

Ensuring energy contracts are clear and fair

Draft decision

10 December 2019

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Executive summary

Our journey towards rebuilding trust in the retail energy market

We are starting to see positive changes in the market

In August 2017, the final report of the Independent Review into the Electricity and Gas Retail Markets in Victoria concluded the market was not working for consumers.

A suite of new rules came into effect on 1 July 2019 that will ensure customers get improved information to help them navigate the market. These include requirements for retailers to regularly notify customers if they are on their retailer's best offer, provide clear upfront advice on contract terms when a customer is signing up to a plan, and notify customers in advance of any price or benefit changes.

These rules support customers to make informed decisions about their energy supply. Requirements such as the best offer notification may also nudge customers who engage less frequently or have never engaged in the market to consider whether they could get a better deal and act accordingly.

We have seen retailer practices and offerings change since the recommendations were made. The size and prevalence of conditional discounts has reduced, and retailers are starting to introduce guaranteed discounts and sign-up or loyalty credits. These changes demonstrate retailers starting to take responsibility for reducing complexity in the market.

We still see a role for further reforms

While improving information provision is key to supporting better outcomes for customers who can and do engage in the market, there will still be a segment of customers who do not engage, for a range of reasons. The review also proposed recommendations that will provide more fundamental protections for all customers, which will particularly impact those customers who are not able to or choose not to engage.

The introduction of the Victorian Default Offer (VDO) has provided a safeguard for customers on electricity standing offers, and for those customers who decide that not engaging in the electricity market is the most suitable option for them. We also still see a role for the reforms to ensure contracts are clear and fair (recommendations 4A-4E) in providing protections for both gas and electricity customers, for example through providing price certainty and clarity about end of benefit and contract period practices.

Some stakeholders consider that market practices have evolved sufficiently that these additional reforms are no longer required. In response to this feedback, we sought to gain a better understanding of outcomes that customers are currently experiencing in the market. Our evidence

shows that while the market has changed from when the recommendations to implement these reforms were originally made, some issues identified by the review are still relevant today. We therefore consider that reforms to ensure contracts are clear and fair are still required to strengthen protections for all customers and continue to rebuild trust in the market.

There are a large number of different types of offers available in the market, with a range of tariff, benefit and contract structures, though the majority of customers are on an offer where the price is not fixed.¹ While retailers must now notify these customers in advance of any price changes, this does not prevent retailers from changing prices whenever they choose to.

Practices where prices change soon after a customer has signed onto a new plan have eroded consumers' trust of retailers. More recently, some retailers have introduced price certainty for their customers by offering 12-month fixed-price contracts. We consider that fixing market contract prices more widely across the market will help give customers certainty over what to expect from their retailer and play an important role in rebuilding trust in the market.

There is still a lack of consistent retailer practices at the end of benefit and contract periods, meaning customers don't know what to expect from their retailer and can end up paying more if they don't make an active choice at the end of a benefit or contract period. Some retailers effectively extend the customer's current plan by rolling them onto another benefit period or contract on the same terms, while other retailers will let the benefit expire or roll customers onto standing offers. Ensuring consistent practices at the end of benefit and contract periods will establish minimum protections for customers who do not engage at these times.

Conditional discounts have been a common feature of plans in the market, and the majority of customers are currently on a plan with a conditional discount.² Despite the substantial reduction in the size and prevalence of conditional discounts on new electricity offers, we are still concerned about the impact of missing offer conditions on existing customers who may be on plans with large discounts – for some contracts this has been up to 40 per cent.

Our data shows that 15 per cent of customers miss at least one offer condition,³ which can have an annual price impact of \$282-386.⁴ ACCC data suggests that a much greater proportion of hardship customers miss at least one offer condition (58 per cent in 2016-17).⁵ We also note that the reduction in conditional discounting practices for electricity offers has not been mirrored to the same extent for gas. We therefore consider there is still a role for regulating conditional discounts,

¹ Source: Data obtained from retailers by the commission via the issue of a s37 information notice.

² See figure 4 in chapter 2.

³ See figure 4 in chapter 2.

⁴ See figure 8 in chapter 2.

⁵ ACCC, [Retail Electricity Pricing Inquiry – Final Report](#), June 2018.

to establish consistent standards for new gas and electricity offers and provide protections for customers on existing contracts who are most at risk of missing offer conditions.

Implementing new contract standards

In developing this package of proposed reforms, we have considered the customer outcomes the recommendations were intended to deliver, and the reforms we have already implemented. We have sought to promote consistent minimum standards across the market, so customers know what they can expect from their retailer.

We have also considered to what extent new rules can benefit customers on existing contracts and customers signing up to new offers from 1 July 2020. Consumer organisations highlighted concerns that customers on plans with expired benefits are subject to price and/or discount changes at the retailer's discretion and may not be receiving fair pricing outcomes.⁶ These customers may miss out on contract protections introduced in this round of reforms if the new rules only apply to contracts entered into after 1 July 2020.

We have considered how we could implement each recommendation in a manner that promotes positive consumer outcomes and maximises customer coverage while being mindful of operational considerations for retailers. We welcome stakeholder feedback on whether we have struck a suitable balance.

Our proposed package of reforms

Table 1 summarises the way in which we are proposing to implement the recommendations.

Table 1 Summary of our proposals

Policy area	Summary of proposals
3A Ensuring customers can easily compare offers	<ul style="list-style-type: none">• We will introduce a new objective in the marketing division of the code, requiring retailers to market gas and electricity offers clearly.• Retailers must not market conditional discounts as the most prominent feature in gas or electricity advertisements, marketing or promotions.• Retailers must advertise all electricity offers in relation to the VDO, in line with existing requirements in the VDO Order in Council and similar national requirements.• We will not introduce a gas reference price at this time but will revisit

⁶ Consumer Action Law Centre & Council On The Ageing, Energy and Water Ombudsman Victoria and Victorian Council of Social Service, submissions to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

this if the Victorian Government asks us to set a gas VDO or if our ongoing monitoring of the market indicates issues with how gas customers are experiencing the market.

4A, 4B

Fixing market contract prices

- Retailers can only change the price of existing market contracts at the time that the VDO changes.
- Retailers who wish to offer products that are not compatible with limiting price changes to once a year must comply with certain conditions.

4C, 4D

Protecting customers at the end of benefit and contract periods

- Benefit and contract periods will be aligned, so customers receive any ongoing discounts, credits or rebates for the entire duration of a contract. Retailers must not decrease these benefits during the contract term.
- At the end of a fixed-term contract, if a customer does not give explicit informed consent to move onto a different offer, the retailer must roll them onto either the VDO (electricity) or that retailer's best offer (gas).
- The changes to the rules for gas contracts are subject to legislative amendments being made.

4E

Regulating conditional discounts

- Pay-on-time discounts will be capped by the commission. The cap methodology is based on the cost of debt for a retailer and established practices used by the commission for water.
- Retailers must honour pay-on-time discounts for customers in payment difficulty receiving tailored assistance.

VDO Order in Council

Including information about the VDO on bills

- Retailers must include information about how a customer can access the VDO on electricity bills.

Reducing allowable back-billing period

- Retailers may only recover any amount undercharged in the four months before they notify the customer, if the undercharging was a result of the customer's fault or unlawful act or omission.

Our draft decisions

Draft decision 1: New objective for marketing energy offers

Retailers must market gas and electricity offers in a clear and easily understood manner.

Draft decision 2: Retailers must market electricity offers with reference to the VDO

The VDO must be used as a reference price for all electricity offers.

Retailers must make a reference price comparison whenever they advertise, publish or offer an electricity offer to a customer.

Draft decision 3: Electricity reference price requirements

An electricity reference price comparison must include:

- the difference between the VDO price and unconditional price, as a percentage of the VDO price
- for each conditional discount, rebate or credit mentioned, the difference between the unconditional price and conditional price, as a percentage of the VDO price
- the lowest possible price
- the conditions of any conditional discounts, rebates or credits
- the distribution region and type of small customer.

Draft decision 4: Retailers must not advertise headline conditional discounts

Retailers must not advertise conditional discounts as the most prominent feature in gas or electricity advertisements, marketing or promotions.

Draft decision 5: Retailers can only change existing market contract prices when the VDO price changes

Retailers can only change prices of existing market contracts when the VDO price changes.

Draft decision 6: Retailers offering products that are not compatible with limiting price changes to once a year must comply with certain conditions

Retailers offering products that are not compatible with limiting price changes to once a year must:

- make customers signing up to these products aware of additional factors when obtaining explicit informed consent
- report regularly to the commission and
- conduct tariff reviews for customers on these products who become eligible for tailored assistance.

Draft decision 7: Retailers must disclose the length of time prices will be available without change

At the point of entering a contract, as part of the existing clear advice entitlement, retailers must clearly disclose when prices will change and, if known, the magnitude of any anticipated changes.

After a customer has signed up to an offer, existing rules require retailers to give advance notice of any price changes and tell the customer about their best offer.

Draft decision 8: Retailers must offer any ongoing financial benefits for the duration of a contract

Benefit and contract periods will be aligned, so customers receive any ongoing discounts, credits or rebates for the entire duration of a contract. Retailers must not decrease these benefits during the contract term.

Draft decision 9: At the end of a fixed-term contract retailers must roll customers onto the VDO or best offer (for electricity and gas respectively)

At the end of a fixed-term contract, if a customer does not give explicit informed consent to move to a different offer, their retailer must automatically roll them onto the VDO (for electricity) or that retailer's best offer (for gas).

The changes to rules for gas contracts are subject to legislative amendments being made.

Draft decision 10: Pay-on-time discounts to be capped by the commission

A pay-on-time discount cap will be determined by the commission and apply to contracts entered into from 1 July 2020.

Draft decision 11: Aligning the methodology for capping energy pay-on-time discounts with the commission's existing methodology for water

The methodology used to determine the pay-on-time discount cap for energy retailers will be consistent with the commission's established methodology for capping water interest rates.

Draft decision 12: Methodology for capping pay-on-time discounts

The pay-on-time discount cap will be the sum of:

- the 10-year Australian Commonwealth Government Bond Rate
- a debt risk premium
- an allowance for debt raising costs.

Draft decision 13: Updating the pay-on-time discount cap

The pay-on-time discount cap will be updated annually. It will be based on data as of 31 May and will take effect on 1 July each year.

Draft decision 14: Process for announcing updated pay-on-time discount cap

The commission will update its guideline and communicate any change in the level of the pay-on-time discount cap in writing to energy retailers in mid-June each year.

Draft decision 15: Retailers must honour pay-on-time discounts for customers receiving tailored assistance

Retailers must honour pay-on-time discounts for customers receiving tailored assistance.

Draft decision 16: Retailers must include information about accessing the VDO on electricity bills

Retailers must include clear, plain and conspicuous information on all electricity bills about how a customer can access the VDO.

Draft decision 17: Reducing the allowable back-billing period to four months

Retailers may only recover any amount undercharged in the four months before they notify the customer, unless the undercharging was a result of the customer's fault or unlawful act or omission.

Draft decision 18: Commencement date of code amendments

The code amendments giving effect to recommendations 3A and 4A-4E, the requirement to include the VDO on electricity bills and the back-billing rule change will take effect on 1 July 2020.

Timeline for implementation

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

- 10 December 2019 – draft decision on clear and fair contract reforms
- mid January 2020 – stakeholder workshop on the draft decision (subject to stakeholder interest)
- 21 January 2020 – submissions to draft decision close
- late February 2020 – final decision released
- 1 July 2020 – Energy Retail Code amendments come into effect.

How to make a submission

We are seeking feedback on our draft decision. Submissions should be made by **5pm on 21 January 2020**.

To make a submission on this paper please go to Engage Victoria's website:

<https://engage.vic.gov.au/>.

Submissions can also be sent by mail to:

Submission to 'ensuring energy contracts are clear and fair' consultation
Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne, Victoria 3000

Submissions will be published on the commission's website, except for any information that is commercially sensitive or confidential. Submissions should clearly identify which information is sensitive or confidential.

1. Context for this draft decision

Independent Review into the Electricity and Gas Retail Markets in Victoria

In November 2016, the Victorian Government appointed an independent panel to conduct a review of electricity and gas retail markets in Victoria. In August 2017, the review released its final report and concluded the market was not working for consumers. In reaching its conclusion, the review found Victorians were paying ‘unusually high’ electricity prices compared to other jurisdictions.

The review made 29 detailed recommendations, under eleven areas, aimed at improving energy market outcomes for consumers, including changing retailer marketing practices, improving market monitoring, establishing a regulated basic service offer and abolishing standing offer contracts.

The Victorian Government response

As part of its interim response in March 2018, the government referred terms of reference to the Essential Services Commission (the commission) under section 10(g) of the Essential Services Commission Act 2001. These terms of reference were for the commission to review the Energy Retail Code to give effect to:

- customer outcomes in the energy market, relating to recommendations 3A–H and 9
- efficient pricing in the energy market, relating to recommendation 8.

In October 2018, the government issued its final response to the review, which supported all recommendations subject to some refinements. In December 2018, the government referred terms of reference for the commission to review the Energy Retail Code to give effect to recommendation 4, relating to ensuring contracts are clear and fair.

New customer entitlements to build trust

We have already given effect to recommendations 3B to 3H via two rounds of Energy Retail Code amendments, made in October 2018 and March 2019. These code amendments took effect from 1 July 2019 and require retailers to:

- make energy fact sheets available for each of their offers, to help customers compare offers
- include their ‘best offer’ on customer bills
- express tariffs, fees, prices and charges in GST inclusive terms only
- provide customers signing up to a plan with clear advice about terms and conditions of offers
- provide advanced notice of changes to prices and benefits that impact a customer’s bill.

The rule changes are intended to restore trust and confidence in the market by requiring retailers to do more to help customers understand, compare and switch energy plans.

Ensuring contract periods, practices and variations are clear and fair

We are now turning our focus to implementing recommendations 3A and 4A-4E. These recommendations relate to promoting clear and fair contract periods, practices (including discounting) and variations.

The terms of reference for recommendation 4 require the commission to have regard to its objectives (outlined in Appendix H) under the Essential Services Commission Act 2001, Electricity Industry Act 2000, and Gas Industry Act 2001, as well as:

- the findings from the review
- the government's published response to the review
- advice from relevant experts
- other matters it deems relevant.

The terms of reference specify that the commission may also consider early adoption of any measures it considers necessary in the context of its statutory objectives, including those introduced in other Australian jurisdictions.

Table 2 Recommendations made by the review relating to contract and discounting practices

Recommendations from the review	
3A	Require retailers to market their offers in dollar terms, rather than as percentages or unanchored discounts.
4A	Require retailers to commit to fix any prices they are offering for a minimum of 12 months. During this period, the market contract prices cannot change. Retailers may request an exemption from the ESC to address unforeseen changes in network costs.
4B	Require retailers to clearly disclose to customers the length of time any offered prices will be available without change.
4C	Require retailers to roll customers onto the nearest matching, generally available offer at the end of a contract or benefit period, unless the customer opts for another offer.
4D	Any conditional discount or other benefit offered for paying on-time or on-line billing should be evergreen. Customers should not lose the discount or other benefit when the contract ends.
4E	Costs incurred by customers for failing to meet offer conditions are to be capped and not be higher than the reasonable cost to the retailer.

Related developments

Regulating conditional discounts

In February 2019, the Australian Government submitted a rule change request to the Australian Energy Market Commission (AEMC) to ensure conditional discounts for gas and electricity retail offers are no higher than the reasonable cost savings a retailer expects to make if a customer satisfies the conditions attached to the discount.⁷ This is in line with a recommendation made by the Australian Competition and Consumer Commission (ACCC) in its Retail Electricity Pricing Inquiry.⁸ The AEMC is currently consulting on a draft determination of this proposed new rule.⁹

An AEMC rule change to prevent discounts on inflated energy rates has also been in effect in the national framework since July 2018.¹⁰ The intention of this rule change was to prevent the practice of retailers applying discounts to rates that are inflated above their standing offers, so if a customer fails to meet the offer conditions they end up paying substantially more than the equivalent standing offer.

Banning headline conditional discounts

Since 1 July 2019, Australian Government regulations have banned headline conditional discounts for electricity (i.e. conditional discounts are no longer allowed to be the price-related matter that is mentioned most conspicuously in any advertisement of an electricity offer).¹¹ These regulations also require such advertisements to clearly and conspicuously state the conditions on any conditional discount. This rule change was also recommended in the ACCC's inquiry.

VDO Order in Council

On 30 May 2019, the Victorian government issued an Order in Council to implement the VDO.¹² The Order in Council directs the commission to amend the Energy Retail Code so that retailers are required to (a) use the VDO as a reference price for tariffs with discounts, and (b) provide information on energy bills about how a customer can access the VDO. This draft decision includes proposed Energy Retail Code amendments that would give effect to these requirements. These amendments are included in appendix B and discussed further in chapters 3 and 9.

⁷ For more information see <https://www.aemc.gov.au/rule-changes/regulating-conditional-discounting>.

⁸ ACCC, [Retail Electricity Pricing Inquiry – Final Report](#) (p. xxii), July 2018.

⁹ AEMC, [Draft rule determination: National energy retail amendment \(regulating conditional discounting\) rule](#), November 2019.

¹⁰ For more information see <https://www.aemc.gov.au/rule-changes/preventing-discounts-on-inflated-energy-rates>.

¹¹ Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019.

¹² Victoria Government Gazette, Order under section 13 of the Electricity Industry Act 2000, May 2019.

Our approach in reaching this draft decision

Issues paper

In June 2019 we released an issues paper and held a workshop with stakeholders to discuss options for implementing recommendations 3A and 4A-4E. We received 16 written submissions to the issues paper, which are available on our website.

In the issues paper we set out the evidence identified by the review that led specifically to recommendations 3A and 4A-4E being made. Our evidence on the current status of these issues indicated that they are generally still prevalent in the Victorian energy market.

An overarching theme raised by stakeholders was the need to consider the recommendations collectively rather than in isolation, and in the context of the current market.¹³

A number of retailers noted that the review recommendations were made two years ago and practices have evolved since then, particularly in the light of the new rules that came into effect on 1 July 2019.¹⁴ These stakeholders felt we should assess the effect of these rules across the market, before assessing whether further rule changes are necessary.

In contrast, consumer organisations considered that the recommendations were still relevant in terms of providing additional protections for disengaged customers and were keen that the recommendations were implemented as set out by the review.¹⁵

Additional inputs to inform our draft decision

Since receiving responses to the issues paper we have sought to gather further evidence on the outcomes that customers are currently experiencing in the market and the potential impacts of implementation options for certain recommendations. We have:

- undertaken consumer testing to better understand how customers respond to different ways of presenting energy prices, to inform the implementation of recommendation 3A
- engaged academic economists to provide an independent view of implementation options and relevant market design considerations for recommendation 4A

¹³ AGL Energy, Alinta Energy, Australian Energy Council, EnergyAustralia, Energy and Water Ombudsman Victoria, Origin Energy and Powershop, submissions to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

¹⁴ AGL Energy, Alinta Energy, Australian Energy Council, EnergyAustralia, Momentum Energy, Powershop, Red Energy & Lumo Energy and Simply Energy, submissions to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

¹⁵ Brotherhood of St Laurence, Consumer Action Law Centre & Council On The Ageing, Energy and Water Ombudsman Victoria and Victorian Council of Social Service, submissions to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

- obtained data on customer costs and contract types by issuing a notice to all electricity retailers in Victoria¹⁶
- continued engaging with stakeholders.¹⁷

Our approach for this draft decision

The market has evolved since the recommendations were initially made and some retailers are starting to simplify the customer experience. However, the updated evidence in chapter 2 on the current state of contract and discounting practices demonstrates that there are still outstanding issues which need to be addressed.

We consider there is a need for both 1 July 2019 and 1 July 2020 reforms. The information disclosure reforms introduced from 1 July 2019 make it easier for customers who engage in the market to compare and select offers, while the clear and fair contract reforms provide minimum protections for all customers. Taken together, we consider that the proposed package of reforms will work alongside existing rules in the market to deliver strong customer protections while enabling retailers to continue to innovate where it is in customer interests.

In developing this draft decision, we have sought to take a proportionate and pragmatic approach, being mindful of our statutory objective to promote protections for customers, including those who are facing payment difficulty.¹⁸ We have also sought to establish consistent minimum protections for customers across the market. We welcome views from stakeholders on the proposed package of reforms.

¹⁶ We issued this notice using our powers under section 37 of the Essential Services Commission Act 2001.

¹⁷ This includes a workshop on the issues paper (June), Victorian energy open forum session (August), workshop on presenting gas discounts (September) and stakeholder reference group meetings (June-November).

¹⁸ The Essential Services Commission Act 2001 (Vic) sets out the commission's overarching statutory objective to promote the long-term interests of Victorian consumers. The commission is also guided by objectives under the Electricity Industry Act 2000 (Vic) and Gas Industry Act 2001 (Vic) to promote the protections for customers, including in relation to customers who are facing payment difficulty.

2. Current market insights

In our issues paper, we presented evidence that issues identified by the review regarding discounting practices and benefit periods were still prevalent.

Since the publication of the issues paper the market has further evolved, particularly in the light of the new rules that came into effect on 1 July 2019. As a result, we analysed the type of electricity and gas offers published by retailers in the market on 30 September 2019, particularly as they relate to discounting and contract terms offered to customers.

We also sought to understand the nature of the existing contracts of Victorian customers, and the actual costs paid for energy. In August 2019, we issued a notice to all licensed electricity retailers operating in Victoria to collect information on the type of retail contracts that Victorian customers are on, and how this may have changed over the last two years. This data has allowed us to examine the retail contracts that customers are currently on and build a more comprehensive picture of the market.

We issued a notice to provide information to retailers using our powers under section 37 of the Essential Services Commission Act 2001.

In this chapter, for data that was obtained from retailers under our section 37 request, the \$ per kilowatt hour (kWh) prices shown are measured by the total amount paid by all customers on a type of offer, divided by the energy consumption of these customers over a 12-month period. Therefore, average prices are shown as a single \$ per kWh figure and will not directly reflect the tariff rates of retailers' offers (as it combines the daily supply charge and variable supply charges into a single figure).

Recommendations 4A and 4B

Recommendations 4A and 4B give customers certainty that their prices will not change for a certain time period.

Prior to 1 July 2019, retailers could change market offer prices at any time and were not required to notify customers before they did so. This meant customers were not always aware of price changes before they happened and could not respond to the change by shopping around for a new offer. The review also highlighted that some customers experience price increases soon after starting a new contract, which could erode confidence in their ability to get a good deal.

Since 1 July 2019, retailers have been required to provide customers with at least five business days' written notice before changes are made that could affect the customer's bill. This measure helps engaged customers to act and switch to a different plan. However, these changes do not

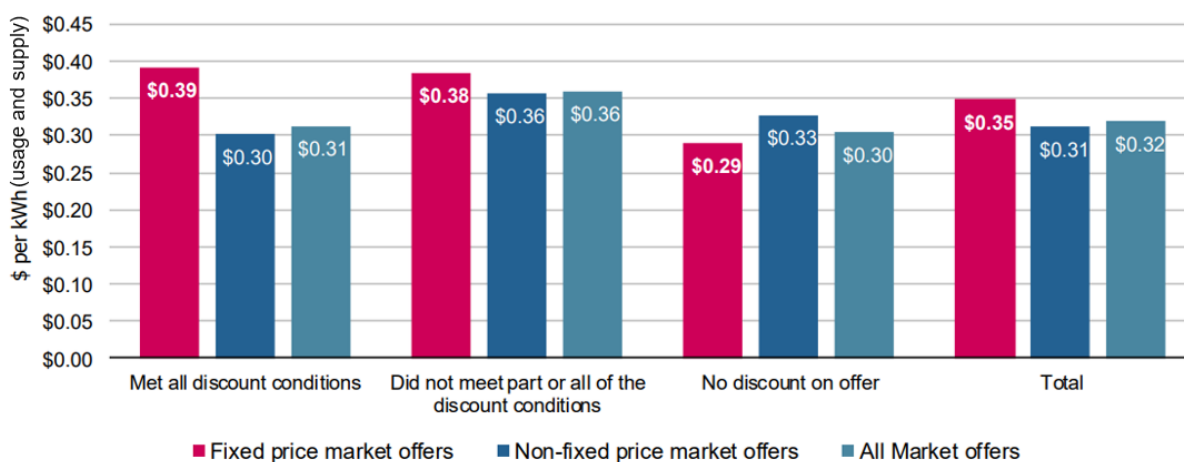
necessarily provide an appropriate level of price certainty for customers when signing up to a new offer (or while on an existing contract).

We recognise that some retailers are providing energy offers with some level of price certainty, usually as fixed-price offers for 12 to 24 months. Based on data we have obtained from retailers, we have found that as of 30 June 2019, one in five Victorian electricity customers were on these fixed-price contracts.

Our analysis also shows that, on average, customers have paid more on these fixed-price contracts. In 2018-19 customers on fixed-price contracts paid an average of \$0.35 per kilowatt hour, whereas customers on non-fixed price contracts paid on average \$0.31 per kilowatt hour. We are mindful of the potential price premium for providing a level of price certainty for customers when considering how to implement recommendation 4A.

It is interesting to note that customers on fixed-price contracts without any discounts paid the lowest on average compared to all other types of contracts. However, we understand that this is largely driven by a small number of retailers that offer low rate plans – 9 per cent of the market are currently on these plans.

Figure 1 Difference in price paid by customers on fixed and non-fixed price offers in 2018-19



Source: Commission analysis of data obtained from retailers

Recommendations 4C and 4D

Recommendations 4C and 4D address the issue of customers needing to engage with their retailers before the end of their benefit or contract period to avoid paying more, by protecting customers at the end of benefit and contract periods. As of June 2019, fixed benefit periods appeared to feature in the majority of offers available on Victorian Energy Compare. In our issues

paper, we noted it was therefore likely that concerns raised by the review persist in the market. We also noted that, given conditional discounts were still widely used in the market¹⁹ and the prevalence of large (30 per cent and greater) discounts had increased since the time of the review,²⁰ the impact on customers of reaching the end of a benefit period was likely to have increased since the review.

We also noted from our discussions with retailers and consumer group representatives that there was no consistent practice among retailers at the expiry of a customer's benefit or contract period.

While we don't have specific data on retailer practices at the end of benefit and contract periods, we have examined the prevalence and size of conditional discounts in the market to understand the extent to which the issues identified by the review are likely to still be relevant. The greater the prevalence of conditional discounts, the more customers are at risk of losing these benefits at the end of a benefit or contract period. The larger the size of conditional discounts customers are receiving, the greater the impact of losing such discounts will be on these customers.

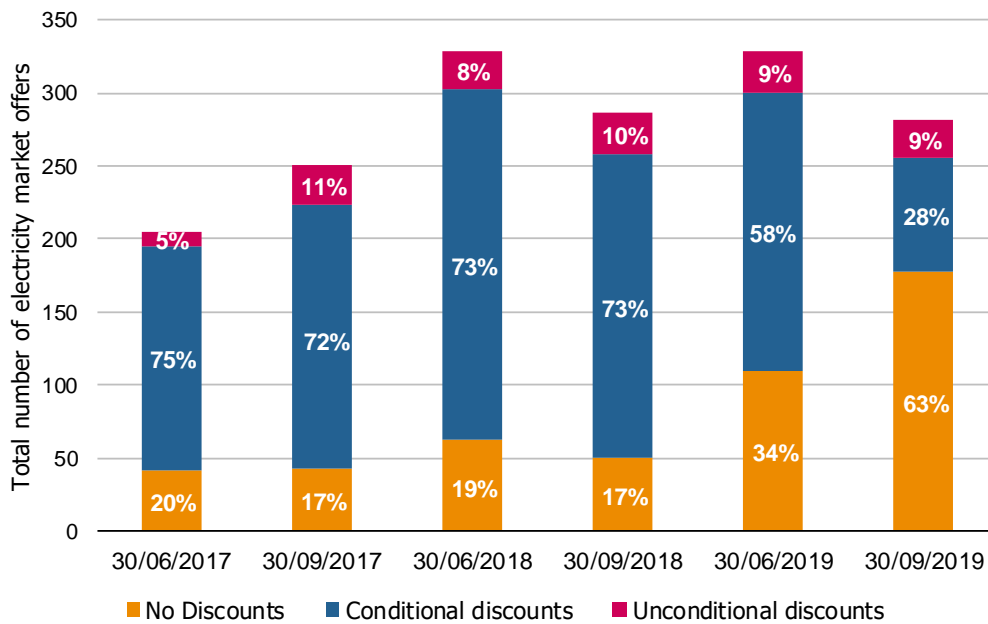
Prevalence of discounting practices

The number of offers with conditional discounts available in the market post 1 July 2019 has reduced. As of 30 September 2019, only 28 per cent of electricity offers and 29 per cent of gas offers had conditional discounts, compared to 58 per cent and 55 per cent respectively just three months earlier. However, the data we have obtained from retailers shows that across the market, 83 per cent of customers were on offers with conditional discounts as of 30 June 2019 (figure 4). The fact that the majority of customers are still on offers with conditional discounts indicates that customers are still likely to be impacted when they reach the end of a benefit period.

¹⁹ Essential Services Commission, [Victorian Energy Market Report 2017-18](#), February 2019.

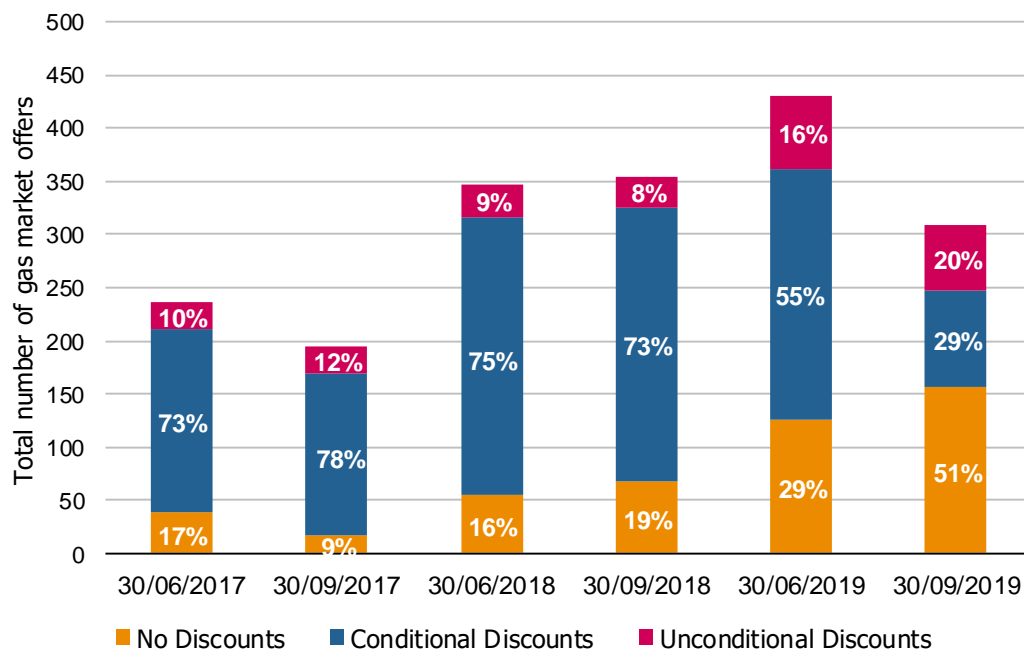
²⁰ ESC analysis of the Victorian Energy Compare website data, April 2019.

Figure 2 Number and proportion of conditional discount, unconditional discount and no discount electricity market offers



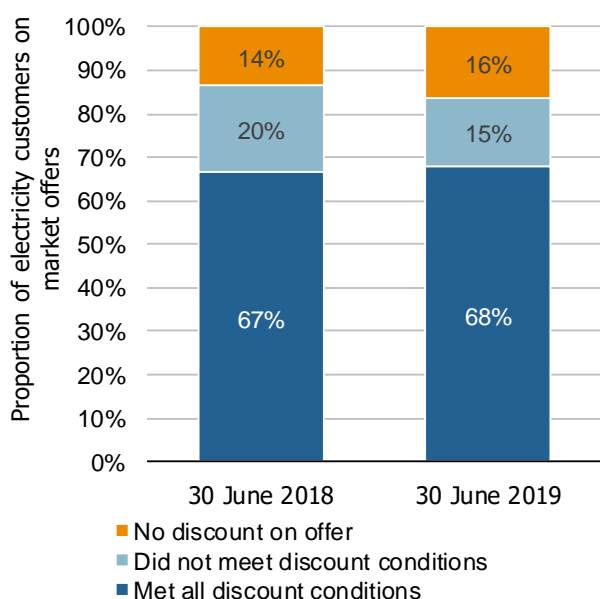
Source: Commission analysis of Victorian Energy Compare data

Figure 3 Number and proportion of conditional discount, unconditional discount and no discount gas market offers



Source: Commission analysis of Victorian Energy Compare data

Figure 4 Breakdown of customers on discounted and undiscounted electricity market contracts



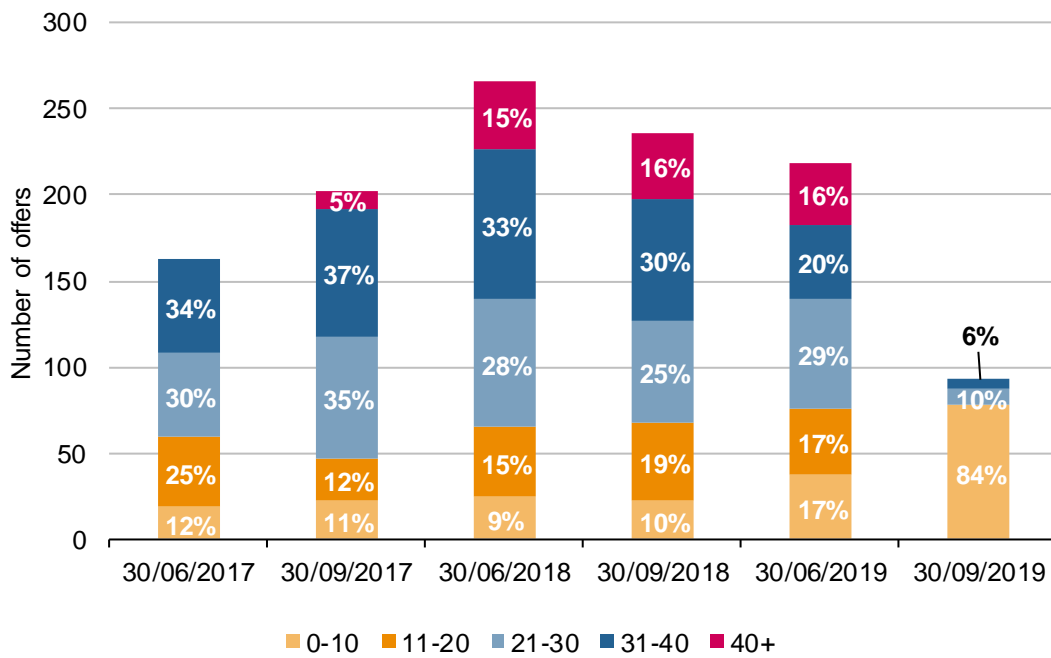
Source: Commission analysis of data obtained from retailers

Size of discounts

We have also observed a reduction in the size of discounts that are available on electricity offers in the market post 1 July 2019, though this has not been mirrored to the same extent for gas discounts. Of offers in the market with discounts, 84 per cent of electricity offers and 53 per cent of gas offers had discounts of less than 10 per cent as of 30 September 2019. However there are still a small proportion of both electricity and gas offers with very high discounts. As of 30 September 2019, 6 per cent of electricity offers had discounts of 31-40 per cent and 8 per cent of gas offers had discounts of over 40 per cent.

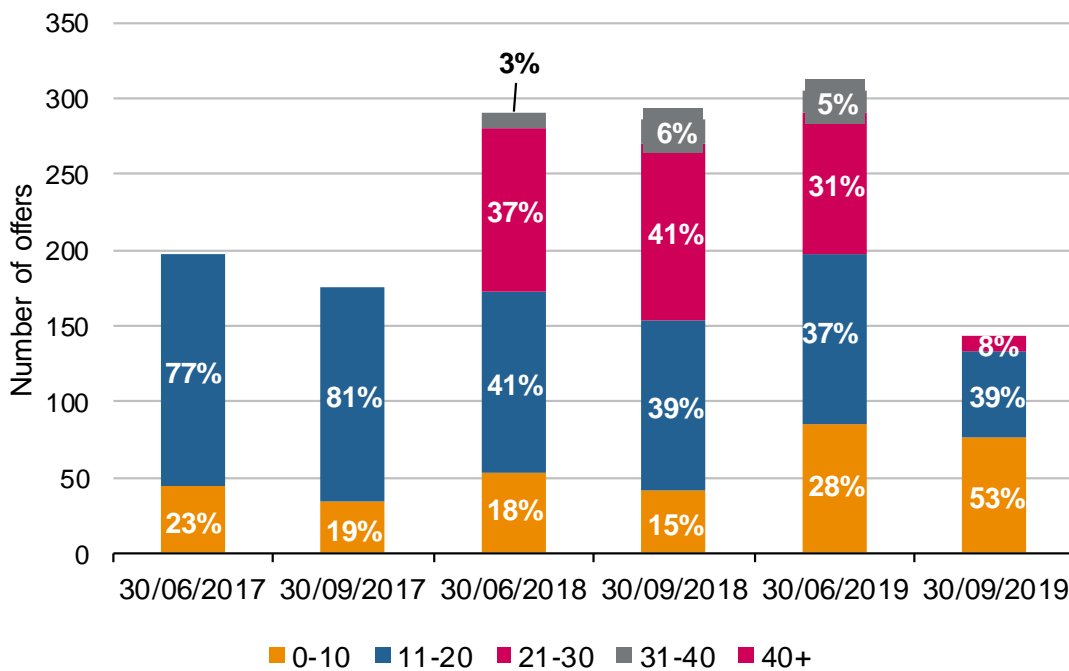
Customers on new electricity contracts are likely to be impacted less when they reach the end of a benefit period, due to reduced discount sizes. However, customers who signed up to electricity and gas contracts before 1 July 2019, and customers signing up to new gas contracts, may still have large conditional discounts and so could still be impacted when they reach the end of a benefit period. This demonstrates that there is still a case for implementing recommendations 4C and 4D.

Figure 5 Number and proportion of electricity market offers by level of discount offered



Source: Commission analysis of Victorian Energy Compare data

Figure 6 Number and proportion of gas market offers by level of discount offered



Source: Commission analysis of Victorian Energy Compare data

Recommendation 4E

Recommendation 4E caps the costs of discounts, so they are no higher than the reasonable cost to a retailer of a customer missing an offer condition. This is intended to make conditional

Current market insights

discounts cost-reflective, and limit the penalties faced by customers who fail to meet offer conditions. To inform our draft decision, we considered both the prevalence of conditional discounts in the market, as well as the actual costs of not meeting discounts for customers on existing contracts.

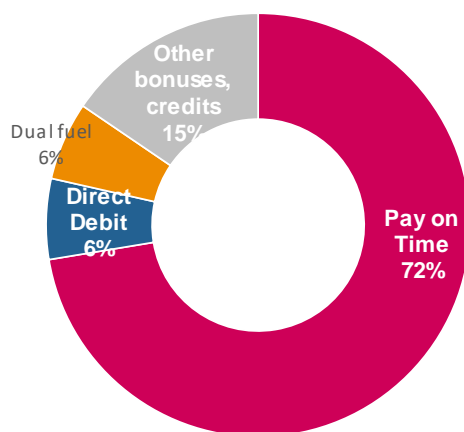
Prevalence of conditional discounts

In our issues paper we noted a continued trend of high levels of conditional discounts. More than half of electricity market offers had a discount larger than 30 per cent as of 31 March 2019.²¹

As previously discussed, the size and level of conditional discounts currently available in the market has generally reduced in recent months, particularly for electricity (figures 2 and 5). However while conditional discounting practices are less of an issue now for customers signing up to new electricity offers in the market, gas conditional discounts are still of some concern (figures 3 and 6), and there are many customers on existing contracts with conditional discounts (figure 4).

We collected data from retailers on the types of discount that are most common in the market. We found most customers with discounts have pay-on-time discounts (72 per cent). There were no customers receiving discounts for online self-service (reduced fees for using online self-serve system instead of calling customer service).

Figure 7 Proportion of customers on offers with different types of discounts as of 31 August 2019²²



Source: Commission analysis of data obtained from retailers

²¹ ESC analysis of the Victorian Energy Compare website data, April 2019

²² The main categories of discount were:

- pay-on-time (discount for paying a bill by the due date)
- direct debit (discount for paying a bill through direct debit)
- dual fuel (discount if a customer has both electricity and gas account with the retailer)
- other bonuses or credits (e.g. bonuses or credits for referring a friend, paying zero fees or getting the first month free for signing up to a new account).

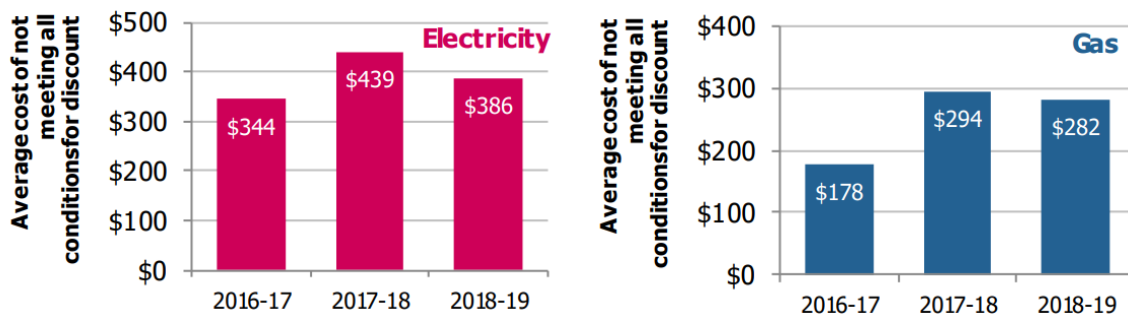
Current market insights

Missing offer conditions

Figure 4 shows that 15 per cent of all customers with discount conditions did not meet part or all of these in the last financial year. This suggests that whilst most customers are able to meet their discount conditions, the issue of penalties for missing discount conditions is still relevant for a notable proportion of customers.

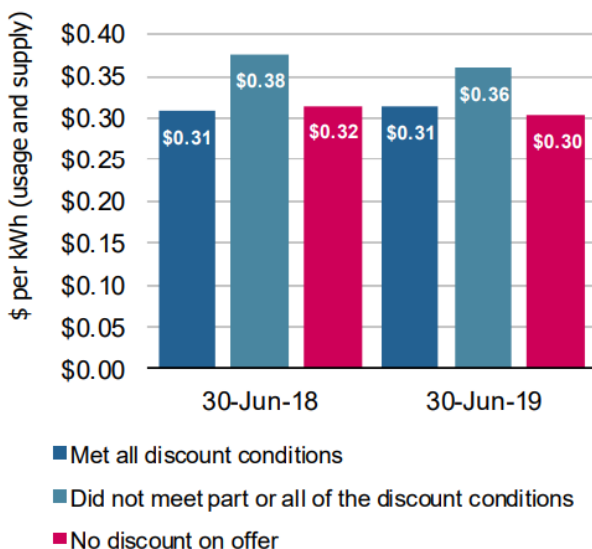
For these customers, the impact of not meeting part or all of their conditions can be significant. On average, the estimated maximum cost to a customer of not meeting all the discount conditions in 2018-19 was up to \$386 for electricity and \$282 for gas (figure 8). Our analysis of retailer data showed that the average actual cost to a customer of not meeting part or all of their electricity discount conditions in 2018-19 was \$188 (\$0.05/kWh, figure 9).

Figure 8 Average estimated annual cost of not meeting all the conditions of a discounted residential energy offer



Source: Commission analysis of Victorian Energy Compare data

Figure 9 Average cost of not meeting discount conditions



Source: Commission analysis of data obtained from retailers

3. Ensuring customers can easily compare offers

Recommendation 3A

Require retailers to market offers in dollar terms, rather than as percentages or unanchored discounts.

The review found that discounts can be difficult for customers to understand, noting that it is often not clear whether the discount is from the total bill or just one component of the tariff.

Recommendation 3A requires retailers to market offers in dollar terms, rather than as percentages or unanchored discounts. This is intended to ensure offers are marketed in a standard way, making it easier for customers to compare and ultimately select an offer, particularly those with discounts.

Issues paper considerations

Stakeholder views

We noted that the VDO Order in Council requires retailers to use the VDO as a reference price for advertised discounts for electricity offers and required the commission to amend the Energy Retail Code to give effect to this.²³ We consider this requirement is consistent with the intended outcomes of recommendation 3A, making it easier for customers to compare discounts.²⁴

Stakeholders were supportive of using the VDO as a reference price for electricity, noting that developing additional requirements to give effect to recommendation 3A could create duplication with the VDO Order in Council requirements.

However, as the VDO only relates to electricity, we must consider the most appropriate way to implement recommendation 3A for gas tariffs. We sought stakeholder views on options for this.

Stakeholders raised a number of suggestions for how a gas reference price could be calculated. These included:

- developing a bottom-up methodology²⁵ (similar in nature to the VDO, though some retailers noted a number of challenges in doing so for gas²⁶)

²³ Victorian Government, Order under section 13 of the Electricity Industry Act 2000, May 2019.

²⁴ Victorian Government, [Victorian Default Offer - Draft Orders consultation paper](#), April 2019.

²⁵ Energy and Water Ombudsman Victoria and Victorian Council of Social Service, submissions to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

²⁶ Origin Energy and Simply Energy, submissions to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

- developing a top-down methodology such as the average of standing offers²⁷, average of market offers²⁸ or Default Market Offer-style approach.²⁹

Several stakeholders highlighted the importance of gas and electricity having consistent reference points, particularly as both fuels are often marketed together.³⁰

Views were mixed as to whether customers would find it easier to understand any reference price comparisons expressed in dollar or percentage terms, though several stakeholders emphasised the importance of ensuring a consistent approach across retailers, and a consistent approach with equivalent national requirements.³¹

Simply Energy suggested that any reference price requirements should apply to all offers (not just those with discounts) in order to provide a simple point of comparison across the market, like the national Default Market Offer.³²

Our draft decisions

Requiring retailers to market their energy offers clearly

We consider it is important that customers have a way to easily compare energy offers. The requirement for retailers to use the VDO as a reference price for electricity offers is an important step forward in promoting transparency. We consider a requirement to market gas offers to a common anchor such as a reference price would support consumers' understanding and ability to compare offers.

As there is no mandate for a gas VDO at this stage, we have considered how we could determine a reference price for gas offers. We consider that the benefits to customers of developing a gas reference price are likely to be similar to those in the electricity market, given that issues around the size and prevalence of conditional discounting are relevant to both markets (as highlighted in chapter 2).

²⁷ AGL Energy, submission to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

²⁸ Brotherhood of St Laurence, Consumer Action Law Centre & Council On The Ageing and Simply Energy, submissions to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

²⁹ Powershop, submission to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

³⁰ Australian Energy Council and Consumer Action Law Centre & Council On The Ageing, submissions to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

³¹ Energy and Water Ombudsman Victoria and Powershop, submissions to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

³² Simply Energy, submission to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

Ensuring customers can easily compare offers

We have carefully considered possible methods to establish a reference price for gas retail offers, and other factors to implement such a mechanism. However, based on our analysis and feedback from stakeholders, we note the differences between electricity and gas that make determining an appropriate reference price methodology for gas offers particularly challenging. These complexities were highlighted during our previous consultation process on developing a reference price in 2018.³³

Our 2018 consultation considered a range of options for a reference price, namely those based on retailer costs and those taking an index-based approach. A retailer cost approach would be highly dependent on the wholesale gas prices contracted by retailers, and information on these wholesale gas contracts is confidential. This is different to the wholesale electricity market where information is available on spot market prices and future contracts are transparent. These factors are incorporated in the price determinations for the VDO for electricity.

Our 2018 consultation also noted the limitations if an index-based approach was used, as it relies on observable prices of gas offers as a starting point to index. The current range and complexity of gas market offers may not present a suitable reference point for a gas retail price for consumers, for reasons including:

- a greater variety in gas tariff structures than for electricity, such as seasonal and block tariffs, and a large number of pricing zones, which would make it more challenging to determine an appropriate reference price
- a gas reference price based on average consumption may have less relevance for many customers and risk causing confusion because of differences in customer loads
- a gas reference price is not an offer constructed by the commission for a customer to sign up to like the VDO for electricity, which also risks confusing customers – particularly where electricity and gas offers are marketed together.

During our recent stakeholder reference group and a separate workshop focusing on reference pricing, stakeholders noted that these challenges relating to developing a gas reference price methodology are still relevant.

We have carefully weighed up these considerations, and on balance have decided not to develop a reference price for gas in this draft decision. We will revisit consideration of a gas reference price if the government asks us to set a gas VDO, or if our ongoing monitoring of the market indicates issues with how gas customers are experiencing the market that could be addressed by the creation of a reference price.

³³ Essential Services Commission, [Developing a reference price methodology for Victoria's energy market](#), March 2018. Stakeholder responses to this consultation are available on our [website](#).

Instead we propose to articulate our overarching expectations for retailers marketing energy offers via a new objective for the marketing division of the Energy Retail Code. This sets out the need for retailers to market both gas and electricity offers in a clear and easily understood manner that assists customers in comparing and choosing a plan. We are also proposing to mirror Australian Consumer Law provisions by adding a requirement that energy retail marketers must not engage in misleading or deceptive conduct or make false or misleading representations.

This objective will be supplemented by more specific reference price requirements for electricity. Retailers will have the flexibility to determine the most appropriate way to market gas offers but will be expected to provide a similar level of clarity for customers when marketing both electricity and gas offers, either separately or together.

Draft decision 1: New objective for marketing energy offers

Retailers must market gas and electricity offers in a clear and easily understood manner.

Electricity reference price requirements

The VDO is to be used as a reference price for all electricity offers

The VDO Order in Council already requires retailers to compare the estimated annual cost of a discounted offer with the estimated annual cost of the VDO for any type of electricity tariff where a discount applies. We propose to require the VDO to be used as a reference price for all electricity offers, not just those with discounts, to deliver the policy intent of recommendation 3A. Retailers will be required to make a reference price comparison whenever they advertise, publish or offer an electricity offer to a customer. We have drafted a guideline (appendix C) which provides detail on these requirements.

We note that our proposed reference price requirements are consistent with national price disclosure requirements (set out in the Electricity Retail Code³⁴), and our guideline mirrors the ACCC's guide to the national requirements.³⁵

Presentation of VDO price comparisons

To inform our proposals for how retailers should display VDO price comparisons, we conducted consumer testing to better understand how customers respond to different ways of presenting energy prices. We presented a representative sample of Victorian customers with pairs of energy plans and asked them to identify the cheapest. Respondents were randomised into one of four groups, who were shown the following headline information about the plans:

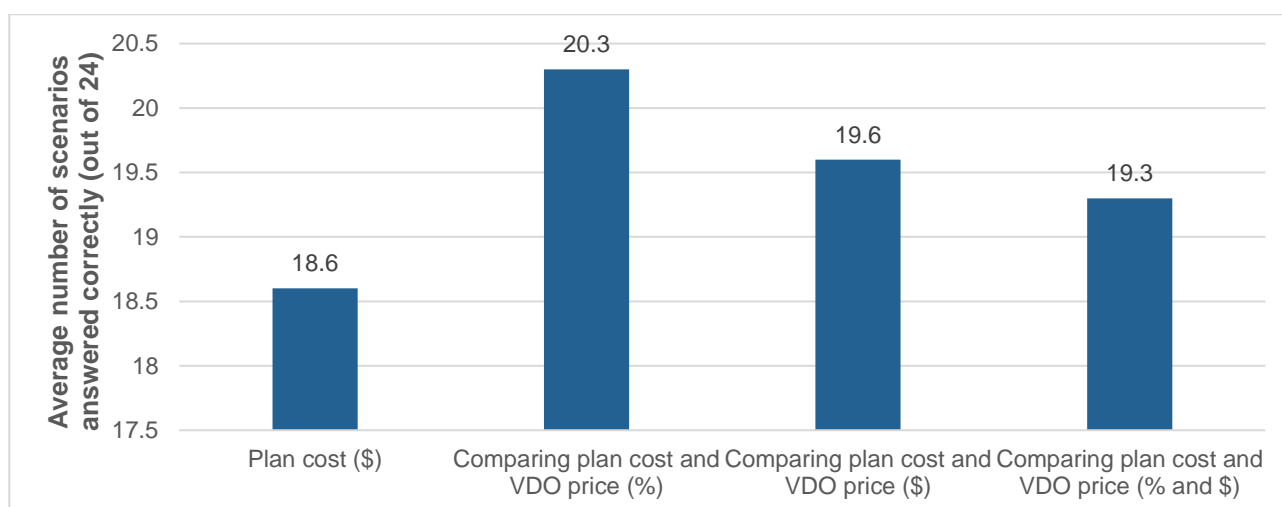
³⁴ Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019, available on the [Australian Government Federal Register of Legislation](#).

³⁵ ACCC, [Guide to the Electricity Retail Code](#), June 2019.

1. How much the plan would cost per year in dollars
2. How the plan cost compares to the VDO price as a percentage
3. How the plan cost compares to the VDO price in dollars
4. How the plan cost compares to the VDO price both as a percentage and in dollars

The results (summarised in figure 10) show that customers were able to correctly identify the cheapest plan more often when the headline information in the advertisement showed how the plan cost compared to the VDO price as a percentage. This was more pronounced for respondents with lower financial literacy skills and those from culturally and linguistically diverse (CALD) backgrounds.³⁶

Figure 10 Key results from consumer testing



Source: Behavioural Insights Team

Given the results of our consumer testing, we consider the headline information in an advertisement should be how the plan cost compares to the VDO price as a percentage. This is also consistent with the national price disclosure requirements. We consider this will fulfil the requirements in the VDO Order in Council relating to the commission requiring the VDO to be used as a reference price and determining how offers are compared to the reference price.

When retailers are required to make a VDO price comparison, they must therefore show:

- the difference between the VDO price³⁷ and the unconditional price,³⁸ as a percentage of the VDO price

³⁶ Appendix F contains a more detailed summary of the consumer testing. The full report is available on our [website](#).

³⁷ The estimated annual cost of the VDO based on annual reference consumption figures specified in the VDO Order.

³⁸ The total price a customer would pay based on annual reference consumption, including any guaranteed discounts, credits or rebates and excluding any conditional discounts, credits or rebates.

Ensuring customers can easily compare offers

- for each conditional discount, rebate or credit mentioned, the difference between the unconditional price and the conditional price,³⁹ as a percentage of the VDO price. This must be articulated separately for each conditional discount, rebate or credit that applies to the offer
- the lowest possible price⁴⁰
- the conditions of any conditional discounts, rebates or credits
- the distribution region and type of small customer that the prices in the advertisement, publication or offer are based on.

These VDO price requirements include both one-off and ongoing discounts, credits or rebates. More detail on these requirements is set out in the guideline in appendix C.

Draft decision 2: Retailers must market electricity offers with reference to the VDO

The VDO must be used as a reference price for all electricity offers.

Retailers must make a reference price comparison whenever they advertise, publish or offer an electricity offer to a customer.

Draft decision 3: Electricity reference price requirements

An electricity reference price comparison must include:

- the difference between the VDO price and unconditional price, as a percentage of the VDO price
- for each conditional discount, rebate or credit mentioned, the difference between the unconditional price and conditional price, as a percentage of the VDO price
- the lowest possible price
- the conditions of any conditional discounts, rebates or credits
- the distribution region and type of small customer.

Banning headline conditional discounts

The national price disclosure requirements specify that if a retailer offers a conditional discount, it must not be the price-related matter that is mentioned most conspicuously in the advertisement. The advertisement must also state the conditions associated with the discount clearly and

³⁹ The price that would be paid if the conditions for the discount, rebate or credit were met.

⁴⁰ The total price a customer would pay based on annual reference consumption, including all guaranteed and conditional discounts, credits or rebates.

conspicuously. These requirements were intended to make discounting arrangements more transparent and address concerns raised by the ACCC about the impact of conditional discounts on customers choosing offers.⁴¹

We consider that these requirements will make it easier for customers to compare and select an offer, which is in line with the intent of recommendation 3A and the new objective we propose to introduce relating to marketing energy offers in clause 60B of the Energy Retail Code. We therefore intend to mirror these requirements in the Victorian framework, both for gas and electricity. This requirement would not restrict retailers from offering conditional discounts altogether.

Draft decision 4: Retailers must not advertise headline conditional discounts

Retailers must not market conditional discounts as the most prominent feature in gas or electricity advertisements, marketing or promotions.

⁴¹ Australian Government, [Public consultation paper: Competition and Consumer \(Industry Code – Electricity Retail\) Regulations 2019](#), February 2019.

4. Fixing market contract prices

Recommendation 4A

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

Recommendation 4B

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

At the time of the review, retailers could change market offer prices at any time and did not have to notify customers in advance. Recommendations 4A and 4B give customers certainty that their prices will not change for a certain time period.

Recommendation 4A seeks to fix market contract prices for at least 12 months from the date a customer signs up to a contract. The intention of this is that customers will not experience price changes soon after they sign up to a new contract, either because of a scheduled price increase or because of retailer strategies such as low priced or win back offers. This should give customers more confidence in switching to a new offer.

Recommendation 4B would require retailers to disclose to customers the length of time any offered prices will be available without change, whether that is for 12 months (in line with recommendation 4A) or a different time period.

Issues paper considerations

We focused on options for implementing recommendation 4A in our issues paper, noting that the way in which 4B is implemented will depend on the option chosen for 4A.

The spectrum of options for implementing recommendation 4A range from doing nothing through to banning all variable price contracts as shown in blue in figure 11. We indicated that we were considering options toward the centre of this scale.

Figure 11 Range of options for implementing recommendation 4A

Blue options were suggested in the issues paper. Pink options are more recent considerations.



Stakeholder views

Views varied on the best way to implement recommendation 4A. Consumer organisations largely supported the option to require all tariffs of market offer contracts to be fixed for the first 12 months after a customer has signed up.⁴² They consider this would be effective at stopping bait and switch practices that have led to high levels of customer complaints. EnergyAustralia also supported this option.⁴³

Most retailers strongly opposed the option to fix prices for 12 months when a customer has signed up and raised concerns about the potential market impacts.⁴⁴ They considered that no additional regulation is needed in this area given the 1 July 2019 reforms. However if the commission does proceed with implementing recommendation 4A, they would prefer the option of requiring retailers to offer one 12 month fixed-price contract. Several retailers also noted that customers can choose the VDO if they want to benefit from price certainty.⁴⁵

⁴² Consumer Action Law Centre & Council On The Ageing, Energy and Water Ombudsman Victoria and Victorian Council of Social Service, submissions to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

⁴³ EnergyAustralia, submission to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

⁴⁴ AGL Energy, Alinta Energy, Australian Energy Council, Powershop, Red Energy & Lumo Energy, submissions to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

⁴⁵ Alinta Energy, Momentum Energy, Red Energy & Lumo Energy, submissions to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

Stakeholders also raised other suggestions for implementing recommendation 4A. The Brotherhood of St Lawrence noted the potential disadvantages of fixing all contract prices for the first 12 months and suggested that the commission could instead set a maximum percentage per year that all price increases would be limited to.⁴⁶

Some retailers suggested that limiting price changes to certain point(s) in the year could achieve the objective of price certainty for customers while allowing retailers to manage their risks better.⁴⁷ Origin Energy and Simply Energy considered that aligning the timing of price changes for market contracts with the VDO in particular would help customers understand when prices would change for all contracts, and would align with current practices of many retailers.

On implementing recommendation 4B, most stakeholders considered that the clear advice entitlement will already achieve the desired consumer outcome.⁴⁸ They noted that this provision did not exist at the time of the review.

Academic expert views on implementation options

To support our decision making, we sought independent views on market design considerations from academic economists Associate Professor David Byrne and Dr Gordon Leslie, who have specific expertise in retail energy market design and wholesale energy markets.⁴⁹

As well as the options outlined in the issues paper, their report proposed and assessed two new options we have been considering (marked in pink in figure 11): a call to market for 12-month contracts and restricting when prices can change to one or more specified points in a year. Appendix G contains a summary of the academics' views on these options.

Our draft decisions

Limiting price changes to when the VDO price changes

We are proposing to limit price changes for existing market contracts to once a year and align this with when the VDO price changes. Retailers would still be able to make new offers at different prices to customers during the year, but once a customer has signed up to a contract their price would remain fixed until the next VDO price change occurs. At the start of the next 12-month

⁴⁶ Brotherhood of St Laurence, submission to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

⁴⁷ ERM Power, Origin Energy, Simply Energy, submissions to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

⁴⁸ AGL Energy, Alinta Energy, Australian Energy Council, Consumer Action Law Centre & Council On The Ageing, EnergyAustralia, Simply Energy, submissions to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

⁴⁹ The full report is available on our [website](#).

period, when the VDO price changes, retailers would be able to change the price of the offer if they wished to, though they would not be obliged to.

We consider that this approach to implementing recommendation 4A has several advantages compared to taking a stricter interpretation and fixing all market contract prices for 12 months from when a customer signs up to an offer.

Our proposed approach would cover all customers in the market, rather than just new customers signing up to an offer from 1 July 2020. As noted by Byrne and Leslie, implementing 4A in this way would create an annual focal point for customers to engage in the market. Customers comparing offers at this time would know the price of their plan for the 12 months ahead and be able to compare this to the suite of market offers available and the newly updated VDO price, to assess which would be the most suitable offer for them. Customers switching offers would have the certainty that the new price they signed up to would not change for the remainder of the 12-month period.

For customers who do not regularly engage with the market and remain with the same retailer for a number of years, any price changes would be limited to once a year and their prices would remain fixed for 12 months at a time. Not only would this deliver the policy intent of recommendation 4A, but it would do so on an enduring basis for customers who remain with the same retailer.

In contrast, if prices were fixed for 12 months from when a customer signed up to an offer, this would only affect engaged customers signing up to a new offer, and retailers would be free to change prices as frequently as they wanted after the initial 12 months. This could effectively lead to a delayed bait and switch effect.

Our proposed approach would largely eliminate the use of bait and switch tactics, as retailers would have to honour the prices until the VDO price changes. The potential for a customer to experience a price rise soon after signing up to a new offer only exists if customers sign up to a new offer towards the end of the 12-month period. However, under the clear advice entitlement, a retailer would be required to make it clear to a customer in this situation when prices would be changing and by how much, so the customer could make an informed choice. The retailer could also choose to honour those prices for the next 12-month period in order to give customers greater price stability.

We consider our proposed approach is a proportionate way to achieve the policy intent of recommendation 4A while mitigating some of the risks that stakeholders highlighted with requiring retailers to fix prices on all contracts for 12 months from when a customer signs up to an offer.

Retailers noted that a more literal interpretation of recommendation 4A would likely result in all prices being higher, to account for a greater risk premium. This view was also shared by Byrne and Leslie. As discussed in chapter 2, we are mindful of the potential price premium associated with providing price certainty. Data we have received from retailers shows that on average across the

market, customers on fixed-price contracts are paying \$22-100 more a year. However only 20 per cent of customers are currently on this type of contract, so if retailers were required to offer this type of contract to all new customers then the premium could potentially be higher.

With our proposed option, retailers would have greater certainty over when they would be able to change retail prices in response to any wholesale price changes. We therefore expect that the need to build in a risk premium should be lower.

We understand that some retailers already only change the prices of market contracts in force once a year. Our proposed option would therefore not require these retailers to change their practices, other than to align with VDO price change timings.

Draft decision 5: Retailers can only change existing market contract prices when the VDO price changes

Retailers can only change prices of existing market contracts when the VDO price changes.

Non-traditional pricing structures and retail products

Some retailers currently offer products that are not compatible with limiting price changes to once a year, such as products with prices that are designed to track wholesale prices or respond to critical peak pricing, or shorter-term fixed-price products where customers may prepay for a certain amount of energy consumption in advance.

We do not want to inhibit such products or prevent engaged customers who understand the nature of the product they are consuming from continuing to do so. We are therefore proposing to enable products with these attributes to exist in the framework. Retailers who wish to offer such products after 1 July 2020 would be able to do so, subject to the following conditions:

- As part of obtaining explicit informed consent from customers signing up to that product, retailers must make these customers aware that:
 - the tariff(s) for that product may change more than once a year, including the basis on which tariff(s) may change and the estimated frequency of changes
 - the retailer offers other contracts (including the VDO for electricity) where the prices will only change when the VDO price changes.

This is intended to ensure that customers on these products understand the nature of the product they are consuming, and that there are alternatives that offer greater price certainty if they choose.

- The retailer would need to notify the commission of the product(s) offered that were subject to these conditions, and report to the commission on the number of customers on each product (including those receiving tailored assistance) and the prices they were paying. The commission

will be engaging with retailers regularly on future reporting requirements, which will include these new requirements.

- The retailer must complete a tariff review for customers who are eligible for tailored assistance to establish whether there is another plan more appropriate to that customer's circumstances. If the retailer identified that another contract may minimise costs for the customer, the retailer would be required to inform the customer and seek consent to transfer the customer to that contract.

We propose to specify certain categories of products that are not compatible with limiting price changes to once a year that retailers will be able to offer, subject to the above conditions:

- prices that continually vary in relation to the prevailing spot price of electricity
- where a specific quantity of electricity or gas is pre-purchased by a customer.

We have set out a guideline (appendix D) for retailers about how to apply to the commission for specific exemptions for categories of product not listed above.

We welcome stakeholder views on these categories, whether we should consider any additional categories, and any other feedback on this proposal.

We note that recommendation 4A refers to retailers being able to request an exemption from the commission to address unforeseen changes in network costs. As we are proposing to align price change events with network price changes, we do not consider that an additional exemption mechanism is required. The VDO price may be varied during a regulatory period in certain circumstances, including if an unforeseen event occurs that is outside the control of retailers and is assessed to have a material impact on efficient costs. In such an event, retailers would also be able to change market contract prices.

Draft decision 6: Retailers offering products that are not compatible with limiting price changes to once a year must comply with certain conditions

Retailers offering products that are not compatible with limiting price changes to once a year must:

- make customers signing up to these products aware of additional factors when obtaining explicit informed consent
- report regularly to the commission and
- conduct tariff reviews for customers on these products who become eligible for tailored assistance.

Disclosing when prices will change to customers

We consider that our proposed approach to implementing recommendation 4A, in combination with rules we have already implemented, will give effect to recommendation 4B by ensuring that customers know how long the price they sign up to will remain unchanged for.

Before a customer signs up to an offer, the clear advice entitlement requires the retailer to notify the customer about when prices will change. If the extent of the price change is known then the retailer is also required to indicate this, to help the customer make an informed choice.

For existing customers, retailers are required to provide advance notification of any price changes at least five business days before the change takes effect. This notice includes specific details of the extent of the price change, and the best offer message.

We will be monitoring the practices of retailers on this, in order to understand its effectiveness.

Draft decision 7: Retailers must disclose the length of time prices will be available without change

At the point of entering a contract, as part of the existing clear advice entitlement, retailers must clearly disclose when prices will change and, if known, the magnitude of any anticipated changes.

After a customer has signed up to an offer, existing rules require retailers to give advance notice of any price changes and tell the customer about their best offer.

5. Protecting customers at the end of benefit and contract periods

Recommendation 4C

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

Recommendation 4D

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

The review found that retailer practices and regulations have meant customers need to engage with their retailers before the end of their benefit or contract period or to avoid losing their benefits or being rolled onto another contract which could leave them paying a much higher price.

Recommendations 4C and 4D address this issue by protecting customers at the end of benefit and contract periods.

Recommendation 4C requires retailers to roll customers onto the nearest matching, generally available offer at the end of a benefit or contract period, unless the customer opts for another offer. This would give customers who cannot, or do not want to, engage with the market some level of protection from being put onto a more expensive offer at the end of a benefit or contract period.

Recommendation 4D would make conditional discounts or other benefits offered for paying on-time or on-line billing evergreen.⁵⁰ This would prevent customers ending up paying substantially more due to the expiry of a conditional discount they signed up to at the start of a contract.

Issues paper considerations

Recommendation 4C

Figure 12 summarises the rules that currently govern the end of benefit and contract periods and our understanding of current retailer practices.

Following the introduction of the VDO, electricity customers are now required to be rolled onto the VDO at the end of a contract period. We noted that this would likely meet the intent of recommendation 4C relating to the end of contracts for electricity.

⁵⁰ Evergreen means there is no fixed end date.

In the issues paper we set out five options for what a customer could roll onto at the end of a benefit period and indicated that we were minded to focus on the VDO and best offer options.

Figure 12 Summary of current rules and practices around the end of benefit and contract periods

End of a benefit period

- Over the past few years, retailers have introduced the concept of a benefit period. This is a period during a market retail contract, with a defined end, where a benefit (such as a price discount) is available to a consumer. There are currently no rules specifying what happens to a consumer at the end of a benefit period.
- Practices vary between retailers, and likely depend on the terms and conditions of the contract. Customers may continue on the same contract with or without the benefit, or a retailer may engage the consumer to discuss them signing up to a new contract.

End of a contract period

- If a consumer does not provide explicit informed consent to move onto a market contract, the current rules require that they become subject to a deemed contract arrangement and pay the same price as the retailer's standing offer.
- As of 1 July 2019, the retailer's electricity standing offer is set at the VDO price rather than a retailer's own determined price (for flat electricity tariffs. From 1 January 2020 a proposed maximum VDO price will apply for all non-flat electricity tariffs).
- Some retailers set out what will happen to the customer at the end of a contract in the terms and conditions of that contract. This may include the customer moving onto another market contract at the end of the contract term, rather than a deemed arrangement.

Stakeholder views on 4C

Stakeholders generally supported continuing to rely on electricity customers being rolled onto the VDO at the end of their contract if they don't make an active choice.⁵¹ Few comments were made on what should happen for gas customers. In the absence of a gas VDO, VCOSS suggested that

⁵¹ Alinta Energy, Australian Energy Commission, Brotherhood of St Laurence, Consumer Action Law Centre & Council On The Ageing, Origin Energy, Powershop, Red Energy & Lumo Energy, Simply Energy and Victorian Council of Social Service, submissions to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

the best offer would be an appropriate choice⁵² and the Brotherhood of St Laurence suggested that the cheapest equivalent offer should be chosen.⁵³

Views around what should happen at the end of a benefit period were more diverse. Some stakeholders also supported customers rolling onto the VDO at the end of a benefit period.⁵⁴ EWOV supported customers being rolled onto the best offer, while noting that recommendation 4D may eliminate benefit periods anyway.⁵⁵

Some retailers considered that rules are not needed to govern practices at the end of benefit periods,⁵⁶ or that retailers should continue to have discretion about what offer a customer moves to.⁵⁷

Other stakeholders suggested a hybrid approach, for example by allowing retailers to roll customers onto the VDO or something cheaper,⁵⁸ or onto a market offer with similar benefits or else the VDO if the customer is ineligible for the similar market offer due to tariff changes.⁵⁹ Simply Energy considered that customers should be rolled onto the cheapest equivalent offer at the end of a benefit period.⁶⁰

Several consumer organisations questioned the scope of recommendation 4C.⁶¹ They noted that even if it applied to new contracts and retrospectively to customers who are on contracts with expired benefit periods, there may still be customers on evergreen contracts who would not benefit from the protections offered by this recommendation. These stakeholders supported the

⁵² Victorian Council of Social Service, submission to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

⁵³ Brotherhood of St Laurence, submission to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

⁵⁴ Alinta Energy, Brotherhood of St Laurence, Consumer Action Law Centre & Council On The Ageing, Origin Energy and Victorian Council of Social Service, submissions to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

⁵⁵ Energy and Water Ombudsman Victoria, submission to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

⁵⁶ Amaysim and Momentum Energy, submission to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

⁵⁷ Alinta Energy and Red Energy & Lumo Energy, submissions to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

⁵⁸ AGL Energy and Australian Energy Council, submissions to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

⁵⁹ EnergyAustralia, submission to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

⁶⁰ Simply Energy, submission to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

⁶¹ Brotherhood of St Laurence and Consumer Action Law Centre & Council On The Ageing, submissions to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

Protecting customers at the end of benefit and contract periods

commission setting a consistent trigger point for defaulting any customers who have not engaged onto either the VDO or the cheapest equivalent offer.

Recommendation 4D

We noted that implementing this recommendation would effectively end the practice of benefit periods, as retailers would no longer be able to offer discounts or other benefits that lasted for a shorter duration than a contract period. We sought stakeholder views on the opportunities and challenges we identified in implementing this recommendation.

Stakeholder views on 4D

Consumer organisations and Momentum Energy supported the intent of this recommendation.⁶² However, a number of stakeholders either did not support the intent or did not otherwise think that this recommendation was necessary.⁶³

Several stakeholders considered that making discounts evergreen would reduce the ability of, and incentives for, retailers to offer discounts,⁶⁴ and potentially other incentives if a broad definition of 'other benefit' is adopted.⁶⁵ Some retailers also did not consider it is reasonable to expect a retailer to offer a conditional discount for the whole life of energy supply.⁶⁶

Our draft decisions

Recommendation 4D

Benefit periods are a construct created by retailers that require customers to engage during their contract period to avoid losing a benefit they originally signed up for. Customers who lose their benefits at the end of a benefit period are likely to end up paying more. As discussed in chapter 2, most customers are on offers with conditional discounts and so are at risk of being in this situation, depending on their retailer's practice. The impact of benefits expiring will be greater for customers on offers with larger conditional discounts. This includes many gas and electricity offers that customers signed up to before 1 July 2019, and some more recent gas offers (figures 5 and 6).

⁶² Brotherhood of St Laurence, Consumer Action Law Centre & Council On The Ageing, Energy and Water Ombudsman Victoria, Momentum Energy and Victorian Council of Social Service, submissions to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

⁶³ AGL Energy, Alinta Energy, Australian Energy Council, Origin Energy and Powershop, submissions to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

⁶⁴ Alinta Energy, Australian Energy Council, Red Energy & Lumo Energy and Simply Energy, submissions to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

⁶⁵ Alinta Energy and EnergyAustralia, submissions to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

⁶⁶ EnergyAustralia and Simply Energy, submissions to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

Protecting customers at the end of benefit and contract periods

We are proposing to align benefit and contract periods, so that a customer signing up to a discount, rebate or credit at the start of the contract will keep the same benefit(s) until the end of the contract.

Under this proposal, retailers could offer evergreen contracts with ongoing discounts, rebates or credits, or fixed-term contracts (e.g. for a 1- or 2-year duration) with discounts, rebates or credits provided for the same length of time.

We note that some retailers already honour discounts after the end of a benefit period by rolling customers onto another benefit period on the same terms, so this would not represent a departure from current practices for these retailers.

To give effect to this recommendation:

- The definition of 'fixed benefit period' in the Energy Retail Code will be amended to include conditional and guaranteed discounts, credits and rebates. It will not cover one-off benefits such as a sign-up credit. Benefits that are not discounts, rebates or credits, such as loyalty points or gifts, and benefits that are not related to the energy contract are also not covered.
- We are decoupling the concepts of benefit periods and fixed-price periods. While it is not explicit, the definition of a benefit period could currently be read as including fixed-price tariffs. Given the interactions between recommendations 4A, 4C and 4D, this would cause unintended consequences if not changed.⁶⁷
- The new rule will apply to new contracts from 1 July 2020 and to contracts in force where a customer is in an existing benefit period as of 1 July 2020, but not to contracts entered into before 1 July 2020 where the benefit period has expired and customers are now on an evergreen contract. On balance we consider that requiring retailers to reinstate previously expired benefits (which could potentially include large conditional discounts) is likely to be problematic and will not necessarily lead to better consumer outcomes.

We understand some contracts may include provisions that enable a retailer to unilaterally vary the terms of a customer's contract without seeking the customer's agreement to make that specific change, provided that the customer gave explicit informed consent to such a term being included in the contract.

We consider that retailers should seek a customer's explicit informed consent in order to reduce the length of any contract that is already in force. We are proposing to add a code requirement to clarify this obligation.

⁶⁷ If fixed price periods were considered a type of benefit period after 1 July 2020, and retailers were required to align benefit and contract periods, then if a retailer wanted to offer an evergreen contract it would have to keep prices fixed at the same level for as long as a customer remained on that contract. Alternatively the retailer would have to only offer fixed-price, fixed-term contracts which would require customers to engage every 12 months, otherwise they would automatically roll onto another contract under recommendation 4C.

Interaction with recommendation 4E

Pay-on-time discounts will be capped from 1 July 2020 onwards under our proposal to implement recommendation 4E. Retailers must ensure that any pay-on-time discount offered does not exceed the cap that is in force at the time a customer signs up to a contract. While the commission will update the cap level each year, retailers are not allowed to decrease the pay-on-time discount a customer initially signed up for during the contract period.

Draft decision 8: Retailers must offer any ongoing financial benefits for the duration of a contract

Benefit and contract periods will be aligned, so customers receive any ongoing discounts, credits or rebates for the entire duration of a contract. Retailers must not decrease these benefits during the contract term.

Recommendation 4C

Recommendation 4C seeks to address price shock experienced at the end of benefit and contract periods. We consider that our proposal to align benefit and contract periods will address the intent of recommendation 4C regarding the end of benefit periods. When a customer reaches the end of a fixed-term contract, if they do not give explicit informed consent to move onto a different offer, we are proposing that the customer is automatically rolled onto the VDO (for electricity) or the best offer (for gas).

The practice of rolling a customer onto the VDO is already required by the Electricity Industry Act and aligns with the policy intent of the VDO as providing protection for customers who are unable or unwilling to engage.

Given there is no VDO for gas at this time, we sought stakeholder reference group views on options for gas customers on fixed-term contracts.

Reference group members highlighted the difference in protection offered by a standing offer compared with a market offer. Standing offers have terms and conditions that are set by the commission, unlike market offers. Rolling a customer onto a market offer could therefore mean they end up with terms and conditions that may not be appropriate to their circumstances, such as on a discount with offer conditions.

Reference group members also highlighted the price implications of the available options. A customer moving onto the retailer's best offer could be assured they were on the cheapest plan on offer from their retailer. This would likely provide a greater level of price protection than standing offers, which have historically been substantially higher than market offers. A customer (particularly a gas customer) moving onto a standing offer at the end of a benefit or contract period would likely face a price increase.

Protecting customers at the end of benefit and contract periods

Although during best offer considerations we did not pursue the retailer discretion option, some reference group members suggested it should be considered in this case, given the drawbacks of the standing offer and best offer. We understand that some retailers currently roll customers onto the offer that most closely matches their existing terms and conditions.

The policy intent of recommendation 4C is to establish minimum protections for customers who do not engage. We consider it is important that these protections are consistent across the market, so customers know what to expect from their retailer. While standing offers do provide protection in the form of standard terms and conditions, our most recent data shows that gas standing offers are on average at least 20 per cent more expensive than market offers.⁶⁸ Similarly, retailer discretion would not deliver consistent customer outcomes across the market.

We also considered rolling a customer onto the cheapest equivalent offer, as some retailers currently do at the end of a contract. However this would involve creating another regulatory construct. Defining 'equivalence' would require us to make judgement calls around how customers value different plan attributes, and it would likely be challenging to achieve consistent, predictable outcomes across the market when fixed-term gas contracts end. We reached a similar conclusion during the best offer consultation process.

On balance, though the gas best offer may have conditions, the risk of price shock is an important factor in the implementation of this recommendation. We anticipate that customers on the best offer would not experience as great a price shock if they are unable or unwilling to engage at the end of their benefit or contract period, compared to the standing offer or retailer discretion. The best offer is also an established concept in the market that customers may recognise from bill change alerts and bills. For these reasons we consider that the best offer strikes the best balance for gas customers to roll onto at the end of a contract.

Legislative amendments are required to amend the existing deemed contract provisions and give effect to recommendation 4C for gas.

Draft decision 9: At the end of a fixed-term contract retailers must roll customers onto the VDO or best offer (for electricity and gas respectively)

At the end of a fixed-term contract, if a customer does not give explicit informed consent to move to a different offer, their retailer must automatically roll them onto the VDO (for electricity) or that retailer's best offer (for gas).

The changes to rules for gas contracts are subject to legislative amendments being made.

⁶⁸ As of 31 May 2019, the average residential customer annual bill for gas standard contract offers was \$1791. This is 21.5 per cent higher than the average bill for unconditional market offers (\$1474) and 23.4 per cent higher than the average bill for discounted market offers where conditional discounts were achieved (\$1451). Source: Essential Services Commission, [Victorian Energy Market Update](#), June 2019.

6. Regulating conditional discounts

Recommendation 4E

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

The review raised concerns that customers on offers with large conditional discounts who fail to meet offer conditions end up paying substantially more, and that this increase is not reflective of the cost incurred by retailers.

Recommendation 4E caps the costs of discounts, so they are no higher than the reasonable cost to a retailer of a customer missing an offer condition. This is intended to make conditional discounts cost-reflective, and limit the penalties faced by customers who fail to meet offer conditions.

Issues paper considerations

We noted interactions between recommendation 4E and other market developments, including the 2018 rule change by the AEMC to prevent discounts on inflated energy rates, the 2019 Australian Government regulations to ban headline conditional discounts for electricity and the November 2019 draft rule change to regulate conditional discounts that the AEMC is currently consulting on.⁶⁹

We outlined two high-level approaches to implementing recommendation 4E. The first would put the onus on the commission to set a cap based on a determination of reasonable costs, which retailers' conditional discounts would not be allowed to exceed. The second would place this onus on retailers, by requiring them to justify to the commission how their discounts are reflective of the reasonable costs of an offer condition being missed.

Stakeholder views

Consumer organisations strongly supported the commission setting a cap on conditional discounts.⁷⁰ They noted this will ensure consistency across the market. The Brotherhood of St Laurence suggested that different caps are set for different types of conditional discounts, and that

⁶⁹ For more details see <https://www.aemc.gov.au/rule-changes/preventing-discounts-on-inflated-energy-rates>, <https://www.legislation.gov.au/Details/F2019L00530> and <https://www.aemc.gov.au/rule-changes/regulating-conditional-discounting> respectively.

⁷⁰ Brotherhood of St Laurence, Consumer Action Law Centre & Council On The Ageing, Energy and Water Ombudsman Victoria and Victorian Council of Social Service, submissions to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

if retailers introduce a new type of conditional discount, they should be obliged to justify its reasonableness until the commission has set a cap for it.⁷¹

Conversely many retailers generally did not consider that a separate regulatory response is needed for recommendation 4E.⁷² They thought that other rule changes, including the requirement to use the VDO as a reference price, would already address the issues relating to this recommendation.

If the commission does implement recommendation 4E, these stakeholders would generally prefer retailers being able to make their own determination of reasonable costs.⁷³ AGL did support the commission setting a cap, provided it was based on new entrant costs.⁷⁴

Several stakeholders emphasised the importance of aligning with the approach that the AEMC takes to implementing its related rule change to ensure national consistency.⁷⁵ We note that the AEMC has published its draft rule change, and is proposing to take a principles-based approach to restricting the level of conditional discounts and fees to the reasonable costs likely to be incurred by the retailer when a customer fails to comply with the payment condition.

Our draft decisions

Capping pay-on-time discounts

Pay-on-time discounts are still a significant product feature of plans for customers. Our data shows that 83 per cent of customers were on an offer with a conditional discount as of 30 June 2019 (figure 4 in chapter 2), the majority of which were pay-on-time discounts (figure 7). 15 per cent of customers on offers with discount conditions missed part or all of these conditions in the last financial year (figure 4). On average, the estimated maximum cost to a customer of not meeting all the discount conditions in 2018-19 was up to \$386 for electricity and \$282 for gas (figure 8).

Given the prevalence and impact of conditional discounts on the Victorian energy market, the review's concern that customers that miss pay-on-time discounts pay substantially more, and the

⁷¹ Brotherhood of St Laurence, submission to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

⁷² AGL Energy, Alinta Energy, Australian Energy Commission, Red Energy & Lumo Energy and Simply Energy, submissions to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

⁷³ Alinta Energy, Australian Energy Commission, Momentum Energy, Powershop and Lumo Energy & Red Energy, submissions to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

⁷⁴ AGL Energy, submission to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

⁷⁵ Alinta Energy, Australian Energy Commission, EnergyAustralia and Powershop, submissions to the Essential Services Commission 'ensuring energy contracts are clear and fair' issues paper, July 2019.

views of stakeholders (particularly consumer organisations), we consider there is a need to regulate conditional discounts. We consider that setting a cap on conditional discounts will result in fewer opportunities for consumer harm than by taking a principles-based approach. A cap will ensure a consistent experience for customers across the market regardless of which retailer they are with. It will also provide clarity to retailers on our expectations and reduce ambiguity when monitoring and enforcing compliance.

We are proposing that this cap would only apply to pay-on-time discounts. These are the most common form of conditional discount, accounting for nearly three quarters of discounts in the market (see figure 7), and so we consider the greatest amount of consumer harm from missing offer conditions is likely to relate to these discounts. The AEMC is considering both late payment fees and pay-on-time discounts in their rule change, however, since late payment fees were banned by the Victorian Government in 2005, we are focusing on conditional pay-on-time discounts. Additionally, the AEMC's draft rule applies to conditional contract terms relating to both the timing and method of paying a bill. This would also capture fees and discounts such as discounts for online payment and direct debit dishonour fees. We are not proposing that any conditional discounts relating to payment method would be subject to a cap at this time.

We are proposing that the pay-on-time discount cap will only apply to contracts entered into from 1 July 2020 onwards. Operationally, if we applied this recommendation to all existing contracts it would likely result in retailers reducing the size of pay-on-time discounts that customers are currently receiving, so customers on existing contracts would end up paying more.

Draft decision 10: Pay-on-time discounts to be capped by the commission

A pay-on-time discount cap will be determined by the commission and apply to contracts entered into from 1 July 2020.

Pay-on-time discount cap methodology

We consider that a methodology for capping pay-on-time discounts should be simple, transparent, and applicable across the market. We have sought to understand what stakeholders consider to be 'reasonable costs' relating to a customer not paying their bill on time. We received limited information from stakeholders in responses to our issues paper and subsequent engagement in workshops and stakeholder reference group meetings.

The commission already has an established methodology used to limit the maximum interest rate that water businesses are allowed to charge on outstanding amounts. This methodology is based on the cost of debt to a business. While the context in water is slightly different to energy, we consider that the cost of debt is an appropriate approximation for the costs that are reasonable for energy retailers to pass onto customers in the event of late payment. This is because it captures the cost to the retailer of borrowing money to cover the shortfall from not receiving a payment from a customer, which we consider is the main direct cost incurred.

Regulating conditional discounts

We have incorporated a debt risk premium in the energy pay-on-time discount cap that reflects the costs faced by energy retailers from information from the Australian Energy Regulator.⁷⁶

While retailers are likely to incur administrative costs relating to recovering the payment from the customer, we do not consider that an allowance for these should be included in a cap on pay-on-time discounts. This is because it is a retailer's choice to offer conditional discounts, and so if they choose to offer these discounts then the administrative costs associated with doing so are a commercial consideration that they factor into determining the costs of offering that product.

The key components of the pay-on-time discount cap are:

- the 10-year Australian Commonwealth Government Bond Rate, calculated using a 40 day trailing average (this is used as a proxy for the nominal risk-free rate and is a widely used reference rate in Australian regulation)
- a debt margin to reflect actual borrowing costs in debt markets for retailers. This comprises:
 - a debt risk premium based on BBB+ rated companies, consistent with the benchmark credit rating that the Australian Energy Regulator decided to use in its 2018 rate of return instrument⁷⁷
 - an allowance for debt raising costs based on information from the Treasury Corporation of Victoria.

For illustrative purposes, if a cap had been set for this financial year using our proposed methodology, pay-on-time discounts would be limited to 3.74 per cent.⁷⁸ This figure is the maximum discount a retailer could apply to a customer's bill that would be conditional on the customer paying that bill on or before the pay-by date.

The commission updates this cap annually for water businesses based on market conditions on 31 May each year. The updated water interest rate then takes effect from 1 July each year for the whole financial year. We propose a similar approach for the energy pay-on-time discount cap. We would update the cap each year in mid-June, publish the updated guideline on our website and write to energy retailers to advise them of the cap that would take effect from 1 July.

Retailers must ensure that any pay-on-time discount offered does not exceed the cap that is in force at the time a customer signs up to a contract. While the commission will update the cap level each year, retailers must honour the same pay-on-time discount a customer initially signed up for throughout the entire contract period, in line with recommendation 4D.

⁷⁶ Australian Energy Regulator, [Rate of return instrument explanatory statement](#) (p279), December 2018.

⁷⁷ In water the debt risk premium is derived using the midpoint from a range between BBB- and BBB+ rated companies.

⁷⁸ Calculated as the sum of 10 year Australian Commonwealth Government Bond Rate, calculated using a 40 day trailing average up to 31 May 2019 (1.74 per cent), debt risk premium from BBB+ rated companies (1.85 per cent) and debt raising cost from Treasury Corporation of Victoria (0.15 per cent).

Draft decision 11: Aligning the methodology for capping energy pay-on-time discounts with the commission's existing methodology for water

The methodology used to determine the pay-on-time discount cap for energy retailers will be consistent with the commission's established methodology for capping water interest rates.

Draft decision 12: Methodology for capping pay-on-time discounts

The pay-on-time discount cap will be the sum of:

- the 10-year Australian Commonwealth Government Bond Rate
- a debt risk premium
- an allowance for debt raising costs.

Draft decision 13: Updating the pay-on-time discount cap

The pay-on-time discount cap will be updated annually. It will be based on data as of 31 May and will take effect on 1 July each year.

Draft decision 14: Process for announcing updated pay-on-time discount cap

The commission will update its guideline and communicate any change in the level of the pay-on-time discount cap in writing to energy retailers in mid-June each year.

Improving protections for customers in payment difficulty

Our proposed cap on conditional discounts only applies to new offers in the market from 1 July 2020. We consider that this on its own would leave a gap in protections for customers on existing contracts with conditional discounts, particularly customers experiencing payment difficulty who may be most impacted by missing a pay-on-time discount condition. Data from the ACCC suggests that hardship customers are much more likely miss offer conditions, with 58 per cent of hardship customers missing at least one offer condition in 2016-17.⁷⁹

We understand that some retailers already honour conditional discounts for customers who are participating in the retailer's hardship program and who are receiving tailored assistance. We consider this to be an important customer protection and industry best practice.

⁷⁹ ACCC, [Retail Electricity Pricing Inquiry – Final Report](#), June 2018.

A key premise of our payment difficulty framework is to ensure that all customers in payment difficulty receive consistent, predictable and equitable assistance. Accordingly, we propose to extend this industry best practice to all retailers to afford all customers in payment difficulty with this important customer protection.

Retailers will be required to honour pay-on-time discounts for tailored assistance customers, starting from when the customer first misses a bill and continuing until either the customer successfully completes their payment arrangement or the retailer withdraws assistance. Retailers will not be allowed to recover the pay-on-time discount for the period where the customer was receiving tailored assistance.

Draft decision 15: Retailers must honour pay-on-time discounts for customers receiving tailored assistance

Retailers must honour pay-on-time discounts for customers receiving tailored assistance.

7. Including information about the Victorian Default Offer on bills

Context

On 30 May 2019, an Order in Council was issued by the Victorian Government to implement the VDO. The order also included a requirement from 1 October 2019 for retailers to include information on electricity bills about how a customer may access the VDO. Clause 16(2)(b) of the order directed the Essential Services Commission to amend the Energy Retail Code to give effect to these obligations.

The requirement to include information about how to access the VDO on electricity bills will help raise awareness among customers. Together with requirement for retailers to include their best offer on electricity bills, customers will be more aware of the range of electricity plans available to them.

Our draft decision

We propose to amend the Energy Retail Code to include the obligation to have clear, plain and conspicuous information about the VDO on electricity bills. Retailers will be required to include this information on the front page of a bill.

A retailer must include the following statement on every electricity bill:

“The Victorian Default Offer is set by Victoria’s independent regulator. For clear advice to help you decide if this is a suitable plan for you, contact us on [phone number] or visit [link to factsheet on retailer’s website].”

Draft decision 16: Retailers must include information about accessing the VDO on electricity bills

Retailers must include clear, plain and conspicuous information on all electricity bills about how a customer can access the VDO.

8. Changing the back-billing rules

Context

The Energy Retail Code sets out the time period for which energy retailers can recover an undercharged amount for energy consumption. Currently, the code provides that an energy retailer may recover up to a nine-month period from its customer, if the undercharging had occurred for nine months or more and was not the customer's fault (for example, because the customer denied the retailer meter access) or caused by an unlawful act or omission of the customer.⁸⁰

In its Energy Fairness Plan, the government considers the allowable period an energy retailer should be able to recover from a customer is four months. They consider "it is unfair to have to pay a bill for nine months' worth of energy when you have been undercharged by the retailer and have done nothing wrong".⁸¹

The link between billing errors, back-billing and consumer confidence in the market is demonstrated by the Victorian Energy and Water Ombudsman's complaint data. In 2018-19, billing complaints continued to be the main reason why customers complained about their energy retailer to the ombudsman.⁸² In particular, billing errors represented one-fifth of billing complaints to the ombudsman and has continued to rise since 2015-16.⁸³

Our draft decision

We propose to amend the Energy Retail Code to reduce the allowable back-billing limit from nine months to four months.

We consider that reducing the allowable back-billing period will support our objective of promoting trust and confidence in the market. Customers are more likely to have a positive relationship with their energy retailer if they are not subject to significant bill shock when they are not the cause of the back-billing. We also consider that it will reduce customer bill shock due to the compressed billing recovery period and deliver more accurate bills as energy companies are likely to be incentivised to develop and maintain compliant billing systems due to the reduced recovery period limit.

⁸⁰ Clause 30(2)(a) of the Energy Retail Code.

⁸¹ Victorian Labor Party, [Cracking down on dodgy energy retailers – Labor's energy fairness plan](#), November 2018.

⁸² Energy and Water Ombudsman (Victoria), [2019 Annual report](#), October 2019.

⁸³ Ibid.

We do not propose to change the undercharging provisions of the Energy Retail Code for situations where back-billing occurs due to a customer's fault or unlawful act or omission. However, we will review this provision as part of our broader 2020-21 regulatory reform program.

Draft decision 17: Reducing the allowable back-billing period to four months

Retailers may only recover any amount undercharged in the four months before they notify the customer, unless the undercharging was a result of the customer's fault or unlawful act or omission.

9. Amending the Energy Retail Code

To give effect to our package of reforms, we are proposing a number of changes to the Energy Retail Code. We propose that the majority of new rules will be located in part 2 of the code, relating to customer retail contracts. We have also identified a number of consequential amendments to be made across other parts of the code.

Ensuring customers can easily compare offers

The new rules relating to ensuring customers can easily compare offers will be located in division 10 of part 2 of the code, which covers energy marketing. We are proposing to amend subdivision 1 to include an overarching objective relating to marketing, and create three new subdivisions:

- requirements prohibiting retail marketers engaging in misleading or deceptive conduct will be in subdivision 1A
- requirements relating to conditional discounts (for gas and electricity) will be in subdivision 2A
- electricity reference price requirements will be in subdivision 2B.

Code location	Amendment
Part 1, division 1, clause 3 – definitions	<ul style="list-style-type: none">• Added new definitions to give effect to recommendation 3A.
Part 2, division 10 – energy marketing	<ul style="list-style-type: none">• Renamed the title of subdivision 1 from ‘preliminary’ to ‘operation of this division’.• Added new clauses that apply to the whole energy marketing division. This includes:<ul style="list-style-type: none">– a requirement for retailers to perform obligations under the division in a way that promotes the objective of the division and each subdivision (clause 60A)– an objective to ensure that retail marketers disclose information about energy plans in a clear and easily understood manner that assists customers to assess the suitability of, and compare, a plan (clause 60B)– a requirement for retailers to ensure that third parties marketing on their behalf comply with this division (clause 60C)

- Added a new subdivision 1A on misleading and deceptive conduct.
- Added a new subdivision 2A on advertising conditional discounts to small customers. This includes:
 - an objective to refer to conditional discounts in a clear and easily understood manner (clause 64A)
 - specific requirements about advertising conditional discounts (clause 64B).
- Added a new subdivision 2B on advertising electricity prices. This includes:
 - an objective to ensure that discounts are referred to consistently in electricity marketing (clause 64C)
 - a clause to clarify the application of the subdivision (clause 64D)
 - definitions relating specifically to the subdivision (clause 64E)
 - reference price requirements (clause 64F) and exceptions to these (clause 64G).
- Removed clause 67 that requires retailers to ensure that third parties marketing on their behalf comply with subdivision 3 (new clause 60C replaces this but for the whole of division 10 in part 2 of the code).

Fixing market contract prices

The new rules relating to fixing market contract prices will also be located in division 7 of part 2 of the code.

We are proposing that the rules restricting retailers to changing market contract prices to when the VDO changes will be located in new clause 46AA. A new division 7A will follow this, setting out the rules around exemptions from the price change requirements.

We will also add notes to highlight links between the price change rules and explicit informed consent and tailored assistance provisions in relevant sections of the code.

Code location	Amendment
Part 1, division 1, clause 3 – definitions	<ul style="list-style-type: none"> • Added new definitions to give effect to recommendation 4A.

Part 2, division 3, clause 16 – pre-contractual duty of retailers	<ul style="list-style-type: none"> Added a note to clause 16(4) (relating to obtaining explicit informed consent before a customer enters a market retail contract) to explain that clause 52D imposes additional explicit informed requirements for customers entering into exempt market retail contracts.
Part 2, division 7 – particular requirements for contracts	<ul style="list-style-type: none"> Added a new clause 46AA that sets out requirements around retailers only being allowed to increase prices on a VDO change date. Added a new division 7A that sets out requirements for exempt market retail contracts. This includes: <ul style="list-style-type: none"> a requirement for retailers to perform obligations under this division and clause 46AA in a way that promotes the objective (clause 52A) an objective to ensure that retailers only change market retail contract prices when the VDO changes, unless the contract is an exempt one (clause 52B) a definition of an exempt market retail contract (clause 52C) additional explicit informed consent requirements for exempt market retail contracts (clause 52D) requirements if a customer on an exempt market retail contract becomes entitled to receive tailored assistance (clause 52E).
Part 3, division 3, clause 79 – minimum assistance	Added a note after clause 79(6) (end of clause that sets out minimum level of tailored assistance a customer can expect) to explain that clause 52E imposes additional tailored assistance requirements if customers are on exempt market retail contracts.

Protecting customers at the end of benefit and contract periods

The new rules relating to aligning benefit and contract periods will also be located in division 7 of part 2 of the code.

Code location	Amendment
Part 1, division 1, clause 3 – definitions	<ul style="list-style-type: none"> Amended the current definition of fixed benefit period.
Part 2, division 7 – particular	<ul style="list-style-type: none"> Inserted a new clause 46B that sets out requirements for retailers to make discounts, rebates and credits available for the whole contract

requirements for contracts	term.
Part 2, division 7, clause 49 – termination	<ul style="list-style-type: none"> Replaced clause 49(4) to require a retail to obtain a customer’s explicit informed consent in order to shorten the duration of a market retail contract by agreement with the customer.
Part 2, division 7, clause 49A – early termination charges	<ul style="list-style-type: none"> Repealed existing clauses 49A(4), 49A(5) and 49A(6) (which permit an early termination charge to be levied due to early termination of a fixed benefit period, subject to conditions). Amended existing clause 49A(3) to remove references to clause 49A(4).
Schedule 3 – transitional provisions	<ul style="list-style-type: none"> Added that clause 46B applies to market retail contracts entered into on or after 1 July 2020, and before 1 July 2020 where a fixed benefit period is current as of 1 July 2020, but not to contracts entered into before 1 July 2020 where all fixed benefit periods have expired.

Regulating conditional discounts

The rules around the new pay-on-time discount cap will be located in division 7 of part 2 of the code.

The rules around honouring pay-on-time discounts will be located alongside existing tailored assistance provisions in part 3 of the code.

Code location	Amendment
Part 1, division 1, clause 3 – definitions	<ul style="list-style-type: none"> Added a new definition for pay-on-time discounts.
Part 2, division 7 – particular requirements for contracts	<ul style="list-style-type: none"> Inserted a new clause 46AB that sets out requirements for pay-on-time discounts to not exceed the cap set by the commission.
Part 3, division 3A – tailored assistance	<ul style="list-style-type: none"> Inserted a new division 3A on honouring pay-on-time discounts. This includes: <ul style="list-style-type: none"> an objective to require retailers and exempt persons to honour pay-

on-time discounts for tailored assistance customers who are in arrears (clause 83A)

- a clause to clarify the application of the subdivision (clause 83B)
- requirements for retailers and exempt persons to honour pay-on-time discounts for customers who fail to pay a bill by the due date and receive tailored assistance (clause 83C).

Schedule 3 –
transitional provisions

- Added that clause 46AB applies to contracts entered into on or after 1 July 2020 but not before.
- Added that part 3, division 3A applies to contracts entered into before, on or after 1 July 2020.

Including information about the Victorian Default Offer on bills

Code location	Amendment
Part 2, division 4, clause 25 – contents of bills	<ul style="list-style-type: none">• Added a requirement to include specific text on the front page of electricity bills that explains how a customer can access the VDO (clause 25(1)(za)).

Changing the back-billing rules

Code location	Amendment
Part 2, division 4, clause 30 – undercharging	<ul style="list-style-type: none">• Amended clause 30(2)(a) to change the allowable back-billing period from 9 months to 4 months.

10. Next steps

How to make a submission

We are seeking feedback on our draft decision. Submissions should be made by **5pm on 21 January 2020**.

To make a submission on this paper please go to Engage Victoria's website:

<https://engage.vic.gov.au/>.

Submissions can also be sent by mail to:

Submission to 'ensuring energy contracts are clear and fair' consultation
Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne, Victoria 3000

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

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

Our approach to consultation is set out in our updated Stakeholder Engagement Framework.⁸⁴

Indicative timelines

Target date	Activity
10 December 2019	Draft decision released
Mid January 2020	Workshop on the draft decision (subject to stakeholder interest)
21 January 2020	Submissions close
Late February 2020	Final decision released and code amended
1 July 2020	Amendments come into effect

⁸⁴ Essential Services Commission, [Stakeholder engagement framework – Charter of Consultation and Regulatory Practice](#), June 2018.

Commencement of new requirements

The terms of reference propose that the new rules implementing recommendations 4A-4E of the review will take effect from 1 July 2020.

We also propose that the code amendments giving effect to recommendation 3A, the requirement to include the VDO on electricity bills and the back-billing changes take effect from 1 July 2020.

Draft decision 18: Commencement date of code amendments

The code amendments giving effect to recommendations 3A and 4A-4E, the requirement to include the VDO on electricity bills and the back-billing rule change will take effect on 1 July 2020.

Appendix A: Terms of reference

Ensuring Contracts are Clear and Fair

Terms of Reference to the Essential Services Commission

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

Background

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

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

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

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

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

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

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

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

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

Request

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

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

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

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

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

Consultation

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

Reporting

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

Completion

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

Appendix B: Draft Energy Retail Code amendments

Ensuring customers can easily compare offers (recommendation 3A) and including information about the Victorian Default Offer on bills

DRAFT AMENDMENTS TO THE ENERGY RETAIL CODE: VICTORIAN DEFAULT OFFER TARIFFS TO BE REFERENCE TARIFFS FOR DISCOUNTS

DECEMBER 2019

Amendments made by the Essential Services Commission on DD/MM/YYYY

1 Nature and commencement of this instrument

- (1) This instrument amends the *Energy Retail Code*.
- (2) This instrument comes into operation on 1 July 2020.

2 Table of amendments

(1) Insert the following definitions in clause 3 in the appropriate alphabetical positions:

annual reference consumption—see clause 64E;

conditional discount means a reduction to the price or tariff for the supply of *energy* that applies only if a *customer* satisfies certain requirements or conditions, and:

- (a) subject to paragraph (b), includes a conditional rebate or a conditional credit; and
- (b) does not include a discount, rebate or credit if all the conditions on it relate to the circumstances in which a *customer* enters into a *customer retail contract* (for example, a one-off sign-up credit);

conditional price—see clause 64E;

distribution zone means the area in which a distributor is licensed to distribute and supply electricity under the *Electricity Industry Act*;

lowest possible price—see clause 64E;

offered prices has the meaning given in clause 64F(1)(a);

price — see clause 64E;

proportional conditional discount—see clause 64E;

representative customer—see clause 64E;

type—see clause 64E;

unconditional price—see clause 64E;

VDO price—see clause 64E;

(2) After clause 25(1)(z) insert:

- (za) for electricity bills only, clear and simple information expressed in plain language on how to access the *Victorian default offer* from the *retailer*, displayed in a conspicuous manner on the front page of the bill with the following text: “The Victorian Default Offer is set by Victoria’s independent regulator. For clear advice to help you decide if this is a suitable plan for you, contact us on [phone number] or visit [link to fact sheet on retailer’s website]”.

(3) In Division 10 Energy Marketing, replace the heading for Subdivision 1 Preliminary with the following:

Subdivision 1 Operation of this Division

(4) After clause 60 insert:

60A Requirement

A *retail marketer* is required to perform its obligations under this Division in a way that promotes the objectives of this Division and each Subdivision.

60B Objective

The objective of this Division is to ensure that *retail marketers* carrying out *energy marketing activities* disclose to *small customers* information regarding their plans in a clear and easily understood manner so as to assist *small customers* to assess the suitability of, and select, a plan.

60C Duty of retailer to ensure compliance

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

Subdivision 1A Provisions from Australian consumer law

60D Misleading or deceptive conduct

A *retail marketer* must not engage in misleading or deceptive conduct (within the meaning of sections 18(1) and 34 of schedule 2 of the *Competition and Consumer Act 2010*, modified by section 4 of the *Competition and Consumer Act 2010*) in connection with the supply or possible supply of goods or services or in connection with the promotion by any

means of the supply or use of goods or services.

60E False or misleading representations

A *retail marketer* must not make a false or misleading representation (within the meaning of section 29(1) of schedule 2 of the *Competition and Consumer Act 2010*) in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services.

(5) After clause 64 insert:

Subdivision 2A Advertising conditional discounts to small customers

64A Objective

The objective of this Subdivision is to ensure that *retail marketers* carrying out *energy marketing activities* refer to *conditional discounts* in a clear and easily understood manner so as to assist *small customers* to assess the suitability of, and select, a plan.

64B Manner of advertising conditional discounts

- (1) Subject to subclause (2), a *retail marketer* must state the conditions on the *conditional discount* clearly and conspicuously in any marketing, advertisement or promotion of prices or tariffs for supplying *energy* to *small customers*.
- (2) The *conditional discount* must not be the price-related matter that is mentioned most prominently in the marketing, advertisement or promotion.

Subdivision 2B Advertising electricity prices

64C Objective

The objective of this Subdivision is to ensure *retail marketers* carrying out *energy marketing activities* in relation to the sale and supply of electricity refer to discounts in a consistent way to assist *customers* to compare plans.

64D Application of Subdivision

This Subdivision applies to *retail marketers* carrying out *energy marketing activities* in relation to the sale and supply of electricity.

64E Definitions

In this Subdivision—

annual reference consumption for a *regulatory period*, in relation to supplying electricity in a *distribution zone* to a *customer* of a particular *type*, means the matters determined under clause 15(5) of the *VDO Order* for the *regulatory period* in relation to the supply;

Note: See the note to clause 64F.

conditional price for a *proportional conditional discount* means the total annual amount a *representative customer* would be charged for the supply of electricity in the *regulatory*

period at the *offered prices*, assuming the conditions on the discount were met and disregarding any other *conditional discounts*;

lowest possible price means the total annual amount a *representative customer* would be charged for the supply of electricity in the *regulatory period* at the *offered prices*, assuming the conditions on all *conditional discounts* (if any) mentioned in the advertisement, publication or offer were met.

Note: If the advertisement, publication or offer does not mention any *conditional discounts*, the *lowest possible price* is the *unconditional price*.

offered prices has the meaning given in clause 64F(1)(a);

price:

- (a) subject to paragraph (b), includes a tariff or charge of any description, including a recurring fee (for example, an annual membership fee); and
- (b) does not include any of the following:
 - (i) a one-off fee (for example, a connection fee or reconnection fee or an account establishment fee);
 - (ii) a fee for making, or failing to make, a payment in particular circumstances (for example, a credit card transaction fee or a direct debit dishonour fee);
 - (iii) a fee for a service provided on request on an ad-hoc basis (for example, a fee for a meter read requested by a customer);

proportional conditional discount means a *conditional discount* that is calculated as a proportion of all or part of the amount a *customer* is charged for the supply of electricity at the *offered prices*;

representative customer, in relation to supplying electricity in a *distribution zone* in a *regulatory period* to a *customer* of a particular *type*, means a *customer* of that *type* who is supplied with electricity in that *distribution zone* in the *regulatory period* in accordance with the *annual reference consumption* for that *regulatory period* in relation to the supply;

type means a *type* of *customer* in respect of which the *Commission* determines an *annual reference consumption* under cl 15(5)(b)(i) of the *VDO Order*;

unconditional price means the total annual amount a *representative customer* would be charged for the supply of electricity in the *regulatory period* at the *offered prices*, disregarding any *conditional discounts*;

VDO price for a *regulatory period* in relation to supplying electricity in a *distribution zone* to a *customer* of a particular *type* means the estimated annual cost of the *Victorian default offer* determined under clause 15(4)(a) of the *VDO Order* for the *regulatory period* in relation to the supply.

Note: See the note to clause 64F.

64F Advertisements etc. must compare retailer's prices with the VDO price

- (1) A *retail marketer* must not:

Appendices

- (a) advertise or publish *prices* for the supply of electricity (the *offered prices*); or
- (b) offer to supply electricity at the *offered prices*;

unless the advertisement, publication or offer meets the requirements of subsections (2), (4), (5) and (6).

(2) The *retail marketer* must state in an advertisement, publication or offer the following matters, making it clear that the matters relate to a *representative customer*:

(a) the difference between:

- (i) the *VDO price*; and
- (ii) the *unconditional price*;

expressed as a percentage of the *VDO price*;

(b) for each *proportional conditional discount* mentioned in the advertisement, publication or offer—the difference between:

- (i) the *unconditional price*; and
- (ii) the *conditional price* for the discount;

expressed as a percentage of the *VDO price*;

(c) the *lowest possible price*.

(3) The *retail marketer* must also state in an advertisement, publication or offer:

- (a) the *distribution zone*; and
- (b) the *type of customer*,

to which the *offered prices* relate.

(4) The *retail marketer* must state in an advertisement, publication or offer the matters required by subclauses (2) and (3) and 64G(2) (whichever are applicable) clearly and conspicuously.

Note: The insertion of this clause and clause 64G does not provide for the matters provided for in subclauses 15(4) and 15(5) of the *VDO Order*. By the proviso to subclause 15(1) of the *VDO Order*, subclauses 15(4) and 15(5) of the *VDO Order* continue to apply.

64G Alternative requirement for offers

- (1) Clause 64F(2)(c) does not apply, at a time during a *regulatory period*, to an offer by a *retail marketer* to supply electricity to a *customer* at the *offered prices* mentioned in clause 64F(1) if the offer meets the requirement of subclause (2) of this clause.
- (2) The offer must state the total annual amount the *retailer* estimates the *customer* would be charged for the supply of electricity in the *distribution zone* in the *regulatory period*,

assuming that the conditions on all *conditional discounts* (if any) mentioned in the offer were met.

- (3) In making an estimate for the purposes of subclause (2), the *retailer* may have regard to:
- (a) the rate at which electricity was supplied to the *customer* in the past; and
 - (b) the timing or pattern of that past supply; and
 - (c) any other matter the *retailer* considers relevant.

Note: See the note to clause 64F.

(6) Delete clause 67, and substitute it with:

67 [Not used]

Fixing market contract prices (recommendation 4A)

DRAFT AMENDMENTS TO THE ENERGY RETAIL CODE: TARIFF CHANGES ONLY ALLOWED ON VDO CHANGE DATE

DECEMBER 2019

Amendments made by the Essential Services Commission on DD/MM/YYYY

1 Nature and commencement of this instrument

- (1) This instrument amends the *Energy Retail Code*.
- (2) This instrument comes into operation on 1 July 2020.

2 Table of amendments

- (1) Insert the following definitions in clause 3 in the appropriate alphabetical positions:

exempt market retail contract —see clause 52C;

regulatory period means a period during which a *VDO price determination* applies;

VDO change date means the date on which a *VDO price determination* made in respect of a *regulatory period* comes into effect;

VDO Order means the Order in Council made under s 13 of the *Electricity Industry Act* published in Special Gazette No. S 208, on Thursday 30 May 2019 and as amended from time to time;

VDO price determination means a price determination by the *Commission* pursuant to the *VDO Order*;

- (2) Replace the definition of *Victorian default offer* in clause 3 with the following:

Victorian default offer means any offer to supply or sell electricity that is subject to a regulated price pursuant to the *VDO Order*;

(3) Below clause 16(4) insert:

Note:

Additional *explicit informed consent* requirements are imposed under clause 52D for the entry by a *small customer* into an *exempt market retail contract*.

(4) After clause 46A insert:

46AA Price increases may only be made on a VDO change date (MRC)

- (1) The requirement and objectives stated in clauses 52A and 52B apply to this clause.
- (2) Subject to subclause (4), a *retailer* must not increase any of the tariffs payable by a *small customer* under a *market retail contract* except with effect from a *VDO change date*.
- (3) Subclause (2) does not permit a *retailer* to increase any tariffs with effect from a *VDO change date* if the *retailer* is prohibited from doing so under the terms and conditions of the *market retail contract*.
- (4) Subclause (2) does not apply to tariffs payable by a *small customer* under an *exempt market retail contract* provided that, for an *exempt market retail contract* entered into on or after 1 July 2020, the *retailer* has complied with its obligations under clauses 16(4) and 52D of this Code to obtain the *customer's explicit informed consent* to enter into that *exempt market retail contract*.
- (5) Subclause (2) does not prevent a *retailer* from changing the tariffs of plans that it offers, advertises or markets to prospective or existing *customers* between one *VDO change date* and the next *VDO change date*.

(6) Application of this clause to market retail contracts

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

Note:

This clause does not apply in relation to changes to any feed-in tariffs payable to *small customers*.

(5) After clause 52 insert:

Division 7A Exempt market retail contracts

52A Requirement

A *retailer* is required to perform its obligations under clause 46AA and this Division in a way that promotes the objective of clause 46AA and this Division.

52B Objectives

The objectives of clause 46AA and this Division are to:

- (a) ensure that a *retailer* may only increase tariffs payable by a *small customer* under a *market retail contract* (other than an *exempt market retail contract*) with effect from a *VDO change date*;
- (b) identify what kinds of market retail contracts are *exempt market retail contracts* for the purposes of clause 46AA and this Division;
- (c) provide for additional consumer protections for *small customers* who are party to *exempt market retail contracts*.

52C Definition of exempt market retail contract

In clause 46AA and this Division, *exempt market retail contract* means a *market retail contract*:

- (a) that includes a tariff that continually varies in relation to the prevailing spot price of *energy*; or
- (b) under which a *retail customer* pre-purchases a specified quantity of *energy*; or
- (c) on terms and conditions in respect of which the *Commission* has granted an exemption.

Note:

The Commission has published a guideline regarding applications for and granting of exemptions for the purposes of clause 52C(c).

52D Explicit informed consent—exempt market retail contracts

- (1) For the purposes of clause 3C(1)(a), the matters relevant to obtaining a *small customer's explicit informed consent* to enter into an *exempt market retail contract* include, but are not limited to:
 - (a) the fact that the tariffs may change more than once per year;
 - (b) the basis for the changes to tariffs;
 - (c) the estimated frequency of changes to tariffs;
 - (d) the fact that the *retailer* offers one or more other contracts (including, in relation to electricity, the *Victorian default offer*) under which tariffs will change only with effect from a *VDO change date*.

Note:

Under clause 3C(1)(a), the matters above must be clearly, fully and adequately disclosed to the customer in plain English.

- (2) The matters specified in subclause (2) must be displayed prominently in any document or electronic communication by which they are disclosed to the *customer*.
- (3) This clause does not affect the application of Part 2A of this Code to an *exempt market retail contract*.

52E Tailored assistance to customers on an exempt market retail contract

- (1) If a *residential customer* who has entered into an *exempt market retail contract* becomes entitled to receive tailored assistance under Part 3, Division 3 of this Code, the *retailer* must:
 - (a) carry out a review to identify whether transferring the *customer* to a different *customer retail contract* would be likely to minimise the *customer's energy costs*, and the review must be based on the *retailer's* knowledge of the *customer's* pattern of *energy* use and payment history;
 - (b) inform the *customer* of the outcome of the review; and
 - (c) if the *retailer* identifies a different *customer retail contract* that would be likely to minimise the *customer's energy costs*, the *retailer* must:
 - (i) inform the *customer* of the *customer retail contract* that is likely to minimise the *customer's energy costs*;
 - (ii) seek the *customer's explicit informed consent* to transfer the *customer* to that other *customer retail contract*; and
 - (iii) provided that the *customer* gives *explicit informed consent*, transfer the *customer* to that other *customer retail contract*.

Note:

In relation to the supply of electricity, the *customer retail contract* to which a customer is transferred under subclause (1)(c) may be a contract under a *Victorian default offer*.

- (2) This clause is in addition to, and does not derogate from, the operation of Part 3 of this Code in relation to a *residential customer* who is party to an *exempt market retail contract*.

(6) After clause 79(6) insert:

Note:

Additional tailored assistance obligations are imposed under clause 52E in relation to *residential customers* who are party to *exempt market retail contracts*.

Protecting customers at the end of benefit and contract periods (recommendations 4C and 4D)

AMENDMENTS TO THE ENERGY RETAIL CODE: FIXED BENEFIT PERIOD UNDER MARKET RETAIL CONTRACTS TO APPLY FOR DURATION OF CONTRACT

DECEMBER 2019

Amendments made by the Essential Services Commission on DD/MM/YYYY

1 Nature and commencement of this instrument

- (1) This instrument amends the *Energy Retail Code*.
- (2) This instrument comes into operation on 1 July 2020.

2 Table of amendments

(1) Replace the definition of *fixed benefit period* in clause 3 with the following:

fixed benefit period means a period of a *market retail contract* (where the end date of that period is specified or ascertainable at the beginning of that period) during which a discount, rebate or credit (including a *conditional discount*) is available to the *customer*;

Notes:

1. A one-off rebate or credit (such as a one-off sign-on benefit) does not give rise to a *fixed benefit period*.
2. A contractual limitation on a *retailer's* ability to vary a tariff or charge payable under a *market retail contract* is not a discount, rebate or credit for the purposes of this definition.

(2) After clause 46AB, insert:

46B Fixed benefit period to apply for duration of market retail contract

- (1) If a *market retail contract* provides for a discount, rebate or credit (including a *conditional discount*) to be made available to the customer for a *fixed benefit period*, the *retailer*:
 - (a) must continue to make that discount, rebate or credit available; and
 - (b) must not decrease the amount of that discount, rebate or credit,throughout the term of that contract.

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

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

Note:

By the operation of clause 15(2), this clause requires a *retailer* to continue any *fixed benefit period* for the full duration of the contract.

(3) **In subclause 49(1)(a), before the words “on a date agreed between the *retailer* and the *customer*” insert:**

subject to subclause (4),

(4) **Replace subclause 49(4) with the following:**

(4) A *retailer* must obtain a *customer’s explicit informed consent* in order to shorten the duration of a *market retail contract* by agreement with the *customer*.

(5) **Replace subclause 49A(3) with the following:**

(3) A term or condition of a *market retail contract* that is not a *fixed term retail contract* has no effect to the extent that it provides for the payment of an early termination charge (however described).

(6) **Replace subclause 49A(4) with the following:**

[Not used]

(7) **Replace subclause 49A(5) with the following:**

[Not used]

(8) **Replace subclause 49A(6) with the following:**

[Not used]

(9) **In Schedule 3, after paragraph 3, insert:**

4. Fixed benefit period under market retail contracts

Clause 46B applies to *market retail contracts*:

- (a) entered into on or after 1 July 2020; and
- (b) entered into prior to 1 July 2020 and under which a *fixed benefit period* is current as at 1 July 2020,

but does not apply to a *market retail contract* entered into prior to 1 July 2020 and under which all *fixed benefit periods* expired prior to 1 July 2020.

Regulating conditional discounts (recommendation 4E)

DRAFT AMENDMENTS TO THE ENERGY RETAIL CODE: CAPPING PAY-ON-TIME DISCOUNTS, AND HONOURING PAY-ON-TIME DISCOUNTS FOR CUSTOMERS RECEIVING TAILORED ASSISTANCE

DECEMBER 2019

Amendments made by the Essential Services Commission on DD/MM/YYYY

1 Nature and commencement of this instrument

- (1) This instrument amends the *Energy Retail Code*.
- (2) This instrument comes into operation on 1 July 2020.

2 Table of amendments

- (1) **Insert the following definitions in clause 3 in the appropriate alphabetical positions:**

pay-on-time discount means a *conditional discount* that is conditional upon the *customer* paying a bill on or before the *pay-by date*;

- (2) **After Clause 46AA insert:**

46AB Pay-on-time discounts to be capped (MRC)

- (1) Any *pay-on-time discount* in a *market retail contract* must not exceed the amount that the Commission specifies in a guideline published under section 13 of the *Essential Services Commission Act 2001* that is in effect at the time that the contract or arrangement is entered into.
- (2) **Application of this clause to market retail contracts**

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

- (3) **After Clause 83 insert:**

Division 3A Pay-on-time discounts to be honoured

83A Objective

The objective of this Division is to require *retailers* to honour *pay-on-time discounts* to *residential customers* who are in arrears and who are receiving tailored assistance.

83B Application of this Division

This Division applies to all *residential customers* who are in arrears under *market retail contracts*. Where a clause states it applies to *exempt persons* in one or more *categories* it applies to people who purchase electricity principally for personal, household or domestic use from an *exempt person* in the relevant *category* and who are in arrears under their *exempt person arrangement*.

83C Pay-on-time discounts to be honoured

(1) If a *residential customer* fails to pay a bill by its *pay-by date*, or by any extended *pay-by date* that the *retailer* has offered as standard assistance, and receives tailored assistance under this Division in respect of that bill, and:

- (a) the *residential customer* later clears its arrears in respect of that bill; or
- (b) the *retailer* later becomes entitled to withdraw tailored assistance to the *residential customer* under clause 83(1),

the *retailer* must not subsequently recover the amount of any *pay-on-time discount* in respect of that bill or any other bill whose *pay-by date* occurred while the *customer* was continuing to receive tailored assistance.

Note: Clause 92(1) prohibits a *retailer* from commencing or continuing with proceedings for the recovery of arrears from a *residential customer* who is receiving standard assistance or tailored assistance under this Part.

(2) **Application of this clause to exempt persons**

This clause applies to *exempt persons* in the following *categories*:

VD2, VR2, VR3 and VR4.

(4) **In Schedule 3, after paragraph 4, insert:**

5. Pay-on-time discounts

- (a) Section 46AB:
 - (i) applies to *market retail contracts* entered into on or after 1 July 2020; and
 - (ii) does not apply to *market retail contracts* entered into before 1 July 2020.
- (b) Part 3, Division 3A applies to *market retail contracts* and *exempt person arrangements* entered into before, on or after 1 July 2020.

Changing the back-billing rules

DRAFT AMENDMENTS TO THE ENERGY RETAIL CODE: REDUCING THE ALLOWABLE BACK-BILLING LIMIT

DECEMBER 2019

Amendments made by the Essential Services Commission on DD/MM/YYYY

1 Nature and commencement of this instrument

- (1) This instrument amends the *Energy Retail Code*.
- (2) This instrument comes into operation on 1 July 2020.

2 Table of amendments

(1) Replace subclause 30(2)(a) with the following:

- (a) unless the amount was undercharged as a result of the *small customer's* fault or unlawful act or omission, limit the amount to be recovered to the amount undercharged in the 4 months before the date the *customer* is notified of the undercharging; and

Appendix C: Draft guideline – advertising energy prices

1. Purpose of this guideline

- 1.1. The purpose of this document is to provide information to energy retailers and other interested parties about how the Essential Services Commission (the commission) expects energy retailers and their marketing associates (collectively known as retail marketers), to advertise publish or offer energy plans, including those with conditional discounts.
- 1.2. The rules covered by this guideline are in part 2, division 10 of the Energy Retail Code (the code)⁸⁵:
 - subdivisions 1 and 1A apply to all marketing of gas and electricity offers
 - subdivision 2A applies to the marketing of any gas or electricity offer with a conditional discount
 - subdivision 2B applies to the marketing of any electricity offer. Certain requirements in the s 208 Order in Council (VDO Order) published on 30 May 2019⁸⁶ also apply here.
- 1.3. These rules were introduced to ensure customers can easily compare offers, in line with recommendation 3A of the Independent Review of the Electricity and Gas Retail Markets in Victoria.⁸⁷
- 1.4. This final document is published as a guideline made under section 13 of the Essential Services Commission Act 2001.
- 1.5. The guideline has been developed in a similar way to the Australian Competition and Consumer Commission's Guide to the Electricity Retail Code following the introduction of changes to the national rules from 1 July 2019.

This document does not substitute a licensee's obligations in the Energy Retail Code or any other state or federal law or regulation, such as the Australian Consumer Law, nor does it constitute legal advice. If a licensee is unsure about its regulatory obligations, it should seek

⁸⁵ Energy Retail Code available at: <https://www.esc.vic.gov.au/electricity-and-gas/codes-guidelines-policies-and-manuals/energy-retail-code>.

⁸⁶ VDO Order available at: <http://www.gazette.vic.gov.au/gazette/Gazettes2019/GG2019S208.pdf> and included in appendix A of this guideline.

⁸⁷ Further information about the background to these rules is available on our [website](#).

independent advice. Energy retailers also have obligations in the Code of Conduct for Marketing Retail Energy in Victoria.⁸⁸

2. Who the rules apply to

- 2.1. Retail marketers must comply with part 2, division 10 of the code.
- 2.2. The obligations in subdivisions 1, 1A and 2A of part 2, division 10 of the code cover all offers and plans for small customers⁸⁹ in Victoria offered by licensed energy retailers. The requirements in subdivision 2B only apply to electricity offers.
- 2.3. The marketing provisions in the Energy Retail Code and the obligations in this guideline do not apply to exempt persons.⁹⁰
- 2.4. Non-compliance with the Energy Retail Code or this guideline may result in a licensee breaching its licence conditions.

3. Objective of the marketing rules (part 2, division 10, subdivision 1)

These rules apply to all electricity and gas offers.

- 3.1. Subdivision 1 contains overarching rules that apply to the division 10 of part 2 of the code.
- 3.2. Clause 60A sets out a requirement for retailer marketers to perform their obligations under division 10 of the code in a way that promotes the objectives of the division (clause 60B) and each subdivision (including clauses 64A and 64C).
- 3.3. Clause 60B sets out the objective of the marketing division. This is to ensure that retail marketers disclose information to customers about their electricity and gas plans in a clear and easily understood way to assist customers to assess the suitability of plans and select an offer.
- 3.4. Clause 60C requires retailers to ensure that associates who are retail marketers comply with division 10 of the code.

4. Misleading and deceptive conduct (part 2, division 10, subdivision 1A)

⁸⁸ Available at: <https://www.esc.vic.gov.au/electricity-and-gas/codes-guidelines-policies-and-manuals/code-conduct-marketing-retail-energy>.

⁸⁹ Small customers are those who use less than 40 MWh of electricity or 1,000 GJ of gas per annum.

⁹⁰ Exempt persons are those who are exempt from the requirement to hold an electricity licence under the General Exemption Order 2017, available at: <https://www.energy.vic.gov.au/legislation/general-exemption-order>.

These rules apply to all electricity and gas offers.

- 4.1. Clause 60D of the code prohibits retail marketers from engaging in misleading or deceptive conduct (within the meaning of section 18(1) of the Competition and Consumer Act 2010, modified by section 4 of the Competition and Consumer Act 2010) in connection with energy marketing activities.

5. Advertising conditional discounts (part 2, division 10, subdivision 2A)

These rules apply to all electricity and gas offers with conditional discounts.

- 5.1. Clause 64A sets out the objective of subdivision 2A. This is to ensure that retail marketers refer to conditional discounts in a clear and easily understood way to assist customers to assess the suitability of plans and select an offer.
- 5.2. Clause 64B(1) requires retail marketers to express the conditions of any conditional discount clearly and conspicuously in any marketing, advertisement or promotion of prices or tariffs for electricity and gas plans designed for small customers.
- 5.3. Clause 64B(2) sets out that the conditional discount must not be the price-related matter that is mentioned most prominently in the marketing, advertisement or promotion.
- 5.4. 'Conditional discount' means a reduction to the price or tariff for the supply of energy, including discounts, rebates or credits, if the customer satisfies certain conditions or requirements. It does **not** include a one-off sign up discount, credit or rebate.

6. Advertising electricity prices (part 2, division 10, subdivision 2B)

These rules apply only to electricity offers.

- 6.1. Clause 64C sets out the objective of subdivision 2B. This is to ensure that retail marketers refer to discounts in a consistent way to assist customers to compare plans.
- 6.2. Clause 64D sets out that the rules in subdivision 2B apply to all retail marketers.
- 6.3. Clause 64E sets out definitions relating to subdivision 2B.

Comparing electricity prices with the VDO price

- 6.4. Clause 64F requires retail marketers to state in any advertisement, publication or offer:
 - the difference between the VDO price (see paragraphs 6.7 and 6.8) and the unconditional price (see paragraphs 6.9 to 6.12), expressed as a percentage of the VDO price

- for each proportional conditional discount mentioned, the difference between the unconditional price and the conditional price for the discount, expressed as a percentage of the VDO price (see paragraphs 6.13 to 6.18)
 - the lowest possible price (see paragraphs 6.19 to 6.24)
 - the relevant distribution zone and the type of customer that the offered prices relate to.
- 6.5. These requirements ensure that all electricity offers are referenced in relation to the VDO price. This includes plans and offers that cost both more and less than the VDO price for a particular distribution area, and offers with or without discounts, credits and/or rebates.
- 6.6. Clause 64F(4) requires retail marketers to ensure that the information summarised in paragraph 6.4 is stated clearly and conspicuously in any advertisement, publication or offer and it is clear that it relates to a representative customer.

The VDO price

- 6.7. The VDO price is the estimated annual cost of the VDO as determined under clause 15(4)(a) of the VDO Order. Appendix A of this guideline contains the relevant section of the VDO Order.
- 6.8. Retail marketers must calculate the estimated annual cost of the VDO using the annual reference consumption figures in the commission's VDO price determination.

The unconditional price

- 6.9. The unconditional price of an electricity offer is the total price a representative customer (based on the annual reference consumption specified in the VDO Order) would be charged during a VDO regulatory period at the retailer's offered prices, without any conditional discounts.
- 6.10. Retail marketers must tell customers how the unconditional price of an electricity offer in a particular distribution region compares with the VDO price for that region and type of customer. This difference must be expressed as a percentage of the VDO price. To calculate this figure, retail marketers must:
- a) Calculate the unconditional price of the offer based on the model annual usage specified in the VDO Order. Retail marketers must include the following items in calculating the unconditional price:
 - (i) any charges
 - (ii) unconditional discounts (this includes discounts, credits or rebates when a customer enters a contract such as a one-off sign up credit)
 - (iii) annual recurring fees such as membership and contribution fees
 - (iv) recurring metering charges.

- b) Retail marketers must not include green charges or feed-in tariffs in this calculation if these are present.
- c) Calculate the difference between the unconditional price and the relevant VDO price set by the commission.
- d) Express this difference as a percentage of the relevant VDO price. This number may be positive or negative, indicating whether the offer is above or below the VDO price.

6.11. If the offer is equal to the price cap set by the commission, this should be expressed as equal to the VDO price.

The example below is for illustrative purposes only and does not reflect the commission's actual VDO price determinations.

Example 1 – residential market offer with unconditional discount

Offer	Usage	Rate (including GST)	Total
Supply	365 days	\$1.00/day	\$365
Usage (annual reference consumption)	4,000 kWh	\$0.24/kWh	\$960
Unconditional price			\$1,325
Lowest possible price			\$1,325
VDO price			\$1,500

6.12. Example one illustrates how to calculate the difference between the unconditional price and the VDO price:

- a) Given the rates under this residential offer and the annual reference consumption specified in the VDO Order is 4,000 kWh, the unconditional price is \$1,325.
- b) The difference between the unconditional price and the example VDO price is -\$175 (\$1,325 subtract \$1,500).
- c) This amount expressed as a percentage of the VDO price is -11.66 per cent (-\$175 divided by \$1,500 and multiplied by 100). As this figure is negative it should be stated as 11.66 per cent less than the VDO price for advertising or presentation purposes.

Conditional discounts

6.13. Retail marketers must express any proportional conditional discount being advertised, published or offered as a percentage of the VDO price. If there is more than one

conditional discount the retail marketer wishes to refer to, it must do this individually for each discount. Retail marketers must not state conditional discounts as a cumulative discount combined with the unconditional price.

- 6.14. Where we refer to conditional discounts, these include conditional rebates and credits but excludes discounts, rebates and credits that relate to a customer entering into the contract such as a one-off sign up credit.⁹¹
- 6.15. It is important retail marketers understand what percentage figure must be stated in an advertisement, publication or offer when referring to a conditional discount. As demonstrated in the example below, a conditional discount available under an offer (such as a pay on time discount based on usage) is not the percentage figure that must be stated; rather it is the conditional discount expressed as a percentage of the VDO price. To determine the percentage figure presented, retail marketers must:
- a) Calculate the unconditional price of the offer as described in paragraph 6.10.
 - b) Calculate the conditional price of the offer. This is the total amount a customer would pay in a regulatory period based on the annual reference consumption if that customer met the conditions for the conditional discount. This must be calculated using the annual reference consumption specified in the VDO Order and include any annual recurring charges and fees outlined in paragraph 6.10(a).
 - c) Calculate the difference between the unconditional price and the conditional price.
 - d) Express this difference as a percentage of the VDO price. The figure should be read as a percentage above or below the VDO price.

The following example is for illustrative purposes only and does not reflect the commission's actual VDO price determinations.

⁹¹ There is a definition of conditional discounts in the Energy Retail Code and in the definitions section of this guideline.

Example 2 – residential market offer with conditional discount

Offer	Usage	Rate	Total
Supply	365 days	\$1.00/day	\$365
Usage (annual reference consumption)	4,000 kWh	\$0.24/kWh	\$960
Unconditional price			\$1,325
Conditional discount		3%	\$39.75
Conditional price			\$1,285.25
Lowest possible price			\$1,285.25
VDO price			\$1,500

6.16. Example two has the same supply and usage rates as example one, but includes a conditional discount:

- Given the rates under this residential offer and the annual reference consumption specified in the VDO Order is 4,000 kWh, the unconditional price is \$1,325 (11.66 per cent below the VDO price).
- The conditional price is \$1,285.25 (\$1,325 minus \$39.75). This is the price a representative customer would pay if they met the conditions of the discount.
- The difference between the unconditional price and the conditional price is \$39.75 (\$1,325 minus \$1,285.25).
- This amount expressed as a percentage of the example VDO price is -2.65 per cent (\$39.75 divided by \$1,500 multiplied by 100). This is the additional percentage off the VDO price if a representative customer meets the discount conditions. This figure should be used for advertising or presentation purposes, rather than the actual size of the discount (i.e. 3 per cent).

6.17. For clarity, the unconditional discount is taken off the VDO price first, followed by any proportional conditional discounts (if applicable).

6.18. If there are multiple conditional discounts, then these must each be calculated off the VDO price.

Expressing the lowest possible price

- 6.19. The lowest possible price for an offer is the total amount a representative customer would pay in a year, assuming that all the conditions on all conditional discounts (if any) mentioned in the advertisement, publication or offer were met.
- 6.20. Retail marketers must include the following items in calculating the lowest possible price for an offer:
- a) any charges
 - b) unconditional discounts
 - c) conditional discounts
 - d) annual recurring fees such as membership and contribution fees
 - e) recurring metering charges.
- 6.21. Retail marketers must not include green charges or PV/solar feed-in tariffs in this calculation if these are present, or any feed-in tariff credits.
- 6.22. If the advertisement, publication or offer does not mention any conditional discount, the lowest possible price is the unconditional price. If there is only one conditional discount, the lowest possible price is the conditional price. If offers have more than one conditional discount, the lowest possible price would include all the conditional discounts.

Alternative requirement for offers

- 6.23. Clause 64G enables a retailer to display the lowest possible price of an offer based on a customer's estimated consumption rather than that of a representative customer.
- 6.24. In providing the estimate, the retail marketer may have regard to:
- a) the rate at which electricity was supplied to the customer in the past
 - b) the timing or pattern of the customer's usage
 - c) any other matter the retail marketer considers relevant.

Other fees and charges

- 6.25. The definition of 'price' in the code requires retail marketers to include a tariff or charge of any description (including recurring fees such as an annual membership fee) in its price, except for :
- a) a one-off fee (for example, a connection fee or reconnection fee or an account establishment fee);
 - b) a fee for making, or failing to make, a payment in particular circumstances (for example, a credit card transaction fee or a direct debit dishonour fee);
 - c) a fee for a service provided on request on an ad-hoc basis (for example, a fee for a meter read requested by a customer);

Time of use, flexible and controlled load tariffs

- 6.26. This section covers how time of use, flexible and controlled load tariff offers for small customers are calculated to be expressed in an advertisement, publication or offer.
- 6.27. Time of use tariffs apply different charges to electricity usage at different times of the day or week. Typically, periods are split into peak and off-peak (a two-period time of use). However, there are also three-period and four-period time of use tariff types (also known as flexible pricing). An offer which has one shoulder period rate is considered a three-period time of use offer. An offer with two shoulder period rates is considered a four-period time of use offer.
- 6.28. The VDO Order provides usage allocations per period for each time of use tariff type and relevant distribution region. This is to enable retail marketers to calculate the unconditional price of a time of use offer for comparison with the VDO price using a consistent set of information.
- 6.29. The commission's VDO price determination includes the VDO price for each distribution zone for non-flat tariffs.
- 6.30. Retail marketers must use the commission's VDO price determination for non-flat tariffs for small customers in a relevant distribution zone, using the annual reference consumption, when displaying prices in an advertisement, publication or offer. Retail marketers must do this using the formulas and specifications as detailed in the VDO price determination.
- 6.31. For time of use offers with a controlled load, retail marketers must reference the relevant VDO price in the commission's VDO price determination, for a particular regulatory period, using the annual reference consumption. This means that a retail marketer must apportion usage to the different time of use elements, and the controlled load, to equal the annual reference consumption for a particular customer type (i.e. residential or small business).
- 6.32. To calculate the unconditional price of a time of use offer, retail marketers must:
- a) determine the time of use type for that offer (two period, three period or four period)
 - b) use the usage allocation set by the VDO Order for each period in the tariff type
 - c) use the relevant small customer annual reference consumption (with or without controlled load)
 - d) calculate the unconditional price based on the above information in subclauses (a)-(c) and use the relevant VDO price for comparison in advertising, publications or offers.

The example below is for illustrative purposes only and does not reflect the commission's actual VDO price determinations.

Example 3 – residential three-period time of use tariff without controlled load

Offer	Usage allocation per period	Annual reference consumption	Retailer rate (including GST)	Total (including GST)
Supply charge		365 days	\$1.00/day	\$365
Peak usage	25 per cent	1,000 kWh	\$0.33/kWh	\$330
Off-peak usage	30 per cent	1,200 kWh	\$0.15/kWh	\$180
Shoulder usage	45 per cent	1,800 kWh	\$0.28/kWh	\$504
Annual reference consumption		4,000 kWh		
Unconditional price				\$1,379
Lowest possible price				\$1,379
VDO price determination – maximum annual bill				\$1,500

- 6.33. Example 3 illustrates how the difference between the unconditional price and the VDO price must be calculated. As this offer has one shoulder period rate, it is a three-period time of use offer. This offer is for a residential customer with no controlled load so the residential annual reference consumption with no controlled load of 4,000 kWh is used.
- 6.34. The usage amounts of each of the three periods is calculated based on the usage allocation set out in the commission’s VDO price determination and the annual reference consumption of 4,000 kWh for a residential customer. Given the retailer’s rates under this offer, the unconditional price for this time of use offer is \$1,379. The commission’s relevant maximum annual bill price made in a VDO price determination for a regulatory period is \$1,500 for the particular distribution zone.
- 6.35. Retail marketers must display the difference between the unconditional price and the VDO price, expressed as a percentage of the VDO price. In example 3 this is -8.06 per cent (\$1,379 minus \$1,500 equals -\$121 divided by \$1,500 multiplied by 100). This should be stated as 8.06 per cent less than the VDO price for advertising or presentation purposes.

Bundled offers

- 6.36. The requirements in subdivision 2B, division 10, part 2 of the code only apply to electricity offers. However, the other requirements outlined in this guideline apply to gas offers as well. Retail marketers who offer a bundled electricity and gas plan must therefore ensure they comply with subdivisions 1, 1A and 2A of division 10, part 2 of the code, having regard to the separate obligations applicable to electricity and gas.

7. Communications covered

Section 7 of the guideline applies to both electricity and gas.

- 7.1. This guideline only applies to price-based advertising. It does not apply to general advertising.

Communication mediums

- 7.2. The requirements in Subdivisions 1 and 2A, Division 10, Part 2 of the Energy Retail Code apply to any communication of an advertisement, publication or offer for both electricity and gas. Subdivision 2B, Division 10, Part 2 of the code also applies to electricity. These requirements include written and verbal communication of prices or discounts to include any of the following media, but not limited to:

- a) offers over the phone (whether initiated by the customer or retail marketer)
- b) face-to-face, such as shopping centre sales
- c) door-to-door sales
- d) magazines, newspapers or journals
- e) radio
- f) web-based or online, including energy price comparator websites
- g) television
- h) social media
- i) billboards or posters
- j) direct mail, catalogues and leaflets
- k) public transport advertising such as on trains, trams, buses, taxis or bicycles.

- 7.3. Clauses 60B and 64A of the Energy Retail Code also require retail marketers to use clear, simple and easily understood communication to assist small customers with understanding plan attributes, including discounts, rebates, credits and prices.

Visual communications

- 7.4. In visual communication to consumers, retail marketers should consider the use of colour, font size or other visual tools to ensure the information required by the Energy Retail Code is clearly and conspicuously displayed and easily distinguishable from other information.

Appendices

The commission does not consider the information to be conspicuous if other information or elements of the advertisement, publication or offer are given more emphasis. For example, on a retail marketer's website, on any page that refers to specific prices and offers, the information required by the Energy Retail Code should be easy to find without navigating through other content.

Oral communications

- 7.5. In oral communication to consumers such as radio advertising or offers over the phone, retail marketers should have regard to speed, volume and other audio tools to ensure information required by the Energy Retail Code is clearly audible and emphasis is placed on this information compared to other statements, dialogue or sounds.

Video communication

- 7.6. In video communication such as television advertisements or online video material, retail marketers should have regard to appropriate visual tools and sound elements when presenting a specific price or discount.

Advertising specific distribution zones

- 7.7. Retail marketers are able to advertise an offer specific to a customer type and distribution region across a jurisdiction or state, provided it is clear the offer relates only to a specific distribution region.

Definitions for the 'advertising energy offers' draft guideline

annual reference consumption for a *regulatory period*, in relation to supplying electricity in a *distribution zone* to a *customer* of a particular *type*, means the matters determined under clause 15(5) of the *VDO Order* for the *regulatory period* in relation to the supply;

Note: The insertion of this clause and clause 64G does not provide for the matters provided for in subclauses 15(4) and 15(5) of the *VDO Order*. By the proviso to subclause 15(1) of the *VDO Order*, subclauses 15(4) and 15(5) of the *VDO Order* continue to apply.

associate of a *retailer* includes –

(a) an employee or agent of the *retailer*; and

(b) a person contracted by the *retailer*; and

(c) a person who receives or is contracted to receive commissions from the *retailer*;

conditional discount means a reduction to the price or tariff for the supply of *energy* that applies only if a *customer* satisfies certain requirements or conditions, and:

(a) subject to paragraph (b), includes a conditional rebate or a conditional credit; and

(b) does not include a discount, rebate or credit if all the conditions on it relate to the circumstances in which a *customer* enters into a *customer retail contract* (for example, a one-off sign-up credit);

conditional price for a *proportional conditional discount* means the total annual amount a *representative customer* would be charged for the supply of electricity in the *regulatory period* at the *offered prices*, assuming the conditions on the discount were met and disregarding any other *conditional discounts*;

customer means a person:

(a) to whom *energy* is sold for premises by a *retailer* or *exempt person*; or

(b) who proposes to purchase *energy* for premises from a *retailer* or *exempt person*;

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

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

(b) a service relating to a *connection* alteration for the premises;

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

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

distribution zone means the area in which a distributor is licensed to distribute and supply electricity under the *Electricity Industry Act*;

energy means electricity or gas or both;

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

(a) *customer connection services*; or

(b) *customer retail services*; or

(c) a supplier or prospective supplier of *customer connection services* or *customer retail services*,

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

lowest possible price means the total annual amount a *representative customer* would be charged for the supply of electricity in the *regulatory period* at the *offered prices*, assuming the conditions on all *conditional discounts* (if any) mentioned in the advertisement, publication or offer were met.

Note: If the advertisement, publication or offer does not mention any *conditional discounts*, the *lowest possible price* is the *unconditional price*.

offered prices has the meaning given in clause 64F(1)(a): advertised or published *prices* for the supply of electricity.

price:

(a) subject to paragraph (b), includes a tariff or charge of any description, including a recurring fee (for example, an annual membership fee); and

(b) does not include any of the following:

(i) a one-off fee (for example, a connection fee or reconnection fee or an account establishment fee);

(ii) a fee for making, or failing to make, a payment in particular circumstances (for example, a credit card transaction fee or a direct debit dishonour fee);

(iii) a fee for a service provided on request on an ad-hoc basis (for example, a fee for a meter read requested by a customer);

proportional conditional discount means a *conditional discount* that is calculated as a proportion of all or part of the amount a *customer* is charged for the supply of electricity at the *offered prices*;

regulatory period means a period during which a *VDO price determination* applies;

representative customer, in relation to supplying electricity in a *distribution zone* in a *regulatory period* to a *customer* of a particular *type*, means a *customer* of that type who is supplied with electricity in that *distribution zone* in the *regulatory period* in accordance with the *annual reference consumption* for that *regulatory period* in relation to the supply;

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

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

type means a type of *customer* in respect of which the commission determines an *annual reference consumption* under clause 15(5)(b)(i) of the *VDO Order*;

unconditional price means the total annual amount a *representative customer* would be charged for the supply of electricity in the *regulatory period* at the *offered prices*, disregarding any *conditional discounts*;

Victorian default offer means any offer to supply or sell electricity that is subject to a regulated price pursuant to the *VDO Order*;

VDO Order means the Order in Council made under s 13 of the *Electricity Industry Act* published in Special Gazette No. S 208, on Thursday 30 May 2019 and as amended from time to time;

VDO price for a *regulatory period* in relation to supplying electricity in a *distribution zone* to a *customer* of a particular *type* means the estimated annual cost of the *Victorian default offer* determined under clause 15(4)(a) of the *VDO Order* for the *regulatory period* in relation to the supply.

Note: See the note to clause 64F: The insertion of this clause and clause 64G does not provide for the matters provided for in subclauses 15(4) and 15(5) of the *VDO Order*. By the proviso to subclause 15(1) of the *VDO Order*, subclauses 15(4) and 15(5) of the *VDO Order* continue to apply.

VDO price determination means a price determination by the *Commission* pursuant to the *VDO Order*;

Appendix A of the 'advertising energy offers' draft guideline

This is clause 15 of the VDO Order⁹² made on 30 May 2019 as amended from time to time.

15. Victorian default offer tariffs to be the reference tariffs for discounts

1. This clause applies until such time as the amendments to the Energy Retail Code required by clause 16(2)(a) come into force.
Provided that, if those amendments do not provide for any matter provided for in this clause, then this clause continues to apply in respect of that matter.
2. A retailer that offers a discount to a domestic customer or a small business customer must:
 - (a) if the discount is in respect of the period from 1 July 2019 to 31 December 2019, disclose how the discount is calculated as against the tariffs in Schedule 1 or Schedule 2 (as the case may be), and what (in percentage or dollar terms) the reduction in tariff is in terms of those tariffs; and
 - (b) if the discount is in respect of a regulatory period, disclose how the discount is calculated as against the flat tariffs determined by the Commission pursuant to the VDO price determination that applies in respect of that period, and what (in percentage or dollar terms) the reduction in tariffs is in terms of those tariffs.
3. For the purposes of subclause (2), the reduction in tariffs is to be expressed as the difference between the estimated annual cost of the Victorian default offer for the customer type and distribution zone, and the estimated annual cost of the offer to which the discount relates after the discount is applied, using the annual reference consumption.
4. For the purposes of subclause (3):
 - (a) the estimated annual cost of the Victorian default offer is:
 - i. during the period from 1 July 2019 to 31 December 2019, determined by applying Schedule 3;
 - ii. during a regulatory period, determined by applying Schedule 3 or any other approach or methodology determined by the Commission; and

⁹² VDO Order available at: <http://www.gazette.vic.gov.au/gazette/Gazettes2019/GG2019S208.pdf>.

(b) the retailer must determine the estimated annual cost of the retailer's offer to which the discount relates:

- i. if the tariff is a flat tariff or a flexible tariff (in either case, with or without a controlled load), by applying Schedule 3;
- ii. otherwise, based on a reasonable estimate having

5. The annual reference consumption is:

(a) during the period from 1 July 2019 to 31 December 2019:

- i. for domestic customers without a controlled load – 4,000 kWh general usage per annum;
- ii. for domestic customers with a controlled load – 4,000 kWh general usage plus 2,000 kWh controlled load usage per annum;
- iii. for small business customers (with or without a controlled load) – 20,000 kWh general usage per annum.

(b) during a regulatory period:

- i. the consumption amount determined by the Commission (if any); or
- ii. if no amount is determined by the Commission pursuant to subclause (5)(b)(i), the amount specified in subclause (5)(a).

6. For the purposes of subclause (5), the amount of electricity consumed is assumed to be the same on each day of the year.

7. Any percentage or dollar amount disclosed pursuant to this clause must be expressed as a whole percentage or dollar, rounded to the nearest percentage or dollar.

8. Otherwise, Division 2 of Part 2A (*Customers entitled to clear advice*) of the Energy Retail Code applies to the disclosures required by this clause.

Appendix D: Draft guideline – applying for an exemption to comply with clause 46AA of the Energy Retail Code

Purpose of this guideline

The purpose of this document is to provide information to energy retailers and other interested parties about how a licensee can apply to the Essential Services Commission (the commission) for an exemption to comply with clause 46AA of the Energy Retail Code. This final document is published as a guideline made under section 13 of the Essential Services Commission Act 2001.

This document does not contain the criteria or considerations the commission will have regard to in granting or refusing an exemption. The commission will exercise its discretion to grant or refuse an exemption to a licensee, for an energy offer that does not comply with clause 46AA, on a case-by-case basis.

A licensee must not make an energy offer to customers that does not comply with clause 46AA before the commission has made a decision to grant or refuse an exemption to a licensee. In this case the licensee may be non-compliant with its licence conditions and obligations under the Energy Retail Code.

Applying for an exemption

This section outlines the information the commission requires and the process for providing the information to apply for an exemption.

Information required

The commission requires the following information from licensees:

1. The legal name of the applicant.
2. The licence details of the applicant.
3. Details of what the licensee is proposing to do, including comprehensive information about the product attributes, and why the product would not be compatible with specific rules in the Energy Retail Code.
4. The licensee needs to demonstrate to the commission what the benefits are for customers on the product they are proposing.
5. The licensee needs to demonstrate how it meets the objectives of Division 7A of the Energy Retail Code.
6. Provide details of the proposed timeframes for implementation of the product into the market.

Applicants should ensure they provide all relevant information and material to the commission to allow sufficient time for the application to be assessed. The commission will endeavour to process applications in a timely manner.

Important note: the information requirements set out in this guideline is not intended to be an exhaustive list of the information that may ultimately be required by the commission in determining the application for an exemption. The commission may request further information at any stage prior to making a final decision on the application for an exemption.

How to apply

Applications for exemptions must address the information requirements listed above and must be submitted to the commission in writing either by emailing or writing to:

compliance.reporting@esc.vic.gov.au

Energy Division

Essential Services Commission

Level 37, 2 Lonsdale Street

Melbourne VIC 3000

Appendix E: Draft guideline – maximum cap for pay-on-time discounts

Purpose of this guideline

The purpose of this document is to provide information to energy retailers and other interested parties on the cap that applies to pay-on-time discounts offered as part of any market retail contract entered into on or after 1 July 2020. This final document is published as a guideline made under section 13 of the Essential Services Commission Act 2001.

What is the pay-on-time discount cap?

As of 1 July 2020, we amended the Energy Retail Code to insert a new cap on conditional pay-on-time discounts:

46AB(1) Any *pay-on-time discount* in a *market retail contract* must not exceed the amount that the Commission specifies in a guideline published under section 13 of the *Essential Services Commission Act 2001* that is in effect at the time that the contract or arrangement is entered into.

The Essential Services Commission (the commission) will determine the maximum discount that a retailer is permitted to offer to customers as a condition of paying on time. This rule was introduced as part of a package of reforms to ensure energy contract and discounting practices are clear and fair. Further information about the background to the cap is available [here](#).

How the cap is set

The methodology used to calculate the pay-on-time discount cap is the sum of:

- the 10-year Australian Commonwealth Government Bond Rate using a 40-day trailing average (a proxy for the risk-free rate)
- a debt risk premium derived based on the difference between the yield on 10-year BBB+ corporate bonds and the risk-free rate
- an allowance for debt raising costs based on information from Treasury Corporation of Victoria.

This figure is the maximum percentage discount a retailer could apply to a customer's bill that would be conditional on the customer paying that bill on or before the pay-by date.

How the cap is updated

The commission will update the cap annually. Data as of 31 May will be used to determine the level of the cap that will take effect from 1 July for the financial year.

The commission will update this guideline before 1 July each year and write to all electricity and gas licensees in Victoria to notify retailers of the new cap level.

Current level of the cap

The maximum pay-on-time discount cap effective from 1 July 2020 is [TBC] per cent.

Appendix F: Summary of consumer testing

We commissioned the Behavioural Insights Team (BIT) to conduct consumer testing on our behalf to determine the most effective way of presenting information about energy plans in advertisements to customers. This testing informed the design of our proposed electricity reference price requirements. The full report from BIT is available on our [website](#). Below is a summary of key findings.

Trial design

BIT ran an online experiment involving a representative sample of 2,023 Victorian customers. Respondents were shown pairs of advertisements for energy plans and were asked to pick the cheapest plan as if they were choosing for a relative. Respondents were randomised into one of four groups, each of which saw the advertisements with the information presented in a slightly different way.

The headline information in the advertisements for each of the groups was:

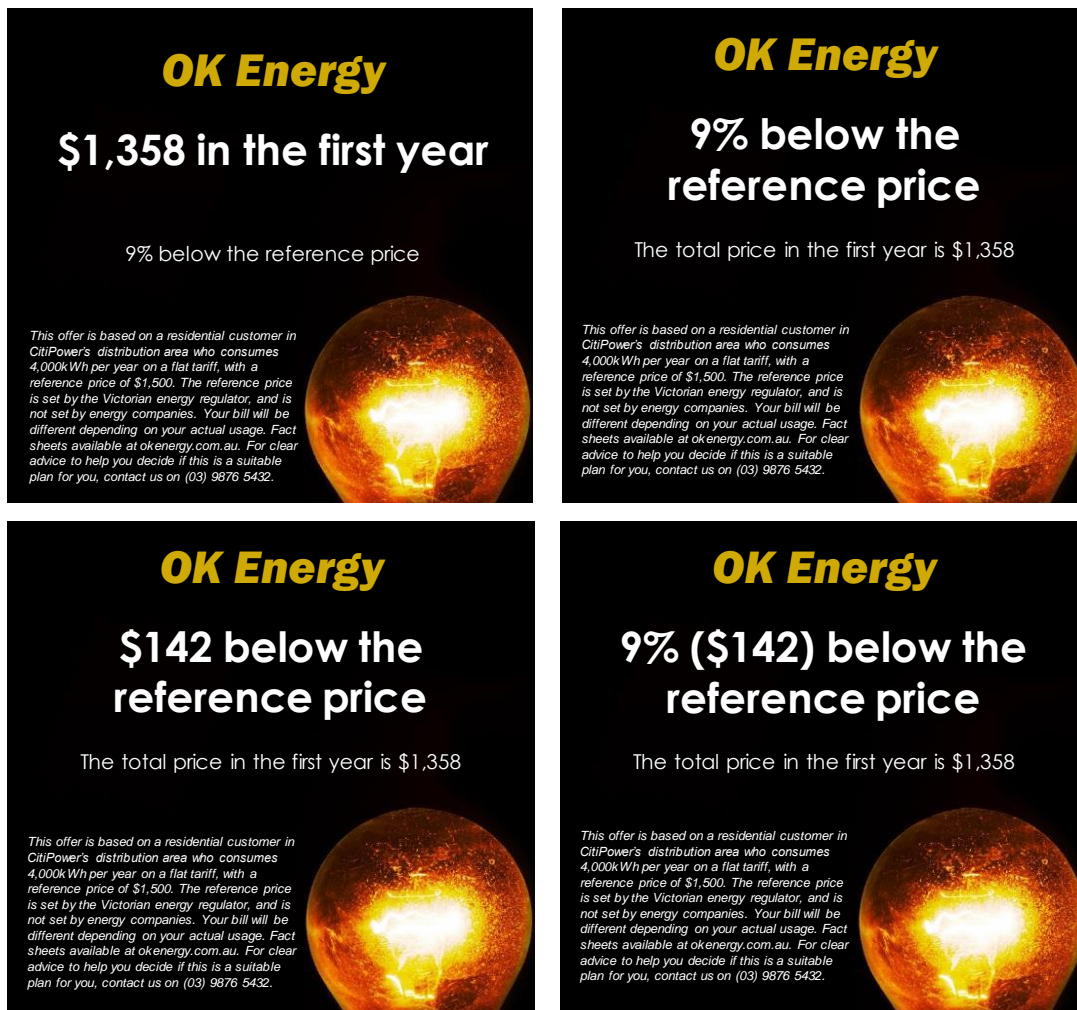
1. How much the plan would cost per year in dollars
2. How the plan cost compares to the VDO price as a percentage
3. How the plan cost compares to the VDO price in dollars
4. How the plan cost compares to the VDO price both as a percentage and in dollars

Figure 13 shows how the information was presented for each of the groups.⁹³

Respondents saw 24 scenarios (pairs of advertisements) in total, which included offers with a conditional discount, a conditional discount with a one-off credit, an unconditional discount and an unconditional discount with a one-off credit.

⁹³ The footnote in the advertisement states “This offer is based on a residential customer in CitiPower’s distribution area who consumes 4,000kWh per year on a flat tariff, with a reference price of \$1,500. The reference price is set by the Victorian energy regulator, and is not set by energy companies. Your bill will be different depending on your actual usage. Fact sheets available at [website]. For clear advice to help you decide if this is a suitable plan for you, contact us on [phone number].”

Figure 13 Presentation of information for four groups of respondents

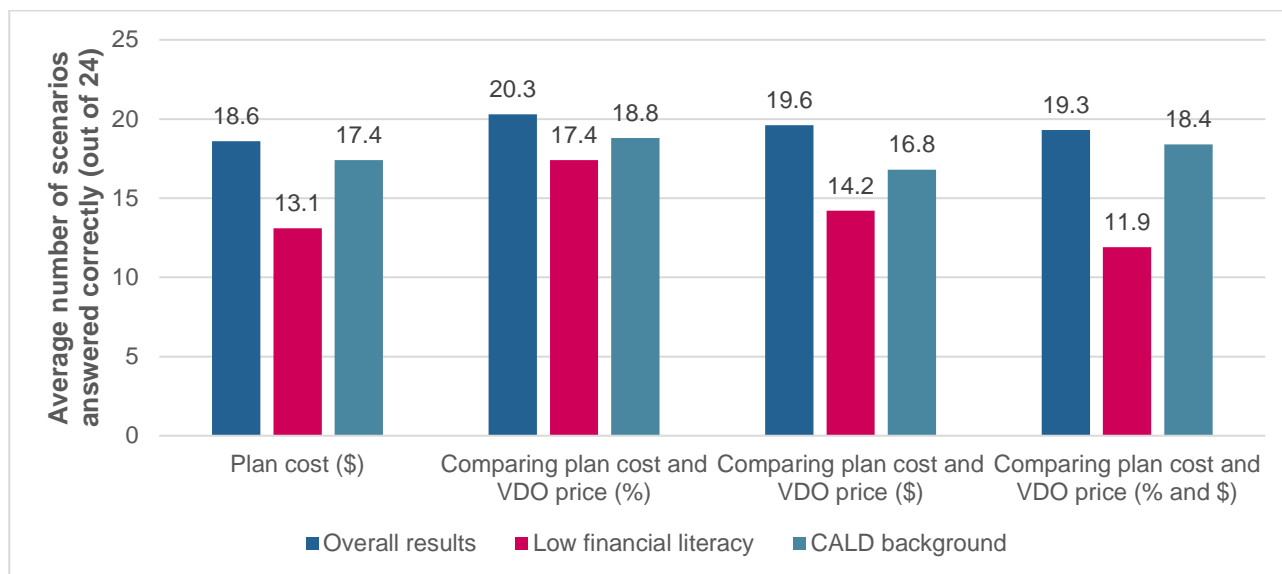


Key results

Respondents were more likely to correctly identify the cheapest plan when the headline information in the advertisement included a comparison to the VDO price in the headline. Groups two, three and four all scored between 0.7 and 1.7 scenarios better than group one which just included the annual cost of the plan.

Respondents correctly identified the cheapest plan most frequently (an average of 20.3 out of 24 scenarios) in group two, where the headline information showed the difference between the plan cost and the VDO price as a percentage. Notably, this result was more pronounced for respondents with low levels of financial literacy and was also observed for respondents from culturally and linguistically diverse backgrounds (see figure 14).

Figure 14 Selected results from consumer testing



Source: Behavioural Insights Team

Other results

We also asked respondents a series of questions about their behaviour and interactions with the energy market. Below we highlight some key insights relating to the use of reference prices.

Understanding of what a reference price is

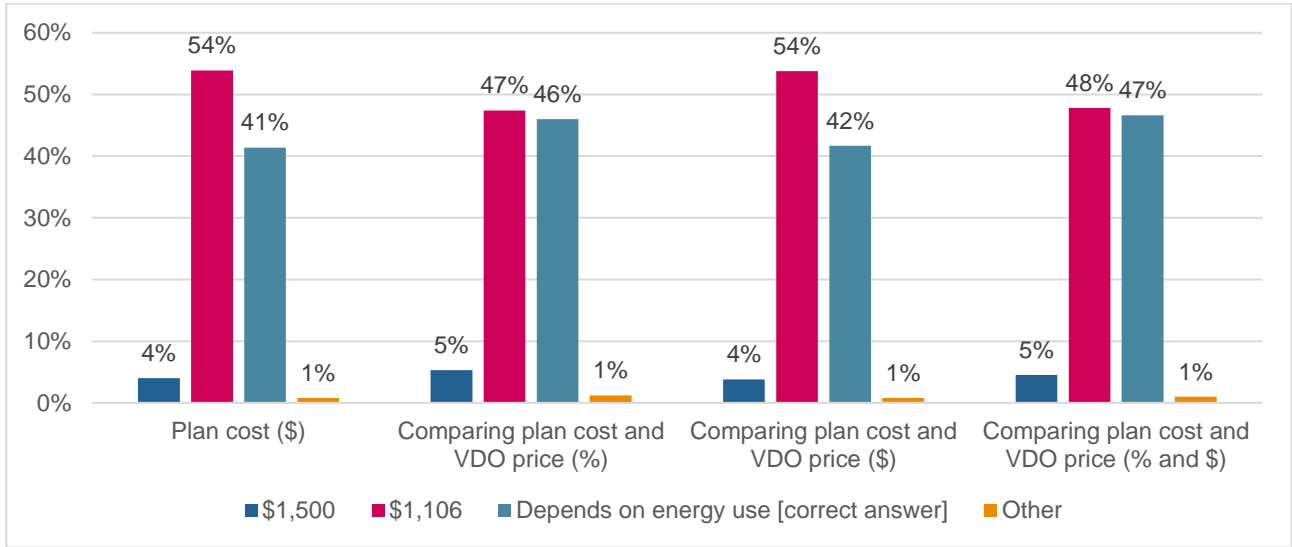
We asked respondents what they thought the reference price referred to in the advertisements they were shown was. Just over half (54 per cent) correctly identified that it is a standard price set by the government that all energy companies have to base their offers on. 31 per cent thought it was a standard price, but one that each energy company calculates differently, and 15 per cent thought it was just energy company marketing.

Understanding of what a customer would pay in practice

We showed respondents a single example advertisement for an offer, presented in the same way as the other advertisements they had seen during the experiment. We asked how much they thought someone who choosing that plan would pay in the first year. In the given example, the total unconditional cost shown for the first year was \$1,106 (based on average annual consumption) and the reference price was \$1,500.

Across each group, most respondents (between 47 and 54 per cent) thought that the plan would cost \$1,106 in practice, which was not the correct answer. The second most popular answer was the correct one, that the price paid would depend on how much energy the customer used.

Figure 15 What customers thought they would pay in practice for a given plan



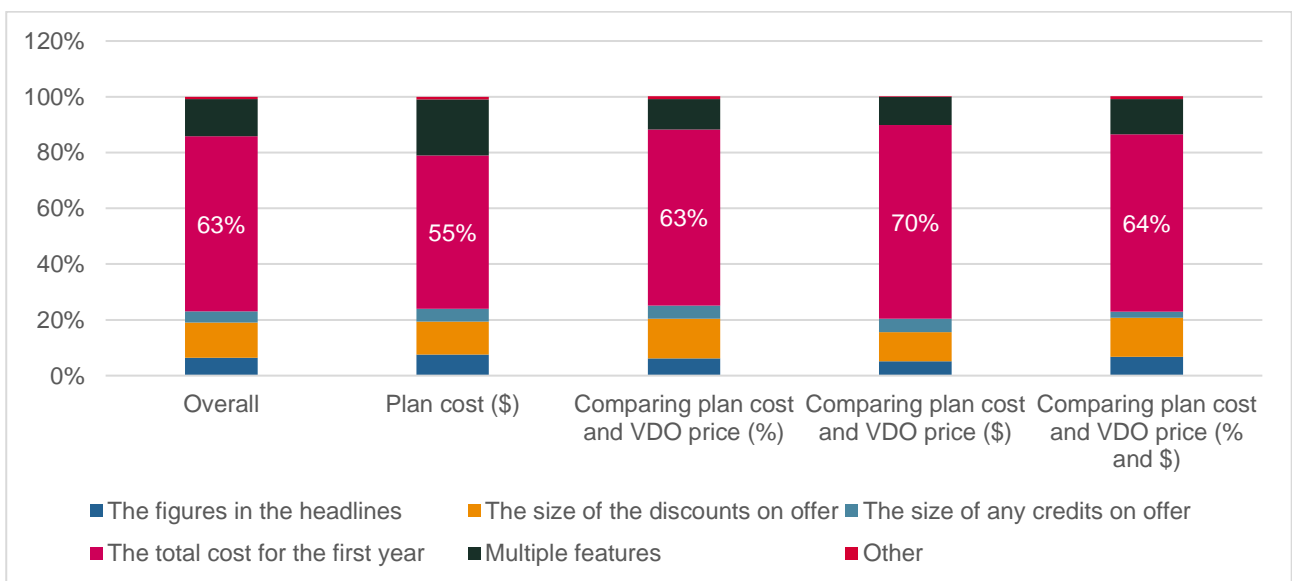
Source: Behavioural Insights Team

On average, more respondents in groups two and four were able to answer this question correctly, with around five per cent more accurate answers than in groups 1 and 3. BIT hypothesise that having a percentage figure in the headline (as in groups two and four) helped customers understand that the amount saved will ‘scale’ depending on the underlying cost.

Factors that customers use to make decisions

We asked respondents what feature helped them decide what the cheapest plan was in the experiment. The majority (63 per cent) focused on the total cost for the first year, though the proportion varied slightly across groups.

Figure 16 The main feature respondents reported using to choose the cheapest plan in the experiment



Source: Behavioural Insights Team

Appendix G: Summary of academic research

We commissioned academics Associate Professor David Byrne and Dr Gordon Leslie to provide an independent view of market design considerations relating to implementation options for recommendation 4A. The full report they produced is available on our [website](#). Below is a summary of key findings.

The five implementation options considered were:

- do nothing
- all retailers must offer one contract where prices are fixed for the first 12 months
- the price of all contracts must be fixed for the first 12 months
- price changes can only occur at set times during the year
- call-to-market for 12-month fixed-price contracts (with a centralised retail exchange option).

Byrne and Leslie assessed the implementation options by considering the impact each would have on consumer search costs, both for engaged and disengaged customers, and whether there could be any unintended consequences such as impacts on competition.

Option 1: Do nothing

Byrne and Leslie noted that this option would maintain the status quo and so would not reduce consumer search costs, though it would maintain the current competitive environment and incentives for innovation. They considered this would not be the best option, as other well-designed options could lead to potential efficiency gains.

Option 2: All retailers must offer one contract where prices are fixed for the first 12 months

Byrne and Leslie considered that this option would have little market impact, as it would just lead to an additional product for customers to consider. Engaged consumers would continue to shop around for better deals and so would likely be unaffected. Disengaged consumers may not be aware that these 12-month fixed contracts are available or put in the effort necessary to find the best contract for them.

Byrne and Leslie suggested that disengaged customers' search costs could be reduced by policy makers publicising a list of available 12-month fixed-price contracts, making clear the rank order of the contracts for a "typical" consumer in the market. However, they noted challenges to the effectiveness of public information campaigns and that public announcements of this nature may lead to tacit price coordination and ultimately higher prices across the market.

Option 3: The price of all contracts must be fixed for the first 12 months

Byrne and Leslie noted that this option would mean that customers would not need to track the price of their deal for the first 12 months but highlighted some major concerns.

This option would limit retailers' ability to compete for engaged consumers, such as by offering introductory discounts or short-run contracts. It would also give firms no flexibility to adjust rates to reflect changing wholesale supply conditions over time.

Even if retailers were allowed to offer contracts to new customers at new prices throughout the year, Byrne and Leslie expected that prices across the market would increase to account for an increased risk premium. They considered that the problems caused by firms not being able to respond to wholesale cost conditions would likely dominate any reduction in consumer search costs.

Option 4: Price changes can only occur at set times during the year

Byrne and Leslie highlighted that this option would provide a focal point in the retail market and the competition calendar when all prices would be reset or rolled over. They noted that customers entering a new contract closer to the price reset date would have certainty of their tariff conditions for a shorter time and may incur search costs again soon after to determine their new best offer.

Byrne and Leslie considered that, all else being equal, contracts entered into closer to the price reset date would be priced lower as the retailer would face less exposure to changing market conditions. This could be affected by whether there is one- or two-sided commitment (whether consumers are able to leave the contract and switch retailers before the reset date or not).

Other factors to consider:

- an information campaign could increase the effective of this option, to raise awareness of price adjustment events and help reduce search costs
- if firms could choose the timing of their price reset date and dominant retailers updated their price levels first, this could result in price leadership and increase overall price levels
- aligning the price reset date with VDO timing could help simplify regulation. Byrne and Leslie also suggested that option 4 could be implemented in a way that creates a class of products which are price-linked to the VDO.

Option 5: Call-to-market for 12-month fixed-price contracts

Byrne and Leslie considered two versions of this option. The simple version would be similar to option 2, with the policy maker publishing information on 12-month fixed-price contracts from retailers, though this would be at specified times during the year when the call-to-market was run. If this was done at consistent times e.g. once a year, over the long run consumers could form habits

in search behaviour. However, besides this cyclical aspect, Byrne and Leslie noted that the option may not add value compared to directing customers to Victorian Energy Compare.

An extended version of this option could involve the policy maker also coordinating the demand side of the market, creating an exchange for energy contracts. As well as collecting 12-month fixed-price contracts from retailers, the policy maker could recruit customers who want to switch based on the outcome of competitive bidding through the exchange. This could give customers the opportunity to opt out of shopping for their own contract, and instead be switched to the cheapest 12-month fixed-price contract every year. Byrne and Leslie consider that this version of option 5 could be much more effective and would be their preferred market design in implementing recommendation 4A.

Appendix H: Role of the commission

Role of the Essential Services Commission

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

The *Essential Services Commission Act 2001* (Vic) sets out the commission's overarching objective to promote the long-term interests of Victorian consumers.⁹⁴ The commission is also guided by objectives under the *Electricity Industry Act 2000* (Vic) and *Gas Industry Act 2001* (Vic) to promote the protections for customers, including in relation to customers who are facing payment difficulty.⁹⁵

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

The Energy Retail Code is the principal instrument used to set out retailers' obligations and was first established in 2002.⁹⁶ The commission amends the code to reflect new reforms and other changes. Version 13 of the code is currently in force today.

⁹⁴ Section 8 Essential Services Commission Act 2001 (Vic).

⁹⁵ Section 10(c) Electricity Industry Act 2000 (Vic) and section 18(c) Gas Industry Act 2001 (Vic).

⁹⁶ The commission replaced the Office of the Regulator-General (ORG), which was established to oversee regulation of electricity and gas industries during the privatisation of the industry and accompanying establishment of markets in generation, distribution and retail segments of the industry. The legislative objective for the ORG in relation to consumers was expressed as: "to ensure that users and consumers benefit from competition and efficiency" (Office of the Regulator-General Act 1994 (Vic), s7(1)(e)).