

## Stakeholder submissions consolidated

We received 19 submissions on our draft decision 'Building trust through new customer entitlements in the retail energy market' which was released on 7 September 2018.

Feedback was provided by 13 retailers (including one confidential submission), 5 consumer groups and the Energy and Water Ombudsman (Victoria). The parties who made non-confidential submissions can be found on the pages below:

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Essential Services Commission

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5 October 2018

## Essential services Commission – Building trust through new customer entitlements in the retail energy market

AGL Energy (AGL) welcomes the opportunity to make a submission in response to the Essential Services Commission Victoria (Commission) draft decision on implementing recommendations 3F, 3G, 3H of the Independent Review of Electricity and Gas Retail Markets (Thwaites review).

We recognise the complexities in developing a regulatory response to the Thwaites recommendations and appreciate the tight timeframes the Commission has had to work in. AGL consider that if these recommendations are appropriately developed they will help offer Victorian consumers additional information to help keep them informed and engaged in the energy market.

Given the limited timeframe AGL believes the following recommendations will ensure consumers obtain a positive experience and therefore become more confident and engaged with the energy sector. Our recommendations through the submission relate to:

- The proposed Clear Advice Entitlement (CAE) and how to make the proposal effective for consumers
- Obtaining clarity on the proposed bill message and the application of Australian Consumer laws.
- The use of further consumer testing to validate positive customer outcomes and ensuring the proposed changes are consistent with wider energy market reforms.

### AGL recommended response for achieving Thwaites recommendation

AGL recommend that the Commission require a bill message without a proposed future savings as the simplest and most effective way to meet the intention of the Thwaites recommendations to nudge and engage consumers. Specifically, we recommend that the Commission consider a message that facilitates retailer and consumer trust, similar to the case study we provide in the attachment below.

This could include messaging such as “we want to put you on a better plan to help you save money – contact us to find out more”.

AGL have serious concerns about the potential impact the messaging may have on consumers by misrepresenting future savings amounts in breach of the Competition and Consumer Act. AGL consider the ultimate intention of nudging consumers can still be achieved with this



recommendation and will then allow time for the CAE can then be considered by Commission through a separate and more robust regulatory process.

The CAE can then be considered by Commission through a separate and more robust regulatory process.

AGL would welcome the opportunity to discuss the potential for this solution to be implemented earlier than 1 July 2019.

AGL also recommend that the Commission

- Undertake a comprehensive review of the regulatory requirements for information on consumer bills to ensure that the requirements remain relevant and up-to-date with the latest consumer testing and regulatory intent. AGL have undertaken a major project regarding the bill design in National Energy Consumer Framework jurisdictions which we are happy to share with the Commission to inform this review.
- Consider how the Consumer Data Right will interact with these new obligations. The Consumer Data Right will give customers the right to portability of their data to get access to services and products that suit their individual circumstances.

A summary of AGL's view on the draft determination is provided below, with detailed information in the subsequent attachment.

Should you have any questions in relation to this submission, please contact Kathryn Burela on 0498001328, [kburela@agl.com.au](mailto:kburela@agl.com.au).

Yours sincerely

Elizabeth Molyneux

*[Signed]*

General Manager Energy Markets Regulation

### Table of determination and initial AGL comment

Draft decision 1 – Best offer entitlement	Supported
Draft decision 2 – Definition of best offer	Not supported as currently drafted Exclude third party offers in generally available definition
Draft decision 3 – Estimating customer usage	Not supported as currently drafted Potentially misleading and inaccurate without 12-month data. Further information provided in the submission on misleading information.
Draft decision 4 – Presentation of best offer	Not supported as currently drafted Potentially misleading (qualifying information)
Draft decision 5 – Clear Advice Entitlement	AGL recommend the Commission remove the CAE from this round of Code amendments and conduct a fulsome regulatory process to ensure that the extensive changes do not lead to unintended consequences for both consumers and industry. AGL note this is also unlikely to be achievable for digital and third parties as currently drafted and AGL request clarity from the Commission on how this could be possible. AGL have provided further recommendations in the body of this submission.
Draft decision 6 – Scope of best offer obligation	Supported – with some amendments recommended in the body of the submission (i.e. amendments to the definition of bill summaries)
Draft decision 7 – Frequency	Recommend 2 best offers per year (either through bill change notice, or if this is not issued then via the bill). Otherwise, retain proposal in draft decision.
Draft decision 8 – Dollar threshold	Should be evidence based (research supported \$50).
Draft decision 9 – Validity period (13 days)	Reconsider if purpose of ‘best offer’ is to nudge customer engagement in the market.
Draft decision 10 – Must include VEC information	Supported
Draft decision 11 – Bill change notice	Supported if businesses can send in line with AER requirements (i.e. separate notices for the events that include the relevant information as required in Code).
Draft decision 12 – Minimum information for bill change notice	Supported if aligned with AER requirements – note that additional requirements such as inclusion of ‘best offer’ will impact systems.
Draft decision 13 – Manner and form of bill change notices	Supported if retailers can align with AER requirements
Draft decision 14 – delivery of bill change notice	Supported
Draft decision 15 – Scope of bill change notice	Should apply to exempt sellers as these customers deserve the same level of customer protection and information.
Draft decision 16 – Notice period	AGL support 5 business days’ notice in line with AEMC decision.
Draft decision 17 – Exemptions for bill change notices	Final decision should align with AEMC final determination – we note the AEMC have added additional exemptions.
Draft decision 18 – GST inclusive messaging	Operationally complex to implement – AGL would support transitional arrangements while impacts are considered by the Commission.
Draft decision 19 - 1 July 2019 implementation	Not achievable with current draft decision for reasons outlined in the attachment.



## ATTACHMENT

### Clear advice entitlement

While AGL acknowledges the Commission's rationale for including the Clear Advice Entitlement (CAE) in the draft decision, we strongly recommend the Commission postpone major amendments to Explicit Informed Consent (EIC) requirements through the CAE.

As the CAE has not been subject to a rigorous assessment it is unclear what the customer impacts will be and whether they will overall be in the long-term interest of Victorian consumers. For example, it is unclear how CAE will impact:

1. Sales validity and disputes due to being tied with explicit informed consent.
2. more complex sales channels such as third party and digital.
3. Sales staff conversations with customers on what may be the 'best offer'.

While we welcome the simplicity of the bill message adopted by the Commission, we note the development of the CAE extends well beyond what would be necessary to address any definitional or operational limitations with the 'best offer' approach and surmounts to new and untested regulation through placing substantial new obligations on retailers regarding Explicit Informed Consent.

AGL recommend the Commission undertake the appropriate regulatory rigour in line with their legislative obligations prior to implementing such a significant change to industry to mitigate unintended consequences and to fully understand the cost and impacts of such a change. Unintended consequences were discussed briefly at the Commission's stakeholder forum on 27 September 2018 and the discussion demonstrated some, but not all the impacts to consumers, such as increased handling time, potential privacy risks or breaches, complex and difficult to follow conversations through sales agents) as well as the incomplete thinking on how this could be applied for other sales channels such as digital.

While AGL understands the merit of CAE, we are concerned that without appropriate testing, the CAE may have the opposite impact then intended by the Commission. That is, the CAE may make conversations more complex, and therefore could lead consumers to disengage as they feel overwhelmed with information. This can result in reduced trust from consumers who may feel as though retailers are trying to avoid giving them the best deal (see the section below on misleading information).

Given the scope of these uncertainties, we recommend the Commission remove the CAE from this round of Code amendments. This would allow the Commission to place a greater focus on those elements necessary to the delivery of recommendations 3G and 3F as required by the Victorian Government's Terms of Reference. Further, the Commission can then undertake a separate and



appropriately robust regulatory review process including consumer testing of the concept and application.

As an alternative second-best approach, the Commission should consider the application of the CAE in this round of Code amendments to be limited to customers making direct contact regarding the bill notice and not apply to digital or third-party sales. The Commission can then work with industry and consumer groups to understand how CAE has impacted the customer experience in this scenario and use these learnings on how it can be refined to ensure a better consumer outcome through the digital and third-party sales channels.

#### *Changing contract models*

While AGL agree with the Commission's position that the retail energy market's effectiveness relies on a principle of shared responsibility<sup>1</sup>, AGL consider that this is a broader concept of the changing model for contracts and the way consumer's want to receive their information, rather than being a matter unique to energy markets.

In AGL's view, the contract attributes that the Commission has called out as being covered by the CAE<sup>2</sup> would in fact already be covered by the Marketing Conduct Code in Victoria, Explicit Informed Consent requirements in the Energy Retail Code and the Competition and Consumer Act. Further, requirements regarding Welcome Pack disclosures and the cooling off period provide protection for consumers to fully consider the impacts and scope of their energy plan and allows them the opportunity to withdraw from the offer.

Any concern of a failing of standards to meet these existing requirements should be addressed by the Commission with clear advice to retailers or enforcement action if breaches have been determined. The development of additional CAE obligations should be part of a broader piece of work undertaken by the Commission.

Further, our understanding in talks with the Commission is that section 70H(b) was drafted in such a way to ensure that Standing Offer customers are offered market contract opportunities should the bill message prompt not be suited to their needs. The drafting of this section then should reflect specifically the need to take these additional steps for Standing Offer customers specifically to ensure that the CAE does not extend beyond the Thwaites recommendations.

#### *CAE impractical for all sales models*

AGL note that there are severe operational and practical constraints in being able to provide greater context to offers based on what retailers know of customers through digital means without requiring substantial data inputs on the customers behalf. The increase in effort for customers to provide

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<sup>1</sup> Draft decision, p43

<sup>2</sup> Draft decision, p45

additional information for the CAE moves this entitlement to an obligation for action on the customer and will likely see drop off in customer interest. [REDACTED]

[REDACTED] As a result of the introduction of new CAE obligations customers may become more disengaged (in direct contrast to the objective of the bill message) – finding the process to cumbersome, complicated or time consuming.

The justification for the inclusion of the CAE in the draft decision highlights the limited view the Commission has taken on the application of this across different sales channels.<sup>3</sup> The very nature of the CAE has been based on the traditional direct call sales model rather than being technology agnostic. AGL has seen an upward trend in the utilisation of digital sales and third-party sales as opposed to the traditional AGL call-sales channel and we are happy to share these statistics with the Commission.<sup>4</sup>

The inclusion of the CAE with the intent of applying across all channels without considering the actual application means that this regulatory proposal is not future proof and does not consider the changes in technology or even the development of the Consumer Data Right (CDR) which will be applied across Australia and will alter the way consumers access and port their data. In fact, the proposed ACCC CDR Rules Framework<sup>5</sup> focus on digital solutions only.

We have included additional information in the Appendix regarding the disclosure of fees and different information that would be required to be disclosed by sales agents that will impact call length times and customer experience.

#### *Privacy concerns*

There are also complex and interrelating privacy risks and concerns that the Commission must consider further. If retailers are required to provide all their existing customer information (such as usage, payment behaviours) to a third-party provider, there may be serious privacy implications.

Under this arrangement, retailers would need to inform customers that they might provide their information to third parties and why. While this is generally covered in privacy policies, the purpose and intent of this is in relation to the provision of certain services and is therefore limited in the nature and scope of data disclosed. Extension of data provisions beyond those generally expected under privacy policies to ensure compliance against what a retailer knows about a customer, will start to encroach on the data that is currently being considered and captured by the Consumer Data Right – which is prefaced on the principle that consumers should control which accredited third parties can access and utilise their detailed, personal and sensitive data.

There are also restrictions under the Privacy Act, where a business provides personal information to third parties the business must ensure that all Privacy Act and Australian Privacy Principle

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<sup>3</sup> Draft decision, p43

<sup>4</sup> [Further information available in our FY18 Full-Year Results pack](#), 9 August 2018, slide 8

<sup>5</sup> [ACCC consultation on Rules Framework for Consumer Data Right](#)



obligations are met – particularly where the information is sent offshore. This would require a massive undertaking to understand the commercial operations of third parties to ensure their compliance and ultimately be held liable for any breaches by them of privacy obligations.

Retailers are unable to control the management and information security of third party providers to the extent of ensuring that the data is protected and secure in line with AGL's own obligations. Even if third party retention of a customer's private information is time limited a retailer would be unable to confirm that the data has been destroyed appropriately.

We strongly recommend that the Commission remove the CAE obligation from applying to all sales channel and limiting its scope to a retailer's own calls channel until further scoping can be done. We do not consider the exclusion of other sales channels will result in customer detriment, but rushed implementation without consideration of these types of concerns may result in serious customer detriment, particularly regarding privacy.

#### *Summary of recommendations in this section*

AGL recommends the Commission

- Removing the CAE from the current review process so that appropriate consultation and regulatory review of the inclusion of this requirement can be scoped.  
This would allow the Commission to consider other regulatory changes currently occurring, such as the Consumer Data Right that will fundamentally shift how customers manage and port their own data.

Alternatively, the Commission should at a minimum -

- Remove section 70H(2) as it is not necessary for the entitlement – where a customer would be informed of the relevant terms and conditions linked to a contract (i.e. that a sales agent would state that the offer amount is conditional on paying on time and failure to pay on time would result in higher prices – it is therefore irrelevant if the customer has a history of paying on time or not).
  - If this intended to apply across all sales channels then 70H(2) creates significant boundaries to retailers for compliance. Removal of this section would also remove the privacy concerns noted above.
- Consider limiting the scope:
  - of the CAE to its purpose of proving additional information to customers on how they could save more money and look to switch plans tied to the 'best offer'.
  - To retailer call centres only
  - of 70H(b) and 70BG to apply only to standing offer customers to ensure that those customers are provided other alternatives to switch to a market contract.
  - to retailer call centres only – consult further on application to other sales channels



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## Misleading information to customers

### *Nudge or contractual offer*

The Commission has positioned the ‘best offer’ communication as ‘nudging’ a customer to engage. Specifically, it is noted that the ‘nudge based’ approach attempts to go with the grain of human behaviour and to prompt customers to consider the suitability of their energy plan.<sup>6</sup> By putting the best offer on bills, we are seeking to provide a ‘nudge’ for customers to consider the suitability of their current energy plan.<sup>7</sup>

There is a clear tension then, between the stated nudge approach to have customers engage, and the drafting of the deemed best offer messaging which becomes more contractual in nature, with tailored savings amounts and potential for unique offer IDs that the Commission expect under 70S would have an offer validity period. It is AGL’s view that this would be classified as marketing. The Commission has previously stated that the final drafting will ensure that the Code state that the ‘best offer’ message is not deemed marketing. As we highlight below, the Courts have determined that this is immaterial in determining if conduct is misleading or not.

AGL believes the Commission can satisfy the Thwaites recommendation on the content of the ‘best offer’ message on bills through a non-\$ based prompt. AGL has recently used such an approach and we obtained high consumer engagement. Such an approach also mitigates against possible CCA breaches.

### *Competition and Consumer Act*

AGL’s view of the proposed requirements relating to best offers will place retailers in a position of potentially breaching Competition and Consumer Act requirements, particularly regarding misleading information. The following section is relevant to a number of the draft decisions of the Commission’s paper including:

- Calculation of savings amount
- Representation of savings amount
- Disclaimers and qualifications of representations
  - Eligibility requirements for new definition of generally available
- Implications for exclusions such as not allowing for the bundling of gas/electricity
- Value of non-price incentives such as frequent flyer points, rewards programs, discounted tickets or services etc.

The ACCC has provided clear advice on the nature of false and misleading impressions. Specifically, they have stated that businesses cannot rely on small print and disclaimers as an excuse for a misleading overall message.

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<sup>6</sup> Draft decision, p23

<sup>7</sup> Draft decision, p27



If a business needs to qualify its advertisements, the ACCC advises to ensure that the qualifying statements are clear and prominent so that consumers know what the real offer is.<sup>8</sup> For the ‘best offer’ this clear and prominent qualifying information would not occur until the customer has made contact with the retailer and the sales agent qualifies the offer through the CAE. We therefore do not consider this would meet the requirements of clear and prominent.

Further, Australian Courts have indicated in a number of cases that a statement intended to induce a consumer to deal with a business can still be misleading, even where it is subsequently corrected through a sales process or website<sup>9</sup>. This would mean that irrespective of whether the Commission drafted the Code amendments to explicitly state that these requirements are not marketing, that would not absolve the potential conflict and breach.

A business may be found to have engaged in misleading conduct at the point at which they have ‘enticed’ the consumer to enter into negotiations based on an erroneous belief. The ACCC has also indicated that they will look at how the behaviour of a business affects the consumer’s impression of a good or service and whether the overall impression created by the conduct is false or inaccurate. The ACCC recommends that additional information should be disclosed where it is likely that the conduct has created a misleading impression, or where it is reasonable to expect that this information will be disclosed.<sup>10</sup> For the purposes of the draft decision, this would include the basis on which the calculation for customer savings has been developed, as well as the terms and conditions associated to that (i.e. club membership eligibility, conditions).

The ACCC further state that the business must clearly direct the consumer’s attention to the most significant terms and conditions so that they can make an informed judgment about whether to make a purchase.<sup>11</sup> In this case, the Commission has determined that the most significant terms and conditions relating to that product are only relevant at the time of the sale, rather than at the time of the bill message – as the message is only intended to nudge the customer. AGL considers ‘the nudge’ is a representation to the customer of something they are eligible for and that the dollar amount will be taken as an accurate representation of the customer’s savings when this may not be the case. As noted above, the current view of Australian Courts is that it is not a defence that a potentially misleading statement is only intended to ‘nudge’ a customer, or prompt them to engage further with the business. This becomes increasingly problematic as retailers need to estimate a customer’s 12-month usage without knowing the relevant information to do such a calculation.

For example, if a customer signs up in May and receives their first ‘best offer’ bill in July, the retailer will have around 6-8 weeks of consumption data for that customer. This data extrapolated out is highly unlikely to provide an accurate reflection of the customers usage for the year. Retailers do not know if there was a unique event (i.e. the customer had been on holiday for the first 3 weeks of that

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<sup>8</sup> [ACCC False or Misleading Statements guidance](#)

<sup>9</sup> *ACCC v Singtel Optus Pty Ltd* [2010] FCA 1177

<sup>10</sup> [ACCC Advertising and Selling Guide](#)

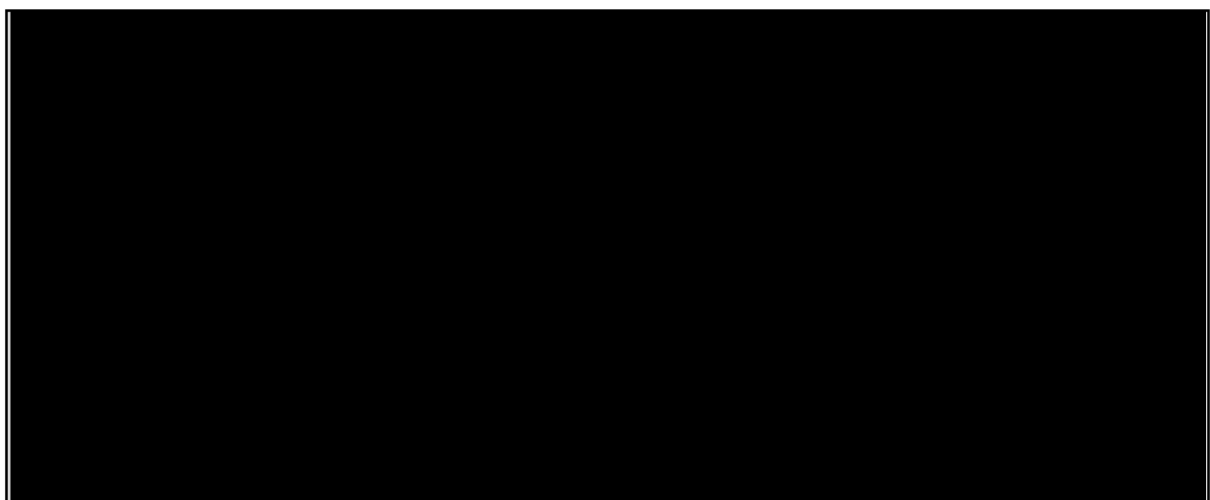
<sup>11</sup> ACCC Advertising and Selling Guide



period), weather implications that may have seen an increase use of heaters or air-conditioners etc. As such, retailers will be required to set the expectation of consumers that they can save hundreds of dollars on a new plan that may not be accurate. While benchmarks may assist this matter in some way, it would still not address the underlying concerns regarding the potential misleading nature of future representations of savings and may result in customers receiving larger savings calculations than is likely due to the nature of the benchmark calculations.

The ACCC is clear that qualifications or disclaimers may not protect that business from breaching the ACL.<sup>12</sup> We have provided further case law on this matter. As it is currently drafted, AGL would need to include an extensive disclaimer on the bill which is already limited in terms of real-estate and runs the risk of being ignored. We have also included an example of the disclaimer we are using for our AER benefit change notice to customers both are in the Appendix. The Commission can note here that there is no call-out box regarding potential savings (i.e. nothing that the consumer will immediately rely on), and the text around the 'do nothing' amount qualifies this statement further. There is also then eight lines of disclaimer – far more than can be required through a bill message box.

The Commission has stated that the purpose of the 'best offer' messaging is to 'nudge' customers in to action and words such as 'could' or 'can' are not intended to mislead the customer. AGL consider the inclusion of the figure heightens the likelihood that the message will be considered misleading under the CCA and would not facilitate a positive transaction between retailers and customers which will only further exacerbate any trust concerns between these parties. AGL consider the following case study is relevant to the Commission's work and demonstrates the effectiveness of positive messaging.



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<sup>12</sup> ACCC Advertising and Selling Guide

AGL consider these results are relevant as the Commission has stated that their own consumer testing included prompting to customers for what actions they will take. AGL consider if the Commission undertook the necessary testing without consumer prompting their results would likely match our above experience.

*Summary of recommendations in this section*

- Reconsider the original intent of the Thwaites recommendations, as well as the practical implications of delivering a nudge message to consumers.
- Remove specifics relating to the savings amount and/or the product name to avoid potential misleading information for the customer and problems relating to calculations and future representations. For example
  - *We may have a better plan for you to help you save money – contact us for more information.*
- Maintain friendly – conversational language for the customer to prompt engagement and help build trust.

## Other matters

*Generally available definition*

AGL supports increased harmonisation with the Australian Energy Regulator (AER) requirements wherever possible but note that alignment with the definition for the purposes of achieving 3G will create substantial confusion and difficulty in determining the best offer.

For example, under the new AER definition of generally available, retailers are required to publish information on offers that may be substantially limited to the public. The Retail Pricing Information Guideline (RPIG) defines the following as an eligibility criteria for a generally available offer “being a member of a particular club – for example: a motoring club, sporting club, or business or leisure association”. This will also add to customer frustration if they only find out about the limitation of accessing these types of offers once on the phone with a sales agent and will question why they are being encouraged to contact the retailer for savings that aren’t practicably within their reach. It is also unclear how this could be implemented on digital platforms i.e. requesting a proof of membership or otherwise termination the digital transaction. This would only add to consumer frustration and impact trust.

AGL therefore strongly recommend that the Commission exclude third-party offers as well as offers that require a monetary outlay by the customer (such as joining a club) from the definition.



### Implementation period

AGL consider that Draft decisions 10 – 18 would be achievable by July 2019 but there will be insufficient time for retailers to develop and implement the requirements for the other decisions as currently drafted.

Draft decisions 2 – 5 are unlikely to be achievable in their current form and move away from the scope originally discussed through the Thwaites recommendations. While we welcome the Commission’s suggestion that retailers can innovate on how to implement the CAE for third party and digital sales, there is insufficient time for such an activity to occur for a 1 July 2019 implementation. This is not a matter of innovation but on whether it is operationally achievable or not, particularly with privacy concerns regarding third party disclosures.

Retailers would have around 7 months to develop regulatory solutions for these channels, to investigate, trial, test and deliver, do website system and layout redesigns for full implementation by 1 July 2019. Given the Commission has been working on these regulatory solutions since April 2018, it is reasonable to assume that 7 months for this type of project is insufficient.

As stated above, AGL strongly recommend the Commission exclude CAE from this round of Code changes. Alternatively, exclude digital and third-party sales from the final decision, and then give retailers sufficient time (i.e. 12 months) to develop the above solutions.

### Overall framework objectives

AGL note the dichotomy that exists between seeking an *Objectives* based regulatory framework and continuing to have, and apply, highly prescriptive requirements that sit underneath these objectives.

For example, 700 states the objective of the Division as being to give small customers an entitlement to prominently displayed, helpful information that enables them to easily: 1) identify whether they are on the best offer, 2) understand how to access the best offer and 3) understand how to access other offers through Victoria Energy Compare.

The *objective* of this Division is therefore the specific provision of information to help consumers switch plans. The Commission has then drafted highly prescriptive requirements under 70R(4) on how retailers will meet this objective, effectively making the purpose of the objective redundant.

The wording with 70G also places obligations on retailers that are not within their control, specifically “to assist the small customer to assess the suitability of, and select, a customer retail contract”. The Code is therefore requiring retailers to ensure a customer selects the right contract, but this is ultimately a decision for the consumer and is not within retailer control. If, after information has been provided by the retailer, a consumer chooses to stay on their plan which results in them paying more for their energy, this would arguably result in a breach of the objective of the Code.

#### *Summary of recommendations in this section*

- Limit the definition of Generally Available to exclude third party offers and those that require additional steps by the customer (whether this is monetary i.e. buying a membership, or associated to signing up to other offers, organisations etc).
- If the Commission do not accept the other recommendations provided by AGL in this submission, amend the implementation date to accommodate for phased implementation. For example
  - Restricting CAE application to call sales only for 1 July 2019.
- Review the Commission's *Objectives* in the Code to align with the new regulatory approach (i.e. the dichotomy between Objectives based regulation with highly prescriptive requirements).
- Revise the *Objectives* to be what is within retailer control.

#### Other Comments

- *Working with other Thwaites Recommendation* - Further guidance should be given on the Commission's intention to implement recommendation 3A requiring retailers to market in dollar terms. If the Commission takes a strict view on this recommendation and retailers are no longer able to market with discounts attached, then this will likely make the market more confusing for customers who are seeing different figures at different points of engagement.
- *Drafting issues* - Need to fix the bill summary definition because it would currently include "dear customer" letters with attached bills. Bill summary should capture where key summary information has been provided in the body of the communication (billing amount, payment methods, due by date).
- *Setting the threshold* – The Commission has set the threshold at \$22 even though the findings set it higher. AGL encourage the Commission to use the results of their research to set the threshold at \$50 to develop evidence-based regulation.
- *Bill change notice* – The Commission should amend all requirements that are currently drafted to align with the AEMC draft determination with the changes that have come through in the final determination.
- *Non-price incentives* – discussed below.

The definition of best offer, to focus only on pricing elements will impact product innovation and consumer benefits. For the very reason the Commission has had difficulty in defining the best offer, consumers value different things, and retailers compete on a variety of levels – not just discounts – to win and retain customers. By not allowing for the consideration of these benefits, the Commission will



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effectively be pushing retailers to remain focused on price, at the detriment of other benefits such as frequent flyer points, shopping discounts, membership deals etc.

AGL offers a range of non-price benefits attached to our plans which are valued differently by different customers. We offer an AGL rewards program [REDACTED]

[REDACTED] Through this program, customers can access a range of special offers including

- Discounted eGift cards with retailers including Coles, Woolworths, Myer, David Jones, JB Hi-Fi
- Discounted movie tickets
- Discounted travel and accommodation
- Up to 50% off meal offers at selected restaurants.

[REDACTED]  
[REDACTED]  
[REDACTED]

By focusing on price, the Commission will disincentivise non-price competition and reduce customer benefits. This is another reason that the bill message should not contain a future value reference but instead a statement about there being offers that are potentially better for the customer.



### Case law

Other relevant case law AGL strongly recommend the Commission considers:

- *Medical Benefits Fund of Australia Ltd v Cassidy* (2003) 205 ALR 402 at 417 [43]: “Nor is it to the point that the misleading or deceptive impression may or will be corrected before or after any contract is made. Whether a representation is misleading or deceptive (or likely to be so) depends on the circumstances in which it is made and not on what might happen in the future”
- *National Exchange Pty Ltd v Australian Securities and Investments Commission* (2004) 61 IPR 420 [55]: “The principle which applies to those cases is that the qualifying material must be sufficiently prominent or conspicuous to prevent the primary statement from being misleading.”
- *ACCC v Hillside (Australia New Media) Pty Ltd trading as Bet365* [2015] FCA 1007 [76]: Even if the effect of relevant advertising is, or is likely to be, dispelled prior to any transaction being effected, it may still be misleading or deceptive.
- *ACCC v TPG Internet Pty Ltd* [2013] HCA 54; (2013) 304 ALR 186 [50]: It has long been recognised that a contravention of s 52 of the TPA may occur, not only when a contract has been concluded under the influence of a misleading advertisement, but also at the point where members of the target audience have been enticed into “the marketing web” by an erroneous belief engendered by an advertiser, even if the consumer may come to appreciate the true position before a transaction is concluded.
- *ACCC v AGL South Australia Pty Ltd* [2014] FCA 1369, [148]-[172] (White J): “However, this does not mean that all matters communicated by a representor are to be taken to have the same weight or effect, or that later qualifying words will neutralise the effect of an earlier misrepresentation.”



### Fees linked to energy contracts

AGL has provided additional material on our Victorian Market Retail Contract schedules, and an example of fees that may apply through distributors (listed as pass through on the AGL schedule) which lists further fees for reconnection, disconnection, specific meter read fees, new connections, truck visits, meter equipment tests and pre-approvals for PV installations. All of these could potentially apply to the customers so requiring disclosure of all fees is clearly impractical and will make the sales experience untenable for consumers.

If the Commission will not separately consult on the CAE to allow for all these matters to be appropriately worked through, we strongly recommend as an alternative that the Commission align the disclosure requirements with the AER's definition of "key fees" in the Retail Pricing Information Guideline (RPIG) below, as they may apply to the customers circumstances:

*Key fee is any fee applying to a plan that will be incurred by:*

- *all customers or*
- *a significant portion of customers.*

*Key fees include but are not limited to:*

- *connection/move-in fees*
- *account establishment fees*
- *annual fees/membership fees*
- *exit fees*
- *late payment fees*
- *disconnection fee for non-payment*
- *disconnection fee on moving out of the premises*
- *reconnection fees*
- *payment processing fees. For example, credit card fees, direct debit fees, and fees for paying in person at the post office*
- *metering fees.*

We further recommend that if the Commission pursue this alternative, that there should be flexibility in its' application to allow retailers to exclude any fees/charges that we believe are unlikely to apply to that customer (for example, it is a poor customer experience to talk about connection fees if the customer is switching across).

# AGL Energy Plan

## Market Retail Contract Fee Schedule



See the General Terms for when these and other fees apply. We will advise you of the amount of any "Pass Through" or unlisted fees at the time you make a relevant request. For example, when we arrange on your behalf for a service to be performed by the Distributor (who is responsible for the electricity poles, wires, pipes and meters in your area).

### 1. Victoria. Electricity

Fee Type	GST excl.	GST incl. <sup>^</sup>
Payment processing fee (% of payment made)	0.45%	
Dishonoured payment fee (cheque)	\$6.50*	n/a
(direct debit)	\$2.30*	n/a
Over the counter payment fee for payments in person with Post Billpay® at a Post Office <sup>~</sup>	\$1.82	\$2.00
Paper bill fee - for each bill sent by post <sup>~</sup>	\$1.59	\$1.75
Reconnection fee <sup>1</sup>	Pass Through	
Disconnection fee <sup>1</sup>	Pass Through	
Special meter read fee <sup>1</sup>	Pass Through	
Refundable advance (each fuel) (Residential Customer)	\$136.36	\$150.00
(Small Business Customer)	\$454.55	\$500.00

Effective 1 July 2017. Fees are subject to change.

<sup>^</sup>The GST inclusive price assumes a GST rate of 10%. If this rate of GST changes, the GST inclusive price outlined above will be adjusted to reflect that change.

\*Amount is not subject to GST.

<sup>~</sup>We may charge this fee if you pay your bill in person at an Australia Post outlet.

<sup>~</sup>We may charge this fee for each paper bill we issue to you. To receive your bills by email instead of post, you can sign up for eBilling via AGL Energy Online or by calling **131 245** for residential customers and **133 835** for business customers.

<sup>1</sup>These fees are charged by your Distributor and passed through to you by AGL.

### 2. Victoria. Gas

Fee Type	GST excl.	GST incl. <sup>^</sup>
Payment processing fee (% of payment made)	0.45%	
Dishonoured payment fee (cheque)	\$6.50*	n/a
(direct debit)	\$2.30*	n/a
Over the counter payment fee for payments in person with Post Billpay® at a Post Office <sup>~</sup>	\$1.82	\$2.00
Paper bill fee - for each bill sent by post <sup>~</sup>	\$1.59	\$1.75
Reconnection fee <sup>1</sup>	Pass Through	
Disconnection fee <sup>1</sup>	Pass Through	
Special meter read fee <sup>1</sup>	Pass Through	
Refundable advance (each fuel) (Residential Customer)	\$136.36	\$150.00
(Small Business Customer)	\$454.55	\$500.00

Effective 1 July 2017. Fees are subject to change.

<sup>^</sup>The GST inclusive price assumes a GST rate of 10%. If this rate of GST changes, the GST inclusive price outlined above will be adjusted to reflect that change.

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<sup>1</sup>These fees are charged by your Distributor and passed through to you by AGL.

# FEE BASED ALTERNATIVE CONTROL SERVICES



Date of Application - 1 January 2018

B2B Code	Code	AH/NH	Field officer visits	\$ GST Excl
020600	020600	0	Field officer visits—BH	18.96
020600AH	020600	1	Field officer visits—AH	341.31
020710	020710	0	Remote Re-energisation - Any Time	6.49
020720	020720	0	Remote De-energisation - Any Time	6.49
020800	020800	0	Remote Meter Re-configuration	28.90
020900	020900	0	Remote Special Read	1.39
<b>Routine new connections – AusNet Services responsible for metering, customers &lt; 100amps</b>				
010107	010107	0	Single Ø Overhead—BH	409.33
010107AH	010107	1	Single Ø Overhead—AH	493.61
010125	010125	0	Install 95mm overhead service from LVABC - BH	674.59
010125AH	010125	1	Install 95mm overhead service from LVABC - AH	845.07
010109	010109	0	Single Ø Underground—BH	212.59
010109AH	010109	1	Single Ø Underground—AH	271.93
010111	010111	0	Multi Ø Overhead—Direct Connected Meter—BH	437.48
010111AH	010111	1	Multi Ø Overhead—Direct Connected Meter—AH	527.55
010112	010112	0	Multi Ø Overhead—CT Connected Meter—BH	587.34
010112AH	010112	1	Multi Ø Overhead—CT Connected Meter—AH	708.28
010113	010113	0	Multi Ø Underground—Direct Connected Meter—BH	318.14
010113AH	010113	1	Multi Ø Underground—Direct Connected Meter—AH	394.01
010114	010114	0	Multi Ø Underground—CT Connected Meter—BH	458.99
010114AH	010114	1	Multi Ø Underground—CT Connected Meter—AH	568.45
010115	010115	0	Temporary Overhead Supply—Coincident Disconnection (Truck visit)—BH	344.41
010115AH	010115	1	Temporary Overhead Supply—Coincident Disconnection (Truck visit)—AH	437.43
<b>Routine new connections – AusNet Services not responsible for metering, customers &lt; 100amps</b>				
010116	010116	0	Single Ø Overhead—BH	409.33
010116AH	010116	1	Single Ø Overhead—AH	493.61
010126	010126	0	Install 95mm overhead service from LVABC - BH	674.59
010126AH	010126	1	Install 95mm overhead service from LVABC - AH	845.07
010118	010118	0	Single Ø Underground—BH	212.59
010118AH	010118	1	Single Ø Underground—AH	271.93
010120	010120	0	Multi Ø Overhead—Direct Connected Meter—BH	437.48
010120AH	010120	1	Multi Ø Overhead—Direct Connected Meter—AH	527.55
010121	010121	0	Multi Ø Overhead—CT Connected Meter—BH	587.34
010121AH	010121	1	Multi Ø Overhead—CT Connected Meter—AH	708.28
010122	010122	0	Multi Ø Underground—Direct Connected Meter—BH	318.14
010122AH	010122	1	Multi Ø Underground—Direct Connected Meter—AH	394.01
010123	010123	0	Multi Ø Underground—CT Connected Meter—BH	458.99
010123AH	010123	1	Multi Ø Underground—CT Connected Meter—AH	568.45
010124	010124	0	Temporary Overhead Supply—Coincident Disconnection (Truck visit)—BH	344.41
010124AH	010124	1	Temporary Overhead Supply—Coincident Disconnection (Truck visit)—AH	437.43
<b>Service truck visits</b>				
030000	030000	0	Service Truck Visit—BH	344.41
030001	030001	0	Wasted Truck Visit—BH	195.98
030001AH	030001	1	Wasted Truck Visit—AH	283.34
030000AH	030000	1	Service Truck Visit—AH	437.43
030100AH	030100	1	Truck Appointment—AH	Quoted service
<b>Meter equipment tests</b>				
060100	060100	0	Single phase	162.18
060200	060200	0	Single phase (each additional meter)	60.42
060300	060300	0	Multi Phase	192.40
060400	060400	0	Multi Phase (each additional meter)	90.62
<b>Small Generator Installations (including PV)</b>				
100100	100100	0	Pre Approval of PV and small generator installation < 4.6kW - BH	
100101	100101	0	Pre Approval of PV and small generator installation 4.6kW to 15kW - BH	151.05
100102	100102	0	Pre Approval of PV and small generator installation 15kW to 30kW - BH	200.25
100103	100103	0	Meter Exchange for PV and small generator installation	Exit Fee + Service Truck Visit
100104	100104	0	Meter Reconfiguration for PV and small generator installation	28.61

# QUOTED ALTERNATIVE CONTROL SERVICES



Date of Application - 1 January 2018

Labour category	Service description	2018	2018
		\$/hour rate - BH	\$/hour rate - AH
Labour—wages	Construction Overhead Install	105.73	128.41
Labour—wages	Construction Underground Install	103.27	125.42
Labour—wages	Construction Substation Install	103.27	125.42
Labour—wages	Electrical Tester Including Vehicle & Equipment	184.62	208.15
Labour—wages	Planner Including Vehicle	141.94	-
Labour—wages	Supervisor Including Vehicle	141.94	-
Labour—design	Design	121.19	147.18
Labour—design	Drafting	93.13	113.10
Labour—design	Survey	109.70	133.23
Labour—design	Tech Officer	109.70	133.23
Labour—design	Line Inspector	105.73	128.41
Labour—design	Contract Supervision	109.70	133.23
Labour—design	Protection Engineer	121.19	147.18
Labour—design	Maintenance Planner	109.70	133.23



5 October 2018

Dr Ron Ben-David  
Chairperson  
Essential Services Commission  
Level 37, 2 Lonsdale Street  
Melbourne VIC 3000

**By email:** [retailenergyreview@esc.vic.gov.au](mailto:retailenergyreview@esc.vic.gov.au)

Dear Dr Ben-David

**Building trust through new customer entitlements in the retail energy market: Draft Decision**

Alinta Energy Retail Sales Pty Ltd (**Alinta Energy**) welcomes the opportunity to provide feedback on the Essential Services Commission's (**the Commission's**) draft decision regarding the implementation of recommendations 3F to 3H of the Thwaites review (**the draft decision**).

Alinta Energy is an active investor in the energy retail, wholesale and generation markets across Australia. Alinta Energy has around 2500 megawatts of generation capacity in Australia (and New Zealand) and a growing customer base of over around 1,000,000 customers in Western Australia and across the National Energy Market and is well placed to provide comment on the Issues Paper.

Alinta Energy is committed to supporting the need to make energy offerings more easily comparable for customers. To that end, Alinta Energy is supportive of the objectives described in the draft decision. Although Alinta Energy supports the intent and objective of the changes, it urges the Commission to consider the manner and method of when, how and where these entitlements should occur.

Alinta Energy commends the Commission on their approach to regulatory reform through codifying the objectives and purpose of newly introduced entitlements for Victorian consumers in the Energy Retail Code. As demonstrated in the recent review conducted by the Commission relating to the Payment Difficulties Framework (PDF), finding the right balance between principle-based regulation (based on objectives) and prescriptive regulations was extremely challenging. It is Alinta Energy's view that industry expertise and knowledge of our customers was a key pillar with determining that balance. The final decision of the PDF led to measured and considered outcomes that, in our view, will benefit the long long-term interest of Victorian customers.

These sentiments are further supported by the Commission's Chairperson when he stated in the draft decision that;

*It would be reasonably straightforward for us to implement the recommendations from the Independent Review in similar fashion, however, it is likely that a few years from now, no-one will remember our reasons for doing so. We might not even remember. And if we can't remember, then how will we judge whether these interventions were successful? How will we know, now or later, whether our actions have led to the outcomes the community expects from the retail energy market?*

To that end, there are some provisions within the draft decision that appear overly prescriptive, complicated and go beyond the intent of the objectives described in the draft decision. Our submission hopes to utilise our industry experience to support the objectives of the draft decision by ensuring certain requirements are not over-codified. Alinta Energy appreciates that this type of regulatory approach can lead to inconsistent approaches however we note that the Commission's new monitoring powers can assist the energy industry with ensuring the outcomes are consistent.

Our responses and comments to the Commission's draft decision are contained in the attached response. Alinta Energy would be happy to discuss any aspect of this submission, or earlier submissions, where required.

Should you require any additional information or wish to discuss any aspect of our submission please contact Ante Klisanin, Retail Regulation Manager on (03) 8533 7344 or via email: [ante.klisanin@alintaenergy.com.au](mailto:ante.klisanin@alintaenergy.com.au).

Yours sincerely



**Shaun Ruddy**  
Manager – National Retail Regulation

## 70H Minimum standards – clear advice

Contractual term that may influence the total monetary value of a bill – when selecting the most suitable offering

Having reviewed the provisions relating to clear advice, Alinta Energy has concerns with the prescriptiveness of advice relating to the retailer's *other energy offers*. Under 70H(1)(b);

(b) the *retailer's other energy offers* that the *retailer* reasonably believes would be suitable for the *customer*.

and its dependency on 70H (2)(b);

(b) communicate the information with reference to the *retailer's* estimate of the total monetary value of a bill for the *customer* under the *customer retail contract*, unless it is unreasonable to do so

In practical terms the existing draft decision would lead to a prospective sales conversation that would be conducted in this manner;

*"Offer A has a conditional pay on time discount of 25%, when met, this offer has an estimated cost of \$300 inclusive of GST and is \$400 inclusive of GST if you do not pay on time.*

*"Offer B has all the conditions of Offer A, but has an additional 1% discount if you sign-up to Direct debit agreement, **this offer has an estimated cost of \$296 inclusive of GST and is \$400 inclusive of GST if you do not pay on time,***

*"Offer C has all the conditions of Offer A, but has an additional discount of 2% if you select e-billing, **this offer has an estimated cost of \$292 inclusive of GST and is \$400 inclusive of GST if you do not pay on time,***

*"Offer D has all the conditions of Offer A, B and C, **this offer has an estimated cost of \$288 inclusive of GST and is \$400 inclusive of GST if you do not pay on time.***

Seen in the example above, this is a significant amount of information for the customer during what may be a verbal negotiation.

In our view 70H(2)(b) should be removed as 70H(2)(c) (emphasising any information may be relevant to selecting an offer) could effectively meet the objectives of this division by assisting the small customer to assess the suitability of and select a customer retail contract.

By removing 70H (2)(b), the prospective sales conversation would become;

*Offer A has a conditional pay on time discount of 25%, when met, this offer has an estimated cost of \$300 inclusive of GST and is \$400 inclusive of GST if you do not pay on time.*

*If you sign-up to a direct debit agreement you will receive a further 1% discount, if you sign-up to e-billing you will receive a further 2% discount of your bill.*

As seen in the revised example, the conversation becomes concise and comprehensible. Effectively removing the bold scripting that relates to monetary impacts and emphasising the information that is relevant to the offerings. We acknowledge the importance of disclosing offerings in monetary terms to allow for comparability and transparency, however we feel



that advising on the monetary variances between multiple offerings could over-complicate and confuse customers.

Alinta Energy would agree that provisions under 70H(2)(b) may be achievable in an Online sign-up environment (where all the information is laid out), but this approach would not allow for appropriate consideration during any verbal sales negotiations.

#### Contractual term that may influence the total monetary value of a bill

Alinta Energy views the provisions under 70H(1)(a) in relation to advising of terms or conditions that influence the monetary value of a bill as a key initiative that meets the draft decisions objectives relating to customers being able to assess the suitability of a customer retail contract. Although not expressly prescribed in the Energy Retail Code, the commentary in the Commissions draft decision states;

*If the retailer was aware of a scheduled price change during the contract period, such as one that was occurring within a few weeks of signing up a customer. In this instance, the retailer would be able to advise the customer that a price change was scheduled, what the price change will be, and the likely dollar impact of the price change.*

Similar to our previous points on monetary dollar impacts relating to variances, in our view informing the customer that a percentage variance would occur on a certain date, would be more appropriate as opposed to the retailer calculating and disclosing a bespoke dollar or monetary estimate on what already is an estimated assumption. The percentage variance would be consistent with existing regulations and communications to the market. Which would ensure new customers are not confused or dis-satisfied in circumstances where the price variance impact is not what was disclosed to them.

#### Explicit informed consent prescribed requirement

Given the complexity (in the draft decision) with advising on multiple offers and their variances in monetary terms, Alinta Energy has concerns with linking clear advice provisions to defective Explicit Informed Consent (EIC). If at any point, during what may now become a long and convoluted sales negotiation, the customer has misunderstood any of part of the information put to them – this will lead to a void contract and defective EIC.

Alinta Energy acknowledges the importance of informed decision-making by our customers during the prospective sales-process, but urges the Commission to consider the outcomes related to prescribing complex, lengthy disclosure requirements (described under 70H(2)(b)) which may lead to confused, disengaged customers that have unintended consequences.

### **Division 4 – Customers to receive deemed best offer information on bills**

#### Deemed best offer – consideration for tariff structure

Alinta Energy acknowledges the challenges with developing a definition for best offer. As proposed in the draft decision, the best offer will effectively be marketing the *potential* savings accessible from the retailers generally available offers. The risk with this approach, as acknowledged by the Commission, is that the best offer disclosed on their bill may not necessarily be the best offer applicable to the customer due to their circumstances.

Taking into account this accepted risk, Alinta Energy would consider that, applying any further processes with determining the best offer would further compound the potential risk of marketing an inappropriate best offer to our customers. Alinta Energy would consider the process of conducting a tariff structure assessment as one that further compounds the risk of marketing an inappropriate best offer.

Alinta Energy notes that tariff structure assessments (when determining the best offer) can be conducted in a number of ways, and can be influenced as a result of customer behaviours, and as such may not be appropriate when determining the best offer. Given the existing risks with the best offer definition and the reliance on estimated meter data for new customers, we would consider this a risk to further de-sensitizing and disengaging customers where the representation of "Best Offer" may not be accurate. .

#### Deemed best offer - \$22 threshold

The draft decision proposes a deemed best offer threshold saving of \$22 per annum. Having reviewed the research conducted by *The Behavioural Insights Team* their findings suggest that 90 percent of customers would require a saving of \$50 or more to consider switching. In Alinta Energy's view this finding is based on an inherently flawed statement and scenario, which stated;

*Imagine that your energy provider was able to email you a notification when you could be on a better plan with them. This email would also include a button that you could click, which would instantly switch you on to that plan – you wouldn't have to do anything else.*

Having this statement or scenario as a pre-position to the question of;

*'how much would you need to save (in dollars) before you would consider switching'*

would, arguably, distort the results and findings. Under no circumstances would retailers be able to email all its customers to achieve this false economy. The main reasons being;

- not all customers have regular access to emails,
- retailers do not have the email account details of all its customers, and
- customers can opt-out of email communications,
- Current regulatory framework would restrict a retailers ability to provide a switching solution as described above.

Our view gathers further merit when the same question was asked, while considered under the "Status Quo Scenario" – a saving of approximately \$100 or more was required to consider switching.

As part of their annual review into retail energy competition in 2017, the Australian Energy Market Commission (AEMC) found that Victorian consumers needed a saving of approximately \$336 for electricity and \$260 for gas annually to consider switching<sup>1</sup>. Figure 1 below details the savings needed from a quarterly bill for a residential customer to consider switching retailers.

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<sup>1</sup> Australian Energy Market Commission, *2017 AEMC Retail Energy Competition Review*, June 2017



Alinta Energy is not suggesting that the deemed best offer threshold be raised to align with the AEMC's findings, but rather, suggests that further research should be conducted to determine an effective threshold that is engaging for Victorian consumers. Alinta Energy are concerned that having a threshold that is too low, may de-sensitise or dis-engage customers from reviewing the best offer disclosures on their bill.

#### Implementation Timeframe and national regulation framework consistency

The draft decision, in its current form, requires a significant amount of development within Alinta Energy's systems and platforms to allow for accurate and timely information disclosures. Having an absolute focus on dollar or monetary impacts across the entire life-cycle of an energy customers retail contract, requires the development and integration of multiple IT platforms and tools to allow for instantaneous, accurate and complete information relating to the dollar impact of offer types. These integrated systems and processes will need to rely on multiple data inputs such as, actual and estimated metering data and offering specifications that would need to output bespoke qualifications.

To that end, we consider that a staged implementation would be the most appropriate method to ensure the full breadth of changes are implemented in a measured and responsible manner. By allowing for the consideration of a staged implementation process, retailers can ensure that any issues (structurally or technologically related) are resolved prior to expanding to external channels, platforms or counter-parties.

Essential Services Commission  
Level 37, 2 Lonsdale St  
MELBOURNE VIC 3000

Lodged by email: [retailenergyreview@esc.vic.gov.au](mailto:retailenergyreview@esc.vic.gov.au)

5 October 2018

## **Building trust through new customer entitlements in the retail energy market: Draft Decision**

The Australian Energy Council (the Energy Council) welcomes the opportunity to make a submission on the Essential Services Commission (ESC) draft decision that seeks to implement recommendation 3F to 3H of the Thwaites Review. The Energy Council supports measures that improve customer understanding of their energy offers and further encourages engagement with the market.

The AEC is the industry body representing 21 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

### **Part 2A overall**

The Energy Council is broadly supportive of the intention of the changes proposed and recognise the benefits that this can deliver consumers. We support measures that provide consumers with greater transparency in products on offer. However, it is critical that changes are implemented in a manner that limits unintended consequences.

Of significant concern is the high level objective of Part 2A and how this may flow through to the actions of retailers. 70G appears to place a responsibility on the retailer that is higher than an obligation to provide information to the customer. The words ‘assist’ and ‘select’ connote that the retailer has a role to play in what would normally be the customer’s choice. Our view is that retailers should be responsible for giving accurate, clear, objective information to the customer, and the customer will then use that impartial information to make an informed choice that suits their needs. The objective of 70G to *assist* the customer and make a *selection* infers the customer will make a particular choice based on the advice of their retailer. We consider this to be too high a standard.

We understand the ESC broadly considers this division to be about retailers identifying and providing customers with the right information. Our view is that this boundary is unclear from the drafting, and should be clarified in the final decision. In the absence of any guidance notes, interpretation is reliant exclusively on the words in the retail code, with particular focus on the objective of the division.

It is not yet clear how the market will evolve from this and other interventions currently in train. While a change to the status quo is necessary, we cannot create a scenario in which retailers appear to hold a higher responsibility over customers making good choices than they should. A customer’s agency should not be impinged. We would strongly encourage the ESC to include wording in this objective to unequivocally state that it is the customer’s responsibility to choose an offer that meets their needs, with the retailer’s role to ensure that they base that decision on accurate and easy to understand information.

## Best offer alerts

### Methodology

Most retailers consider the best offer methodology chosen by the ESC to be the simplest at a high level. However, we consider that some minor amendments must be made to ensure the best offer presented to customers is meaningful.

At the workshop on 27 September, restricted generally available offers (GAO) were discussed. This was raised in light of the ESC's decision to amend the definition of GAO to match the Australian Energy Regulator's new definition. The new definition includes offers previously considered not to be a GAO, such as offers for new customers only, and offers that were only applicable to specific groups of customers, namely those who were members of affiliated clubs and associations.

Our preference is that offers with eligibility criteria are excluded from the best offer alert requirements. These offers will often result in the cheapest deals for customers, but might either require a customer to pay a fee to join a club to be eligible, or it may be impossible for them to become eligible.

Certain fees for joining clubs can be large, potentially outweighing the savings the new offer might allow. The result of this methodology will cause disengagement, and will not deliver improved customer experiences or increase trust in the market.

### Frequency of notification

We support the proposal that customers be notified of the retailer's best offer at least twice per year, and once in every 6 month period.

We understand there are three options being considered. The option presented in the draft decision that would require retailers to notify customers in the first bill post 1 July and the first bill post 1 January (the July/January option), twice per year on the customer's 6 monthly anniversary (the anniversary option), and at any time during each 6 month period (the flexible option).

Our strong preference is for the flexible option, with some caveats to ensure the intended outcome is delivered. For example, we would be comfortable with an expectation that the alerts be at least 4 months apart to prohibit a potential scenario where a retailer issued the best offer notification in both June and July to avoid sending it again for a year.

At least 6 monthly notifications guarantee that customers are notified in a meaningful manner, without the risks of desensitisation and confusion. An additional benefit (which would significantly reduce operational costs for retailers) is that retailers will be able to spread the load of the notification across the year. We expect the notification will drive significant action from customers, and the load on call centres from issuing every July bill with the alert cannot be understated. Of further concern is that July is already one of the busiest months for call centres as customers get in touch to discuss high winter energy consumption.

Further, we consider there may be benefit in exploring uncoupling the best offer alert from the bill and the bill change notice. The draft decision requires retailers to issue the best offer alert three times per year, at specific times<sup>1</sup>. This is prescriptive, and not reflective of an outcomes based regulatory framework. The objective of the division in 70G, and the part in 70O sets out a need for customers to be informed in a clear

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<sup>1</sup> The customer would be notified three times if a single bill change event occurs. If no bill change, the customer would be notified twice.

and timely manner, that enables them to easily identify whether they are on the best offer. The Energy Council considers there is a risk that requiring this messaging to be sent more than once in a short period may confuse customers, particularly if the deemed best offer is different. From a drafting perspective this does not appear to be difficult to achieve. The calculation and presentation of the deemed best offer could be generic, with a simple clause requiring the alert to be provided at least as frequently as the final decision requires. Whether the message is received on the bill or the bill change notice should be irrelevant to the customer.

## **The obligation to offer**

Customers must be able to access energy as an essential service. In both the Victorian and national rules, this right of access is enshrined by requiring designated retailers to offer at least the standing offer to all customers. A designated retailer is either the current financially responsible retailer at the premises, or for a new site, the local area retailer.

Designated retailers are able to elect whether or not they will offer a market offer to a customer, and they must offer their standing offer. Other retailers have no obligation to make any offer to that customer. These rules are in place to carefully balance the rights of consumers to have access to energy, and the ability for retailers in a competitive market to determine the type of business they wish to operate. The rules allow particular offers to be developed and marketed to suit particular customer groups, with no obligation for retailers to offer these products to all. Without these protections, retailer offers that are beneficial to some customers may be removed, with all new offers developed to meet the needs of the lowest common denominator.

We consider that the impact of a number of proposals in the draft decision will change the nature of the 'obligation to offer' principles which are enshrined nationally.

## **Best offer validity period**

The best offer validity period appears to create an expectation that the alert on the bill is in fact a contract offer that the customer is able to accept. This expectation would be enhanced by the presentation of an offer ID. Under the Draft Decision, the retailer is required to inform the customer that the best offer exists, and then must accept a customer request to be put on that offer within 13 business days.

In contract law, the best offer notice on the bill would be considered an invitation to treat, and not an 'offer' to engage in a contract. The actual 'offer' will only occur once the customer engages with the retailer and the retailer agrees to enter into the new contract. We understand that the best offer notice will function as a 'nudge' to get the customer to consider the suitability of their contract, however the best offer notice must still be clearly distinguished from an 'offer' to contract.

Retailers should have an obligation to advise a customer if there may be better offers available to them. The customer then has a right to request that offer, but ultimately it is up to the retailer whether or not it is accepted. In a competitive market, a retailer has three options. Either accept the customer's request to be put on the offer advised in the alert, offer an alternative product that meets the customer's needs, or refuse to make a better offer. The retailer has an incentive to make an offer that encourages the customer to remain with them, otherwise the customer will switch providers.

In any event, these incentives render the 13 day validity period for best offers unnecessary. The Council understands the problem the ESC is attempting to avoid, however consider that the costs in avoiding this problem outweigh the benefits. As noted by many at the ESC workshop held on 27 September 2018, it is operationally cumbersome to maintain offers on a 'rolling' basis. Given this is the first version of these rules,

the simplest method of implementation should be utilised. If the lack of a validity period proves to be a significant detriment to consumers, we would be comfortable with this obligation being reviewed in future iterations of the code.

### **Requiring a retailer to inform about other suitable offers**

Rule 70H(1)b requires retailers to inform customers about other energy offers that the retailer (or their agent) reasonably believes would be suitable for that customer. This appears to create an expectation that all suitable offers will be proffered to the customer. As noted above, retailers only have an obligation to offer the standing offer if they are the designated retailer. There is no requirement to inform a customer about all of a retailer's offers.

We consider the appropriate outcome for these customers is that the retailer should, at a minimum, be obliged to emphasise that the terms and conditions of the offer being discussed might not be suitable in their circumstances. Again, the retailer is incentivised to offer customers other offers or risk losing the customer, but they should not be obliged to.

Practically this obligation as it is currently drafted will have other impacts on the products a retailer offers through different channels. It is quite common for certain sales channels (such as door to door or third party sellers) to only have access to a limited subset of a retailer's product suite. This rule would appear to create an obligation on retailers to make every offer available through every channel, irrespective of whether the product is generally available or not. There is a risk that for a retailer unwilling to offer certain products to particular customer groups, these products will be removed<sup>2</sup>.

## **Customer advice entitlement (CAE)**

### **What the CAE is intended to achieve**

Retailers broadly support the notion of an obligation to provide consumers with clear, timely, and reliable information to allow consumers to assess the suitability of the offer they are considering signing up to.

The Draft Decision highlights this as a mechanism that supports customer choices. It notes that it is intended to make a customer more aware of the contract terms that will impact their bills, and allow them to more confidently shop around. Retailers support these objectives.

But the energy market is complex, with different parties able to undertake works that can impact a customer's bill. The CAE cannot be utilised as a mechanism to resolve those broader issues. Often these charges will be agreed prior to the works being undertaken, but in certain circumstances, the agreement may be with the distributor or electrician rather than the retailer directly. For example, a customer may get solar at some point in the future and require changes to the metering at their property. In Victoria the network operator would perform these works, and the customer would be billed by their retailer. Similarly, a customer may receive an estimated bill at some point in the future that impacts their bill. These impacts are features of the market, not of the offer itself.

The manner in which the 70(H) has been drafted captures *any* contractual term that might impact a customer's bill. We anticipate this will result in a vastly broader capture than the intended objective of helping a customer choose an offer that suits their circumstances. The Draft Decision suggests that a retailer

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<sup>2</sup> These might include products only suitable to customers with solar or battery onsite, or other characteristics that influence their consumption patterns.

with a simple offer will not have to do much to comply with the CAE. Under the current drafting, this will not be the case.

The Energy Council suggests the scope of this obligation should be tightened so that it impacts only the factors that *will* impact a customer's bill for the purposes of offer comparison, and are within the retailer's control. For example, a missed pay on time discount, a paper bill, or a payment surcharge, will impact the amount customers would pay under the contract, and are unique to that offer. A customer is reasonably able to utilise the market to avoid these costs if they deem them to be unacceptable.

There is no benefit in advising a customer of costs that cannot be avoided. These unavoidable charges tend to be distribution charges that retailers merely pass through. An alternative drafting option may be to expressly exclude a retailer informing a customer of outcomes arising from something performed by a distributor or other party. We would be very concerned if the CAE required a retailer to spend a significant length of time providing extensive information to a consumer looking to enter into an energy contract. The risk of confusion is high.

### **Linking the CAE to Explicit Informed Consent (EIC)**

We are concerned about linking the CAE to the EIC obligations in s3C of the Code. The outcome of this link is if a retailer fails to adequately perform the CAE, then the EIC previously obtained will be considered defective.

We understand it is difficult for the ESC to change an obligation given the problem only arises if a retailer fails to comply with the new rule. Given this, we do not raise this issue lightly. This problem is a technical one, caused by the impacts of the defective EIC obligations in the code, rather than the standing of any CAE.

Defective EIC in the Energy Retail Code renders a transaction that required EIC void. Rule 3E prohibits retailers who fail to provide a satisfactory record of EIC to recover any amount for energy supplied as a result of a void transaction. If a customer transferred retailers as a result of that void transaction, the customer is liable to pay their previous retailer for energy rather than the new one.

The defective EIC obligations are designed to provide protections to customers who have been switched from a retailer without their consent, generally without their knowledge. A retailer who fails to obtain EIC for a customer to enter into a market retail contract, or to trigger a customer transfer, clearly should be returned to their previous retailer without incurring any liability to the new retailer. The other EIC obligations in the code do not involve transfers, so the critical element of the defective EIC rule<sup>3</sup> will not be triggered.

The CAE, unlike other EIC obligations, cannot be guaranteed by having adequate systems and processes in place. It is, by the ESC's own statement, intended to provide a much higher standard than mere tick box compliance. The customer's circumstances are expected to be understood, and the nature of the information the retailer gives to the customer will be guided by their individual circumstances. Compliance cannot be determined by any method other than investigating the entire interaction leading to the EIC being given for each specific customer. Issues will arise long after the contract was entered into, and only when the customer considers a term or condition relevant to them switching wasn't appropriately disclosed.

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<sup>3</sup> Rule 3E(5)



The technical problem with the draft decision is that rather than the customer receiving appropriate restitution from their new retailer (who they wanted to transfer to) for the failure to properly comply with the CAE, they are in fact required to be transferred back to their previous retailer. This is clearly not a good customer outcome – and will result in the customer paying more than they otherwise would. The below case study highlights the customer impact:

*John receives a higher than expected bill after paying a bill late. He makes a complaint to Bolt Energy 10 months after he switched from Lightning Energy to Bolt Energy on a cheaper plan. The offer included a pay on time discount which wasn't properly explained when he signed up.*

*An investigation takes place into what occurred. Bolt Energy check the initial transaction to determine whether the CAE was complied with by listening to a recording of the original sales call. Bolt Energy consider that the CAE wasn't complied with, and the EIC is deemed void.*

*Despite John paying his first 9 bills on time, and receiving all the benefits of the cheaper plan, under 3E(5)a John is no longer liable to pay Bolt Energy for any charges incurred under the new contract, and all money paid must be refunded. John is now liable to pay Lightning Energy all charges for the supply of energy on the terms and conditions of their original contract as if the transfer never occurred. Unfortunately, the prices for Lightning Energy are more expensive than Bolt Energy, so John's bill is higher, causing bill shock.*

The Energy Council strongly suggest that if the ESC determines a CAE is necessary, it is not linked to EIC. This shift would have no detrimental customer impact. Any retailer who failed to comply would have an obligation to rectify their error and if they didn't, the customer would be entitled to raise a complaint with EWOV where they would receive adequate recourse.

In the longer term, we would welcome the opportunity to further discuss the broader role of the EIC obligations in the ERC to ensure they are delivering the outcomes customers expect.

## Implementation

Retailers are concerned with the implementation date of 1 July 2019. We consider that a staged implementation, similar to that utilised by the AER in implementing the recent changes to the Retail Pricing Information Guideline, might deliver the majority of the benefits to Victorian consumers quickly, while allowing retailers time to implement the more complex elements of the draft decision.

In particular, the Energy Council would encourage the commencement date for the CAE for contact centres to be implemented on 1 July 2019, but delayed until at least 1 January 2020 for other channels (including digital and third parties)<sup>4</sup>. The CAE will be complex to implement for these channels, and would benefit significantly from the learnings from call centre implementation. Staging this implementation would allow retailers time to innovate in a manner that delivers customers the outcomes sought from the CAE. As noted in the September workshop, the CAE is complex to comply with, and will require retailers to change the manner in which they currently do things to comply. We are concerned that forcing retailers to be compliant for all channels at the same time will create unintended outcomes. For example, if retailers are unable to develop innovative systems to comply with the CAE for online channels, these channels will have to be removed from the market until a solution is found. This is not in the interests of customers.

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<sup>4</sup> We understand the Commission has suggested staged implementations previously, and retailers have suggested this created additional complexities, over and above a once off implementation. This remains true broadly, particularly where each element will require amendments to the same systems. Process changes outside of billing systems can be beneficial to implement in stages, provided their development is incremental (rather than continuing redevelopment).

Depending on the best offer alert frequency chosen, retailers also seek an additional transitional provision for the first alert sent after the commencement date. If either the July/January or the anniversary methods are chosen, retailers would need to be 100% ready to comply from the first of July. Retailers would welcome the first message to be sent at any time between 1 July and 31 December 2019 as a transitional provision to reduce the costs of implementation.

## **Implications of misleading and deceptive conduct**

Energy Council members are concerned that the best offer alert has the potential to constitute misleading and deceptive conduct under the Australian Consumer Law. This is an issue even if the ESC clarifies that the best offer alert does not constitute marketing.

Of particular concern is the assumption that including a 'conditions apply' disclaimer is adequate to avoid what is a potentially misleading statement. The ACCC has been very clear that disclaimers must be clear and prominent enough to enable a customer to know what the real offer is. If a best offer alert highlights savings the customer cannot reasonably achieve, then this would appear to be misleading.

Australian courts have indicated that a misleading representation is not rectified by a subsequent sales process that clarifies the representations that were previously made.<sup>5</sup>

This makes the wording of the best offer alert critical. There needs to be a balance between what will achieve the greatest response from customers, and what has the potential to mislead them.

The second round of testing conducted by BIT for the ESC investigated the response for two different types of message. The payment message, highlighting how the customer is "paying \$485 more than they need to" is particularly strong. If this message was chosen, we do not consider any disclaimer can adequately explain to a customer that these savings may not be achievable for them.

We strongly recommend the ESC engage with the ACCC to ensure the drafting of this obligation does not put retailers in a position where complying with the retail code risks breaching the ACL. Even if it might be unlikely for the ACCC to take action in such a circumstance, the risk of customer detriment is high.

## **GST inclusive amounts on bills**

Retailers are bound to comply with the GST Act. The Energy Council is concerned that the 3G requirements as drafted may be inconsistent with the GST Act, and may increase customer confusion.

While elements of the bill are inclusive and exclusive of GST, these elements cannot be simply added up to equate to a GST inclusive bill. A number of elements of the bill - for example solar, concessions, and discounts - are complex from a GST perspective.

A practical example of this issue can be shown on a supermarket receipt. The receipt will give a total bill amount, state the amount of GST included, and then designate particular items as GST exclusive. On an energy bill these GST exclusive elements will change based on the calculation and payment method of the bill. For example, a residential customer with a pay on time discount will be charged GST only on the amount paid, after discounts are determined. If the customer fails to pay the bill on time, the discounts will not be applied, and the GST amount will be higher.

We strongly suggest the ESC investigates the GST obligations further before finalising the draft decision.

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<sup>5</sup> *ACCC v Singtel Optus Pty Ltd* [2010] FCA 1177

## **GST and concessions**

The concession rules in Victoria require retailers to calculate energy concessions on GST exclusive amounts. This creates a practical issue for retailers in attempting to comply with the new rules in 3G. Under the current drafting, retailers would be required to only show the bill amounts inclusive of GST, with no ability to highlight the calculation methodology. This would result in a concession amount shown on the bill that is irreconcilable to the customer – a poor customer experience. We encourage the ESC to expand on the exemptions in 3G to expressly allow retailers to provide amounts as GST exclusive where any other obligation reasonably requires them to.

The Energy Council looks forward to continuing engagement with the ESC to implement the remaining measures in Recommendation 3 and further increase customer engagement with the retail energy market.

For any questions about our submission please contact me by email at [ben.barnes@energycouncil.com.au](mailto:ben.barnes@energycouncil.com.au) or on (03) 9205 3115.

Yours sincerely,



Ben Barnes  
Director, Retail Policy  
Australian Energy Council



**REF: SUBMISSION TO NEW REQUIREMENTS FOR ENERGY BILLS**

05 October 2018

Essential Services Commission  
Level 27, 2 Lonsdale Street  
Melbourne, Victoria 3000

To the Essential Services Commission,

I am writing to provide CISVic's feedback to your draft decision: '*Building trust through new customer entitlements in the retail energy market*'.

Community Information & Support Victoria (CISVic) is the peak body representing local community information and support services. Our local services assist people experiencing personal and financial difficulties by providing information, referral and support services, including Emergency Relief. CISVic is currently the lead agent in a Consortia of 29 members delivering Emergency Relief (ER) services from 39 sites across metropolitan Melbourne, regional Victoria, and NSW.

Firstly, I would like to congratulate the Commission on its comprehensive review of the electricity and gas retail markets in Victoria. We believe that you have listened to the sector representing energy customers, particularly those who experience energy-related financial hardship. Changes to the energy retail market are urgently needed to address the widespread difficulties for many struggling to pay their bills, which our agencies witness every day.

While we strongly support most proposals in the draft decision, we also believe that some of them need to be changed to better protect vulnerable customers. These relate to: the frequency at which the best offer appears on bills (No. 7), the notice period for bill changes No. (16), and exemptions from the need to issue a bill change notice (No. 17). Our feedback to these and other proposed measures is provided over page.

Thank-you for considering this feedback. Please feel free to contact me if you require any more information.

Yours Sincerely,

Kate Wheller  
Executive Officer

Community Information & Support Victoria

ESC Draft decision	CISVic response	CISVic comment
1. Best offer entitlement	Strongly support	Currently many customers are struggling to pay their energy bills and will benefit from being properly informed about best offers available.
2. The definition of best offer	Strongly support	
3. Estimating a customer's usage and the application of discounts and concessions when determining the best offer	Strongly support	CISVic agrees that the retailer should apply all unconditional and conditional discounts when determining the best offer. Offers with restrictions should be included, but with clear communication about these restrictions.
4. Presentation of the best offer on bills	Strongly support	CISVic endorses the ESC proposal for presentation of best offer on bills, particularly locating a savings estimate immediately adjacent to the amount due in a prominent position.
5. Clear advice entitlement	Strongly support	CISVic agrees that customers need to have very clear advice about the dollar cost implications of all terms and conditions when they enter a contract. This would help prevent vulnerable people being financially disadvantaged and exploited due to a lack of awareness or understanding.
6. Scope of the new best offer obligation	Strongly support	
7. Frequency at which the best offer appears on bills	Recommend change to frequency	CISVic believes best offer messages should appear on bills at a minimum of <u>quarterly</u> , rather than every six months. CISVic agencies see many people seeking emergency relief due to a lack of ability to pay energy bills. For these people, change to a best offer could bring significant relief. We believe they should not have to wait six months to be informed of these.
8. Dollar threshold for determining best offer	Strongly support	CISVic agrees that for an offer to be deemed a 'best offer' it must result in an estimated saving of \$22 - <i>or less</i> . Certainly the threshold should not be set higher, as \$22 is a significant amount of money for many people struggling to cover basic living expenses.
9. How long a best offer must be valid for	Strongly support	CISVic believes that it is very important for customers to have 13 business days to accept a best offer, from issuing of the bill where the best offer appears, and that this should be rigorously enforced.
10. Additional information to appear on bills	Strongly support	
11. Bill change notices	Strongly support	
12. Minimum requirements for information to appear on bill change notices	Strongly support	

ESC Draft decision	CISVic response	CISVic comment
13. Manner and form of bill change notices	Support	
14. Delivery of bill change notices	Strongly support	
16. Notice period	Recommend change to notice period	CISVic believes that retailers should notify customers of a bill change a minimum of <u>13</u> days before a benefit or price change takes effect. Not only would this be fairer and more reasonable, it would be consistent with the time period for availability of a best offer. (See 9 above).
17. Exemptions from the need to issue a bill change notice	Recommend change to exemptions	CISVic believes it is <i>crucial</i> for retailers to alert customers when there is a change to billing that would require customers to pay more for their energy, even when this increased amount is due to changes in government concessions.
18. Prices to be expressed in GST inclusive terms only	Strongly support	

4 October 2018

**RetailEnergyReview@esc.vic.gov.au**

Essential Services Commission  
Level 27, 2 Lonsdale Street  
Melbourne VIC 3000

Dear Essential Services Commission,

**Draft Decision: Building trust through new customer entitlements in the retail energy market**

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the Commission's Draft Decision, *Building trust through new customer entitlements in the retail energy market* (**Draft Decision**). Consumer Action appreciates the opportunity to participate in the reference group that has helped inform the Draft Decision. We are confident our views have been genuinely heard throughout that process and have been grateful for the opportunity.

We are also broadly satisfied with the Draft Decision. To the extent that consumer information can mitigate poor consumer outcomes, the Draft Decision will have a positive impact if implemented as proposed—as intended by the relevant recommendations of the *Independent Review into the Electricity and Gas Retail markets in Victoria* (**Independent Review**).

In particular, the 'best offer' requirement is a useful step forward for all of the reasons outlined in the Independent Review. For too long, sweeping assumptions have been made about consumer engagement in energy—without sufficient thought being given to facilitating that engagement, or whether the assumptions being made align with true consumer behaviour. In that vein, Consumer Action particularly values the input of the Behavioural Insights Team (**BIT**) in the development of the Draft Decision, and we encourage the ESC to continue to engage BIT and other behavioural scientists in policy development.

Consumer Action notes and strongly endorses the 'purpose driven philosophy' underpinning the Draft Decision, as expressed by Chairman Dr Ron Ben-David in his introduction:

*"Under our proposed approach the code will outline the reason why certain information must be provided to customers. This means retailers' actions won't only be judged against whether they've provided the information, but whether they've done so in a way that enlivens the purpose given for providing that information. This means obligations like the provision of information move beyond traditional principles of transparency and disclosure, and are elevated to higher principles*



*of responsibility and accountability. Retailers become responsible for enlivening the objective and purposes described in the regulations and they can be held accountable for doing so.”<sup>1</sup>*

We also acknowledge that while recommendations 3F-H of the Independent Review appear straightforward at first blush, the complexity of the market renders their practical formulation and implementation surprisingly difficult. The Commission has inevitably had to make a series of judgment calls to arrive at a workable series of decisions. The truth is, there is no ‘perfect’ formulation to cover all possible permutations when requiring a retailer to identify a ‘best offer’ and advise a consumer of that offer. Fortunately, the reality of consumer decision making in the energy market is that it is likely to be inexact, made on a gut feel for what sounds like it’s “about right” or “a good deal”. So it is not *about* the detail—it is all about the headline message, and using that headline message (or ‘nudge’) to prompt engagement, and then requiring retailers to honour that engagement with clear advice. On that basis we are confident that the Commission has arrived at a sensible position and we are hopeful that the Draft Decision, if implemented largely as drafted, would have a positive impact on the market.

That being said, Consumer Action does maintain its strong view that prompting engagement will only take the market so far—there is a limit to how many people will engage with the retail energy market, and a limit to the extent they will maintain that engagement over time. The Draft Decision effectively fashions a useful nudge to boost engagement, but in the end we will need bolder solutions (such as a Basic Service Offer) to fully arrest retail energy market dysfunction.

The energy sector does seem to be slowly waking up to the fact that consumers are not nearly as interested in energy as many sector practitioners have traditionally assumed they are. Ironically, there are very *rational* reasons for this. Not least of which is that there is actually *no choice* not to buy the product. The choice around energy consumption is not whether you buy it, but simply who you buy it from—and for a multitude of reasons, some consumers will inevitably be more willing and capable of shopping around than others. From Consumer Action’s perspective, this raises serious alarm bells around low-income and vulnerable consumers. A growing body of academic literature clearly demonstrates that people living in poverty operate under life-stressors which directly impact their capacity to engage with the market. It follows then, that this cohort are likely to be the ‘losers’ in a market where people are rewarded for their capacity to shop around, and penalised if they do not.

But they won’t be the only losers, and they won’t be the only ones who resent being forced to shop around for an essential service. A 2017 paper by the Centre for Competition Policy at the University of East Anglia, *Switching Energy Suppliers: It’s Not All About The Money*, found that when examining consumer behaviour in the energy market:

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<sup>1</sup> Essential Services Commission, *Building trust through new customer entitlements in the retail energy market: Draft Decision*, 2018, pp v-vi.





*"...a number of non-monetary factors...seem influential and...help explain apparently weak consumer response to savings opportunities in this context, suggesting that price competition for this seemingly homogenous product may have less power than is often assumed."*<sup>2</sup>

The study found that:

*"...broad factors which influence the switching decision include uncertainty about various aspects of the offer(s), preferences over non-price characteristics, concerns about the switching process itself and time pressures. Many of the factors identified can be located within a rational decision making framework, suggesting the perceived net benefit from switching may be much less than that suggested by looking solely at the magnitude of potential monetary savings. Consequently, switching rates are likely to be substantially lower than we might initially expect, even in favourable conditions."*<sup>3</sup>

In his 2018 Consumer Law Conference paper, *Competition, Neo-paternalism and the Nonsumer Uprising*, Dr Ron Ben-David made the observation that:

*"Merely telling nonsumers to shop around for 'savings' is unlikely to assuage their growing sense of injustice. It is a sense of injustice driven by having to shop around even though the purchase is involuntary. It is a sense of injustice borne from having to shop around ever more assiduously just to avoid being exploited. It is this growing sense of injustice that is seeing nonsumers increasingly demanding answers.*

*And as recent history shows, when nonsumers find their voice, the polity listens."*<sup>4</sup>

The proposed changes in the Draft Decision may well make it easier to get a better deal, but they still amount to telling people to shop around. We have to ask ourselves whether that is enough. It is news to absolutely no-one that consumer inertia in the retail energy market is deeply entrenched. The bigger question is whether it is actually endemic, constituting an unavoidable feature of a 'nonsumer' market.

If it is endemic, then it is incumbent on policy and law-makers to consider policy solutions which do not rely on breathing life into competition. To cite one example—the Victorian state government recently committed close to \$50 million dollars' worth of \$50 payments for consumers to simply visit the state operated price comparator web-site. If we're having to do that to 'encourage' people to shop around, at what point do we accept that perhaps they simply don't want to? At what point do we accept that we have, in policy terms, jumped the shark?

It is clear to us that new policy solutions are needed. It is also clear that such solutions may include a degree of price regulation.

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<sup>2</sup> Deller, David et al. *Switching Energy Suppliers: It's Not All About The Money*, Centre for Competition Policy, University of East Anglia, 2017, p. 1. Available at: <http://competitionpolicy.ac.uk/documents/8158338/17199160/CCP+WP+17-5+complete.pdf/fdaaed88-56e5-44f9-98db-6cf161bfb0d4>

<sup>3</sup> Ibid, p 2.

<sup>4</sup> Dr Ron Ben-David, *Competition, Neo-paternalism and the Nonsumer Uprising*, 2018, p. 32. Available at: <https://www.esc.vic.gov.au/sites/default/files/documents/competition-neo-paternalism-and-the-nonsumer-uprising-paper.pdf>

We note all of this to say that while the Draft Decision is important and useful, it is limited by the paradigm from which it springs. While it will have some positive impact, we do need a much more profound cultural shift to truly address retail energy market dysfunction.

Due to our extensive involvement in the process already, and our broad satisfaction with the document as proposed, we have kept our submission relatively brief.

If the ESC has specific questions of us in relation to any of the comments provided, we are happy to respond to those either through correspondence or in person.

Our comments are detailed more fully below.

### **About Consumer Action**

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just market place for all Australians.

### **Draft decision 1: Best offer entitlement**

This decision gives effect to a major element of recommendation 3F of the Independent Review, and as such is a decision the Commission was required to make following the Government's endorsement of the recommendation.

We hope this requirement will have some impact on the prevailing consumer culture around energy, helping to alert consumers to the benefits of remaining mindful of their energy plans and the potential benefits in switching—even if it only means switching between plans with your current retailer. In those terms, the details of the offer presented are not as important as the headline message, i.e. that you have options to choose from, you don't have to stay where you are. Undoubtedly, this measure will aid retention more than leading to new acquisitions, but if it results in fewer consumers remaining on their retailer's more expensive plans then we are comfortable with that outcome.

While this nudge will help some people, we believe the majority will still fail to engage. On that basis, and for all the reasons outlined above, a policy solution that is less reliant on consumer engagement is still the best way forward.

### **Draft decision 2: The definition of best offer**

We are satisfied that Option 2 is the preferable way to define 'best offer', acknowledging that there is no 'perfect solution' to this problem.

Option 1 would likely lead to a high level of consumer frustration, in a market where consumers already have very little trust or confidence (let alone goodwill) in retailers. Option 3 is too narrow and would fail to expose the degree of price dispersion that the entitlement must expose to really work, and Option 4 would introduce unnecessary and potentially counter-productive complexity.



Studies have found that more options can actually lead to less decision making, and this can be shown even when the options were very limited (i.e. an ability to choose from two different offers, rather than just accepting the one presented):

*"We have also included under uncertainty the negative effect of being shown two offers...rather than one. We interpret the result as a presentation of two offers introducing some uncertainty into the outcome for the recipient: for example, being shown two reasonably similar offers may have prompted some participants to wonder whether there might be other (possibly better) deals in the wider market, either now or in the near future, encouraging postponement of a decision."*<sup>5</sup>

We are strongly opposed to Option 5, which would place too much discretion in the hands of retailers and as the Commission correctly identifies, would present significant enforcement challenges.

Option 2 has the down-side that while the identified 'best offer' may be generally available, it may not be appropriate for the consumer being notified. An obvious example of this is if the offer includes a pay on time discount, and yet the consumer has a history of not being able to pay on time. In our view, this is where the clear advice entitlement should have its intended effect—it effectively requires the retailer to make that analysis on behalf of the consumer and advise them accordingly. For that reason alone, the clear advice entitlement is critical to the Draft Decision having its intended impact.

Throughout the consultation period much has been made of the potentially negative impact of consumers making contact with their retailer only to find that the 'best offer' they've been told about comes with conditions (such as a pay on time discount, or the requirement to be a member of a football club, or the RACV for example) and that this may exacerbate consumer frustration.

We contend that this concern has been over-stated and misses the point that the best offer notice is a nudge designed to encourage a consumer to contact their retailer—rather than provide a definitive offer.

The notice itself will be expressed in approximate terms (i.e. 'you *could* save *around...*' or 'you *may* be paying *up to* x too much') and requires the consumer to make contact with the retailer to learn more—at which point consumers are likely to anticipate potential caveats. Including such offers in the definition of best offer is important to give consumers a true sense of the *range* of prices available to them because this will (we hope) foster a desire to ensure they are getting a good deal.

We would prefer that 'new customer' offers are also included in the definition—as doing so may prompt consumers to explore their options with other retailers, working against the natural tendency for the best offer notice requirement to entrench existing market share by promoting retention. It is more important to us that the best offer notice fosters awareness in consumers of the benefits of 'active' shopping, than the particular 'best offer' identified be available to them without caveat. We also hope over time that the best offer notice will lead to less price dispersion,

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<sup>5</sup> Ibid, p 12.



and this can only happen if retailers are forced to expose the degree of price dispersion that currently exists.

Finally, in relation to pay on time discounts—we note that both the Independent Review and the ACCC electricity pricing inquiry *Restoring electricity affordability & Australia's competitive advantage* (**ACCC Inquiry**) correctly identified them as highly problematic and recommended that they effectively be abolished. We look forward to that outcome.

### **Draft decision 3: Estimating a customer's usage and the application of discounts and concessions when determining the best offer**

This is a sensible approach to achieve the desired purpose.

### **Draft decision 4: Presentation of the best offer on bills**

The BIT testing commissioned by the ESC was valuable in determining the appropriate format for communicating the best offer notice, and we are satisfied that it has arrived at the right balance of information and simplicity to maximise comprehension. This gives the best offer notice the best possible chance of having the desired impact. Along with other stakeholders we were particularly concerned about the potential for confusion, specifically the possibility that consumers may be uncertain as to how much they actually need to pay on their bill, as opposed to how much they could save by switching to the best offer. The BIT testing emphatically dispelled this concern, finding that 96.9% of respondents did not confuse the best offer notice with the amount due. This was very reassuring.

The BIT testing also clearly demonstrated the wisdom of the adage 'less is more', confirming that more information does not necessarily lead to the best (or at least, better) consumer outcomes. Having the *right* information at the right time—prompting the right action—is as effective as providing exhaustive disclosure.

It was also interesting to see that theory of loss aversion borne out in the testing, with people being clearly more motivated by the thought that they are paying too much than they are by the prospect of making a saving (despite the net dollar outcome being the same).

That being said, we note that even the highest testing option (i.e. the statement '*we could offer you a cheaper plan*' combined with '*you are paying up to \$485 a year more than you need to*') still only achieved a 64.2% comprehension rate in terms of respondents who understood that they were not on the best deal; and a 68% comprehension rate for those who understood they could contact their retailer for a better deal. Put another way, this means that 35.8% of respondents failed to grasp the key message, and 32% did not seem to understand that their retailer could assist them. In terms of stated intentions, the combination of statement + payment was again the most successful. Only a small proportion of respondents to that combination stated they would simply pay the bill and do nothing, although interestingly the proportion who stated they would contact their retailer to explore the best offer identified was not overwhelming. Just as many stated they would go online and do their own research, and only slightly fewer stated they would go to Victoria Energy Compare to explore their options.

Consumer Action is cognisant that these results may not be reflected in a live environment. If anything, there is likely to be a higher degree of inertia. It should also be noted that the respondents were both prompted and reacting to a potential saving of almost \$500 a year. Identified savings will



vary considerably, and it is to be expected that the lower the differential between the identified best offer and the consumers current plan, the less impetus there will be to take action and switch plans. Many unprompted consumers with busy lives, where lower savings levels are identified will simply whack the bill up on the fridge and pay it when they're able—if they're able—and if (or when) they remember to do so.

Taking comprehension figures into account, and then considering the degree of inertia in the market, (and the potential for inertia to increase as identified savings decrease), only the most optimistic adherents of competition theory could make a case for anything approaching a 50% likely 'success' rate for best offer notices—that is, in terms of consumers actually following through and achieving a better outcome. The reality is, the success rate is likely to be far lower. If even 20% of consumers were to take action on the basis of best offer notices to achieve identified savings (or savings close to it), then this would be an outstanding result. Unfortunately, it would still leave 80% who have not.

All of this only serves to underline the limitations of retail competition in the energy market—and highlight the quixotic task of stoking consumer engagement to produce the competitive tension it so desperately needs.

#### **Draft decision 5: Clear advice entitlement**

The clear advice entitlement is critical to the success of the Draft Decision, and we're not surprised it's contentious with the retailers. It is perhaps the clearest example of the Commission's outcomes-based, purpose driven regulatory philosophy. The clear advice entitlement does require retailers to adopt a new mind-set in how they interact with their customers, and it is only to be expected that they find the prospect challenging.

We strongly support the Commission in the direction they're taking and accept that it will take time to shift energy retailer culture, just as it will take time to shift energy consumer culture. It's a truism that there is a tension between achieving a truly competitive market, and the natural desire of each individual retailer to maximise profitability. To date, retailers have been able to exploit consumer inertia and the 'stickiness' of the market to overcharge consumers and over time they have become used to profit margins bolstered by those dynamics. It is therefore a significant but necessary cultural shift to require retailers to make genuine efforts to clearly advise consumers of the best plan available to them, and to work to ensure that plan is appropriate. The factors identified in the Draft Decision as being necessary to communicate to the consumer are entirely appropriate, and retailers are well-placed to take those factors into account when providing their advice.

Of course, this cultural shift would be helped by increased awareness of the benefits of switching, of the Victorian Energy Compare (**VEC**) web-site, and the prospect that if retailers don't work to keep consumers then they will lose market share. While this sounds good in theory, we know that such competitive tensions are yet to truly emerge in Victoria's energy market. In a sense, the clear advice entitlement is about trying to instill a mode of behaviour in retailers that should by rights already exist due to competitive market forces.

The fact that the Commission has to leverage regulatory reform to compel retailers to behave this way does raise the question of whether competition theory really *works* in retail energy and whether a bolder solution—such as a BSO—may be necessary to achieve positive consumer outcomes.



### **Draft decision 6: Scope of the new best offer obligation**

This is sensible, we have nothing to add.

### **Draft decision 7: Frequency at which best offer appears on bills**

This issue has been the subject of much discussion throughout the consultation period. Consumer Action supports the proposal that best offer notices should be provided twice a year, as we believe providing them too frequently may dull their impact. If best offer notices appear on every bill, we are concerned they will fade into the visual ‘white noise’ that constitutes much of what is already an over-crowded communication piece. As it is, consumers naturally zero in on one factor—the amount due. For the best offer notice to register with the consumer, we believe it has to have some degree of novelty. We are mindful that consumers will also be receiving this information when they receive bill change notices, so we are mindful of dulling the message through over-use.

In terms of when those six-monthly notices should be sent, we are persuaded by the argument that requiring them at set times as the Commission has proposed (i.e. the first bill after 1 January and 1 July each year) may be problematic. The proposal could create a surge in inquiries at those times (and therefore long call-centre waiting times, which is likely to frustrate consumers). It is also possible that retailers will manipulate their available offers at those times to minimize the impact of the best offer notice. Set against those concerns is the potential of encouraging cultural shift through having set notice periods, during which consumers may be inclined to talk to each other, raising community awareness, and during which we may see retailers work to maintain market share. Without knowing the figures, we imagine that a reasonable proportion of consumers switch private health insurers annually at around the time that premiums are raised. It’s highly visible that insurers compete at those times to attract new customers. It would be interesting to know the rate of switching in those periods, as opposed to other times of the year.

On balance, we do arrive at the view that twice year at the retailer’s discretion, provided there is at least four months between notices, is the preferable outcome. We would also encourage the ESC to think about what public education and information campaign it may like to run to raise awareness of the initiative. This could help lift community awareness and foster dialogue between consumers even without designating set dates for best offer notices.

### **Draft decision 8: Dollar threshold for determining best offer**

This has been another point of great discussion throughout the consultation period. Again, Consumer Action is comfortable with the draft decision reached by the ESC. While few consumers are likely to switch for a saving of \$22, those who will are likely to be the ones who desperately need to do so.

If the threshold is to be raised from that amount we would be strongly opposed to it rising above \$50. The truth is, for low-income consumers living in poverty, no amount of money can be considered to be a small amount of money.

### **Draft decision 9: How long a best offer must be valid for**

This has been another contentious issue throughout the consultation process. Consumer Action does understand the retailer’s dilemma with this issue—if an offer must remain open for 13 days from the issuing date of the bill, and if best offer notices are going out at different times, then it creates the prospect of offers which can never be closed without breaching the Code.



That being said, surely it is within the capacity of retailers to identify the expiry date of their offers when generating 'best offer' notices, and ensure that they only list an offer as a best offer when they know it will still be open 13 days from the bill's issuing date? That way, it would not be a matter of holding an offer open on behalf of a consumer in order to meet the 13-day requirement, but of ensuring that any 'best offer' highlighted is one that they already know will be open at least 13 days from that time. If a better offer exists but is due to expire in a shorter time period, then the retailer would simply not identify that offer – and would instead identify the nearest equivalent offer which they can confirm will remain open. Perhaps this is infeasible for operational reasons, but if not it would seem to be an acceptable solution to the problem.

Consumer Action does, however, question whether 13 days provides consumers with enough time to respond, and whether a 21 or 28 day period may be more appropriate. We note that this is a gut feel which may require behavioural testing.

We also note that we are less concerned with this issue than some other stakeholders. The real value of the best offer requirement is not to ensure that consumers get the exact 'best offer' identified, but to prompt consumers to engage with the market and get a *better* offer than one they're on. As previously discussed, the 'best offer' may not be appropriate for them anyway, due to a whole range of potential reasons.

Accordingly, even if the particular 'best offer' has expired, it is incumbent upon retailer's through the clear advice entitlement to recommend the *nearest equivalent offer to the best offer* and ensure that the terms of that offer are appropriate (and beneficial) for the consumer. Whether they save the exact amount stated on the notice (which would be incredibly difficult to achieve) is not actually the intent – the intent is that they not be left to flounder with an expensive, inappropriate offer. Beyond that, the broader intent is to encourage consumers to be more mindful of their agency in the retail energy market – that they have the freedom to shop around for a better price (either with their own retailer, or with another).

#### **Draft decision 10: Additional information to appear on bills**

This is a very important element of the Draft Decision as without clearly pointing consumers in the direction of VEC, the additional proposed bill information will do much to shore up retention but little to fuel competition through new customer acquisition. It is important though that the notice identifying VEC be prominent on the bill, and that it be clearly identified as a government web-site and service.

Again, a strong public information and/or education campaign accompanying these reforms could be very useful to drive more traffic to VEC.

#### **Draft decision 11: Bill change notices**

Consumer Action has little to add to the ESC's Draft Decision regarding this reform, other than to say we regard the bill change notice as a sensible and necessary reform and support it in its entirety.

Historically, it has been a major failing of the retail energy market that retailers have not had to advise consumers or price and benefit changes. Given the 'stickiness' of the market, this has resulted in far too many consumers paying far too much for energy—and has produced what has become known as the 'loyalty tax' whereby consumers who stay with their retailer the longest (i.e. the most loyal) end up paying the highest prices.



It is necessary in any well-functioning market that consumers are advised of price and/or benefit changes so that they may re-appraise their situation and act accordingly.

**Draft decision 12: Minimum requirements for information to appear on bill change notices**

This is a sensible decision, we have nothing to add. The minimum information identified should give consumers what they need to make an appropriate decision.

**Draft decision 13: Manner and form of bill change notices**

Consumer Action strongly supports the Commission's decision to require retailers to provide bill change notices *'in a manner and form consistent with the objective of the notice.'* This is an important demonstration of the outcomes-based approach that the Commission highlights in the introduction to the Draft Decision and will be a good test of retailer's capacity to embrace that approach and move away from the 'tick-box' approach to compliance that has come to characterise the industry in recent years.

**Draft decision 14: Delivery of bill change notices**

This is a sensible decision, we have nothing to add.

**Draft decision 15: Scope of bill change notices**

We are disappointed that exempt sellers are not included in this reform, although we understand the Commission's reasons for that decision. We do note that the Draft Decision says exempt sellers will not be required to send bill change notices 'at this point in time' and remain hopeful that they will be required to do so in due course. While exempt sellers will admittedly find it challenging to adjust to regulatory requirements, that doesn't change the fact that consumers who purchase their energy through them require (and deserve) the same level of consumer protection that applies to consumer's purchasing energy through more traditional channels.

Other than that, this is a sensible decision and we have nothing further to add.

**Draft decision 16: Notice period**

This is a largely sensible decision, and we agree that for behavioural reasons a five-day notice period is likely to be more effective than the current 40 to 20-day notice period. That is, to the extent that a bill change notice is likely to prompt a consumer to take any action at all, it is more likely to do so if delivered close to when the change is going to occur as opposed to weeks in advance.

That being said, we are conscious of the risk that with slow mail delivery times a consumer may receive the notice with *too little* time (i.e. a day or two before the change takes effect). We encourage the ESC to clarify that the notice must be received by the consumer at least five business days before the change takes effect to ensure the notification lands in a period that is neither too far in advance of the change, or too close to it.

**Draft decision 17: Exemptions from the need to issue a bill change notice**

Aligning with AEMC and AER decisions regarding price and benefit change notices makes sense, and on that basis we regard this as a sensible decision—we have nothing further to add.

**Draft decision 18: Prices to be expressed in GST inclusive terms only**

This is a sensible (and long overdue) decision, we have nothing further to add.

**Draft decision 19: Commencement date for the new requirements**



We understand that 1 July 2019 is as soon as the reforms can be practically implemented and on that basis we support the ESC's Draft Decision on the commencement date.

Please contact Zac Gillam on 03 9670 5088 or at [zac@consumeraction.org.au](mailto:zac@consumeraction.org.au) if you have any questions about this submission.

Yours Sincerely,



Gerard Brody  
Chief Executive Officer  
**CONSUMER ACTION LAW CENTRE**



Zac Gillam  
Senior Policy Officer  
**CONSUMER ACTION LAW CENTRE**



## Submission to ESC's New Requirements for Energy Bills

Essential Services Commission  
Level 27, 2 Lonsdale Street  
Melbourne, Victoria 3000

Dear Secretariat,

The Consumer Policy Research Centre (CPRC) welcomes the opportunity to provide a submission on the ESC's new requirements for energy bills.

CPRC is an independent, non-profit, consumer think-tank established by the Victorian Government in 2016. CPRC undertakes consumer research independently and in partnership with others to inform evidence-based policy and business practice change. Our vision is to deliver a fair outcome for all consumers. We work closely with policymakers, regulators, academia, industry & the community sector to develop, translate and promote evidence-based research to inform practice and policy change.

CPRC welcomes the introduction of the best offer entitlement to ensure consumers receive timely, simple information about alternative available products.

### **Best offer definition**

We support the Commission's draft decision in adopting the 'cheapest generally available offer' as the most practical definition of a 'best offer'. While this may not capture the retailer's cheapest offer in the market, it reduces the risk that offers with more stringent eligibility requirements are presented which may limit consumer access and create consumer confusion. As noted by the Commission, this initiative is intended as a nudge to prompt individuals to contact their retailer to secure a better offer, so navigability and simplicity are key.

Where an offer does have eligibility requirements – such as for new customers only or direct debit sign-up – the Clear Advice Entitlement should provide consumers some protection. If this secondary mechanism works as intended, retailers would still offer consumers a better tariff than their current plan.

### **Presentation of the best offer on bills**

In our view, the use of comprehension testing with consumers is fundamental where regulators and policymakers seek to improve information disclosure.<sup>1</sup> To this end, we welcome the Commission's approach to adopt consumer testing and informed by behavioural insights into this reform process. The results have provided a useful evidence base from which more meaningful decisions can be made, even with various limitations (such as online sampling) due to the constraints of the consultation period. Ideally, the Commission would be able to conduct further testing with digitally excluded consumers and those with limited numeracy to identify whether the presentation improved comprehension, and to ensure that consumers can identify the correct amount to pay - though we recognise the limited timeframe for the delivery of this reform.

The ESC's research found that "loss aversion" style message appeared to work best, which is consistent with the broader behavioural economics literature. Given these findings, we

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<sup>1</sup> CPRC, *Five Preconditions of Effective Consumer engagement*, March 2018.

support the commission's decision to limit the discretion of retailers to change the presentation or wording of the "best offer" information.

In communicating the best offer to a consumer, we would support a requirement that each offer be linked to a unique plan ID, which may reduce confusion where consumers call retailers to switch plans or endeavour to switch providers.

### **Unique Plan ID**

CPRC strongly encourages the Commission to consider introducing a unique plan ID, as outlined in the AER's revised Retail Price Information Guideline (RPIG). A requirement that this unique energy plan ID be recognised by retailers, be required on retailer bills – and on third-party websites wherever the tariff is advertised - will likely reduce the confusion that consumers encounter when seeking to switch providers. Consistency across different mediums will avoid unnecessary complexity and consumer confusion.<sup>2</sup>

We would also note that VEC already generates a unique offer ID code for each energy tariff that is submitted to the website by each retailer. Were further work required to more formally establish this unique ID, we note that KPMG is currently engaged by the Department of Energy, Land, Water and Planning (DELWP) to consult on possible revisions and improvements to *Victorian Energy Compare*. This suggests an opportune window to align different objectives – with the end goal of a simpler customer journey to compare and switch.

Though out of scope of the ESC's immediate work program, the inclusion of a unique plan ID on the bill consistent with VEC may enable the Department to deliver on other recommendations in the *Independent Review into the Electricity and Gas Retail Markets in Victoria*, such as recommendation 3J:

The Victorian Government's program to continue to enhance and promote the Victorian Energy Compare website and use of smart meter data.

If Victorians can access their consumption data, overlaid with their tariff (via a plan ID) on *Victorian Energy Compare*, this may provide a simple, efficient and effective way to enable consumers to compare their current tariff cost with new market offers, reducing any ambiguity and guesswork currently required. If the approach of the ESC's reforms is to nudge consumers to action, simplifying the actions and subsequent consumer journey is likely to yield improved outcomes.

Moreover, clear plan identifiers will be a necessary requirement for the forthcoming Consumer Data Right (CDR) reforms – in which energy is likely to be the next sector these reforms will be applied to. Data portability to enable more accurate comparison and facilitate switching is essential to improve consumer outcomes as part of this process. Key data to enable a consumer to compare products and services in the energy sector includes: information about user of product (i.e. National Metering Identifier), information about use of product (i.e. consumption data), information about a product (i.e. current retail tariff and product information). Together, these three pieces of data enable comparison of current plan with potential plan.

### **Clear advice entitlement**

We support the requirement that customers are entitled to clear advice about the terms and conditions of the retail offer proposed by a retailer, at the point of entering a contract. This relates to CPRC's second precondition – that the terms and conditions are clear and understandable.<sup>3</sup>

We would encourage the Commission to consider including in the Clear Advice Entitlement as a requirement to inform consumers that if and when the company proposes to change

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<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

any of the rates associated with the product, the consumer will receive a Rate Change Notification via their nominated communication channel (see Decision 16: Notice Period).

We note from the ESC's forum that articulating all the hypothetical circumstances in which prices might change potentially creates an overwhelming conversation for consumers. However, this goes to the question of how retailers structure their tariffs and contract accordingly - it is notable that new tariffs are already emerging that appear address the variability of costs in energy tariffs with genuinely fixed charges over a set period. We agree with the ESC's approach to identify a reasonable line of delineation about the terms and conditions relevant to the new tariff that must be communicated to consumers.

### **Interaction with third parties**

CPRC agrees with the ESC's decision that any third party acting on behalf of a consumer with their explicit informed consent, should also be able to meet this same Clear Advice Entitlement.

### **How long should an offer be valid after appearing on the bill**

The proposed 13 days for an offer to remain valid seems a particularly short window. The behavioural economics literature suggests people put off complex decisions (procrastinate) so this limited window may limit effective engagement.<sup>4</sup>

Moreover, as long as an energy tariff can be accessed on VEC, from the customer's perspective it remains "valid" and appears "generally available". In our view, aligning the expiry of the offer on the bill, and elsewhere - on VEC and other comparison sites - constitutes key information for consumers when making decisions.

As raised in the ESC's draft decision forum, the use of an expiry date linked to a unique plan ID may help to address this complication. Realistically, providing significantly time-limited offers may frustrate consumers and may even have the unintended consequences of individuals disengaging until the next best offer letter. It is worth remembering that 13 percent of Victorian households do not have the internet at home, so may be totally reliant on these letters to identify cheaper offers.<sup>5</sup> Therefore, a longer period - perhaps 30 days - would seem more reasonable.

### **Frequency at which the best offer appears on bills**

There are good arguments for the different options outlined by the ESC for the frequency at which the best offer must be provided on a bill.

Narrowly identified periods - such as in January and July - may help policymakers, community workers and media to build awareness for switching. In the UK's experiment with cheapest market offer trials, there was a significant "voltage drop" between the pilot and larger scale roll-out - which suggests that external factors reinforce nudges delivered via bills about switching to cheaper offers.<sup>6</sup> High profile news coverage of the issues with the energy market, combined with a price change mid-way through the trial may be responsible for the elevated switching of both the control group the amplified switching rates of both treatment arms.<sup>7</sup>

However, we recognise that retailers might receive overwhelming volumes of calls as a result of a narrow window, creating problems for both consumers seeking to switch and retailers call centre workloads. From the consumer's own perspective, an anniversary best

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<sup>4</sup> Karen Stenner, Elisha R. Frederiks, and Elizabeth V. Hobman, "Household Energy Use: Applying Behavioural Economics to Understand Consumer Decision-Making and Behaviour", *Renewable and Sustainable Energy Reviews* 41 (January 2015): 1385-94.

<sup>5</sup> ABS, *8146.0 - Household Use of Information Technology, Australia, 2016-17*, 2018

<sup>6</sup> Al-Ubaydli, Omar, John A. List, and Dana L. Suskind. "What can we learn from experiments? Understanding the threats to the scalability of experimental results." *American Economic Review* 107, no. 5 (2017): 282-86.

<sup>7</sup> Francisco Moraiz and Roger Tyers, "Small Scale Database trial", Research Results, (Ofgem, November 2017).

offer perhaps makes sense, however, we recognise that individualised best offers may be complex for retailer's systems.

The proposed option of two best offer letters per year "not within four months" at the discretion of the retailer perhaps offers a reasonable alternative.

### **Dollar threshold for determining best offer**

CPRC notes the findings of the ESC's research indicate that consumers do not have a uniform view about the dollar threshold required to switch, and for some, this smaller dollar threshold may prompt action, and may well be material for those on limited incomes.

### **Additional information**

We strongly support the need for information on the bill to clearly direct consumers how to access the Victorian Energy Compare website. Evidence suggests that many consumers remain unaware of the government's comparator, even though many indicate a strong preference for an independent government comparator rather than commercial comparators.<sup>8</sup>

### **Prices to be expressed in GST inclusive terms only**

This is a sensible and well overdue reform. Research suggests partitioned pricing can be confusing for consumers and there appears no logical reason why GST should be separated out from the cost of service.<sup>9</sup> Those components that do not include GST – such as concessions and solar feed in tariffs – could be articulated separately.

If you have any queries about this submission, please don't hesitate to contact Ben Martin Hobbs on 03 96379 7600 or [ben.martinhobbs@cprc.org.au](mailto:ben.martinhobbs@cprc.org.au).

Yours sincerely,



Lauren Solomon

**Chief Executive Officer  
Consumer Policy Research Centre**

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<sup>8</sup> CPRC, *Five Preconditions*.

<sup>9</sup> Steffen Huck, Brian Wallace and London Economics, 'Partitioned Pricing Research A behavioural experiment', OFT1501A (Office of Fair Trading, 2014), 2014.  
[http://webarchive.nationalarchives.gov.uk/20140402165048/http://oft.gov.uk/shared\\_oft/economic\\_research/OFT1501A.pdf](http://webarchive.nationalarchives.gov.uk/20140402165048/http://oft.gov.uk/shared_oft/economic_research/OFT1501A.pdf)

5 October 2018

Essential Services Commission  
Level 37, 2 Lonsdale Street  
Melbourne VIC 3000

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

Dear Dr Ben-David

**Re: Draft decision - Building trust through new customer entitlements in the retail energy market**

Thank you for the opportunity to comment on the Essential Services Commission's (ESC) *Draft decision – Building trust through new customer entitlements in the retail energy market*.

The Energy and Water Ombudsman (Victoria) (EWOV) is an industry-based external dispute resolution scheme that helps Victorian energy or water customers by receiving, investigating and resolving complaints about their company. Under EWOV's Charter, we resolve complaints on a 'fair and reasonable' basis and aim to reduce the occurrence of complaints<sup>1</sup>. We are guided by the principles in the Commonwealth Government's Benchmarks for Industry-based Customer Dispute Resolution<sup>2</sup>. It is in this context that our comments are made.

In examining the complaints we receive from customers of energy retailers, and considering how the implementation of these proposed changes might present themselves as complaints, we broadly find that they will improve the customer experience within the market. The focus on outcomes for customers appropriately seeks to shift the responsibility to build trust in the retail energy market onto retailers. This should ultimately assist with a reduction in customer complaints to EWOV.

We have provided a brief response to the Draft Decision below.

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<sup>1</sup> See Clause 5.1 of EWOV's Charter: <https://www.ewov.com.au/files/ewov-charter.pdf>

<sup>2</sup> See EWOV's website: <https://www.ewov.com.au/about/who-we-are/our-principles>

### ***Draft decision 1: Best offer entitlement***

As explained in more detail below, EWOV continues to receive high volumes of complaints from customers with concerns about their billing, in particular high bill and their capacity to pay for their energy. We support the inclusion of the best offer via customer bills as a mechanism that will inform consumers of potential opportunities to reduce their energy bills.

### ***Draft decision 2: The definition of best offer***

EWOV considers that to achieve the outcomes the Commission is seeking (to increase customer confidence and trust in the retail market), it would be advisable to remove the discretion related to non-generally available offers. Customers should have the genuine benefit of the ‘best offer’ for them, based upon their energy usage. Removal of the discretion will improve access to more affordable tariffs for customers, which should contribute to a reduction in some of the underlying issues to EWOV’s high billing issues.

In 2017-18, 11,747 customers (one in three) contacted EWOV worried about being able to pay for energy or water. High bills were the top issue overall (87% of these relating to electricity and gas), closely followed by disconnection/restriction for debt, (97% of these related to electricity or gas); and debt collection/ credit default listing (96% about electricity or gas). The average residential arrears in the complaints we investigated was \$2,698, with 473 residential customers holding arrears of over \$3,000; some as high as \$10,000. A significant number of customers presented with limited capacity to reduce their consumption or increase their capacity to pay. From our conversations with them, we often learnt that they were carrying debts across multiple utilities. In many cases, it was also evident that utility debt was part of a much more complex financial situation they were facing.

### ***Draft decision 3: Estimating a customer’s usage and the application of discounts and concessions when determining the best offer***

To support customers understanding the potential real life impact of the information provided by in the “best offer” disclosure, EWOV supports the application of discounts and concessions when estimating a customer’s usage for the best offer.

### ***Draft decision 4: Presentation of the best offer on bills***

Customer confusion about how to understand the information contained on their bill can be a driver of customer complaints to EWOV. To provide greater clarity to customers and achieve the underlying intent of building customer trust, EWOV supports the presentation of the best offer on bills in a manner that enables clear and easy access for all consumers.

### ***Draft decision 5: Clear advice entitlement***

EWOV supports the clear advice entitlement as a way of helping customers understand their rights and responsibilities. However, the format of this advice will need to enable the customer to understand it fully to provide its explicit informed consent.

### ***Draft decision 6: Scope of the new best offer obligation***

EWOV supports the scope of the new best offer obligation, however, we do consider there is a need to expand the obligation to exempt sellers.

EWOV's jurisdiction was expanded to include embedded networks from 1 July 2018. While there is limited in jurisdiction complaint data available at this point, customers have frequently expressed concern about their high bills and inability to access the market. In the instance that a customer lives in an apartment building, for example, and has the right, via an AMI compliant meter, to access the services of a retail licence holder, best offer information from embedded networks will be fundamental in informing the customer's decision (and providing a point of comparison). The inclusion of this right will assist more customers to access the benefits of a competitive market.

### ***Draft decision 7: Frequency at which the best offer appears on bills***

EWOV supports the frequency at which the best offer appears on bills, however suggest that customers may become more acquainted with the process if it is provided more regularly, such as quarterly. The incentive for consumers to engage with the information on the bills will likely be linked to events such as seasonal high bills (electricity in Autumn, gas in Spring). EWOV's ResOnline data released in August 2018 clearly evidences the seasonality of billing related complaints and highlights the opportunity for more timely provision of information to customers<sup>3</sup>.

### ***Draft decision 8: Dollar threshold for determining best offer***

EWOV supports the dollar threshold for determining the best offer. The customers EWOV assists in the resolution of energy complaints, often present with bills that are small in comparable terms, given the efforts of a household to minimise its use to the best of its ability, for example when in receipt of Newstart allowances.

The ability to save \$22 by switching to a better offer is potentially a considerable benefit to those customers.

### ***Draft decision 9: How long a best offer must be valid for***

EWOV considers that an offer needs to be available for a timeframe that will align with a customer's behaviour. Consumers are likely to engage with their bill on receipt, and at the time they go to pay their

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<sup>3</sup> <https://www.ewov.com.au/reports/res-online/201808>



bill, as evidenced by the complaints EWOV receives. At minimum the offer, or an equivalent offer, will need to be available for a period aligning with a payment cycle and consumer behaviour.

***Draft decision 10: Additional information to appear on bills***

EWOV supports the inclusion of additional information relating to Victorian Energy Compare on a customer bill. Of further benefit, to enable a customer to adequately embrace the opportunity provided by Victorian Energy Compare, would be clear instructions on how to access customer energy consumption data files.

***Draft decision 11: Bill change notices***

EWOV supports the new requirement to issue bill change notices triggered by price or benefit change.

We consider that prior notification via a more targeted bill change notice should result in more consumers becoming aware of their rights to change providers should they be unhappy with the proposed changes.

Our position on this is explained in more detail in our submission to the Australian Energy Market Commission (AEMC) National Energy Retail Amendment (Advance notice of price changes) Rule 2018 (Consultation Paper)<sup>4</sup>.

***Draft decision 12: Minimum requirement for information to appear on bill change notices***

EWOV supports the minimum requirements for information to appear on bill change notices, noting that alongside retailer estimates of the annual dollar impact of the benefit of price change the current annual dollar amount for usage must be included for easy comparison.

***Draft decision 13: Manner and form of bill change notices***

EWOV considers that some prescription for the format/presentation of this information will be valuable, to ensure the information is provided in a clear and accessible format that minimises confusion and potential complaints.

***Draft decision 14: Delivery of bill change notices***

EWOV agrees with the draft decision regarding delivery of bill change notices.

***Draft decision 15: Scope of bill change notices***

EWOV agrees with the scope of bill change notices, however, as above, considers this is an equally important inclusion for the customers of embedded networks in the context of enabling those

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<sup>4</sup> [https://www.ewov.com.au/files/aemc\\_advance\\_notice\\_of\\_price\\_changes\\_-\\_consultation\\_paper\\_22-5-2018\\_0.pdf](https://www.ewov.com.au/files/aemc_advance_notice_of_price_changes_-_consultation_paper_22-5-2018_0.pdf)

customers to know in advance of a price or benefit change. This will enable them to pursue their right to exit the embedded network and switch to a licensed retailer, [where able](#).

#### ***Draft decision 16: Notice period***

EWOV supports the notice period.

#### ***Draft decision 17: Exemptions from the need to issue a bill change notice***

EWOV is concerned with the exemption relating to the potential for a benefit change where the benefit change date occurs within 40 business days of the commencement of the market retail contract.

EWOV has received complaints from customers who have, prior to the receipt of the first bill, been informed of price changes significantly higher than those they have signed up to. Advance notice of these changes will reduce complaints to EWOV, as customers will be able to switch providers before incurring bills relating to the price change. In addition, the time between receiving the bill increase notification and the actual bill, presents problems for consumers who may not recollect a price increase notification or be aware of the start date. A second notification on or with the first bill following the price increase would serve to reduce complaints from consumers to EWOV. The case studies below illustrate the notification issues as well as the significant price increases customers are experiencing.

##### *Case study 1:*

*Mr B contacted EWOV as he was dissatisfied with his retailer in relation to a price increase. He had received an email advising that it would be increasing its rate by 34% and subsequently received a new bill based on the increased rates, contributing to high arrears of \$2,400. (2017/24127)*

##### *Case study 2:*

*Ms D received a high bill for the amount of \$2,705.86, for the period 1 May 2018 to 31 May 2018 - 147.27kWh. The bill same time last year was for the amount of \$1,267.21 with comparable usage of 110.33kWh. The retailer maintained that it had sent Ms D that a letter to inform her that the contract had changed, which included a price increase. Ms D was not aware of the letter. (2018/14411)*

##### *Case study 3:*

*Mr F was advised of a rate increase by his retailer. He subsequently received a bill for \$931.67 for the period 18 January 2018 to 15 April 2018, his previous bill was \$332.11. The retailer advised the previous bill was on the old rate and the recent bill was based on the new rate. (2018/9159)*

EWOV considers that the ESC should monitor the take up rate of contracts tied to the spot price to ensure consumer detriment, driven by limited understanding of the potential financial impact, is minimised.

**Draft decision 18: Prices to be expressed in GST inclusive terms only**

EWOV supports the decision to express prices as GST inclusive. This will reduce consumer confusion and subsequent complaints to EWOV.

***Draft decision 19: Commencement date for the new requirements***

EWOV supports the commencement date.

We trust these comments are useful. Should you like any further information or have any queries, please contact Janine Rayner, Communications and Policy Manager, on (03) 8672 4289.

Yours sincerely



**Cynthia Gebert**  
**Energy and Water Ombudsman (Victoria)**

5 October 2018



**EnergyAustralia**

LIGHT THE WAY

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Chair  
Essential Services Commission  
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Dear Dr Ben-David

### **ESC -- New customer entitlements in the retail energy market -- draft decision**

EnergyAustralia welcomes the opportunity to make this submission to the Essential Services Commission's draft decision for new customer entitlements in the retail energy market.

We are one of Australia's largest energy companies, providing gas and electricity to 2.6 million household and business customer accounts in New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory. In Victoria, we provide gas and electricity to around 20 percent of households.

We also service 15 per cent of small business electricity needs and 19 per cent of their gas needs. We are the only major vertically integrated energy retailer based in Victoria with 2000 employees at the Yallourn power station and mine in the Latrobe Valley and contact centre and head office staff located in metropolitan and CBD locations.

EnergyAustralia supports the objective of the Commission to ensure that customers are given helpful information that enables them to easily identify a deal that is more suitable to their individual circumstances. Customers are our priority. We are focused on building trust and ensuring our customers are on the best product for them. We support the Commission's approach to give responsibility back to retailers. The Commission should take this further, and rather than prescriptive regulation on how retailers deliver the new proposed Part 2A<sup>1</sup> of the Code, leave this as a high-level objective.

By overengineering the regulations, rather than allowing retailers to work out the best way of doing this, imposes real costs and complexity onto customers (directly and indirectly). Assuming the high-level purpose of retail regulation is to ensure customers are better off, the Commission should frame these obligations to give rise to the maximum benefit at least additional cost. We do not consider Part 2A does this. As demonstrated by the Ofgem experience in mandating a 'cheapest tariff message' on bills,

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<sup>1</sup> Clear Advice Entitlement, Bill Change Notice, Best offer on bills

where only 3 per cent of customers were prompted to switch plans in 2017<sup>2</sup>, the costs, of which are ultimately borne by the customer, are likely to outweigh any benefits.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

<sup>2</sup> [https://www.ofgem.gov.uk/system/files/docs/2018/05/annex\\_2\\_-\\_summary\\_of\\_evidence\\_used\\_to\\_inform\\_our\\_proposals\\_0.pdf](https://www.ofgem.gov.uk/system/files/docs/2018/05/annex_2_-_summary_of_evidence_used_to_inform_our_proposals_0.pdf)

<sup>3</sup> 2.6 million accounts, on average at least 4 bills per year per account, and around 260 week days per year

<sup>4</sup> Our billing run currently takes around 3 hours per night and starts at around 9.30pm. At times we have had to make improvements to our system's processing capacity to ensure that our bill run does not encroach into business hours. Once this finishes then the next step in the process is for mail house processing that must be completed to meet Australia Post mail receipt deadlines.

We strongly urge the Commission to consider obtaining IT advice and assessing the costs of the changes before a final decision is made. [REDACTED]

To assist with managing implementation, we request that the Commission consider a staged approach to implementation in its final decision. While, the amendments to the Code need to come into effect on 1 July 2019, as specified under the terms of reference, we consider the Commission has some discretion to include transitional arrangements.

We propose that this can be done in two phases:

1. First phase: compliance with bill change notices and the Clear Advice Entitlement for contact centres by 1 July 2019.
2. Second phase: compliance with the remainder of the draft Code amendments by 1 January 2020. Including the requirement to provide at least one 'best offer' message in any format in the 6 months period before 1 January 2020.

A staggered approach will ensure that changes are implemented in a manner that limits unintended consequences. Particularly, as there are elements of the draft amendments that need further consideration and clarity. We consider that the Commission has understated the actual amount of change required to comply with these amendments before the 1 July 2019.

The remainder of our submission focuses on the components of the draft decision which we consider need further clarification by the Commission.

### **1. Putting the best off on bills**

The Commission has stated that the new billing entitlements will lead to innovative products for customers, we consider that innovation may be suppressed. For example, demand response offers are expensive to build and to take to market. The savings depend on the customer's ability to respond behaviourally (to messages to reduce energy use at certain times) or to have appliances, a smart inverter or other electronic control that enables a more automatic response. The savings on these types of plans will be impossible for us to assess or reliably include in the 'best offer' message. This means that customers are unlikely to see it as a viable offer and are more likely to distrust other marketing that retailers may do to market these products even though they would offer considerably lower bills for customers. We request the Commission further consider the necessity of future proofing the regulations to allow retailers the ability to design new products that reflect what customers want.

#### **1.1. Definition of the best offer**

Defining the 'best offer' as the cheapest generally available offer from the retailer is the simplest approach to take. However, we request that the Commission consider a further eligibility criterion. We have found that customers support a move towards offers that are more personalised – such as staff plans for employees of Alliance Partners or individually tailored to the specific circumstances of the customer. As both these categories are defined by a level of exclusivity, and are not suitable to all customer

segments, the 'best offer' definition should also be defined as an offer that can be easily acquired by all general members of the public.

### **1.1. Design and presentation**

We understand, as a result of further customer testing, that the Commission may prefer the message 'paying \$485 more than they need to'. EnergyAustralia does not support the move towards a 'payment' statement. This creates expectations for the customer about the accuracy of their bill which is misleading. It could potentially lead to levels of angst that customers have been 'ripped off' when they may never have or be able to achieve that saving. We are concerned that this will increase the level of distrust in retailers which contradicts the objective of this obligation - to build trust. If retailers were to use similar wording in marketing material, it would almost certainly be picked up by regulators as misleading. The Commission should retain the wording as prescribed in the draft Code amendment.

We do not support the Commission's reasoning that the threshold should be set at \$22 as this is the maximum exit fees retailers may charge, to determine if a message is positive or negative. The Commission's own customer testing showed that 90 per cent of customers would require a saving of \$50 or more to consider switching. As such, the threshold should be set at a saving of \$50 per year. If the Commission decides to maintain the \$22 threshold we would encourage that in the final decision, the requirement for a positive message is removed altogether.

### **1.2. Frequency**

The Commission has proposed that the 'best offer' message appears at a minimum, every six months and to appear on the first bill following 1 January and 1 July each year. Our preference is to not link the message to any specific date or communication type. Instead retailers should be obliged to provide a message at least twice a year, and this can be either on the bill or a bill change notice. This will reduce any unintended consequences leading to customer confusion and concerns that customers will become desensitised to the message due to information overload.

We also believe that this will support customer choices, such as those customers who value locked in rates and value bill predictability. For example, EnergyAustralia's Secure Saver plan guarantees residential electricity and gas customers their usage rates and supply charges will not increase for a two-year period but may have a higher rate than other plans. We recently contacted our customers who were on standing tariff offers in New South Wales to encourage them to be on better plans. [REDACTED]

[REDACTED]. Our research indicates that customers who are less confident or engaged prefer consistency and stability. These customers would not benefit from a 'best offer' message and doing so may result in further disengagement. We suggest that the 'best offer' message should only apply to certain categories of customers – such as customers who have not engaged with us for two years.

Greater flexibility on when and how retailers provide the 'best offer' is consistent with other regulators. Ofgem is proposing to remove some of the prescriptive content, placement and formatting rules of its 'cheapest tariff message'.<sup>5</sup> It is opting for greater flexibility in how retailers communicate the message and will require this message to be provided at a minimum of once a year and at all Key Prompt Points (i.e. points at which consumers could benefit from considering their options) as appropriate. It will be at the discretion of the retailer to determine the most effective times to prompt their customers. Ofgem acknowledged consumer groups concerns that this change could lead to some customers getting insufficient information, but Ofgem considers these concerns are addressed through the once a year minimum requirement to provide a 'cheapest tariff message'. EnergyAustralia supports this outcome focussed approach, which will provide flexibility to retailers to innovate products, and strongly encourages the Commission to consider the learnings from Ofgem in making its final decision.

We also do not support the proposal for the bill message to be provided on the customer's anniversary with the retailers. Mandating customer contact at the 6-month anniversary of the sign date is operationally complexed. Significant changes would be required to our system at a substantial cost as previously discussed.

### **1.3.Scope**

The scope of the obligation should be limited to only bills (in all formats) or the new, proposed bill change notice. We do not support the 'best offer' obligation applying to communications that summarise key content – bill summaries such as email or SMS. While the Commission states that customers may not open a bill attachment to an email or SMS, our customer research indicates that customers value the bill and will look at it over an email content. Additionally, the technical limits of providing the 'best offer' message in SMS form is likely to see retailers move away from these types of communications. As discussed above, our preference is that the Commission should not mandate the form of the communication.

### **1.4.Validity of the offer**

The Commission has proposed the 'best offer' must be available for 13 business days. A blanket 13 business day approach for all customer is difficult to operationalise and we do not support this approach. [REDACTED]

We consider the issue of validity is moot if retailers are provided the flexibility on the frequency and form of communication of the 'best offer' message. That is, no validity period would be needed. Retailers operate in a competitive market where business models rely on retailers retaining customers. To be viable, we should be offering our customers the best plan for their circumstances to encourage them to stay with us. If the Commission determines that a validity timeframe is required, this could be regulated at a higher level rather than prescriptively, as it currently is drafted.

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<sup>5</sup> [https://www.ofgem.gov.uk/system/files/docs/2018/09/statutory\\_consultation\\_-\\_domestic\\_supplier-customer\\_communications\\_rulebook\\_reforms.pdf](https://www.ofgem.gov.uk/system/files/docs/2018/09/statutory_consultation_-_domestic_supplier-customer_communications_rulebook_reforms.pdf)



We do not support the concept of a unique ID. Adopting the use of a unique ID will require significant changes to our systems, process and training of contact staff and third parties. The benefit derived by customers being able to cross reference a unique ID will outweigh the costs. Particularly, as the policy intent of the 'best offer' message is to nudge the customer to engage in the market. Most of our conversations with customers are based on product name and the customer's needs making the use of a unique ID obsolete. We are also unsure of how this would work with Victorian Energy Compare without significant upgrades to the website.

## **2. Clear advice entitlement**

The intent of this obligation is for the retailer to communicate to the customer the contract attributes of the 'best offer', for example conditional discounts to get a lower bill or additional fees, that may affect the bill amount. We agree that the customer should be informed of this information to determine if the 'best offer' is the right offer for their individual circumstances.

However, as currently drafted, retailers are obliged to inform the customers of *any* contractual terms or conditions that will influence the monetary value of a bill. This is a very broad requirement and is outside the scope of the policy intent of this recommendation. We encourage the Commission to consider tightening the requirements of this obligation to only apply to any contract attributes which will impact what the customer will pay if they switch.

We do not support the Clear Advice Entitlement applying to third parties or digital channels. It is unclear how the logistics of these requirements will work in practice. The Clear Advice Entitlement imposes a requirement that retailers are to consider *all* information it has knowledge of regarding the customer in fulfilling this obligation. This will rely on the customer inputting a significant amount of information into digital platforms or third parties being fully informed of a customer's individual needs. Customers will be required to provide all necessary information in an era where customers are already time poor and may find it too much work to input this into a digital platform. As currently drafted, the retailer may be found to be at fault if later the customer complains that they are not on the 'best offer', though they may not have provided all information needed to assess their individual circumstances.

Research has shown that more and more information does not necessarily mean customers will make the best decision for them. Customers want simple and hassle-free options. Given that the Commission has not had the opportunity to work through the implications of the Clear Advice Entitlement on third parties or digital platforms we recommend that this be removed entirely from this obligation or a delayed implementation until 1 January 2020.

Additionally, due to the complexities discussed above and the limited consultation on the Clear Advice Entitlement we do not support this obligation being linked to explicit informed consent. This is a heavy-handed approach where we are yet to understand what operational impacts this requirement will have on the business, including training consultants (noting the new obligations under PDF for consultants) and how it would work with a digital platform.

There is a significant risk of unintended consequences to customers by linking the Clear Advice Entitlement to explicit informed consent. We agree that an obligation should be on retailers to ensure customers are fully informed but consider this should be linked to a penalty.

### **3. Bill change notice**

We support the Commission's proposal to streamline the bill change notice and to align the national framework. While we agree that the price change notice should be provided to a customer within 5 business days, consistent with AEMC rule change, we do not agree that this should also apply to the benefit change notice.

The National Retail Rules<sup>6</sup> require a retailer to notify no earlier than 40 business days and no later than 20 business days before the benefit change date. While, we note that the Commission considers the shortening the benefit notice requirement to 5 business days may increase its effectiveness as a prompt to customers to engage this will be logistically challenging if the discount/benefit change coincides.

### **4. Summary**

EnergyAustralia welcomes greater efforts to ensure all customers are on the best plan for their individual circumstances. This effort is something that we are already undertaking and will continue to do so into the future. As such, we ask that the Commission considers the implications of a heavily prescribed approach and rather provide retailers flexibility in the frequency and form of the 'best offer' message. We also request that the Commission consider a staged approach to implementation of the new billing entitlements to ensure that these regulatory changes deliver the best outcomes for customers.

EnergyAustralia looks forward to continuing to work cooperatively with the Commission to improve energy comprehension and accessibility for all customers. If you would like to discuss this submission, please contact Carmel Forbes on (03) 8628 1596 or at [carmel.forbes@energyaustralia.com.au](mailto:carmel.forbes@energyaustralia.com.au).

Regards

**Melinda Green**

Industry Regulation Leader

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<sup>6</sup> NERR, 48A





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Friday, 5 October 2018

James Clinch  
Manager, Regulatory Reform  
Essential Services Commission  
Level 27, 2 Lonsdale Street  
Melbourne, Victoria 3000

By mail and email

Dear Mr Clinch

ERM Power Limited (ERM Power) welcomes the opportunity to respond to the Essential Services Commission's draft decision on how to implement recommendations 3F-H of the Retail Market Review (PDF).

### **About ERM Power**

ERM Power is an Australian energy company operating electricity sales, generation and energy solutions businesses. The Company has grown to become the second largest electricity provider to commercial businesses and industrials in Australia by load<sup>1</sup>. A growing range of energy solutions products and services are being delivered, including lighting and energy efficiency software and data analytics, to the Company's existing and new customer base. ERM Power also sells electricity in several markets in the United States. The Company operates 662 megawatts of low emission, gas-fired peaking power stations in Western Australia and Queensland.

[www.ermpower.com.au](http://www.ermpower.com.au)

### **General comments**

The first tranche of recommendations from the Independent Review of the Electricity and Gas Retail Markets in Victoria aims to restore trust in customers by increasing retailer accountabilities. In the redraft of the Energy Retail Code (ERC), we welcome the new approach proposed by the Essential Services Commission (the Commission) to not only specify the new regulatory requirement but also outline the reasons why certain information must be provided to customers. That way, retailers are not only able to gauge compliance but also measure how well retailers meet customers' expectations.

The draft decision contains four parts: savings information on bills; prior notification of changes to tariff, charge or benefit; clear advice entitlement; and presentation of price inclusive of GST. We appreciate the intention of the proposed changes and are supportive of the changes in principle, however we have strong reservations where the proposed changes are deemed impractical and unreasonable when expected to be applied to multi-site customers in certain provisions.

Multi-site customers are business customers who have more than one National Metering Identifier (NMI) and are contracted as a deemed large customer. Rule 5 of the National Energy Retail Rule (NERR) allows a business customer, who is or would be a small customer, to enter into an agreement in writing with the retailer to the effect that at least two or more of its business premises are to be aggregated for the purpose of determining whether the upper consumption threshold has been met. The customer is then treated as a large customer for the purposes of Division 3 of Part 1, Part 2 of the NERR and Part 2 of the National Energy Retail Law (NERL).

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<sup>1</sup> Based on ERM Power analysis of latest published financial information.



A provision equivalent to Rule 5 of the NERR is not included in the ERC. Instead, Orders in Council define a “relevant customer” on the basis of an individual supply point, and not on the basis of the aggregate of each supply point from which the customer consumes electricity or gas (see Section 5(b), Energy Industry Act (EIA) Order in Council dated 25 November 2008). A “relevant customer” is defined as a customer in respect of each supply point where consumption has not/is not likely to be, more than 40 MWh per annum.

Under section 36(1) of the EIA, a term of a contract for the supply of electricity to a ‘relevant customer’ is void to the extent that it is inconsistent with terms set by the ESC relating to specific matters. This means that a retailer cannot provide the option for a customer to contract out of certain small customer protections in Victoria, as in other states.

The inability to aggregate small business sites in Victoria has both retailer and customer implications. These customers are not able to choose consolidated billing across their sites, and so must manage numerous separate bills. They must manage separate contract expiry and renewal processes for each site, and risk being placed on a standing offer if one is missed. This impacts both customers with multiple sites in Victoria, as well as cross-jurisdictional multi-site customers, where NECF sites are aggregated but Victorian sites are not.

***Best offer rule application should be constrained to only single site customers or made exempted for multi-site customers***

The proposed new Part 2A Division 4 requires retailers to put their best offer on a customer’s bill. The draft decision proposes that the best offer be defined as the cheapest generally available offer from that retailer for that customer based on their energy usage. Retailers will have discretion to present cheaper plans from among their non-generally available offers. We strongly consider that the above definition does not recognise how multi-site customers contract for energy.

Single-site customers are dependent on generally available offers made by retailers. In contrast, multi-site customers are contracted via sophisticated contract negotiation process using third party brokers, direct submissions to tender requirements, and other means. The pricing and contract terms and conditions over the term of the contract are fully transparent to the customer and vigorously reviewed by their legal and finance team. Price to the multi-site customer, in essence, is not just determined by the offer in the general market, but on a variety of other factors such as network costs, current wholesale price and other benefits that can be offered by the retailer to the customer. The requirement to regularly provide multi-site customers with a best generally available offer is likely to cause confusion to multi-site customers.

Furthermore, in draft decision 10, the requirement to include information on how the customer can access the government comparator website, Victorian Energy Compare (VEC) does not appear to consider its current system capabilities on search functions for multi-site customers. As depicted above, multi-site customers undertake a different process to receive, analyse, and select their best offer through an entire sophisticated contract negotiation / tender evaluation process. It is impractical to expect these customers to use VEC to consider alternative retailer offers. Most of these customers are acquired either through a broker or a tender process; the Victorian Government’s tool does not accommodate multi-site offer arrangements. Therefore, directing a multi-site customer to VEC will have no relevance as the contract formed for these customers covers multiple sites rather than single-site arrangements. Similarly, ‘best offer’ alternatives are unlikely to be relevant as contracted tariffs are based on their existing arrangements covering multiple sites.

**Conclusion**

ERM Power considers that the Commission’s proposed approach is one that is designed around single-site customers such as households and single-site SMEs. It fails to recognise the complexities and bespoke nature of multi-site contracts. Draft decisions 1 to 17 are unlikely to provide any real benefit to multi-site customers and may in fact only serve to confuse them. We consider the Commission should remove the requirements of 3G (Draft



decision 1 to 17) for multi-site customers either by applying an exemption or directly specifying that it only applies to single-site customers within the small customer threshold.

Please contact me if you would like to discuss this submission further.

Yours sincerely,

[signed]

Ben Pryor

Regulatory Affairs Policy Adviser

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5 October 2018  
Dr Ron Ben-David  
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Level 37, 2 Lonsdale Street  
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Submitted by email to [retailenergyreview@esc.vic.gov.au](mailto:retailenergyreview@esc.vic.gov.au)

## **Building Trust Through New Consumer Entitlements in the Retail Energy Market**

Thank you for the opportunity to provide a submission in response to the ESC's Draft Decision on Building Trust Through New Consumer Entitlements in the Retail Energy Market.

Momentum Energy is a 100% Australian-owned and operated energy retailer. We pride ourselves on competitive pricing, innovation and outstanding customer service. We retail electricity in Victoria, New South Wales, South Australia, Queensland, the ACT, and on the Bass Strait Islands. We offer competitive rates to both residential and business customers along with a range of innovative energy products and services. We also retail natural gas to Victorian customers.

Momentum Energy is owned by Hydro Tasmania, Australia's largest producer of renewable energy.

### **Introduction**

Momentum supports the findings from the Bi-Partisan Review into Retail Energy Prices (Thwaites Review) and has previously indicated support for a number of the recommendations including recommendation 3 which is the basis of this draft decision. With this in mind, we are concerned that the Commission is seeking to impose drastic reforms on an industry which is already showing signs that the calls from customers, regulators and politicians for a fairer and more transparent energy market are being heeded.

We are always supportive of initiatives to help customers to engage in the market on fair and transparent terms. We appreciate the ESC's acknowledgement of our decision to cease offering discounts and rely on a simple price based approach which allows customers to easily understand their energy charges. Thwaites recommendation 3 is largely in line with Momentum's philosophy of transparency and fairness and consequently our comments in this submission are based on ensuring that the requirements deliver the intended outcomes.

We fully support requirements to ensure that consumers understand all relevant information about their energy contract at point of sale; are provided with transparent information when their bill is about to change; and consider it eminently reasonable that

prices are displayed inclusive of GST in line with the vast majority of other consumer goods and services. Our key concerns with the draft decision arise from the fact that the Government has imposed extremely tight deadlines for consultation and implementation which may lead to suboptimal outcomes being realised.

The reforms, although much needed, are being made in a contracted timeframe without the opportunity for the ESC to undertake its usual exploration of costs and benefits. In light of this, we consider that the ESC should either recommend to government that additional time is required to undertake a more thorough review or, to ensure that any reforms are as light touch as possible to minimize the costs associated with them and allow them be reversed if the desired outcomes don't arise. We submit that this approach may involve the recommendation of staggered implementation timeframes to enable retailers to meet their obligations in a more cost reflective manner.

We applaud the ESC's approach to attempting to analyse the outcomes from the reforms by engaging behavioral economists to ensure that the implementation is effective as possible. We believe however that the timeframe under which this has been undertaken has not allowed for a proper analysis and consequently the findings cannot be taken as given, so the ESC should err on the side of caution before requiring changes to be implemented at huge cost to industry.

It is important that the reforms result in a demonstrable net benefit to consumers. The idea of a Deemed Best Offer Message may very well lead to a range of positive consumer responses however the real life experience is unlikely to replicate the results of the discrete choice experiment used. Revealed preferences (or the real life outcomes) often differ from stated preferences arise through behavioral insights experiments and we think this is highly likely to be the case with these reforms.

Our concerns in this regard stems from the fact that the insights testing showed that 27% of customers would respond to the Deemed Best Offer Message by visiting the Victorian Energy Compare website. Thwaites report found that "awareness of the site is not currently high<sup>1</sup>" which appears to be inconsistent with the finding from the insights testing. We do not believe that this invalidates the finding that there would be some benefit to consumers, but it certainly means that any benefit which does arise is unlikely to be as high as predicted. This should be considered when the ESC has regard to the costs and overall impacts on consumers.

We urge the ESC to impose the minimum obligations on industry in order to achieve the intended outcome at the lowest possible cost. This may require the ESC to exercise discretion in its interpretation of the recommendations and increase focus on the desired outcomes rather than the exact wording. We believe that the ESC would still be meeting its terms of reference if it adopts this approach.

We have submitted during discussions with the ESC that the changes being proposed will be extremely costly to implement and will result in additional costs being borne by consumers.

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<sup>1</sup> John Thwaites, Patricia Faulkner and Terry Mulder, 'Independent review into the electricity and gas retail markets in Victoria', Final Report, August 2017. P56



This is an example of the need for the responsibility for outcomes to be shared between retailers, the ESC and policy makers. Noting that the terms of reference prevent the ESC from assessing the independent review's recommendations but instead focusing on timely and cost-effective opportunities to implement them we consider that there is scope to recommend to government ways to reduce costs. These could include proposing alternative solutions to achieve the desired outcomes, or a staggered approach to implementation.

We consider it crucial that the costs associated with the reforms be adequately articulated in the final. As industry is not privy to discussions between the Commission and Government on such matter (and nor should they be in many circumstances) it is necessary to convey in the final decision that a robust examination of the issues has been undertaken to demonstrate how the decision aligns with the ESC's Objective and how the ESC came to such a decision having appropriate regard to all the facts and circumstances required under its governing legislation.

We appreciate that the ESC is not required to undertake a full cost/benefit analysis, however we believe that a balance can be reached which provides "bang for buck" and ensures that consumers are not paying for regulatory reforms from which they will derive no net benefit.

With the aforementioned contextual considerations in mind, we offer the following thoughts on the provisions of the Draft Decision and the proposed Energy Retail Code as drafted.

### **Legal Considerations**

Momentum has formed a view that the requirements expose retailers to possible legal risk on a number of fronts.

#### ***Spam Act 2003 and National Privacy Principles***

Momentum is concerned that the best offer requirement would have the effect of characterising the bill as a commercial electronic message under Part 6 of the *Spam Act 2003* in instances where customers have opted to receive bills electronically. Part 6 states:

- (1) For the purposes of this Act, a commercial electronic message is an electronic message, where, having regard to:
  - (a) the content of the message; and
  - (b) the way in which the message is presented; and
  - (c) the content that can be located using the links, telephone numbers or contact information (if any) set out in the message;it would be concluded that the purpose, or one of the purposes, of the message is:
  - (d) to offer to supply goods or services; or
  - (e) to advertise or promote goods or services;...

While it is clearly not the intention of the ESC or the retailer to spam customers, we are concerned that this would open retailers up to prosecution as would be unable to offer customers the option to unsubscribe without being in breach of Energy Retail Code (and contractual) requirements to send bills.

We believe that the requirement creates a similar conflict with provisions of the National Privacy Principles where bills are not sent electronically.

We understand that the ESC is cognisant of this issue and has instructed drafters to take particular care to avoid this issue. The broad nature of the Spam Act provisions on this matter will require precise drafting, and we do not believe that the proposed Energy Retail Code provisions contained in the Draft Decision are suitable. Of particular concern is 70S of the Energy Retail Code which has the effect of characterising a negative best offer message as an offer in the contractual sense and would put retailers in contravention of the Spam Act and Privacy Principles provisions surrounding marketing materials.

We are open to working with the ESC to ensure that retailers are not placed in a situation where compliance with the Energy Retail Code exposes them to legal risk under a Commonwealth Act. We seek assurances in the Final Decision that the ESC has robust legal advice on this matter.

### ***Australian Consumer Law***

Similarly, we have concerns that the prescribed wording proposed for 70R of Energy Retail Code does not offer retailers sufficient protection from liability under Australian Consumer Law. Momentum, and no doubt other retailers, are conscious of ensuring that representations about the savings which could be achieved on their products could not be construed as misleading.

We are concerned that retailers would need to surround the best offer message with caveats and fineprint to protect themselves from claims of misleading and deceptive conduct. This approach would not engender consumer trust as there is a perception that retailers have benefitted from hiding behind fine print in marketing materials to provide offers which do not live up to customer expectations. Momentum appreciates that the ESC is cognisant of this in drafting the required wording however we consider that a set of wording agreed with all retailers would both lessen the risks faced by retailers and send a more appropriate message to consumers.

### **Recommendation 3 G**

Momentum is broadly supportive of the ESC's definition of deemed best offer in the draft decision. We have discussed in workshops with the ESC the challenges which will arise from adopting the AER's definition of Generally Available, which would include offers where a membership or affiliation is required to be eligible for an offer, and we do not believe that this would further the objectives of the reforms.

While it may be tempting to require retailers to calculate the benefit net of any additional costs which the customer may incur from an affiliation of membership, we do not believe that this is a realistic option as:

These external costs are outside the control of retailer and may change without their knowledge; and

Some memberships have a scale of fees depending on membership types and therefore cannot be quantified for individual customers.

The simplest option to avoid this issue is to remove offers where the customer is required to make an additional outlay in order to gain eligibility from the scope of this reform, or to retain the ESC's existing definition of generally available offer.

The definition of *annual total cost of current plan* concerns Momentum as we believe that the definition as drafted will prevent the reform from achieving its desired objective. This is due to the fact that the customer's current plan is calculated on the basis that all potential discounts are included even though this may not have been the case for any individual customer.

A number of our competitors offer products with a conditional discount and products with a simple (zero discount) rate. Where the rate, after discounts are applied, is lower than the simple rate the retailer is not obliged to inform the customer of this alternative offer, even if the customer would be able to save money as they do not always pay their bills on time. We do not believe that this outcome aligns with the intent of the Thwaites recommendation and we urge the ESC to consider how this can be addressed.

At face value it appears as though the *annual total cost of current plan* definition should take into account instances where conditional discounts have not been achieved however, we consider this could add significant complexity to the implementation. Given that this issue would not impact Momentum, we are unable to comment on the impacts in terms of costs and timeframes and suggest that the ESC engage directly with potentially impacted retailers before coming to a final decision which meets the objective of the recommendation.

### **Recommendation 3H.**

Momentum agrees that it makes sense for prices to be quoted inclusive of GST, and that energy is in the minority of commodities or services which are not currently represented in this manner. We are concerned however, that the complexities of making this change are not well understood.

Notwithstanding that it will necessitate reviewing almost all marketing materials, customer communications and digital interfaces (websites and online sales channels), it is relatively simple to ensure prices are displayed and quoted inclusive of GST in most instances. Major issues arise however, when this requirement is extended to the bill. A retailer's bill template is not a static document and each field is calculated dependant on other elements. Requiring retailers to show GST inclusive rates is not merely matter of printing a new number, but will fundamentally change the formulas to calculate the bill total, concessions and feed in tariff amounts.

We question whether providing GST inclusive rates on bills will in fact improve the customer experience. The energy industry has not adopted GST exclusive pricing to obfuscate or confuse, but rather to provide greater clarity. Under ATO guidelines, retailers can show the total of the bill inclusive of GST where GST equals exactly 1/11<sup>th</sup> of the total amount

payable. In instances where the customer has a concession or receives a payment for distributed generation this will not be the case. Rather than providing the customer with a clearer picture of the makeup of their bill, these cases will become more confusing.

This is illustrated below.

**Current**

Calculation of Electricity Charges (Back page)			
	Units	Rate (Ex. GST)	Total
Usage	575.51	0.176	101.29
Daily	32	0.72	23.04
Total (ex. GST)			<b>124.33</b>
GST Compliant Invoicing (front page)			
Energy Charges		<b>124.33</b>	
Concession		-21.76	
GST		10.26	
Total Payable		112.83	

**Proposed**

Calculation of Electricity Charges (Back Page)			
	Units	Rate (Inc. GST)	Total
Usage	575.51	0.1936	111.42
Daily	32	0.792	25.34
Total			<b>136.76</b>
GST Compliant Invoicing (front page)			
Energy Charges		<b>124.33</b>	
Concession		-21.76	
GST		10.26	
Total Payable		112.83	

The example on the left shows the current approach to displaying energy charges. This approach enables customers to easily reconcile their energy charges (as calculated on a consumption multiplied by rates basis) with their GST compliant invoice which shows the total amount payable.

Under the proposed requirement to include GST in rates, the figures on the usage calculation will not align with the GST compliant invoice. This is demonstrated in the example on the right and is likely to cause customer confusion. The extent to which this confusion negates any benefit associated with displaying GST inclusive rates is unclear, but this issue, coupled with the considerable cost of system change required should be investigated further before determining the final approach.

We note that the Terms of Reference have provided the ESC until January 2019 to make a decision and we consider that it would be appropriate to delay a decision until this time to investigate whether a more cost effective alternative can be identified.

**Clear Advice Entitlement**

Momentum fully supports the requirement to ensure that customers are made aware of all pertinent information. We are mindful of the fact however, that too much information will not help customers and that the ESC will need to make a decision on the point at which diminishing returns will commence.

As outlined at the ESC’s workshop on 27 September, the provision as currently drafted will require retailers to disclose details which will not be relevant for the overwhelming majority of consumers. Not only will this result in retailer cost to serve increasing, but it is likely to

discourage customers from participating in the market. The alternative customer response may be to gravitate towards online signup where they may simply click through pertinent information without giving it proper consideration.

The Thwaites review does not expressly state the level of detail which must be provided so we believe that the ESC is unconstrained in its ability to draft a provision which results in position customer outcomes.

### **Implementation Concerns**

Cognisant of the Government's timeframe regarding the implementation of the new requirements, Momentum believes that the ESC must consider the technical and commercial reality of the proposal. As outlined above, Momentum sees considerable value in ensuring that customers are appraised of their opportunities to save money on their energy bills and to this end we tasked our ICT vendor with providing a statement of work to assess the feasibility of a similar initiative prior to the launch of our new customer relationship management system in 2017. This initiative was ultimately abandoned due to the significant cost and build time required.

Unfortunately the required level of resourcing required to implement these reforms by 1 July 2019 may not be a reality due to the number of regulatory change initiatives currently in train. These include the Payment Difficulty Framework (due by the end of this year), implementation of Time of Use Solar (for 1 July 2019), life support reforms (due 1 February 2019) as well as the day to day resourcing effort required to run a business.

We recommend that the ESC investigate how the desired outcomes could be achieved by exercising some discretion in its interpretation of the Thwaites recommendations. For example, we note in the Draft Decision that the ESC considers that providing a bill insert in addition to the changes to the bill would "introduce additional costs to retailers, which could be expected to ultimately be borne by consumer"<sup>2</sup>. While this statement is relatively self evident, a standalone bill insert would be significantly cheaper for retailers to produce as it does not interfere with the bill template which is costly to reconfigure.

Once again noting that the Commission's terms of reference does not allow it to assess the merits of the Government's policy decision, we believe that it is incumbent on the Commission to have regard to the the benefits and costs of regulation, and in line with its terms of reference, suggest mechanisms to achieve the outcomes sought from the recommendations in the most cost effective manner. If the best offer message was to be required on a bill insert rather than on the bill itself, it is likely to reduce costs and achieve similar outcomes and we believe that the ESC should consider this in making its final decision.

In contrast to the relatively limiting Terms of Reference, the Thwaites recommendations are sufficiently broad, in that they lack any real detail as to how they should be operationalised, as to provide the ESC with considerable discretion. In fact, we contend that

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<sup>2</sup> Essential Services Commission 2018, Building trust through new customer entitlements in the retail energy market: Draft Decision, 7 September. P 42.

the ESC should, in accordance with its focus on outcomes based regulation focus more on the desired outcome and less on the specific wording of the recommendation. On this basis we consider that decision to include a best offer message **with**, rather than **on**, bills is consistent with the Terms of Reference.

A similarly flexible approach to the other elements of this suite of reforms is likely to bring a greater net benefit to Victorian consumers and we urge the ESC to consider using any discretion that it believes it has when making its final decision.

#### **Additional information**

If you require any further information with regard to these issues, please contact me on (03) 8651 3565 or email [joe.kremzer@momentum.com.au](mailto:joe.kremzer@momentum.com.au)

Yours sincerely

Joe Kremzer  
Regulatory Manager  
Momentum Energy

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Melbourne VIC 3000

**By email:**  
[RetailEnergyReview@esc.vic.gov.au](mailto:RetailEnergyReview@esc.vic.gov.au)

## Submissions to New Requirements for Energy Bills

To Whom It May Concern,

Onsite Energy Solutions (OES) is a boutique electricity retailer seeking to validate the introduction of a new, innovative retail model, based on the supply and installation of behind-the-meter solar storage together with "fixed" (\$ per month) pricing.

OES supports the introduction of the obligations recommended by the Victorian government's Independent Review. We also support codifying the consumer outcomes these obligations are intended to deliver, specifically customers should be:

1. Informed about whether their retailer is charging them a reasonable price for their energy twice per year.
2. Entitled to prior notification of any changes their retailer intends to make to any tariff, charge or benefit that affects their energy bill.
3. Entitled to advice that helps them confidently navigate their way to the retailer's contract that best suits their circumstances.

We concur with the view that it is "now indisputable that the community expects a higher standards of conduct in the energy sector than might be acceptable elsewhere in the economy" and we support the introduction of a "new, 'responsibility-based' approach to the regulation of the retail energy market".

Further, we believe that the draft decisions in their current form will not unduly hamper innovation.

### **Draft decision 1: Best offer entitlement**

**OES' comment:**

We agree that Customers are entitled to be informed, via their bill, of the best offer available to them from their retailer.

### **Draft decision 2: The definition of best offer**

**OES' comment:**

We agree that 'Best offer' is to be defined (at a minimum) as the cheapest generally available offer from that retailer for that customer based on their energy usage, with the retailer having discretion to present cheaper plans from among their non-generally available offers.

In particular we support the adoption of the Australian Energy Regulator's definition as stated in:

<https://www.aer.gov.au/system/files/AER%20Retail%20Pricing%20Information%20Guidelines%20-%20Version%205.0%20-%20April%202018.pdf>

**Generally available plans**

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

**Restricted plans**

77. Restricted plans are specifically targeted at an individual or exclusive group and tailored to the specific circumstances of that customer and their need(s).

78. Restricted plans are typically not actively marketed, but negotiated by the retailer or its agent

with the customer. Examples of restricted plans include, but are not limited to:

- a. family and friends plans, including retailer staff plans and staff plans for employees of companies with whom the retailer has a commercial relationship
- b. plans targeted to a specific customer, with traits and characteristics that cannot be easily acquired - for example - where the customer negotiates a specific plan with the retailer based on having multiple sites serviced by the same retailer
- c. obsolete plans
- d. standing offer plans that are not readily available to small customers in a particular location but which retailers publish on Energy Made Easy only to satisfy their Financially Responsible Market Participant (FRMP) requirements under the Retail Rules
- e. plans for customers in residential embedded networks where the retailer acts as the embedded network operator, or provides retail-only plans to an embedded network customer
- f. plans restricted to customers in a pilot program
- g. plans restricted to concession customers
- h. plans restricted to hardship customers
- i. 'save' plans, which are offered by retailers in response to a customer signalling they intend to switch to another retailer
- j. 'win-back' plans, which are offered by retailers after the customer has switched to a new retailer to persuade the customer to return.

**Draft decision 3: Estimating a customer's usage and the application of discounts and concessions when determining the best offer**

**OES' comment:**

We agree with the draft decision.

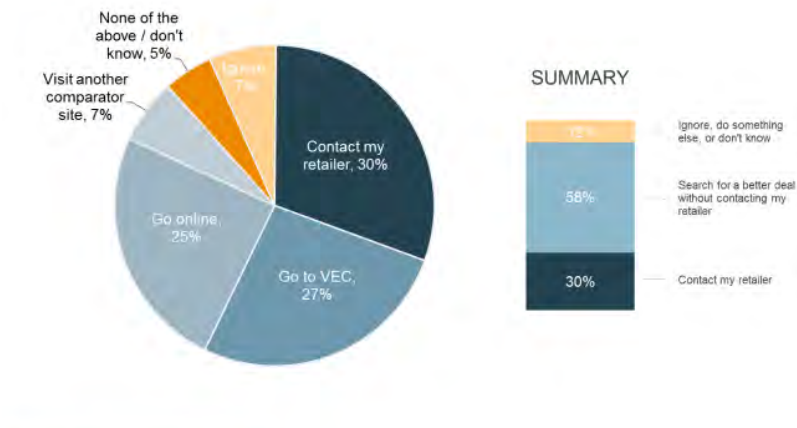
**Draft decision 4: Presentation of the best offer on bills**

**OES' comment:**

We agree with the draft decision. We also believe that, based on the Commission's research (refer below) into consumer behavior showing that a significant portion of consumers who receive "red box" bills do not approach their retailers in the first instance, this decision is likely to incentivize retailers to seek to ensure that consumers are on their "best available offer" in an effort to minimize the risk of loss of market share.



Figure 2.1 Stated intentions of customers after reviewing a bill containing their retailer's 'best offer'



Source: Behavioural Insights Team (BIT)

**Draft decision 5: Clear advice entitlement**

**OES' comment:**

We agree with the draft decision.

**Draft decision 6: Scope of the new best offer obligation**

**OES' comment:**

We agree with the draft decision.

**Draft decision 7: Frequency at which the best offer appears on bills**

**OES' comment:**

We agree with the draft decision. The message is to appear on the first bill to follow 1 January and 1 July each year, starting from 1 July 2019. We do not agree with commencement of the 6 month periods from the anniversary date of the customer joining the retailer as we believe this increase back office complexity and delivery costs.

**Draft decision 8: Dollar threshold for determining best offer**

**OES' comment:**

We agree with the draft decision.

**Draft decision 9: How long a best offer must be valid for**

**OES' comment:**

We agree with the draft decision. Further, we believe that the expiry date of the offer should be included in the "red box" area of the bill.

**Draft decision 10: Additional information to appear on bills**

**OES' comment:**

We agree with the draft decision.

**Draft decision 11: Bill change notices**

**OES' comment:**

We agree with the draft decision.

**Draft decision 12: Minimum requirements for information to appear on bill change notices**

**OES' comment:**

We agree with the draft decision.

**Draft decision 13: Manner and form of bill change notices**

**OES' comment:**

We agree with the draft decision.

**Draft decision 14: Delivery of bill change notices**

**OES' comment:**

We agree with the draft decision.

**Draft decision 15: Scope of bill change notices**

**OES' comment:**

We agree with the draft decision.

**Draft decision 16: Notice period**

**OES' comment:**

We agree with the draft decision.

**Draft decision 17: Exemptions from the need to issue a bill change notice**

**OES' comment:**

We agree with the draft decision.

**Draft decision 18: Prices to be expressed in GST inclusive terms only**

**OES' comment:**

We agree with the draft decision.

**Draft decision 19: Commencement date for the new requirements**

**OES' comment:**

We agree with the draft decision.



Should you require further clarification, please do not hesitate to contact me on 0407 465 289.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Bryn Dellar', with a long horizontal stroke extending to the right.

Ronald (Bryn) Dellar  
Chief Executive Officer  
Onsite Energy Solutions Pty Ltd



5 October 2018

James Clinch  
Essential Services Commission  
Level 27, 2 Lonsdale Street  
Melbourne Victoria 3000

Lodged by email: [RetailEnergyReview@esc.vic.gov.au](mailto:RetailEnergyReview@esc.vic.gov.au)

Dear Mr Clinch,

**Re: Submissions to New Requirements for Energy Bills—Draft Decision**

Origin Energy (Origin) welcomes this opportunity to respond to the Essential Service Commission of Victoria's (the Commission) Draft Decision on recommendations 3F, 3G and 3H of the *Independent Review into the Electricity and Gas Retail Markets in Victoria (Independent Review)*.<sup>1</sup>

The implementation of recommendations 3F, 3G and 3H will require significant changes to Origin's billing systems to remove GST exclusive pricing and to introduce new calculations that underlie the best offer notification. The Commission's new clear advice entitlement will add an additional overlay of complexity, with retailers adjusting their sales processes in the call centre, on digital platforms, and via third-party agents to meet this new regulatory requirement.

Along with recommendations 3A to 3E, these are significant operational and system changes for retailers—some of which may only apply in Victoria. As we explain further below, these new changes come at a time of significant regulatory change in across the industry, with many projects being implemented simultaneously. Given the breadth of these changes, Origin asks the Commission to be sensitive to suggestions by Origin and other retailers which may simplify the implementation of these recommendations. From a practical standpoint, the following issues are particularly important to Origin:

- The inclusion of concessions and solar exports in the calculation of a customer's best offer—excluding these would be much more straightforward for Origin's billing system and will reduce complexity that may trigger errors and unintended outcomes;
- Blended offers and dual fuel offers, as well as tender and multisite customers, should be excluded from the requirement to identify a best offer and to display it on bills or notices;
- Retailers should be required to undertake a best offer notification approximately once every six months;
- There should not be a prescribed time for how long a best offer is open given the vagaries of customer billing and changes in pricing decisions;
- We support retailer discretion on the estimation of a better offer where less than 12 months data is available;
- The customer advice entitlement should be revised, removing it from Explicit Informed Consent (EIC), and narrowing clause 70H(1)(b) to apply only to contact centres when customers are triggered by the better offer notice;
- The customer advice entitlement is an addition to the Independent Review's recommendations. It would be beneficial for the Commission to consult longer on it and to use its discretion to provide retailers with additional implementation time;
- Origin believes the customer advice entitlement should only apply to product specific terms and conditions, not broader contractual terms and conditions that impact on a customer's total bill value;

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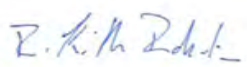
<sup>1</sup> John Thwaites, Patricia Faulkner and Terry Mulder, *Independent review into the electricity and gas retail markets in Victoria*, Final Report, August 2017.

- The Australian Energy Market Commission's (AEMC) Advance Notice of Price Changes final determination should be adopted by the Commission for the sake of national consistency;
- The Commission should engage individually with retailers to understand their challenges in meeting this deadline, and take this into account when considering any enforcement activity;
- A transition period on the 'best offer' notice to require retailers to send one within six months of 1 July 2019.

These and other points are explained in greater detail below. We have also read the AEC's submission and reiterate our support for the views they express on-behalf of the industry.

Should you have any questions or wish to discuss this information further, please contact Timothy Wilson on (03) 8665 7155.

Yours sincerely



Keith Robertson  
General Manager, Regulatory Policy  
(02) 9503 5674 [Keith.Robertson@Originenergy.com.au](mailto:Keith.Robertson@Originenergy.com.au)

## 1. 'Best offer' on bills

### Definition of 'best offer'

Arriving at an objective definition of 'best offer' is a difficult task in the energy market, where retailers design products that appeal to different customer preferences. For instance, Origin's Predictable Plan offers a fixed price for twelve months for customers that prefer certainty and do not want to monitor their use. Other customers may value a simple product like 'One low rate', which is a competitive price without a pay-on-time discount. It is difficult to conceive of the market in terms of a 'best offer'. Nevertheless, the Commission's terms of reference oblige it to give effect to two recommendations that require retailers to inform their customers of their best offer. The Commission has weighed the risks and benefits of different definitions in its consultations to date. Origin therefore agrees with the Commission's approach in draft decision 2 to define best offer as the lowest generally available offer.

In calculating the figure, the Commission will require retailers to include any relevant concession and solar export data. Origin believes that this could overstate the extent of potential savings where a customer has not been in receipt of either of these benefits for a full twelve months. In other words, the retailer is comparing two figures that are not the same: one where a concession or benefit has not been received for twelve months and a future scenario that assumes twelve months. A customer could therefore be on the best offer and still receive a negative deemed best offer message. The alternative is a retailer using the same limited amount of time a customer has been on a benefit for in the past to calculate the future annual amount. For instance, if a customer has received six months of a concession then their future amount can be calculated on the basis of six months. This will resolve the issue above but it is far more complex from a systems perspective to undertake this calculation because we need to separate out the specific concession time period rather than assuming it will apply for twelve months. It is also potentially a less accurate figure for the customer given it assumes a partial concession or solar export credit for the next twelve months.

For the sake of retailer implementation, it would be better to exclude variables like concessions and solar export credits, and to instead rely on consumption amounts. From the point of view of customer experience, it may also help to manage expectations because the exclusion of a concession and solar export credit will tend to understate their benefit because they can only receive a lower cost with those benefits included.

In terms of the wording of the best offer notification, Origin has expressed reservations about the statement directly to the Commission. We believe that certain wording may run a higher risk of being misleading and therefore could necessitate lengthy disclosure statements on bills. We ask the Commission to consider this carefully given the limited space available on retailer bills and the higher risk of customers having a poor experience where the bill message overstates the likely benefit. As our advice to the Commission indicates, the current preferred form of wording that was disclosed in the workshop on 27 September 2018 is more at risk of creating this problem than other potential variations.

### Blended offers and dual fuel

As the Commission is aware from its consultations to date, there are offers in the market with competitive tariffs that depend on customers agreeing to additional products or services to obtain them. The most common examples are dual fuel contracts and blended offers. A dual fuel contract attaches an additional price benefit based on a customer accepting contracts for gas and electricity. Similarly, a blended offer involves a retailer selling a product along with an energy contract. This could be a solar system or another service (such as internet or club membership). In either of these cases, the tariff that is sold with the dual fuel or non-energy product may be the best offer for the purpose of calculating a bill notice because it is the lowest available. In principle, Origin believes it is simpler to exclude these offers rather than to include them. From the perspective of the customer, it may be a poor experience to have better

offers made to them that exceed the supply of energy and may include products and services that are regulated in a different fashion to energy.

### Multisite and tenders

Origin believes that it is inappropriate to include multisite and tender customers in the obligation to include a best offer notice. These small customers are generally contracted at a parent level, to which the definition of small customer would not apply. However, because these are billed individually, these customers could receive a best offer notification that is inappropriate for them because it is intended for single site residential or SME customers. Accordingly, where a retailer has reached a multisite or tender agreement, an exemption should exist to this requirement.

### How long is the best offer available to a customer?

With respect to the requirement to leave an offer open for 13 business days, Origin does not believe a minimum timeframe is necessary. The best 'Generally Available Offer' can change multiple times throughout a financial year; retailers will often change prices directly in response to competition levels in the market. Keeping an offer open for 13 business days will make managing these changes very difficult, as there is a risk that a customer will have a better offer notice on their bill which is redundant before they even receive the invoice. In theory, all offers will need to be accessible for 13 business days after the invoice is sent. Customers will need to be able to access these offers via the contact centre and other platforms (such as websites and third parties). All of this creates complexity with our call centre staff, how third parties manage keeping these offers open when they are not available to the public, and our own website. It is not clear that this level of complexity is warranted to address the (hypothetical) issue of a customer receiving a better offer notification that is premised on an out-of-date offer. This hypothetical scenario generally assumes that a retailer withdraws a higher offer and a customer can no longer access it; this should not in fact be assumed as the new offer may be better for the customer anyway.

Even if a retailer does withdraw the higher offer, it is a competitive retail market and a customer can either accept the latest generally available offer from their retailer or access another market offer. Irrespective, the best offer notice has served as a prompt to engage the customer. Accordingly, in a competitive market, Origin does not see a justification for imposing a timeframe for how long a best offer will be open, given the intent of the notice is to act as an engagement prompt.

### Notice frequency

The Commission has established two requirements for timing of the best offer notice:

- whenever a customer receives any end of benefit or price notification letter; and
- the first bill after January and July.

By its design, this will result in some customers receiving several best offer messages in close proximity to price changes in January and July (for those retailers that gazette twice a year). Thus, a customer can receive a best offer notice in December and the same notice on a bill again in January. This does not necessarily serve an additional purpose and may potentially diminish its impact if they receive this information twice within a short period of time.

Origin believes that it may be more beneficial to require retailers to undertake a best offer assessment twice a year at a minimum. This can be achieved in the first instance by making the primary obligation for retailers to alert customers of the best offer via either the end of benefit or price notification letter. We would expect a price notification letter to cover off at least one of these six-month intervals, if not both. Where neither of these notices is sent within six months, then a retailer could be obligated to send

a best offer notice on the next bill. That way a customer will receive regular updates without diminishing their effectiveness by sending these notices too frequently.

### Customer data

The Commission has proposed to enable retailers to make their own estimates of customer consumption where there is less than twelve months available. Origin supports this position. With respect to the data used to support a 'best offer' calculation, a retailer may have 12 months of data that is both actual and estimated. Where a network cannot obtain an actual meter read they will provide an estimate, which retailers then use to bill customers for. It is hypothetically possible that a customer may receive a best offer notice with only an estimated meter read data available (for example, after their first gas bill a customer may receive a best offer notice that coincides with an annual price change). A retailer will then use this estimate to derive an annual figure. This situation is unavoidable in narrow circumstances and should be permitted by the Commission requiring retailers to make their best estimate where less than twelve months data is available.

## **2. Customer advice entitlement**

The Commission has introduced a new customer advice entitlement to offset the risk of customers moving on to a better offer with complicated conditional discounts but which has the lowest generally available price. The Commission has therefore introduced two requirements as part of obtaining EIC in clause 70H(1): explaining terms and conditions that influence the total monetary value of the bill *and* advising the customer of any other offers a retailer reasonably believes would be suitable for the customer.

In Origin's view, the customer advice entitlement should not form a precondition to EIC. Whilst we can understand that providing customers with relevant information is part of obtaining consent, Origin believes that EIC is a distinct right that demonstrates a customer has consented to matters in order to enter a contract. At present, the customer does not receive this information as a precondition of EIC. Whilst it may be beneficial for a customer to receive the information under clause 70H(1), it is best framed as an additional requirement rather than the act of obtaining consent. An analogous example is clauses 62 to 64 of the Retail Code. A retailer is required to provide customers with a range of information under clauses 62 to 64 of the Code; this is a general entitlement, but it is not a precondition for EIC. As with clauses 62 to 64, a failure to provide the customer with their entitlement to information should be a breach of the Code rather than a precondition that would void a contract under clause 3E of the Retail Energy Code.

### All terms and conditions?

Based on the Commission's Draft Decision, Origin had initially interpreted draft clause 70H(1)(a) as requiring disclosure to the customer of terms and conditions specific to a *product*. This interpretation was based on the Commission's explanation of the new rule in its Draft Decision:

*We also note that the extent of any burden associated with complying with the obligation is directly proportionate to the level of complexity that a retailer has included in their contract terms and their market offerings. That is to say, retailers would be largely in control of the size of the impact the obligation has on their business. For example, retailers with few offers in the market, and with offers containing simple contract terms and conditions, may find the obligation imposes no significant burden. This means the obligation creates an incentive for retailers to move away from complex and confusing contracts.<sup>2</sup>*

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<sup>2</sup> Essential Services Commission of Victoria, *Building trust through new customer entitlements in the retail energy market: Draft Decision*, 7 September 2018, p. 46.



Implicitly, those matters that retailers chose to include in a product—such as a benefit for paying on time—would necessitate explanation to the customer of how the condition impacted on price.

During a workshop held by the Commission on 27 September, it was suggested that the Commission's intention was for the customer advice entitlement to apply to all terms and conditions in the contract that influenced the total monetary value of the bill. The example of an estimated meter read for gas customers was raised, with the Commission confirming that retailers would need to explain this term and condition to a customer as part of the advice entitlement. This interpretation extends the obligation beyond the sphere of retailer 'products'—which refers to the matters that retailers have direct control over when designing different energy products—and into the broader operation of the market that retailers do not directly control when designing customer products. These matters are generally ancillary to a customer's choice of which energy product they choose. Alternately they may be directly resultant from customer requests or behaviours and limited to subsets of customers. At any rate these additional costs are not equally likely to apply to all customers. Some examples of such fees might include:

*Administrative charges:*

- Credit card payment fee
- Payment processing fee
- Paper bill fee
- Payment dishonour or reversal costs.
- Adjustment fee

*Distributor charges*—such fees may arise due to distributor requirements, or at the request of the customer. These are not uniform (fees vary by network and by fuel type) depending on the service order type and metering type. Additionally, if a customer is located on a distribution zone border it is possible a retailer will be able to advise the correct fee. These fees also change annually and would theoretically have a flow on impact into what information would need to be supplied at price change:

- Disconnection and reconnection fees
- Meter installation, replacement or upgrade fees
- Special read fees

*Customer Service charges:*

- Mercantile collection fees
- Historical billing request fee

Additionally, Origin is concerned about any requirement that would oblige retailers to explain to customers the basis for estimating customer bills. Bill estimation is a network function and retailers would be relying on that external party to verify that method. The estimation is not a function of which product a customer chooses but is in fact more dependent on the network they reside in. Regardless of which retailer a customer chooses in their premises, they will receive the same meter estimation. If the network changes their estimation method, but does not update a retailer, then we will have provided them with out-of-date information as part of their EIC. This could arguably negate the customer's contract because EIC was reached on an incorrect basis.

We note that the Commission has recently highlighted higher complaint numbers associated with bill estimations by networks.<sup>3</sup> The Commission may introduce changes to the rules to enable estimated meter reads—something that AEMC are also consulting on. We believe that the Commission ought to seek to address this problem by adopting national rules in the first instance rather than requiring retailers to explain the basis for network reads prior to EIC.

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<sup>3</sup> Essential Services Commission of Victoria, *Victorian energy market update April to June 2018*, 27 September 2018, p. 7.

Origin does not support the customer advice entitlement extending to general terms and conditions that may impact the total value of the bill. We believe the intent of the Draft Decision, as quoted above, is reasonable and that the line ought to be drawn around the conditions that form part of the products that retailers sell to customers. The terms and conditions of a product are more material to customers choosing that product (such as the magnitude of the pay on time discount) than the other contract terms and conditions which tend to reflect other market operation costs. Origin therefore believes that clause 70H(1)(a) ought to be redrafted and confined to conditional terms and conditions for products rather than “any contractual” term or condition.

### Different platforms

The Commission intends for the customer advice entitlement to be ‘platform agnostic’. This appears to be workable with respect to draft clause 70H(1)(a), where a retailer website can present relevant terms and conditions and any monetary impact prior to a customer providing EIC. Origin is concerned about how draft clause 70H(1)(b) is integrated into online platforms. In terms of drafting, the Code refers to a retailer’s “belief”. This does not seem appropriate for an online platform where a retailer may not have any “beliefs” about a customer. The draft Code also refers to a suitable offer. It is hard to design an online platform in such a manner given that both customers and non-customers will be visiting websites. This could be seen to create an obligation for a retailer to present all generally available offers to customers to comply with this requirement. This would defeat its purpose, which is to narrow a customer’s choice architecture based on what is suitable for them.

The consequence of this is potentially twofold: firstly, creating a poor customer experience by requiring numerous offers for customers when they search offers on retailer websites; or, secondly, limiting retailer product offerings to comply with this requirement. We understand that the Commission has created “an incentive for retailers to move away from complex and confusing contracts” by requiring retailers to explain the impact on prices of terms and conditions.<sup>4</sup> However, the additional obligation in clause 70H(1)(b) could encourage retailers to limit the number of products they offer by requiring them to disclose them to customers on digital (or other) platforms—particularly where a retailer does not have any information about the customer and would not have reasonable grounds to judge the suitability of specific problems.

### Third parties

Origin is concerned about the practical implications of non-retailers being subject to either of the requirements in draft clause 70H(1)(b). Retailers and their third-party marketing representatives are bound by the Marketing Code of Conduct, the objective of which (among others) is to promote the disclosure of information to customers. In the circumstances that these non-retailers obtain the customers’ EIC the third party becomes effectively responsible for discharging the Customer Advice Entitlement under 70H. Accordingly, where the obligations reside on retailers they will also extend to their third parties acting on their behalf.

Unlike the Victorian Energy Compare website, retailers choose to make offers available through selected websites; only a selection of offers will be available to the selected third party. As such the third party may not have a more suitable offer available to that customer, even though one may exist. Given the third party has the same obligations as the retailer under the Marketing Code of Conduct, they will necessarily require all the retailers generally available offers to comply with clause 70H(1)(b).

Requiring all offers to be available would potentially undermine a Victorian Energy Compare’s role as the site for all generally available offers to be made available; this would be contrary to the purpose of having that website. We also note that a customer will be prompted to either contact the retailer or the

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<sup>4</sup> ESCV, *Building trust: Draft Decision*, p. 46.

Victorian Energy Compare website and it is likely most customers will do either of these activities rather than a third-party comparator. For these reasons, Origin believes third party websites should not be bound by draft clause 70(H)(1)(b).

The general meaning of 'third parties' effectively encompasses any non-retail entity that acts on behalf of a retailer in the interaction with the customers. For example, buying groups (where the offer might be generic, but there is a broader non-energy benefit to the 'body corporate' of the buying group members) are technically collective third parties but they differ from commercial comparators and brokerage services. Another third party are builders that, through agreements with a retailer, may provide the end-user details so that the site can be transferred out of the builder's name and into the property occupier's name. Where EIC cannot be obtained for a customer to enter a contract, these customers are placed on to the standing offer in accordance with the Retail Code requirements.

Origin believes that both buying groups and builders may be captured by the clear advice entitlement given the obligations of the Marketing Code of Conduct. However, they are clearly not the same business models as a third-party comparator site or a brokerage service. In a practical sense, many of these third-party agents cannot reasonably be expected to be bound by the same obligations of retailers with respect to assessing the suitability of other offers. A third-party comparator will not possess the same information about a customer that the Commission has in mind to fulfil this obligation—retailers obtain this information via billing data and payment history. Equally, it is not practical to require a builder or buying group to have available the retailer's other offers to assess their suitability for the customer.

As such, we would recommend in the first instance that the wording in the code be more specific to the particular service they provide. Rather than introducing blanket regulation of all third parties through the clear advice entitlement and the Marketing Code of Conduct, the Commission needs to be more cognisant of the function that particular third parties serve and to assess whether tailored regulation is more appropriate.

Additionally, that a customer may use Victorian Energy Compare to determine the 'best offer' presents the possibility that Victorian Energy Compare would be unable to comply with the proposed 13-day availability requirement in the same manner that third parties may struggle, as outlined above. This would remove the availability of an impartial 'single source of truth' from consumers. More concerning, as the calculation to determine the 'best offer' may differ from retailer to retailer, it is possible that Victorian Energy Compare may present a different 'best offer' to the customer from the same retailer. This possibility is extremely likely, compounded where a customer uploads a meter data file in order to obtain the best offer recommendation, and would contribute to undermining trust in the energy market.

#### Solution to clause 70H(1)(b) issues

As currently drafted, Origin believes that the requirement in clause 70H(1)(b) is too extensive, particularly given this is a general entitlement for customers and platform agnostic. Origin interprets the clause as potentially requiring a retailer to assess the suitability of other offers, that a retailer reasonably believes would be suitable, prior to obtaining EIC. The use of 'and' between clauses (a) and (b) indicates that a retailer must follow this step where a reasonable belief is formed. In compliance with clause 70H(1)(b), the question will become: what forms a basis for a retailer reaching a reasonable belief for assessing the suitability of the customer's offer?

Where a contact centre interaction is triggered by a 'best offer' notification, a retailer will already have undertaken a calculation of a customer's potential saving as part of generating the notice; there will be no requirement for contact centre staff to conduct this assessment. However, if it is a general entitlement regardless of a best offer notification, then this will require retailers to undertake an assessment whenever a customer contacts a retailer wanting a new offer. In Origin's view, this is far more onerous than draft clause 70H(1)(a), which only requires retailers to inform customers about any conditions that may impact the total monetary value of the bill.

Our understanding is that the Commission foresaw a potential issue with customers responding to a 'best offer' that had the lowest price but also came attached with conditions that did not suit all customers. Hence additional protection afforded in clause 70H(1)(b) was to ensure that retailers made a more suitable product available where they had one (for example, a product without conditional terms). Origin does not oppose this requirement where a customer has been triggered to contact a call centre following a best offer notification.

However, for the above reasons, we believe that clause 70H(1)(b) has been drafted much broader than the Commission intended. If the Commission is adamant that draft clause 70H(1)(b) is to remain, then it should be limited only to where a customer has contacted the retailer's call centre in relation to a best offer notice. This would address the Commission's concerns with customers ending up on unsuitable offers because of the 'best offer' notice, whilst mitigating against unintended consequences from the current drafting. As we explain above, we do not believe that the protection afforded clause 70H(1)(b) is appropriate or necessary for non-contact centre interactions or when a customer is contacting a retailer outside of a 'best offer' notice.

#### Additional consultation

The customer advice entitlement does not directly arise from the Independent Review's recommendations; rather, it is a response to secondary issues that are raised by the two 'best offer' recommendations. On the face of it, retailers did not anticipate a customer advice entitlement when the Independent Review was released or in the Victorian Government's Interim Response. Origin is of the view that if the Commission is to proceed with this aspect of the Draft Decision, retailers ought to be given additional consultation and implementation time to assess its merit and the impact on operations. In the very least, the Commission is not bound by its terms of reference to make a final decision by 1 July 2019, and there is scope for an extended consultation. We ask the Commission to do so in relation to this aspect of the Draft Decision so that any issues are thoroughly addressed. This would also give the Commission the opportunity to assess the benefits and costs of this recommendation.

### **3. Price and benefit change notices**

The Commission has largely duplicated the information requirements from the Benefit Change Notice Guideline and the Draft Decision on Advance Price Notification and combined them into a notice. Unlike the AER, the Commission has provided retailers with more discretion in how the letters are presented to customers by requiring retailers to meet an objective in the Code. Origin supports this approach and we believe that the proposed objective provides adequate guidance to retailers. The ESC can then assess retailers against these objectives. In Origin's experience, this approach is preferable to that taken by the AER with its end of benefit guideline; responsibility for the effectiveness of the Guideline is effectively placed onto the regulator. In Origin's experience, retailers have more expertise in designing these communications, and it will be more effective for regulators to hold retailers to account for their communications.

With respect to draft clause 70(L)(3)(h), retailers are required to provide any information specific to the customer to assist the customer to complete the fields necessary to compare offers on Victorian Energy Compare. This seems to be based on the requirement that the AER has introduced into its end of benefit notification. For Victoria, this will work for the first page of Victorian Energy Compare, which has similar questions to Energy Made Easy. Origin is able to provide this information to customers. However, unlike the Energy Made Easy website, Victorian Energy Compare asks a more involved set of questions about the customer's circumstances on the second page. Most of these matters the retailer will not have knowledge about (for example, the kind of cooling and heating used by a customer). It would be helpful for the Commission to confirm that retailers are not obligated to obtain and provide customers with this information as it would be too onerous a burden.

### Advance Notice of Price Change

The AEMC has recently made a final rule in the Advance Notice of Price Changes consultation.<sup>5</sup> Notwithstanding that there are aspects of that decision that we preferred were different, Origin is of the view that national consistency is preferable on this particular matter. This is particularly with respect to the five-business day requirement and the inclusion of additional exemption category that does not require a notice where a customer's price change is a direct result of changes to bank charges and fees. If the Commission has not intended a 'best offer' notice to be sent for these kinds of secondary costs then this can be clarified by including it as a specific exemption in draft clause 70L(7). Accordingly, we support the Commission adopting the AEMC's final rule for the purpose of implementing recommendation 3F.

### Notification of Network Tariff Changes

Distribution businesses have the ability to amend a customer's network tariff without their authority if the customer's consumption or connection no longer meets the requirements for the tariff. For example, a small businesses electricity consumption goes over the 100MWh per annum threshold and the network business moves the customer from a flat network tariff to a demand network tariff. These changes are beyond the retailer's control.

In these circumstances, Origin believes the requirement should be that customers are notified as soon as practicable, but in any event no later than the customer's next bill. This additional exemption category aligns with the AEMC's Final Rule with regards to advance notice of price changes.

## **4. GST inclusive pricing**

Origin accepts the Commission's interpretation of recommendation 3H and the underlying policy reasons for making this shift. As the Commission's amendments to the *Energy Retail Code* demonstrate, retailers are required to include a break-down of both GST exclusive and inclusive pricing in Price and Product Information statements,<sup>6</sup> Energy Price Fact Sheets<sup>7</sup> and offer summaries.<sup>8</sup> The model terms and conditions also permit GST exclusive pricing. It has been the accepted practice across the industry to include GST exclusive and inclusive pricing in bills and Origin's is no exception. As a consequence of this regulatory legacy, our systems have been built around tabulating bills with tariffs that are GST exclusive. This is the case in all jurisdictions as residential customer billing is, to the greatest extent possible, done in a consistent format.

At the moment, Origin does all of its calculations pre-GST and then use the total to arrive at a GST figure. These reforms will require GST to be embedded into the prices; to achieve this, Origin's billing calculation logic will need to be overhauled.

We understand that the requirement for a 1 July 2019 implementation has been set by the Victorian Government. Given the significant impact that removing GST has on our current billing practices, Origin foresees potential implementation obstacles that may make 1 July 2019 difficult to comply with. The Commission should engage individually with retailers to understand their challenges in meeting this deadline; in doing so, they should consider whether it is appropriate to enforce this requirement strictly where a retailer has demonstrated implementation issues. We highlight some additional implementation issues below.

### Multisite and tenders

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<sup>5</sup> Australian Energy Market Commission, *Advance notice of price changes, Rule determination*, 27 September 2018.

<sup>6</sup> See schedule 5 of the *Energy Retail Code*.

<sup>7</sup> See schedule 4 of the *Energy Retail Code*.

<sup>8</sup> See clause 15C(4) of the *Energy Retail Code*.

The GST-inclusive billing requirement applies to all small customers. A complication may arise for multi-site and tender customers: this is where a contract may be with a single large entity with multiple sites. That entity uses energy across a number of sites that, if unaggregated, would not exceed the 40MWh threshold for a small customer. However, a retailer may bill each site individually as part of their agreement with the entity; the entity may also require GST exclusive billing as part of this agreement (generally for their own accounting purposes). The result is a series of individual 'small customer' bills with the same entity that does not exclude GST. However, under the current proposal, these individual invoices would have to include GST despite the stated preference of the customer. Origin believes that an exception is warranted for these circumstances.

### Concessions and small businesses

Pursuant to an Order in Council<sup>9</sup> and Guidelines produced by the Department of Health and Human Services,<sup>10</sup> concessions for customers are calculated on a GST exclusive consumption figure. On Origin bills presently, customers can see the GST-exclusive basis for calculating the concession. Arriving at a GST-exclusive concession amount will create yet another level of complexity in our billing systems to remove the GST component of the energy charges in order to be able to calculate the concession. This problem is compounded with multiple concessions. A retailer cannot bundle all the concession amounts together and subtract the GST; it has to do so individually. A solution will need to be determined with minimal disruption to the new GST inclusive billing requirements. Further, the absence of GST exclusive pricing will mean that a customer will not be able to transparently reconcile their concession amount with their total bill because they will not have the GST exclusive consumption tariff that the concession is calculated on.

Further, Origin notes that this change may impact the taxation practices of some small customers. For their accounting purposes, it helps these customers to have itemised GST exclusive pricing. These customers will claim back the GST paid as part of their quarterly Business Activity Statements (BAS). The Victorian Government's blanket removal of GST inclusive pricing ignores this accounting benefit. We expect these customers to be disappointed by this change.

It is important that the Government and the Commission is aware of the impact this change will have on concessions and small businesses, because it may drive customer complaint activity to the Ombudsman and other agencies. To help mitigate this problem it would be beneficial for the Victorian Government (or the Commission) to inform customers of this change prior to its implementation. We suggest to the Commission that they should raise this with the Government so that it can take these steps. Whilst retailers can also inform customers, it would undoubtedly be beneficial for the Government to do so given they are viewed as a more neutral source of information.

## **5. Implementation**

Origin appreciates the Commission's general approach to consultation to date, particularly the willingness to talk directly to stakeholders throughout the process and to take us into your thinking. This has been very reasonable of the Commission irrespective of our above concerns on particular issues (the airing of which are a necessary part of the consultation process). However, the Commission has been working on these issues since March, which demonstrates the complex nature of these recommendations from a regulatory perspective. Complex regulations make for a complicated implementation. This difficulty is compounded in an environment where retailers are allocating many of the same resources on delivering:

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<sup>9</sup> See definition of 'consumption' on page 90 <http://www.gazette.vic.gov.au/gazette/Gazettes2013/GG2013G032.pdf#page=90>

<sup>10</sup> See 'How is the concession calculated?': <https://services.dhhs.vic.gov.au/annual-electricity-concession>

- the Victorian Payment Difficulties framework;
- changes to Hardship policies federally which are due by 1 June 2019;<sup>11</sup>
- the AER's life support changes on 1 February 2019;
- changes to the NSW Social Code for concession customers;
- reforms to customer's providing self-read of meters;
- five-minute settlement, which commences on 1 July 2021, but is already absorbing resources because it involves significant changes to internal systems and processes that are highly integrated and currently incapable of accommodating five-minute settlement data;
- the AER's ongoing work implementing the new Retail Pricing Information Guidelines (since August and ongoing through this period);
- the commencement of the end of benefit notification on 1 October 2018; and
- and the new advance notice of price notifications on 1 February 2019.

The Commission is also working on recommendations 3A to 3H. The exact scope of these recommendations is yet to be determined by the Commission but there will be additional system and process changes required to implement them in tandem by 1 July 2019.

Given the breadth of these changes, Origin asks the Commission to be sensitive to suggestions by Origin and other retailers which may simplify the implementation of these recommendations.

The 1 July 2019 implementation deadline has been set by the Victorian Government's response to the *Independent Review* and their terms of reference to the Commission. However, we believe the Commission could set an initial transition requirement for retailers to provide customers with a 'best offer' notice on their bills within six months of 1 July 2019. This will provide retailers with additional time to ensure their systems and processes are properly designed and working. Customers may receive a notice from 1 July 2019 if a retailer is in a position to provide one; the obligation would require that such a notice would definitely be required no later than 31 December 2019. We have discussed the implementation approach to GST above.

In terms of the customer advice entitlement, Origin believes that the Commission should set a later implementation date for the reasons expressed under the Additional Consultation subheading in section two above. We note the Commission has further discretion on this matter given it is not directly (or necessarily) the result of the Independent Review's recommendations.

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<sup>11</sup> Australian Energy Market Commission, *Strengthening protections for customers in hardship: Draft Decision*, 6 September 2018.



5 October 2018

Essential Services Commission  
Level 27, 2 Lonsdale Street  
Melbourne, Victoria 3000

Dear Essential Services Commission

**Submission on the Draft Decision: Building Trust Through New Entitlements in the Retail Energy Market**

Powershop Australia Pty Ltd (**Powershop**) thanks the Essential Services Commission (**ESC**) for the opportunity to provide comments on the ESC’s draft decision, *Building Trust Through New Entitlements in the Retail Energy Markets (Decision)*.

**Draft decision 1: Best offer entitlement**

Of the five approaches identified for defining the ‘best offer’, Powershop agrees with the ESC’s position and prefers option 2 – cheapest generally available offer.

Powershop’s view is that generally available offers should include retention offers and win-back offers because they are available to all customers who are leaving or have left the retailer. As the objective of recommendation 3G is to “cut through the complexity of the market for customers”, Powershop believes that it is important that retailers “notify customers of savings that would be available to them if they were on their retailer’s best offer”, or in this case – savings that would be available to the customer if they left/ threatened to leave a retailer. This is important as it saves customers the effort of having to shop around, make a decision to switch, and then be targeted with a retention offer that could have been clearly disclosed to them earlier. Powershop considers offers that are designed for a football club membership or insurance business membership to be restricted/ non-publicly available offers. These views inform Powershop’s positions in the following table of approaches.

**Table 1:** Powershop’s position on ESC’s five potential approaches:

Options	Brief ESC description	Powershop position	Ranking
1. Cheapest possible offer	“entails defining ‘best offer’ as the lowest cost offer the retailer can make to the customer, including from among the retailer’s non-public offers. This would include the retailer’s win-back and retention offers, as well as any offers the retailer reserve for customers on their hardship policy”.	This option provides the most comprehensive comparison for customers as all restricted or non-publicly available offers are disclosed.  For this option to work effectively the clear advice entitlement would be an important step in explaining the restrictions on certain offers to customers. However, the risk with this approach is customer dissatisfaction with being advised that they cannot take up an offer if they did not meet eligibility criteria. We believe this is a significant enough risk that we cannot support this approach.  <u>Note:</u> As mentioned above, Powershop consider retention and win-back offers should be generally available in this scenario.	2 <sup>nd</sup>
2. Cheapest	“define best offer as the retailer’s cheapest generally available offer. The	Powershop supports option 2 as the required approach, especially if the customer-centric	1 <sup>st</sup>





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generally available offer	term 'generally available' is drawn from the national framework and means 'all plans that are available to any customers in the appropriate distribution zone with the appropriate metering configuration are generally available unless they are a restricted plan.' Under the AER's definition, restricted plans are those that are specifically targeted at an individual or exclusive group, such as concession card holders or hardship customers".	approach of considering retention and win-back offers as generally available is adopted.	
3. Cheapest equivalent offer	An offer "that is similar in character to the offer the customer is currently on. Under this option, the best offer displayed on the bill would be the cheapest offer that has the same characteristics as the customer's current offer. For instance, if the customer is currently on a plan that had e-billing and pay-on-time discount, then the best offer presented on their bill would be the cheapest plan the retailer offers that also comes with e-billing and pay-on-time discounts".	While Powershop understands the intent of this approach, it has the potential to under value customers' potential savings. For example, if a customer is receiving paper bills and there is an e-billing offer that is \$300 a year cheaper, the customer may not be presented this offer because it is not an equivalent offer due to the use of e-billing as opposed to paper bills.	3rd
4. Two 'best offers': cheapest generally available and cheapest equivalent	"involves the retailer being required to display two 'best offers' spanning both the cheapest generally available and cheapest equivalent options".	Powershop does not support this approach. Because there is no single market offer for the customer to refer to, this option has the potential to further confuse customers and it provides little benefit.	5th
5. Allow retailers discretion to define 'best offer'	"The final option we considered is not to define 'best offer' at all, and instead leave this question to the discretion of retailers". "This approach avoids the need to enshrine a single definition of 'best offer' in the regulatory framework".	For a prescriptive requirement such as this, we would suggest that this approach will not work.	4th

Note: Ranking, 1<sup>st</sup> is most preferable, 5<sup>th</sup> being least preferable.

### Draft decision 2: The definition of best offer

While Powershop understands the ESC's position that the definition of best offer should be linked to price, this has the potential to limit innovation, customer service and product development. For example, retailers who offer demand response programs that financially reward customers for lowering consumption are not factored into the best offer definition, therefore disadvantaging those retailers for their innovative offer.



### Draft decision 3: Estimating a customer’s usage and the application of discounts and concessions when determining the best offer

#### Application of discounts

In principle, Powershop supports the ESC’s decision requiring retailers to inform customers of the best offer available, but observes that this decision also has the potential to lock the market into the status quo of how discounts and market offers are currently presented. This is because introducing such prescriptive compliance requirements may lock retailers into offering less choice to customers to better manage compliance risks.

For example, Powershop offers customers a choice of products to choose from because some of our customers choose to buy in bulk, while others buy products to support community renewable energy programs. To facilitate this freedom of choice, Powershop offer customers our Auto Pay market offer, which gives them access to the below ‘powerpacks’ that vary in discount/ cost depending on the make-up of the pack.

**Table 2:** Powershop powerpacks:

Powerpack	Discount	Description/ Conditions
Power Saver	19.5% off usage and supply	Powershop’s everyday powerpack – customers can buy as much as they like whenever they like.
Mega Pack	23.2% off usage and supply	Powershop’s ‘bulk buy’ pack which gives customers approximately three months’ worth of power. This pack is available every 60 days.
Your Community Energy	19.5% off usage and supply	This pack includes a 6.6c/kWh premium which is pooled and distributed to community based renewable energy projects. <sup>1</sup>
Green Power Saver	19.5% off usage and supply	This is a 100% accredited GreenPower powerpack.
Future packs	20.5% off usage and supply	Future packs are designed to save budget savvy customers money by buying energy in advance. For example, customers can buy an ‘October Future Pack’ in September.
Monthly Specials	Varies	Monthly Specials are only available a few times a month. They’re a bigger discount than the Power Saver on usually about a day’s worth of usage.

Note: All discounts are off Powershop’s Auto Pay market offer rates. All powerpacks can be purchased online or through the Powershop app.

#### How concessions are managed when calculating best offer

Powershop’s view is that concessions should be excluded from the calculation determining the best market offer as concession entitlements sit outside the retailers’ control and could cause confusion. Significant system development would also be required for us to implement the necessary changes associated with including concessions. These views inform Powershop’s positions in the following table of approaches. Further, if a customer is comparing a market offer that has been presented on their bill and it includes a concession amount, the customer might

<sup>1</sup> <https://www.powershop.com.au/your-community-energy/>



compare it against another retailer's market offer which excludes the concession component, therefore providing an inaccurate comparison.

## Batteries

While the Decision discusses how solar data will be factored into the calculation of 'best offer', batteries are not discussed at all. Powershop presumes batteries will be treated the same as solar export data, but further clarity is required in the final decision.

### **Draft decision 4: Presentation of the best offer on bills**

Powershop has some concerns about the ESC deploying prescriptive language for use where the customer is not on the retailer's best offer, particularly with respect to the obligations regarding representations to consumers under the Australian Consumer Law. Powershop suggests that the ESC consider any potential conflicts that may arise, and provide retailers with appropriate flexibility to avoid such conflicts.

### **Draft decision 5: Clear advice entitlement**

Powershop supports the intent of the clear advice entitlement to the extent that it provides retailers and customers the opportunity to discuss which offer will suit their needs. We note that the requirement may also have the welcome effect of driving down the number of market offers some retailers have in the market, therefore removing some of the confusion for consumers.

One aspect Powershop would like further clarity on is the scope of the clear advice entitlement with respect to fees. Powershop's view is that the current drafting may be interpreted as requiring retailers to advise customers of all the different fees that may be levied depending on the customers' actions during the contract.

For example, the current drafting may be interpreted to require retailers to advise:

- If you decide to have solar installed at your address the fees for a meter reconfiguration will be \$X based on your network distributors current fee schedule;
- If you decide to renovate your house and move your electricity meter, fees of \$X may be levied based on your network distributors current fee schedule;
- If you need increased electricity supply to your property a three-phase meter may be required which may cost \$X based on your network distributors current fee schedule;
- If you decide to demolish your property, meter abolishment fees of \$X may apply based on your network distributors current fee schedule; and
- If you decide to have solar hot water installed at your address the fees for this will be \$X based on your network distributors current fee schedule".

Powershop does not believe that the above interpretation is the ESC's intent, as fees such as those detailed are advised and consented to prior to works taking place. Moreover, imposing this obligation would be impractical and drive further confusion in the market. It is also worth noting that the fees described above are distributor-levied fees which are passed through by a retailer, and are not retailer fees.

If the intent of this requirement is to force retailers who charge fees for late payment, paper bill and dishonour fees (etc.), to make this clear prior to the customer entering into an agreement, then Powershop wholeheartedly support this obligation and encourage the ESC to clarify this position in the final decision.



### **Draft decision 6: Scope of the new best offer obligations**

Powershop strongly opposes this requirement not being imposed on exempt sellers such as embedded networks. The Energy and Water Ombudsman of Victoria has recently (1 July 2018) started taking complaints from embedded network customers due to dissatisfaction.

While not all apartment blocks have embedded networks, it is important to note that the 2016 Census of Population and Housing found that 10% (2,348,434) of all people in Australia spent Census night in an apartment, with 23% of occupied apartments being in Victoria.<sup>2</sup> If only a small percentage of apartments have embedded networks or will install them at a later time they should receive the protections under this Decision.

### **Draft decision 7: Frequency at which the best offer appears on bills**

Powershop supports best offer messages appearing at a minimum every six months, however we would prefer the ability to schedule the message at our discretion, rather than on the first bill to follow 1 January and 1 July each year. These timeframes are traditionally busy periods for retailers' service centres, and increased call centre traffic at this period could frustrate customers. Allowing for flexibility in issuing the better offer messages would enable retailers to better manage their customers' experience.

There was discussion during the consultation for this Decision that the bill message be displayed on the anniversary of the retailer becoming financially responsible for the customer. Powershop oppose this approach due to the unnecessary complexity of such a requirement. Customers will receive the same amount of benefit in the frequency detailed in the draft decision or at retailer discretion - at far less cost compared to an anniversary frequency.

### **Draft decision 8: Dollar threshold for determining best offer**

Powershop supports the implementation of the \$22 savings threshold as the trigger to display the best offer message.

### **Draft decision 9: How long a best offer must be valid for**

Powershop's view is that 13 business days may not be sufficient time for the customer to act on the best offer presented to them on their bill. Powershop suggests that an easily referable timeframe is used, such as the issue date of the next bill.

### **Draft decision 10: Additional information to appear on bills**

Given the limited space on bills and the fact customers are already advised of the VEC website on Price and Product Information Statements, Powershop would prefer VEC information not be included in the bill message.

### **Draft decision 11: Bill change notices**

Powershop perceives this requirement to comprise two distinctly separate notices.

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<sup>2</sup> <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2071.0-2016-Main%20Features-Apartment%20Living-20>



## 1. Benefit change notices

Powershop has long advocated for better customer protections regarding the use of high discount, fixed benefit period contracts and supporting regulation that promotes better communication around the expiry of these offers, so that customers are not charged a 'loyalty tax'.

## 2. Price change notice requirements

Powershop has long seen a deficiency in Code requirements regarding price change notices, and as such has always provided customers with advance notice of price changes. In recent times Powershop has given customer's 10 business days' notice of any price change. In addition Powershop uses the first bill after a price change as a fall-back method of communication should the customer believe they have not received the notification.

The timeframe for sending these two distinct notices is discussed further in response to draft decision 16.

### **Draft decision 12: Minimum requirements for information to appear on bill change notices**

As detailed immediately above, Powershop has always given customers advance notice of price changes. In our experience implementing these notices, we would suggest that a 'less is more' approach is required when presenting this information. We believe that customers simply want to know what their prices are and what they will be changing to.

The following table details our position on required information for bill change notices.

**Table 3:** Bill change notice required information

Required information as detailed in the Decision	Powershop's view
The small customer's metering identifier.	Not necessary, and already detailed on bills.
That the small customer may use the price comparator to compare offers that are generally available to classes of small customers in their area.	Not necessary. Customers switch if they do not like the price.
The name and web address of the price comparator.	Not necessary.
That the customer can request historical billing data (and, if they are being sold electricity, energy consumption data) from the retailer that will assist the customer to use the price comparator to compare offers that are generally available to classes of small customers in their area.	Not necessary, and already available.
Any early termination charges payable under the market retail contract.	Agree.
The retailer's best offer for that customer, defined, calculated and presented in the same manner as set out in draft decision 2 to 4, 8 and 9.	Agree.
The retailer's estimate of the annual dollar impact of the benefit or price change (where the benefit is financial in nature).	Not necessary. A simple 'before and after' price table is sufficient. Annualised cost can be inaccurate and misrepresentative, which exposes us to unnecessary risk. Notice must be kept simple.
Information specific to the customer to assist the	Not necessary for this notice. Requiring



customer to complete the fields necessary to compare offers on Victorian Energy Compare.	retailers to provide a “VEC user’s manual” in this notice is unreasonable. If further explanatory information is required, this should be provided through the VEC website itself.
That a benefit change will occur and the benefit change date (benefit changes only).	Agree.
That the customer’s tariffs and charges are being varied (price changes only).	Agree.
The date on which the variation will come into effect (price changes only).	Agree.
The customer’s existing tariffs and charges, (price changes only).	Agree.
The customer’s tariffs and charges as varied (price changes only).	Agree.

#### **Draft decision 13: Manner and form of bill change notices**

Powershop supports allowing retailers to present bill change notices in a manner and form consistent with the objective of the notice.

#### **Draft decision 14: Delivery of bill change notices**

Powershop supports delivering bill change notices in a manner determined by the customer.

#### **Draft decision 15: Scope of bill change notices**

As we have stated in our submissions to the Australian Energy Market Commission, “retailers will generally promote price decreases as part of their communications strategy, therefore removing the need for regulation”.

Despite this view, Powershop always favour consistency between the Code and National Energy Retail Rules.

#### **Draft decision 16: Notice period**

##### **Price change notice**

Powershop supports sending a customer’s price change notice a minimum of five business days prior to the price change coming into effect.

##### **Benefit change notice**

Powershop opposes the “streamlining” of benefit change notices and price change notices. As we have identified earlier in this submission, these notices serve two distinct purposes. Watering down retailer obligations to advise customers of the end of their benefit period may lead to higher customer bills when the benefit period ends.

Powershop agrees with the Department of Premier and Cabinet’s Behavioural Insights Unit that timeliness is important in successfully prompting a customer to take action, and that a prompt to take action is more likely to be effective if it is provided as close as practical to the end of the benefit period. However, this assessment does not limit the effectiveness of giving customers ample time to research and make a decision. The ESC and multiple other agencies have stated that



the market is too complex for customers to navigate, and in this context Powershop sees no benefit of giving customers only 5 days to research instead of 40 days.

**Draft decision 17: Exemptions from need to issue a bill change notice**

Powershop agrees with the exemptions detailed in the Decision other than the following exemption:

*“in relation to a benefit change where a benefit change date occurs within 40 business days of the commencement of the market retail contract”.*

Powershop’s concern with this exemption is that it may inadvertently introduce short-term benefit period contracts. For example, consider the circumstances where a customer signs up on a 60% discount which is fixed for one month, only for the discount to be slashed to 10% after one month.

To mitigate the risk of any such offers appearing, the ESC should remove this exemption.

**Draft decision 18: Prices to be expressed in GST inclusive terms only**

Powershop support GST inclusive pricing but is concerned by the implementation timeframe and potential inconsistency between retailers.

Further, for GST inclusive pricing to work effectively, fairly and for the benefit of customers nationally, the AER and ESC should align their positions on GST requirements and implementation timeframes, whether as described in this Decision or otherwise (subject to consultation with retailers if a new position is put forward).

**Draft decision 19: Commencement date for the new requirements**

While Powershop understands the terms of reference given to the ESC, Powershop would encourage a transitional implementation to allow for a smooth implementation. A transitional implementation will allow retailers to better scope and implement the necessary system changes in a manner that delivers positive customer outcomes. We note that while the objective of these changes is to build trust between retailers and customers, having to implement such large scale changes in such a short timeframe will make it difficult for retailers to effectively meet this objective.

Powershop’s view is that a six month implementation timeframe should commence from 1 July 2019 and be completed by 1 January 2020.

If you have any queries or would like to discuss any aspect of this submission please do not hesitate to contact me.

Yours sincerely,

**Haiden Jones**  
Operations Manager  
Powershop Australia Pty Ltd



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5 October 2018

Dr Ron Ben-David  
Chairperson  
Essential Services Commission  
Level 37, 2 Lonsdale Street  
Melbourne, VIC 3000

Submitted electronically: [RetailEnergyReview@esc.vic.gov.au](mailto:RetailEnergyReview@esc.vic.gov.au)

Dear Dr Ben-David,

**Re: Draft Decision - Building trust through new customer entitlements in the retail energy market**

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to respond to the Essential Services Commission's (the Commission) Draft Decision to implement recommendations 3F to 3H of the Independent Review into the Electricity and Gas Retail Markets (the Thwaites Review).

It is clear from the Draft Decision that the Commission is keen to implement measures to improve engagement in the market and increase transparency of the variety of energy products and services available to them. We consider that the Commission's desire to place good consumer outcomes at the centre of its regulatory framework is meaningful and consistent with the intent of the Thwaites recommendations. Many of the original recommendations will complement the competitive retail market.

We recognise that the Commission has been given direction to implement specific recommendations within a prescribed timeframe. Unfortunately, this prevents a more detailed assessment of the precise impact of the recommendations including their likely costs and dynamic effects. It also precludes the Commission from investigating other options to meet the objectives of the recommendations in a manner that promotes good consumer outcomes, in an efficient and cost effective manner, and consistent with our experience on the upcoming implementation of the payment difficulties framework.

The Commission has gone some way in assessing potential actions that consumers may take on receipt of the notification of a potential better offer through a defined set of parameters tested by applying behavioural economics. As a result, the Draft Decision claims that Victorian consumers will participate in the energy market with greater trust and confidence. Our customers have all participated in the market, and have made an active decision to choose either Red or Lumo as the retailer to meet their energy needs. Our customers chose to stay with us for a variety of reasons including our award winning customer service and/or our competitive products. We are concerned that as currently drafted, implementation of these recommendations will be costly and will impact the customer experience of Victorian consumers. While it may be the case that some Victorian consumers will act on the new changes, we are not confident that these intangible benefits identified in the behavioural assessment will outweigh the significant costs across industry. It is unfortunate that the Commission's process does not allow for this more comprehensive evaluation to avoid any unintended consequences of a stringent application of the recommendations.



## **Retailer obligations and customer expectations**

Red and Lumo firmly believe that Victorian consumers benefit substantially from effective competition, and that the Energy Retail Code (the Code) should apply obligations on retailers to increase consumers' experience with and confidence in the Victorian energy market. The drafting of the Code in the Draft Decision largely does not place obligations on retailers to achieve these outcomes.

We are concerned that the Draft Decision creates an environment where the compliance status of a retailer's conduct is uncertain or that breaches are only apparent after the event. An example is the notion of the most suitable offer for a customer and whether a retailer has offered sufficient assistance (particularly if a customer has been advised they can expect to receive highly specific savings on the cost of their energy usage). Should a customer have any cause for complaint and is a retailer exposed to regulatory action if that customer feels - for whatever reason - that they are not on the most suitable offer? It is highly unlikely that a customer would actually realise the estimated savings even if they switch offers, despite a retailer's efforts to assist. This could be due to changes in their usage, payment behaviour or circumstances, all of which are outside a retailer's direct control. We are concerned that imposing obligations on retailers that are not measurable is not in the best interests of consumers or will increase transparency and confidence in the energy market. Particularly when there are additional risks that a retailer may be seen as misleading a customer with the potential savings available to a customer as the estimated annualised savings is just that—an estimate. The draft Code obliges retailers to include all savings, including any conditional benefits that the customer may not be able to meet.

Red and Lumo remain most concerned with the linkage in the draft Code between the clear advice entitlement and the obligation on a retailer to obtain the customer's explicit informed consent. Energy consumers have the existing safeguard of a prescribed cooling off period that gives sufficient time for them to undertake a measured and considered analysis of an energy contract, many of which are entirely consistent with model contract terms recommended by the Commission in the Code. At 10 business days, the length of the cooling off period exceeds that for other significant purchases, notably the absence of a cooling off period for a house purchase at auction. This safeguard allows a consumer to consider the financial implications of the best offer and any competing offers (including their lower profile terms), ask questions of the retailer and also the chance to seek advice from other parties, such as financial counsellors, friends or legal counsel if the consumer desires.

## **Proposed considerations by the Commission**

Whilst understanding that the Commission is working within very stringent timeframes and terms of reference, we consider it prudent for the Commission to satisfy itself of the following prior to making a final decision:

- All regulated messaging is simple and clear to a customer, to reduce any potential for a poor customer experience or inhibiting their ability to participate in the market.
- The final version of the Code is clear that the definition and application of the provision of the annualised best offer savings to a customer will not be constituted as misleading and deceptive conduct under Australian Consumer Law – especially if the message is described in the Code as “you are paying \$X more than you need to”.
- Obligations in the Code can be provided to a consumer in a technology agnostic manner, and take into account potential innovations in energy pricing structures and products.
- All permutations of retail offers are considered and covered in the Code, particularly dual fuel offers.

- Implementation will not reduce the amount or variation in the offers made available to consumers in the market, including the number of active retailers able to make competitive offers.
- Timeframes for implementation are prioritised in a manner to deliver the greatest benefit to consumers while reducing implementation costs, which will ultimately be borne by consumers.

Finally, we strongly urge the Commission to engage with the implementation of the ACCC recommendations, as we are very concerned that there are likely to be inconsistent obligations being placed on retailers. Regulatory outcomes implemented under the Thwaites Review must take into account the national arrangements in order to avoid poor customer outcomes and unintended consequences of Victorian specific legislation.

### **About Red and Lumo**

We are 100% Australian owned subsidiaries of Snowy Hydro Limited. Collectively, we retail gas and electricity in Victoria, New South Wales, Queensland and South Australia to over 1 million customers.

Red and Lumo thank the Commission for the opportunity to respond to the Draft Decision. Should you have any further enquiries regarding this submission, please call Geoff Hargreaves, Regulatory Manager on 0438 671 750.

Yours sincerely

A handwritten signature in black ink, appearing to read "Ramy Soussou". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

**Ramy Soussou**

General Manager Regulatory Affairs & Stakeholder Relations

**Red Energy Pty Ltd**

**Lumo Energy (Australia) Pty Ltd**

Retail Energy Review Team  
By email to [RetailEnergyReview@esc.vic.gov.au](mailto:RetailEnergyReview@esc.vic.gov.au)

8 October 2018

## Response to *Building trust through new customer entitlements in the retail energy market* – draft decision

Dear Retail Energy Review Team

Thanks for the opportunity to respond to the draft decision on the implementation of Recommendations 3F-H of the *Independent Review into the Electricity and Gas Retail Markets*. This submission complements the views Renew has already expressed through workshops and forums.

Renew (formerly known as the Alternative Technology Association) is a prominent advocate for all Australian residential energy consumers. As a member of the National Energy Consumer Roundtable, Renew works closely with other consumer advocacy organisations, providing expertise and experience in energy policy and markets. We also conduct independent research into sustainable technologies and practices.

As well as advocating on behalf of all residential consumers, we are the direct representative of our 11,000 members – mostly residential energy consumers with an interest in sustainable energy and resource use – who, like most Australians, find engaging with energy markets confusing. In our member advice service and our home energy consultations, we see many households that, despite being more interested in and informed about home energy usage than the average household, are still signed to energy offers that are completely unsuitable for their usage patterns and consumption level, leading to significantly higher costs than they otherwise could be paying. The changes proposed in this draft decision have the potential to mitigate some of this confusion, and we hope that our response helps with the design and implementation of these changes.

### Decisions 1–9: The ‘best offer’ requirement

#### 1. Putting the ‘best offer’ on bills

Renew supports the new ‘best offer’ requirement and endorses the Commission’s view that its primary purpose be to ‘nudge’ the customer to engage with the market, rather than be a comprehensive provision of information. The user testing undertaken by the Commission supports this approach, as it shows that customers are likely to take a range of actions in response to the best offer notification, only some of which involve following up on the specific offer shown.

#### 2. Defining ‘best offer’

We support the Commission’s proposal that the ‘best offer’ be the cheapest generally available offer, with retailer discretion to present cheaper plans from their non-generally available offers. This is preferable to the other options considered because:

- ‘Generally available offer’ is already well-defined, and these offers can be found (and verified) in Victoria Energy Compare.
- ‘Cheapest possible offer’ is not well-defined and may not be verifiable.

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- 'Cheapest equivalent offer' is difficult to define (what is 'equivalent'?) and presupposes that the customer is not interested in different types of offers, which may not be true.
- 'Two best offers' adds complexity to presentation on the bill, implies a precision that may not be accurate, and goes beyond the 'nudge' approach toward more comprehensive information provision.
- Retailer discretion as to what constitutes 'best offer' could lead to criteria designed to exclude cheaper generally available offers, or offers designed to be excluded by the criteria.

In considering other issues pertaining to the definition of 'best offer', Renew proposes that:

- Generally available offers that require additional financial outlay – such as signing up to a magazine subscription or club membership – should be excluded, because additional financial outlay could undermine the bill savings presented by the best offer notification.
- Generally available offers with other eligibility criteria that *do not* require additional financial outlay – such as offers only available to new customers – should be included, to avoid incentivising retailers to add eligibility criteria to their cheapest generally available offers in order to exclude them from the best offer notification requirement. This may also encourage retailers to ensure they have offers for existing customers that are priced similarly to offers for new customers, in order to satisfy customers who contact them in response to the best offer notification.
- Offers that are bundled with other products or services – such as gas + electricity or energy + internet bundled offers – pose a challenge. Bundled offers are much more complex for customers to figure out financially as they need to consider their existing cost for the other service(s); and retailers can't reliably advise the potential bill saving as they don't know what the customer is currently paying for the product or service that would be bundled with the new offer. If bundled offers are included, the *clear advice entitlement* obligation must include a specific requirement for retailer to obtain sufficient information from customers to give a clear picture of the net financial outcome of the bundled offer compared to the customer's existing offer and other relevant services.

### 3. Calculating 'best offer'

Renew supports the proposals to calculate the value of the 'best offer' by:

- Using the customer's last twelve months of billing data, with estimated data used where a full twelve months is not available. Retailers should have a documented procedure for estimating data.
- Applying all conditional and unconditional discounts – contingent on clear communication to the customer *if and when the customer makes contact to access the offer* of the impact of not meeting conditions. This should be covered by the new *clear advice entitlement* requirement, discussed below.
- Applying any concessions the customer is eligible for to both their current offer and the 'best offer'.

### 4. Presenting 'best offer' on bills

Renew supports the Commission's proposed approach to displaying the 'best offer' notification on bills. We particularly support the proposed terminology, which makes it clear that the saving is approximate and that it 'may' be achieved (rather than 'can definitely' be achieved). This approach embodies the 'nudge' principle, and also reflects the realities that energy usage varies – so usage next year won't be exactly the same as usage last year – and that conditional discounts may materially affect the financial outcome.

### *Expressing dollar savings*

Renew recommends that the dollar saving be rounded down to the nearest \$5 or \$10 in order to better convey that the saving is approximate. More specific figures (\$86.74 rather than \$80 or \$85) imply a precision that is not actually possible.

### *Unique offer IDs*

Experience with Victoria Energy Compare (VEC) suggests that retailer call centres can't necessarily identify a specific offer that a customer has fun when searching comparators or other information sources. The same names are often applied to a range of different offers; and call centre staff may not know the names of all products on offer. Specifically, VEC assigns unique ID codes to all offers in their system, but call centre staff have no idea what the unique offer IDs refer to. We have had many anecdotal reports of customers finding an offer on VEC, phoning the retailer and quoting the offer ID, being told by the retailer rep that they don't know what it refers to, and being offered a completely different product to the one they had found. This undermines the whole intent of a site like VEC, and could similarly undermine the intent of the 'best offer' initiative for those customers who are spurred to engage with their existing retailer. We see no reason why unique offer IDs can't be included in the best offer notification (since they are already generated by VEC and retailers presumably record them somewhere), and recommend that they be included, and that the Commission investigate how unique offer IDs can be more effective in the Victorian market as a tool to help consumers identify which offer they are currently on, and how to request a new offer when engaging with the market.

### *If a customer is already on the best offer*

When there is no better offer Renew supports the original proposal for the best offer notification to state this. This normalises the 'best offer' notification paradigm, may still serve as a nudge to engage with them market, and may reassure customers, once they become aware of the 'best offer' notification system, that their offer is also subject to the same scrutiny.

## 5. Clear advice entitlement

Renew strongly supports the clear advice entitlement. This is the essential complement to the 'best offer' advice, where the approximate value of a possible saving becomes verified as an actual opportunity for a specific customer.

The clear advice entitlement enables the 'best offer' advice to be simpler. For example, risk of misleading customers by including pay-on-time discounts (or other conditional discounts) in their 'best offer' notification when they are not guaranteed of constantly meeting the conditions is mitigated by clear communication from the retailer that failing to meet the conditions will change the value available. *Without the clear advice entitlement, Renew could not support inclusion of conditional discounts in the calculating the 'best offer'.*

We note the concerns of retailers that a requirement to explicitly divulge conditions in retail offers places a burden on them, and risks confusing customers. We agree with the Commission that if there are dozens or hundreds of terms and conditions that can materially impact energy costs, there is a serious problem with the terms and conditions.

We recommend that the Commission clarify the language in the clear advice entitlement obligation to make it clear that:

- it *specifically refers to* conditions included by retailers in their offers that change costs depending on customer meeting criteria or changing their behaviour (e.g. pay-on-time discounts, time-variant or demand-based pricing)
- it *does include* costs such as paper bill fees and merchant fees, since retailers have the option of smearing these costs.
- it *does include* possible increases in tariffs, by advising as appropriate:
  - that prices are fixed for a specific period of time,

- o that prices may increase under the terms of the offer by an unspecified amount if the magnitude and timing of expected price rises is not known, and/or
  - o the dollar impact of price changes that are known at the time of the advice.
- it *does not refer* to pass-through costs from other elements in the supply chain (e.g. DNSP charges for special reads, etc.) *unless* there is a retail margin added to those costs
- it *does not* need to include DNSP tariff reassignment, as this would either be absorbed by the retailer, or lead to a change of retail tariff which itself would trigger a bill change notice. A predictable tariff reassignment, on the other hand, is a predictable price change that should be notified as discussed above.

We also recommend that pass-through costs such as special read fees, meter, testing, etc. are prominently displayed in offer information provided to customers when accepting an offer.

#### *Privacy implications*

We note the concern of retailers about the privacy implications of having third parties delivering tailored advice to customers under the *clear advice entitlement* obligation. In our view, if third parties are used to deliver customer support or advice, it must be under contractual arrangements that **embody the retailer's privacy obligations**.

#### *Offering more suitable offers*

If a customer, in response to the 'best offer' notification, does not contact their retailer but rather engages with a commercial comparator but is led back to a different offer from their existing retailer, we would assume that once the customer is identified as an existing customer they are transferred to that part of the business that deals with existing customers and is able to access relevant customer information under the existing privacy framework, on which to base any assessment of the suitability of the offer. If that assumption is not correct, then there seems to be a serious flaw in retailer systems or contractual arrangements with comparators.

#### *Bundled offers*

As noted above, if bundled offers are included, the *clear advice entitlement* obligation must include a specific requirement for retailer to obtain sufficient information from customers to give a clear picture of the net financial outcome of the bundled offer compared to the customer's existing offer and other relevant services.

### **6. Scope of the 'best offer' obligation**

Renew supports the proposed scope of the 'best offer' obligation, but recommends that it be extended to exempt retailers within 24 months of commencement.

### **7. Frequency of 'best offer' notification**

Renew recognises the complexity of determining when and how frequently the 'best offer' notification should appear and is cautious of the potential for poor consumer outcomes if it is either left to retailers' discretion or overly prescriptive. In particular we note the risks of call centre congestion and of retailers gaming the system (by temporarily removing cheaper offers from the market at certain times) if the frequency is strictly prescribed.

We are also concerned that the right balance be struck between too frequent and too infrequent notifications. Consumers may 'switch off' if it becomes just another thing on every bill; or they may miss it altogether if, for example, it's on one bill per year and they just weren't paying attention that one time (especially if at a busy time of year such as December/January).

Renew believes twice a year strikes a good balance, and suggests giving retailers the discretion to choose when it appears, with the caveat that they be at least four months apart.

## 8. Dollar threshold for 'best offer'

The dollar threshold for determining whether an offer is cheaper is a vexed question. Too small a threshold may lead to some customers seeing it as insignificant and concluding that the market has little to offer them (undermining the 'nudge' principle), while too large a threshold may lead to more price sensitive households not being notified about an offer that would make a difference for them. Too small a threshold also risks customers switching to an offer that ends up making no difference because a small saving could easily be offset by fairly minor changes in usage – especially if some of it is also offset by an early termination fee. Thus, Renew's view is that:

- the proposed \$22 p.a. threshold, based on a typical termination fee, is too small because it could end up leading to no change in bill costs.
- the threshold we use in our economic analysis of fuel choice, \$100 p.a. is probably too high for many households, as lower income households would likely value smaller savings than middle income households would.
- A threshold of \$40-\$50 p.a. may be a good middle ground, being a \$10-\$12 saving on a quarterly bill and – more importantly – a large enough figure that most households would see it as significant enough to engage with the market looking for a cheaper offer, even if they wouldn't ordinarily value a saving that amounts to \$1 per week.

However we acknowledge this view is based more on a gut feeling than any research, and we urge the Commission to consider relevant research and the views of other consumer representatives, especially those working directly with people vulnerable to financial hardship, in determining the threshold.

## 9. The time period for which a 'best offer' must be valid

Renew agrees with the Commission that this is difficult to determine thanks to the dynamic nature of energy offers in the market. We also note that since the primary purpose of the 'best offer' notification is to 'nudge' customers to engage with the market to find a better offer (rather than simply to accept the offer shown), it may be successful even if the offer in question is no longer available when a customer contacts their retailer – and that customer research undertaken by the Commission suggests that the majority of customers responding to the 'best offer' notification will not even pursue the offer shown with their existing retailer, but search the market more generally. Thus we consider the Commission's proposal for 13 business days after the bill issue date to be satisfactory. We see no need to show the offer expiry on bills.

### Decision 10: Additional information on bills

Renew supports the proposal to require all bills to include information about how the customer can access Victoria Energy Compare (VEC). We also recommend that key information needed to use VEC is included. From our experience working with consumers using VEC, the information consumers sometimes don't know that their retailer should know is:

- Whether they have a controlled load
- Who their distributor is
- Their peak, off peak, and shoulder rates (currently GST-exclusive)
- Their daily supply charge total for the bill period (also currently GST-exclusive).

We recommend that the Commission advise VEC that when the requirement to show prices in GST-inclusive terms on bills commences, VEC change its data entry directions and calculation methodology to calculate prices based on GST-inclusive rates.

## Decisions 11–17: Bill change notices

### 11. Bill change notices

Renew strongly supports the new requirement for bill change notices. We have long considered the practice of advising of price changes after they have occurred to be unsatisfactory, and out of step with most other industries. Consumers are often caught off-guard by unexpected and unannounced price changes, and the tariff change notices currently sent after the fact are typically unclear and probably overlooked in many cases.

### 12. Minimum information requirement for bill change notices

Renew supports the proposed information requirements for bill change notices. As noted above, with regard to information the consumer needs to make use of VEC: it's up to the customer to know things like how many people live in their house and what type of appliances they have. From our experience working with consumers using VEC, the information consumers sometimes don't know that their retailer should know is:

- Whether they have a controlled load
- Who their distributor is
- Their peak, off peak, and shoulder rates (currently GST-exclusive)
- Their daily supply charge total for the bill period (also currently GST-exclusive).

We recommend that the Commission advise VEC that when the requirement to show prices in GST-inclusive terms on bills commences, VEC change its data entry directions and calculation methodology to calculate prices based on GST-inclusive rates.

### 13–15. Manner and form, delivery, and scope of bill change notices

Renew supports these proposals, but recommends that the scope be extended to exempt retailers within 24 months of commencement.

### 16. Notice period

Renew recommends that a longer notice period be given. We find it difficult to believe that price changes can be implemented in such a short timeframe as to be unable to be notified more than five days beforehand. We recommend at least 14 days to give consumers sufficient time to engage with the market.

### 17. Exemptions to the bill change notice requirement

Renew supports these proposals

## Decision 18: Expression of prices as GST inclusive

Renew understands that some stakeholders feel there are complications with displaying prices as GST-inclusive with regard to feed-in tariffs and concessions. We are not convinced. FITs are GST-free and subtracting them before or after GST is added makes no difference. Concessions may be calculated on the GST-exclusive rates, but the amount can still be shown on the bill as a credit; and anyone attempting to verify that the full 17.5% has been deducted from the total of the fixed and variable charges will find it hasn't whether or not the charges are GST-inclusive or -exclusive, because the concession is not applied to the full bill anyway (an allowance has been made since 2011 so that the concession is not applied to that part of the bill deemed offset by the carbon price compensation package).

Energy offers are the only consumer products with prices shown as GST-exclusive. This causes much confusion, and can make it hard for consumers to compare offers (because some are shown as GST-inclusive) and calculate expected costs. Requiring energy bills and offers to show GST-inclusive prices brings energy into line with all other sectors. Renew strongly supports this change.



If it is decided to allow retailers to show both GST-exclusive and GST-inclusive prices, we recommend that there is a requirement to very clearly distinguish between the two so consumers don't get confused about which prices are what. This would mean they would need to be presented in a visually distinct way – simply labelling two columns of a table differently is not clear enough for many people.

#### *Victoria Energy Compare and GST-inclusive prices*

We note that while VEC shows results GST-inclusive, it requires GST-exclusive rates to be entered if users choose to enter their current plan details for comparison. This is at odds with the new requirement for GST-inclusive prices on bills and other collateral. We recommend that the Commission advise VEC that when the requirement to show prices in GST-inclusive terms on bills commences, VEC change its data entry directions and calculation methodology to calculate prices based on GST-inclusive rates.

#### Other matters

We also note that the number of things required to be shown on bills has grown significantly over the last decade or so, and would support a consultative process at some stage in the future to revisit all the requirements for information to be shown on bills in order to make them simpler for consumers to understand.

Thankyou for accepting a late submission. Renew looks forward to continued engagement with other aspects of the implementation of recommendations of the *Independent Review into the Electricity and Gas Retail Markets*.

Sincerely yours,



**Dean Lombard**  
Senior Energy Analyst

5 October 2018

James Clinch  
A/Senior Regulatory Manager, Energy  
Essential Services Commission  
Level 27, 2 Lonsdale Street  
MELBOURNE VIC 3000

By email: [RetailEnergyReview@esc.vic.gov.au](mailto:RetailEnergyReview@esc.vic.gov.au)

Dear Mr Clinch,

### **New Requirements for Energy Bills**

Simply Energy welcomes the opportunity to provide feedback on the proposed amendments to the Victorian Energy Retail Code.

Simply Energy is a leading second-tier energy retailer with over 660,000 customer accounts across Victoria, New South Wales, South Australia, Queensland and Western Australia. As a second-tier retailer, Simply Energy actively supports customer engagement and open market competition. With these objectives in mind, Simply Energy considers the proposed scope of the Code changes are adequately adapted to enhance competitive tension and consumer outcomes in the Victorian energy market.

In exploring the proposed Code changes in further detail, Simply Energy's submission briefly evaluates:

- the objectives on the proposed changes;
- the scope of the deemed best offer requirement;
- the implementation of the clear advice entitlement; and
- the scope of the GST-inclusive price obligation.

### **Objectives**

Overall Simply Energy is supportive of the policy intent of the changes outlined under Part 2A. That said, Simply Energy considers the objective under cl 70G around supporting customer choice should be confined to requiring retailers to provide the information consumers need to make informed decisions about their energy services. The ultimate decision as to which product is most suitable should remain with the consumer, who can choose a product that suits his or her lifestyle and needs based on clear and transparent information provided by market participants.

## Deemed Best Offer

Simply Energy considers that advice of the deemed best offer may be able to play a role in promoting greater consumer engagement, but its limitations need to be considered. There is a risk that providing estimated savings in dollar terms on customer bills and price change notices could lead to unrealistic expectations about the benefits of switching offers. Customers need to understand that these estimates are based on historic usage and offer rates that may be subject to change.

For this reason, it may be more beneficial to have a standalone requirement to advise customers about whether they are on the deemed best offer every 12 months, rather than including this information on bills and price change notices. Including notifications as part of a standalone message should provide retailers with greater scope to qualify any estimated savings, and also provide more meaningful information to consumers.

Furthermore, if 12 months usage data is not available, then a consistent estimation approach should be prescribed in the Retail Code. Simply Energy considers that the current requirements outlined under the definition of *annual usage history* are insufficient to ensure consistency across all Victorian energy retailers. Simply Energy is also of the view that the inclusion of concessions and energy rebates in the calculation of a deemed best offer is problematic given these rates can vary based on a customer's levels of usage.

In terms of generally available offers used for the purposes of evaluating a customer's deemed best offer, Simply Energy considers that offers which have eligibility criteria, such as requiring membership with a club or association, should be excluded from the assessment. Simply Energy also considers that mandating that an offer must be available for 13 business days after advice on the deemed best offer is issued is too restrictive and potentially unworkable given new products offerings are continually being developed. In view of this, Simply Energy considers that cl 70S should be qualified and state that a retailer must provide information on an equivalent comparable offer in circumstances where the product stated in the deemed best offer message is no longer available.

It also needs to be made clear in the Code and to consumers that reference to an offer in the any form of correspondence is a mere invitation to treat. There should not be any obligation on retailers, other than the financially responsible market participant in offering a standard retail contract, to provide energy services in all circumstances. Simply Energy considers that it is important for this safeguard to be preserved, as it ensures retailers can effectively manage their credit risk. This is not to say that genuinely vulnerable customers should not be encouraged to take up the most appropriate energy plan for their circumstances. Indeed, Simply Energy already has processes in place to ensure these customers are proactively supported.

## Clear Advice Entitlement

With the focus on ensuring the customers understand the terms and conditions that may affect the monetary value of their bill, Simply Energy considers that the clear advice requirement will be beneficial for customers looking to change offers or retailers. In order to ensure customers receive the most benefit from these conversations, Simply Energy is of the view that cl 70H should be confined to the disclosure of product specific clauses rather than disclosure of generic distributor and metering charges. From Simply Energy's perspective, the main charges and provisions that should be brought to a customer's attention are those relating to conditional discounts, price change, feed-in tariffs and variable supply charges.

In order to ensure that retailers have sufficient time to implement the clear advice entitlement across all sale's channels, Simply Energy considers that a phased implementation approach should be adopted. As the Australian Energy Council has suggested in its submission, a potentially workable approach for industry could be to apply the obligations to disclose the financial terms for contact centres from 1 July 2019 and from 1 January 2020 for all other communication channels. The individualised nature of the information and linking the entitlement to explicit informed consent requirements means that it is imperative that retailers have robust processes in place.

### **GST Inclusive Marketing and Billing**

Simply Energy also sees the benefit in communicating and advertising based on GST inclusive terms. These requirements will ensure small-use energy customers are aware of the full costs associated with the services they are receiving or looking to procure.

Simply Energy, however, considers that extending this requirement to billing may lead to customer confusion given that energy concessions, discounts and feed-in tariffs are calculated based on GST-exclusive charges. This could, in turn, make it difficult for retailers to comply with other aspects of the Retail Code, such as the requirement under cl 25(1)(h) for retailers to make it easy for small customers to verify the basis on which tariffs and charges are calculated.

### **Concluding Remarks**

Overall Simply Energy considers that the Essential Services Commission has been very open and engaged throughout this process. Consistent with this open and engaged approach, Simply Energy would encourage the Commission to continue to take into account industry feedback in refining the proposed amendments to the Retail Code.

Simply Energy welcomes further discussion in relation to this submission. To arrange a discussion or if you have any questions please contact Anthony O'Connell, Senior Regulatory and Compliance Officer, on (03) 8807 5134 or at [Anthony.OConnell@simplyenergy.com.au](mailto:Anthony.OConnell@simplyenergy.com.au).

Yours sincerely



James Barton  
General Manager, Regulation  
Simply Energy

3 October 2018

Essential Services Commission

Sent by email: [RetailEnergyReview@esc.vic.gov.au](mailto:RetailEnergyReview@esc.vic.gov.au)

### **Submission to New Requirements for Energy Bills**

Sumo welcomes the opportunity to respond to the Essential Services Commission's Draft Decision 'Building trust through new customer entitlements in the retail energy market' dated 7 September 2018.

Sumo is supportive of measures that will result in cost-effective improvements to customer experience in the energy retail sector, including by making it easier for consumers to identify and take advantage of better offers. However, we have concerns about some of the draft decisions proposed.

#### **Cost and time impacts**

The Victorian Government's Terms of Reference require the Commission to identify the most timely and cost-effective opportunities for implementing recommendations 3A to 3H of the independent review.

The cost of delivering the changes in the manner proposed in the Draft Decision would be significant and, as noted below, are likely not to be achievable by 1 July 2019. Sumo has identified a number of ways in which those recommendations could be implemented in a more timely and cost-effective manner. We have set these out in Attachment A.

We strongly encourage the Commission to assess each element of the Draft Decision against the expected costs, and consider ways that similar customer outcomes – ones that are still consistent with the Victorian Government Terms of Reference – could be achieved faster and at lower cost. We have included confidential cost information in Attachment B.

Notably also, the 'clear advice' entitlement is not based on a recommendation from the independent review. Implementing this change will add to the cost, and will interfere with implementation of the independent review recommendations. We recommend that consideration of this component of the draft decision be deferred.

#### **Implementation timeframes**

The Draft Decision proposes a 1 July 2019 commencement date for the new rules. Given the significant effort required to meet these new rules, we do not expect that we would be in a position to comply within this timeframe. We recommend a start date of 1 January 2020.

Please contact me if you have any questions about this submission.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Alex Fleming', with a long horizontal flourish extending to the right.

Alex Fleming

**GM – Legal, Regulatory & Compliance**

## Attachment A

### Building trust through new customer entitlements in the retail energy market – Draft Decision – Sumo recommendations

Draft decision	Recommendation
<b>'Best offer' entitlement</b>	
<p><u>Draft decision 3:</u> Estimating a customer's usage</p>	<p>The draft decision proposes that the best offer is to be determined using the customer's previous 12 months metering data or, if that is not available, the retailer's best estimate of the customer's 12 months metering data.</p> <p>The system development required to produce this best offer calculation using a customer's actual or estimated metering data is a significant undertaking.</p> <p>A far simpler approach – and one that could be achieved by July 2019 and at a lower cost – would be to estimate the savings based on average or typical household usage. Although not tailored to the customer's circumstances, this would still achieve the outcome of causing the customer to call to seek further information about the best available offer.</p>
<p><u>Draft decision 4:</u> Presentation of best offer on bills</p>	<p>The draft decision would require the retailer to include the message immediately adjacent to the bill due amount. This would require a redesign of the bill which would come at a material cost.</p> <p>Retailer bills typically have space available for important messages. It would be a far simpler implementation, and more cost-effective, to use the existing bill message space for the 'best offer' message.</p>
<p><u>Draft decision 7:</u> Frequency at which best offer appears on bills</p>	<p>The draft decision would require the best offer messages to appear on bills on the first bill to follow 1 January and 1 July each year.</p> <p>It is expected that the best offer bill messages would drive a significant volume of calls. Sumo issues electricity bills on a monthly basis, which means the best offer messages would be delivered (and customer calls made) predominantly in January and July. The increase in call volumes in these months would be difficult to manage, particularly for a small retailer with a small call centre. Where the increase cannot be managed by a temporary increase to the number of call centre agents, the result will be a decline in telephone grade of service.</p> <p>Provided that bill messages are included on a periodic basis, retailers should be given the discretion when to deliver the message. Sumo would prefer to deliver the messages evenly throughout the year so as to maintain a consistent level of calls.</p> <p>It is worth noting that most energy retail plans have a term of at least 12 months. This being the case, the objective would also be achieved by delivering the best offer message on an annual basis rather than every 6 months. Doing so would also reduce the cost impact of the obligation.</p>

<p><u>Draft decision 8:</u> Dollar threshold</p>	<p>The draft decision proposes that a 'best offer' must result in an estimated saving of at least \$22 (including GST). The explanation for this amount is that it aligns with the maximum amount permitted to be charged as an early termination fee to cover the administrative costs of the customer leaving early. It is difficult to understand the relevance of this amount.</p> <p>More relevant is the amount that customers would expect to save before they are prepared to switch to a new product or new retailer. In Sumo's experience, customers are unlikely to be bothered switching for less than \$100 per year (less than \$10 per month). A \$100 saving would therefore be a more sensible threshold for the 'best offer'.</p>
<p><b>'Clear advice' entitlement</b></p>	
<p><u>Draft decision 5:</u> Clear advice entitlement</p>	<p>The clear advice entitlement would require retailers to ensure a customer is made aware of the dollar cost implications of all terms and conditions that influence the costs they will face, and of any other offers the retailer believes may be more suitable. On one level, this is a very sensible requirement. However, to the extent this requires a retailer to provide advice based on its knowledge of a customer's usage patterns and payment history, it is likely to be costly to implement and complex to deliver:</p> <ul style="list-style-type: none"> <li>• Sumo would potentially need to undertake significant system development to provide a CRM that will give sales agents information about a customer's pattern of energy consumption and payment history to enable the sales agents to take these data into account when offering energy products and providing the 'clear advice'.</li> <li>• There is a reasonable risk that sales agents will interpret customer usage and payment history incorrectly, and so provide bad and possibly misleading advice to customers.</li> <li>• The types of information required to be provided should be limited to key terms that are known will impact the cost. This would include, for example, the impact of conditional discounts, but would not include, for example, details of all possible fees (such as customer-initiated metering services e.g. special meter read). Providing too much information will lead to an even longer sales call, potential customer confusion, and ultimately a poor customer experience.</li> <li>• There should be no requirement for third party sales channels to know and provide customers advice based on the specific circumstances of the customer. Otherwise retailers would be required to provide customer personal information to third party sales channels, which would increase the possibility of data breaches.</li> <li>• There should be no requirement for a retailer to provide clear advice based on a customer's unique circumstances when a customer signs up online.</li> <li>• To the extent that there is any discretion on the part of a retailer as to what should be included in the 'clear advice' entitlement, the information should not be included as part of the 'explicit informed consent' requirement.</li> </ul>





# Knowing the best energy offer





VCOSS Submission to the Essential Services Commission Draft Decision on 'best offer' notification and other new customer entitlements

October 2018

The Victorian Council of Social Service is the peak body of the social and community sector in Victoria.

VCOSS members reflect the diversity of the sector and include large charities, peak organisations, small community services, advocacy groups and individuals interested in social policy.

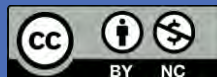
In addition to supporting the sector, VCOSS represents the interests of Victorians experiencing poverty and disadvantage, and advocates for the development of a sustainable, fair and equitable society.

 /vcoss  
 @vcoss  
 ChannelVCOSS  
 [vcoss.org.au](http://vcoss.org.au)

This submission was prepared by Emma O'Neill and authorised by VCOSS CEO Emma King.

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A fully accessible version is available online at [vcoss.org.au/policy/](http://vcoss.org.au/policy/)



VCOSS acknowledges the traditional owners of country and pays respect to past, present and emerging Elders.

This document was prepared on the lands of the Kulin Nation.



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# Executive Summary

The Victorian Council of Social Service (VCOSS) welcomes the draft decision of the Essential Services Commission (ESC) on new information entitlements for energy customers, including ‘best offer’ notifications on energy bills.

VCOSS strongly supports ‘best offer’ notifications. Energy market deregulation assumed people actively engage to find a good value deal. We now know only a small proportion of people can participate in this way. Some people face entrenched engagement barriers, such as digital exclusion, limited English literacy skills, and difficult life circumstances. These make searching for an energy deal a very low priority. Regularly notifying people of a retailer’s best offer helps limit price-gouging, because those captive to their retailer often do not have the time and resources to engage.

VCOSS supports the proposed savings threshold for ‘best offer’ notifications. People would be informed of a retailer’s best offer when estimated to save at least \$22 each year. People should be able to accept a retailer’s best offer for at least 13 days after notification.

VCOSS welcomes introducing bill change notices. These warn of price or benefit changes in advance, such as a price increase or the end of an on-time payment discount. We particularly welcome requiring retailers to estimate the annual dollar impact of price or benefit changes, notify people of their best offer on the bill change notice, and direct people to the Victorian Energy Compare price comparator website. Currently, people can too easily unknowingly default onto poor value deals at the end of a benefit period, or be unaware of other lower cost deals when prices increase.

VCOSS endorses the proposed ‘clear advice’ entitlement. This requires retailers to make people aware of the dollar cost implications of all terms and conditions of an energy deal, at the time of entering a contract, and discuss other, potentially more suitable deals. It introduces much-needed transparency, particularly for people at risk of financial stress, and creates a retailer incentive to reduce the complexity of their offers and cost changes during an energy deal.

# Recommendations

## Notifying 'best offers'

- Define 'best offer' as the cheapest generally available offer
- Cap non-compliance costs in conjunction with introducing best offer notifications
- Notify people of best offers at least once each quarter
- Notify people of best offers when receiving standard or tailored assistance under the payment difficulty framework

## Notifying billing changes

- Issue bill change notices at least 13 business days before a price or benefit change happens
- Use bill change notices to prompt people to update their concession eligibility, when facing removal of a concession discount

# Notifying ‘best offers’

## Define ‘best offer’ broadly and cap non-compliance costs

### Recommendations

- Define ‘best offer’ as the cheapest generally available offer
- Cap non-compliance costs in conjunction with introducing best offer notifications

The ESC proposes retailers regularly notify people of their best offer on bills, where they are not already on it.

Defining the ‘best offer’ is not easy. It depends on how much energy people use, when they use it, whether they have a solar system, and whether they use both electricity and gas.

Defining ‘best offer’ is also complicated by widespread pricing and marketing features retailers use, including:

- conditional discounts, particularly for on-time payment, direct debit and online billing
- one-off bill credits
- one-off gift inducements
- special prices for members of particular organisations (e.g. RACV).

The cheapest energy offer may not be available to everyone. Even if available, some people may be unable to comply with its conditions, such as paying on-time or online. The ESC proposes some options for defining ‘best offer’. Of the options, VCOSS supports defining the ‘best offer’ as the cheapest generally available offer. This is a minimum standard. Retailers remain free to present other, cheaper offers.

In some cases, the best generally available offer is only available to some people, such as new customers, requires particular organisational membership, or another restriction.

These offers should still be presented, even though people may not comply with the requirements. Otherwise, retailers may simply add restrictions to their lowest priced offers to avoid disclosure. This transparency alerts people to potentially lower prices, prompting them to engage, and even attempt negotiating an equivalent deal with fewer caveats. We anticipate customer dissatisfaction with restrictions will encourage retailers to reconsider their pricing and marketing strategies.

The ESC acknowledges presenting the cheapest generally available offer carries risks. Conditions can cause financial stress when people cannot comply. On average, people pay

an extra \$314 for electricity, and \$189 for gas, for failing to meet discount conditions over a year.<sup>1</sup> This can easily tip a household into financial hardship and create disconnection risks.

Limiting non-compliance costs helps mitigate these risks, rather than hiding better prices from people. Presenting the ‘best offer’ on bills will work best if the Victorian government caps the costs of failing to comply at no higher than the reasonable cost to the retailer.

## Regularly notify people of better deals

### Recommendation

- Notify people of best offers at least once each quarter

The ESC proposes ‘best offer’ notifications appear on bills at least every six months, on the first bill following 1 January and 1 July each year, starting from 1 July 2019.

We suggest notifications must occur at least once during each calendar quarter, to align with existing quarterly payment instalments and help prevent payment difficulties. VCOSS members providing frontline services consider six months too long to wait for the next notification. People paying too much can build up significant debts over six months, particularly during high-usage summer and winter periods.

The ESC proposal could lead to an influx of people contacting retailer call centres during those periods, causing long wait times, pressure on call centre staff, and a corresponding risk of people not receiving comprehensive, clear advice about the best offer or other offers. A more frequent, even spread of notifications would help reduce the concentration of customer enquiries and support better customer service. Further, if ‘best offer’ notifications have to appear on the first bill following 1 January and 1 July each year, retailers may withdraw better value offers during this period, to avoid or limit the extent of ‘best offer’ notifications.

## Adopt a low savings threshold

VCOSS supports the ESC’s proposal to trigger a ‘best offer’ notification when people can save at least \$22 per year, compared with their current deal. This limits price-gouging existing customers, assuming people act and switch plans. A higher threshold would be a higher ‘overcharging’ allowance for retailers.

In our view, the ESC should not try to estimate an ‘ideal’ savings threshold that prompts people to change their energy deal. VCOSS members stress respecting people’s autonomy, and letting individuals decide whether the savings justify contacting their retailer and switching plans.

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<sup>1</sup> Essential Services Commission, *Victorian Energy Market Report, 2016-17*, 41.

## Give people time to accept offers

The ESC proposes the retailer's best offer is open for 13 business days, aligning with the minimum period for a bill due date under the Energy Retail Code. In other words, people can accept the better offer at any time before the bill is due. We support this, and consider the 13-day period should be a minimum, allowing retailers to give people more time. We oppose a watered-down requirement, such as not specifying a minimum period, or merely requiring a 'reasonable period'.

If someone contacts their retailer after the 13-day period and the best offer has expired, the retailer should be obliged to offer people an equivalent deal, unless this is no longer possible. This helps protect people requiring more time to understand their bill and the 'best offer' notification, or seek assistance to do so.

## Clearly present the 'best offer'

The ESC is not prescribing how the best offer notification should appear on bills, beyond specifying it must:

- be included on the front page of the bill
- be displayed prominently in clear and legible typeset
- be contained in a border
- be located adjacent to and no less prominently than the amount due
- comply with any ESC direction.

Some VCOSS members suggest retailers test visual cues such as infographs to present this information. Visual information can be more easily understood than written information, and can particularly assist vulnerable people, such as those with limited English skills. Easy English information can also aid understanding.

## Notify 'best offer' during payment difficulty

### Recommendation

- Notify people of best offers when receiving standard or tailored assistance under the payment difficulty framework

In addition to six monthly (or more frequent) 'best offer' notifications, people using the new payment difficulty framework should also be entitled to best offer information when receiving standard assistance (to help avoid arrears) and any level of tailored assistance. Even if someone has been recently notified of the best offer, it is important this information is reiterated or updated when nominating a payment plan to repay arrears, as any savings made on ongoing usage costs will enable more sustainable and timely payments.



# Notifying billing changes

VCOSS welcomes introducing a 'bill change notice', which contains information about upcoming price or benefit changes. The notice will include information about:

- the retailer's best estimate of the annual dollar impact of the price or benefit change
- the benefit change date
- the date variations to tariffs and charges happen
- the customer's existing tariffs and charges, and the new ones
- the retailer's best offer
- Victorian Energy Compare, and information and data to assist using Victorian Energy Compare
- any early termination charges payable.

## Provide sufficient notice

### Recommendation

- Issue bill change notices at least 13 business days before a price or benefit change happens

The ESC proposes retailers notify people of a bill change at least five business days before a price or benefit change happens. We appreciate this short period is based on behavioural research, suggesting the most effective prompts occur close to the deadline for action. However, VCOSS members suggest this period is far too short for many people, including where:

- mail delays occur
- people have difficulty understanding the notice and require assistance from others (particularly older people and those from culturally and linguistically diverse backgrounds)
- common life events such as illness, hospitalisation, caring obligations and work pressures prevent people opening notices from energy retailers, understanding them, and having the time and opportunity to reach call centre staff.

A longer notice period provides leeway for these everyday circumstances and allows people to avoid the impact of price or benefit changes.

VCOSS members found the five day bill change notification period confusing compared with the 13 business days for 'best offer' notification. Making them 13 days apiece is simpler.

## Notify expiring concessions

### Recommendation

- Use bill change notices to prompt people to update their concession eligibility, when facing removal of a concession discount

Bill change notices are not proposed for tariff and charge variations caused by a change to, withdrawal, or expiry of, a government-funded energy charge rebate, concession or relief scheme. This appears to include price changes when a retailer does not have enough information about someone's concession eligibility.

VCOSS recommends requiring a bill change notice to be issued in these circumstances. People should be alerted, in advance, with a bill change notice, if the retailer needs updated information about a person's concession status to continue applying a concession. VCOSS members report people often lose concessions because their eligibility information is not up-to-date, but are not notified of this problem.

Further, bill change notices should provide this information when the 'best offer' includes a concession discount. That 'best offer' could be misleading if the person will soon lose their concession.

## Provide clear advice

In a complex energy market people face difficulty securing a good deal without hidden catches.

VCOSS strongly supports the 'clear advice' entitlement proposed by the ESC. Retailers must make people aware of the dollar costs of all terms and conditions of an energy deal, when entering a contract, and before the retailer obtains explicit informed consent. Retailers must also advise of any more suitable offers.

The 'clear advice' entitlement complements 'best offer' notifications, which do not contain information on their conditions. VCOSS particularly supports clear advice being provided about:

- the consequences of not complying with conditions, including on-time payment conditions
- service fees and charges, like paper billing
- estimated meter reads, including avoiding them, checking for them on bills, and contacting retailers if they seem incorrect
- more suitable offers, based on people's consumption and payment histories.

VCOSS members also suggest retailers use 'clear advice' to build energy literacy. This includes providing basic advice about checking energy use on bills, and questioning odd readings.

VCOSS wants retailers to strongly comply with these provisions, bolstered by rigorous enforcement. Compliance will become easier after other reforms to the energy market are implemented, such as fixing energy offer prices for a minimum of 12 months, and capping non-compliance costs. Emerging market developments will also help, including 'no discount' retailers, and promotion of no-discount and unconditional discount deals by other retailers. Retailers have considerable scope to reduce the complexity of their offers, and help make providing clear advice easier.



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