



**HARMONISATION PROJECT:  
CONSEQUENTIAL AMENDMENTS  
TO VICTORIAN ENERGY  
INSTRUMENTS**

FINAL DECISION PAPER

**JULY 2014**



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# 1 INTRODUCTION

## 1.1 Background

On 7 December 2012, the Essential Services Commission (the **Commission**) released a draft *Energy Retail Code version 11 (draft ERC v11)*. This code amalgamates certain energy retail codes and guidelines and seeks to harmonise this new instrument, where appropriate, with the national requirements under the *National Energy Customer Framework (NECF)*. This project is known as the 'harmonisation project'.

In preparing the draft ERC v11, the Commission adopted the wording and structure of the *National Energy Retail Rules (NERR)*, except where such amendments were either precluded by Victorian legislation or were inconsistent with the Victorian Government's stated policy intentions.

As a result of the approach adopted by the Commission, the draft ERC v11 consists primarily of the NERR drafting but with amendments to incorporate Victorian specific provisions such as the inclusion of additional consumer protections that were prescribed by Victorian legislation, or the deletion of NERR provisions that were prohibited by Victorian legislation. Amendments were also made to include provisions of the Victorian codes and guidelines that the Victorian Government identified were intended to be retained.

The Commission noted in the Consultation Paper for the harmonisation project,<sup>1</sup> that the draft ERC v11 was limited to harmonising the Victorian energy instruments with the provisions of the NECF so far as they related to retailer requirements and did not adopt the provisions of the NERR that related to distributor obligations. It was further noted that there are some retailer obligations which overlap with distributor obligations and therefore additional work would be undertaken by the Commission to identify any consequential amendments required to be made to other Victorian energy instruments as a result of the drafting adopted in the draft ERC v11.

## 1.2 Consultation Paper

The Commission released its *Harmonisation Project: Consequential Amendments to Victorian Energy Instruments – Consultation Paper (Victorian Energy Instruments Consultation Paper)* in July 2013. The Victorian Energy Instruments Consultation Paper outlined the Commission's approach to reviewing certain Victorian energy

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<sup>1</sup> Essential Services Commission 2012, *Harmonisation of the Energy Retail Code and Guidelines with the National Energy Customer Framework (NECF) – Consultation Paper*, December.



instruments outside the scope of the harmonisation project, but that may contain retailer obligations that are inconsistent with the drafting of the draft ERC v11 and therefore should be amended. The Commission sought comments on the proposed consequential amendments to the Victorian energy instruments as a result of the drafting adopted in the draft ERC v11.

The Victorian energy instruments that were considered by the Commission for the purposes of this review are as follows, those amended in this review are in bold:

1. **Electricity Distribution Code;**
2. **Gas Distribution System Code;**
3. Electricity Retail Licences;
4. Gas Retail Licences;
5. Electricity Distribution Licences;
6. Gas Distribution Licences;
7. **Deemed Electricity Distribution Contract;**
8. **Electricity Customer Metering Code;**
9. Public Lighting Code;
10. **Electricity Customer Transfer Code;**
11. Guideline 11 Voltage Variation Compensation;
12. Guideline 14 Provision of Services by Electricity Distributors;
13. Guideline 15 Connection of Embedded Generation;
14. Electricity Industry Guideline 17 Ring Fencing;
15. Retailer of Last Resort Manual August 2011;
16. Default Use of System Agreement;
17. Retail Market Procedures;
18. **Retail Compliance Reporting Manual;** and
19. **Operating Procedure Compensation for Wrongful Disconnection.**

### 1.3 Submissions

Submissions were invited from interested parties on the proposed consequential amendments to the Victorian energy instruments detailed in Annexure A, and the proposed amendments to retail licences described in section 2.



The Commission did not seek submissions on matters of policy as part of this consultation, or on the future distribution arrangements. The Commission advised that submissions should focus solely on the proposed consequential amendments.

The Commission received submissions from the following stakeholders:

- SP Australia Networks (Distribution) Pty Ltd (**SP AusNet**)
- United Energy Distribution Pty Limited and Multinet Gas Distribution Partnership (**United Energy**)
- Lumo Energy Australia Pty Ltd (**Lumo**)
- Consumer Groups.

The Commission's responses to the submissions received, and the related final decision, are outlined in the table attached as Annexure A to this Final Decision Paper.

## 1.4 Consequential amendments

Following its review of the Victorian energy instruments set out in section 1.2 and review of the submissions received from stakeholders, the Commission is amending the following instruments:

- Electricity Distribution Code;
- Gas Distribution System Code;
- Electricity Customer Metering Code;
- Electricity Customer Transfer Code;
- Retail Compliance Reporting Manual; and
- Operating Procedure Compensation for Wrongful Disconnection.

As stated in the Victorian Energy Instruments Consultation Paper, the Commission had determined that consequential amendments will be required where a direct inconsistency arises between the existing requirement under a Victorian energy instrument and the draft ERC v11.

Where there is an overlap between an obligation contained in a Victorian energy instrument and the draft ERC v11 – but where that overlap does not result in a direct inconsistency – no amendment to the Victorian instrument will be made and the two obligations will be left to operate alongside each other.

Where this situation arises, the Commission has included a note in the ERC v11 that indicates that a related obligation is contained in a separate instrument and that identifies the instrument in which the obligation is contained.

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A table outlining the Commission’s proposed and final consequential amendments to these instruments is provided in Annexure A to this Final Decision Paper. The track-change versions of these instruments are available on our website.

Section 3 of the consultation paper proposed a further individual consultation process with each retailer to amend retail licences where necessary, based on individual variations between licences.

The Commission’s decision in relation to the need for changes to retail licences is discussed in section 2 of this Paper.

## 1.5 Regulatory powers of the Commission

The Commission has responsibility for licensing electricity and gas retailers and distributors in Victoria. The Commission’s powers are outlined in the *Electricity Industry Act 2000 (EIA)*, the *Gas Industry Act 2001 (GIA)* and the *Essential Services Commission Act 2001 (ESCA)*.

Section 8 of the ESCA requires the Commission to promote the long term interests of Victorian consumers in performing its functions and exercising its powers, and in doing so have regard to the price, quality and reliability of essential services. In seeking to achieve this objective, the Commission must have regard to the following matters to the extent that they are relevant in any particular case:

- (a) efficiency in the industry and incentives for long term investment;
- (b) the financial viability of the industry;
- (c) the degree of, and scope for, competition within the industry, including countervailing market power and information asymmetries;
- (d) the relevant health, safety, environmental and social legislation applying to the industry;
- (e) the benefits and costs of regulation (including externalities and the gains from competition and efficiency) for—
  - (i) consumers and users of products or services (including low income and vulnerable consumers);
  - (ii) regulated entities;
- (f) consistency in regulation between States and on a national basis;
- (g) any matters specified in the empowering instrument.



The Commission also has specific energy sector objectives under the EIA and GIA. These are:

- to promote a consistent regulatory approach between the electricity industry and the gas industry, to the extent that it is efficient and practicable to do so; and
- to promote the development of full retail competition.

Our approach to consultation and regulatory reviews is set out in our Charter of Consultation and Regulatory Practice which is available on the Commission's website at <http://www.esc.vic.gov.au/getattachment/About-Us/Consultation-Policy/CharterofConsultationforWeb.pdf.aspx>





## 2 CONSEQUENTIAL AMENDMENTS TO RETAIL LICENCES

The Commission has considered whether, and to what extent, amendments to retail licences may be necessary to give effect to ERC v11.

All licensees authorised to sell energy to relevant customers,<sup>2</sup> are required to comply with the Energy Retail Code as issued by the Commission from time to time. The Commission recognises that the way this obligation is expressed in individual licences varies between licences, depending on when the licence was issued. This is a result of the variation in licence drafting conventions over time.

Section 3 of the consultation paper proposed a further consultation process particular to each retail licensee, to amend licences if necessary based on variations between licences.

The Commission may in due course discuss with individual licensees whether there is any merit in amending the relevant licence conditions to better reflect the requirement to comply with the ERC.

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<sup>2</sup> Within the meaning of section 36 of the Electricity Industry Act or section 43 of the Gas Industry Act.



### 3 GENERAL SUBMISSIONS FROM STAKEHOLDERS

This section outlines the general submissions received from stakeholders on the Victorian Energy Instruments Consultation Paper. The submissions that related to individual clauses are outlined in Annexure A to this Final Decision Paper.

#### 3.1 Implementation of NECF

The scope of the Commission’s harmonisation project did not include consideration of the provisions of the NERR that relate to the customer-distributor relationship.

##### *Submission*

The Commission received a submission from Lumo expressing its strong support for the implementation of the NECF in its entirety by the Victorian government. Lumo stated that “the consequential amendments do not achieve the objective set out by the Commission, to harmonise Victorian instruments to those contained in the NECF” and queried “why the customer-distributor relationship prescribed in the NECF is omitted from the harmonisation effort.”<sup>3</sup>

##### *Discussion*

The Commission did not adopt the provisions of the NERR that related to the customer-distributor relationship because it was outside the scope of the harmonisation project. The customer-distributor relationship is dealt with in other instruments in Victoria, not the Energy Retail Code.

#### **FINAL DECISION**

The Commission did not adopt the provisions of the NERR relating to the customer-distributor relationship as part of the harmonisation project because it fell outside the scope of the harmonisation project.

<sup>3</sup> Lumo’s submission, p 1.



## 3.2 Terms and conditions of energy contracts under ERC v11

As outlined in section 2, all retail licensees that sell energy to relevant customers are required to comply with the Energy Retail Code as issued from time to time by the Commission.

ERC v11 requires that certain relevant terms and conditions must be included in a licensee's energy contracts. Retail licences include a condition that a contract for the sale of electricity or gas must not be inconsistent with these terms and conditions.

The Commission recognises that ERC v11 also makes provision for a range of matters beyond the terms and conditions of retail contracts. The Commission sought comments on whether there was a need to modify existing licence conditions, in order to provide clarity that not all of the provisions of ERC v11 need to be replicated in a retail contract.

### *Submission*

The Consumer Groups asked the Commission to clarify its proposal at page 8 of the Consultation Paper, to remove the condition in retail licences requiring each term or condition of the ERC to be a term or condition with which a contract for the sale of energy to a relevant customer must not be inconsistent.

The Consumer Groups requested that the Commission clarify the following:

- Does this mean that contracts can have terms and conditions which are inconsistent with the ERC v11?
- Does this mean that the model terms and conditions of a standard retail contract and a market retail contract need not contain all the provisions in the draft ERC v11?<sup>4</sup>

### *Discussion*

The Commission's proposal – to remove the condition in retail licences requiring each term or condition of the ERC to be a term or condition with which a contract for the sale of energy to a relevant customer must not be inconsistent – was made because the ERC v11 covers matters beyond contractual terms and conditions, and incorporates

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<sup>4</sup> Consumer Group submission, p 77.



other guidelines. As a result, it appeared no longer necessary that the licence should require contracts to be formed with reference to each condition of the ERC.

Following a review of this issue, the Commission has decided that licence conditions with this affect do not need to be modified. This is because the ERC v11 is clear about which of its conditions are relevant to the content of such a contract.

The Commission may in due course discuss with individual licensees whether there is any merit in amending the relevant licence conditions to better reflect the requirement to comply with the ERC.

**FINAL DECISION**

The Commission will not proceed with the proposed amendments to the conditions of retail licences.



# ANNEXURE A – TABLE OF CONSEQUENTIAL AMENDMENTS TO VICTORIAN ENERGY INSTRUMENTS

## 1. Introduction

The list in paragraph 1.1 sets out the Victorian energy instruments reviewed by the Commission to identify any relevant interfaces with the ERC v11. Amendments to the instruments to align them with the ERC v11 are described in the table at paragraph 1.2 below. The table only includes the instruments for which there are consequential amendments.

### 1.1 Instruments amended in this review

1. Electricity Distribution Code
2. Gas Distribution System Code
3. Deemed Electricity Distribution Contract
4. Electricity Customer Metering Code
5. Electricity Customer Transfer Code
6. Retail Compliance Reporting Manual
7. Operating Procedure Compensation for Wrongful Disconnection



## 1.2 Detailed discussion of amendments to instruments

The table below sets out the instruments that have been amended by the Commission, details of the amendment, any submissions received on the amendment, and the Commission's final decision.

### 1. ELECTRICITY DISTRIBUTION CODE

Clause Number	Description of clause	Analysis of inconsistency	Proposed Action	Stakeholder Submission	Final Decision
5.6.1	<p>Where a customer or retailer provides a distributor with confirmation from a registered medical practitioner or a hospital that a person residing at the customer's supply address requires a life support machine, the distributor must:</p> <p>(a) register the supply address as a life support machine supply address;</p> <p>(b) not disconnect supply to the customer's supply address while the supply</p>	<p>The ERC v11 adopts the term 'Life Support Equipment' from the NERR, whereas the Electricity Distribution Code uses the term life support machine. There is no definition of life support machine provided in the Electricity Distribution Code.</p>	<p>Replace the references to 'life support machine' in the Electricity Distribution Code with the term 'Life Support Equipment' and insert the following definition from the ERC v11:</p> <p>life support equipment means any of the following:</p> <p>(a) an oxygen concentrator;</p> <p>(b) an intermittent peritoneal dialysis machine;</p> <p>(c) a kidney dialysis machine;</p> <p>(d) a chronic positive airways pressure respirator;</p>	<p><b>SP AusNet</b> – As noted in our comments on the life support equipment in the ERC v11, the NERR definition of life support equipment is problematic in the way it expands the scope of non-medical equipment. (p 7)</p>	<p>The Commission has addressed this issue in its 'Final Decision: Harmonisation of the Energy Retail Code and Guidelines with the National Energy Customer Framework'. Please refer to that paper for our reasoning. The Commission will adopt in the Electricity Distribution Code the same definition of 'life support equipment' that is adopted in the ERC v11.</p>



Clause Number	Description of clause	Analysis of inconsistency	Proposed Action	Stakeholder Submission	Final Decision
	<p>address remains registered as a life support machine address; and</p> <p>(c) give the customer:</p> <ul style="list-style-type: none"> <li>• at least 4 business days written notice of any planned interruption to supply at the supply address (the 4 business days to be counted from the date of receipt of the notice), unless a longer period of notice is requested by the customer and provided that the longer period of notice:               <ul style="list-style-type: none"> <li>- is reasonably necessary; and</li> <li>- can be accommodated by the distributor;</li> </ul> </li> <li>• advice to assist the</li> </ul>		<p>(e) Crigler Najjar Syndrome phototherapy equipment;</p> <p>(f) a ventilator for life support;</p> <p>(g) in relation to a particular customer—any other equipment that a registered medical practitioner certifies is required for a person residing at the customer's premises for life support.</p>		



Clause Number	Description of clause	Analysis of inconsistency	Proposed Action	Stakeholder Submission	Final Decision
	<p>customer to prepare a plan of action in case an unplanned interruption should occur; and</p> <ul style="list-style-type: none"> <li>an emergency telephone contact number.</li> </ul>				
9.1.14	<p>The distributor must twice advise each customer, who has an annual electricity consumption of less than 20 MWh, that their electricity network tariffs in the future may be set on the basis of time of use tariffs. The first advice must be sent at least 20 business days prior to the meter exchange and the second advice at least 4 business days prior to the</p>			<p><b>United Energy</b> - The Victorian Government has moved from a network tariff moratorium to a flexible pricing policy where the customer/retailer selects the network tariff. In view of the changed policy UE considers that this clause is no longer required and should be repealed. Customers would still continue to be notified of any meter exchanges consistent with planned</p>	<p>The Commission agrees with stakeholder submissions and will remove cl. 9.1.14 from the Electricity Distribution Code.</p>





Clause Number	Description of clause	Analysis of inconsistency	Proposed Action	Stakeholder Submission	Final Decision
	meter exchange. The words to be inserted by the distributor in the notification are: "The rollout of smart meters may result in your tariff being changed in future to a time of use tariff. Your retailer will notify you of any change and implications for your retail prices and charges."			interruption requirements. UE suggests repealing cl. 9.1.14. (p 2) <b>SP AusNet</b> – This clause requires notification to customers when their meter is exchanged for a smart meter that their tariff may change to a time of use tariff. This has not been applicable for some time and is particularly not applicable under the new flexible tariff regime. (p 2)	
12.6.1	A distributor must not disconnect supply to a customer's supply address except in the case of an emergency or under cl. 12.5 or otherwise as agreed with a customer:	The ERC v11 adopts the NERR drafting in relation to time for disconnection to the extent that it provides that the start of the protected period is before 8am.	Electricity Distribution Code to be amended as follows: A distributor must not disconnect supply to a customer's supply address except in the case of an emergency or under cl. 12.5	No submissions were received from stakeholders.	The Commission's proposed action is adopted as its Final Decision.



Clause Number	Description of clause	Analysis of inconsistency	Proposed Action	Stakeholder Submission	Final Decision
	(a) after 2pm (for a domestic customer) or 3pm (for a business customer) on a weekday; or (b) on a Friday, a weekend, public holiday or on the day before a public holiday.		or otherwise as agreed with a customer: (a) before 8am or after 2pm (for a domestic customer) or 3pm (for a business customer) on a weekday; or (b) on a Friday, a weekend, public holiday or on the day before a public holiday.		
12.6.2	A distributor must not disconnect supply to a customer: (a) if the customer's supply address is registered as a life support machine supply address except in the case of an emergency;	The draft ERC v11 refers to Life Support Equipment rather than life support machine.	Replace the reference to 'life support machine' with 'Life Support Equipment'.	No submissions were received from stakeholders.	The Commission's proposed action is adopted as its Final Decision.



Clause Number	Description of clause	Analysis of inconsistency	Proposed Action	Stakeholder Submission	Final Decision
19	Energy Retail Code means the Code of that name setting out terms and conditions relevant to contracts for the supply or sale of electricity certified by the Commission under section 36(1) of the Act.	The draft ERC v11 serves further statutory functions in addition to those under section 36(1) of the EIA.	Amend definition of Energy Retail Code as follows: <i>Energy Retail Code</i> means the code of that name determined by the Commission under the Electricity Industry Act and Gas Industry Act.	No submissions were received from stakeholders.	The Commission's proposed action is adopted as its Final Decision.

## 2. DEEMED ELECTRICITY DISTRIBUTION CONTRACT

	Deemed Electricity Distribution Contract (s.40A, EIA)			<b>SP AusNet</b> – The electricity distribution contract has not been updated since 2002. It still refers to TXU and the TXU website, and contains other superseded references. We have not analysed in detail whether the ERC v11 introduces any issues of incompatibility with this contract. (p 2)	SP AusNet's submission does not raise an issue of inconsistency between the ERC v11 and the deemed electricity distribution contract. As such, the submission is outside the scope of the harmonisation project and the Commission does not propose to amend the deemed electricity distribution contract currently in force pursuant to s.40A of
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					the EIA. If SP AusNet wishes to replace the superseded references to TXU, it can apply to vary the contract under s.40A(6) and (7) of the EIA.
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### 3. GAS DISTRIBUTION SYSTEM CODE

Clause Number	Description of clause	Analysis of inconsistency	Proposed Action	Stakeholder Submission	Final Decision
7.2.2(b)	A Distributor may seek payment from the Affected Party of the anticipated <u>costs of testing the metering installation</u> , including the cost of replacing any seal used to protect the metering installation broken to allow the test to be carried out, provided that if the metering installation is defective and fails to meet the accuracy standards prescribed by the Distribution System Code then the Distributor must	Clause 29(5)(b) of the draft ERC v11 was amended to provide that the retailer may not request <u>that a customer pay the cost of a meter test up front as the ERC v10 does not permit meter testing fees to be paid up front</u> . This is inconsistent with the provisions under the Gas Distribution System Code.	Amend cl. 7.2.2(b) of the Gas Distribution System Code as follows:  A Distributor may seek payment from the Affected Party of the anticipated costs of testing the metering installation, including the cost of replacing any seal used to protect the metering installation broken to allow the test to be carried out, if the metering installation is not defective and meets the accuracy standards	No submissions were received from stakeholders.	The Commission's proposed action is adopted as its Final Decision.



Clause Number	Description of clause	Analysis of inconsistency	Proposed Action	Stakeholder Submission	Final Decision
	refund the payment made by the Affected Party within 5 business days of completion of the test.		prescribed by the Distribution System Code. A distributor must not seek payment from the Affected Party prior to the commencement of the test.		
<b>13.1 Glossary</b>	Energy Retail Code – The Energy Retail Code being a determination of the Commission under section 43 of the Gas Industry Act.	The draft ERC v11 performs further statutory functions to those under section 43 of the GIA.	Amend definition of Energy Retail Code as follows: <i>Energy Retail Code</i> means the code of that name determined by the Commission under the Electricity Industry Act and Gas Industry Act.	No submissions were received from stakeholders.	The Commission’s proposed action is adopted as its Final Decision.



#### 4. ELECTRICITY CUSTOMER METERING CODE

Clause Number	Description of clause	Analysis of inconsistency	Proposed Action	Stakeholder Submission	Final Decision
1.7(a)	A distributor, retailer or responsible person must handle a complaint by a customer in accordance with the relevant Australian Standard on Complaints Handling or "Benchmarks for Industry-Based Customer Dispute Resolution Schemes".	<p>Clause 50(1)(b) of the draft ERC v11 requires retailers to include in their market retail contracts provisions to the effect that a retailer is obliged to handle a complaint in accordance with the retailer's standard complaints and dispute resolution procedures rather than specifically referring to the relevant Australian Standard. Section 19 of the model terms also provides that complaints are to be handled according to the retailer's standard complaint handling system.</p> <p>Clause 28.1 of the ERC v10 required a retailer to handle a customer complaint in accordance with the</p>	<p>Incorporate requirement from cl. 81 of the NERL into the draft ERC v11 as follows:</p> <p>A distributor, retailer or responsible person must develop, make and publish on its website a set of procedures detailing the retailer's, distributor's or responsible person's procedures for handling small customer complaints and dispute resolution procedures. The procedures must be regularly reviewed and kept up to date. The procedures must be substantially consistent with the Australian Standard AS ISO 10002-2006 (<i>Customer</i></p>	<p><b>Lumo</b> – We query why this clause was not amended to reflect the updates to the ERC v11? A consistent complaints and dispute resolution procedure will produce a more appropriate outcome for customers who have a grievance. For this reason, Lumo recommends that the Commission insert cl. 59A into cl. 1.7(a). (p 1)</p>	<p>The Commission disagrees with Lumo's submission to insert cl. 59A into cl. 1.7(a). Clause 1.7(a) is not inconsistent with cl. 59A of the ERC v11; cl. 59A is simply a more detailed description of a retailer and responsible person's obligations in relation to complaints.</p>



Clause Number	Description of clause	Analysis of inconsistency	Proposed Action	Stakeholder Submission	Final Decision
		relevant Australian Standard on Complaints Handling.	<i>satisfaction – Guidelines for complaints handling in organizations</i> ) as amended and updated from time to time.		
<b>2.6</b>	<p>A distributor, retailer or responsible person must provide sufficient written information to the customer so that the customer can access, at a minimum, the cumulative total energy measured by an interval meter that is a type 5 metering installation or smart meter at the customer's premises:</p> <p>when the meter is installed at a customer's premises; and</p> <p>anytime the information is requested by the customer.</p>	<p>Clause 25(1)(y) of the draft ERC v11 provides that if a customer's bill is derived from smart meter interval data, the customer's bill must contain:</p> <ul style="list-style-type: none"> <li>the index read at the end of the billing period;</li> <li>the index read at the start of the billing period (starting 1 July 2012);</li> <li>the actual tariffs; and</li> <li>the total amount of electricity/gas consumed in each period or class of period in respect of which a relevant tariff applies to a customer.</li> </ul>	<p>Insert note into the draft ERC v11 which states that additional obligations in relation to the provision of metering information to customers are contained in the Electricity Customer Metering Code.</p>	<p>No submissions were received from stakeholders.</p>	<p>The Commission's proposed action is adopted as its Final Decision.</p>



Clause Number	Description of clause	Analysis of inconsistency	Proposed Action	Stakeholder Submission	Final Decision
5.1	Subject to clause 5.2, a distributor, a retailer or a responsible person (whichever is responsible for providing the metering services) may at any time, and must within 15 business days of a request from a customer, customer's representative or a distributor (if it is not responsible for the metering services), test the metering equipment which has been installed to measure and record the amount of electricity supplied to an electrical installation of the customer to ascertain whether or not the metering equipment is defective.	Clause 29(5) of the draft ERC v11 provides for customer requests for meter testing in reviewing a bill and requires the retailer to arrange for a check of the meter reading or metering data or request the responsible person to test the meter. The draft ERC v11 does not provide a time period for testing the metering equipment.	Insert note into the draft ERC v11 which states that additional obligations in relation to the meter testing are contained in the Electricity Customer Metering Code.	No submissions were received from stakeholders.	The Commission's proposed action is adopted as its Final Decision.





Clause Number	Description of clause	Analysis of inconsistency	Proposed Action	Stakeholder Submission	Final Decision
5.3(b)	<p>For tests conducted following a request from a customer, a distributor, a retailer or a responsible person (as the case may be) may seek payment of the anticipated costs of testing metering equipment prior to the commencement of testing, but if the metering equipment fails to meet the accuracy standards prescribed under the Metrology Procedure, the distributor, the retailer or the responsible person (as the case may be) must refund the payment made by the customer within 5 business days of completion of the test.</p>	<p>Clause 29(5)(b) of the draft ERC v11 was amended to provide that the retailer may not request that a customer pay the cost of a meter test up front. This is inconsistent with the provisions under the Electricity Customer Metering Code.</p>	<p>Amend cl. 5.3(b) of the Electricity Customer Metering Code as follows:</p> <p>For tests conducted following a request from a customer, a distributor, a retailer or a responsible person (as the case may be) must not seek payment of the anticipated costs of testing metering equipment prior to the commencement of testing.</p>	<p>No submissions were received from stakeholders.</p>	<p>The Commission's proposed action is adopted as its Final Decision.</p>



Clause Number	Description of clause	Analysis of inconsistency	Proposed Action	Stakeholder Submission	Final Decision
9	“ <i>Energy Retail Code</i> ” means the code of that name certified by the <i>Commission</i> .	For consistency, the new definition of draft ERC v11 should be adopted in the Electricity Customer Metering Code.	Amend definition of Energy Retail Code as follows: <i>Energy Retail Code</i> means the code of that name determined by the Commission under the Electricity Industry Act and Gas Industry Act.	No submissions were received from stakeholders.	The Commission’s proposed action is adopted as its Final Decision.
9	<i>smart meter</i> means an interval <i>meter</i> designed to transmit data to a remote locality that meets the functionality requirements for advanced metering infrastructure set out in any relevant Order made under section 46D of the <i>Electricity Industry Act</i> .			<b>United Energy</b> – The definition of ‘ <i>smart meter</i> ’ establishes customer protections and obligations for a smart meter that is being remotely read and meets the functionality and the service level requirements. As drafted this clause places remote read or remote service obligations on the meters that may be manually read basic or interval meters. In addition the functionality requirements are not set out	United Energy's submission does not raise an issue of inconsistency between the Electricity Customer Metering Code and the ERC v11. The Commission has addressed this issue in its 'Final Decision: Harmonisation of the Energy Retail Code and Guidelines with the National Energy Customer Framework'. The Commission will adopt in the Electricity Customer Metering Code the same definition of 'smart meter'



Clause Number	Description of clause	Analysis of inconsistency	Proposed Action	Stakeholder Submission	Final Decision
				in the Specifications Order. They are set out in a Ministerial document published on the Department's website which is referred to in the Order. The definition should be amended from a meter that simply meets the hardware requirements whether read remotely or locally to a meter that meets the hardware requirements and the remote service requirements. (p 2)	that is adopted in the ERC v11.

## 5. ELECTRICITY CUSTOMER TRANSFER CODE

Clause Number	Description of clause	Analysis of inconsistency	Proposed Action	Stakeholder Submission	Final Decision
1.1	The purpose of this Code is to facilitate and regulate aspects of the process by	A number of other applicable laws and codes are set out in Appendix A to	Appendix A of the Electricity Customer Transfer Code should be amended to	No submissions were received from stakeholders.	The Commission's proposed action is adopted as its Final Decision.



Clause Number	Description of clause	Analysis of inconsistency	Proposed Action	Stakeholder Submission	Final Decision
	<p>which customers can choose to change retailer or (in certain circumstances) can be transferred to another retailer. The data access rules and the transfer rules contained in this Code operate in conjunction with the National Electricity Rules and the national CATS retail transfer procedures which operate under the National Electricity Rules.</p>	<p>the Electricity Customer Transfer Code, and cl. 1.6 of the Code notes that the Code does not comprehensively set out all rights and obligations of people participating in MSATS, market data or customer transfers.</p> <p>The AEMO MSATS Procedures: CATS Procedure Principles and Obligations are referred to in the Electricity Customer Transfer Code as the CATS retail transfer procedures. Chapter 6 of the CATS retail transfer procedures is the equivalent to the Electricity Customer Transfer Code.</p>	<p>include reference to the ERC v11.</p>		



Clause Number	Description of clause	Analysis of inconsistency	Proposed Action	Stakeholder Submission	Final Decision
4.1(a)	<p>(a) A proposed transfer of a customer to a new retailer must be initiated by the proposed new retailer as soon as practicable after the expiry of the cooling-off period (if any) applicable to the contract between the customer and the new retailer:</p> <p>(1) with the explicit informed consent of a relevant customer or otherwise the consent of the customer;</p> <p>(2) in accordance with the CATS retail transfer procedures;</p> <p>(3) by nomination of a proposed date in accordance with clause 4.2.</p>	<p>Clause 57(2) of the draft ERC v11 provides that a customer transfer is permitted prior to completion of the cooling off period provided that the transfer can be reversed if the customer elects to withdraw.</p> <p>Clause 6.4(n) of the CATS retail transfer procedures provides that the new Financially Responsible Market Participant may withdraw a change of retailer transaction request at any time until the transfer is completed in CATS. It is unclear whether this clause will allow a transfer to be reversed in the event it is permitted prior to the cooling off period. It is likely that should cl. 57(2) of the draft ERC v11 apply, and once a</p>	<p>Amend the Electricity Customer Transfer Code to permit a transfer to occur prior to completion of the cooling off period if the transfer can be reversed if the customer elects to withdraw.</p>	<p>No submissions were received from stakeholders.</p>	<p>The Commission's proposed action is adopted as its Final Decision.</p>



Clause Number	Description of clause	Analysis of inconsistency	Proposed Action	Stakeholder Submission	Final Decision
		transfer has been completed, a new transfer will need to be initiated to effect a reversal of a transfer. This clause should therefore not restrict the operation of the draft ERC v11.			
6	<i>Energy Retail Code</i> means the code of that name determined by the <i>Commission</i> .	For consistency, the new definition of draft ERC v11 should be adopted in the Electricity Customer Transfer Code.	Amend definition of Energy Retail Code as follows: <i>Energy Retail Code</i> means the code of that name determined by the Commission under the Electricity Industry Act and Gas Industry Act.	No submissions were received from stakeholders.	The Commission's proposed action is adopted as its Final Decision.
6	<i>smart meter</i> means an interval <i>meter</i> designed to transmit data to a remote locality that meets the functionality requirements for advanced metering infrastructure set out in any relevant Order made under			<b>United Energy</b> – The definition of ' <i>smart meter</i> ' establishes customer protections and obligations for a smart meter that is being remotely read and meets the functionality and the service level	United Energy's submission does not raise an issue of inconsistency between the Electricity Customer Transfer Code and the ERC v11. The Commission has addressed this issue in its 'Final Decision:



Clause Number	Description of clause	Analysis of inconsistency	Proposed Action	Stakeholder Submission	Final Decision
	section 46D of the Electricity Industry Act.			<p>requirements. As drafted this clause places remote read or remote service obligations on the meters that may be manually read basic or interval meters. In addition the functionality requirements are not set out in the Specifications Order. They are set out in a Ministerial document published on the Department's website which is referred to in the Order. The definition should be amended from a meter that simply meets the hardware requirements whether read remotely or locally to a meter that meets the hardware requirements and the remote service requirements. (p 2)</p>	<p>Harmonisation of the Energy Retail Code and Guidelines with the National Energy Customer Framework'. The Commission will adopt in the Electricity Customer Transfer Code the same definition of 'smart meter' that is adopted in the ERC v11.</p>



## 6. RETAIL COMPLIANCE REPORTING MANUAL

Clause Number	Description of clause	Analysis of inconsistency	Proposed Action	Stakeholder Submission	Final Decision
<b>Appendix A</b> <b>Table A.1</b>	<p>Appendix A to the Retail Compliance Reporting Manual contains detailed references to clauses within:</p> <ul style="list-style-type: none"> <li>the Code of Conduct for Marketing Retail Energy in Victoria</li> <li>ERC</li> <li>Guideline 13: Greenhouse Gas Disclosure on Electricity Customers' Bills</li> <li>Guideline No. 19: Energy Price and Product Disclosure</li> <li>Guideline No. 21: Energy Retailers' Financial Hardship Policies</li> </ul>	<p>The references to these instruments have changed due to the drafting of the draft ERC v11.</p>	<p>Update Appendix A, Table A.1, to reflect changes to the draft ERC v11 as per the tracked changes set out in the marked-up version of the Retail Compliance Reporting Manual published on the Commission's website.</p>	<p><b>Lumo</b> – We support the proposed updates to the Retail Compliance Reporting Manual. We recommend that the updated Manual apply from 1 January 2014 to 1 July 2014, with the current version continuing to apply until 30 December 2013. This will cause the least disruption to business process and ensure that compliance reporting relates to the obligations that are in place at the time of the report. (p 1-2)</p>	<p>The Commission agrees with Lumo's submission that the 'effective date' of the amendments to the Retail Compliance Reporting Manual should coincide with the implementation date for the ERC v11, which is 13 October 2014. The Commission proposes to insert into the amendment record of the manual the same date as the commencement date of ERC v11.</p>





Clause Number	Description of clause	Analysis of inconsistency	Proposed Action	Stakeholder Submission	Final Decision
<b>Appendix A Table A.1</b>	Appendix A to the Retail Compliance Reporting Manual contains references to Electricity Retail Licence clauses 9.1 to 9.3 under Type 2 obligations.	Section 3 of the consultation paper proposed a further individual consultation process with each retailer to amend retail licences where necessary, based on individual variations between licences.	Further amendments to Appendix A of the Retail Compliance Reporting Manual may be required if amendments are made to retail licences following consultation with individual licensees.	No submissions were received from stakeholders.	The Commission's proposed action is adopted as its Final Decision.

## 7. OPERATING PROCEDURE COMPENSATION FOR WRONGFUL DISCONNECTION

Clause Number	Description of clause	Analysis of inconsistency	Proposed Action	Stakeholder Submission	Final Decision
<b>General submission</b>				<b>Lumo</b> – We query why the Commission has inserted the word 'operating' throughout the body of this document and it has not rectified other inconsistent terminology in other documents. We support the Commission amending the	The Commission inserted the word 'operating' to more accurately reflect the title of the instrument which is called an 'Operating Procedure'. The name of the instrument was referred to inconsistently throughout the instrument, either as a



				Codes and 'Operating' procedures to ensure that language contained within these documents is relevant. For example, the Gas Distribution System Code continues to refer to 'VENCorp' and the Electricity Distribution Code refers to 'NEMMCO'. (p 3)	guideline, procedure or operating procedure. The Commission has replaced the references to 'VENCorp' and 'NEMMCO' with 'AEMO' in the codes it has amended as a result of the harmonisation project, but will not amend any other codes at this time.
<b>Clause 2.3</b>	This clause of the Operating Procedure refers to and replicates clause 36.1 of the ERC which has not been adopted in the draft ERC v11.	The reference to cl. 36.1 should be removed from the Operating Procedure as it has not been adopted in the draft ERC v11.	Delete the words: 'Consistent with clause 36.1 of the Energy Retail Code'.	<b>Consumer Groups</b> – The reference to cl. 36.1 in the draft ERC v11 is incorrect. (p 77)	The Commission agrees with the Consumer Groups that cl. 2.3 of the Operating Procedure incorrectly refers to cl. 36.1 of the ERC v11. The correct reference is cl. 35.1. In any case, the Commission will delete the words 'Consistent with clause 36.1 of the Energy Retail Code', as cl. 35.1 has not been adopted in the ERC v11.



<p><b>Clause 3.1</b></p>	<p>This clause refers to certain clause numbers from the ERC v10 which have changed numbering in the draft ERC v11.</p>	<p>The clause references should be updated for consistency with new clause numbering adopted in the draft ERC v11.</p>	<p>Delete the references to clauses 11.2, 13.1 and 13.2 and replace with clauses 33(1), 111, 112, 113 and 116.</p>	<p><b>Consumer Groups</b> – This clause states “<i>In assessing the meaning of certain provisions in clauses 11.2, 13.1 or 13.2 of the Energy Retail Code (and equivalent provisions of retailers’ terms and conditions of supply which reflect the code), regard must be had to the applicable interpretative guidance in the second column of Appendix A. The guidance given there is not a formal supplement to the Code to be applied in abstract without full regard to the circumstances, nor is it exhaustive (see clauses 5.2 and 6.4).</i>” The references to clauses 11.2, 13.1 and 13.2 of the ERC v10 will be replaced with clauses 33(1), 111, 112, 113, and 116 of the draft ERC v11. Given that the</p>	<p>The Consumer Groups have asked the Commission to clarify how continuing to use the interpretive guidance in column 2 of Appendix A to interpret those clauses in the ERC v11 which govern when a retailer may arrange disconnection of a customer's premises (i.e. clauses 33(1), 111, 112, 113 and 116), would impact on how wrongful disconnection payment is assessed.</p> <p>The Commission confirms that the content given in the second column of Appendix 2 is merely guidance. It is 'not a formal supplement to the [ERC v11] to be applied in abstract without full regard to the circumstances, nor is it exhaustive' (cl. 3.1 of the</p>
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				<p>payment difficulties and disconnection sections between both the current ERC v10 and the draft ERC v11, we are concerned that the changes would impact the way wrongful disconnection payment is assessed. Could the Commission please clarify? (p 77-78)</p>	<p>Operating Procedure). To the extent that the ERC v11 requires a different standard from retailers than what the guidance in column 2 suggests, this different standard would apply to the retailer. In addition, to the extent that cl. 33(1), 111, 112 and 113 prohibit disconnection in circumstances not included in Appendix A, these would also give rise to wrongful disconnection compensation obligations.</p>
<p><b>Interpretation</b></p>	<p>Sets out the interpretation of terms in the Operating Procedure.</p>	<p>Certain terms have been given new definitions in the draft ERC v11.</p>	<p>Incorporate new definitions adopted in the ERC v11 where appropriate.</p>	<p>No submissions were received from stakeholders.</p>	<p>The Commission's proposed action is adopted as its Final Decision.</p>



<p><b>Appendix A</b> <b>(1(g), 1(m), 2(a), 2(b), 2(c), 2(g))</b></p>	<p>Appendix A to the Operating Procedure refers to certain clause numbers from the ERC v10 which have changed numbering in the draft ERC v11.</p>	<p>The clause references should be updated for consistency with new clause numbering adopted in the draft ERC v11.</p>	<p>Amendments to clause numbers are indicated in track changes in the marked up version of the instrument available on the Commission's website.</p>	<p><b>Lumo - 1(g)</b> We recommend that 'arrangements' be replaced with 'arrangement' as highlighted below:</p> <p>(g) customer has given reasonable assurance of willingness agreed to an offer to pay the bill in instalments and not yet dishonoured failed to adhere to an instalment <b>arrangements</b> assurance (ERC 111(1)(b)).</p> <p><b>1(m)</b> - We note that financial counselling is not a requirement under 33(3). Recommend the following amendment be made:</p> <p>(m) failure to provide (where required) information on concessions</p>	<p><b>1(g)</b> - The Commission agrees with Lumo's recommendation to replace 'arrangements' with 'arrangement', because if a customer has failed to adhere to <u>one</u> instalment arrangement that does not give rise to a retailer's right to arrange disconnection (cl. 111(1) ERC v11). The Commission also considers it necessary to include a reference to payment plans for consistency with the ERC v11.</p> <p><b>1(m)</b> - The Commission agrees with Lumo's submission. Clause 1(m) of Appendix A was a description of cl. 11.2(4) of the ERC v10, which required retailers to provide customers requiring</p>
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				<p><u>and energy efficiency and financial counselling</u> (ERC v11 cl. 33(3)).</p> <p><b>2(a)</b> - We note that cl. 33(1) does not have a requirement to assess a customer's capacity to pay.</p>	<p>payment assistance with details 'on concessions including the Utility Relief Grant Scheme, telephone information about energy efficiency and advice on the availability of an independent financial counsellor'. Clause 33(3) of the ERC v11 replaces cl. 11.2 of the ERC v10. We agree that cl. 33(3) no longer includes reference to 'energy efficiency' or 'financial counselling'. On that basis, the Commission proposes to delete from 1(m) the reference to 'energy efficiency' and 'financial counselling'.</p> <p><b>2(a)</b> - The Commission agrees with Lumo's submission that cl. 33(1) does not contain a</p>
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				<p>We recommend one of the following amendments are made:</p> <p><u>Option 1:</u> 2(a) disconnection occurs where the retailer has not considered whether the customer is experiencing repeated payment difficulties in paying the bills or requires payment assistance and does not take steps to assess the customer's capacity to pay (ERC clauses 33(1), 72(1) and 72(1)(a)(1) <b>for assessment of capacity to pay</b>).</p> <p><u>Option 2:</u> 2(a) disconnection occurs where the retailer has not considered whether the customer is experiencing repeated payment difficulties in paying the bills</p>	<p>requirement to assess the customer's capacity to pay. However, cl. 2(a) of Appendix A of the marked-up version of the Operating Procedure already refers to cl. 72(1) of the ERC v11, which <u>does</u> require a retailer to assess a hardship customer's capacity to pay when establishing a payment plan for that customer. On that basis, the Commission proposes to retain the reference to cl. 72(1) of the ERC v11.</p>
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				<p>or requires payment assistance and, <b><u>where required</u></b>, does not take steps to assess the customer's capacity to pay (clauses 33(1) and 72(1) of the ERC v11).</p> <p><b>2(b)</b> - We believe the correct ERC reference is cl. 111(1)(e) for 2(b).</p> <p><b>2(c)</b> - The reference clause should refer to the actual sub-clause to avoid confusion – ERC 72(1)(a)(i).</p>	<p><b>2(b)</b> -The Commission agrees with Lumo's submission that the correct ERC v11 reference is cl. 111(1)(e). This is already the reference used in cl. 2(b) of Appendix A of the marked-up version of the Operating Procedure. As such, no change is proposed.</p> <p><b>2(c)</b> -The Commission agrees with Lumo's submission that cl. 2(c) should reference the sub-cl. 72(1)(a)(i).</p>
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				<p><b>2(g)</b> - We query how cl. 111(2) applies in this situation, as all cases are covered under cl. 111(1). (p 3-4)</p>	<p><b>2(g)</b> - The Commission considers that cl.111(2) is an error and should refer to cl.111(3)(c), which contains a separate 'best endeavours' obligation in respect of contacting customers on shortened collection cycles prior to disconnection. The Commission also proposes to amend cl. 2(g) to reflect the fact that the obligation to use 'best endeavours' to contact a customer prior to disconnection applies to <i>all</i> customers, and not just hardship customers.</p>
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