum value of 89kWh per kilolitre. Where *customers* are currently billed using a lower *electric bulk hot water conversion factor*, or a lower *electric bulk hot water conversion factor* for the site is assessed, *retailers* must bill *customers* using the lower *electric bulk hot water conversion factor*;¹⁸

Electricity Industry Act means the *Electricity Industry Act 2000* (Vic);

e-marketing activity has the meaning given by section 109A of the *Telecommunications Act 1997* of the Commonwealth;

energisation of premises means:

- (a) in the case of electricity—the closing of a *connection*; or
- (b) in the case of gas—the opening of a *connection*,

in order to allow the flow of *energy* to the premises;¹⁹

energy means electricity or gas or both;²⁰

energy laws includes:

- (a) the national electricity legislation as defined in the NEL;
- (b) the national gas legislation as defined in the NGL;
- (c) legislation of Victoria (other than the national electricity legislation and the national gas legislation), or any instrument made or issued under or for the purpose of that legislation, that regulates *energy*;
- (d) the NER and the NGR; and
- (e) instruments made under the NER and the NGR (including the *Retail Market Procedures*);²¹

¹⁷ This definition is based on the definition in the ERC v10.

¹⁸ This definition is based on the definition in the ERC v10.

¹⁹ This definition is taken from the NERL.

²⁰ This definition is taken from the NERL and corresponds with the definition in the ERC v10.

²¹ This is equivalent to the definition of '*energy laws*' in the NERL except that it excludes references to the NECF (ie the NERL and the NERR).

energy marketing activity means an activity that is carried on to market, advertise or promote:

- (a) *customer connection services*; or
- (b) *customer retail services*; or
- (c) a supplier or prospective supplier of *customer connection services* or *customer retail services*;²²

energy ombudsman means the Energy and Water Ombudsman (Victoria) Limited;²³

explicit informed consent—see clause 3C;

financially responsible retailer for premises means:

- (a) in the case of electricity—the *retailer* who is the financially responsible Market Participant responsible for the premises under the NER; or
- (b) in the case of gas—the *retailer* who is responsible for settling the account for gas withdrawn from the delivery point (however described) associated with the premises under the relevant *Retail Market Procedures*;²⁴

gas bulk hot water means water centrally heated by gas and delivered to a number of *customer* premises where the *customer's* consumption of hot water is measured with a *meter* and where an *energy bill* is issued by a *retailer*;²⁵

gas bulk hot water rate means the gas price in cents per litre that is used by a *retailer* to charge *customers* for *energy* in delivering *gas bulk hot water*;²⁶

Gas Industry Act means the *Gas Industry Act 2001* (Vic);

hardship customer means a *residential customer* of a *retailer* who is identified as a *customer* experiencing financial payment difficulties due to hardship in accordance with the *retailer's customer hardship policy*;²⁷

index read in relation to *smart meters* has the meaning given under section 3.3.4 of Meter Data File Format Specification NEM 12 and NEM 13 published by the Australian Energy Market Operator;²⁸

²² This definition is taken from the NERL.

²³ This definition has been amended to address EWOV's submission to its name being incorrectly listed.

²⁴ This definition is taken from the NERL.

²⁵ This definition is based on the definition in the ERC v10.

²⁶ This definition is based on the definition in the ERC v10.

²⁷ This definition is taken from the NERL.

²⁸ This definition is taken from the ERC v10 and has been inserted to address the Consumer Groups' submission.

last resort event in respect of a *retailer* means when:

- (a) the *retailer's* retail licence is suspended or revoked; or
- (b) the right of the *retailer* to acquire:
 - (i) for electricity, electricity from the wholesale electricity market; and
 - (ii) for gas, gas from a wholesale gas market or a producer,is suspended or terminated,

whichever first occurs;²⁹

life support equipment means any of the following:

- (a) an oxygen concentrator;
- (b) an intermittent peritoneal dialysis machine;
- (c) a kidney dialysis machine;
- (d) a chronic positive airways pressure respirator;
- (e) crigler najjar syndrome phototherapy equipment;
- (f) a ventilator for life support;
- (g) in relation to a particular *customer*—any other equipment that a registered medical practitioner certifies is required for a person residing at the *customer's* premises for life support;³⁰

market retail contract means a contract between a *small customer* and a *retailer* which is not a *deemed customer retail arrangement* nor a *standard retail contract*;³¹

meter, in relation to a *customer*, means:

- (a) the device that measures the quantity of *energy* passing through it or records the consumption of *energy* at the *customer's* premises; and
- (b) for *electricity bulk hot water* or *gas bulk hot water*, the device which measures and records the consumption of bulk hot water consumed at the *customer's* premises;³²

²⁹ This definition is taken from the ERC v10 and has been inserted to address the Consumer Groups' submission.

³⁰ There is no definition of Life Support Equipment in the ERC v10.

³¹ This definition is adapted from the NERL and the ERC v10.

³² This definition is adapted from the ERC v10.

meter type has the meaning given in an Order in Council made under section 7AA of the *Electricity Industry Act* or made under section 7A of the *Gas Industry Act*, as applicable;³³

metering data has the same meaning as:

- (a) in the case of electricity—in the NER; or
- (b) in the case of gas—in the applicable *Retail Market Procedures*;

metering rules:

- (a) for electricity—means the applicable *Retail Market Procedures* and Chapter 7 of the NER;
- (b) for gas—means the applicable *Retail Market Procedures*;

move-in customer means a *small customer* who starts consuming *energy* at premises without first applying to a *retailer* for the provision of *customer retail services*;³⁴

NEL means the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* of South Australia;

NEM Representative means a related body corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth) of an electricity *retailer* that is registered with AEMO as a market *customer* under the NER and that, directly or indirectly, sells electricity to the *retailer* for on-sale to *customers*;

NER means the National Electricity Rules as in force from time to time under the NEL;

NGL means the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2008* of South Australia;

NGR means the National Gas Rules as in force from time to time under Chapter 9 of the NGL;

offer summary means a statement prepared by a *retailer* pursuant to its obligations under clause 15C;³⁵

pay-by date—see clause 26;

payment plan means a plan for:

- (a) a *hardship customer*; or

³³ This definition is taken from Guideline 19 - Energy Price and Product Disclosure.

³⁴ This definition is taken from the NERL.

³⁵ This definition is taken from Guideline 19 - Energy Price and Product Disclosure. It is only used in clauses 15C and 15D.

(b) a *residential customer* who is not a *hardship customer* but who is experiencing payment difficulties,

to pay a *retailer*, by periodic instalments in accordance with this Code, any amounts payable by the *customer* for the sale and supply of *energy*;³⁶

Price and Product Information Statement means a statement prepared by a *specified retailer* pursuant to its obligations under section 36A of the *Electricity Industry Act* or under section 43A of the *Gas Industry Act*;³⁷

re energisation or reconnection of premises means the *energisation* of the premises after their *de energisation*;³⁸

relevant authority means:

- (a) AEMO; or
- (b) State or federal police; or
- (c) a person or body who has the power under law to direct a distributor to *de-energise* premises;

relevant customer means a *relevant customer* within the meaning of section 36 of the *Electricity Industry Act* or section 43 of the *Gas Industry Act*;³⁹

Note:

The term '*relevant customer*' is used in clause 15. Under the *Electricity Industry Act* and the *Gas Industry Act* the term is defined by Orders in Council. As at the date of this Code, '*relevant customers*' are the same as '*small business customers*'.

reminder notice—see clause 109;

residential customer means a *customer* who purchases *energy* principally for personal, household or domestic use;

responsible person:

- (a) in the case of electricity—has the same meaning as in the NER; or
- (b) in the case of gas—means the person who, under the applicable *Retail Market Procedures*, is responsible for *meter* reading;

retail marketer means a *retailer* or an *associate of a retailer*;⁴⁰

Retail Market Procedures means:

³⁶ This definition is taken from the NERL.

³⁷ This definition is taken from Guideline 19 – Energy Price and Product Disclosure. It is only used in clauses 15B and 15D.

³⁸ This definition is taken from the NERL.

³⁹ This definition is taken from Orders in Council in force at the date of this Code.

⁴⁰ This definition is taken from the NERL.

- (a) in the case of electricity, the *Retail Market Procedures* within the meaning of the NER; and
- (b) in the case of gas, the *Retail Market Procedures* within the meaning of the NGL and made under the NGR;⁴¹

retailer means a person who holds a retail licence under the *Electricity Industry Act* or the *Gas Industry Act*;

security deposit means an amount of money paid or payable, in accordance with this Code, to a *retailer* as a security against non-payment of a bill;

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*;⁴²;

Note:

Under the *Electricity Industry Act* and the *Gas Industry Act*, the term '*domestic and small business customer*' is defined by Orders in Council. As at the date of this Code the relevant Orders define a *domestic or small business customer* as (paraphrasing):

- (a) a person who purchases *energy* principally for personal, household or domestic use at the relevant supply point; or
- (b) in the case of electricity, a person whose aggregate consumption of electricity taken from the relevant supply point has not been, or in the case of a new supply point, is not likely to be, more than 40MWh per year; or
- (c) in the case of gas, a person whose aggregate consumption of gas taken from the relevant supply point has not been, or, in the case of a new supply point, is not likely to be, more than 1000 GJ per year.

small retail customer has the meaning given by section 3 of the *Electricity Industry Act* and by section 3 of the *Gas Industry Act*;⁴³

Note:

Small retail customers are defined by Orders in Council made under section 7AA of the *Electricity Industry Act* and section 7A of the *Gas Industry Act*. *Small retail customers* are only relevant for the purpose of Division 2A, which replaces Guideline No 19 – Energy Price and Product Disclosure.

smart meter means an interval *meter* designed to transmit data to a remote locality that meets the functionality requirements for advanced metering infrastructure set out in any relevant Order made under section 46D of the *Electricity Industry Act*;⁴⁴

⁴¹ This definition is taken from the NERL.

⁴² This definition has been amended to address the Consumer Groups' submission that references to customer types should be simplified.

⁴³ This definition is taken from Orders in Council in force at the date of this Code.

⁴⁴ This definition is the same definition used in the ERC v10.

specified retailer has the meaning given by section 3 of the *Electricity Industry Act* and section 3 of the *Gas Industry Act*;⁴⁵

Note:

The term '*specified retailer*' is used in this Code in clause 15B. Under the *Electricity Industry Act* and *Gas Industry Act* it is defined by Orders in Council. As at the date of this Code, the current Orders in Council provide that each retail licensee is a *specified retailer* for the purposes of section 36A of the *Electricity Industry Act* and 43A of the *Gas Industry Act*.

standard retail contract means a *customer retail contract* that arises from the acceptance of a *standing offer*;⁴⁶

standing offer has, in relation to electricity, the same meaning as 'licensee standing offer' in section 3 of the *Electricity Industry Act* and, in relation to gas, the same meaning as 'licensee standing offer' in section 3 of the *Gas Industry Act*;⁴⁷

supply capacity control product means the use, other than the emergency use, of a *smart meter* to temporarily interrupt electricity supply to a *customer*;⁴⁸

telemarketing call has the same meaning as in the *Telecommunications Act 1997* of the Commonwealth.

3A Savings and Transitional Provisions

Schedule 3 applies.

3B Purpose and Application

- (1) This Code applies to all *small customers*.
- (2) This code applies to, and must be complied with by, all *retailers* in accordance with their retail licences.
- (3) The provisions in Division 2A of this Code constitute guidelines for the purpose of sections 35C and 36A of the *Electricity Industry Act* and sections 42C and 43A of the *Gas Industry Act*. The parts of Division 2A of this Code concerned with offer summaries are prepared and issued under section 13 of the *Essential Services Commission Act 2001* (Vic).⁴⁹
- (4) The provisions in Part 3 of this Code constitute guidelines for the purpose of section 44 of the *Electricity Industry Act* and section 48H of the *Gas Industry Act*.

⁴⁵ This definition is taken from Orders in Council in force at the date of this Code.

⁴⁶ This definition is based on the definition in the NERL, modified to reflect the draft instrument.

⁴⁷ This definition is equivalent to the definition used in the ERC v10.

⁴⁸ This definition is the same definition used in the ERC v10.

⁴⁹ Guideline 19 refers to the offer summary requirement (referred to in clause 15C) as being a guideline issued under *Essential Services Commission Act 2011* (Vic).

3C Explicit Informed Consent⁵⁰

- (1) *Explicit informed consent* to a transaction is consent given by a *small customer* to a *retailer* where:
 - (a) the *retailer*, or a person acting on behalf of the *retailer*, has clearly, fully and adequately disclosed all matters relevant to the consent of the *customer* in plain English⁵¹, including each specific purpose or use of the consent; and
 - (b) the *customer* gives the consent to the transaction in accordance with subclause (2); and
 - (c) the person is competent to do so; and⁵²
 - (d) any requirements prescribed by this Code for the purposes of this subclause have been complied with.
- (2) *Explicit informed consent* requires the consent to be given by the *small customer*:
 - (a) in writing signed by the *customer*; or
 - (b) except for the purposes of clause 20,⁵³ verbally, so long as the verbal consent is evidenced in such a way that it can be verified and made the subject of a record under clause 3D; or
 - (c) by electronic communication generated by the *customer*.

3D Record of explicit informed consent⁵⁴

- (1) A *retailer* must:

⁵⁰ This definition is based on the definition in section 39 of the NERL. This definition is substantially similar to the definition of explicit informed consent contained in the ERC v10, except that the ERC v10 definition provides that explicit informed consent cannot be provided orally for the purposes of:

- o clause 10.1 of the ERC v10, which provides that a retailer and a customer may negotiate a shorter billing cycle if the customer gives explicit informed consent.

⁵¹ This reflects the requirement outlined in subclause (b) of the definition of explicit informed consent outlined in clause 34 of the ERC v10.

⁵² This reflects the requirement outlined in subclause (c) of the definition of explicit informed consent outlined in clause 34 of the ERC v10.

⁵³ This reflects the requirement in the ERC v10 which does not allow explicit informed consent to be given verbally for bills to be based on a method other than a reading of the customer's meter. The ERC v10 also requires written explicit informed consent in relation to negotiating a shorter billing cycle, however the Commission has not incorporated this requirement.

⁵⁴ This definition is based on the definition in section 40 of the NERL. There is no requirement in the ERC v10 for a retailer to keep records of each customer's explicit informed consent.

- (a) create a record of each *explicit informed consent* required by this Code and provided by a *small customer*; and
 - (b) retain the record for at least 2 years.
- (2) The record must be in such a format and include such information as will enable:
- (a) the *Commission* to verify the *retailer's* compliance with the relevant requirements of this Code relating to *explicit informed consent*; and
 - (b) the *retailer* to answer enquiries from a *small customer* relating to the *customer's explicit informed consent*.
- (3) A *retailer* must, on request by a *small customer* and at no charge, provide the *customer* with access to a copy of the record of any *explicit informed consent* given by the *customer* and then retained by the *retailer*.

3E No or defective explicit informed consent⁵⁵

- (1) A transaction specified in this Code as requiring *explicit informed consent* between a retailer and small customer is void if it is established, in accordance with subsection (2) and any applicable provisions of this Code, that *explicit informed consent* as required by this clause was not obtained.
- (2) It is established that the required *explicit informed consent* was not obtained if:
- (a) the *customer* raises the issue with the *retailer* either by asserting that the consent was not obtained or by requesting production of a record of the consent; and
 - (b) the issue is so raised within 12 months after the date of the transaction; and
 - (c) the *retailer*:
 - (i) admits that the consent was not obtained; or
 - (ii) does not produce a satisfactory record of the informed consent as soon as practicable, but within 10 business days, after the issue is so raised.
- (3) Subject to subsections (4) and (5), the *retailer* cannot recover any amount for any energy supplied as a result of the void transaction.
- (4) If the void transaction did not involve the transfer of the *customer* to the *retailer* from another *retailer*, the *customer* is only liable to pay the *retailer* any charges that would have been payable for the sale and supply of *energy* if the void transaction had not occurred.

⁵⁵ This clause is taken from section 41 of the NERL.

- (5) If the void transaction did involve the transfer of the *customer* to the *retailer* (the new *retailer*) from another *retailer* (the original *retailer*)—
- (a) the *customer* is (subject to paragraph (b)) liable to pay the original *retailer* all charges for the sale and supply of *energy* as if the void transaction had not occurred and the sale and supply had occurred with the original *retailer* being the *customer's retailer*; and
 - (b) to the extent that the *customer* has paid the new *retailer* charges for the sale and supply of *energy* as a consequence of the void transaction—
 - (i) the *customer* is entitled to set off the amount of those payments against any amounts payable under paragraph (a); and
 - (ii) the new *retailer* must pay the set off amounts to the original *retailer*; and
 - (iii) the original *retailer* is entitled to recover those set off amounts from the new *retailer* in a court of competent jurisdiction; and
 - (c) nothing in this section prevents the original *retailer* from proceeding by action for loss or damage suffered because of the void transaction; and
 - (d) the *customer* is not liable to the new *retailer* for any loss or damage arising because the transaction is void or arising from payments the new *retailer* has to pay the original *retailer* because the transaction is void.

3F Giving of notices and other documents under this Code⁵⁶

- (1) If this Code requires or permits a notice or other document to be served on a person (whether the expression 'deliver', 'give', 'notify' or 'send' or another expression is used), the notice or other document may be served:
- (a) on a natural person:
 - (i) by delivering it to the person personally; or
 - (ii) by leaving it at, or by sending it by post, facsimile or similar facility to the last known address of the place of residence or usual place of business of the person; or
 - (iii) by sending it electronically to that person, but, in the case of a *small customer*, only if the *small customer* has given *explicit informed consent* to receiving the notice or other document electronically; or
 - (a) on a body corporate:

⁵⁶ This clause is taken from section 319 of the NERL.

- (i) by leaving it at the registered office or usual place of business of the body corporate with an officer of the body corporate; or
- (ii) by sending it by post, facsimile or similar facility to its registered office or its usual place of business; or
- (iii) by sending it electronically to that body corporate or an office of the body corporate.

Division 2 [Not used]

4 [Not used]

5 [Not used]

Division 3 [Not used]

6 [Not used]

7 [Not used]

8 [Not used]

9 [Not used]

10 [Not used]

11 [Not used]

Part 2 Customer retail contracts

Division 1 Standard retail contracts—terms and conditions generally

12 Model terms and conditions for standard retail contracts

- (1) Model terms and conditions for a *standard retail contract* are set out in Schedule 1.
- (2) A statement in Schedule 1 that is underlined and in square brackets indicates that a required alteration must be made by omitting the statement and substituting the matter referred to in the statement.
- (3) The model terms and conditions set out in Schedule 1, as varied to incorporate any permitted alterations or required alterations, are approved by the *Commission* for the purpose of section 35(1)(b) of the *Electricity Industry Act* and section 42(1)(b) of the *Gas Industry Act*.⁵⁷

Note:

Where a *retailer* adopts the model terms, varied only to incorporate any permitted alterations or required alterations, the *retailer* is not required to submit the model terms for approval by the *Commission* under section 35(1)(b) of the *Electricity Industry Act* or section 42(1)(b) of the *Gas Industry Act*.

- (3A) Each provision of the model terms and conditions set out in Schedule 1, as varied to incorporate any permitted alterations or required alterations:
 - (a) is a term or condition decided by the *Commission* for the purpose of section 36(1) of the *Electricity Industry Act* and section 43(1) of the *Gas Industry Act* in relation to *relevant customers* who purchase *energy* under a *standard retail contract*; and
 - (b) the terms and conditions of the contract must not be inconsistent with the provisions; and
 - (c) the terms and conditions of the contract may supplement or augment the operation of the provision; and
 - (d) the terms and conditions of the contract must not diminish the operation of the provision; and
 - (e) the provision prevails to the extent of any inconsistency with any other term or condition of the contract.⁵⁸

⁵⁷ This provision gives retailers an incentive to use the model terms and conditions but does not make it mandatory as it is under the NECF.

⁵⁸ This subclause is substantially equivalent to section 29 of the NERL and has been inserted to address the Consumer Groups' submission that clauses 51 and 52 of the draft ERC v11, which relate to liabilities and

- (4) Permitted alterations are:
 - (a) alterations specifying details relating to identity and contact details of the *retailer*; and
 - (b) minor alterations that do not change the substantive effect of the model terms and conditions; and
 - (c) alterations of a kind specified or referred to in this Code.⁵⁹
- (5) Required alterations are:
 - (a) alterations that this Code requires to be made to the *retailer's* form of *standard retail contract* in relation to matters relating to specific jurisdictions; and
 - (b) alterations of a kind specified or referred to in this Code.⁶⁰
- (6) In this clause *alterations* includes omissions and additions.⁶¹

13 Application of provisions of this Code to standard retail contracts

- (1) Other provisions of this Code apply to *standard retail contracts* to the extent provided by those provisions.

Note:

For example, clause 70 makes provision for the termination of a *standard retail contract*.

- (2) If a clause provides that a provision of this Code applies in relation to *standard retail contracts* or that the clause is a minimum requirement in relation to *standard retail contracts*:
 - (a) the provision is a term or condition decided by the *Commission* for the purpose of section 36(1) of the *Electricity Industry Act* and section 43(1) of the *Gas Industry Act* in relation to *relevant customers* who purchase *energy* under a *standard retail contract*;⁶² and

indemnities respectively, should also apply to Standard Retail Contracts. The model terms and conditions set out in Schedule 1 are consistent with the requirements under clauses 16 and 17 of the ERC v10 despite the fact that they are not set out directly in the NERR. This clause is intended to have the effect that a retailer cannot introduce a clause into its Standard Retail Contract which would be inconsistent with the model terms and conditions and therefore prohibits the retailer introducing a clause limiting its liability or including an indemnity described in clauses 51 and 52.

⁵⁹ This clause is equivalent to section 25(4) of the NERL.

⁶⁰ This clause is based on section 25(5) of the NERL.

⁶¹ This is equivalent to section 25(6) of the NERL.

⁶² Sections 36(1) of the *Electricity Industry Act* and 43(1) of the *Gas Industry Act* provide that a term or condition of a contract for the supply or sale of energy to a relevant customer is void to the extent that it is inconsistent with terms or conditions decided by the *Commission* under these sections. Sections 36(2) of the *Electricity*

- (b) the terms and conditions of the contract must not be inconsistent with the provision; and
- (c) the terms and conditions of the contract may supplement or augment the operation of the provision; and
- (d) the terms and conditions of the contract must not diminish the operation of the provision; and
- (e) the provision prevails to the extent of any inconsistency with any other term or condition of the contract.

Division 2 Market retail contracts—terms and conditions generally

14 Terms and conditions of market retail contracts

- (1) The terms and conditions of a *market retail contract* are as agreed between the *retailer* and the *small customer*, except as provided by this Code.
- (2) Nothing in this Code prevents the inclusion in a *market retail contract* of a term or condition that is the same or substantially the same as a term or condition of *standard retail contracts* that is not otherwise applicable to *market retail contracts*.

15 Application of provisions of this Code to market retail contracts⁶³

- (1) Other provisions of this Code apply to *market retail contracts*, to the extent provided by those provisions.
- (2) If a clause provides that a provision of this Code applies in relation to *market retail contracts* or that the clause is a minimum requirement in relation to *market retail contracts*:
 - (a) the provision is a term or condition decided by the *Commission* for the purpose of section 36(1) of the *Electricity Industry Act* and section 43(1) of

Industry Act and 43(2) of the Gas Industry Act provide that if a term or condition is void because it is inconsistent with a term or condition decided by the *Commission*, the term or condition decided by the *Commission* is deemed to form part of the contract in place of the void term or condition.

⁶³ Clause 19 of the ERC v10 provides that where a retailer and a customer agree to a new term or condition that is inconsistent with specified provisions of the ERC v10, the existing energy contract terminates and the parties enter into a new market contract. There is no equivalent to clause 19 in the NERR. Instead section 33 of the NERL provides that a small customer and a retailer may enter into a market retail contract as agreed between the parties. Unlike the ERC v10, the NERR sets out whether a particular rule is applicable to standard retail contracts or market retail contracts on a rule by rule basis. Clause 19 will not be included in the new draft instrument. The minimum requirements for market retail contracts in Victoria are set out in the sections 36(1) of the Electricity Industry Act and 43(1) of the Gas Industry Act . Therefore references to these provisions of the Electricity Industry Act and Gas Industry Act are included in this instrument.

the *Gas Industry Act* in relation to *relevant customers* who purchase *energy* under a *market retail contract*;⁶⁴ and

- (b) the terms and conditions of the contract must not be inconsistent with the provision; and
- (c) the terms and conditions of the contract may supplement or augment the operation of the provision; and
- (d) the terms and conditions of the contract must not diminish the operation of the provision; and
- (e) the provision prevails to the extent of any inconsistency with any other term or condition of the contract.

Division 2A Energy Price and Product disclosure⁶⁵

15A Internet publication of standing offer tariffs

- (1) *A retailer* must:
 - (a) publish on its internet site details of its *standing offers*; and
 - (b) provide to the ESC details of its *standing offer* tariffs in the manner set out in Schedule 4.⁶⁶
- (2) The home page of the *retailer's* principal internet site must have a link that allows a person to access the *retailer's standing offer* easily and logically.

⁶⁴ Sections 36(1) of the Electricity Industry Act and 43(1) of the Gas Industry Act provide that a term or condition of a contract for the supply or sale of energy to a relevant customer is void to the extent that it is inconsistent with terms or conditions decided by the *Commission* under these sections. Sections 36(2) of the Electricity Industry Act and 43(2) of the Gas Industry Act provide that if a term or condition is void because it is inconsistent with a term or condition decided by the *Commission*, the term or condition decided by the *Commission* is deemed to form part of the contract in place of the void term or condition.

⁶⁵ Division 2A incorporates the *Commission's* Guideline 19 – Energy Price and Product Disclosure. Guideline 19 was made in accordance with sections 35C and 36A of the Electricity Industry Act and sections 42C and 43A of the Gas Industry Act, which impose obligations on retailers to publish standing offer and market contract tariffs, terms and conditions on their internet sites and provide information to the *Commission* in accordance with the Guidelines. Under sections 24 and 37 of the NERL, retailers are required to present standing offer or market offer prices in accordance with the AER Retail Pricing Information Guidelines. At this stage, Guideline 19 has been included in the new instrument in place of the AER requirements. However, the *Commission* is currently consulting on proposed amendments to Guideline 19. This consultation document can be found on the *Commission's* website entitled '*Proposed changes to regulatory instruments relating to flexible pricing – Draft Decision - June 2013*'. Please refer to this consultation paper, and also chapter 8.2 of the *Commission's* Harmonisation Draft Decision (Consultation Paper) for further discussion on this issue.

⁶⁶ Schedule 4 replicates Schedule A of Guideline 19.

15B Relevant published offers (Price and Product Information Statements)

- (1) A *specified retailer* must provide a link on the home page of the *specified retailer's* internet site so that a *customer* can easily and logically access the *retailer's Price and Product Information Statements*.
- (2) The *specified retailer* must not:
 - (a) require the *customer* to provide technical information, such as the *customer's* consumption, retail tariff, network tariff, distribution area, national metering identifier or meter installation registration number; or
 - (b) request personal information about the *customer*, such as driver's licence number, address or date of birth;

before providing the *Price and Product Information Statement*.

Note:

This clause is not intended to prevent *retailers* from asking questions about these characteristics. However, it cannot be mandatory that the *customer* provide the information in order to proceed through the online process and obtain a *Price and Product Information Statement*.

- (3) If the *specified retailer* requires the *customer's meter type*, the *customer* must be provided with plain English explanations so that they can identify their *meter type* easily.
- (4) A *specified retailer* must co-operate with the *Commission* in implementing a system to create and sustain reliable links from the *Commission's* internet site so that the *customer* can:
 - (a) easily view the same or more offer information in the *retailer's* website; and
 - (b) potentially accept that offer or another offer.
- (5) Where the *specified retailer* is unable to determine, based on the information gathered about the *customer*, which of more than one *Price and Product Information Statement* applies, the *specified retailer* must either:
 - (a) present a *Price and Product Information Statement* for one of the potentially applicable tariffs; or
 - (b) present a *Price and Product Information Statement* for each of the potentially applicable tariffs.

In doing so, the *specified retailer* must electronically communicate to the *customer* that it is not clear, based on the information gathered about the *customer*, which of more than one *Price and Product Information Statement* applies.

- (6) Each *Price and Product Information Statement* must at least include:
- (a) all fees and charges separately disclosed, including the tariff and early termination fees, if applicable;
 - (b) the term of the contract and the termination notification required;
 - (c) an explanation of how the tariff and other fees and charges can change, if applicable;
 - (d) a description of the characteristics relevant to determining whether the tariff or term or condition is applicable to a *customer*;
 - (e) the following statement:
“About this document
This Price and Product Information Statement is presented in accordance with the requirements of the Essential Services Commission (ESC) - the independent regulator of the retail energy industry in Victoria. For information about choosing an energy retailer, visit www.esc.vic.gov.au/yourchoice.”
 - (f) details of, if applicable:
 - (i) rebates, other than government-funded rebates;
 - (ii) non-price incentives;
 - (iii) where a different tariff is applicable at different times, when the different tariffs apply;
 - (iv) where the *specified retailer* intends to make the tariff or any other element of the published details available only for a fixed period, the availability end date; and
 - (v) how to get further information on the terms and conditions.
- (7) Each *Price and Product Information Statement* must adhere to the following format requirements:
- (a) the *specified retailer* must title and refer to the published information as “*Price and Product Information Statement*”;
 - (b) the *specified retailer* must specifically identify each *Price and Product Information Statement* with a unique name or reference code or both;
 - (c) all monetary amounts must be shown on both a GST-exclusive and GST inclusive basis;
 - (d) variable fees and charges that relate to *energy* consumed must be expressed as cents per kilowatt hour or megajoule, as appropriate; and

- (e) any fixed fees or charges relating to the supply of *energy* must be expressed as either dollars per day or in a manner which shows how these fees or charges are billed and calculated.

An example *Price and Product Information Statement* is set out in Schedule 5.⁶⁷ The *specified retailer* may present its *Price and Product Information Statement* in an alternative format to that set out in clause 15B(6) and clause 15B(7) with the *Commission's* prior approval.

- (8) A *Price and Product Information Statement* must be updated within five business days of any change to the information presented in the statement.

15C Offer summary

- (1) A *retailer* must provide an *offer summary* in writing to a *small retail customer*:
 - (a) on request by the *customer*; and
 - (b) when providing the *customer* the terms or information about the terms of any new retail contract, including when engaging in any marketing activity.
- (2) Each *offer summary* must include at least:
 - (a) the information set out in clauses 15B(6)(a) to (c) and (f);
 - (b) in relation to any fixed fees or charges relating to the supply of *energy*, the number of days in the period to which the charge relates;
 - (c) the following statement:

“For information about choosing an energy *retailer* visit:
www.esc.vic.gov.au/yourchoice”
- (3) For the purpose of avoiding any confusion:
 - (a) the *offer summary* must be a separate document to the full contractual terms and conditions; and
 - (b) may include other information.
- (4) All monetary amounts presented on the *offer summary* must be shown on both a GST-exclusive and GST-inclusive basis

15D Other requirements

- (1) All information in a *Price and Product Information Statement* or *offer summary* must be written in plain English and be designed to be readily understandable by

⁶⁷ Schedule 5 replicates Schedule B of Guideline 19.

customers. Additional information included in an *offer summary*, beyond the requirements specified in this guideline, should be appropriate and not excessive.

- (2) In presenting a *Price and Product Information Statement* or *offer summary*, a *retailer* must comply with all applicable legislative and regulatory requirements, including, but not limited to, the *Privacy Act 1988* (Cth), the *Competition and Consumer Act 2010* (Cth), the *Australian Consumer Law and Fair Trading Act 2012* (Vic) and Division 10 of Part 2 of this Code.

Division 3 Customer retail contracts—pre-contractual procedures

16 Pre-contractual duty of retailers

- (1) This clause applies where a *retailer* is contacted by a *small customer* who is seeking to purchase *energy* for premises.
- (2) If the *retailer* is the *designated retailer* for the premises, the *retailer*:
 - (a) may elect to offer the *customer* a *market retail contract*; and
 - (b) must advise the *customer* of the availability of the *retailer's standing offer*.⁶⁸
- (3) If the *retailer* is not the *designated retailer* for the premises and the *retailer* does not elect to offer the *customer* (whether at the request of the *customer* or of its own initiative) a *market retail contract*, the *retailer*:
 - (a) must refer the *customer* to the distributor for the premises concerned; and
 - (b) must inform the *small customer* that the distributor will be able to advise the *customer* which *retailer* has an obligation to make a *standing offer* that is applicable to the *customer*.
- (4) A *retailer* must obtain the *explicit informed consent* of a *small customer* for the entry by the *customer* into a *market retail contract* with the *retailer*.⁶⁹

⁶⁸ The NECF includes a separate category of customers referred to as '*small market offer customers*'. These are small business customers who consume energy at or above the lower consumption threshold (currently 40Mwh per annum for electricity and 400GJ per annum for gas); see NERL section 5. For these customers retailers can satisfy the obligation to offer by offering a market contract and not a standing offer. The Electricity Industry Act and Gas Industry Act do not currently allow for '*small market offer customers*' not to be entitled to a standing offer.

⁶⁹ This obligation is taken from section 38(b) of the NERL.

17 [Not used]⁷⁰

18 **Pre-contractual request to designated retailer for sale of energy (SRC)**⁷¹

- (1) A *small customer* who wishes to purchase *energy* for premises under a *standard retail contract* may make a request to the *designated retailer* for the premises for the sale of *energy* in accordance with the *retailer's standing offer*.
- (2) The request may be made by telephone or in writing.
- (3) The *small customer* must:
 - (a) provide the *customer's* name and *acceptable identification*; and
 - (b) provide contact details for billing purposes; and
 - (c) ensure that there is safe and unhindered access to the *meter* at the premises.
- (4) [Not used]
- (5) The *designated retailer* may include in the charges under the *standard retail contract* any outstanding amounts owed by the *small customer* to the *retailer* from an unpaid account (excluding unpaid amounts for premises for which the *customer* has an ongoing *customer retail contract*).
- (6) The *designated retailer* is not entitled to refuse to sell *energy* to a *small customer* who is a *residential customer* on the ground that the *customer* owes the *retailer* the outstanding amounts referred to in subclause (5).
- (7) Where:
 - (a) a *retailer* has arranged for the *de-energisation* of a *small customer's* premises (other than where the *retailer* has arranged for *de-energisation* due to failure to pay a bill under clause 111); and
 - (b) the *customer* has not within 10 business days of *de-energisation* rectified the matter that gave rise to the *de-energisation*,

the *retailer* may decline to enter into a *customer retail contract* with the *customer* and to arrange for *energisation* of the premises until the matter that gave rise to the *de-energisation* has been rectified.

⁷⁰ This rule has been deleted on the basis that it imposes an obligation on distributors.

⁷¹ Rule 18 is substantially equivalent to clause 1 of the ERC v10 except that:

- the NERR does not require the customer to pay any connection charge as and when required by their energy contract (clause 1(b) of the ERC v10), and
- the NERR does not require the customer to provide contact details for the property owner where the request relates to a rental property; and
- the NERR contains additional requirements to the ERC v10.

19 Responsibilities of designated retailer in response to request for sale of energy (SRC)⁷²

- (1) A *designated retailer* must, as soon as practicable, provide a *small customer* requesting the sale of *energy* under the *retailer's standing offer* with the following information:
 - (a) a description of the *retailer's standard retail contract* that is formed as a result of the *customer* accepting the *standing offer* and how copies of the contract may be obtained;⁷³
 - (b) a description of the *retailer's* and *customer's* respective rights and obligations concerning the sale of *energy* under the *Electricity Industry Act* or *Gas Industry Act*, as applicable, and this Code, including the *retailer's* standard complaints and dispute resolution procedures;⁷⁴
 - (c) information about the availability of government funded *energy* charge rebate, concession or relief schemes;⁷⁵
 - (d) information in community languages about the availability of interpreter services for the languages concerned and telephone numbers for the services.
- (2) The *retailer* must, as soon as practicable (but not later than the end of the next business day) after the request for the sale of *energy* is properly made (as referred to in subclause (3)), forward relevant details of the *customer* to the distributor for the premises concerned, for the purpose of:
 - (a) updating the distributor's records, if the premises are energised; or
 - (b) arranging for the *energisation* of the premises by the distributor, if the premises are not energised.

⁷² Rule 19, together with rule 64, is broadly consistent with clause 3.5 of the ESC Code of Conduct for Marketing Retail Energy in Victoria (**Marketing Code**). However, the NERR does not contain an equivalent provision to clause 3.5(a) bullet point two of the Marketing Code which provides that a retailer must give a consumer a notice advising the consumer of their rights to cancel the contract and a further notice setting out the name and address of the retailer which may be used to cancel the contract.

⁷³ There is no direct equivalent to this sub-rule in the ERC v10 or the Marketing Code. However it is broadly consistent with the type of information that must be provided to consumers under clauses 3.3 and 3.5 of the Marketing Code.

⁷⁴ There is no direct equivalent to this sub-rule in the ERC v10 or the Marketing Code; it is broadly consistent with the information required to be provided under clause 3.5(a) bullet points 4 and 5 of the Marketing Code which require the retailer to provide the consumer with information about making a complaint and the general scope of the Marketing Code and compliance procedures. Clause 26.2 of the ERC v10 also requires a retailer to give domestic customers a copy of the retailer's charter and specifies the information that must be included in the charter. There is no direct equivalent in the NERR for a charter, however rule 19(1)(b) covers similar information to clause 26.2.

⁷⁵ This sub-rule is broadly consistent with the information required to be provided under clause 3.5(a) bullet point 3 of the Marketing Code, which requires the retailer to provide information relating to government energy assistance schemes.

- (3) A request for the sale of *energy* is properly made when:
- (a) the request has been received by the *retailer*; and
 - (b) the *small customer* has complied with the requirements under clause 18 (3); and
 - (c) the *small customer* is otherwise entitled to receive the sale of *energy* in accordance with the *standard retail contract*.

Division 4 Customer retail contracts—billing⁷⁶

20 Basis for bills (SRC and MRC)⁷⁷

- (1) A *retailer* must base a *small customer's* bill for the *customer's* consumption of:
- (a) electricity:
 - (i) on *metering data* provided for the relevant *meter* at the *customer's* premises provided by the *responsible person* and determined in accordance with the *metering rules* and clause 21; or
 - (ii) on any other method agreed by the *retailer* and the *small customer*, if the *retailer* has obtained the *explicit informed consent* of the *customer*.⁷⁸
 - (b) gas:
 - (i) on an actual reading of the relevant *meter* at the *customer's* premises provided by the *responsible person* and determined in accordance with the *metering rules*; or
 - (ii) on *metering data* provided for the relevant *meter* at the *customer's* premises provided by the *responsible person* and determined in accordance with the *metering rules*; or
 - (iii) on an estimation of the *customer's* consumption of *energy*, as provided by clause 21; or

⁷⁶ There is no direct equivalent to clauses 7.5 (fees and charges for dishonoured payments and merchant service fees) and 7.6 (vacating a premises) of the ERC v10 in the NERR. The NERR contains some provisions relating to vacating premises in various sections.

⁷⁷ Rules 20(1) and 20(2) are substantially equivalent to clause 5.1 of the ERC v10 except that the ERC v10 provides that a retailer will not be in breach of the requirement to use its best endeavours to read a customer's meter if the retailer is unable to read the meter as a result of the customer breaching clause 25 of the ERC v10 (that is, allowing safe, convenient and unhindered access to the meter) or an event outside the retailer's control.

⁷⁸ After consideration of the submissions received and discussions with the Consumer Groups and EWOV, the Commission has decided to amend clause 20(1)(a)(ii) of the draft ERC v11 to require that a customer provide their explicit informed consent before a retailer can base a customer's bill on a method other than a customer's metering data. This reflects the requirements outlined in clause 5.1 of the ERC v10.

- (iv) on any other method agreed by the *retailer* and the *small customer*, if the *retailer* has obtained the *explicit informed consent* of the *customer*.⁷⁹
- (2) The *retailer* must use its best endeavours to ensure that actual readings of the *meter* are carried out as frequently as is required to prepare its bills consistently with the *metering rules* and in any event at least once every 12 months.
- (3) Despite subclauses (1) and (2), if there is no *meter* in respect of the *customer's* premises, the *retailer* must base the *customer's* bill on *energy* data that is calculated in accordance with applicable *energy laws*.⁸⁰
- (4) **Application of this clause to standard retail contracts**
This clause applies in relation to *standard retail contracts*.
- (5) **Application of this clause to market retail contracts**
This clause applies in relation to *market retail contracts*.

20A Bulk Hot Water Charging⁸¹

- (1) A *retailer* must issue bills to a *customer* for the charging of the *energy* used in the delivery of bulk hot water in accordance with Schedule 6.
- (2) Where a *retailer* charges for *energy* in delivering either *gas bulk hot water* or *electric bulk hot water* to a *relevant customer*, the *retailer* must include at least the following information (as applicable) in the *relevant customer's* bill:
 - (a) the relevant *gas bulk hot water* rate applicable to the *relevant customer* in cents per litre;
 - (b) the relevant electricity rate(s) being charged to the *relevant customer* for the electricity consumed in the *electric bulk hot water* unit in cents per kWh;
 - (c) the relevant *electric bulk hot water conversion factor* for *electric bulk hot water* in kWh/kilolitre;
 - (d) the total amount of *gas bulk hot water* or *electric bulk hot water* in kilolitres or litres consumed in each period or class of period in respect of which the relevant *gas bulk hot water* rate or electricity tariffs apply to the relevant

⁷⁹ After consideration of the submissions received and discussions with the Consumer Groups and EWOV, the Commission has decided to amend clause 20(1)(b)(iv) of the draft ERC v11 to require that a customer provide their explicit informed consent before a retailer can base a customer's bill on a method other than a customer's metering data. This reflects the requirements outlined in clause 5.1 of the ERC v10.

⁸⁰ Rule 20(3) is substantially equivalent to clause 5.6 of the ERC v10 except that the ERC v10 refers to '*applicable regulatory instruments*' instead of '*applicable energy laws*'. An appropriate definition of '*energy laws*' has been included in the new draft instrument.

⁸¹ The ERC v10 contains detailed provisions in relation to bulk hot water charging which have been included in the new draft instrument.

customer and, if the *customer's* meter measures and records consumption data only on the accumulation basis, the dates and total amounts of the immediately previous and current meter readings or estimates;

- (e) the deemed *energy* used for *electric bulk hot water* (in kWh); and
- (f) separately identified charges for *gas bulk hot water* or *electric bulk hot water* on the *customer's* bill.

21 Estimation as basis for bills (SRC and MRC)⁸²

- (1) A *retailer* may base a *small customer's* bill on an estimation of the *customer's* consumption of *energy* where:
 - (a) the *customer* gives their *explicit informed consent*⁸³ to the use of estimation by the *retailer*; or
 - (b) the *retailer* is not able to reasonably or reliably base the bill on an actual *meter* reading; or
 - (c) *metering data* is not provided to the *retailer* by the *responsible person*.⁸⁴
- (2) Where estimations are permitted to be used as the basis for a *small customer's* bill, the estimations may be based on:
 - (a) the *customer's* reading of the relevant *meter*; or
 - (b) historical *metering data* for the *customer* reasonably available to the *retailer*; or
 - (c) the average usage of *energy* by a comparable *customer* over the corresponding period, if there is no historical *metering data* for the *customer*.⁸⁵

⁸² Rule 21 contains some of the same provisions as clause 5.2 of the ERC v10, however the ERC v10 contains additional matters that are not provided for in the NERR. In particular, there are no provisions in the NERR equivalent to clause 5.2(a), bullet point 2, which relates to second tier customers, or equivalent to clause 5.2(b) of the ERC v10 which relates to electricity customers that are transferring from one retailer to another retailer. Both clauses provide that these particular types of electricity customers may be provided with an estimated bill prepared on a basis used to determine the retailer's responsibility in the wholesale electricity market for electricity supply under applicable regulatory instruments. These provisions are not included in the new draft instrument.

⁸³ Following the Commission's consideration of the submissions received and discussions with the Consumer Groups and EWOV, and to reflect the requirement to obtain explicit informed consent under clause 20, the Commission has decided to amend clause 21(1)(a) to require retailers to obtain a customer's explicit informed consent prior to basing their bill on estimation.

⁸⁴ Rule 21 (1) is substantially equivalent to clause 5.2(a) of the ERC v10 except that the NERR also requires the customer to consent to the use of the estimation.

⁸⁵ Rules 21(2)(a) and (b) are substantially equivalent to clause 5.2, bullet point 1 of the ERC v10. However Rule 21(2)(c) differs to the ERC v10 which provides that an estimated bill may be based on the average consumption at the relevant tariff calculated over the period covered by the estimated bill instead of the average usage of energy by a comparable customer as provided for by the NERR. The intent of the two

- (2A) Despite clauses 20, 21(1) and 21(2) and 25(1)(i), in the case of a *smart meter*, if a *retailer* is not able to reasonably or reliably base a bill on actual *metering data* collected from the *customer's smart meter* for each trading interval, the *retailer* may provide the *customer* with a bill that is either:
- (a) prepared using estimated and/or substituted *metering data* in accordance with applicable *energy laws*;⁸⁶ or
 - (b) if estimated and/or substituted *metering data* is not available, prepared based on the *customer's* historical billing or *metering data* or, where the *retailer* does not have the *customer's* historical billing or *metering data*, the average usage of *energy* by a comparable *customer* over the corresponding period covered by the estimated bill.⁸⁷
- (3) The *retailer* must inform the *small customer*, on the bill, that the bill is based on an estimation.⁸⁸
- (4) Without affecting clause 20 (2), if the *retailer* has issued the *small customer* with a bill based on an estimation and the *retailer* subsequently issues the *customer* with a bill that is based on an actual *meter* reading or on *metering data*:
- (a) the *retailer* must include an adjustment on the later bill to take account of any overcharging of the *customer* that has occurred; and
 - (b) unless the actual *meter* reading or *metering data* could not be obtained as a result of an act or omission by the *customer*, the *retailer* must, if requested to do so by the *customer*, offer the *customer* time to pay any undercharged amount by agreed instalments, over a period being no longer than:
 - (i) the period during which an actual *meter* reading or *metering data* was not obtained, where that period is less than 12 months; or
 - (ii) in any other case, 12 months.⁸⁹

different forms of drafting appear to be the same, and so we have retained the NERR drafting.

⁸⁶ The ERC v10 defines '*applicable regulatory instruments*' in relation to electricity as: the National Electricity Rules; the Metrology Procedure: Part A (National Electricity Market); the Metrology Procedure: Part B (National Electricity Market); the Electricity Customer Transfer Code; and the Electricity Customer Metering Code. An appropriate definition of '*energy laws*' has been included in the new draft instrument.

⁸⁷ There are no provisions in the NERR equivalent to clause 5.2(c) of the ERC v10 which provides the basis for an estimate of a customer's bill in the case of smart meters. The obligations relating to smart meters are included in the new draft instrument.

⁸⁸ The requirement in this sub-rule is equivalent to clause 4.2(e) and is also provided for in Rule 20 of the NERR.

⁸⁹ This sub-rule is broadly equivalent to clause 5.4(a) of the ERC v10 except that the ERC v10 specifically requires the retailer to adjust the bill in accordance with clause 6 (which deals with overcharging and undercharging). The NERR, however, requires the retailer to include an adjustment on the bill to take into account any overcharging and offer the customer time to pay any undercharged amount by instalment. The NERR provisions therefore have the same effect as some aspects of clause 6 of the ERC v10 except that, in relation to the amount of time given to pay the undercharged amount, the ERC v10 provides that the time period must be at least equal to the period over which undercharging occurred, while the NERR provides that the period must be no longer than that period. Further, the NERR does not contain a provision equivalent to clause 5.4(b) of the ERC v10, which provides that clause 5.4(a) does not apply to an estimated bill prepared under

- (5) Where an attempt to read the *small customer's meter* is unsuccessful due to an act or omission of the *customer*, and the *customer* subsequently requests a *retailer* to replace an estimated bill with a bill based on an actual *meter* reading, the *retailer* must comply with that request but may pass through to that *small customer* any costs it incurs in doing so.⁹⁰

(6) **Application of this clause to standard retail contracts**

This clause applies in relation to *standard retail contracts*.

(7) **Application of this clause to market retail contracts**

This clause applies in relation to *market retail contracts*⁹¹, but only to the extent (if any) a contract provides for estimation as the basis for the *small customer's* bill.⁹²

22 Proportionate billing (SRC and MRC)⁹³

- (1) If a *small customer's* bill covers a period other than the *customer's* usual billing cycle or a period during which the *customer's* tariff changes, the *retailer* must charge in proportion to the relevant periods and clearly show relevant details on the bill.

(2) **Application of this clause to standard retail contracts**

This clause applies in relation to *standard retail contracts*.

(3) **Application of this clause to market retail contracts**

This clause applies in relation to *market retail contracts*.

23 Bill smoothing (SRC)⁹⁴

- (1) Despite clauses 20 and 21, a *retailer* may, in respect of any 12 month period, provide a *small customer* with bills based on an estimation under a bill smoothing arrangement if and only if:

clause 5.1(a), bullet point 2, which relates to second tier customers, or equivalent to clause 5.2(b) of the ERC v10 which relates to electricity customers that are transferring from one retailer to another retailer. In relation to these customers, the retailer may adjust a bill to the extent permitted by applicable regulatory instruments. The NERR also does not contain a provision equivalent to clause 5.4(c) which provides that clause 5.4(a) does not apply in respect of an estimated bill under a bill smoothing arrangement.

⁹⁰ This sub-rule is substantially equivalent to clause 5.5 of the ERC v10.

⁹¹ See footnote in Part 8 regarding removal of references to prepayment meters.

⁹² Under the ERC v10, the estimated bill provisions cannot be varied in the formation of a market contract.

Adjustment of a bill in relation to normal customers (ie, clause 5.4(a)) may be varied by agreement between the customer and the retailer in the formation of a market contract.

⁹³ Rule 22 is substantially equivalent to clause 5.7 of the ERC v10.

⁹⁴ Rule 23 is substantially equivalent to clause 5.3 of the ERC v10 except that the NERR requires the customer's explicit informed consent.

- (a) the amount payable under each bill is initially the same and is set on the basis of the *retailer's* initial estimate of the amount of *energy* the *customer* will consume over the 12 month period; and
 - (b) that initial estimate is based on the *customer's* historical billing data or, where the *retailer* does not have that data, average usage of *energy* by a comparable *customer* calculated over the 12 month period; and
 - (c) in the seventh month:
 - (i) the *retailer* re-estimates the amount of *energy* the *customer* will consume over the 12 month period, taking into account any actual *meter* readings or actual *metering data* and relevant seasonal factors; and
 - (ii) if there is a difference between the initial estimate and the re-estimate of greater than 10 per cent, the amount payable under each of the remaining bills in the 12 month period is to be reset to reflect that difference; and
 - (d) at the end of the 12 month period, the *meter* is read or *metering data* is obtained and any undercharging or overcharging is adjusted under clause 30 or 31.
- (2) The *explicit informed consent* of the *small customer* is required for the *retailer's* billing on the basis referred to in subclause (1).

(3) **Application of this clause to standard retail contracts**

This clause applies in relation to *standard retail contracts*.

(4) **Application of this clause to market retail contracts**

This clause does not apply in relation to *market retail contracts*, but this subclause does not prevent a *retailer* from including bill smoothing arrangements in a *market retail contract*.

24 **Frequency of bills (SRC)**⁹⁵

- (1) *A retailer* must issue bills to a *small customer*:
- (a) subject to paragraph (b), at least once every 3 months; and
 - (b) in the case of gas, at least once every 2 months in relation to the period up to 31 December 2013.

⁹⁵ Rule 24(1) is equivalent to clause 3.1 of the ERC v10 in relation to electricity; however for gas the ERC v10 requires bills to be issued every 2 months. The Commission understands that DSDBI has indicated that it intends to retain the 2 month billing cycle for gas customers until 31 December 2013. The ERC v10 also provides for billing cycles for dual fuel customers to be agreed between the retailer and the customer. The new draft instrument will not maintain specific dual fuel obligations.

(2) A *retailer* and a *small customer* may agree to a billing cycle with a regular recurrent period that differs from the *retailer's* usual recurrent period where the *retailer* obtains the *explicit informed consent* of the *small customer*. Under the agreement the *retailer* may impose an *additional retail charge* on the *customer* for making the different billing cycle available.⁹⁶

(3) **Application of this clause to standard retail contracts**

This clause applies in relation to *standard retail contracts*.

(4) **Application of this clause to market retail contracts**

This clause does not apply in relation to *market retail contracts*.

25 Contents of bills (SRC and MRC)

(1) A *retailer* must prepare a bill so that a *small customer* can easily verify that the bill conforms to their *customer retail contract* and must include the following particulars in a bill for a *small customer*:⁹⁷

- (a) the *customer's* name and account number;⁹⁸
- (b) the address of the *customer's* premises for the sale of *energy* and the *customer's* mailing address (if different);⁹⁹
- (c) the *meter* identifier;¹⁰⁰
- (d) the billing period;¹⁰¹
- (e) the *pay-by date* for the bill and the *bill issue date*;¹⁰²
- (f) the total amount payable by the *customer*, including amounts of any arrears or credits;¹⁰³

⁹⁶ Rule 24(2) is substantially equivalent to clause 10.1 of the ERC v10 except that the ERC v10 provides that, in the case of electricity, a retailer and a customer may negotiate a billing cycle of less than 3 months and, for gas, less than 2 months. The ERC v10 also permits a retailer to impose an additional charge on the customer for making the different billing cycle available.

⁹⁷ Rule 25(1) is substantially equivalent to clause 4.1 and 4.2 of the ERC v10 except where noted. Clause 4.2(h) of the ERC v10, which provides for additional information to be provided in a bill if the bill is derived from smart meter interval data, is not covered by the NERR. Clause 4.3 of the ERC v10, which relates to bundled charges, is also not covered in the NERR. However, rules 25(1)(g) and (h) will achieve the same effect as clause 4.3.

⁹⁸ This sub-rule is equivalent to clause 4.2(a) of the ERC v10.

⁹⁹ This sub-rule is equivalent to clause 4.2(a) of the ERC v10.

¹⁰⁰ In addition to the meter identifier, clause 4.2 (b) of the ERC v10 requires a bill to include '*checksum*' and if there is no assigned meter identifier, the bill must include the customer's meter number or another unique identifying mark assigned to the customer's metering installation.

¹⁰¹ This sub-rule is equivalent to clause 4.2(c) of the ERC v10.

¹⁰² Clause 4.2(k) of the ERC v10 requires the bill to include the '*pay-by date*' but does not require the '*bill issue date*' to be specified.

- (g) tariffs and charges applicable to the *customer*;¹⁰⁴
- (h) the basis on which tariffs and charges are calculated;¹⁰⁵
- (i) whether the bill was issued as a result of a *meter* reading or:
 - (i) in the case of a *meter* other than a *smart meter*, an estimation; or
 - (ii) in the case of a *smart meter*, an accumulated total of at least 48 hours of trading intervals are not billed on the basis of *smart meter* interval data; and,
 if issued as a result of a *meter* reading, the date of the *meter* reading;¹⁰⁶
- (j) subject to subclause (y),¹⁰⁷ the values of *meter* readings (or, if applicable, estimations) at the start and end of the billing period;¹⁰⁸
- (k) particulars of the average daily consumption during the billing period, including the average daily cost for each *smart meter* tariff component of the billing period;¹⁰⁹
- (l) if a bill was issued by the same *retailer* for the corresponding billing period during the previous year, particulars of the average daily consumption during that previous billing period;¹¹⁰

¹⁰³ Clause 4.2(j) and clause 4.2(l) are substantially equivalent to rule 25(1)(f). Clause 4.2(l) also requires the bill to specify the amount of any refundable advance provided by the customer; this is provided for in rule 25 (1)(q).

¹⁰⁴ This sub-rule is equivalent to clause 4.2(d) of the ERC v10 with respect to tariffs and clause 4.3 of the ERC v10 with respect to charges.

¹⁰⁵ Sub-rule 25(1)(h) is similar to clause 4.3 of the ERC v10 except that the ERC v10 provides that on request a retailer must provide a customer with reasonable information on network charges, retail charges and any other charges relating to the sale or supply of energy comprised in the amount payable under the customer's bill.

¹⁰⁶ This sub-rule is equivalent to clause 4.2(e), bullet point 1 of the ERC v10. Bullet point 2, provides that in the case of a smart meter, the bill must specify whether an accumulated total of at least 48 hours of trading intervals are not billed on the basis of smart meter interval data.

¹⁰⁷ Clause 25(1)(j) has been made subject to clause 25(1)(y) to address that it is only applicable where there are no smart meters.

¹⁰⁸ This sub-rule is substantially equivalent to clause 4.2(g) of the ERC v10, which requires that the bill state the total amount of electricity or gas consumed in each period. Clause 4.2(g) also provides that if a customer's meter measures and records consumption data only on an accumulation basis, the bill must provide the dates and total amounts of the immediately previous and current meter readings.

¹⁰⁹ Clause 4.4 of the ERC v10 requires that comparative consumption information for the billing period be provided in the form of a graph. Additionally, the ERC v10 requires that, to the extent that data is available, the bill must include details of *aggregate* consumption for each billing period over the past 12 months and a comparison of consumption for the period covered by the bill with the consumption for the same period of the previous year. Whereas the NERR requires a comparison of average *daily* consumption. The ERC v10 also provides that for customers with smart meters, the bill must include the customer's consumption for each monthly period over the past 12 months. Under the ERC v10 this clause can be varied in market contracts however the NERR requirement cannot be varied in 'market contracts'. Clause 4.2(r) of the ERC v10 also requires that the average daily cost for each smart meter tariff component over the billing period be included in the bill. This is not provided for in the NERR.

- (m) the estimated date of the next scheduled *meter* reading (if applicable);¹¹¹
- (n) details of consumption or estimated consumption of *energy* for each billing period over the past 12 months or, in the case of *customers* with a *smart meter*, consumption for each monthly period over the past 12 months;¹¹²
- (o) for ¹¹³electricity bills, bill benchmarking information to the extent required by section 40R of the *Electricity Industry Act*;¹¹⁴
- (p) any amount deducted, credited or received under a government funded *energy* charge rebate, concession or relief scheme or under a *payment plan*;¹¹⁵
- (q) if the *customer* has provided a *security deposit*, the amount of that deposit;¹¹⁶
- (r) details of the available payment methods;¹¹⁷
- (s) reference to the availability of government funded *energy* charge rebate, concession or relief schemes;¹¹⁸
- (t) a telephone number for account enquiries, the charge for which is no more than the cost of a local call;¹¹⁹
- (u) a telephone number for complaints (which may be the same as that for account enquiries), the charge for which is no more than the cost of a local call;¹²⁰

¹¹⁰ Clause 4.4(a) of the ERC v10 at bullet point 2, requires a comparison of consumption for the period covered by the bill with the consumption for the same period of the previous year, whereas the NERR requires particulars of the average daily consumption.

¹¹¹ This sub-rule is not provided for in the ERC v10.

¹¹² Clause 4.4 of the ERC v10 requires details of consumption for each billing period over the past 12 months. Additionally, for customers with smart meters, the ERC v10 requires details of consumption for each monthly period over the past 12 months to be provided in a customer's bill.

¹¹³ The words '*reminder notices and*' have been deleted from clause 25(1)(o) as the Electricity Industry Act only requires bill benchmarking information to be included on bills, not reminder notices.

¹¹⁴ The reference to Electricity Consumption Benchmarks has been deleted. Part 11 of the NERR requires the AER to provide electricity consumption benchmarks for residential customers to retailers. Retailers are required to include in a customer's bill a comparison of the customer's electricity consumption against the benchmarks and are required to represent the information in a graphical or tabular form. Energy consumption benchmarks are not required under the ERC v10. There is a Victorian requirement in relation to bill benchmarking under sections 40P and 40R of the Electricity Industry Act. These statutory requirements are not provided for in the ERC v10.

¹¹⁵ This sub-rule is not provided for in the ERC v10.

¹¹⁶ This sub-rule is equivalent to clause 4.2(l) of the ERC v10.

¹¹⁷ This sub-rule is equivalent to clause 4.2(m) of the ERC v10. This requirement may be varied in a market retail contract under the ERC v10 but not under the NERR.

¹¹⁸ This sub-rule is substantially equivalent to clause 4.2(n) of the ERC v10 except that the ERC v10 provides that if the customer is a domestic customer, the bill must include details about the availability of concessions.

¹¹⁹ This sub-rule is substantially equivalent to clause 4.2(o).

- (v) a separate 24 hour telephone number for fault enquiries and emergencies, the charge for which is no more than the cost of a local call, being the telephone number for the distributor and giving the name of the distributor;¹²¹
- (w) contact details of interpreter services in community languages;¹²²
- (x) any proportionate billing information in accordance with clause 22;¹²³
- (y) if a *customer's* bill is derived from *smart meter* interval data:
 - (i) the *index read* at the end of the billing period; and
 - (ii) the *index read* at the start of the billing period¹²⁴; and
 - (iii) the actual tariffs; and
 - (iv) the total amount of electricity (in kWh) ¹²⁵consumed in each period or class of period in respect of which a relevant tariff applies to a *customer*.¹²⁶

Note:

Additional obligations in relation to the provision of metering information to customers are contained in the Electricity Metering Code.

- (2) The *retailer* must include amounts billed for goods and services (other than the sale and supply of *energy*) in a separate bill or as a separate item in an *energy* bill.¹²⁷

(3) **Application of this clause to standard retail contracts**

This clause applies in relation to *standard retail contracts*.

¹²⁰ The ERC v10 does not require a telephone number specifically for complaints to be included in a customer's bill. Clause 4.2(q) of the ERC v10 requires that if the bill is a reminder notice, contact details for the retailer's complaint handling processes be included in the bill.

¹²¹ This sub-rule is substantially equivalent to clause 4.2(o).

¹²² This sub-rule is substantially equivalent to clause 4.2(p) except that under the ERC v10 this requirement is applicable to domestic customers only.

¹²³ This sub-rule is equivalent to clause 5.7 of the ERC v10.

¹²⁴ The words '*from 1 July 2012*' have been deleted from clause 25(1)(y)(ii) as the Commission considers the timing of the clause is redundant.

¹²⁵ The reference to gas was removed in response to submission from Origin Energy that smart meter minimum functionality does not include remote interval reading of gas meters.

¹²⁶ This sub-rule is taken from clause 4.2(h) of the ERC v10.

¹²⁷ This sub-rule is equivalent to the first part of clause 4.6 of the ERC v10 except that the ERC v10 also requires that a description of the other goods or services be included.

(4) **Application of this clause to market retail contracts**

This clause applies in relation to *market retail contracts*.

25A Greenhouse Gas Disclosure on electricity customers' bills¹²⁸

(1) In this clause:¹²⁹

co-efficient means:

- (a) for 2002 – 1.39 tonnes CO₂e/MWh; and
- (b) for each subsequent calendar year – a figure to be calculated by DSDBI and supplied to the relevant *retailer* by the *Commission*. The figure is to be derived from relevant data in the then latest National Greenhouse Gas Inventory published by the Department of Climate Change and Energy Efficiency (a Commonwealth Government department) and other relevant documents so as to reflect average greenhouse gas intensity of electricity sold in Victoria (in the absence of which the previous year's figure applies).

DSDBI means the Victorian Department of State Development, Business and Innovation.

disclosable emissions means the number of tonnes for the period calculated by applying the formula:

$$\textit{co-efficient} \times (\text{MWh of electricity} - \text{MWh of green power})$$

(and where the period encompasses two calendar years the formula is to be applied using the *co-efficient* which is current at the end of the period).

green power means electricity which is accredited as “Green Power” under the national Green Power Accreditation Program managed by the National GreenPower Steering Group.

(2) In accordance with section 40R of the EIA, a *retailer* must:¹³⁰

- (a) include in each bill issued to a *customer* for the supply or sale of electricity the information concerning greenhouse gas emissions connected with the

¹²⁸ There is no equivalent to Guideline 13: Greenhouse Gas Disclosure on Electricity Customers' Bills in the NERR. Therefore, we have included a new rule 25A which incorporates the provisions contained in Guideline 13. Clause 25A has been updated to reflect the current version of Guideline 13 dated January 2013. In addition, all references to DPI have been replaced with DSDBI, the department's new name.

¹²⁹ The definitions within clause 25A have been moved to the beginning of the clause to address the EWOV's submission.

¹³⁰ New subclause 25A(2) has been inserted to reflect section 40R of the Electricity Industry Act which provides that a licence to sell electricity is deemed to include a condition requiring the licensee to include on a customer's bill either information concerning greenhouse gas emissions or provide bill benchmarking information to a customer.

generation of the electricity so supplied or electricity generation in general that the *Commission* specifies for this purpose in subclause 25A(3); or

- (b) provide bill benchmarking information to a *residential customer*.
- (3) If a *retailer* decides to include greenhouse gas information in a *customer's* electricity bill the following information must be included:¹³¹
- (a) the amount of *disclosable emissions* associated with the amount of electricity to which the bill relates;
 - (b) to the extent that data is available as to the amount of electricity, the amount of *disclosable emissions* associated with the amount of electricity to which each previous bill related within the past 12 months;
 - (c) a graphical representation of the data referred to in paragraphs (a) and (b), with adequate explanation of the graph;
 - (d) the website address: www.switchon.vic.gov.au.
- (4) A *retailer* must present the information set out in subclause (3) and any associated information on greenhouse gas emissions, including the format of the graph, in a manner approved by the *Commission*. The *Commission* will consult with *DSDBI* before giving or refusing its approval.
- (4A) Schedule 7 contains three examples of narrative and graphical formats which will best meet the regulatory objective if the disclosure is shown on the front of the *customer* bill. Adoption of one of these formats (or another format) nonetheless requires formal approval under subclause (4).¹³²
- (5) *DSDBI* will use *best endeavours* to calculate the co-efficient for a calendar year by the end of October in the preceding calendar year, and will supply it to the *Commission* promptly after its calculation. The *Commission* will advise the *retailers* of the co-efficient and publish it on the *Commission's* website upon receiving it from *DSCBI*.
- (6) *DSDBI* will advise the *Commission* about environmental policy issues in relation to the implementation of this clause 25A.
- (7) A *retailer* must handle a complaint by a *customer* relating to the subject-matter of this clause 25A in the same manner as it is obliged to handle complaints or resolve disputes in relation to bills generally under its retail licence and under the terms of its retail contract with the *customer*.

¹³¹ The Commission has amended this clause to make it clear that retailers have the option to either include greenhouse gas information or bill benchmarking on their customers' bills.

¹³² The DSDBI has advised that they would like these graphical formats to be included in the new draft instrument.

- (8) If a *retailer* has a complaint about a *Commission* or *DSDBI* decision taken under or pursuant to this clause 25A, or it has an unresolved *customer* complaint which properly relates to such a *Commission* or *DSDBI* decision, it must:
- (a) attempt to resolve the matter with DSDBI if the matter relates to a DSDBI decision; or
 - (b) raise the matter with the *Commission* if the *retailer* is unsuccessful in resolving the matter with DSDBI or if the matter relates to a decision made by the *Commission*.

Note:

Neither the *Commission* nor this *Code* can bind *DSDBI* in the discharge of its functions, however, subclauses (5) and (6) have been included following consultation with *DSDBI* to properly inform retailers and customers of the role which *DSDBI* proposes to undertake in the scheme for increasing customer awareness through electricity bills which is set out in this *Code*.

26 Pay-by date (SRC)

- (1) The *pay-by date* for a bill must not be earlier than 13 business days from the *bill issue date*.¹³³
- (2) **Application of this clause to standard retail contracts**
This clause applies in relation to *standard retail contracts*.
- (3) **Application of this clause to market retail contracts**
This clause does not apply in relation to *market retail contracts*.

27 Apportionment (SRC)¹³⁴

- (1) If a bill includes amounts payable for goods and services other than the sale and supply of *energy*, any payment made by a *small customer* in relation to the bill must be applied firstly in satisfaction of the charges for the sale and supply of *energy*, unless:
 - (a) the *customer* otherwise directs; or
 - (b) another apportionment arrangement is agreed to by the *customer*.
- (2) **Application of this clause to standard retail contracts**
This clause applies in relation to *standard retail contracts*.

¹³³ Clause 7.1(a) of the ERC v10 provides that the '*pay by day*' on the initial bill must not be less than 12 business days from the date of dispatch. However, the 13 day time period will be included in the new Draft instrument as per the NERR.

¹³⁴ Rule 27(1) (in addition to rule 25(2)) is substantially similar to clause 4.6 of the ERC v10. Clause 4.5 is not included in the new draft instrument as there is no intention to maintain specific dual fuel obligations in the new draft instrument.

(3) **Application of this clause to market retail contracts**

This clause does not apply in relation to *market retail contracts*.¹³⁵

27A In Home Displays (SRC and MRC)¹³⁶

(1) If a retailer provides an In Home Display to a customer, the retailer must provide information to the customer setting out how any consumption and cost information displayed on the In Home Display compares to the consumption and cost information on the customer's bills.

(2) **Application of this clause to standard retail contracts**

This clause applies in relation to *standard retail contracts*.

(3) **Application of this clause to market retail contracts**

This clause applies in relation to *market retail contracts*.

28 Historical billing information (SRC and MRC)¹³⁷

(1) A retailer must use its *best endeavours* to provide historical billing and *metering data* to a *small customer* for the previous 2 years within 10 business days of the *customer's* request, or such other period they agree.

(2) Historical billing data provided to the *small customer* for the previous 2 years must be provided without charge, but data requested for an earlier period or more than once in any 12 month period may be provided subject to a reasonable charge.

(2A) If a *customer* with a *smart meter* makes a request for historical billing data or *metering data*¹³⁸, a *retailer* must provide interval data electronically, or by some other form, in a way which makes the information understandable or accessible to the *customer*.¹³⁹

(3) **Application of this clause to standard retail contracts**

This clause applies in relation to *standard retail contracts*.

¹³⁵ Under the ERC v10, the apportionment of payment provisions cannot be varied by agreement between the customer and the retailer in the formation of a market contract.

¹³⁶ The NERR does not contain an equivalent provision to clause 4.7 of the ERC v10. However, this provision will be included in the new draft instrument.

¹³⁷ Rule 28 is substantially similar to clause 27.2(a) of the ERC v10. There is no equivalent to clauses 27.2(b) or (d) of the ERC v10. However, clause 27.2(c) has been included at Rule 28(1) of the new draft instrument.

¹³⁸ Following the submission from the Consumer Groups, the Commission has amended subclause 28(2A) to include a reference to '*metering data*' and correct the drafting error by amending '*historical billing information*' to '*historical billing data*'.

¹³⁹ Clause 27.2(e) of the ERC v10 is not provided for in the NERR. However, the existing ERC v10 provisions that relate to smart meters will be included in the new draft instrument.

(4) **Application of this clause to market retail contracts**

This clause applies in relation to *market retail contracts*.

29 Billing disputes (SRC and MRC)¹⁴⁰

- (1) A *retailer* must review a bill if requested to do so by the *small customer*.
- (2) The *retailer* must conduct the review in accordance with the *retailer's* standard complaints and dispute resolution procedures, including any time limits applicable under those procedures.
- (3) The *retailer* must inform the *small customer* of the outcome of the review as soon as reasonably possible but, in any event, within any time limits applicable under the *retailer's* standard complaints and dispute resolution procedures.
- (4) The *retailer* may require the *small customer* to pay:
 - (a) the lesser of:
 - (i) that portion of the bill under review that the *customer* and the *retailer* agree is not the subject of review; or
 - (ii) an amount equal to the average amount of the *customer's* bills in the previous 12 months (excluding the bill in dispute); and
 - (b) any other bills that are properly due.
- (5) If the *small customer* requests that, in reviewing the bill, the *meter* reading or *metering data* be checked or the *meter* tested:
 - (a) the *retailer* must, as the case may require:
 - (i) arrange for a check of the *meter* reading or *metering data*; or
 - (ii) request the *responsible person* to test the *meter*; and
 - (b) subject to subclause (c),¹⁴¹ the *customer* must pay for the cost of the check or test (which the *retailer* may not request be paid in advance); and
 - (c) if the *meter* or *metering data* proves to be faulty or incorrect, the *customer* must not be required to pay the cost of the check or test.¹⁴²

¹⁴⁰ Rule 29 of the NERR is substantially equivalent to clause 6.1 of the ERC v10 except that sub-rules (2) and (3) of the NERR are not provided for in the ERC v10.

¹⁴¹ Clauses 29(5)(b) and 29(6)(b)(iii) have been amended to make the clause subject to clause 29(5)(c) to address submissions that it was incorrectly drafted as it placed an obligation on customers to pay for the cost of a check or test when the metering data proves to be faulty or inconsistent.

¹⁴² Paragraph (c) has been amended to prohibit retailers from requesting up-front payment for meter testing as provided for in the ERC v10. The deletion of paragraph (b) is a consequential change. Clause 29(5)(c) has been amended for consistency with clause 29(5)(b).

Note:

Additional obligations in relation to meter testing are contained in the Electricity Metering Code.

- (6) Where, after conducting a review of the bill, the *retailer* is satisfied that it is:
- (a) correct, the *retailer* may require the *small customer* to pay the amount of the bill that is still outstanding; or
 - (b) incorrect, the *retailer*:
 - (i) must adjust the bill in accordance with clauses 30 or 31, as the case requires; and
 - (ii) may require the *customer* to pay the amount (if any) of the bill that is still outstanding.
- (7) The *retailer* must inform the *small customer* that the *customer* may lodge a dispute with the *energy ombudsman* after completion of the *retailer*'s review of a bill, where the *customer* is not satisfied with the *retailer*'s decision in the review and the *retailer*'s action or proposed action under subclause (6).

(8) **Application of this clause to standard retail contracts**

This clause applies in relation to *standard retail contracts*.

(9) **Application of this clause to market retail contracts**

This clause applies in relation to *market retail contracts*.

30 Undercharging (SRC and MRC)¹⁴³

- (1) Subject to subclause (2), where a *retailer* has undercharged a *small customer*, it may recover from the *customer* the amount undercharged.
- (2) Where a *retailer* proposes to recover an amount undercharged the *retailer* must:
- (a) unless the amount was undercharged as a result of the *small customer*'s fault or unlawful act or omission, limit the amount to be recovered to the amount undercharged in the 9 months before the date the *customer* is notified of the undercharging; and
 - (b) not charge the *customer* interest on that amount; and
 - (c) state the amount to be recovered as a separate item in a special bill or in the next bill, together with an explanation of that amount; and

¹⁴³ Rule 30 is substantially equivalent to clause 6.2 of the ERC v10 except that the amount of time which the retailer must offer the customer to pay the undercharged amount must be at least equal to the period over which the undercharging occurred (clause 6.2(d), bullet point 3 of the ERC v10), while under rule 30 of the NERR, it must be a period nominated by the customer being no longer than this period.

- (d) offer the *customer* time to pay that amount by agreed instalments, over a period nominated by the *customer* being no longer than:
 - (i) the period during which the undercharging occurred, if the undercharging occurred over a period of less than 12 months; or
 - (ii) 12 months, in any other case.
- (2A) If during the period that a *retailer* has undercharged a *customer* the *customer's* tariff changes, the *retailer* must charge the *customer* at the original and changed tariffs in proportion to the relevant periods during which the original and changed tariffs were in effect.¹⁴⁴
- (3) To avoid doubt, a reference in this clause to undercharging by a *retailer* includes a reference to a failure by the *retailer* to issue a bill.
- (4) **Application of this clause to standard retail contracts**

This clause applies in relation to *standard retail contracts*.
- (5) **Application of this clause to market retail contracts**

This clause applies in relation to *market retail contracts*.

31 Overcharging (SRC and MRC)¹⁴⁵

- (1) Where a *small customer* has been overcharged by an amount equal to or above the overcharge threshold, the *retailer* must inform the *customer* accordingly within 10 business days after the *retailer* becomes aware of the overcharging.
- (2) If the amount overcharged is equal to or above the overcharge threshold, the *retailer* must:
 - (a) repay that amount as reasonably directed by the *small customer*; or
 - (b) if there is no such reasonable direction, credit that amount to the next bill; or
 - (c) if there is no such reasonable direction and the *small customer* has ceased to obtain *customer retail services* from the *retailer*, use its best endeavours to refund that amount within 10 business days.

¹⁴⁴ Rule 30(2A) has been included to reflect clause 6.2(c) of the ERC v10. The wording has been amended to more accurately reflect its intended operation.

¹⁴⁵ Rule 31 is substantially equivalent to clause 6.3 of the ERC v10 except that the NERR contains additional provisions relating to circumstances where a customer has ceased to obtain services from the retailer. The ERC v10 also does not include an equivalent provision to sub-rule (4), which prohibits the payment of interest on an overcharged amount, or sub-rule (5), which relates to overcharging as a result of a customer's unlawful act or omission. The NERR also permits the AER to determine a different overcharge threshold. The Commission reserves the right to determine these thresholds.

Note:

Money not claimed is to be dealt with by the *retailer* in accordance with the relevant unclaimed money legislation.

- (3) If the amount overcharged is less than the overcharge threshold, the *retailer* must:
 - (a) credit that amount to the next bill; or
 - (b) if the *small customer* has ceased to obtain *customer retail services* from the *retailer*, use its best endeavours to refund that amount within 10 business days.
- (4) No interest is payable on an amount overcharged.
- (5) If the *small customer* was overcharged as a result of the *customer's* unlawful act or omission, the *retailer* is only required to repay, credit or refund the *customer* the amount the *customer* was overcharged in the 12 months before the error was discovered.
- (6) The overcharge threshold is \$50 or such other amount as the *Commission* determines under subclause (7).
- (7) The *Commission* may from time to time determine a new overcharge threshold after consultation with *retailers* and other relevant stakeholders.
- (8) The *Commission* must publish the current overcharge threshold on its website.
- (9) **Application of this clause to standard retail contracts**
This clause applies in relation to *standard retail contracts*.
- (10) **Application of this clause to market retail contracts**
This clause applies in relation to *market retail contracts*.

32 Payment methods (SRC and MRC)¹⁴⁶

- (1) A *retailer* must accept payment for a bill by a *small customer* in any of the following ways:
 - (a) in person;
 - (b) by telephone;
 - (c) by mail;

¹⁴⁶ Rule 32 is substantially equivalent to clause 7.2 of the ERC v10, except that rule 32 contains additional payment methods to those required under the ERC v10. Clause 7.2(b) of the ERC v10 also contains additional requirements in relation to direct debit arrangements (noted below).

- (d) by direct debit;
 - (e) by electronic funds transfer.
- (2) *A small customer:*
- (a) applying for or on a *standard retail contract*; or
 - (b) on a *market retail contract*,
- may request the *retailer* to permit payment by using Centrepay as a payment option and, subject to clause 74, the *retailer* may elect to permit this option.
- (3) Where a direct debit arrangement is to be entered into between a *retailer* and a *small customer*:
- (a) the *retailer* and the *small customer* must agree the amount, initial date and frequency of the direct debits; and
 - (b) the *explicit informed consent* of the *small customer* is required for entering into the arrangement.
- (4) Where a direct debit arrangement is entered into between a *retailer* and a *small customer*, the *retailer* must:
- (a) notify the *small customer* in writing that if the *customer* requests the *retailer* to cease to rely on the arrangement, the *retailer* will no longer rely on the direct debit authority; and
 - (b) terminate the arrangement on being requested by the *customer* to do so; and
 - (c) if a *last resort event* occurs in respect of the *retailer*, the *retailer* must immediately cancel the direct debit arrangement and notify both the *customer* and the financial institution of the cancellation.¹⁴⁷
- (5) *A retailer* must accept payments by a *small customer* for a bill in advance.¹⁴⁸
- (6) **Application of this clause to standard retail contracts**
- This clause applies in relation to *standard retail contracts*.
- (7) **Application of this clause to market retail contracts**
- This clause (other than subclause (1)) applies in relation to *market retail contracts*.

¹⁴⁷ Clause 7.2(b)(6) bullet point 5 of the ERC v10 has been included in rule 32(4)(c) of the new draft instrument.

¹⁴⁸ This sub-rule is substantially equivalent to clause 7.3 of the ERC v10.

33 Payment difficulties (SRC and MRC)¹⁴⁹

- (1) A *retailer* must offer and apply *payment plans* for:
 - (a) *hardship customers*; and
 - (b) other *residential customers* experiencing payment difficulties if the *customer* informs the *retailer* in writing or by telephone that the *customer* is experiencing payment difficulties or the *retailer* otherwise believes the *customer* is experiencing repeated difficulties in paying the *customer's* bill or requires payment assistance.¹⁵⁰(2) However, a *retailer* is not required to offer a *payment plan* to a *customer* referred to in subclause (1) if the *customer*:
 - (a) has had 2 *payment plans* cancelled due to non-payment in the previous 12 months;¹⁵¹ or
 - (b) has been convicted of an offence involving illegal use of *energy* in the previous 2 years.
- (3) A *retailer* must provide information to a *customer* referred to in subclause (1) about the availability of government funded *energy* charge rebate, concession or relief schemes, including the Utility Relief Grant Scheme.
- (3A) A *retailer* must not require the payment of any amount as a condition of providing the *customer* with an application form for a Utility Relief Grant.¹⁵²
- (4) Clause 72 applies to a *residential customer* referred to in subclause (1) (b) in the same way as it applies to a *hardship customer*.

¹⁴⁹ Clauses 11.1 and 11.2 of the ERC v10 are broadly equivalent to rule 33 except that NERR includes less obligations than the ERC v10. In particular clauses 11.2(1) and (2) of the ERC v10 include obligations in relation to assessments of a customer's capacity to pay.

¹⁵⁰ Unlike the NERL, the Electricity Industry Act and Gas Industry Act do not specifically require retailers to enter into payment plans with customers experiencing financial difficulties. Section 43(2) of the Electricity Industry Act and section 48G of the Gas Industry Act require retailers to prepare a customer hardship policy which includes flexible bill payment options. Clause 33(1)(b) has been amended to include the additional text in clause 72(1A)(b) to address the Consumer Groups' submission that the drafting of clauses 33(1) and 72(1A) was inconsistent. Clause 72(1A) has been deleted to remove duplication.

¹⁵¹ This sub-rule is substantially similar to clause 11.2(3) of the ERC v10 except that the ERC v10 further requires that the customer has not provided a reasonable assurance to the retailers that the customer is willing to meet payment obligations under a further instalment plan in addition to failure to comply with the instalment plans.

¹⁵² This sub-rule is similar in effect to clause 11.2(4) of the ERC v10 except that the ERC v10 specifically refers to the Utility Relief Grant Scheme and also requires the retailer to provide the customer with telephone information about energy efficiency and advice on the availability of an independent financial counsellor. Clause 11.2(5) of the ERC v10 specifically prohibits the retailer from requiring the payment of any amount as a condition of providing the customer with an application form for the Utility Relief Fund. Clause 11.2(5) has been included in the new draft instrument.

(5) **Application of this clause to standard retail contracts**

This clause applies in relation to *standard retail contracts*.

(6) **Application of this clause to market retail contracts**

This clause applies in relation to *market retail contracts*.

34 Shortened collection cycles (SRC and MRC)¹⁵³

(1) A *retailer* may place a *small customer* on a shortened collection cycle with the agreement of the *customer*.

(2) Otherwise, a *retailer* may place a *small customer* on a shortened collection cycle only if:

(a) in the case of a *residential customer*—the *customer* is not experiencing payment difficulties;¹⁵⁴ and

(b) the *retailer* has given the *customer* a reminder or warning notice for 2 consecutive bills;¹⁵⁵ and

(c) before the second reminder or warning notice, the *retailer* has given the *customer* a notice informing the *customer* that:

(i) receipt of the second reminder or warning notice may result in the *customer* being placed on a shortened collection cycle; and

(ii) being on a shortened collection cycle means the *customer* will not receive a *reminder notice* until the *customer* has paid 3 consecutive bills in the *customer's* billing cycle by the *pay-by date*; and

(iii) failure to make a payment may result in arrangements being made for *disconnection* of the supply of *energy* without a further *reminder notice*; and

(iv) alternative payment arrangements may be available; and

(v) the *customer* may obtain further information from the *retailer* (on a specified telephone number).

¹⁵³ Rule 34 is substantially equivalent to clause 9.1 of the ERC v10 except where noted.

¹⁵⁴ Clause 9.1(a) of the ERC v10 requires a retailer to comply with clause 11.2, which relates to assessment and assistance for domestic customers experiencing payment difficulties, before placing a domestic customer on a shortened collection cycle. There is no direct equivalent provision in the NERR, however rule 34(2)(a) prohibits a customer being placed on a shortened collection cycle if the customer is experiencing payment difficulties, which achieves a similar outcome.

¹⁵⁵ Clause 9.1(b) of the ERC v10 requires reminder notices for three consecutive bills or disconnection warnings for two consecutive bills. The NERR only requires two reminder or disconnection warning notices. The NERR position has been adopted.

- (3) The *retailer* must, within 10 business days of placing the *small customer* on a shortened collection cycle, give the *customer* notice that:
- (a) the *customer* has been placed on a shortened collection cycle; and
 - (b) the *customer* must pay 3 consecutive bills in the *customer's* billing cycle by the *pay-by date* in order to be removed from the shortened collection cycle; and
 - (c) failure to make a payment may result in arrangements being made for *disconnection* of the supply of *energy* without a further *reminder notice*.¹⁵⁶
- (4) The *retailer* must remove the *small customer* from the shortened collection cycle as soon as practicable after the *customer* pays 3 consecutive bills in the *customer's* billing cycle by the *pay-by date*, unless the *customer* requests that this not be done.
- (5) In this clause:
- reminder or warning notice*** means a *reminder notice* or a *disconnection warning notice*.

(6) **Application of this clause to standard retail contracts**

This clause applies in relation to *standard retail contracts*.

(7) **Application of this clause to market retail contracts**

This clause applies in relation to *market retail contracts*.

35 Request for final bill (SRC)¹⁵⁷

- (1) If a *customer* requests the *retailer* to arrange for the preparation and issue of a final bill for the *customer's* premises, the *retailer* must use its best endeavours to arrange for:
- (a) a *meter* reading; and
 - (b) the preparation and issue of a final bill for the premises in accordance with the *customer's* request.

Note:

Clause 118 makes provision for the issue of a final bill where the *customer* requests *de-energisation* of the premises.

¹⁵⁶ Rule 34(3)(a) is substantially equivalent to clause 9.2 of the ERC v10, except that the NERR includes additional requirements to the ERC v10 under sub-rules (b) and (c).

¹⁵⁷ There is no equivalent provision in the ERC v10 to Rule 37. The ERC v10 only provides for the finalisation of a customer's account if the customer has requested disconnection, which is equivalent to Rule 118 of the NERR.

(2) **Application of this clause to standard retail contracts**

This clause applies in relation to *standard retail contracts*.

(3) **Application of this clause to market retail contracts**

This clause does not apply in relation to *market retail contracts*.

35A Additional Retail Charges (SRC and MRC)^{158 159}

(1) A *retailer* may impose an *additional retail charge* on a *customer*:

- (a) if their *energy* contract is a *market retail contract*¹⁶⁰, whether or not the imposition of an additional retail charge is expressly provided for in a term or condition set out in this Code; and
- (b) otherwise, only where the imposition of an additional retail charge is expressly provided for in a term or condition set out in this Code.

(2) The amount of any additional retail charge must be fair and reasonable having regard to related costs incurred by the *retailer*.

(3) In this clause *additional retail charge* means a charge relating to the sale of *energy* by a *retailer* to a *customer* other than a charge based on the tariff applicable to the *customer* and which must be calculated in accordance with clause 35A¹⁶¹ of this Code. To avoid doubt:

- (a) any network charge relating to the supply, but not sale, of *energy* to a *customer*'s supply address is not an additional retail charge (whether or not the network charge is bundled in the *retailer*'s tariff);
- (b) without limiting paragraph (a), any charge the *retailer* may impose as a direct pass through of a distribution tariff, excluded service charge for electricity, ancillary reference tariff for gas or other charge imposed on the *retailer* by a distributor for *connection* to, or use of, the distributor's distribution system is not an additional retail charge; and
- (c) any amount payable by a *customer* to a *retailer* for the *customer*'s breach of their *energy* contract, whether under an agreed damages term or otherwise, is not an additional retail charge.

¹⁵⁸ This rule has been included to reflect clause 30 of the ERC v10. There is no equivalent provision in the NERR.

¹⁵⁹ The wording of clause 35A(4) has been incorporated into clause 35C to reflect the current drafting of clause 7.5 of the ERC v10.

¹⁶⁰ This clause has been amended to include the word '*retail*' in market retail contract to address the Consumer Groups' submission that it was omitted from the original draft ERC v11.

¹⁶¹ This clause has been amended to address a drafting error.

(4) **Application of this clause to standard retail contracts**

This clause applies in relation to *standard retail contracts*.

(5) **Application of this clause to market retail contracts**

This clause applies in relation to *market retail contracts*.

35B Merchant Service Fees (MRC)¹⁶²

(1) Where a *residential customer* pays the *retailer's* bill using a method that results in the *retailer* incurring a merchant service fee, the *retailer* may recover the amount of that fee from the *residential customer*.

(2) **Application of this clause to standard retail contracts**

This clause does not apply¹⁶³ in relation to *standard retail contracts*.

(3) **Application of this clause to market retail contracts**

This clause applies in relation to *market retail contracts*.

35C Dishonoured Payments (SRC and MRC)¹⁶⁴

(1) If a *residential customer* pays the *retailer's* bill and that payment is dishonoured or reversed through fault of the *residential customer*, resulting in the *retailer* incurring a fee, the *retailer* may recover that fee from the *residential customer*.

(2) **Application of this clause to standard retail contracts**

This clause applies in relation to *standard retail contracts*.

(3) **Application of this clause to market retail contracts**

This clause applies in relation to *market retail contracts*.

¹⁶² This rule has been included to reflect clause 7.5(b) of the ERC v10. There is no equivalent provision in the NERR.

¹⁶³ This clause has been amended to address the Consumer Groups' and EWOV's submissions that merchant fees are only recoverable under market retail contracts.

¹⁶⁴ This clause has been included to reflect clause 7.5(a) of the ERC v10. There is no equivalent provision in the NERR.

Division 5 Tariff changes

36 Obligations on retailers (SRC)¹⁶⁵

- (1) Where during a billing cycle a *small customer* changes from one type of tariff to another type of tariff for *customer retail services*, the *retailer* must (if it is necessary to do so due to the change in the type of tariff applying to that *small customer*):
 - (a) obtain a *meter* reading (or *metering data*) at the time the type of tariff changes; and
 - (b) calculate the *customer's* bill using the type of tariff applying:
 - (i) the old type of tariff up to but not including the date of the *meter* reading; and
 - (ii) the new type of tariff from and including the date of the *meter* reading.

(2) **Application of this clause to standard retail contracts**

This clause applies in relation to *standard retail contracts*.

(3) **Application of this clause to market retail contracts**

This clause does not apply in relation to *market retail contracts*.

37 Customer request for change of tariff (SRC)

- (1) Where a *retailer* offers alternative tariffs or tariff options and a *small customer*:
 - (a) requests a *retailer* to transfer from that *customer's* current tariff to another tariff; and
 - (b) demonstrates to the *retailer* that it satisfies all of the conditions relating to that other tariff and any conditions imposed by the *customer's* distributor,

the *retailer* must transfer the *small customer* to that other tariff within 10 business days of satisfying those conditions.
- (2) Where a *small customer* transfers from one tariff type to another, the effective date of the transfer is:
 - (a) subject to paragraph (b), the date on which the *meter* reading was obtained; or
 - (b) where the transfer requires a change to the *meter* at the *small customer's* premises, the date the *meter* change is completed.

¹⁶⁵ There is no equivalent to rule 36 or rule 37 of the NERR in the ERC v10.

(3) **Application of this clause to standard retail contracts**

This clause applies in relation to *standard retail contracts*.

(4) **Application of this clause to market retail contracts**

This clause does not apply in relation to *market retail contracts*.

38 Change in use (SRC)

(1) A *small customer* must notify its *retailer* of a change in use of the *customer's* premises.

(2) Where a *small customer* notifies a *retailer* of a change in use of the *customer's* premises, the *retailer* may require the *customer* to transfer to a tariff applicable to the *customer's* use of that premises with effect from the date on which the *retailer* notifies the *customer* of the new tariff.

(3) [Not used]¹⁶⁶

(4) If a *small customer* fails to give notice of a change in use of the *customer's* premises, the *retailer* may, upon giving notice to the *customer*, transfer the *customer* to the applicable tariff with effect from the date on which the change of use occurred.

(5) ¹⁶⁷ [Not used].(6) **Application of this clause to standard retail contracts**

This clause applies in relation to *standard retail contracts*.

(7) **Application of this clause to market retail contracts**

This clause does not apply in relation to *market retail contracts*.

¹⁶⁶ This subclause has been deleted because it relies on clauses 8 and 10 which are not included in the new draft instrument.

¹⁶⁷ This clause has been deleted to address a drafting error as provisions relating to classification and reclassification of customers set out in Rules 7 to 11 of the NERR were not included in the draft ERC v11 because, in Victoria, these matters are dealt with in Orders in Council .

Division 6 Customer retail contracts—security deposits

39 Consideration of credit history¹⁶⁸

- (1) For the purpose of deciding whether to require a *small customer* to provide a *security deposit* under clause 40 a *retailer* must:
 - (a) request the *customer* to provide the *retailer* with:
 - (i) permission to obtain a credit check of the credit history of the *customer*; and
 - (ii) other information relating to the credit history of the *customer*; and
 - (b) take into consideration:
 - (i) any credit history obtained as a result of the credit check; and
 - (ii) any credit history provided by the *customer*; and
 - (iii) any other available information that relates to the credit history of the *customer*,

that is reasonably required for the *retailer* to assess the ability of the *customer* to meet the *customer's* financial obligations under a *customer* retail contract.

(2) Application of this clause to standard retail contracts

This clause applies in relation to *standard retail contracts*.

(3) Application of this clause to market retail contracts

This clause applies in relation to *market retail contracts*, but only to the extent (if any) a contract provides for payment of a *security deposit*.

40 Requirement for security deposit (SRC and MRC)¹⁶⁹

- (1) Subject to subclauses (2)–(4), a *retailer* may require a *small customer* to provide a *security deposit*:

¹⁶⁸ There is no direct equivalent to rule 39 in the ERC v10. Rule 39 permits more extensive consideration of a customer's credit history than under clause 8 of the ERC v10. Under clause 8.1(a) bullet point 4 of the ERC v10, the retailer's assessment of a customer's credit history is limited to consideration of a 'relevant default' by the customer (broadly, being a default that relates to a failure to pay a bill for the supply of energy or water with a retailer that is greater than \$120) and a retailer has taken steps to recover the amount; or where the debt has resulted in court judgement or the customer has been declared bankrupt. The more extensive consideration of a customer's history as per the NERL provision has been adopted.

¹⁶⁹ The NERR requirements in relation to security deposits are organised and drafted differently to the ERC v10 but achieve broadly consistent outcomes to clause 8 of the ERC v10, except where noted below. The NERR includes a number of additional requirements that are not provided for in the ERC v10. Conversely, there are some obligations under the ERC v10 that have not been picked up in the NERR.

- (a) in the case of a *residential customer*—only at the time the *customer* requests the sale and supply of *energy* under a *customer retail contract* and not during the currency of the *customer retail contract*; and
 - (b) in the case of a *business customer*—at the time the *customer* requests the sale and supply of *energy* under a *customer retail contract* or during the currency of the *customer retail contract*.¹⁷⁰
- (2) A *retailer* cannot require a *small customer* to provide a *security deposit* unless:
- (a) the *customer* owes money to that *retailer* in relation to the sale and supply of *energy* to any premises, unless the bill relating to the amount owed is:
 - (i) under review by the *retailer* under clause 29; or
 - (ii) under consideration by the *energy ombudsman* as referred to in that clause;¹⁷¹ or
 - (b) the *customer* has fraudulently acquired or intentionally consumed *energy* otherwise than in accordance with the *energy laws* within the past 2 years;¹⁷² or
 - (c) the *customer* has refused or failed to provide *acceptable identification* to the *retailer*;¹⁷³ or
 - (d) the *retailer* reasonably considers that the *customer* has an unsatisfactory credit history;¹⁷⁴ or
 - (e) in the case of a *business customer*, the *retailer* reasonably considers that the *customer* has (in respect of the business):
 - (i) no history of paying *energy* accounts; or
 - (ii) an unsatisfactory record in relation to the payment of *energy* accounts;¹⁷⁵ or

¹⁷⁰ The ERC v10 does not restrict the time when a retailer can request a security deposit from the customer.

¹⁷¹ Unlike the NERR, a retailer can only request a security deposit from a customer if the customer has left a previous supply address or has transferred to the retailer and still owes the retailer or former retailer more than \$120. There is no equivalent provision to rules 40(2)(a)(i) and (ii) in the ERC v10.

¹⁷² Rule 40(2)(b) is substantially equivalent to clause 8.1(a), bullet point 2 of the ERC v10.

¹⁷³ Rule 40(2)(c) is substantially equivalent to clause 8.1(a) bullet point 3 of the ERC v10 except that the ERC v10 provision applies to new customers.

¹⁷⁴ Rule 40(2)(d) is substantially equivalent to clause 8.1(a) bullet point 4 of the ERC v10 except that the ERC v10 limits the circumstances in which a customer's credit history may be considered to '*relevant defaults*' (see note above).

¹⁷⁵ Rule 40(2)(e) is similar to clause 8.2 of the ERC v10, except that clause 8.2 permits a retailer to request a security deposit from a business customer if it is fair and reasonable in all the circumstances whereas the NERR specifies that the business customer must have no history of paying energy accounts or an unsatisfactory record in relation to the payment of energy accounts.

- (f) the *customer* has refused or failed to provide the *retailer* with the permission or other information requested under clause 39 (1) (a).¹⁷⁶
- (3) A *retailer* cannot require a *residential customer* to provide a *security deposit* if the *customer*:¹⁷⁷
- (a) is identified as a *hardship customer* by the *retailer* in relation to any premises; or
 - (b) advises the *retailer* that the *customer* was identified as a *hardship customer* by another *retailer* in relation to any premises; or
 - (c) if the *small customer* has formally applied for a Utility Relief Grant and a decision on the application has not been made.¹⁷⁸
- (4) A *retailer* cannot require a *residential customer* to provide a *security deposit* unless the *retailer* has offered the *customer* the option of a *payment plan* and the *customer* has either declined the offer or failed to pay an instalment having accepted the offer and the *retailer* has otherwise complied with clause 33.¹⁷⁹
- (5) If the *retailer* requires a *security deposit* on the basis that the *small customer* has an unsatisfactory credit history, the *retailer* must inform the *customer*:
- (a) that the *retailer* has decided the *customer* has an unsatisfactory credit history; and
 - (b) the reasons for the *retailer*'s decision; and
 - (c) of the *customer*'s rights to dispute the decision of the *retailer*.¹⁸⁰
- (6) A *retailer* must not refuse to sell *energy* on the grounds of non-payment or partial payment of a *security deposit* but may:
- (a) arrange to de-energise (or disconnect) premises under clause 112; or
 - (b) refuse to arrange *re-energisation* of premises.¹⁸¹

¹⁷⁶ There is no equivalent provision to rule 40(2)(f) in the ERC v10.

¹⁷⁷ The previous subclause 40(3)(c) stating "if the *retailer* has not complied with Clause 33" has been inserted into clause 40(4) to address the Consumer Groups' submission that clauses 40(3)(c) and 40(4) appear to achieve the same outcome.

¹⁷⁸ There is no direct equivalent provision to rule 40(3) in the ERC v10. However, clause 8.1(b) bullets points 3 and 4 provide that a *retailer* cannot require a *security deposit* if the *retailer* has not complied with clause 11.1 (which relates to payment difficulties), or if the *customer* has formally applied for the Utility Relief Grant and a decision on the application has not been made. Clause 8.1(b) bullet points 3 and 4 have been included in the new draft instrument.

¹⁷⁹ Rule 40(4) is substantially equivalent to clause 8.1(b) bullet point 1 of the ERC v10. This clause has been amended to address the Consumer Groups' submission that clauses 40(3)(c) and 40(4) appear to achieve the same outcome.

¹⁸⁰ There is no equivalent provision to rule 40(5) in the ERC v10.

¹⁸¹ There is no equivalent provision to rule 40(6) in the ERC v10.

(7) Subject to subclause (6), payment or partial payment of a *security deposit* is not a pre-condition to the formation of a *standard retail contract*.¹⁸²

(8) **Application of this clause to standard retail contracts**

This clause applies in relation to *standard retail contracts*.

(9) **Application of this clause to market retail contracts**

This clause applies in relation to *market retail contracts*, but only to the extent (if any) a contract provides for payment of a *security deposit*.¹⁸³

41 Payment of security deposit (SRC)

(1) **Security deposit must be paid**

A *small customer* who is required under clause 40 to pay a *security deposit* to a *retailer* is obliged to pay the *security deposit* when requested by the *retailer* to do so.¹⁸⁴

(2) **Re-energisation may be refused for non-payment of security deposit**

A *retailer* may refuse to arrange the *re-energisation* of a *customer's* premises if a required *security deposit* remains unpaid and the *customer* has been de-energised for that reason under clause 112.¹⁸⁵

(3) **Security deposit account**

A *retailer* must keep *security deposits* in a separate account and separately identify in its company accounts the value of *security deposits* that it holds for *small customers*.¹⁸⁶

(4) **Application of this clause to standard retail contracts**

This clause applies in relation to *standard retail contracts*.

(5) **Application of this clause to market retail contracts**

This clause (other than subclause (3)) does not apply in relation to *market retail contracts*.

¹⁸² There is no equivalent provision to rule 40(7) in the ERC v10.

¹⁸³ The ERC v10 does not permit a market retail contract to be varied to exclude provisions relating to security deposits.

¹⁸⁴ There is no equivalent provision to rule 41(1) in the ERC v10.

¹⁸⁵ There is no equivalent provision to rule 41(2) in the ERC v10.

¹⁸⁶ There is no equivalent provision to rule 41(3) in the ERC v10.

42 Amount of security deposit (SRC)¹⁸⁷

- (1) A *retailer* must ensure that the amount of a *security deposit* for a *small customer* is not greater than 37.5% of the *customer's* estimated bills over a 12 month period, based on:
 - (a) the *customer's* billing history; or
 - (b) the average usage of *energy* by a comparable *customer* over a comparable 12 month period.
- (2) **Application of this clause to standard retail contracts**

This clause applies in relation to *standard retail contracts*.
- (3) **Application of this clause to market retail contracts**

This clause does not apply in relation to *market retail contracts*.

43 Interest on security deposit (SRC and MRC)¹⁸⁸

- (1) If a *retailer* has received a *security deposit* from a *small customer*, the *retailer* must pay interest to the *customer* on the deposit at the bank bill rate.
- (2) Interest is to accrue daily and is to be capitalised (if not paid) every 90 days.
- (3) For the purposes of this clause, bank bill rate means a daily published rate no less than the pre-tax rate of return the *retailer* would earn over the period the *retailer* retains the *security deposit* if it were invested in bank bills that have a term of 90 days.
- (4) **Application of this clause to standard retail contracts**

This clause applies in relation to *standard retail contracts*.
- (5) **Application of this clause to market retail contracts**

This clause applies in relation to *market retail contracts*, but only to the extent (if any) a contract provides for payment of a *security deposit*.

44 Use of security deposit (SRC)

- (1) A *retailer* may apply a *security deposit* to offset amounts owed to it by a *small customer* if and only if:

¹⁸⁷ Rule 42 is substantially equivalent to clause 8.1(c) of the ERC v10 with respect to a contract, other than a dual fuel contract. However the ERC v10 provides that for a dual fuel contract, if the retailer requires the security deposit because the customer has an unsatisfactory credit rating, the security deposit must not be more than 25%. The new draft instrument does not maintain specific dual fuel obligations.

¹⁸⁸ Rule 43 is substantially equivalent to clause 8.3(a) of the ERC v10.

- (a) the *customer* fails to pay a bill and the failure results in *de-energisation* of the *customer*'s premises by the *retailer* and there is no contractual right to *re-energisation*; or
 - (b) in relation to the issue of a final bill:
 - (i) the *customer* vacates the premises; or
 - (ii) the *customer* requests *de-energisation* of the premises; or
 - (iii) the *customer* transfers to another *retailer*.¹⁸⁹
- (2) If a final bill includes amounts payable for goods and services provided by the *retailer* other than for the sale of *energy*, the *retailer* must apply the *security deposit* firstly in satisfaction of the charges for the sale of *energy*, unless:
- (a) the *customer* otherwise directs; or
 - (b) another apportionment arrangement is agreed to by the *customer*.¹⁹⁰
- (3) The *retailer* must account to the *customer* in relation to the application of a *security deposit* amount within 10 business days after the application of the *security deposit*.¹⁹¹
- (4) A reference in this clause to a *security deposit* includes a reference to any accrued interest on the *security deposit*.

(5) **Application of this clause to standard retail contracts**

This clause applies in relation to *standard retail contracts*.

(6) **Application of this clause to market retail contracts**

This clause does not apply in relation to *market retail contracts*.¹⁹²

45 **Obligation to return security deposit (SRC)**¹⁹³

- (1) If a *small customer* has been required by a *retailer* to pay a *security deposit*, the *retailer* must repay to the *small customer* in accordance with the *small customer*'s reasonable instructions the amount of the *security deposit*, together with accrued interest, within 10 business days after the *small customer*:

¹⁸⁹ Rule 44(1) is substantially equivalent to clause 8.3(c) of the ERC v10.

¹⁹⁰ There is no equivalent provision to rule 44(2) in the ERC v10.

¹⁹¹ Rule 44(3) is substantially equivalent to clause 8.3(d) of the ERC v10.

¹⁹² A market retail contract cannot be varied with respect to security deposits under the ERC v10.

¹⁹³ Rule 45 is substantially equivalent to clause 8.3(b) of the ERC v10.

- (a) completes 1 year's payment (in the case of a *residential customer*) or 2 years' payment (in the case of a *business customer*) by the *pay-by dates* for the *retailer's* bills; or
 - (b) vacates the relevant premises, requests *de-energisation* of the premises or transfers to another *retailer*, where the *security deposit* or any part of it is not required in settlement of the final bill referred to in clause 44 (1) (b).
- (2) If no reasonable instructions are given by the *small customer*, a *retailer* must credit the amount of the *security deposit*, together with accrued interest, on:
- (a) in a case to which subclause (1) (a) applies—the *customer's* next bill; or
 - (b) in a case to which subclause (1) (b) applies—the *customer's* final bill.
- (3) **Application of this clause to standard retail contracts**
This clause applies in relation to *standard retail contracts*.
- (4) **Application of this clause to market retail contracts**
This clause does not apply in relation to *market retail contracts*.

Division 7 Market retail contracts—particular requirements

45A Definitions

In this Division:

fixed term retail contract means a *market retail contract* that contains a term or condition that specifies:

- (a) the date on which the contract will end; or
- (b) a method for calculating the date on which the contract will end and which is ascertainable at the time the contract is entered into.

fixed benefit period means a period of a *market retail contract* (where the end date of that period is specified or ascertainable at the beginning of that period) during which a benefit to the *customer* (such as a price discount) is available.

46 Tariffs and charges

- (1) This clause sets out some minimum requirements that are to apply in relation to the terms and conditions of *market retail contracts*.
- (2) A *retailer* must set out in a *market retail contract* with a *small customer* all tariffs and charges payable by the *customer*.

- (3) The *retailer* must give notice to the *customer* of any variation to the tariffs and charges that affects the *customer*.¹⁹⁴
- (4) The notice must be given as soon as practicable, and in any event, in the case of *customers* with *smart meters*, 20 business days prior to the variation, and otherwise no later than the *customer's* next bill.¹⁹⁵
- (5) The *retailer* must set out in the *market retail contract* the obligations with regard to notice that the *retailer* must comply with where the tariffs and charges are to be varied.
- (6) Any variation of the terms and conditions of a *market retail contract* must not be inconsistent with the requirements of this Code in relation to the variation of *market retail contracts*.¹⁹⁶

46A Variations to market retail contracts¹⁹⁷

- (1) The structure and nature of the tariff of a *market retail contract* between a *customer* and a *retailer* may only be varied by agreement in writing between the *customer* and the *retailer*. The *retailer* may be required to obtain the *customer's* *explicit informed consent* in order to vary a *market retail contract* if provided for by a provision of this Code.
- (2) If the structure or nature of the tariff changes in accordance with a term or condition of an *energy contract* previously agreed between the *customer* and the *retailer*, no further agreement is required. between the *retailer* and the *customer* to effect such tariff change, provided that, where the contract is a *market retail*

¹⁹⁴ Rule 46(3) is similar in effect to clause 20(a) of the ERC v10 which provides that the structure and nature of tariffs may only be varied by agreement in writing between the customer and the retailer. However the ERC v10 applies not only to variations of tariffs but also more broadly in relation to terms and conditions and it relates to energy contracts rather than being limited to market retail contracts. The NERR does not provide for variation to standard retail contracts or variation to terms and conditions more broadly. There is no equivalent in the NERR to clauses 20(b) and 20(c) of the ERC v10, which relate to inferred customer consent to a variation. The NERR also does not provide for gazette based variations set out in clause 21 of the ERC v10.

¹⁹⁵ Rule 46(4) is similar in effect to clause 26.4(b) of the ERC v10 which requires a retailer to give a customer notice of variations to the amount and structure of the retailer's tariffs as soon as practicable and, in the case of smart meters, 20 business days prior to the variation, and otherwise no later than the customer's next bill. There is no equivalent in the NERR to clause 26.4(a) of the ERC v10, which provides that a retailer must provide a customer with reasonable information on tariffs within 10 business days of the customer's request. Sections 23(1) and 37 of the NERL require standing offer tariffs and market offer prices to be published on a retailer's website. Rules 23(1) and 37 of the NERL have been included in the new draft instrument. The publication of standing offer prices is contained in Guideline 19, and is included in Division 2A of the new instrument.

¹⁹⁶ Rule 35 of the NERL provides that any variation of the terms and conditions of a market retail contract must not be inconsistent with the Rules in relation to variation of market retail contracts. Section 28 of the NERL also provides for limited '*permitted alterations*' to standard retail contracts. The wording of sections 28 and 35 of the NERL have been included in the new draft instrument. '*Permitted alterations*' are incorporated in Rule 12.

¹⁹⁷ This clause has been incorporated to include provisions of clause 20 of the ERC v10 in response to submissions from the Consumer Groups.

contract, the customer had given its *explicit informed consent* to the inclusion of the relevant term or condition in the *energy contract*.

- (3) For the avoidance of doubt, if the tariff and terms and conditions of a dual fuel contract vary on disconnection by a *retailer* of a *small customer's* gas in accordance with and as contemplated by a disconnection warning, no further agreement is required.

47 Cooling off period and right of withdrawal—market retail contracts¹⁹⁸

(1) Right of withdrawal

A *small customer* who enters into a *market retail contract* with a *retailer* has the right to withdraw from the contract in accordance with this clause.

(2) When right of withdrawal may be exercised

The right of withdrawal may be exercised within the period of 10 business days (the *cooling off period*) commencing with the date the *small customer* receives the required information under clause 64 about the contract.

(3) Customer's agreement or acceptance is not a bar to withdrawal

The right of withdrawal may be exercised even though the *small customer* agreed to or accepted the contract.

(4) How right of withdrawal may be exercised

The *small customer* withdraws from the contract by informing the *retailer* orally or in writing of the *customer's* intention to withdraw from the contract.¹⁹⁹

(5) Rights and obligation to be set out in contract

A *retailer* must include in each *market retail contract* it enters into with a *small customer* express provisions setting out the rights and obligations provided for by this clause.²⁰⁰

¹⁹⁸ Rule 47 is similar to clause 3.4 of the Marketing Code except that clause 3.4(b) bullet point 1 provides that for an electricity contract that is an energisation contract or for a gas contract in respect of a supply point which requires only unplugging or installation of a meter to allow the flow of gas, the cancellation period is only 5 business days including the date the contract is entered into. Appendix 1 of the Marketing Code contains additional provisions in relation to cooling off where the *Fair Trading Act 1999* does not apply. The *Fair Trading Act 1999* has been repealed and replaced by the *Australian Consumer Law* and *Fair Trading Act 2012*.

¹⁹⁹ Under clause 3.4 of the Marketing Code, a consumer can cancel a marketing contract by giving the retailer a cancellation notice whereas the NERR also permits a consumer to cancel a contract by providing notice verbally.

²⁰⁰ This sub-rule is not provided for in the Marketing Code.

(6) **Record of withdrawal**

A *retailer* must create a record of each withdrawal, and the provisions of clause 3D of the Code²⁰¹ apply in relation to a record of withdrawal as if it were a record of *explicit informed consent*.

(7) **Effect of withdrawal**

Withdrawal from a *market retail contract* operates as a rescission of the contract.

48 Retailer notice of end of fixed term retail contract²⁰²

- (1) This clause applies to a fixed term retail contract.
- (2) A *retailer* must, in accordance with this clause, notify a *small customer* with a fixed term retail contract that the contract is due to end.
- (3) The notice must be given no earlier than 40 business days and no later than 20 business days before the end date of the contract.
- (4) The notice must state:
 - (a) the date on which the contract will end; and
 - (b) details of the prices, terms and conditions applicable to the sale of *energy* to the premises concerned under a *deemed customer retail arrangement*; and
 - (c) the *customer's* options for establishing a *customer retail contract* (including the availability of a *standing offer*); and
 - (d) the consequences for the *customer* if the *customer* does not enter into a *customer retail contract* (whether with that or another *retailer*), including the entitlement of the *retailer* to arrange for the *de-energisation* of the premises and details of the process for *de-energisation*.
- (5) The *retailer* is not required to give the notice where the *customer* has already entered into a new contract with the *retailer*, or has given instructions to the *retailer* as to what actions the *retailer* must take at the end of the contract.
- (6) A *retailer* must, for a fixed term retail contract, include a term or condition to the effect that the *retailer* will:
 - (a) notify the *customer* that the contract is due to end; and

²⁰¹ Section 40 of the NERL sets out certain format requirements for records of informed consent including that the record must be kept for 2 years. Section 40 of the NERL has been incorporated into clause 3B of the Code.

²⁰² Rule 48 is substantially equivalent to clause 24.3 of the ERC v10 except that the timing requirements for the notice period are different: the ERC v10 requires a retailer to notify a customer no sooner than 2 months before, and no later than one month before the expiration date and the NERR refers to 40 business days and 20 business days respectively.

- (b) give such notice no earlier than 40 business days and no later than 20 business days before the end of the contract.

49 Termination of market retail contract²⁰³

- (1) A *market retail contract* terminates:
 - (a) on a date agreed between the *retailer* and the *customer*; or
 - (b) [Not used];²⁰⁴ or
 - (c) when the provision of *customer retail services* to the premises commences under a *customer retail contract* with a different *customer*; or
 - (d) when the provision of *customer retail services* to the premises commences under a different *customer retail contract* between the *customer* and the *retailer* or another *retailer*;²⁰⁵ or
 - (e) at the end of the period of 10 business days commencing on the day the *customer's* premises are de-energised, if there is no contractual right to *re-energisation*;²⁰⁶ or
 - (f) subject to subclause (2), on another date or event specified in the *market retail contract*,

whichever first occurs.

²⁰³ The NERR provisions in relation to termination of a retail contracts are organised and drafted differently to clause 24 of the ERC v10. However rule 49, with respect to market retail contracts, and rule 70, with respect to standard retail contracts have substantially similar effect. The key differences are: the NERR provides a number of circumstances in which a market retail contract terminates, whereas clause 24.1(a) does not provide any circumstances and only states that a customer can terminate the contract. Clause 24.1(b) of the ERC v10 requires the customer to give the retailer 28 days notice whereas sub-rule (2) prohibits a contract from requiring more than 20 business days notice. Clause 24.1(c) of the ERC v10 provides that a deemed customer does not need to give notice to terminate an energy contract, however this is not specifically provided for in the NERR. There is no equivalent in the NERR to clause 24.2 of the ERC v10 which specifies the time at which a deemed contract under section 39(5)(b) of the Electricity Industry Act or 46(5)(b) of the Gas Industry Act comes to an end, being the period covered by the second bill issued by the retailer. Under section 54(3) of the NERL, deemed customer contracts continue until a new customer retail contract is formed in relation to the premises. There is no equivalent provision in the NERR to clause 24.5 of the ERC v10, which specifies the time at which termination of an energy contract is effective. There is no equivalent provision in the NERR to clause 24.6 of the ERC v10, which sets out the consequences of a last resort event on energy contracts. Section 141 of the NERL has substantially the same effect as clause 24.6(a) of the ERC v10, however there is no equivalent to clauses 24.6(b) and (c) of the ERC v10 which deal with dual fuel contracts. None of these additional aspects of the ERC v10 have been included in the new draft instrument.

²⁰⁴ Rules relating to prepayment meters have been removed.

²⁰⁵ This sub-rule is similar in effect to clause 24.2(b) which permits a retailer to terminate if the customer and retailer enter into a new energy contract.

²⁰⁶ This sub-rule is similar in effect to clause 24.2(a) of the ERC v10, except the ERC v10 does not specify a 10 day time period. Instead clause 24.2(a) provides that retailer can terminate if a customer breaches their energy contract and it confers a right on the retailer to disconnect the customer and the customer no longer has a right to be reconnected.

- (2) A term or condition of a *market retail contract* has no effect to the extent that it requires a *customer* to give more than 20 business days notice to terminate the contract.
- (3) Termination of a *market retail contract* does not affect any rights or obligations that have already accrued under the contract.
- (4) [Not used]
- (5) This clause is a minimum requirement that is to apply in relation to *small customers* who purchase *energy* under a *market retail contract*.

49A Early termination charges and agreed damages terms²⁰⁷

- (1) A term or condition of a fixed term retail contract has no effect to the extent that it provides for payment of an early termination charge or *agreed damages term* (however described), unless:
 - (a) the contract includes details of the amount or manner of calculation of the early termination charge or *agreed damages term*; and
 - (b) subject to subclause 49A(6A), the early termination charge or *agreed damages term* is a reasonable estimate of the costs to the *retailer* resulting from the early termination or other event the subject of the *agreed damages term*.
- (2) For the purposes of subclause (1)(b), the costs to the *retailer* are the reasonable costs incurred or to be incurred by the *retailer*, and do not include costs based on lost supply or lost profits.
- (3) Subject to subclause (4), a term or condition of a *market retail contract* that is not a fixed term retail contract has no effect to the extent that it provides for the payment of an early termination charge (however described).²⁰⁸
- (4) Subclauses (1) and (3) do not prevent the imposition of an early termination charge due to the early termination of a fixed benefit period, even if this coincides with the termination of the *market retail contract*.
- (5) An early termination charge (however described), payable where a *customer* terminates a fixed benefit period early, only has effect if:

²⁰⁷ Rule 49A is broadly equivalent to clause 24.1(d) of the ERC v10 which provides that a retailer may impose an early termination fee on the customer if the contract includes details of the amount or manner of the calculation of the early termination fee and the imposition of a fee is not prohibited by any guideline. The NERR contains a number of additional requirements that are not covered by the ERC v10. Rule 49A also incorporates clause 31 of the ERC v10.

²⁰⁸ Clause 24.1(d) bullet point 2 permits an early termination fee to be imposed on a customer who is party to an evergreen contract which is terminated by the customer before the maturity date.

- (a) the contract includes details of the amount or manner of calculation of the early termination charge; and
 - (b) subject to subclause 49A(6A) the early termination charge is a reasonable estimate of the costs to the retailer resulting from the early termination.
- (6) For the purposes of subclause (5)(b), the costs to the *retailer* are the reasonable costs incurred or to be incurred by the *retailer*, and do not include costs based on lost supply or lost profits.
- (6A) Any amount of an early termination charge²⁰⁹ must be determined by reference to, and must not exceed, the total of the following direct costs incurred by the retailer in relation to that particular customer which remain unamortised at the time of termination:
- (i) pro-rata costs of procuring the *customer* to enter into the contract; and
 - (ii) \$20:
- which comprises:
- (i) the additional costs of giving effect to the early termination of the contract, final billing and ceasing to be responsible for the supply address; and
 - (ii) the value of any imbalance in the *retailer's* electricity or gas hedging program to the extent that it is directly attributable to that breach of contract.
- (7) This clause is a minimum requirement that is to apply in relation to *small customers* who purchase *energy* under a *market retail contract*.

50 Small customer complaints and dispute resolution information²¹⁰

- (1) A *retailer* must include, as a minimum requirement in relation to the terms and conditions of a *market retail contract*, provisions to the effect of the following:
- (a) the *small customer* may, if they have a query, complaint or dispute, contact the *retailer*;
 - (b) the *retailer* is obliged to handle a complaint made by a *small customer* in accordance with the *retailer's* standard complaints and dispute resolution

²⁰⁹ This clause has been amended to address the typographical error.

²¹⁰ Rule 50 is substantially equivalent to clause 28 of the ERC v10 except that clause 28.1 requires the retailer to handle a complaint in accordance with the relevant '*Australian Standard in Complaints Handling*' and to include the information on the complaint handling process in the retailer's charter. The NERR requires this information to be published on the retailer's website. Clause 28.2(a) of the ERC v10 also requires the retailer to inform the customer that they have the right to raise the complaint to a higher level within the retailer's management structure in addition to referring the complaint to the Ombudsman.

procedures, which can be found on the *retailer's* website or provided to the *customer* on request;

- (c) the *retailer* must inform the *small customer* of the outcome of the *customer's* complaint;
 - (d) if the *small customer* is not satisfied with the *retailer's* response to the *customer's* complaint, the *customer* has a right to refer the complaint or dispute to the *energy ombudsman*.
- (2) The provisions required to be included in the *market retail contract* must provide the *retailer's* contact details for the *small customer* to contact the *retailer* in connection with a query, complaint or dispute.

51 Liabilities and immunities

A *retailer* must not include any term or condition in a *market retail contract* with a *small customer* that limits the liability of the *retailer* for breach of the contract or negligence by the *retailer*.²¹¹

52 Indemnities

A *retailer* must not include any term or condition in a *market retail contract* with a *small customer* under which the *customer* indemnifies the *retailer*, so that the *retailer* may recover from the *customer* an amount greater than the *retailer* would otherwise have been able to recover at general law for breach of contract or negligence by the *customer* in respect of the contract.²¹²

Division 8 Deemed customer retail arrangements²¹³

53 Obligations of retailers

- (1) As soon as practicable after becoming aware that a *small customer* is consuming *energy* under a *deemed customer retail arrangement*, the *financially responsible*

²¹¹ Rule 51 is substantially equivalent to clause 16(a), bullet point 1 of the ERC v10 except that the NERR relates only to market retail contracts whereas the ERC v10 relates to all energy contracts. There are no equivalent provisions in the NERR to the remaining provisions of the ERC v10 which provide at clause 16(1) bullet point 2 that the retailer must not include a term in its energy contract requiring a domestic customer to take precautions to minimise risk of loss resulting from poor quality or reliability of energy supply. Also at clause 16(b) the retailer may include a term: of the sort contemplated by section 64A of the *Australian Consumer Law* under which the customer acknowledges the extent of the retailer's responsibility for the quality and reliability of energy supply, confirming that there is no variation or exclusion of the operation of specified provisions of energy legislation, and requiring a business customer to take precautions to minimise risk of loss resulting from poor quality or reliability of energy supply. However, the NERR Standard Retail Contract is in accordance with the provisions of the Code despite not being set out directly in the Rules.

²¹² Rule 52 is substantially equivalent to clause 17 of the ERC v10 except that the NERR relates only to market retail contracts whereas the ERC v10 relates to all energy contracts.

²¹³ There is no direct equivalent in the ERC v10.

retailer for the premises concerned must give the *customer* information about the following:

- (a) the *retailer's* contact information;
 - (b) details of the prices, terms and conditions applicable to the sale of *energy* to the premises concerned under the *deemed customer retail arrangement*;
 - (c) the *customer's* options for establishing a *customer retail contract* (including the availability of a *standing offer*);
 - (d) the consequences for the *customer* if the *customer* does not enter into a *customer retail contract* (whether with that or another *retailer*), including the entitlement of the *retailer* to arrange for the *de-energisation* of the premises and details of the process for *de-energisation*.
- (2) If the *small customer* is a *carry-over customer* of the *retailer*, the *retailer* does not have to give the *customer* the information required under subclause (1) if the *retailer* has already given the *customer* a notice under clause 48 relating to a *market retail contract* and containing that information.

54 Formation of standard retail contract on incomplete request

The *financially responsible retailer* for a *move-in customer* or *carry-over customer* may treat the *customer* as requesting the sale of *energy* under the *retailer's standing offer* and may take all appropriate steps for the formation of a *standard retail contract* with the *customer*, if:

- (a) the *customer* has provided the *retailer* with the *customer's* name and (if required by the *retailer*) *acceptable identification* and contact details for billing purposes; but
- (b) the *customer* has not advised the *retailer* as to the type of *customer retail contract* under which the *customer* wishes to be supplied.

Division 9 Other retailer obligations

55 Referral to interpreter services²¹⁴

A *retailer* must refer a *residential customer* to a relevant interpreter service if a referral is necessary or appropriate to meet the reasonable needs of the *customer*.

²¹⁴ Rule 55 is not directly included in the ERC v10 however it is similar in intent to clause 26.2(c) of the ERC v10.

56 Provision of information to customers²¹⁵

- (1) A *retailer* must publish on its website a summary of the rights, entitlements and obligations of *small customers*, including:
 - (a) the *retailer's* standard complaints and dispute resolution procedure; and
 - (b) the contact details for the relevant *energy ombudsman*.
- (2) If a *small customer* requests information of the kind referred to in subclause (1), the *retailer* must either:
 - (a) refer the *customer* to the *retailer's* website; or
 - (b) provide the information to the *customer*.
- (3) The *retailer* must provide a copy of any information of that kind to the *customer* if the *customer* requests a copy.
- (4) The information or a copy of the information requested under this clause must be provided without charge, but information requested more than once in any 12 month period may be provided subject to a reasonable charge.

57 Retailer obligations in relation to customer transfer²¹⁶

- (1) A *retailer* must not submit a request for the transfer of a *small customer* under the relevant *Retail Market Procedures* unless:
 - (a) the *retailer* has obtained *explicit informed consent* from the *customer* to enter into the relevant *customer retail contract*; and
 - (b) the *retailer* has a *customer retail contract* in place to enable the sale of *energy* to the *customer* at their premises.
- (2) A *customer* transfer under the relevant *Retail Market Procedures* is permitted prior to the completion of the *cooling off period*, provided that the transfer can be reversed if the *customer* elects to withdraw from the contract under clause 47.

²¹⁵ Clause 26.2 of the ERC v10 requires a retailer to give domestic customers a copy of the retailer's charter and specifies the information that must be included in the charter. There is no direct equivalent in the NERR for a charter, however rule 56 covers similar information to clause 26.2. Similarly clause 26.3 of the ERC v10 requires retailers to provide a copy of the code to customers on request, however there is no equivalent in the NERR. Rule 56(4) similarly requires the information to be provided to customers on request. Clause 26.5 of the ERC v10 requires a retailer to provide domestic customers with information on concessions and clause 26.6 requires a retailer to provide information regarding energy efficiency on request. There is no equivalent to these provisions in the NERR. The Commission has included these provisions in the new draft instrument.

²¹⁶ Rule 57(1)(a) of the NERR is substantially equivalent to clause 33(a) of the ERC v10. There is no equivalent to clauses 33(b) of the ERC v10 in the NERR, which provides that clause 33(a) does not apply if the assignment forms part of the transfer to the same third party of all or substantially all of the retailer's retail sales business.

58 Notice to small customers on transfer

A *retailer* must, within 5 business days of receiving notification that it has become the *financially responsible retailer* for a *small customer* as a result of a *customer* transfer, give notice to the *customer*:

- (a) that the *retailer* has commenced selling *energy* to the *customer*; and
- (b) of the date on which the *retailer* commenced selling *energy* to the *customer*.

59 Notice to small customers where transfer delayed

Where a *retailer* has notified a *small customer* of the expected date of a transfer and that transfer does not occur, the *retailer* must, within 5 days of becoming aware that a transfer has not occurred on the expected date, notify the *customer*:

- (a) that the transfer did not occur; and
- (b) of the reason for the delay; and
- (c) of the new expected date of the completion of the transfer, if it is still proceeding.

Note:

Additional requirements in relation to customer transfers are contained in the Electricity Customer Transfer Code.²¹⁷

59A Standard complaints and dispute resolution procedures

A *retailer* or responsible person must develop, make and publish on its website a set of procedures detailing the *retailer's* or responsible person's procedures for handling small customer complaints and dispute resolution procedures. The procedures must be regularly reviewed and kept up to date. The procedures must be substantially consistent with the Australian Standard AS ISO 10002-2006 (Customer satisfaction – Guidelines for complaints handling in organizations) as amended and updated from time to time.²¹⁸

²¹⁷ This note was inserted to address the submission by the Consumer Groups that there is no discussion of transfer timeframes or particular provisions relating to smart meters as there is in the *Electricity Customer Transfer Code*.

²¹⁸ This subclause is equivalent to clause 81 of the NERL and was inserted to address inconsistencies between the *Electricity Metering Code*, the NERL and this Code.

Division 10 Energy marketing²¹⁹

Note:

The *Telecommunications Act 1997*, the *Do Not Call Register Act 2006* and the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* of the Commonwealth may also apply to *retail marketers* carrying out *energy marketing activities*.

Subdivision 1 Preliminary

60 Application of Division

This Division applies to *retail marketers* carrying out *energy marketing activities*.

Subdivision 2 Providing information to small customers

61 Overview of this Subdivision

- (1) This Subdivision requires a *retail marketer* to provide specific information to *small customers* in connection with *market retail contracts*.
- (2) The information is referred to in this Subdivision as required information.

62 Requirement for and timing of disclosure to small customers²²⁰

A *retail marketer* must provide the required information to a *small customer* in relation to the *market retail contract* concerned:

- (a) before the formation of the contract; or
- (b) as soon as practicable after the formation of the contract.

²¹⁹ Division 10 of the NERR is drafted substantially differently to the Marketing Code. There are also provisions of the Marketing Code which are not contained in the NERR but are instead covered in the NERL. The DSDBI commented in its Discussion Paper on '*Victorian-specific regulatory requirements under the National Energy Customer Framework*' that the NECF contains significant protections for consumers which obviate the need for additional Victorian energy-specific regulation. Sections of the Marketing Code that are not included in the NERR are: clause 1, Training of marketing representatives; clause 3.7, Off retailer business premises contracts, clause 5, commencement of retail service; clause 6, marketing and consumer information, Appendix 1, cooling-off where the *Fair Trading Act* does not apply. Sections of the Marketing Code that are not in the NERR but are contained in the NERL are, clause 4.1 consumer transfer, clause 4.2 contract terms, and clause 7, dispute resolution. The sections of the Marketing Code that are not covered in the NERR will not be included in the new draft instrument.

²²⁰ Clause 3.3 of the Marketing Code refers to '*pre-contractual information*' which must be provided to a consumer before entering into a contract. Clause 3.5 of the Marketing Code provides for contract information which must be provided to a consumer on or before the second business day after the relevant date in respect of a contract. The contract information set out in clause 3.5 does not have an equivalent in the NERR. Instead there are various requirements regarding contract information, for example, see rule 19 of the NERR.

63 Form of disclosure to *small customers*

- (1) Required information provided to a *small customer* before the formation of the *market retail contract* may be provided electronically, verbally or in writing.²²¹
- (2) Required information provided to a *small customer* after the formation of the *market retail contract* must be provided in a single written disclosure statement.²²²
- (3) If required information was provided to a *small customer* electronically or verbally before the formation of the *market retail contract*, required information in a single written disclosure statement must also be provided to the *customer* after the formation of the contract.²²³

64 Required information²²⁴

- (1) The required information that a *retail marketer* is to provide to a *small customer* is information in relation to the following:
 - (a) all applicable prices, charges, early termination payments and penalties, *security deposits*, service levels, concessions or rebates, billing and payment arrangements and how any of these matters may be changed;²²⁵
 - (b) the commencement date and duration of the contract, the availability of extensions, and the termination of the contract if the *customer* moves out during the term of the contract;²²⁶

²²¹ Clause 3.1 of the Marketing Code requires that information provided to consumers must be written in plain English and designed to be readily understood by consumers.

²²² There is no equivalent provision to this sub-rule in Marketing Code.

²²³ There is no equivalent provision to this sub-rule in Marketing Code.

²²⁴ There are broad similarities between pre-contractual information under clause 3.3 of the Marketing Code and required information under the NERR. However there are a number of provisions in the Marketing Code that are not covered by the NERR. These provisions are as follows: clause 3.3.(b) bullet point 1: the type, frequency of bills and payment methods the consumer will receive; clause 3.3.(b) bullet point 3: the full name, address and telephone number of the retailer; clause 3.3.(b) bullet point 5: that the consumer may be contacted as part of an audit procedure to confirm their understanding of the contract; clause 3.3.(b) bullet point 6: all relevant information about any difference between the contract's terms and the basic terms and conditions under the Energy Retail Code; and clause 3.3.(b) bullet point 8: whether the marketing representative will receive a commission if the customer enters into a contract. Additionally, the Marketing Code only requires limited pre-contractual information to be provided to consumers entering a standard offer and more detailed information to be provided to consumers entering a market contract whereas the NERR does not make a distinction between information to be provided to consumers entering standard retail contracts or market retail contracts.

²²⁵ Clause 3.3(a) and (b) bullet point 1 and bullet point 2 of the Marketing Code are broadly equivalent to rule 64(1)(a).

²²⁶ Clause 3.3 (b) bullet point 4 of the Marketing Code contains similarities to rule 64(1)(b) in relation to contract termination. The NERR contains additional requirements to provide information about the commencement date and duration of the contract and the availability of extensions.

- (c) if any requirement is to be or may be complied with by an electronic transaction—how the transaction is to operate and, as appropriate, an indication that the *customer* will be bound by the electronic transaction or will be recognised as having received the information contained in the electronic transaction;²²⁷
 - (d) the rights that a *customer* has to withdraw from the contract during the *cooling off period*, including how to exercise those rights;²²⁸
 - (e) the *customer's* right to complain to the *retailer* in respect of any *energy marketing activity* of the *retail marketer* conducted on behalf of the *retailer* and, if the complaint is not satisfactorily resolved by the *retailer*, of the *customer's* right to complain to the *energy ombudsman*.²²⁹
- (2) The required information, when given in a written disclosure statement, must include or be accompanied by a copy of the *market retail contract*.²³⁰

Subdivision 3 Energy marketing activities

65 No contact lists²³¹

- (1) This clause applies to *energy* marketing in person at a person's premises or marketing by mail, but does not apply to *telemarketing calls* or *e-marketing activities*.²³²
- (2) A *retailer* must ensure that a “no contact list” is created and maintained for its *retail marketers*, whether by the *retailer* itself or by a person or organisation on behalf of the *retailer*.

²²⁷ Clause 3.6 of the Marketing Code similarly deals with electronic commerce information, however it specifically requires the retailer to have online processes to ensure the consumer has received the information required by clause 3.5 and prior to entering the contract the retailer must supply the required information by email immediately after entering the contract. This additional requirement is broadly consistent with rule 63(1) of the NERR which requires retailers to provide information after the formation of the contract if they had previously received verbal or electronic information.

²²⁸ There is no direct equivalent to this sub-rule in the Marketing Code, however it is likely to be captured by the requirement under clause 3.3(b) bullet point 4 of the Marketing Code which requires the retailer to provide information about the rights the consumer has to cancel the contract.

²²⁹ There is no equivalent provision to sub-rule 64(1)(e) in the NERR.

²³⁰ Sub-rule 64(2) is broadly consistent with clause 3.5 bullet point 1 of the Marketing Code which requires that on or before the second business day after the contract is entered into by the consumer, the retailer must give the consumer a copy of the contract. Sub-rule 64(2) is also broadly consistent with clause 3.3(1) bullet point 7 of the Marketing Code except that under the Marketing Code the full terms of the contract must be provided to a consumer in the case of contracts formed by marketing representatives in person off the business premises.

²³¹ Rule 65 is substantially equivalent to clause 2.3 of the Marketing Code except where noted.

²³² The NERR provisions in relation to no contact lists apply to marketing in person or at a person's premises but not to telemarketing calls or e-marketing activities. By contrast, clause 2.3 of the Marketing Code relates to marketing in person, by email, by telephone or by post.

- (3) A “no contact list” is a list of *small customers* who indicate they wish to be placed on the list.
- (4) A *small customer* may give such an indication by applying (in person, electronically, by telephone or in writing) to the *retailer* or by communicating directly with a *retail marketer*.
- (5) A *retail marketer* must not make contact with a *small customer* whose name is on the relevant no contact list.
- (6) An entry for a particular *small customer* in a no contact list continues for a period of 2 years, but the period is refreshed each time the *customer* requests inclusion or maintenance of inclusion.²³³
- (7) A *retailer* must publish a statement on its website about the existence of its no contact list and the procedures for being placed on the list.²³⁴

66 No canvassing or advertising signs²³⁵

In carrying out *energy marketing activities* a *retail marketer* must comply with any signs at a person’s premises indicating:

- (a) canvassing is not permitted at the premises; or
- (b) no advertising or similar material is to be left at the premises or in a letterbox or other receptacle at or associated with the premises.

67 Duty of retailer to ensure compliance

A *retailer* must ensure that a *retail marketer* who is an *associate* of the *retailer* complies with this Subdivision.²³⁶

68 Record keeping²³⁷

- (1) A *retailer* must ensure that records are kept of all *energy marketing activities* carried out by it or on its behalf by *retail marketers*, including details of *energy marketing visits* that have been conducted, and telephone *energy marketing calls* that have been placed.
- (2) The *retailer* must ensure that each such record is retained:

²³³ Clause 2.3 of the Marketing Code does not specify the period that a consumer remains on a no contact list. Instead the Marketing Code provides that a consumer's name may be removed from the no contact list if a consumer changes address.

²³⁴ There is no equivalent to sub-rule 65(7) in the Marketing Code.

²³⁵ This sub-rule is substantially equivalent to the final sentence in clause 2.3 of the Marketing Code.

²³⁶ There is no equivalent to Rule 67 in the Marketing Code.

²³⁷ Rule 68 is substantially equivalent to clauses 2.4 and 2.5 of the Marketing Code except the Marketing Code provides more detail about the type of information that must be recorded.

- (a) for the period of 12 months; or
 - (b) where a *small customer* has within that period made a complaint or referred a dispute to the *energy ombudsman* in relation to *energy marketing activities*—for the period the complaint or dispute remains unresolved,
- whichever is the longer period.
- (3) A *retailer* must ensure that it and appropriate officers or employees of the *retailer*, have immediate access, or a right of immediate access, to each such record.²³⁸

Division 11 Miscellaneous

69 Compliance by small customer who is not owner of premises²³⁹

If a *small customer* is unable to fulfill an obligation in respect of:

- (a) premises (including, but not limited to, access to premises) under a *customer retail contract*; or
- (b) access to premises under this Code,

because the *customer* is not the owner of the premises, the *customer* is not in breach of the contract or this Code if the *customer* takes all reasonable steps to ensure that the owner or other person responsible for the premises fulfils the obligation.

70 Termination of standard retail contract (SRC)²⁴⁰

- (1) A *standard retail contract* terminates:
 - (a) subject to subclause (3), in a case where the *small customer*:
 - (i) gives the *retailer* a notice (a **termination notice**) stating that the *customer* wishes to terminate the contract (even if the *customer* has vacated the premises earlier); or
 - (ii) is reclassified so that the *customer* is no longer a *small customer*;

on a date advised by the *retailer* (which must be at least 5 but not more than 20 business days from the giving of a termination notice or a reclassification); or
 - (b) on a date agreed between the *retailer* and the *small customer*; or

²³⁸ Under the Marketing Code, a retailer must also make records available for an independent audit as required.

²³⁹ No direct equivalent in ERC v10.

²⁴⁰ Refer to comments at footnote 199.

- (c) when the *small customer* starts receiving *customer retail services* for the premises under a different *customer retail contract* with the *retailer* or a different *retailer*; or
- (d) when a different *customer* starts receiving *customer retail services* for the premises under a *customer retail contract* with the *retailer* or a different *retailer*; or
- (e) at the end of the period of 10 business days commencing on the day the *small customer's* premises are de-energised, if there is no contractual right to *re-energisation*,

whichever first occurs.

- (2) Where a *small customer* gives a termination notice and notifies the *retailer* of a date on which the *small customer* intends to vacate the premises, the *retailer* must:
 - (a) use its best endeavours to ensure that the relevant *meters* are read at, or the relevant *metering data* is obtained for, the premises on the date and at the time agreed with the *small customer* (or as soon as possible after that date if the *small customer* has not provided access to the relevant *meters* on that date or at that time); and
 - (b) prepare and send to the *small customer* at the forwarding address provided by the *small customer* a final bill based on the relevant *meter* reading or *metering data*.
- (3) If the *small customer* gives a termination notice, or is reclassified so that the *customer* is no longer a *small customer*, but does not give safe access to the premises to conduct a final *meter* reading (where relevant), the *standard retail contract* does not terminate under subclause (1) (a) until the date the *retailer* issues a final bill and the *customer* has paid any outstanding balance.
- (4) A *retailer* must not impose a termination charge (however described) under a *standard retail contract* in respect of the termination of the contract.
- (5) Termination of a *standard retail contract* does not affect any rights or obligations that have already accrued under the contract.
- (6) Where there is an existing *standard retail contract* between a *retailer* and a *small customer* who is reclassified under the Code so that the *customer* is no longer a *small customer*, the *retailer* is no longer obliged to make a *standing offer* to the *customer*.
- (7) [Not used]
- (8) **Application of this clause to standard retail contracts**

This clause applies in relation to *standard retail contracts*.

(9) **Application of this clause to market retail contracts**

This clause does not apply in relation to *market retail contracts*.

70A Termination of a deemed contract

For the purposes of:

- (a) section 39(5)(b) of the *Electricity Industry Act*; or
- (b) section 46(5)(b) of the *Gas Industry Act*,

a deemed contract under that section comes to an end at the end of the period covered by the second bill issued by the *retailer* to the *customer*²⁴¹ or if any of the events listed in section 39(7) of the *Electricity Industry Act* or section 46(7) of the *Gas Industry Act* occur, whichever occurs first.²⁴²

70B Termination in the event of a last resort event²⁴³

- (1) Where a *retailer* and a *customer* have entered into an *energy contract*, other than a dual fuel contract, and a *last resort event* occurs in relation to the *retailer*, that *energy contract* will automatically terminate and the *customer* will not be liable for any termination fee or other penalty.
- (2) Where a *retailer* and a *customer* have a dual fuel contract under which both gas and electricity are sold under the one contract and:
 - (a) *last resort events* simultaneously occur in relation to the *retailer* in relation to both fuels, that *energy contract* will automatically terminate and the *customer* will not be liable for any early termination fee or other penalty; or
 - (b) a *last resort event* occurs in relation to the *retailer* in relation to one of the fuels:
 - (i) the *energy contract* will automatically terminate to the extent it applies to the fuel in relation to which the *last resort event* occurred and, subject to subclause (ii) below, will continue in relation to the other fuel on the same terms and conditions in so far as they apply to the sale of that other fuel; and
 - (ii) the customer may, within 14 days of the last resort event occurring, terminate the *energy contract* in relation to that other fuel by giving the retailer 7 days notice; and

²⁴¹ This clause is taken from clause 24.4 of the ERC v10.

²⁴² This clause was amended to address the submission by the EWOV that there is an inconsistency between the Electricity Industry Act and the Gas Industry Act and the draft ERC v11. In addition, the amended clause addresses Origin's submission that it is unclear what would happen to a deemed contract if the customer continues to take supply after being issued a second bill, but refuses to enter into a supply contract.

²⁴³ This subclause is equivalent to clause 24.6 of the ERC v10 and was inserted to address the Consumer Groups' submissions that provisions relating to a '*last resort event*' should be included in the draft ERC v11.

- (iii) in either case, the *customer* will not be liable for any early termination fee.
- (3) Where a *retailer* and a *customer* have a dual fuel contract which comprises two separate *energy contracts*, one each for gas and electricity, with synchronised billing cycles, and:
- (a) *last resort events* simultaneously occur in relation to the *retailer* in relation to both fuels, those *energy contracts* will automatically terminate and the *customer* will not be liable for any early termination fee or other penalty; or
 - (b) a *last resort event* occurs in relation to the *retailer* in relation to one of the fuels:
 - (i) the *energy contract* for the fuel in relation to which the *last resort event* occurred will automatically terminate and the *customer* will not be liable for any early termination fee or other penalty; and
 - (ii) the *energy contract* for the other fuel will continue on the same terms and conditions.

Part 3 Customer hardship²⁴⁴

71 Obligation of retailer to communicate customer hardship policy

- (1) A *retailer* must inform a *hardship customer* of the *retailer* of the existence of the *retailer's* customer hardship policy as soon as practicable after the *customer* is identified as a *hardship customer*.
- (2) The *retailer* must provide a *customer* or a financial counsellor with a copy of the customer hardship policy on request and at no expense.²⁴⁵
- (3) A *retailer* must publish details of its customer hardship policy on its website
 - (a) as soon as practicable after it has been approved by the *Commission*; and
 - (b) in a way that is easy for a *customer* to access.²⁴⁶

71A Approval by the *Commission* of a customer hardship policy²⁴⁷

- (1) A customer hardship policy must include the matters set out in section 43(2) of the *Electricity Industry Act* or section 48G(2) of the *Gas Industry Act*.
- (2) In determining whether to approve a *retailer's* customer hardship policy, the *Commission* will consider whether it is appropriate and will have regard to:
 - (a) the factors set out in section 45(2) of the *Electricity Industry Act* or section 48I of the *Gas Industry Act*; and

²⁴⁴ Section 43 of the Electricity Industry Act and section 48G of the Gas Industry Act require retailers to prepare a financial hardship policy. Section 44 of the Electricity Industry Act and 48H of the Gas Industry Act permit the Commission to prepare guidelines in relation to financial hardship policies. Guideline 21 relates to *Energy Retailers Financial Hardship Policies*. The equivalent requirement under the NECF for a retailer to have a customer hardship policy is set out in section 43 of the NERL, and section 49 of the NERL permits Rules to be made with respect to hardship customers. In addition to the requirements set out in rule 72 of the NERR, section 44 of the NERL sets out the minimum requirements for a customer hardship policy. The NERL requirements are broadly equivalent to the clause 2.2 of Guideline 21. As there are no requirements relating to the content of a customer hardship policy in the NERR. The requirements outlined on clauses 2.1-2.4 of Guideline 21 have been included to ensure that the Commission satisfies its obligations under the Electricity Industry Act and the Gas Industry Act and to create less confusion for industry by included elements of the NERR and the Guideline 21. The Commission notes that while this chapter is predominately based on Guideline 21, we have used the NERR terminology.

²⁴⁵ Clause 2.3 of Guideline 21 requires a retailer to provide details of the hardship policy to a customer or a financial counsellor.

²⁴⁶ Section 43(2) of the NERL requires a retailer to publish its customer hardship policy on its website as soon as practicable after it is approved. Clause 2.3 of Guideline 21 requires a retailer to publish details of the hardship policy on its website in a way that is easy for a customer to access.

²⁴⁷ This clause has been inserted to correct a drafting error and respond to the Consumer Groups' submission that some aspects of clause 2.1 of Guideline 21 were not incorporated in the ERC v11. The Commission has decided to incorporate all of the provisions from clause 2.1 of Guideline 21 instead of adopting the NERL drafting.

- (b) the objects set out in section 42 of the *Electricity Industry Act* or section 48F of the *Gas Industry Act*, including the promotion of best practice in energy delivery.

71B Contents of a customer hardship policy ²⁴⁸

- (1) Nothing in this clause requires a *retailer* to offer all the options covered by its customer hardship policy to all of its *hardship customers* in financial hardship. The *retailer* must however, provide its *customers* in financial hardship with equitable access to the options appropriate to their individual circumstances.
- (2) In meeting the obligations set out in clause 71A, the *Commission* expects a *retailer's* customer hardship policy to:
 - (a) reflect that a *customer* in financial hardship is a *customer* who has the intention but not the capacity to make a payment within the timeframe required by the *retailer's* payment terms;
 - (b) enable *customers* in financial hardship:
 - (i) to identify themselves to the *retailer*,
 - (ii) to be identified by financial counsellors to the *retailer*; or
 - (iii) to be identified by the *retailer*;
 - (c) provide details of the processes and criteria the *retailer* will use to identify *customers* in financial hardship;
 - (d) provide details of the options that will be provided to *customers* in financial hardship and how *customers* will be assisted to maintain their participation in payment plans or any other option offered to them;
 - (e) provide details of the processes the *retailer* will use to work with the *customer* and where appropriate a financial counsellor to assess the appropriate options to be provided by the *retailer*;
 - (f) offer fair and reasonable payment options with fair and reasonable instalment intervals that accommodate the particular circumstances of *customers* in financial hardship and to monitor the *customer's* payments, including the accumulation of debt;
 - (g) provide details of:
 - (i) how and in what circumstances the *retailer* will make field audits of electricity or gas usage available to *customers* experiencing financial hardship;

²⁴⁸ Clause 2.2 of Guideline 21 has been incorporated into the Code to address a drafting omission and the Consumer Groups' submission.

- (ii) in what circumstances the field audits will be available at partial or no cost to the *customer*; and
 - (iii) how the *customer's* agreement to partially fund a field audit will be obtained and how the benefits of the *customer's* expenditure will be demonstrated;
- (h) provide details of how and in what circumstances the retailer will provide assistance to *customers* in financial hardship to replace electrical and gas appliances, including whether the *retailer* will sell or supply the appliances itself or nominate a third party to do so;
 - (i) provide for the referral of *customers* in financial hardship to other support agencies and schemes where appropriate;
 - (j) set out the process *retailers* will follow to advise *customers* of their rights and obligations in respect of their agreement under the *retailer's* hardship program;
 - (k) set out the circumstances in which a hardship arrangement between a *customer* and the *retailer* will cease;
 - (l) require the *retailer's* staff to be made aware of the policy and require all staff involved in the administration of the customer hardship program to have the necessary skills to sensitively engage with *customers* about their payment difficulties and in offering assistance;
 - (m) be transparent, accessible and communicate to *customers*, financial counsellors and community assistance agencies;
 - (n) recommend the most appropriate tariff at the time of entry to the customer hardship program, bearing in mind;
 - (i) cost effectiveness; and
 - (ii) whether the *customer* has dedicated off peak appliances; and
 - (iii) the *customer's* previous tariff (including network charge); and
 - (iv) the *customer's* overall power usage; and
 - (v) the *customer's* previous bills, if available; and
 - (vi) any other relevant information provided by the *customer*; and
 - (p) require the *retailer* to monitor their behaviour and consumption during their participation in the customer hardship program to ensure that they continue on the most appropriate tariff and facilitate a change if necessary.

- (3) This clause 71B does not limit the requirements of section 43(2) of the *Electricity Industry Act* or section 48G(2) of the *Gas Industry Act* or the requirements of this Code.

71C Changes to customer hardship policies²⁴⁹

- (1) The *Commission* expects *retailers* to periodically review their customer hardship policies in accordance with normal business practice.
- (2) Any request by the *retailer* for the *Commission* to approve a new or amended customer hardship policy under section 45(4) of the *Electricity Industry Act* or section 48I(4) of the *Gas Industry Act* must include a statement as to the nature, impact and reason for the change.

72 Payment plans^{250 251}

- (1) A *payment plan* for a *hardship customer* must:
- (a) be established having regard to:
 - (i) the *customer's* capacity to pay; and
 - (ii) any arrears owing by the *customer*; and
 - (iii) the *customer's* expected *energy* consumption needs over the following 12 month period; and
 - (b) include an offer for the *customer* to pay for their *energy* consumption in advance or in arrears by instalment payments.
- (2) A *retailer* who offers a *payment plan* under this clause for a *customer* must inform the *customer* of:
- (a) the duration of the plan; and
 - (b) the amount of each instalment payable under the plan, the frequency of instalments and the date by which each instalment must be paid; and

²⁴⁹ This new clause responds to the Consumer Groups' submission that clause 2.4 of Guideline 21 should be incorporated into the draft ERC v11. It was a drafting omission by the Commission that clause 2.4 of Guideline 21 was not included.

²⁵⁰ Clause 72 incorporates section 50 of the NERL and rule 72 of the NERR. It is substantially equivalent to clause 12.1 and 12.2 of the ERC v10, except that there are no equivalent provisions to clauses 12.2(b) and 12.2(c) of the ERC v10 in the NERR. Clause 12.2(b) requires the retailer to make provision for recalculating the amount of instalments where the difference between the customer's estimated consumption and actual consumption will result in the customer being significantly in credit or debit. Clause 12.2(c) requires the retailer to monitor the customer's consumption while on the instalment plan and to have in place fair and reasonable procedures to address payment difficulties while on the plan. There is no equivalent in the NERR to clause 12.3 of the ERC v10. Clause 12.3 will be included in the new draft instrument.

²⁵¹ Subclause 72(1A) has been deleted following submissions from the Consumer Groups that clauses 33 and 72 were inconsistent. The additional text from clause 72(1A)(b) has been included in clause 33(1)(b).

- (c) if the *customer* is in arrears—the number of instalments to pay the arrears; and
 - (d) if the *customer* is to pay in advance—the basis on which instalments are calculated.
- (3) A *retailer* must consider any reasonable request from a *business customer* for, and may impose an *additional retail charge* on the *business customer* if they enter into, a payment plan.

Note:

Subclause (1) of clause 72 must be read in light of subclause 33(4) of this Code which provides that clause 72 applies to a residential customer experiencing payment difficulties in the same way as it applies to a hardship customer.²⁵²

72A Debt recovery²⁵³

A *retailer* must not commence proceedings for the recovery of a debt relating to the sale and supply of *energy* from a *residential customer* if:

- (a) the *customer* continues to adhere to the terms of a *payment plan* or other agreed payment arrangement; or
- (b) the *retailer* has failed to comply with the requirements of:
 - (i) its customer hardship policy in relation to that *customer*; or
 - (ii) the²⁵⁴ *Electricity Industry Act* or *Gas Industry Act* and this Code relating to non-payment of bills, *payment plans* and assistance to *hardship customers* or *residential customers* experiencing payment difficulties.
- (c) the *retailer* has failed to comply with guidelines on debt collection issued by the Australian Competition and Consumer Commission concerning section 50 of the Australian Consumer Law as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

²⁵² The Commission has inserted this note to assist with the interpretation of the draft ERC v11.

²⁵³ This clause is based on section 51 of the NERL. It is substantially equivalent to clause 11.4 of the ERC v10. The ERC v10 contains an additional requirement that a retailer must comply with guidelines issued by the ACCC concerning section 50 of the *Australian Consumer Law*. This additional requirement is included in the new draft instrument.

²⁵⁴ This clause was amended to correct a drafting error.

73 [Not used] ²⁵⁵

74 **Payment by Centrepay (SRC and MRC)**²⁵⁶

- (1) This clause applies where a *hardship customer* requests a *retailer* to permit payment by using Centrepay as a payment option (see clause 32).
- (2) If the *hardship customer* is applying for or on a *standard retail contract*, the *retailer* must allow the *customer* to use Centrepay as a payment option.
- (3) If the *hardship customer* is on a *market retail contract* and Centrepay is available as a payment option under that contract, the *retailer* must allow the *customer* to use Centrepay as a payment option.
- (4) If the *hardship customer* is on a *market retail contract* and Centrepay is not available as a payment option under that contract, the *retailer* must undertake a review of the *market retail contract*.
- (5) If, as a result of a review, an alternative *customer retail contract* is considered to be more appropriate, the *retailer* must transfer the *customer* to that alternative contract, where the *retailer* has obtained the *customer's explicit informed consent*.
- (6) Any alternative *customer retail contract* offered to a *hardship customer* must make Centrepay available as a payment option.
- (7) If, as a result of the review, there is no alternative *customer retail contract* considered to be more appropriate, the *retailer* must make Centrepay available as a payment option under the *hardship customer's* existing *market retail contract*.
- (8) The *retailer* must not charge the *customer* for the review, for any transfer to an alternative retail contract or any early termination charge or other penalty for the early termination of the *customer's* previous *customer retail contract*.

75 **Hardship program indicators**²⁵⁷

- (1) The *Commission* may, in consultation with *retailers* and other interested stakeholders, determine hardship program indicators.
- (2) The hardship program indicators may cover the following:
 - (a) entry into hardship programs;

²⁵⁵ Rule 73 of the NERR requires retailers to waive late payment fees for hardship customers. Under Victorian law, a retailer is prohibited from including a term or condition in a customer retail contract in relation to fees for the late payment of bills. The term in the standard retail contract which permits late payment fees has been removed. Consequently, a rule that provides for the waiver of late fees for hardship customers is not required.

²⁵⁶ There is no equivalent provision in the ERC v10 or the guidelines to Rule 74. It will be included in the new draft instrument.

²⁵⁷ There is no equivalent requirement under Victorian law to determine hardship program indicators.

- (b) participation in hardship programs;
 - (c) assistance available to and assistance provided to *customers* under *customer hardship policies*.
- (3) The *Commission* may from time to time amend the hardship program indicators in consultation with *retailers* and other interested stakeholders.
- (4) In this clause:
- hardship program** means a program outlined in a *customer hardship policy*.

76 **Waiver of debt for hardship customer**²⁵⁸

Nothing in this Part prevents a *retailer* from waiving any fee, charge or amount of arrears for the provision of *customer retail services* to a *hardship customer* in accordance with the *retailer's customer hardship policy*.

76A **Supply capacity control product**²⁵⁹

A *retailer* must not offer a *supply capacity control product* to a *customer* for any credit management purpose before a date to be determined by the Minister for Energy and Resources.²⁶⁰

²⁵⁸ There is no equivalent provision in the ERC v10 or Guideline 21 to rule 76.

²⁵⁹ This clause is based on clause 12A of the ERC v10 and will be included in the new Draft instrument. There is no equivalent to this clause in the NECF.

²⁶⁰ The Commission has been advised by the Minister for Energy and Resources that this current prohibition will be extended beyond 1 January 2014. The draft ERC v11 will be updated when the Commission has been notified of the new expiry date for the prohibition by the Minister.

Part 4 [Not used]²⁶¹

Division 1 [Not used]

77 [Not used]

78 [Not used]

Division 2 [Not used]

79 [Not used]

80 [Not used]

Division 3 [Not used]

81 [Not used]

Division 4 [Not used]

82 [Not used]

83 [Not used]

Division 5 [Not used]

84 [Not used]

85 [Not used]

86 [Not used]

87 [Not used]

Division 6 [Not used]

88 [Not used]

89 [Not used]

90 [Not used]

²⁶¹ Part 4 of the NERR deals with the relationship between distributors and customers. This Part has been deleted on the basis that it relates to obligations of distributors.

91 [Not used]

Division 7 [Not used]

92 [Not used]

Part 5 [Not used]²⁶²

Division 1 [Not used]

93 [Not used]

Division 2 [Not used]

94 [Not used]

Division 3 [Not used]

95 [Not used]

96 [Not used]

97 [Not used]

98 [Not used]

99 [Not used]

100 [Not used]

Division 4 [Not used]

101 [Not used]

102 [Not used]

Division 5 [Not used]

103 [Not used]

104 [Not used]

²⁶² Part 5 of the NERR deals with the relationship between distributors and retailers. This Part has been deleted on the basis that the relationship between retailers and distributors is governed by use of system agreements under the Victorian regime.

105 **[Not used]**

106 **[Not used]**

Part 6 De-energisation (or disconnection) of premises—small customers

Division 1 Preliminary

107 Application of this Part

- (1) This Part applies to *small customers* only, and references to a *customer* are to be construed accordingly.
- (2) A *retailer* must not arrange *de-energisation* of a *customer's* premises except in accordance with Division 2.
- (3) [Not used]²⁶³
- (4) [Not used]²⁶⁴

108 Definitions²⁶⁵

In this Part:

disconnection warning period means the period that starts on the date of issue of a *disconnection warning notice* under clause 110, which must be no earlier than the next business day after the end of the *reminder notice period*, and ends no earlier than 6 business days from the date of issue of the *disconnection warning notice*;²⁶⁶

protected period means:

- (a) a business day before 8am or after 2pm for a *residential customer* or 3pm for a *business customer*; or
- (b) a Friday or the day before a public holiday; or
- (c) a weekend or a public holiday; or
- (d) the days between 20 December and 31 December (both inclusive) in any year;²⁶⁷

²⁶³ This rule has been removed because it relates to distributor's obligations.

²⁶⁴ This rule has been removed because it relates to distributor's obligations.

²⁶⁵ The definition of '*extreme weather event*' has been deleted to address AGL's submission that a local instrument is required to declare the applicability of '*extreme weather event*' in Victoria and if no such instrument is declared then the obligations surrounding '*extreme weather event*' will not be effective.

²⁶⁶ Clause 13.1(b) of the ERC v10 provides for a different method for the calculation of the time period for a disconnection warning notice. The NERR time periods will be adopted.

²⁶⁷ Clause 14(d) of the ERC v10 provides that a domestic customer is not to have their premises disconnected

public holiday, in relation to a *customer*, means a day that is observed as a local public holiday in the area in which the *customer*'s premises are located (including the whole of Victoria);

reminder notice period means the period that starts on the date of issue of a *reminder notice* under clause 109, which must be no earlier than the next business day after the *pay-by date*, and ends no earlier than 6 business days from the date of issue of the *reminder notice*.²⁶⁸

109 Reminder notices—retailers

(1) Nature of reminder notices

A *reminder notice* is a notice issued by a *retailer* after the *pay-by date* for a bill to remind the *customer* that payment is required.

(2) Particulars to be included in reminder notices

A *reminder notice* must:²⁶⁹

- (a) state the date of its issue; and
- (b) state the date on which the *reminder notice period* ends; and
- (c) state that payment of the bill must be made during the *reminder notice period*; and
- (d) include details of the *retailer*'s telephone number for complaints and disputes.

110 Disconnection warning notices²⁷⁰

(1) Nature of disconnection warning notices

A *disconnection warning notice* is a notice issued by a *retailer* to warn a *customer* that the *customer*'s premises will or may be de-energised.

after 2pm, whereas the NERR provides that a protected period in relation to de-energisation commences at 3pm. The DSDBI has indicated that Victorian timeframes in relation to disconnection are to be retained and therefore the NERR has been amended to reflect the Victorian provision. Also the NERR includes an additional requirement that disconnection must not occur between 20 December and 31 December.

²⁶⁸ The ERC v10 provides for a different method for the calculation of the time period for a warning notice. Clause 13.1 (b) of the ERC v10 provides that a reminder notice must be given to a customer not less than 14 business days from the date of dispatch of the bill and must include a new '*pay-by date*' not less than 20 business days from the date of dispatch of the bill. Clause 7.1 of the ERC v10 provides that the '*pay-by date*' must be not less than 12 business days from the date of dispatch of the bill. The NERR time periods in relation to issuing reminder notices have been adopted.

²⁶⁹ The NERR provides for more particulars to be included in a reminder notice than clause 13.1(b) of the ERC v10. The ERC v10 requires a new '*pay-by date*' to be included in a reminder notice, whereas the NERR requires a statement that payment must be made during the reminder notice period.

²⁷⁰ Rule 109 broadly corresponds to clauses 13.1(b) and (c) of the ERC v10. It is drafted differently to the ERC v10, but achieves broadly equivalent outcomes except where noted in the drafting notes.

(2) **Particulars to be included in disconnection warning notices**²⁷¹

A *disconnection warning notice* must:

- (a) state the date of its issue; and
- (b) state the matter giving rise to the potential *de-energisation* of the *customer's* premises; and
- (c) where the notice has been issued for not paying a bill:
 - (i) state the date on which the *disconnection warning period* ends; and
 - (ii) state that payment of the bill must be made during the *disconnection warning period*; and
- (d) for matters other than not paying a bill—allow a period of not fewer than 5 business days after the date of issue for the *customer* to rectify the matter before *de-energisation* will or may occur;²⁷² and
- (e) inform the *customer* of applicable *re-energisation* procedures and (if applicable) that a charge will be imposed for *re-energisation*; and
- (f) include details of the existence and operation of the *energy ombudsman*, including contact details;²⁷³ and
- (g) include details of the telephone number of the *retailer* for payment assistance enquiries;²⁷⁴ and
- (h) for a *customer* with a *smart meter*, state that *de-energisation* could occur remotely.

²⁷¹ The ERC v10 requires that only the '*pay-by date*' must be included in disconnection warning except in the case of dual fuel contracts which must also contain a statement in relation to variation of tariffs and terms and conditions. Customers who have a dual fuel contract are also entitled to a further disconnection warning under clause 13.1(e) which is not provided for in the NECF. However, there will be no requirement to maintain a separate regime for dual fuel customers in the new draft instrument.

²⁷² The ERC v10 does not distinguish between matters relating to non-payment of a bill and matters other than non-payment of a bill. Clause 13.1(c) of the ERC v10 at bullet point 2 provides that for non-dual fuel customers, a retailer may disconnect a customer no fewer than 7 business days after the receipt of the disconnection warning.

²⁷³ This sub-rule is substantially equivalent to clause 28.3 of the ERC v10.

²⁷⁴ The ERC v10 refers to the telephone number as being '*for payment assistance enquiries*'. These words will be included in the new draft instrument.

Division 2 Retailer-initiated de-energisation of premises

111 De-energisation for not paying bill²⁷⁵

- (1) A *retailer* may arrange *de-energisation* of a *customer's* premises if:
- (a) the *customer*:
 - (i) has not paid a bill by the *pay-by date*; or
 - (ii) is on a *payment plan* with the *retailer* and has not adhered to the terms of the plan; and
 - (b) if the *customer* is a *residential customer*, the *customer*:
 - (i) has not paid a bill by the *pay-by date*; and
 - (ii) has not agreed to an offer to pay the bill by instalments or, having agreed to the offer, has failed to adhere to an instalment arrangement; and
 - (c) the *retailer* has given the *customer* a *reminder notice*; and
 - (d) the *retailer* has given the *customer* a *disconnection warning notice* after the expiry of the period referred to in the *reminder notice*; and
 - (e) the *retailer* has, after giving the *disconnection warning notice*, used its best endeavours to contact the *customer*, in connection with the failure to pay, or to agree to the offer or to adhere to the *payment plan* or instalment arrangement as referred to in paragraphs (a) (ii) and (b) (ii), in one of the following ways:²⁷⁶
 - (i) in person;
 - (ii) by telephone;
 - (iii) by facsimile or other electronic means²⁷⁷; and
 - (f) the *customer* has refused or failed to take any reasonable action towards settling the debt.
- (2) Where a *customer* is a *hardship customer* or a *residential customer* who has informed the *retailer* in writing or by telephone that the *customer* is experiencing

²⁷⁵ This Rule is drafted differently to the ERC v10, however it achieves broadly equivalent outcomes except where noted in the drafting notes.

²⁷⁶ Clause 13.1(d) of the ERC v10 provides that disconnection cannot occur until the customer has called the retailer and the retailer has provided advice on financial assistance. The NERR does not contain an equivalent provision. However, the NERR does require that contact be made with the customer.

²⁷⁷ The Commission has removed the information in brackets as it is the Commission's opinion that this conflicts with requiring a retailer to use their 'best endeavours'. The Commission has included a reference to the *Operating Procedure Compensation for Wrongful Disconnection* to provide further guidance.

payment difficulties, a *retailer* must not arrange for *de-energisation* of the *customer's* premises under subclause (1), unless the *retailer* has offered the *customer 2 payment plans* in the previous 12 months²⁷⁸ and:

- (a) the *customer* has agreed to neither of them²⁷⁹; or
 - (b) the *customer* has agreed to one but not the other of them but the plan to which the *customer* agreed has been cancelled due to non-payment by the *customer*; or
 - (c) the *customer* has agreed to both of them but the plans have been cancelled due to non-payment by the *customer*.²⁸⁰
- (3) A *retailer* may arrange *de-energisation* of a *customer's* premises, including by de-energising the customer's supply remotely, if:
- (a) the *customer* has, while on a shortened collection cycle, not paid a bill by the *pay-by date*; and
 - (b) the *retailer* has given the *customer* a *disconnection warning notice* after the *pay-by date*; and
 - (c) the *retailer* has, after giving the *disconnection warning notice*, used its best endeavours to contact the *customer*, in connection with the failure to pay, or to agree to the offer or to adhere to the *payment plan* or instalment arrangement as referred to in subclause (1) (a) (ii) and (b) (ii), in one of the following ways:²⁸¹
 - (i) in person;
 - (ii) by telephone;
 - (iii) by facsimile or other electronic means; and

²⁷⁸ Rule 111(2) has the same effect as clause 13.1(a) of the ERC v10 which provides that a retailer must not disconnect a customer if the failure to pay relates to an instalment under the customer's first instalment plan with the retailer.

²⁷⁹ The imposition of a 5 business day time restriction has been deleted as its inclusion was a drafting error as the Commission is adopting the NERR drafting for this clause. The Commission notes that the NERR drafting offers greater consumer protection as customers are not limited to 5 days to accept a retailer's offer of a payment plan.

²⁸⁰ Clause 13.2(a) of the ERC v10 provides that a retailer can disconnect a customer's energy supply provided the retailer has complied with clause 11.2, used its best endeavours to contact the customer, and the customer has not accepted an instalment plan within 5 business days. Clause 13.2(b) of the ERC v10 provides for remote disconnection which is not specifically covered by the NERR. The additional requirements in relation to remote disconnection under the ERC v10 are, first, that if the retailer is unable to contact the customer after attempting once in person and twice by telephone, it must contact the customer by mail, email, or SMS, and, second, that when contacting the customer, the retailer must set out all the options for the customer. The DSDBI has requested that we retain an equivalent to clause 13.2(b) of the ERC v10.

²⁸¹ Clause 3.1(f) of the ERC v10 provides that a retailer must contact the customer on a shortened collection cycle in person or by telephone to inform them of the disconnection. However, the NERR provides equivalent protection by requiring that any messages left by the retailer must be acknowledged by the customer.

- (d) the *customer* has refused or failed to take any reasonable action towards settling the debt.

Note:

Further guidance in relation to the *Commission's* expectations with respect to de-energisation of a customer's premises is set out in the *Commission's* publication Operating Procedure Compensation for Wrongful Disconnection.

The *Commission* notes that "other electronic means" includes email.²⁸²

(4) **Application of this clause to standard retail contracts**

This clause applies in relation to *standard retail contracts*.

(5) **Application of this clause to market retail contracts**

This clause applies in relation to *market retail contracts*.

112 De-energisation for not paying security deposit or refusal to provide acceptable identification²⁸³

- (1) A *retailer* may arrange for the *de-energisation* of a *customer's* premises if the *customer* has failed to pay a *security deposit* or the *customer* refuses when required to provide *acceptable identification* (if the *customer* is a new *customer* of the *retailer*) and if:

- (a) the *retailer* has given the *customer* a notice of its intention to do so; and
- (b) the *retailer* has given the *customer* a *disconnection warning notice* after the expiry of the period referred to in the notice of its intention (being not less than 5 business days after the notice of its intention was given)²⁸⁴; and
- (c) the *customer* has continued not to provide a *security deposit* or *acceptable identification*.

(2) **Application of this clause to standard retail contracts**

This clause applies in relation to *standard retail contracts*.

²⁸² The Commission has inserted the above notes to provide further guidance when interpreting the requirements of clause 111.

²⁸³ Clause 13.4 of the ERC v10 is similar to NERR 112 except that the ERC v10 allows a retailer to disconnect premises if a customer refuses to provide a refundable advance as well as for failure to provide acceptable identification.

²⁸⁴ Clause 13.4(a) of the ERC v10 provides for a 10 day notice period. However, DSDBI have confirmed that the policy intent in relation to preserving Victorian timeframes was limited to timeframes with respect to protected periods and not timeframes more broadly. Accordingly, the NERR timeframe of 5 days has been reinstated.

(3) **Application of this clause to market retail contracts**

This clause applies in relation to *market retail contracts*, but only to the extent (if any) a contract provides for payment of a *security deposit*.²⁸⁵

113 De-energisation for denying access to meter²⁸⁶

(1) A *retailer* may arrange for *de-energisation* of a *customer's* premises if the *customer* has failed to allow, for 3 consecutive scheduled *meter* readings, access to the *customer's* premises to read a *meter* and if:

- (a) the *retailer* has given the *customer* an opportunity to offer reasonable alternative arrangements for access that are acceptable to the *responsible person*; and
- (b) the *retailer* has, on each of the occasions access was denied, arranged for the *customer* to be given a notice requesting access to the *meter* at the premises and advising of the *retailer's* ability to arrange for *de-energisation*; and
- (c) the *retailer* has used its best endeavours to contact the *customer*:
 - (i) in person; or
 - (ii) by telephone (in which case contact is, if the telephone is unanswered, taken to have occurred only if the *customer* acknowledges receipt of a message); or
 - (iii) by facsimile or other electronic means (in which case contact is taken to have occurred only if the *customer* acknowledges receipt of the message); and
- (d) the *retailer* has given the *customer* a notice of its intention to arrange for *de-energisation*; and
- (e) the *retailer* has given the *customer* a *disconnection warning notice* after the expiry of the period referred to in the notice of its intention; and
- (f) the *customer* has not rectified the matter that gave rise to the right to arrange for *de-energisation*.

(2) **Application of this clause to standard retail contracts**

This clause applies in relation to *standard retail contracts*.

²⁸⁵ The Victorian Government has indicated that prepayment meters will continue to be prohibited. Further, under the ERC v10, the provision of a security deposit is not a matter which can be varied in a market retail contract.

²⁸⁶ Clause 13.3 of the ERC v10 is substantially equivalent to Rule 113 of the NERR except that the disconnection warning notice under the ERC v10 must specify a date for disconnection being no less than 7 business days after the receipt of the notice, whereas the NERR allows 5 business days after the date of issues of the notice (see comments regarding the differences in calculation of time periods above).

(3) **Application of this clause to market retail contracts**

This clause applies in relation to *market retail contracts*.

114 De-energisation for illegally using energy²⁸⁷

(1) A *retailer* may make immediate arrangements for *de-energisation* of a *customer's* premises if there has been:

- (a) fraudulent acquisition of *energy* at those premises; or
- (b) intentional consumption of *energy* at those premises otherwise than in accordance with the *energy laws*.

(2) No *disconnection warning notice* or other notice is required for *de-energisation* under this clause.

(3) **Application of this clause to standard retail contracts**

This clause applies in relation to *standard retail contracts*.

(4) **Application of this clause to market retail contracts**

This clause applies in relation to *market retail contracts*.

115 De-energisation for non-notification by move-in or carry-over customers²⁸⁸

(1) The *financially responsible retailer* for a *move-in customer's* or *carry-over customer's* premises may arrange for the *de-energisation* of the premises if the *customer* refuses or fails to take appropriate steps to enter into a *customer retail contract* as soon as practicable.²⁸⁹

(2) A *financially responsible retailer* must not arrange for *de-energisation* under this clause unless:

- (a) the *retailer* has given the *customer* a notice of its intention to do so; and
- (b) the *retailer* has given the *customer* a *disconnection warning notice* after the expiry of the period referred to in the notice of its intention, not being less than 5 business days after the notice of its intention was given.

²⁸⁷ There is no equivalent ground for disconnection under the ERC v10; instead section 29 of the ERC v10 permits the retailer to take debt recovery action. Rule 114 of the NERR will be included in the new draft instrument.

²⁸⁸ There is no equivalent ground for disconnection under the ERC v10. Move-in and carry-over customers are dealt with in section 39 of the Electricity Industry Act and section 46 of the Gas Industry Act. Rule 115 of the NERR will be included in the new draft instrument.

²⁸⁹ The wording in section 54 (6) of the NERL has been included.

- (3) The *financially responsible retailer* may commence *de-energisation* procedures even if the *retailer* is unable to ascertain the name or other particulars of the person consuming *energy* at the premises.
- (4) If a *customer's* premises are de-energised in accordance with this clause, the deemed contract that is in effect under section 39 of the *Electricity Industry Act* or section 46 of the *Gas Industry Act* will come to an end.

Note:

Section 39 of the *Electricity Industry Act* and section 46 of the *Gas Industry Act* provide for deemed contracts for supply and sale of *energy* to apply between retailers and *customers* who take a supply of *energy* without having a retail contract in place. Section 39(5) of the *Electricity Industry Act* and section 46(5) of the *Gas Industry Act* authorises the *Commission* to decide, and provide for the licence of a licensee, conditions setting out events on the happening of which a deemed contract under section 39 and 46 may come to an end.²⁹⁰

116 When retailer must not arrange de-energisation²⁹¹

(1) Restrictions on de-energisation

Despite any other provisions of this Division but subject to subclauses (2), (3) and (4), a *retailer* must not arrange for the *de-energisation* of a *customer's* premises to occur:

- (a) where the premises are registered under Part 7 as having *life support equipment*;²⁹² or
- (b) where the *customer* has made a complaint, directly related to the reason for the proposed *de-energisation*, to the *retailer* under the *retailer's* standard complaints and dispute resolution procedures, and the complaint remains unresolved; or
- (c) where the *customer* has made a complaint, directly related to the reason for the proposed *de-energisation*, to the *energy ombudsman*, and the complaint remains unresolved; or
- (d) where the *customer* is a *hardship customer* or *residential customer* and is adhering to a *payment plan* under clause 33 or 72; or
- (e) where the *customer* informs the *retailer*, or the *retailer* is otherwise aware, that the *customer* has formally applied for assistance to an organisation responsible for a rebate, concession or relief available under any

²⁹⁰ Clause 115(4) was inserted into the draft instrument to provide that if a customer's premises are de-energised in accordance with the carry-over or move-in provisions, a deemed contract between a retailer and a customer under section 39 of the EIA or section 46 of the GIA will come to an end. We recognise that amendments may be required to retailers' licences so that clause 115(4) is effective.

²⁹¹ Rule 116 of the NERR is organised differently to the ERC v10, however it achieves broadly equivalent outcomes except where noted in the drafting notes.

²⁹² Clause 14(b)(c) of the ERC v10 refers to a life support machine in relation to electricity and a '*medical exemption supply address*' for gas.

government funded *energy* charge rebate, concession or relief scheme and a decision on the application has not been made;²⁹³ or

- (f) on the ground that the *customer* has failed to pay an amount on a bill that relates to goods and services other than for the sale of *energy*; or
- (g) for non-payment of a bill where the amount outstanding is less than \$120 (exclusive of GST);²⁹⁴ or
- (h) [Not used]²⁹⁵
- (i) during a protected period.²⁹⁶

(2) **Restrictions not applying for non-access to meter**

The restrictions in subclauses (1) (d), (e) and (f) do not apply if the reason for *de-energisation* was failure to provide access to a *meter*.

(3) **Non-application of restrictions where de-energisation requested by customer**

The restrictions in subclause (1) do not apply if the *customer* has requested *de-energisation*.

(4) **Non-application of restrictions where illegal use of energy**

Apart from the restriction in subclause (1) (a) relating to *life support equipment*, the restrictions in subclause (1) do not apply in relation to *de-energisation* of a *customer's* premises for:

- (a) the fraudulent acquisition of *energy* at those premises; or
- (b) the intentional consumption of *energy* at those premises otherwise than in accordance with the *energy laws*.

(5) **Application of this clause to standard retail contracts**

This clause applies in relation to *standard retail contracts*.

(6) **Application of this clause to market retail contracts**

This clause applies in relation to *market retail contracts*.

²⁹³ Clause 14(a) of the ERC v10 refers only to domestic customers rather than '*customers*'. Further the ERC v10 only refers to an application to the Utility Relief Grant.

²⁹⁴ Clause 14(a) of the ERC v10 prohibits disconnection for non-payment of an amount less than \$120.

²⁹⁵ This clause has been deleted to address AGL's submission that a local instrument is required to declare the applicability of '*extreme weather events*' in Victoria and if no such instrument is declared then the obligations surrounding '*extreme weather events*' will not be effective.

²⁹⁶ Clause 14(d) of the ERC v10 prohibits disconnection after 2pm for domestic customers and 3pm for business customers. Protected period under NERR means no disconnection before 8am or after 3pm for all customers.

117 Timing of de-energisation where dual fuel contract²⁹⁷

(1) Definition

In this clause:

dual fuel contract means:

- (a) one *market retail contract* between a *small customer* and a *retailer* for the sale of both electricity and gas by the *retailer* to the *small customer*; or
- (b) two *market retail contracts* between the same *small customer* and the same *retailer*, one for the sale of electricity and the other for the sale of gas, by the *retailer* to the *customer*, under which a single bill is issued.

(2) Application of this clause

This clause applies where a *retailer* and a *customer* have entered into a dual fuel contract for the *customer's* premises and the *retailer* has the right to arrange for *de-energisation* of the premises under this Division.

(3) De-energisation of gas supply

Despite any other provision of this Division, the *retailer* may exercise the right to arrange for *de-energisation* of the *customer's* gas supply no sooner than seven business days after the date of receipt of the *disconnection warning notice*.

(4) De-energisation of electricity supply

The *retailer* may exercise the right to arrange for *de-energisation* of the *customer's* electricity supply in accordance with timing determined under the dual fuel contract but no earlier than 15²⁹⁸ business days after the date of the *de-energisation* of the *customer's* gas supply under subclause (3).²⁹⁹

(5) Restrictions on de-energisation not affected

Nothing in this clause affects the operation of clause 116.

²⁹⁷ This Rule is drafted differently to the ERC v10, however achieves broadly equivalent outcomes except where noted in the drafting notes.

²⁹⁸ This clause has been amended to correct a drafting error.

²⁹⁹ Clause 13.1(c)(A) of the ERC v10 provides that a retailer may disconnect a customer's gas supply no sooner than seven business days after the date of receipt of the disconnection warning and the customer's electricity supply on a day no sooner than 22 business days after the date of receipt of the disconnection warning

118 Request for de-energisation³⁰⁰

- (1) If a *customer* requests the *retailer* to arrange for *de-energisation* of the *customer's* premises, the *retailer* must use its best endeavours to arrange for:
 - (a) *de-energisation* in accordance with the *customer's* request; and
 - (b) a *meter* reading; and
 - (c) if applicable, the preparation and issue of a final bill for the premises; and
 - (d) where a *customer* can be remotely disconnected and the *retailer* believes it can do so safely, the *retailer* must arrange for *de-energisation* of the *customer's* supply address within two hours of the *customer's* request.
- (2) **Application of this clause to standard retail contracts**

This clause applies in relation to *standard retail contracts*.
- (3) **Application of this clause to market retail contracts**

This clause applies in relation to *market retail contracts*.

Division 3 Distributor de-energisation of premises³⁰¹

119 [Not used]

- (1) [Not used]
- (2) [Not used]
- (3) [Not used]

120 [Not used]

- (1) [Not used]
- (2) [Not used]
- (3) [Not used]
- (4) [Not used]

³⁰⁰ Rule 118 is substantially equivalent to clause 13.5 of the ERC v10 except that under clause 13.5, where a customer can be remotely disconnected and the retailer believes it can do so safely, the retailer must disconnect the customer's supply address within two hours.

³⁰¹ Division 3 deals with the de-energisation of premises by distributors. This Division has been omitted as the new draft instrument is limited to retailers requirements.

Division 4 Re-energisation of premises³⁰²

121 Obligation on retailer to arrange re-energisation of premises

- (1) Where a *retailer* has arranged for the *de-energisation* of a *small customer's* premises and the *customer* has within 10 business days of the *de-energisation*:
 - (a) if relevant, rectified the matter that led to the *de-energisation* or made arrangements to the satisfaction of the *retailer*; and
 - (b) made a request for *re-energisation*; and
 - (c) paid any charge for *re-energisation*;

the *retailer* must, in accordance with any requirements under the *energy laws*, initiate a request to the distributor for *re-energisation* of the premises.

- (2A) If a *small customer* whose premises have been *de-energised* is eligible for a Utility Relief Grant and, within 10 business days of the *de-energisation*, applies for such a grant, then the *small customer* is to be taken by the *retailer* to have rectified the matter that led to the *de-energisation*.³⁰³

(2) Application of this clause to standard retail contracts

This clause applies in relation to *standard retail contracts*.

(3) Application of this clause to market retail contracts

This clause applies in relation to *market retail contracts*.

122 [Not used]³⁰⁴

122A Time for re-energisation³⁰⁵

- (1) If a *customer* makes a request for *re-energisation*:
 - (a) before 3 pm on a business day, the *retailer* must arrange for re-energisation of the *customer's* premises on the day of the request; or

³⁰² Rule 121 is substantially equivalent to clause 15.1 of the ERC v10.

³⁰³ This rule has been included to reflect clause 15.1(a) bullet point 2 of the ERC v10. There is no equivalent provision in the NERR.

³⁰⁴ Rule 122 deals with re-energisation of premises by distributors. This rule has been omitted on the basis that the new draft instrument is limited to retailers requirements.

³⁰⁵ There is no provision in the NERR equivalent to clause 15.2 of the ERC v10 which provides specific timeframes in which the retailer must reconnect the customer. Clause 15.2 of the ERC v10 will be included in the new draft instrument.

- (b) after 3 pm on a business day, the *retailer* must arrange for re-energisation of³⁰⁶ the *customer's* premises on the next business day or, if the request also is made before 9 pm and the *customer* pays any applicable additional after hours reconnection charge, on the day requested by the *customer*; or
 - (c) where the *retailer* is able to reconnect the *customer* by re-energising the *customer's* premises remotely and reasonably believes that it can do so safely:
 - (i) subject to clauses (1)(a) and (b) above, the *retailer* must use its best endeavours to arrange for re-energisation of the *customer's* premises within two hours;
 - (ii) in any event, the *retailer* must pass on the request to the relevant distributor within one hour after the conclusion of the interaction during which the *customer* made the request.
- (2) A *retailer* and a *customer* may agree that later times are to apply to the *retailer*.

³⁰⁶ This clause has been amended to reflect the wording used in the NERR, namely that retailers must arrange for the distributor to re-energise the premises rather than re-energising the premises themselves.

Part 7 Life support equipment³⁰⁷

123 Application of this Part

This Part applies in relation to a *customer* who is a party to a contract with a *retailer* for the sale of *energy*, and prevails to the extent of any inconsistency with Part 6.

124 Retailer obligations

(1) Life support equipment

Where a *customer* provides a *retailer* with confirmation from a registered medical practitioner that a person residing at the *customer's* premises requires *life support equipment*, the *retailer* must:

- (a) register the premises as having *life support equipment*; and
- (b) advise the distributor that a person residing at the premises requires *life support equipment*; and
- (c) give the distributor relevant information about the premises for the purposes of updating the distributor's distribution records and registers; and
- (d) not arrange for the *de-energisation* of the premises while the person continues to reside at the premises and requires *life support equipment*; and
- (e) give the *customer* an emergency telephone contact number for the distributor (the charge for which is no more than the cost of a local call).

(2) Cessation of requirement for life support equipment

Where a *customer* whose premises have been registered under this clause advises the *retailer* that the person for whom the *life support equipment* is required has vacated the premises or no longer requires the *life support equipment*, the *retailer* must inform the distributor as soon as possible of the advice received from the *customer*.

(3) Application of this clause to standard retail contracts

This clause applies in relation to *standard retail contracts*.

(4) Application of this clause to market retail contracts

This clause applies in relation to *market retail contracts*.

³⁰⁷ Part 7 of the NERR is substantially equivalent to clause 26.7 of the ERC v10, except that clause 26.7(c) of the ERC v10 specifically requires a retailer to inform a distributor if the customer's supply address is affected by a fault.

125 **[Not used]**³⁰⁸

126 **[Not used]**

³⁰⁸ Rules 125 and 126 have been removed, as they relate to distributor's obligations. Rules 123 and 124 which relate to retailer's obligations need to be reviewed as to whether existing distributor obligations in other Victorian instruments are consistent with the new retailer obligations.

Part 8 **[Not used]**³⁰⁹

127 **[Not used]**

128 **[Not used]**

129 **[Not used]**

130 **[Not used]**

131 **[Not used]**

132 **[Not used]**

133 **[Not used]**

134 **[Not used]**

135 **[Not used]**

136 **[Not used]**

137 **[Not used]**

138 **[Not used]**

139 **[Not used]**

140 **[Not used]**

141 **[Not used]**

142 **[Not used]**

143 **[Not used]**

144 **[Not used]**

145 **[Not used]**

146 **[Not used]**

³⁰⁹ Part 8 of the NERR regulates pre-payment meter systems. Pre-payment meters are not are not currently permitted in Victoria. Part 8 will be deleted and prepayment meter provisions be introduced only if and when government policy changes.

147 [Not used]

Part 9 [Not used]

Division 1 [Not used]

148 [Not used]

Division 2 [Not used]

149 [Not used]

150 [Not used]

151 [Not used]

152 [Not used]

153 [Not used]

Division 3 [Not used]

154 [Not used]

Division 4 [Not used]

155 [Not used]

156 [Not used]

157 [Not used]

158 [Not used]

159 [Not used]

160 [Not used]

161 [Not used]

162 [Not used]

163 [Not used]

Division 5 [Not used]

164 [Not used]

Part 10 [Not used]³¹⁰

165 [Not used]

166 [Not used]

167 [Not used]

Part 11 [Not used]³¹¹

168 [Not used]

169 [Not used]

170 [Not used]

171 [Not used]

Part 12 [Not used]³¹²

172 [Not used]

173 [Not used]

³¹⁰ Part 10 of the NERR deals with the requirement of retail market performance reports by the AER. This is outside the scope of the new draft instrument.

³¹¹ Part 11 of the NERR requires the AER to provide electricity consumption benchmarks for residential customers to retailers. Retailers are required to include in a customer's bill a comparison of the customer's electricity consumption against the benchmarks and are required to represent the information in a graphical or tabular form. Energy consumption benchmarks are not required under the ERC v10. There is a Victorian requirement in relation to bill benchmarking under sections 40P and 40R of the Electricity Industry Act. These statutory requirements are not provided for in the ERC v10.

³¹² Part 12 of the NERR deals with national energy retail consultation. This is outside the scope of the new draft instrument.

Schedule 1 **Model terms and conditions for standard retail contracts**

(Clause 12)

PREAMBLE

This contract is about the sale of energy to you as a small customer at your premises. It is a standard retail contract that starts without you having to sign a document agreeing to these terms and conditions.

In addition to this contract, the energy laws and other consumer laws also contain rules about the sale of energy and we will comply with these rules in our dealings with you. For example, the Energy Retail Code ('The Code') sets out specific rights and obligations about energy marketing, payment methods and arrangements for customers experiencing payment difficulties.

You also have a separate contract with your distributor, called a customer connection contract. The customer connection contract deals with the supply of energy to your premises and can be found on your distributor's website.

More information about this contract and other matters is on our website [permitted alteration: insert retailer's website address].

1 THE PARTIES

This contract is between:

[Permitted alteration: name of *designated retailer*] who sells energy to you at your premises (in this contract referred to as "we", "our" or "us"); and

You, the customer to whom this contract applies (in this contract referred to as "you" or "your").

2 DEFINITIONS AND INTERPRETATION

- (a) Terms used in this contract have the same meanings as they have in the Code. However for ease of reference, a simplified explanation of some terms is given at the end of this contract.
- (b) Where the simplified explanations given at the end of this contract differ from the definitions in the Code, the definitions in the Code prevail.

3 DO THESE TERMS AND CONDITIONS APPLY TO YOU?

3.1 These are our terms and conditions

This contract sets out the terms and conditions for a standard retail contract for a small customer under the Code.

3.2 Application of these terms and conditions

These terms and conditions apply to you if:

- (a) you are a small customer; and
- (b) [Not used]
- (c) you request us to sell energy to you at your premises; and
- (d) you are not being sold energy for the premises under a market retail contract.

3.3 Electricity or gas

Standard retail contracts apply to electricity and gas, but some terms may be expressed to apply only to one or the other. If we are your retailer for both electricity and gas, you have a separate contract with us for each of them.

4 WHAT IS THE TERM OF THIS CONTRACT?

4.1 When does this contract start?

This contract starts on the date you satisfy any pre-conditions set out in the Code, including giving us acceptable identification and your contact details for billing purposes.

4.2 When does this contract end?

- (a) This contract ends:
 - (i) if you give us a notice stating you wish to end the contract—subject to paragraph (b), on a date advised by us of which we will give you at least 5 but no more than 20 business days notice; or
 - (ii) if you are no longer a small customer:
 - (A) subject to paragraph (b), on a date specified by us, of which we will give you at least 5 but no more than 20 business days notice; or
 - (B) if you have not told us of a change in the use of your energy— from the time of the change in use; or
 - (iii) if we both agree to a date to end the contract—on the date that is agreed; or
 - (iv) if you start to buy energy for the premises from us or a different retailer under a customer retail contract—on the date the market retail contract starts; or

- (v) if a different customer starts to buy energy for the premises—on the date that customer’s contract starts; or
 - (vi) if the premises are disconnected and you have not met the requirements in the Code for reconnection—10 business days from the date of disconnection.
- (b) If you do not give us safe and unhindered access to the premises to conduct a final meter reading (where relevant), this contract will not end under paragraph (a) (i) or (ii) until we have issued you a final bill and you have paid any outstanding amount for the sale of energy.
 - (c) Rights and obligations accrued before the end of this contract continue despite the end of the contract, including any obligations to pay amounts to us.

4.3 Vacating your premises

- (a) If you are vacating your premises, you must provide your forwarding address to us for your final bill in addition to a notice under clause 4.2(a)(i) of this contract.
- (b) When we receive the notice, we must use our best endeavours to arrange for the reading of the meter on the date specified in your notice (or as soon as possible after that date if you do not provide access to your meter on that date) and send a final bill to you at the forwarding address stated in your notice.
- (c) You will continue to be responsible for charges for the premises until your contract ends in accordance with clause 4.2 of this contract.

5 SCOPE OF THIS CONTRACT

5.1 What is covered by this contract?

- (a) Under this contract we agree to sell you energy at your premises. We also agree to meet other obligations set out in this contract and to comply with the energy laws.
- (b) In return, you agree:
 - (i) to be responsible for charges for energy supplied to the premises until this contract ends under clause 4.2 even if you vacate the premises earlier; and
 - (ii) to pay the amounts billed by us under this contract; and
 - (iii) to meet your obligations under this contract and the *energy laws*.

5.2 What is not covered by this contract?

This contract does not cover the physical connection of your premises to the distribution system, including metering equipment and the maintenance of that connection and the supply of energy to your premises. This is the role of your distributor under a separate contract called a customer connection contract.

6 YOUR GENERAL OBLIGATIONS

6.1 Full information

You must give us any information we reasonably require for the purposes of this contract. The information must be correct, and you must not mislead or deceive us in relation to any information provided to us.

6.2 Updating information

You must tell us promptly if information you have provided to us changes, including if your billing address changes or if your use of energy changes (for example, if you start running a business at the premises).

6.3 Life support equipment

- (a) If a person living at your premises requires life support equipment, you must register the premises with us or your distributor. To register, you will need to give written confirmation from a registered medical practitioner of the requirement for life support equipment at the premises.
- (b) You must tell us or your distributor if the life support equipment is no longer required at the premises.

6.4 Obligations if you are not an owner

If you cannot meet an obligation relating to your premises under this contract because you are not the owner you will not be in breach of the obligation if you take all reasonable steps to ensure that the owner or other person responsible for the premises fulfils the obligation.

7 OUR LIABILITY

- (a) The quality and reliability of your electricity supply and the quality, pressure and continuity of your gas supply is subject to a variety of factors that are beyond our control as your retailer, including accidents, emergencies, weather conditions, vandalism, system demand, the technical limitations of the distribution system and the acts of other persons (such as your distributor), including at the direction of a relevant authority.
- (b) To the extent permitted by law, we give no condition, warranty or undertaking, and we make no representation to you, about the condition or suitability of energy, its quality, fitness for purpose or safety, other than those set out in this contract.

- (c) [Not used].³¹³

8 PRICE FOR ENERGY AND OTHER SERVICES

8.1 What are our tariffs and charges?

- (a) Our tariffs and charges for the sale of energy to you under this contract are our standing offer prices. These are published on our website and include your distributor's charges.
- (b) Different tariffs and charges may apply to you depending on your circumstances. The conditions for each tariff and charge are set out in our standing offer prices.

Note:

We do not impose any charges for the termination of this contract.

8.2 Changes to tariffs and charges

- (a) If we vary our standing offer prices, we will publish the variation in a newspaper and on our website at least 10 business days before it starts. We will also include details with your next bill if the variation affects you.
- (b) Our standing offer prices will not be varied more often than once every 6 months.

8.3 Variation of tariff due to change of use

If a change in your use of energy means you are no longer eligible for the particular tariff you are on, we may transfer you to a new tariff under our standing offer prices:

- (a) if you notify us there has been a change of use—from the date we notify you of the new tariff³¹⁴; or
- (b) if you have not notified us of the change of use—retrospectively from the date the change of use occurred.
- (c) This clause does not limit the obligations we have concerning variations to our standing offer prices³¹⁵ contained in the energy laws.³¹⁶

³¹³ Clause 7(c) refers to the limitation of liability contained in the NERL. This clause has been omitted as the NERL is not operative in Victoria.

³¹⁴ This clause has been amended to address the Consumer Groups' submission that it was unclear when clause 8.3(a) applied.

³¹⁵ This clause has been amended to correct a drafting error.

³¹⁶ This clause has been included to clarify that retailers remain bound by the statutory requirements for variation contained in the Electricity Industry Act and Gas Industry Act.

8.4 Variation of tariff or type of tariff on request

- (a) If you think you satisfy the conditions applying to another tariff or type of tariff under our standing offer prices, you can ask us to review your current circumstances to see whether that tariff or type of tariff can apply to you.
- (b) If you meet the requirements for another tariff or type of tariff and request us to do so, we must:
 - (i) transfer you to that other tariff within 10 business days; or
 - (ii) transfer you to that other type of tariff from the date the meter is read or the type of meter is changed (if needed).

8.5 Changes to tariffs or type of tariff during a billing cycle

If a tariff applying to you changes during a billing cycle, we will calculate your next bill on a proportionate basis.

8.6 GST

- (a) Amounts specified in the standing offer prices from time to time and other amounts payable under this contract may be stated to be exclusive or inclusive of GST. Paragraph (b) applies unless an amount is stated to include GST.
- (b) Where an amount paid by you under this contract is payment for a “taxable supply” as defined for GST purposes, to the extent permitted by law, that payment will be increased so that the cost of the GST payable on the taxable supply is passed on to the recipient of that taxable supply.

9 BILLING

9.1 General

We will send a bill to you as soon as possible after the end of each billing cycle. We will send the bill:

- (a) to you at the address nominated by you; or
- (b) to a person authorised in writing by you to act on your behalf at the address specified by you.

9.2 Calculating the bill

Bills we send to you (‘your bills’) will be calculated on:

- (a) the amount of energy consumed at your premises during the billing cycle (using information obtained from reading your meter or otherwise in accordance with the Code); and

- (b) the amount of fees and charges for any other services provided under this contract during the billing cycle; and
- (c) the charges payable for services provided by your distributor, including connection charges if you have asked for a new connection or connection alteration and have not made alternative arrangements with your distributor.

9.3 Estimating the energy usage

- (a) We may estimate the amount of energy consumed at your premises if your meter cannot be read, if your metering data is not obtained (for example, if access to the meter is not given or the meter breaks down or is faulty), or if you otherwise give us your explicit informed³¹⁷ consent.
- (b) If we estimate the amount of energy consumed at your premises to calculate a bill, we must:
 - (i) clearly state on the bill that it is based on an estimation; and
 - (ii) when your meter is later read, adjust your bill for the difference between the estimate and the energy actually used.
- (c) If the later meter read shows that you have been undercharged, we will allow you to pay the undercharged amount in instalments, over the same period of time during which the meter was not read (if less than 12 months), or otherwise over 12 months.
- (d) If the meter has not been read due to your actions, and you request us to replace the estimated bill with a bill based on an actual reading of the meter, we will comply with your request but may charge you any cost we incur in doing so.

9.4 Your historical billing information

Upon request, we must give you information about your billing history for the previous 2 years free of charge. However, we may charge you if we have already given you this information in the previous 12 months, or if you require information going back more than 2 years.

9.5 Bill smoothing

We may, where you agree, arrange for you to pay your bills under a bill smoothing arrangement, which is based on a 12 monthly estimate of your energy consumption.

³¹⁷ This subclause has been amended to reflect the inclusion of a requirement for 'explicit informed consent' in clause 21.

10 PAYING YOUR BILL

10.1 What you have to pay

You must pay to us the amount shown on each bill by the date for payment (the pay-by date) on the bill. The pay-by date will be no earlier than 13 business days from the date on which we issue your bill.

10.2 Issue of reminder notices

If you have not paid your bill by the pay-by date, we will send you a reminder notice that payment is required. The reminder notice will give you a further due date for payment which will be not less than 6 business days after we issue the notice.

10.3 Difficulties in paying

- (a) If you have difficulties paying your bill, you should contact us as soon as possible. We will provide you with information about payment options.
- (b) If you are a residential customer and have told us that you have difficulty paying your bill, we must offer you the option of paying your bill under a payment plan. However, we are not obliged to do so if you have had 2 payment plans cancelled due to non-payment in the previous 12 months or have been convicted of an offence involving the illegal use of energy in the previous 2 years.
- (c) Additional protections may be available to you under our Customer Hardship Policy and under the Code if you are a customer experiencing payment difficulties due to hardship. A copy of our Customer Hardship Policy is available on our website.

10.4 [Not used]³¹⁸

11 METERS

- (a) You must allow safe and unhindered access to your premises for the purposes of reading and maintaining the meters (where relevant).³¹⁹
- (b) We will use our best endeavours to ensure that a meter reading is carried out as frequently as is needed to prepare your bills, consistently with the metering rules and in any event at least once every 12 months.

³¹⁸ Clause 10.4 provides for late payment fees. In Victoria, section 40C of the Electricity Industry Act and section 48B of the Gas Industry Act prohibit a retailer from including a term or condition in a customer retail contract in relation to fees for late payment of bills.

³¹⁹ Standard Retail Contract clause 11(a) is substantially equivalent to clause 25 of the ERC v10 except that the Standard Retail Contract does not require the retailer's representative to carry identification.

12 UNDERCHARGING AND OVERCHARGING

12.1 Undercharging

- (a) If we have undercharged you, we may recover the undercharged amount from you. If we recover an undercharged amount from you:
 - (i) we will not charge interest on the undercharged amount; and
 - (ii) we will offer you time to pay the undercharged amount in instalments over the same period of time during which you were undercharged (if less than 12 months), or otherwise over 12 months.
- (b) The maximum amount we can recover from you is limited to the amount that has been undercharged in the 9 months immediately before we notify you, unless the undercharge is your fault, or results from your unlawful act or omission.

12.2 Overcharging

- (a) Where you have been overcharged by less than [required alteration: insert current overcharge threshold], and you have already paid the overcharged amount, we must credit that amount to your next bill.
- (b) Where you have been overcharged by [required alteration: insert current overcharge threshold] or more, we must inform you within 10 business days of our becoming aware of the overcharge and, if you have already paid that amount, we must credit that amount to your next bill. However, if you request otherwise, we will comply with that request.
- (c) If you have stopped buying energy from us, we will use our best endeavours to pay the overcharged amount to you within 10 business days.
- (d) If you have been overcharged as a result of your own fault or unlawful act or omission, we may limit the amount we credit or pay you to the amount you were overcharged in the last 12 months.

12.3 Reviewing your bill

- (a) If you disagree with the amount you have been charged, you can ask us to review your bill in accordance with our standard complaints and dispute resolution procedures.
- (b) If you ask us to, we must arrange for a check of the meter reading or metering data or for a test of the meter in reviewing the bill. You may be liable for the cost of the check or test, however we cannot request payment in advance.³²⁰

³²⁰ This clause has been amended to address the Consumer Groups' submission that clause 29(5)(b) of the draft ERC v11 and clause 12.3(b) of Schedule 1 were contradictory.

- (c) If your bill is being reviewed, you are still required to pay any other bills from us that are due for payment and the lesser of:
 - (i) the portion of the bill that you do not dispute; or
 - (ii) an amount equal to the average of your bills in the last 12 months.

13 SECURITY DEPOSITS

13.1 Security deposit

We may require that you provide a security deposit. The circumstances in which we can require a security deposit and the maximum amount of the security deposit are governed by the Code.

13.2 Interest on security deposits

Where you have paid a security deposit, we must pay you interest on the security deposit at a rate and on terms required by the Code.

13.3 Use of a security deposit

- (a) We may use your security deposit, and any interest earned on the security deposit, to offset any amount you owe under this contract:
 - (i) if you fail to pay a bill and as a result we arrange for the disconnection of your premises; or
 - (ii) in relation to a final bill (i.e. a bill we issue when you vacate the premises or when you stop purchasing energy from us at your premises or when you request that your premises be disconnected).
- (b) If we use your security deposit or any accrued interest to offset amounts owed to us, we will advise you within 10 business days.

13.4 Return of security deposit

- (a) We must return your security deposit and any accrued interest in the following circumstances:
 - (i) you complete 1 years' payment (in the case of residential customers) or 2 years' payment (in the case of *business customers*) by the pay-by dates on our initial bills; or
 - (ii) subject to clause 14.3 of this contract, you stop purchasing energy at the relevant premises under this contract.
- (b) If you do not give us any reasonable instructions, we will credit the amount of the security deposit, together with any accrued interest, to your next bill.

14 DISCONNECTION OF SUPPLY

14.1 When can we arrange for disconnection?

Subject to us satisfying the requirements in the Code, we may arrange for the disconnection of your premises if:

- (a) you do not pay your bill by the pay-by date and, if you are a residential customer, you:
 - (i) fail to comply with the terms of an agreed payment plan; or
 - (ii) do not agree to an offer to pay the bill by instalments, or having agreed, you fail to comply with the instalment arrangement;
- (b) you do not provide a security deposit or acceptable identification³²¹ we are entitled to require from you; or
- (c) you do not give access to your premises to read a meter (where relevant) for 3 consecutive meter reads; or
- (d) there has been illegal or fraudulent use of energy at your premises in breach of clause 16 of this contract; or
- (e) we are otherwise entitled or required to do so under the Code or by law.

14.2 Notice and warning of disconnection

Before disconnecting your premises, we must comply with relevant warning notice requirements and other provisions in the Code. However, we are not required to provide a warning notice prior to disconnection in certain circumstances (for example, where there has been illegal or fraudulent use of energy at your premises or where there is an emergency or health and safety issue).

14.3 When we must not arrange disconnection

- (a) Subject to paragraph (b), your premises may not be disconnected during the following times ('the protected period'):
 - (i) on a business day before 8.00am or after 2.00pm for a residential customer or 3.00pm for a *business customer*; or
 - (ii) on a Friday or the day before a public holiday; or
 - (iii) on a weekend or a public holiday; or
 - (iv) on the days between 20 December and 31 December (both inclusive) in any year; or

³²¹ This subclause has been amended to address Consumer Groups' submission that clause 14.1 inadequately reflected when a retailer can disconnect a customer.

- (v) [Not used].
- (b) Your premises may be disconnected within the protected period:
 - (i) for reasons of health and safety; or
 - (ii) in an emergency; or
 - (iii) as directed by a relevant authority; or
 - (iv) if permitted under your customer connection contract or under the energy laws;³²² or
 - (v) if you request us to arrange disconnection within the protected period; or
 - (vi) if your premises contain a commercial business that only operates within the protected period and where access to the premises is necessary to effect disconnection; or
 - (vii) where the premises are not occupied.

15.1 RECONNECTION AFTER DISCONNECTION

- (a) We must request your distributor to reconnect your premises if, within 10 business days of your premises being disconnected:
 - (i) you ask us to arrange for reconnection of your premises; and
 - (ii) you rectify the matter that led to the disconnection; and
 - (iii) you pay any reconnection charge (if requested).
- (b) We may terminate this contract 10 business days following disconnection if you do not meet the requirements in paragraph (a).

15.2 Timeframes for re-energisation

If you ask us to re-energise your premises:

- (a) before 3 pm on a business day, we must arrange for re-energisation of your premises on the day of the request; or
- (b) after 3 pm on a business day, we must arrange for re-energisation of your premises on the next business day or, if the request also is made before 9 pm and you pay any applicable additional after hours reconnection charge, on the day of the request; or

³²² This clause has been amended to reflect the fact that distributor regulatory arrangements have not been aligned with the NECF.

- (c) where we are able to reconnect you by re-energising your premises remotely and reasonably believe that we can do so safely:
 - (i) we must use our best endeavours to re-energise your premises within two hours; or
 - (ii) in any event, we must pass on the request to the relevant distributor within one hour of the request.

unless you agree otherwise.³²³

16 WRONGFUL AND ILLEGAL USE OF ENERGY

16.1 Use of energy

You must not, and must take reasonable steps to ensure others do not:

- (a) illegally use energy supplied to your premises; or
- (b) interfere or allow interference with any energy equipment that is at your premises except as may be permitted by law; or
- (c) use the energy supplied to your premises or any energy equipment in a manner that:
 - (i) unreasonably interferes with the connection or supply of energy to another customer; or
 - (ii) causes damage or interference to any third party; or
- (d) allow energy purchased from us to be used otherwise than in accordance with this contract and the Code; or
- (e) tamper with, or permit tampering with, any meters or associated equipment.

17 NOTICES AND BILLS³²⁴

- (a) Notices and bills under this contract must be sent in writing, unless this contract or the Code say otherwise.
- (b) A notice or bill sent under this contract is taken to have been received by you or by us (as relevant):
 - (i) on the date it is handed to the party, left at the party's premises (in your case) or one of our offices (in our case) or successfully faxed to

³²³ This clause has been inserted to address the Consumer Groups' submission that there is no clause in the Standard Retail Contract model terms that sets out the reconnection times.

³²⁴ Clause 17 of the Standard Retail Contract is substantially equivalent to clause 32 of the ERC v10 which sets out the acceptable methods of providing notice.

the party (which occurs when the sender receives a transmission report to that effect); or

- (ii) on the date 2 business days after it is posted; or
 - (iii) on the date of transmission (unless the sender receives notice that delivery did not occur or has been delayed) if sent electronically and the use of electronic communication has been agreed between us.
- (c) Our contact details for you to contact us or send us a notice are as set out in our bill to you, or as notified to you from time to time.

18 PRIVACY ACT NOTICE

We will comply with all relevant privacy legislation in relation to your personal information. You can find a summary of our privacy policy on our website. If you have any questions, you can contact our privacy officer.

19 COMPLAINTS AND DISPUTE RESOLUTION

19.1 Complaints

If you have a complaint relating to the sale of energy by us to you, or this contract generally, you may lodge a complaint with us in accordance with our standard complaints and dispute resolution procedures.

Note:

Our standard complaints and dispute resolution procedures are published on our website.

19.2 Our obligations in handling complaints

If you make a complaint, we must respond to your complaint within the required timeframes set out in our standard complaints and dispute resolution procedures and inform you:

- (a) of the outcome of your complaint and the reasons for our decision; and
- (b) that if you are not satisfied with our response, you have a right to refer the complaint to [required alteration: insert name of relevant *energy ombudsman*].

20 FORCE MAJEURE³²⁵

20.1 Effect of force majeure event

If either party to this contract cannot meet an obligation under this contract because of an event outside the control of that party ('a force majeure event'):

- (a) the obligation, other than an obligation to pay money, is suspended to the extent it is affected by the force majeure event for as long as the force majeure event continues; and
- (b) the affected party must use its best endeavours to give the other party prompt notice of that fact including full particulars of the event, an estimate of its likely duration, the extent to which the affected party's obligations are affected and the steps being taken to remove, overcome or minimise those effects.

20.2 Deemed prompt notice

If the effects of a force majeure event are widespread, we will be deemed to have given you prompt notice if we make the necessary information available by way of a 24 hour telephone service within 30 minutes of being advised of the event or otherwise as soon as practicable.

20.3 Obligation to overcome or minimise effect of force majeure event

A party that claims a force majeure event must use its best endeavours to remove, overcome or minimise the effects of that event as soon as practicable.

20.4 Settlement of industrial disputes

Nothing in this clause requires a party to settle an industrial dispute that constitutes a force majeure event in any manner other than the manner preferred by that party.

21 APPLICABLE LAW

The laws of Victoria govern this contract.

22 RETAILER OF LAST RESORT EVENT

If we are no longer entitled by law to sell energy to you due to a Retailer of Last Resort (RoLR) event occurring in relation to us, we are required under the energy

³²⁵ The NERR does not contain a rule in relation to force majeure events like the ERC v10. However, clause 20 of the Standard Retail Contract is very similar to clause 18 of the ERC v10 except that the ERC v10 does permit the suspension of the obligation to pay money. The NERR does not contain equivalent provisions to clause 18(c) of the ERC v10 which permits the retailer and customer to agree that the retailer is not to have the benefit of the force majeure provisions or clause 18(e) which clarifies that clause 188 does not exclude the operation of section 120 of the National Electricity Law or for gas, sections 232 or 233 of the Gas Industry Act or section 33 of the *Gas Safety Act 1997*.

laws to provide relevant information (including your name, billing address and metering identifier) to the entity appointed as the relevant designated retailer for the RoLR event and this contract will come to an end.

23 GENERAL

23.1 Our obligations

Some obligations placed on us under this contract may be carried out by another person. If an obligation is placed on us to do something under this contract, then:

- (a) we are taken to have complied with the obligation if another person does it on our behalf; and
- (b) if the obligation is not complied with, we are still liable to you for the failure to comply with this contract.

23.2 Amending this contract

- (a) This contract may only be amended in accordance with the procedures set out in the *Electricity Industry Act* and *Gas Industry Act*.
- (b) We must publish any amendments to this contract on our website.

Simplified explanation of terms

billing cycle means the regular recurrent period for which you receive a bill from us;

business day means a day other than a Saturday, a Sunday or a public holiday;

Code means the Energy Retail Code made by the Essential; Services *Commission*;

customer means a person who buys or wants to buy energy from a retailer;

customer connection contract means a contract between you and your distributor relating to the distribution or supply of energy by the distributor to your premises and includes a deemed distribution contract arising under section 40A of the *Electricity Industry Act* or section 48 of the *Gas Industry Act*;

designated retailer means the *financially responsible retailer* for the premises (where you have an existing connection) or the local area retailer (where you do not have an existing connection) for your premises;

disconnection means an action to prevent the flow of energy to the premises, but does not include an interruption;

distributor means the person who operates the system that connects your premises to the distribution network;

Electricity Industry Act means the *Electricity Industry Act 2000* (Vic).

emergency means an emergency due to the actual or imminent occurrence of an event that in any way endangers or threatens to endanger the safety or health of any person, or normal operation of the distribution system or transmission system, or that destroys or damages, or threatens to destroy or damage, any property;

energy means electricity or gas;

energy laws means national and State and Territory laws and rules relating to energy and the legal instruments made under those laws and rules;

force majeure event means an event outside the control of a party;

Gas Industry Act means the *Gas Industry Act 2001* (Vic).

GST has the meaning given in the GST Act (*A New Tax System (Goods and Services Tax) Act 1999* (Cth));

relevant authority means any person or body who has the power under law to direct us, including the Australian Energy Market Operator and State or Federal Police;

residential customer means a person who purchases energy principally for personal, household or domestic use at their premises;

retailer means a person that is authorised to sell energy to customers;

RoLR event means an event that triggers the operation of the Retailer of Last Resort scheme under the energy laws;

security deposit means an amount of money paid to us as security against non-payment of a bill in accordance with the Code;

small customer means:

- (a) a residential customer; or
- (b) a business customer who consumes energy at or below a level determined under the Electricity Industry Act or the Gas Industry Act;

standing offer prices means tariffs and charges that we charge you for or in connection with the sale and supply of energy. These are published on our website.

Schedule 2 [Not used]³²⁶

³²⁶ Schedule 2 has been deleted on the basis that connection contracts relate to obligations of distributors.

Schedule 3 Transitional Provisions³²⁷

(1) Standing offers

Each *retailer* that is required to publish a standing offer under section 35(1)(b) of the *Electricity Industry Act* or section 42(1)(b) of the *Gas Industry Act* must, within 60 days after the date on which this Code comes into operation (the commencement date):

- (a) adopt the model terms set out in Schedule 1, varied to incorporate any permitted alterations or required alterations, and publish the model terms as so adopted in the Government Gazette as a variation to its existing standing offer in accordance with section 35(4) of the *Electricity Industry Act* and section 42(4) of the *Gas Industry Act*; or
- (b) otherwise vary its existing standing offer so that it complies with the requirements of this Code and:
 - (i) submit the varied standing offer for approval by the *Commission*; and
 - (ii) after obtaining the *Commission's* approval, publish the varied standing offer in the Government Gazette,

in accordance with section 35(4) of the *Electricity Industry Act* and section 42(4) of the *Gas Industry Act*.

- (c) If any provision of a *retailer's* standing offer in existence on the commencement date does not comply with any provision of this Code relating to the form or content of the *retailer's* standing offer, the relevant provision of this Code will be deemed not to apply to the *retailer* until the date which is 60 days after the commencement date.
- (d) Paragraph (c) does not relieve the *retailer* from the obligation to comply with the provisions of this Code that apply to standard retail contracts and that impose obligations on the *retailer* independently of the form or content of the *retailer's* standing offer.

(2) Market contracts

- (a) A contract which is a 'market contract' for the purpose of this Code as in effect immediately before the commencement date is taken to be a 'market retail contract' for the purpose of this Code as in effect on and from the commencement date.
- (b) The terms and conditions set out in a *market retail contract* entered into on or after the commencement date must be consistent with the requirements of this Code that apply to *market retail contracts*.

³²⁷ The Commission has inserted transitional arrangements into Schedule 3 to provide for the transition of existing standing offer and market contracts.

- (c) The terms and conditions set out in a *market retail contract* that is in existence on the commencement date must be varied, or must be replaced by a new market retail contract, so that they are consistent with the requirements of this Code that apply to *market retail contracts* on or before the date which is two years after the commencement date.
- (d) Paragraph (c) does not relieve the retailer from the obligation to comply with the provisions of this Code despite those provisions being inconsistent with a term or condition included in the *retailer's market retail contract*.

Note

The effect of section 36 of the *Electricity Industry Act* and section 43 of the *Gas Industry Act*, read with clause 15 of this Code, is that where a term or condition set out in a *market retail contract* is inconsistent with a requirement of this Code that applies to market retail contracts, the requirement of the Code applies in place of the inconsistent term or condition.

Schedule 4³²⁸ Residential Electricity Standing Offer

[RETAILER NAME]
STANDING/RELEVANT PUBLISHED OFFER – ELECTRICITY RESIDENTIAL
DISTRIBUTION ZONE –
DATE OF PUBLICATION -

<i>Residential, single rate</i>	Tariff	Unit	Ex GST	Inc GST
Domestic – General	First [] kWh/qtr	c/kWh		
	Next [] kWh/qtr	c/kWh		
	Balance kWh/qtr	c/kWh		
	All consumption	c/kWh		
	Supply charge	\$/day		

<i>Residential, two-rate</i>	Tariff	Unit	Ex GST	Inc GST
Residential Domestic – General plus hot water and heating	Peak - First [] kWh/qtr	c/kWh		
	Peak - Next [] kWh/qtr	c/kWh		
	Peak – Balance kWh/qtr	c/kWh		
	Off-peak - First [] kWh/qtr	c/kWh		
	Off-peak - Next [] kWh/qtr	c/kWh		
	Off-peak – Balance kWh/qtr	c/kWh		
	All consumption	c/kWh		
	Supply charge	\$/day		

<i>Residential, two-rate Jemena and United Energy DB only</i>	Tariff	Unit	Ex GST	Inc GST
Residential Domestic – General plus hot water and heating (all except J6/JT)	Peak - First [] kWh/qtr	c/kWh		
	Peak - Next [] kWh/qtr	c/kWh		
	Peak – Balance kWh/qtr	c/kWh		
	Off-peak – First [] kWh/qtr	c/kWh		
	Off-peak - Next [] kWh/qtr	c/kWh		
	Off-peak – Balance kWh/qtr	c/kWh		
	All consumption	c/kWh		
	Supply charge	\$/day		

³²⁸ Schedule 4 is taken from Schedule A in Guideline 19.

Residential Domestic – General plus hot water and heating (J6/JT)	Peak - First []kWh/qtr	c/kWh		
	Peak - Next []kWh/qtr	c/kWh		
	Peak – Balance kWh/qtr	c/kWh		
	Off-peak – First []kWh/qtr	c/kWh		
	Off-peak - Next []kWh/qtr	c/kWh		
	Off-peak – Balance kWh/qtr	c/kWh		
	All consumption	c/kWh		
	Supply charge	\$/day		

<i>Residential, time-of-use</i>	Tariff	Unit	Ex GST	Inc GST
Domestic – Time of Use	Peak - First []kWh/qtr	c/kWh		
	Peak - Next []kWh/qtr	c/kWh		
	Peak – Balance kWh/qtr	c/kWh		
	Off-peak – First []kWh/qtr	c/kWh		
	Off-peak - Next []kWh/qtr	c/kWh		
	Off-peak – Balance kWh/qtr	c/kWh		
	All consumption	c/kWh		
	Supply charge	\$/day		

**[RETAILER NAME]
STANDING/RELEVANT PUBLISHED OFFER – ELECTRICITY SMALL BUSINESS
DISTRIBUTION ZONE –
DATE OF PUBLICATION -**

<i>Small business, single-rate</i>	Tariff	Unit	Ex GST	Inc GST
Business – General	First [] kWh/qtr	c/kWh		
	Next [] kWh/qtr	c/kWh		
	Balance kWh/qtr	c/kWh		
	All consumption	c/kWh		
	Supply charge	\$/day		

<i>Small business, two-rate</i>	Tariff	Unit	Ex GST	Inc GST
Business – General plus Heating	Peak - First [] kWh/qtr	c/kWh		
	Peak - Next [] kWh/qtr	c/kWh		
	Peak – Balance kWh/qtr	c/kWh		
	Off-peak - First [] kWh/qtr	c/kWh		
	Off-peak - Next [] kWh/qtr	c/kWh		
	Off-peak – Balance kWh/qtr	c/kWh		
	All consumption	c/kWh		
	Supply charge	\$/day		

<i>Small business, time-of-use</i>	Tariff	Unit	Ex GST	Inc GST
Business – Time of Use 5 Days	Peak - First [] kWh/qtr	c/kWh		
	Peak - Next [] kWh/qtr	c/kWh		
	Peak – Balance kWh/qtr	c/kWh		
	Off-peak - First [] kWh/qtr	c/kWh		
	Off-peak - Next [] kWh/qtr	c/kWh		
	Off-peak – Balance kWh/qtr	c/kWh		
	All consumption	c/kWh		
	Supply charge	\$/day		
Business – Time of Use 7 Days	Peak - First [] kWh/qtr	c/kWh		
	Peak - Next [] kWh/qtr	c/kWh		
	Peak – Balance kWh/qtr	c/kWh		
	Off-peak - First [] kWh/qtr	c/kWh		
	Off-peak - Next [] kWh/qtr	c/kWh		
	Off-peak – Balance kWh/qtr	c/kWh		
	All consumption	c/kWh		
	Supply charge	\$/day		

<i>Small business, time-of-use Powercor and SPAusNet DB only</i>	Tariff	Unit	Ex GST	Inc GST
Farm 7 Days Time of Use	Peak - First [] kWh/qtr	c/kWh		
	Peak - Next [] kWh/qtr	c/kWh		
	Peak – Balance kWh/qtr	c/kWh		
	Off-peak - First [] kWh/qtr	c/kWh		
	Off-peak - Next [] kWh/qtr	c/kWh		
	Off-peak – Balance kWh/qtr	c/kWh		
	All consumption	c/kWh		
	Supply charge	\$/day		
Farm (B1/B2)	Peak - First [] kWh/qtr	c/kWh		
	Peak - Next [] kWh/qtr	c/kWh		
	Peak – Balance kWh/qtr	c/kWh		
	Off-peak – First [] kWh/qtr	c/kWh		
	Off-peak - Next [] kWh/qtr	c/kWh		
	Off-peak – Balance kWh/qtr	c/kWh		

	All consumption	c/kWh		
	Supply charge	\$/day		

[RETAILER NAME]

**STANDING/RELEVANT PUBLISHED OFFER – GAS
DISTRIBUTION ZONE –
DATE OF PUBLICATION -**

<i>Residential</i>	Tariff	Unit	Ex GST	Inc GST
Domestic – General	Peak - First [] MJ / 2 months	c/MJ		
	Peak - Next [] MJ / 2 months	c/MJ		
	Peak – Balance MJ / 2 months	c/MJ		
	Off-peak - First [] MJ / 2 months	c/MJ		
	Off-peak - Next [] MJ / 2 months	c/MJ		
	Off-peak – Balance MJ / 2 months	c/MJ		
	All consumption	c/MJ		
	Supply charge	\$/day		
Domestic – Bulk Hot Water to Flats	All gas - MJ / 2 months	c/MJ		
	Hot water charge	c/Litre		
	Hot water conversion factor	MJ/Litre		

<i>Small Business</i>	Tariff	Unit	Ex GST	Inc GST
Business – General	Peak - First [] MJ / 2 months	c/MJ		
	Peak - Next [] MJ / 2 months	c/MJ		
	Peak – Balance MJ / 2 months	c/MJ		
	Off-peak - First [] MJ / 2 months	c/MJ		
	Off-peak - Next [] MJ / 2 months	c/MJ		
	Off-peak – Balance MJ / 2 months	c/MJ		
	All consumption	c/MJ		
	Supply charge	\$/day		

Gas Distribution Zones

Investra Victoria	Multinet	SPI AusNet
Central 1	Main 1	Central 1
Central 2	Main 2	Central 2
North	Yarra Valley	West
Murray Valley	South Gippsland	Adjoining Central
Bairnsdale		Adjoining West
Investra Albury		
Cardinia		
Mildura		

Schedule 5³²⁹

Retailer Name
(Branding Banner)

Price and Product Information Statement

This information statement presents a summary of the tariff and terms and conditions applicable to this offer. If you would like further information or are interested in taking up this offer, follow the links to the quoting page on our website or call xxxx.

Product Name and / or Code

DATE OF PUBLICATION

PRODUCT DETAILS

[insert applicable details, such as, closing date, term and termination notification required, details of how tariffs can change, rebates, non-price incentives]

ELECTRICITY

Electricity Tariffs	Excluding GST	Including GST
As set out in Schedule A	XX.xxx	XX.xxx
Supply Charge (\$/Day) (or how billed and calculated)	XX.xxx	XX.xxx

GAS

Gas Tariffs	Excluding GST	Including GST
As set out in Schedule A	XX.xxx	XX.xxx
Supply Charge (\$/Day) (or how billed and calculated)	XX.xxx	XX.xxx

ELIGIBILITY

The details presented in this Price and Product Information Statement are for a [residential/small business] customer located in the [insert] distribution area with a [insert meter type] and [insert any other eligibility criteria].

About this document

This product information statement is presented in accordance with the requirements of the Essential Services Commission (ESC) - the independent regulator of the energy industry in Victoria. For information about choosing an energy retailer, visit www.esc.vic.gov.au/yourchoice.

³²⁹ Schedule 5 is taken from Schedule B in Guideline 19.

Schedule 6³³⁰ Bulk Hot Water Formulae

Bulk Hot Water Charging

Gas bulk hot water Pricing Formulae

A. $Gas\ bulk\ hot\ water\ rate\ (cents\ per\ litre) = CF\ (MJ\ per\ litre) * gas\ bulk\ hot\ water\ tariff\ (cents\ per\ MJ)$

Where *customers* are charged by their *retailer* for *energy* in delivering *gas bulk hot water*:

CF = the *gas bulk hot water conversion factor*
= 0.49724 MJ per litre
gas bulk hot water tariff = the *standing offer* tariff applicable to the *gas bulk hot water unit* (gas tariff 10/11)

Where *customers* are charged for *energy* in delivering *gas bulk hot water* pursuant to a *market contract*:

CF = the *gas bulk hot water conversion factor*
= 0.49724 MJ per litre
gas bulk hot water tariff = the market tariff applicable to the *bulk hot water unit*

B. $Retailer\ provided\ gas\ bulk\ hot\ water\ per\ customer\ supply\ charge\ (cents) = \frac{\text{the supply charge under the tariff applicable to the relevant } gas\ bulk\ hot\ water\ unit}{\text{the number of } customers\ supplied\ by\ the\ relevant\ gas\ bulk\ hot\ water\ unit.}$

Retailers may decide not to charge the supply charge or may decide to roll-in the supply charge into the commodity charge of the applicable tariff.

C. $Customer\ gas\ bulk\ hot\ water\ charge\ (cents) = \text{the } customer's\ metered\ consumption\ of\ hot\ water\ (litres) * gas\ bulk\ hot\ water\ price\ (cents\ per\ litre) + customer's\ supply\ charge\ (cents)$

³³⁰ Schedule 6 is taken from Appendix 2 of the ERC v10.

Electric Bulk Hot Water Billing Formulae

A. Where *customers* are charged for energy in delivering *electric bulk hot water* either by their *retailer* under a *standard retail contract* or pursuant to a *market retail contract* the:³³¹

Customer electricity bulk hot water charge (cents) = the *customer's* metered consumption of hot water (kilolitres)
* electricity tariff rate(s) applicable to the *customer* for the applicable *electric bulk hot water* unit (cents per kWh)
* CF (kWh per kilolitre)

Where:

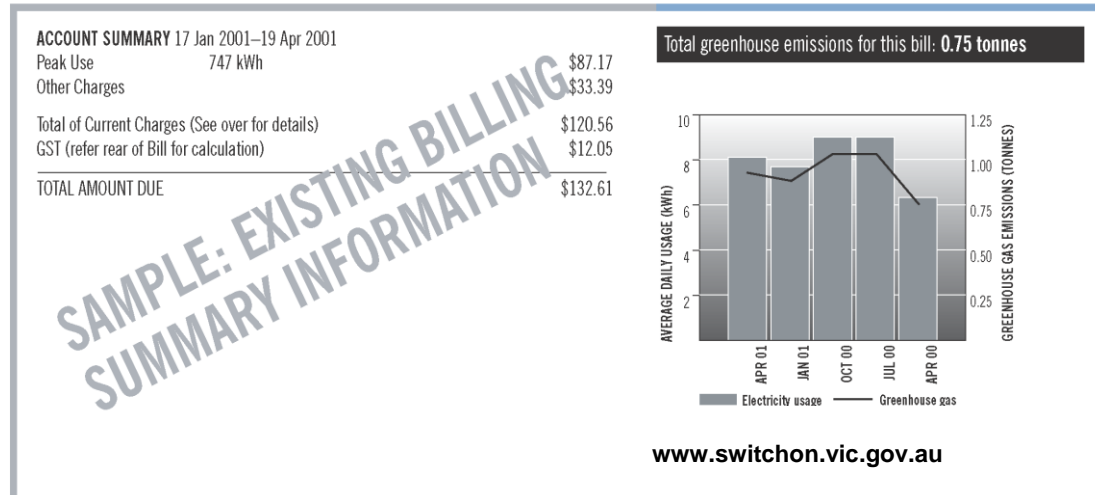
CF = *electric bulk hot water conversion factor* used by *retailers* to bill *electric bulk hot water* customers. The *electric bulk hot water conversion factor* will have a maximum value of 89 kWh per kilolitre. Where *customers* are currently billed using a lower *electric bulk hot water conversion factor*, or a lower *electric bulk hot water conversion factor* for the site is assessed, *retailers* must bill *customers* using the lower *electric bulk hot water conversion factor*.

The *customer's* electricity tariff must be an off-peak tariff if supplied from an off-peak *electric bulk hot water* unit.

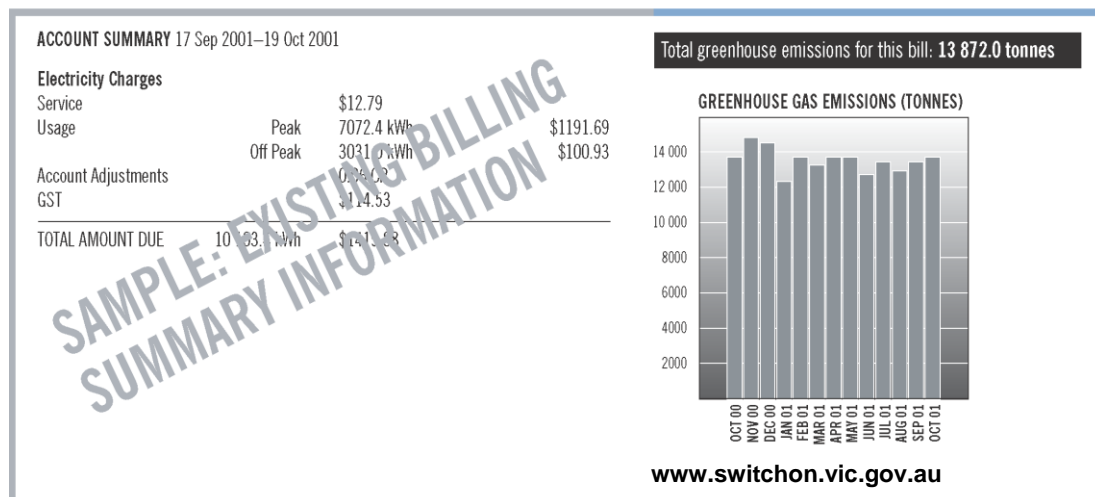
³³¹ Schedule 6 has been amended to reflect the terminology used in the draft ERC v11.

Schedule 7 – Acceptable formats of greenhouse gas disclosure on customers’ bills.³³²

EXAMPLE 1: GREENHOUSE GAS DISCLOSURE



EXAMPLE 2: GREENHOUSE GAS DISCLOSURE



³³² The graphs in Schedule 7 have been amended to list the new website, which is www.switchon.vic.gov.au.

EXAMPLE 3: GREENHOUSE GAS DISCLOSURE

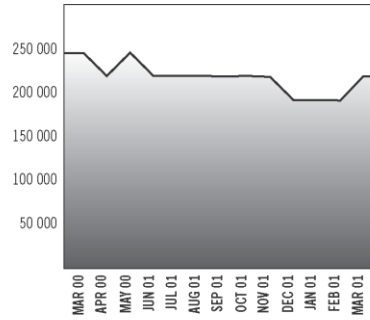
ACCOUNT SUMMARY 17 Feb 2001–19 Mar 2001

Electricity Charges

Opening Balance		\$0.00
Energy Charges	Peak 82 113.8 kWh	\$41 083.22
	Off Peak 68 354.2 kWh	
Network Charges		\$5 906.50
Other Charges		\$11 325.90
GST		\$11 831.56
TOTAL AMOUNT DUE	150 466 kWh	\$130 147.18

Total greenhouse emissions for this bill: 206 592.6 tonnes

GREENHOUSE GAS EMISSIONS (TONNES)



www.switchon.vic.gov.au

SAMPLE: EXISTING BILLING SUMMARY INFORMATION