

Submissions on the 'Consequential amendments relating to the Victorian Default Offer: Draft decision'

We received 13 submissions on the 'Consequential amendments relating to the Victorian Default Offer: Draft decision', which was released on 8 May 2019.

Feedback came from:

- eight retailers
- two consumer groups
- an energy business representative group
- the Energy and Water Ombudsman (Victoria).

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22 May 2019

Consequential amendments related to the Victorian Default Offer

AGL Energy (AGL) welcomes the opportunity to comment on the Consequential amendments related to the Victorian Default Offer Draft Decision (draft decision) issued by the Essential Services Commission of Victoria (ESC) on 8 May 2019.

AGL recognises that the Victorian Default Offer Draft (VDO) will start from 1 July 2019 and seeks the best customer experience by minimising the potential for customer confusion and allowing a smooth implementation for energy retailers. We have provided thoughts below on how this can best be achieved.

Draft Decision 1

AGL supports this draft decision and has no substantive comments.

Draft Decision 2

AGL has no substantive comments on this draft decision.

We recognise that this is complicated by the obligations to supply that exist under the Energy Retail Code but are generally supportive of the intent that in instances where the VDO is the best offer for that customer, all retailers should communicate the VDO to customers in transparent manner through the clear advice entitlement.

Draft Decision 3

AGL does not support the proposed drafting of this decision as we do not believe it is in the consumers' interest and is more likely to result in consumer confusion, distrust and potentially inertia.

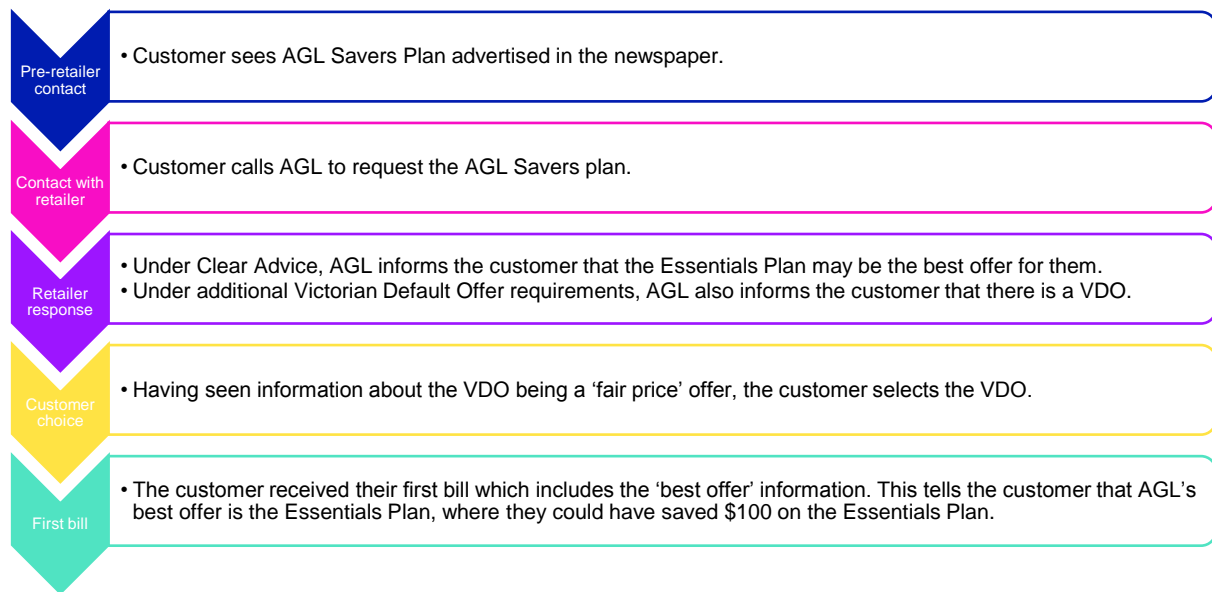
We believe this draft decision does not align and potentially contradicts the objectives of the October 2018 Clear Advice Entitlement and Best Offer changes. Further, AGL believe this requirement is unnecessary as we understand that retailers will be required to inform customers how to access the VDO through a bill message.

Customer experience

While we agree that customers should be made aware of the VDO, this should only be done where it is reasonably considered to be the best offer for the customer. Consider the following example in Figure1

where a customer may be easily confused due to the need to inform them of the VDO despite it not being the best offer for their circumstances.

Figure 1: Example of customer experience in accessing an energy plan



The practical application of this draft decision would likely lead to poorer outcomes for both consumers and retailers and would not engender trust or a positive experience.

By overloading the consumer with choice, or information that appears conflicting there are two key risks:

- i. **Encouraging customer inertia** – overwhelmed by the available information, consumers do not know how to prioritise it and fall back to using heuristics, which may well result in them making no decision at all.¹
- ii. **Fostering distrust** – The ESC has based a lot of their recent decision making on the premise that trust needs to be built between retailers and consumers.² Examples such as the above would counter this, by informing the customer of a 'fair price set by government' that may not be the best offer based on the customer's circumstances. The consumer may feel deliberately tricked or confused by the retailer.

We encourage decision-making that ensures clear, simply information to the customer to help build that trust and therefore recommend removing VDO references from Clear Advice Entitlement (CAE) requirements, unless it is the best offer for the customer.

We have included an example of a script engagement with a Victorian customer to elaborate on this point ([REDACTED]). This scripting does not include other obligations or resolving other customer queries but demonstrates both a poor customer experience as it will increase the length and complexity of the call for the customer.

¹ <https://www.aemc.gov.au/sites/default/files/content/c74a8d35-8472-4f81-a2b1-a68d6392a0e9/RPR-0004-Consultant-Report-5-Oxera-Behavioural-insights-into-Australian-retail-energy-markets.PDF>

² Essential Services Commission Victoria, *Building Trust Through New Customer Entitlements in the Retail Energy Market: Final Decision*, 30 October 2018



Implementation requirements

We also note the implementation timeframes as being overly restrictive to introduce this new obligation under the CAE. The CAE final decision was delivered on 30 October 2018 and AGL has invested heavily in developing a project and implementation plan to deliver the requirements. This final decision represents a substantial change management project for the business to ensure that relevant staff scripting, advice, training is developed, that internal processes and systems are upgraded, and appropriate risk and compliance frameworks are built around the obligations.

Retailers will not be receiving the full scope of the Energy Retail Code consequential amendments for VDO obligations until June, with an implementation date of 1 July 2019.

This draft decision will require adjustments to our existing change management project for CAE and best offer that is hampered by time constraints and introduces new risks that must be considered. As we have previously raised with decision-makers, retailers often rely on third party providers such as mail houses for the dissemination of information to customers (including billing and notification communications).

Given the time line, our mail houses will have already been briefed with content information and it will be unlikely that AGL can meet this new obligation. If retailers are not given appropriate time to implement changes, there is a risk to both retailer compliance as well as the overall consumer experience, such as engagement through our call centres and the thoroughness of staff training and comprehension of all new obligations.

If you have any questions, please contact Patrick Whish-Wilson at [REDACTED].

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Elizabeth Molyneux'.

Elizabeth Molyneux
GM of Energy Markets Regulation

Essential Services Commission
Level 37, 2 Lonsdale St
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Lodged by email: retailenergyreview@esc.vic.gov.au

22 May 2019

Consequential amendments related to the Victorian Default Offer – Draft Decision

The Australian Energy Council (the AEC) welcomes the opportunity to make a submission to the Essential Services Commission (ESC) on the Consequential amendments related to the Victorian Default Offer (VDO) Draft Decision (the Draft Decision).

The AEC is the industry body representing 23 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

The ESC makes three draft decisions. The AEC supports the first draft decision, noting that it does not appear to impose any additional obligations on retailers. We are comfortable with Draft Decision Two where the retailer is the designated retailer, but not for customers where the retailer has no obligation to offer the VDO. We oppose Draft Decision Three, and consider if implemented in the manner proposed would lead to an increase in customer confusion.

Draft Decision 1

Clause 70P of the Draft Decision expands the recently developed definition of ‘*deemed best offer*’ to explicitly require retailers to direct customers to the VDO if it is the best offer for their individual circumstances. We are comfortable with this addition, but note that it does not appear to amend the existing obligations created in the October 2018 Final Decision “Building trust through new customer entitlements in the retail energy market”. The AEC considers the existing definition of generally available offer – stated in the new part 2A to be “any plan that is available to any customer in the relevant distribution zone unless it is classified as a restricted plan” – would capture the VDO. If the VDO is the retailers best generally available offer, then the retailer would already be required to display that offer on the bill.

Draft Decision 2

The AEC does not consider that Draft Decision 2 aligns with the obligations under clause 16 of the ERC. Where the retailer is the designated retailer, and the VDO is in fact the best offer for that customer, we agree that the customer should be informed of the VDO as part of the clear advice entitlement. However, if the retailer is not designated, there can be no obligation to offer the VDO to the customer. Given this, we suggest the drafting of 70P be amended to only require retailers to inform customers of the applicable VDO for which they are entitled.

Draft Decision 3

The AEC opposes Draft Decision 3 at this time. Unlike the other two draft decisions, Draft Decision 3 is not consequential to the implementation of the VDO. While some stakeholders might consider it beneficial, it is

inappropriate to be imposing non-essential obligations on retailers at such a late juncture, without proper merits assessment.

Process notwithstanding, the AEC has concerns about the practical implications of this decision on customers. Unlike Draft Decision 2, the retailer would be expected under this obligation to advise the customer of the availability of the VDO when the VDO would not be beneficial for that customer based on the regulated definition of *deemed best offer*. We do not agree with the views of some customer advocates that there will be customers who are better off paying more on the VDO than signing up to a cheaper market offer.

For this reason, advising customers that there is an alternative “fair price” that is available (but more expensive) will only serve to increase distrust of retailers. While we understand the Government’s desire to ensure customers are aware of the presence of the VDO, including it in the clear advice entitlement – an obligation designed to be tailored to provide the information a customer needs to know to make an informed decision – does not seem beneficial. The AEC expects that there will be adequate information about the existence of the VDO outside of confusing customers in the clear advice entitlement.

We recommend the ESC revisit the merits of Draft Decision 3 at a future time where a more appropriate consultation timeframe is possible.

For any questions about our submission please contact me by email at [REDACTED]

Yours sincerely,



Ben Barnes
Director, Retail Policy
Australian Energy Council



22 May 2019

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

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

Consequential amendments related to the Victorian Default Offer – Draft Decision

Alinta Energy welcomes the opportunity to comment on the Commission's "Consequential Amendments related to the VDO Draft Decision."

Alinta is an active investor in energy markets across Australia with an owned and contracted generation portfolio of nearly 3,000MW, including 1,700MW of gas-fired generation facilities and 1,070MW of thermal generation facilities. We have in excess of 1.1 million electricity and gas customers including more than 600,000 in east coast markets, and are therefore well placed to comment on the Draft Decision and the questions raised by the ESC in the consultation paper.

Alinta recognises the need for consequential changes to the Energy Retail Code (ERC) to ensure the objectives of the Independent Review into the Electricity and Gas Retail Markets in Victoria are achieved without any ambiguity or mis-alignment across the regulatory framework. Alinta supports Draft Decision 1, but notes that changes are required to Draft Decision 2 and 3 to ensure these objectives are achieved. Alinta would also like to propose an additional consequential change to the ERC to ensure all generally available offers are consistently considered when meeting requirements associated with clear advice and the best offer check.

Our detailed comments in response to the Commission's questions are set out below. Should you have any questions or require any additional information please contact Ante Klisanin on [REDACTED]

Yours sincerely,

Graeme Hamilton
General Manager – Government and Regulatory Affairs

Consultation questions

Draft Decision 1

The deemed best offer must be the lowest cost of a generally available plan or Victorian Default Offer applicable to the customer.

As proposed in the Draft Decision, clause 70(2) extends the *deemed best offer* check for existing customers to include the Victorian Default Offer (VDO). Alinta views the *deemed best offer check* as a key outcome from the ESC's Final Decision; *Building trust through new customer entitlements in the retail energy market* (the Final Decision). Extending the *deemed best offer check* beyond *generally available offers*, in our view, is aligned to the objective of the deemed best offer. As described in Clause 70O;

The objective of this Division is to give small customers an entitlement to prominently displayed, helpful information that enables them to easily:
(1) identify whether they are on their retailer's deemed best offer;

To that end, if the *deemed best offer* is indeed the VDO, Alinta views this as a new customer entitlement that should be identified and prominently displayed on customer bills. As described in the Final Decision;

requiring retailers to notify customers of savings that would be available to them if they were on their retailer's best offer. It reflects an ethos that customers, including customers who by choice or circumstance do not actively engage with the market, should be provided greater assistance to navigate its complexity.¹

This entitlement is designed to 'nudge' existing customers to consider the dollar savings of their existing offer against the deemed best offer. This is an entitlement that has been developed for retailers existing customers and should work in parallel with the clear advice obligation in Draft Decision 2. However, Draft Decision 2 requires some revision in order to achieve these objectives, as discussed further below.

Draft Decision 2

A retailer, under the clear advice entitlement, must communicate to a customer information about the retailer's other applicable generally available plans and a Victorian default offer that it reasonably believes may be more suitable for the customer.

As proposed in the Draft decision, clause 70(H)(1)(d);

the retailer's other generally available plans and a VDO applicable to the customer that the retailer reasonably believes may be more suitable for the customer having regard to any information the retailer has regarding the customer wherever it is practical to do so;

¹ www.esc.vic.gov.au/sites/default/files/documents/building-trust-through-new-customer-entitlements-in-the-retail-energy-market-retail-markets-review-final-decision-20181030_0.pdf, p. 32

For the avoidance of ambiguity, Alinta proposes that clause 70(H)(1)(d) be revised to state;

the retailer's other generally available plans and a Victorian default offer (where the retailer is the designated retailer) applicable to the customer that the retailer reasonably believes may be more suitable for the customer having regard to any information the retailer has regarding the customer wherever it is practical to do so;

If this clause is not revised in this manner, these obligations may require retailers to provide advice regarding a plan that a retailer may choose not to offer to a new customer. As drafted, clause 70(H)(1)(d) is mis-aligned with clause 16(3) of the ERC, which states;

*(3) If the retailer is not the designated retailer for the premises and the retailer does not elect to offer the customer (whether at the request of the customer or of its own initiative) a market retail contract, the retailer:
(a) must refer the customer to the distributor for the premises concerned; and
(b) must inform the small customer that the distributor will be able to advise the customer which retailer has an obligation to make a standing offer that is applicable to the customer.*

There are a number of reasons why a retailer would not offer a market retail contract with to new customer, the most common being where a customer has not met the retailer's credit assessment. Retaining clause 70(H)(1)(d) as drafted, would now result in the customer's retailer advising the customer of an offer the retailer is not required to offer. Alinta urges the ESC to consider revising these provisions to align 16(3) of the ERC.

Draft Decision 3

Under the clear advice entitlement, a retailer is to communicate information about the availability of the Victorian Default Offer and how the customer may access the plan from the retailer.

Similar to Draft Decision 2, Alinta views clause 70H(1)(f) as a requirement on retailers that is unnecessary and will diminish the ability of retailers to achieve the objective of the clear advice entitlements. As described in clause 70G of the ERC, the objective of clear advice is to provide;

... clear, timely and reliable information, provided in a respectful manner, to assist the small customer to assess the suitability of, and select, a customer retail contract.

In practical terms, prior to forming a contract, retailers will provide clear advice as to the most suitable offer (which may be the *best offer*) and then retailers will be required to inform customers of the VDO, despite the VDO not being the most suitable and/or *best offer*. There are two concerns with Draft Decision 3 as drafted;

- i. Retailers are not required to offer the VDO where it is not the designated retailer. To that end, retailers will be providing clear advice on the VDO which may not be available to new customers; and
- ii. Retailers will be marketing a product that may not be the most suitable or *best offer* for the customer.

Alinta views Draft Decision 3 as unnecessary and can lead to a counter-intuitive interaction with our customers, causing confusion, lack of confidence and clarity in the energy market offers.

Other Issues

Restricted plans and clarification on Win-back plans

As currently drafted in the Final Decision, a 'win-back' plan is considered a restricted plan. Given that both the clear advice and best offer provisions only consider *generally available offers* and the VDO, Alinta has concerns that there is no sunset or expiry date associated with win-back plans. As such, this broad definition may allow retailers to market win-back plans as exclusive to customers who switched to a new retailer at any time in the past, while avoiding the obligations associated with performing clear advice and *best offer checks*.

We urge the Commission to consider a further consequential change to the ERC to apply an expiry date of 30 days from the date the customer switched to a new retailer for win-back plans to be considered a restricted plan., Alinta views this as a reasonable time period for ending win-back processes. To that end, any marketing to these customers after 30 days would need to be in accordance with requirements associated with generally available offers.

22 May 2019

To Dr Ron Ben-David
Chairman
Essential Services Commission (ESC)
Level 37, 2 Lonsdale Street
Melbourne Victoria 3000
retailenergyreview@esc.vic.gov.au

Dear Dr Ben-David

amaysim submission on Consequential amendments related to the Victorian Default Offer Draft Decision

This submission relates to the Consequential amendments related to the Victorian Default Offer Draft Decision (**Consequential Draft Decision**) released by the ESC on 8 May 2019.

On 4 April 2019, amaysim Australia Ltd (**amaysim**) made detailed submissions to the ESC on the Victorian Default Offer (**VDO**) pursuant to the *Energy Legislation Amendment (Victorian Default Offer) Bill 2019 (VDO Rules)* and the ESC's draft advice to the Victorian Government. In those submissions we set out what we consider to be constructive suggestions (together with our reasons for them) for improvements to the VDO to make it fairer and more effective for consumers and industry. amaysim stands by those submissions.

In this submission, we have sought to provide our specific comments on the Consequential Draft Decision, specifically draft decisions 2 and 3.

Our submissions on draft decisions 2 and 3 of the Consequential Draft Decision

Draft decisions 2 and 3 introduce additional requirements in respect of a retailers' obligation to provide customers with clear advice. Pursuant to these additional requirements, retailers must now inform customers not only of a retailer's "other generally available plans that the retailer reasonably believes may be more suitable for the customer" but also information about the availability of the VDO and how to access it.

We submit that the obligation to advise customers of the VDO in this manner (regardless of its suitability to the customer) is contrary to:

- a) the intent of the clear advice entitlement which is to ensure that "where a retailer has reason to believe that the VDO may be a better option for that customer, the retailer [should] tell that customer about the VDO and how to access it"¹; and
- b) the Terms of Reference, which state that the VDO is to "provide a simple, trusted and reasonably priced electricity option that safeguards consumers unable or unwilling to engage in the retail electricity market without impeding the consumer benefits experienced by those who are active in the market".² (emphasis added)

In our observation, the intent behind the VDO was to safeguard the interests of "disengaged customers" (i.e. standing offer customers paying the so-called "loyalty tax") by requiring retailers to move those customers to the VDO and setting a cap on its price. This crux of the policy was, as per the Second Reading Speech, to "replace costly standing offers", as recommended by the ACCC.³ In our view, having studied the relevant background materials, the VDO was not intended to be a mass offering to all customers, and specifically not to customers who are "active in the market". To this point, we refer to the ACCC's submission to the ESC on the VDO which raised its concern in respect of making the VDO a generally

¹ Consequential amendments related to the Victorian Default Offer Draft Decision released by the ESC on 8 May 2019, page 4.

² Victorian Government, 'Terms of reference for the Essential Services Commission', 21 December 2018.

³ Second Reading Speech to the Energy Legislation Amendment (Victorian Default Offer) Bill 2019, page 723.

available offer:

"The ACCC's concept of a default offer did not envisage that it would be an offer that retailers make available; rather it would operate as a cap on standing offer prices. If consumers are encouraged to ask their retailer to be placed onto the VDO, this risks consumers missing out on better offers that are available in the market".⁴

We reiterate the ACCC's concerns. We note that draft decisions 2 and 3 are not only in conflict with the intention of the VDO as set out in the Second Reading Speech, and the ACCC's views on what constitutes an effective default offer, but also have the potential to cause customer confusion in so far as requiring retailers to offer customers the VDO regardless of its suitability. These amendments effectively make the VDO another generally available plan and may ultimately lead to, as the ACCC have stated, more disengagement in the market as *"individual customers that were shopping around and benefiting from retail competition may disengage and end up paying a higher amount under a VDO"*.⁵

To that end, we submit that the ESC and the Victorian Government consider this conflict in light of the additional requirements under draft decisions 2 and 3 and recommend (in addition to our earlier submissions) that the original wording of the clear advice requirement be reinstated.

Subscription energy pricing

In addition to the above, we reiterate our earlier submission and conversations with the ESC concerning subscription energy products. amaysim has launched such a product in Victoria, which can be found here: <https://www.amaysim.com.au/energy>.

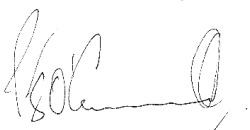
Retailers are increasingly recognising a need in the market to create innovative products for consumers that offer more than the classic energy products currently seen in market. Energy subscription products introduce customer-centric innovative features that empower customers through usage monitoring capabilities and improve overall customer experience through consistent and transparent pricing. We believe that it is time for the industry to move away from 'acquisition offers' and 'back-book pricing' which leads consumers to assume that they are getting a good deal, only to find that the price they pay goes up over time. Subscription energy plans will change this by being clear, up front, about the price which the customer should expect to pay each month.

As the ESC must appreciate, subscription energy products are, by their very nature, very difficult to compare to classic energy products which are constructed on a price per-unit consumed and which are post-paid (being that they are paid well after the energy is actually consumed). They are fundamentally different products. Similarly, subscription energy products are not comparable to the VDO which is merely a regulated price for the same classic energy products which dominate the market. To that end, we submit that subscription pricing should be excluded from the Best Offer and clear advice entitlement requirements.

Alternatively, at a minimum, we submit that the ESC should adjust the current Best Offer methodology to allow retailers to attribute a reasonable and appropriate value to innovative product features (such as energy rollover where unused energy can be used in subsequent billing periods) when calculating the Best Offer. Product features are not a metric of value contemplated under the existing methodology. However, our user testing confirms they are a critical element to product selection particularly for customers who value transparent pricing, predictability, usage monitoring and up-front monthly pricing over the classic plans currently seen in the market. Through this adjustment, we hope that a more accurate "like-for-like" comparison can be made between innovative products such as subscription products and classic plans.

As always, we would welcome the opportunity to discuss these matters and our recommendations with the ESC. Please contact our Chief Strategy Officer, Alexander Feldman [REDACTED] or Chief Executive Officer, Peter O'Connell [REDACTED].

Yours faithfully



Peter O'Connell
Chief Executive Officer



Alexander Feldman
Chief Strategy Officer & General Counsel

⁴ ACCC submission to Victorian Default Offer to apply from 1 July 2019 - draft advice (ACCC Submission), page 2.

⁵ ACCC submission to Victorian Default Offer to apply from 1 July 2019 - draft advice (ACCC Submission), page 2.



Brotherhood
of St Laurence

Working for an Australia free of poverty

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21 May 2019

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Submission regarding draft decision on consequential amendments related to the Victorian Default Offer

The Brotherhood of St Laurence welcomes this opportunity to comment on the Victorian Default Offer (VDO) draft decision issued by the Essential Services Commission (ESC). We thank the ESC for the clarifications in the decision and support their intent.

The best offer notice should include the prices of both the VDO and best offer.

From 1 July 2019, bills will display the 'best offer' available to a customer to alert them to potential savings. Either a market offer or a VDO could be considered the best offer for a given customer; however bills will only display whichever one is cheaper.

The best offer notice should display the prices of both the VDO and best market offer, for several reasons. Firstly, it will help promote public awareness of the VDO. Secondly, the best market offer will often include conditional discounts that many customers cannot meet. A customer who knows they cannot access the 'best offer' displayed to them is unlikely to pursue it; however they could access the VDO if they were made aware of it. Thirdly, the VDO is an inherently safer option for customers than a market offer. Retailers will have an incentive to display a cheap market offer on the best offer notice, entice people to sign up to it, and then raise its price, which would not be possible with the VDO. Last, retailers will anyway be obliged to display on bills information about how to access the VDO, and this information will be more effective if it includes a personalised price for the VDO.

We support the requirement for retailers to provide clear advice about the VDO.

The Brotherhood supports the draft decision's proposal that retailers be required in all communication to provide clear advice about the costs and terms of energy offers, including about the VDO. Ideally, this should ensure that customers who unknowingly attempt to apply for expensive offers are redirected to cheaper ones unless there is a compelling feature of the high-priced offer.

We also urge the Commission to enforce this requirement rigorously. This could include requesting call records for customers who signed up for offers that cost more than the VDO, or 'mystery shopping'.

We support the requirement for retailers to alert customers to the VDO.

The draft decision proposes that retailers must make customers aware of the VDO before they sign up to any offer. We support this proposal, which will increase public awareness of the VDO and make it more difficult for retailers to game the clear advice entitlement. We cannot understate the importance of this requirement. The VDO will provide the best option for consumers who are looking for a fair price and a high degree of certainty on price and conditions.

To this end, all retailers should be obliged to inform all customers about the VDO, even if the regulations do not oblige that retailer to offer it to that customer (BSL supports an obligation for all retailers to supply the VDO to all customers, but we note this may not be passed). If the retailer does not offer the VDO, they should provide the contact details of the relevant distributor to enable the consumer to identify the retailer that is obliged to supply them the VDO.

For further information, please contact Damian Sullivan ([REDACTED]) or David Bryant ([REDACTED]).

Yours sincerely,



Damian Sullivan

Senior Manager, Energy Equity and Climate Change

22 May 2019

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

Mr Aaron Yuen
Senior Regulatory Manager
Energy Reform and Analysis
Essential Services Commission

Dear Aaron,

Consequential amendments related to the Victorian Default Offer Draft Decision

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the Essential Services Commission (**ESC**) [Draft Decision on the Consequential Amendments Related to the Victorian Default Offer](#) (**Draft Decision**). The Victorian Default Offer (**VDO**), clear advice entitlement and best offer notifications are all important reforms that if successful will cease the poor outcomes many households in Victoria face when simply trying to access a fair price for their essential electricity services.

Generally, we strongly support this Draft Decision as it makes clear that energy retailers must ensure that they inform households in Victoria of new protections and options available when choosing an energy offer. However, Consumer Action has seen trends in calls to our services that indicate systemic non-compliance from many energy retailers following recent reforms. We encourage the ESC to monitor compliance with the Draft Decision and take enforcement action and report systemic issues where necessary.

We discuss our views on the Draft Decision in more detail below.

About Consumer Action

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

Clear advice entitlement and the VDO

We strongly support draft decision two; that a retailer, under the clear advice entitlement, must communicate to a customer information about the retailer's other applicable generally available plans and a Victorian default offer that it reasonably believes may be more suitable for the customer. We also support draft decision three; under the clear advice entitlement, a retailer is to communicate information about the availability of the VDO and how the customer may access the plan from the retailer.

The VDO is a protection for those who do not, or cannot, regularly engage in the retail energy market. We understand that the obligation to offer arrangements will not change as of 1 July 2019 and that draft decision three will ensure that people get the opportunity to decide whether the VDO's protections suit their needs regardless of whether the retailer giving clear advice is obliged to offer them the VDO. No one should pay more than what has been independently assessed as a fair price without being informed of the VDO's availability.

The VDO is a 'unique product offering,' unlike market offers its price will be independently set by the ESC to ensure it is a fair price unlike other offers where retailers will have the discretion to vary the price.

*'The clear advice entitlement will require retailers to be upfront with customers about any terms within the contract that could lead to the customer paying more than they expect.'*¹

Many households in Victoria may just want to 'set and forget' a fair price for their essential electricity supply. All should be informed of the VDO's availability and that its terms do not allow the energy retailer to vary prices so that a household gets the opportunity to make a decision about whether the VDO fits their needs.

We would expect that to give clear advice, a retailer's representative should have to explain that the business would have the ability to vary the price of all offers at any time except for the VDO. The ESC should also guide and enforce that retailers exercise the clear advice entitlement to inform households of this fact.

Consumer Action has called for all licensed energy retailers to be obliged to offer the VDO to all who request it so that it should take no more than one phone call for a household in Victoria to access the VDO's protections. This is beyond the scope of this draft decision, but it is important to note that we strongly support draft decision three given that retailers could otherwise argue that they will not have to discuss the VDO to a household where they are not obliged to offer a default offer. Retailers should not be able to avoid mentioning the VDO in a discussion about the most suitable offer on this basis.

¹ ESC, 2019. *Consequential amendments related to the Victorian Default Offer*, p.4

Best offer requirement and the VDO

We support the ESC's first draft decision in general. If the VDO appears to be the best offer for a household, it should feature on their best offer notification. Households in Victoria should know about the availability of an independently set fair price that is available to all households.

This information will be particularly important for households who are unknowingly facing unfair outcomes after being misled by less than upfront marketing and pricing practices. An example would be those who have taken up what, on face value, appears to be a good deal because the headline discount was "40 percent" off if conditions are met, but who regularly cannot meet a condition like paying on time and end up paying hundreds of dollars more than the VDO a year due to a high base rate. If a VDO is likely to be the lowest price for a household in this situation then the consumer's best offer notification on their electricity bill should point them to the VDO.

Consumer Action has seen a bill where someone having difficulty making payment saw a penalty of over \$500 for missing their 'pay on time discount.' In the future this person should, at the very least, be informed of the availability of the VDO as a more suitable energy deal through the best offer notification before an issue like this arises. More work must be undertaken to ensure all Victorians that are still on confusing or complex offers, including with features like inflated 'pay on time' discounts, are protected by the VDO. For now, the VDO should not be left out of best offer notifications that may address such issues for some households in Victoria.

Monitoring and enforcement

We support the VDO, best offer notification and clear advice entitlement changes but we are concerned how this will translate from policy to practice. Unless they have incentives to change their ways, it seems likely that these energy retailers will find new ways to obfuscate in order to defeat the intended outcomes for households in Victoria. Many aspects of these reforms give energy retailers discretion as to how they go about enabling the best outcome possible for households in Victoria. The ESC must actively monitor and take enforcement action where energy retailers fail to fulfil the requirements outlined in the Draft Decision.

Since the Payment Difficulty Framework came into effect on 1 January 2019 it has become clear through calls to the National Debt Helpline at Consumer Action that many energy retailer staff are not adequately trained or are just generally not complying and providing the minimum assistance set out in the framework.² Too often we see that Utility Relief Grants (URGs) are still not offered when appropriate, payment proposals made in accordance with a household's entitlements are not accepted and people's circumstances are not considered. The ESC needs to take more action to ensure that the intended outcomes of regulation

² Consumer Action will soon report these trends publicly and will make the information that reveals these trends available to the ESC in advance.

eventuate, both with the Payment Difficulty Framework changes that are already in place and the other reforms addressed in this Draft Decision.

We particularly encourage the ESC to monitor whether retailers inform households in Victoria of the VDO in a clear way as part of a discussion with an individual, rather than a confusing pre-recorded message over the phone. A pre-recorded message is unlikely to give clear advice and instead, when bunched in with other messages, may result in 'information overload.' We also encourage the ESC to monitor how clear advice is given in a situation where someone signs up from unsolicited door to door or telemarketing sales, through third party comparators or on a retailer's website. It will also be critical to monitor whether retailers have enough evidence to demonstrate that they have given clear advice about the availability and features of the VDO.

We also question whether the current requirements under the Energy Retail Code³, that necessitate all energy retailers who deny households an energy market offer to still provide information on how to find which retailer is obliged to offer the VDO, are actually complied with in practice. Our experience is that Victorians can face barriers in identifying who is the responsible retailer and thereby have problems securing access to an essential service. The ESC must monitor whether retailers are compliant with these obligations and take public enforcement action if they are not.

Please contact our Policy Officer Jake Lilley at Consumer Action Law Centre on [REDACTED] if you have any questions about this submission.

Yours Sincerely,

CONSUMER ACTION LAW CENTRE



Gerard Brody | Chief Executive Officer

³ Essential Services Commission, *Energy Retail Code Version 12*, Division 3, 16 (3).



EnergyAustralia

LIGHT THE WAY

22 May 2019

Dr Ron Ben-David
Chair
Essential Services Commission
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Lodged electronically: RetailEnergyReview@esc.vic.gov.au

Dear Dr Ben-David

ESC – Consequential amendments related to the VDO – draft decision

EnergyAustralia welcomes the opportunity to make this submission to the Essential Services Commission's (ESC's) draft decision to clarify how the Victorian Default Offer (VDO) will interact with new customer entitlements taking effect from 1 July 2019.

While we support the ESC's intention to ensure that customers are informed of the VDO, we do not support these amendments. We consider them unnecessary, which may result in poor customer outcomes without any additional customer benefits.

From 1 July 2019, retailers will need to comply to new Part 2A of the Energy Retail Code. We consider these new requirements already capture the intention of the ESC's proposed amendments. That is, retailers are required to inform a customer of the best (lowest cost) plan for them. If the VDO is the lowest cost plan, the customer will be informed of this as part of the *deemed best offer* message on their energy bill.

We strongly encourage the ESC to consider the practical implications of delivering these changes by the 1 July 2019. A 4- or 5-week implementation timeframe incurs significant additional costs and increased complexity. It puts at risk the delivery of other reforms, which will provide real customer benefits. We also recommend that the ESC wait for the Order in Council to be finalised, before considering amendments to Part 2A. This will reduce the risk of any duplication of when and how retailers should provide information on the VDO.

Clause 70H - clear advice

The ESC states in its October 2018 final decision¹ for the clear advice obligation that it 'expects the clear advice entitlement will encourage high quality customer service from retailers' and that it is 'a critical measure to rebuild and uphold confidence in the market'.

¹ October 2018, Building trust through new customer entitlements in the retail energy market, pg. 54

From 1 July 2019, retailers will be required to provide key information to customers so that they can assess their options prior to signing up to a new plan. Along with information about any terms and conditions of the new contract that could influence what the customer will pay, retailers also must inform the customer of any other generally available plans they reasonably believe may be more suitable.

Subclause 70H(1)(d)

The ESC has proposed an amendment to 'clear advice' which will require retailers to inform a customer of any other generally available plans **and** the VDO (applicable to the customer) that they reasonably believe may be more suitable, even if the VDO is not the cheapest plan.

We agree that where a designated retailer offers the VDO and they reasonably believe that the VDO would be more suitable for a customer, the customer should be informed of this. However, given that the VDO will be a generally available plan, customers will already be informed of the VDO if it is the cheapest plan for them. As such, we consider this amendment will not benefit customers. Rather, it may confuse them.

We recommend for the subclause to be changed to generally available plans "or" the VDO – not both.

(d) the retailer's other generally available plans ~~and a~~ or Victorian default offer applicable to the customer that the retailer reasonably believes may be more suitable for the customer having regard to any information the retailer has regarding the customer wherever it is practical to do so

Subclause 70H(1)(f)

The ESC has proposed amendments which will require retailers to provide customers with information about the availability of the VDO and how the customer may access the plan.

(f) information about the availability of the Victorian default offer and how the customer may access the plan from the retailer.

As proposed, the amendment will mean that before a retailer signs a customer onto a new contract the retailer will be obliged to tell the customer about the VDO and how to access it even if the VDO is more expensive than the *deemed best offer*. We consider it is not a good customer experience to be told about a plan that could mean they are worse off. This will increase confusion and further erode trust in the market. This amendment also appears to duplicate subclause 70H(1)(d) as the customer would have already been advised if the VDO is the better plan available. If it the VDO is not the best plan, then this means the customer is getting an even cheaper offer.

If you would like to discuss this submission, please contact Carmel Forbes on [REDACTED].

Regards

Sarah Ogilvie

Industry Regulation Leader

22 May 2019

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

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

Dear ESC,

Re: Consequential amendments related to the Victorian Default Offer – Draft Decision

Thank you for the opportunity to comment on the Essential Services Commission's (ESC) *Consequential amendments related to the Victorian Default Offer – Draft Decision (Draft Decision)*.

The Energy and Water Ombudsman (Victoria) (EWOV) is an industry-based external dispute resolution scheme that helps Victorian energy or water customers by receiving, investigating and resolving complaints about their company. Under EWOV's Charter, we resolve complaints on a 'fair and reasonable' basis and aim to reduce the occurrence of complaints¹. We are guided by the principles in the Commonwealth Government's Benchmarks for Industry-based Customer Dispute Resolution². It is in this context that our comments are made.

EWOV appreciates the ESC's efforts to clarify the interaction of the best offer requirement with the Victorian Default Offer (VDO), both of which will come into effect on 1 July 2019. The VDO and best offer requirement are both significant reforms which, when taken together, should spur greater consumer engagement with the retail energy market. Higher levels of engagement should in turn result in more appropriate deals for a greater proportion of consumers and – crucially from EWOV's point of view – reduce the occurrence of complaints. High billing complaints remain a significant head of complaint for us. In the 2017-2018 period high billing complaints were our most common form of complaint (we received 3,626), which displaced disconnection complaints. Disconnection complaints had been the most common form of complaint for the previous four years.³ Viewed in this context, the VDO and best offer requirements are important and timely reforms. We support their implementation, and the clarification that the ESC has provided in this Draft Decision.

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

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

³ EWOV, *2018 Annual Report*, p. 26. Available at: <https://www.ewov.com.au/files/2018-ewov-annual-report.pdf>

Notably, the Draft Decision clearly seeks to ensure that consumers are given clear and honest information regarding the VDO, and that the VDO is included as a potential best offer option both in best offer notifications and through the clear advice entitlement. This clarification is important because the VDO will be a new and distinct form of offer in the market, with unique product features. It is useful that the ESC has sought to ensure the VDO is not ‘quarantined’ from best offer considerations, and also to ensure that consumers are informed about the VDO - so that they may make their purchasing decision based on all available relevant information.

Our further comments are set out below.

1. Draft Decision 1: *The deemed best offer must be the lowest cost of a generally available plan or Victorian Default Offer applicable to the customer.*

EWOV agrees with this decision.

Given the policy intent of promoting effective and efficient retail competition through higher levels of consumer engagement, it is only logical that the VDO should be read against other generally available offers and included in a retailer’s assessment of which offer constitutes their ‘best offer’.

If consumers act on this information as hoped, it is likely to lead to a decline in high billing complaints.

2. Draft Decision 2: *A retailer, under the clear advice entitlement, must communicate to a customer information about the retailer’s other applicable generally available plans and a Victorian default offer that it reasonably believes may be more suitable for the customer.*

EWOV agrees with this decision.

As we read it, this draft decision essentially articulates the intent of the clear advice entitlement and makes it clear that the VDO should be included in the honest dialogue that the clear advice entitlement is intended to create between consumers and retailer representatives.

If the VDO is more suitable for a particular customer than another identified ‘best offer’, then the clear advice entitlement would dictate that the retailer provides that advice to the customer. Similarly, if the retailer has an offer that would be better for the customer than the VDO – then that is the advice that should be provided.

3. Draft Decision 3: *Under the clear advice entitlement, a retailer is to communicate information about the availability of the Victorian Default Offer and how the customer may access the plan from the retailer.*

EWOV agrees with this decision.

The VDO is a new and different kind of offer – it has the unique product feature of having a price determined not by the retailer offering it, but by the ESC (to be reviewed annually from 1 January 2020

onwards). The unique price setting mechanism of the VDO is an important distinguishing feature that consumers should be conscious of when choosing an energy plan, as it sets it apart from other offers in the market.

We trust these comments are useful. Should you like any further information or have any queries, please contact Zac Gillam, Senior Policy and Stakeholder Engagement Officer, on [REDACTED].

Yours sincerely



Cynthia Gebert
Energy and Water Ombudsman (Victoria)

16 May 2019

Dr Ron Ben-David
Chairman
Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne Vic 3000.

Submitted via Email: RetailEnergyReview@esc.vic.gov.au

Consequential Amendments Related to the Victoria Default Offer

Thank you for the opportunity to provide a submission in response to the Consequential Amendments Related to the Victorian Default Offer consultation paper.

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

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

We provide the following responses to the draft decisions in the consultation document.

Responses to each Draft Decision in the Consultation Paper

Draft decision 1

The deemed best offer must be the lowest cost of a generally available plan or Victorian Default Offer applicable to the customer.

This decision makes it more explicit that retailers must also consider the Victorian Default Offer (VDO) together with the lowest cost generally available offer¹ when determining the offer to include as the deemed best offer message. Momentum is supportive of this change as it adds clarity to the proposed clause 70P of the Energy Retail Code (ERC).

¹ Proposed clause 70P Energy Retail Code

Draft decision 2

A retailer, under the clear advice entitlement, must communicate to a customer information about the retailer's other applicable generally available plans and a Victorian default offer that it reasonable believes may be more suitable for the customer.

This proposed amendment to clause 70H of the ERC Minimum standards – Clear advice extends the obligation to all retailers, prior to gaining explicit informed consent to enter into a contract, to not only offer other generally available plans, that the retailer believes may be more suitable, but to also offer the VDO at this time as well.

Momentum is concerned that this new provision extends our obligation to supply responsibility² to all customers rather than only to customers where we are the financially responsible market participant (FRMP). We consider that the current obligation to supply arrangements must be preserved. The imposition of a VDO will result in retailers being required to take on customers who they are unable to supply in a financially viable manner. This is especially likely to be the case for certain retailers who specialise in a particular customer segment (e.g. solar) and exacerbates the risk of these boutique retailers failing. We agree that for our existing customers we have an obligation to offer the VDO but not for all customers.

It is also acknowledged that should a new customer accept a market contract with Momentum, in following bills we have an obligation to make these customers aware of how to access the VDO. However, we believe that this extended supply obligation is not aligned to the retailer obligations outlined under clause 19 of the ERC and section 35 of the EIA.

Draft decision 3

Under the clear advice entitlement, a retailer is to communicate information about the availability of the Victorian Default offer and how the customer may access the plan from the retailer.

Draft Decision 3 imposes an obligation on retailers, as part of the Clear Advice requirement, to inform all customers that the VDO is available (even if it is more costly than a generally available offer) and how they can access the VDO. This will undoubtedly be confusing to customers as they will be potentially asked to consider 3 separate offers at the same time. A specific offer, a generally available offer and the VDO. They will also be informed of the details of these 3 offers and that the VDO is a fair price set by the government. However, the VDO may be priced higher than the other two offers.

Momentum has listened to customers and customer advocacy groups that have argued that the retail energy market is too complex. We have developed products to simplify the

² Electricity Industry Act

customer experience to encourage more customers to engage in the market. We should not be mandated, in all situations, to offer the VDO as it will complicate the decision making process for most customers for little additional value.

Should you require any further information with regard to these responses, please don't hesitate to contact me on [REDACTED]

Yours sincerely

[Signed]
Randall Brown
Regulatory Manager



Meridian Energy Australia Pty Ltd
Level 15, 357 Collins Street
Melbourne VIC 3000

22 May 2019

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

Email: RetailEnergyReview@esc.vic.gov.au

Dear Essential Services Commission

Consequential amendments related to the Victorian Default Offer – Meridian and Powershop response to the draft decision

Meridian Energy Australia Pty Ltd and Powershop Australia Pty Ltd (MEA Group or Powershop) thank the Essential Services Commission Victoria (ESC) for the opportunity to provide comments on the Consequential amendments related to the Victorian Default Offer (VDO) draft decision (the Decision) to apply from 1 July 2019.

The MEA Group is a vertically integrated generator and retailer focused entirely on renewable generation. We opened our portfolio of generation assets with the Mt Millar wind farm in South Australia and the Mt Mercer wind farm in Victoria. Subsequently, in early 2018, MEA Group acquired the Hume, Burrinjuck and Keepit hydroelectric power stations, further expanding our modes of generation. We have supplemented our asset portfolio by entering into a number of power purchase agreements with other renewable generators, and through this investment in new generation we have continued to support Australia's transition to renewable energy.

Powershop is an innovative retailer committed to providing lower prices for customers and which recognises the benefits to customers in transitioning to a more distributed and renewable-based energy system. Over the last five years, Powershop has introduced a number of significant, innovative and customer-centric initiatives into the Victorian market, including the first mobile app that allows customers to monitor their usage, a peer-to-peer solar trading trial and a successful customer-led demand response program. Powershop has also been active in supporting community energy initiatives, including providing operational and market services for the community-owned Hepburn Wind Farm, supporting the Warburton hydro project, and funding a large range of community and social enterprise energy projects through our Your Community Energy program.

We provide our responses to the draft decisions below.

Draft decision 1 - The deemed best offer must be the lowest cost of a generally available plan or Victorian Default Offer applicable to the customer.

MEA Group accepts that Draft decision 1 expands on the recently developed requirements of a '*deemed best offer*'; that if the VDO is a retailer's best generally available offer, then it must be presented in the bill message to customers.

Draft decision 2 - A retailer, under the clear advice entitlement, must communicate to a customer information about the retailer's other applicable generally available plans and a Victorian Default Offer that it reasonably believes may be more suitable for the customer.

MEA Group believes this Draft decision 2 is inconsistent with clause 16 of the Energy Retail Code (ERC) and the obligations applicable to a non-designated retailer. MEA Group agrees that a designated retailer under clause 16(2) of the ERC should inform the customer of the VDO as part of their clear advice entitlement, if the VDO is the best offer for that customer.

Clause 16(3) of the ERC allows for a non-designated retailer to elect whether to offer a small customer a market retail contract. If a non-designated retailer does not elect to offer a market retail contract to a customer, it must refer the customer to the relevant distributor and inform the customer that the distributor will be able to advise which retailer is their designated retailer. Consequently, the obligation to inform the customer of the VDO should sit with this designated retailer.

MEA Group believes Draft decision 2 is inconsistent with clause 16(3) of the ERC, as it does not take into account the different obligations under the ERC of a designated retailer and non-designated retailer, essentially imposing an additional requirement on a non-designated retailer to offer a generally available plan or VDO. MEA Group recommends that the Final Decision must be consistent with the requirements of clause 16 of the ERC.

Draft decision 3 - Under the clear advice entitlement, a retailer is to communicate information about the availability of the Victorian Default Offer and how the customer may access the plan from the retailer.

MEA Group believes that Draft Decision 3 is not consequential to the implementation of the VDO. Given the limited opportunity for prior consultation and the unrealistic timeframe of 1 July 2019 to implement this Draft decision, MEA Group considers that a more prudent approach would be to defer this decision and undertake a robust consultation process with the energy industry in order to mitigate any unintended consequences that could impact consumers.

More importantly, this Draft decision 3 may lead to further customer confusion and trust erosion with the energy industry. MEA Group agrees that if the VDO is the best option for the customer, then the customer should be advised of and have the option of signing up to the VDO.

The intention of the 'clear advice' entitlement is to ensure customers are appropriately informed of their choices, not to be further confused. MEA Group does not agree with the requirement of Draft decision 3 to require retailers to advise of a "fair price" VDO, even if the customer is electing a market offer which is more beneficial than the VDO.

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

Yours sincerely,



Edward McManus
CEO
Powershop Australia Pty Ltd
Meridian Energy Australia



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22 May 2019

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

Submitted electronically: RetailEnergyReview@esc.vic.gov.au

Dear Dr Ben-David,

Re. Consequential amendments related to the Victorian Default Offer

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to respond to the Essential Services Commission's (the Commission's) consultation on consequential amendments to the Energy Retail Code (the Code) related to the Victorian Default Offer (VDO).

The Code applicable from 1 July 2019 is clear that where retailer is the financially responsible market participant (FRMP), it must always factor the VDO into best offer calculations. The retailer must also discuss the VDO when there is reason to believe it is suitable for that customer - this is inherent in the definitions of generally available and in the clear advice entitlement. We do not see the requirement to include draft decision 1 and 2 into the Code, as we believe it is clear. However, if the Commission feels it is appropriate to make these matters explicit, we are comfortable with this change.

However, draft decision 3 is contrary to the Victorian Government's implementation of the VDO in that it creates an obligation to discuss an offer that in many situations, the retailer is not obligated to offer. The section 13 order in council published by the Department clearly articulates that every Victorian residential and small business electricity consumer will be able to access a VDO from their *current* energy retailer. Where a retailer is offering energy products at prices below the VDO these consequential amendments are counterproductive to our clear advice entitlement obligations.

One of our primary concerns with the VDO has always been that its potential to discourage consumers from actively participating in the market to find an offer that suits their needs and preferences; this includes a highly competitive price. As its name suggests, the VDO should be no more than a *default offer* so we are wary of obligations on retailers to refer to the VDO in situations where it may not be the most suitable - on the basis of price or some other factor - or where the retailer has no obligation to offer the VDO.

However, draft decision 3 undermines the clarity of the Code (including any additional clarity added) as it compels a retailer to discuss a product with a new customer that it is not under any obligation to offer (even if it may choose to do so). The additional requirement to explain the VDO to potential new customers - including terms of how it is set and to whom it applies - and how it relates to other offers would be a distraction from the core objectives of the clear advice conversation.

Our understanding of the policy intent of the clear advice entitlement is to ensure retailers understand a consumer's needs and to then determine which of their plans are most suitable. A retailer may have numerous offers available that are cheaper or better reflect a consumer's preferences than the VDO. Red and Lumo are concerned that the additional obligation will not only confuse customers, but detract from the trust that the Commission is attempting to instil. At worst, this may place retailers in breach of obligations under Australian Consumer Law, which prevents the provision of misleading information to customers.

In addition to the mandated requirements for retailers to mention VDO on bills and use of the VDO as a reference in advertising offers, the Victorian Government and Commission could advertise the availability of the new default offer, how it is set and to whom it applies.

Other matters

Red and Lumo note that the Commission will need to make a number of consequential amendments to the final version of the Code to address some minor numerical and typographical errors. The required amendments to the current 1 July Code are outlined below:

- 3G(2)(a) is missing a 'the' in between 'with' and 'GST Act'
- 3G(3) second 'retailer' isn't italicised
- 70L(7) goes from (c) to (e) and misses (d)
- 70P goes from (2) to (4)

About Red and Lumo

We are 100% Australian owned subsidiaries of Snowy Hydro Limited. Collectively, we retail gas and electricity in Victoria, New South Wales, Queensland and South Australia and electricity in the ACT to over 1 million customers.

Red and Lumo thank the Commission for the opportunity to respond to its draft decision. Should you wish to discuss aspects or have any further enquiries regarding this submission, please call Geoff Hargreaves, Regulatory Manager on [REDACTED].

Yours sincerely

A handwritten signature in black ink, appearing to read "Ramy Soussou". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ramy Soussou
General Manager Regulatory Affairs & Stakeholder Relations
Red Energy Pty Ltd
Lumo Energy Australia Pty Ltd

22 May 2019

Ms Sarah McDowell
Director, Energy
Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne VIC 3000

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

Dear Ms McDowell,

Re: Consequential Amendments Related to the Victorian Default Offer

Simply Energy welcomes the opportunity to provide feedback on the Essential Services Commission's (ESC) Default Decision on Consequential Amendments Related to the Victorian Default Offer (VDO).

Simply Energy is a leading second-tier energy retailer with over 700,000 customer accounts across Victoria, New South Wales, South Australia, Queensland and Western Australia.

Simply Energy considers that draft recommendations 1 and 2 align with the overarching policy intent of the VDO, as well as the best offer and clear advice entitlements that come into effect from 1 July 2019.

However, Simply Energy proposes that the ESC should reconsider the scope of recommendation 3. Simply Energy suggests that a requirement should only be placed on a retailer to inform a prospective customer about the availability of the VDO where a customer may be better off on the VDO. It could be confusing for a customer to be provided with additional information about the availability of the VDO in circumstances where a cheaper market offer is available. In saying that, it is Simply Energy's understanding that only the designated retailer is required to make the VDO available to its customers.

In view this, Simply Energy recommends that in circumstances where a non-financially responsible retailer is unwilling to offer a customer a retail energy contract on terms and rates equivalent or better than the VDO, then the retailer should be required as part of the clear advice entitlement to provide the customer with:

- information about the availability of the VDO; and
- details of the distributor who can put the customer in contact with the designated retailer who has an obligation to supply the customer under the VDO.

Simply Energy welcomes further discussion about the proposed changes to the ESC's draft decision. To arrange a discussion please contact Anthony O'Connell, Senior Regulatory and Compliance Officer, on, telephone, [REDACTED].

Yours sincerely



James Barton
General Manager, Regulation
Simply Energy

Rebuilding trust in the energy market

Response to Essential Services Commission draft decision on reforms related to the Victorian Default Offer

22 May 2019



The Victorian Council of Social Service (VCOSS) welcomes consultation by the Essential Services Commission (ESC) on how the Victorian Default Offer (VDO) will interact with 'best offer' notifications on bills and the new clear advice entitlement.

'Best offer' notifications

From 1 July 2019, retailers will be required to display their best offer on energy bills, at least quarterly for electricity and every four months for gas. The best offer will be personalised for each customer, based on their consumption data.

We support the ESC's proposal for the deemed best offer to be the lowest cost of the VDO or a generally available offer (i.e. one that is not restricted to members of certain clubs or other affiliations). The best offer notification is an important way to inform people about the VDO, where the VDO is the lowest priced deal available to that particular customer.

The Victorian Government also suggests bills include information about how customers can access the VDO.¹ This may confuse customers, as the bill will then contain three pieces of information about energy pricing:

- the actual amount owed by the customer on their current bill
- the best offer available to the customer
- information about the VDO.

It is now well-established that more information does not necessarily lead to better decisions. There is an optimal amount of information to enable better decision-making. Decision-making deteriorates as the amount of information and number of choices increases, leading people to rely on brand, word-of-mouth or other mental shortcuts to guide decisions.²

We therefore recommended in a previous submission that if Government wishes to include information about the VDO with bills, it should consider providing its own VDO information sheet, as a separate leaflet.³ This would not have to be provided with every bill; it could, for example, be provided twice a year prior to the summer and winter spikes in energy use. Standardised, simplified VDO information, regardless of retailer, would assist comprehension. Presenting VDO

¹ State of Victoria, Department of Environment, Land, Water and Planning, *Victorian Default Offer – Draft Orders*, Consultation Paper, 2019.

² Lauren Solomon and Ben Martin-Hobbs, *Five preconditions of effective consumer engagement: A conceptual framework—Product information, consumer choice and market engagement*, Consumer Policy Research Centre, 29.

³ Victorian Council of Social Service, Consumer Action Law Centre, Financial and Consumer Rights Council, Council on the Ageing Victoria and the Victorian Public Tenants Association, *A simple, efficient and accessible energy deal: Response to draft Orders in Council on the Victorian Default Offer*, May 2019.

information separately to the bill would also allow Government to use conversational language with limited jargon, which is more likely to be well-received and understood.⁴

Clear advice entitlement

From 1 July 2019, energy customers will also be entitled to 'clear advice' from a retailer when enquiring about an energy offer, including the dollar cost implications of terms and conditions, and other offers that may be more suitable for the customer.

We support the proposal for retailers to be required, as part of the clear advice entitlement, to:

- inform a customer about other generally available offers and a VDO that it reasonably believes may be more suitable for the customer
- communicate information to all customers about the VDO's availability and how a customer may access it from the retailer.

We particularly endorse retailers being required to inform all customers about the VDO's existence, regardless of whether they believe the VDO is more suitable than the offer under consideration. Without this requirement, too much will be left to the discretion of retailers and a person may not receive any information about the VDO. The VDO contains important protections that may make it preferable from an individual customer's perspective, including:

- fixed annual pricing, allowing customers to 'set and forget' and to not have to be alert to price increases soon after entering a contract
- no conditions, such as online or on-time payment
- an independent, government-regulated fair price
- an entitlement to paper bills without charge.

We suggest retailers should be required to inform customers about these features; simply telling a customer about the VDO's availability will not allow them to properly evaluate this option.

It is particularly important for customers to be informed about the non-conditional nature of the VDO. Only 56 per cent of payment plan customers and 41 per cent of hardship concession customers achieve conditional discounts, which can result in a much higher overall bill than a non-discount deal.⁵ Over the three years to 2017-18, the annual average cost of not meeting discount conditions increased from \$212 to \$455 for electricity.⁶ This can easily trigger financial hardship and restrict people's ability to pay for other essentials such as rent and food. Approximately 180,000 Victorian households experience ongoing energy payment difficulty, with renters, households with children and those on low incomes most affected.⁷ These households, and others, need protection against unmanageable contract conditions and sudden, severe rises in energy costs, which the VDO provides.

We welcome each of the ESC's proposed reforms and look forward to strong enforcement of the best offer and clear advice entitlements, to help customers select the most sustainable and affordable energy deal for them, and avoid payment difficulty or disconnection.

⁴ Australian Government, Department of the Prime Minister and Cabinet, *Electricity information to fit the bill*, December 2018, 8.

⁵ Australian Competition and Consumer Commission, *Restoring electricity affordability and Australia's competitive advantage*, Retail Electricity Pricing Inquiry—Final Report, June 2018, 264.

⁶ Essential Services Commission, *Victorian Energy Market Report 2017-18*, 26 February 2019, 52.

⁷ Victorian Council of Social Service, *Battling On: Persistent Energy Hardship*, November 2018.