

# Building trust through new customer entitlements in the retail energy market

Draft Decision

7 September 2018



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## Chairperson's introduction

This draft decision outlines how we propose to implement the first tranche of recommendations from the Independent Review of the Electricity and Gas Retail markets in Victoria (the Independent Review)<sup>1</sup>, which was supported by the Victorian Government in March 2018.<sup>2</sup> These recommendations outlined new regulatory obligations that should be imposed on energy retailers. In developing this draft decision, we have also carefully considered *how* these obligations can be implemented to maximise their impact on consumer outcomes. In doing so, we have been heavily influenced by the numerous inquiries and reviews that have highlighted the declining level of confidence and trust in consumer markets for utility and financial services.

Over the history of regulation of the retail energy market, regulation has tended to be reactive. Typically, in the face of an emerging community concern, a new obligation is imposed on energy retailers. These community concerns typically arise when there is a decline in consumer confidence in the operations of the market. The regulatory response is intended to restore that trust. In other words, new rules are created to compensate for the community's lack of confidence in the market. The effect of this approach is to transfer responsibility for market outcomes away from energy companies and on to the regulator and its rules. And, after quarter of a century, the list of rules and regulations is extensive. Today, few people can even remember why some of these obligations exist. Nonetheless, they exist and we continue to monitor retailers' compliance with them.

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

In the energy sector, regulation has operated on the premise that if energy companies comply with the regulator's rules, it follows that consumers will be satisfied with the outcomes they experience.

Recent reports from the Independent Review, the Australian Competition and Consumer Commission<sup>3</sup> and the Australian Energy Market Commission<sup>4</sup> have detailed unsatisfactory

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

<sup>2</sup> See <https://engage.vic.gov.au/review-electricity-and-gas-retail-markets-victoria>.

<sup>3</sup> ACCC, 'Restoring electricity affordability and Australia's competitive advantage: Retail Electricity Pricing Inquiry – Final Report', July 2018,

outcomes in the retail energy market. Importantly, these reports do not raise concerns about widespread noncompliance by energy retailers. Nonetheless, they all highlight a growing loss of trust in the retail energy market caused by the unsatisfactory outcomes customers are experiencing. In other words, these reports highlight the weakness of the assumption that consumers get good outcomes when energy retailers follow the rules. Poor customer outcomes are not always the result of poor retailer compliance. Conversely, compliance does not always lead to satisfactory outcomes.

That's why we are taking a different approach to implementing the recommendations from the Independent Review. We're seeking to put responsibility for building trust in the retail energy market back where it belongs — with the energy retailers. After all, it is the energy companies who have the direct relationship with customers.

In this draft decision we're proposing a new form of regulation. While we're creating the obligations recommended by the Independent Review, we are also proposing to codify the consumer outcomes these obligations are intended to deliver. Doing so means retailers won't be able to adopt a simple tick-the-box approach to complying with these new obligations. Instead, they will need to turn their minds to how they achieve these outcomes while meeting their compliance obligations. Trust and community confidence cannot be restored by more tick-the-box regulation.

We are not alone in recognising the need for a new approach.

There is a need for basic tenets of honesty, integrity and accountability. Regulations without a spirit of morality do not work.<sup>5</sup>

Until now, the regulatory framework has treated obligations like the provision of information to customers as an outcome in its own right. In its present form, the regulatory framework does not explain why that information must be provided or how it is meant to assist the customer. As a result, retailers rightly ensure they comply with those obligations but neither they, nor the community, can gauge whether they've done so in a way that has made any difference.

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

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<sup>4</sup> AEMC, '2018 Retail Energy Competition Review', June 2018,

<sup>5</sup> Don Argus AC, *Banks must go back to basics to regain public trust*. The Weekend Australian. August 18-19, 2018.

responsibility and accountability. Retailers become responsible for enlivening the objective and purposes described in the regulations and they can be held accountable for doing so.

As the regulator, this means we must clearly articulate the purposes we attach to new regulatory obligations and we must subject these purposes to community scrutiny before they are codified. In other words, we must confirm that the purposes we attach to our regulations do truthfully embody community expectations and standards. If the objectives we articulate in the regulatory framework align with community standards, and retailers are held accountable for meeting those objectives, then consumers can have confidence that the market is operating in their interests and worthy of their trust.

We propose to create higher standards of retailer accountability by creating new customer entitlements which retailers will be required to honour. The objective of each entitlement will be specified in terms of the outcome that customers can expect. Retailers will be required to act in accordance with those objectives. Beneath these objectives will sit minimum standards which will ensure a degree of consistency in the actions of all retailers. Beyond these minimum standards, retailers will be free to innovate in how they satisfy the customer entitlement.

This draft decision proposes to establish three new customer entitlements that will sit in a new Part 2A in the Energy Retail Code. The stated purpose of this new Part will be, “to provide customers with an entitlement to measures that assist them to engage confidently with the energy market.” The three new entitlements are summarised below.

First, customers should be informed about whether their retailer is charging them a reasonable price for their energy. This will be achieved by creating a customer entitlement to information about the savings available to them if they were to switch to the retailer’s best offer. This information will appear on customer bills at least twice per year. It would be a mistake to view this as just another disclosure on an already crowded energy bill. Instead, it will serve as a prominent declaration from the retailer about how well it is acting on behalf of its customer in providing an essential service (at least in terms of prices).

Second, customers will be entitled to prior notification of any changes their retailer intends to make to any tariff, charge or benefit that affects their energy bill. The objective of this entitlement is to support customers to consider the ongoing benefits of their retail contract in the face of price changes. It too, should not be viewed as just another letter but rather as an example of retailers taking responsibility for assisting customers to assess the merits of their existing contractual arrangements.

Third, customers will be entitled to clear advice from the retailer before entering into a contract. It will no longer be sufficient for a retailer merely to gain a customer’s consent to a retail contract — as would be sufficient under the current compliance-based approach to regulation. Under our proposed new approach, customers will be entitled to advice that helps them confidently navigate their way to the retailer’s contract that best suits their circumstances. This entitlement means

retailers will be responsible for turning their minds to the merits of the contracts their customers enter.

When viewed as a whole, these three entitlements will mean customers can engage more confidently with the retail energy market knowing their retailer won't be 'pulling a swifty' when they're not looking.

We are confident retailers will seize the opportunity to support the new customer entitlements we are proposing in this draft decision. By taking greater responsibility for the outcomes experienced by their customers, retailers will become active leaders in restoring community confidence and trust in the retail energy market. This is rightly their role. After all, it is their market.

Finally, we are proposing to prohibit retailers from excluding the GST when quoting their prices. This will bring the representation of energy prices into line with pricing across the broader economy and help limit the scope for customer confusion.

It is now indisputable that the community expects a higher standards of conduct in the energy sector than might be acceptable elsewhere in the economy. We have recognised that this higher standard cannot be achieved by a simple focus on a tick-the-box compliance. That is why **this draft decision proposes a new, 'responsibility-based' approach to the regulation of the retail energy market.**

We look forward to your feedback.



## Executive summary

Historically, the retail energy market has received less public attention than energy networks or the generation sector. This is despite being the part of the energy supply chain most directly experienced by consumers. This has changed in the past year, following a series of high profile reviews that have drawn attention to customers' negative experiences of this market, and the surprisingly high costs associated with the retail component of customer bills.

A central theme of these reviews has been the loss of customer confidence and trust in the retail market. Such findings have spurred the reviewers to propose a suite of changes to make retailer conduct fairer and more transparent, and the customer experience clearer and easier. This background has shaped our approach to implementing the new entitlements outlined in this draft decision, which are intended to encourage and support a culture of shared responsibility within the retail sector.

### **Independent Review into the Electricity and Gas Retail Markets**

This draft decision follows the Independent Review into the Electricity and Gas Retail Markets in Victoria that was completed in August 2017.<sup>6</sup> Similar to other recent assessments, the review found that the benefits promised when competition was implemented have not been realised and that consumers were paying more for the same service. It also identified that the market had become so complex that even motivated customers were easily confused, and that this was eroding trust and confidence. It made 29 detailed recommendations, including a number of recommendations intended to reinstate trust and confidence in the market by requiring retailers to do more to help customers understand, compare and switch energy plans.

In March 2018, the Victorian Government issued its interim response to the review. As part of its response, it requested the Essential Services Commission review our codes for the purposes of giving effect to selected recommendations of the review.<sup>7</sup> This report sets out our draft decision on the first round of amendments to the Energy Retail Code arising from that review.

### **Our proposal**

We have been requested to give priority to recommendation 3G of the retail market review, which is for retailers to put their best offer on customer bills. We are also taking this opportunity to

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<sup>6</sup> John Thwaites, Patricia Faulkner and Terry Mulder, op cit.

<sup>7</sup> See terms of reference at appendix A.

progress recommendations in relation to price change notifications (recommendation 3F) and displaying prices in GST inclusive terms (recommendation 3H).

We have therefore developed a number of proposals to give effect to these recommendations. Through this draft decision we are proposing new customer entitlements to cut through the complexity of the market, and make it easier for customers to understand when a better deal is available from their retailer. The changes would also require retailers to regularly display their 'best offer' on customers' bills, along with advice on how to access it. Retailers will be required to personalise the information by using the customer's actual meter data to calculate the savings that may be available.

The retail market review also highlighted that the existing regulatory framework allows retailers to change a customer's energy prices without prior notice. In response, we have proposed a new 'bill change notice' that retailers must send to customers ahead of price changes, as well as changes to benefits (such as discounts) associated with their contracts. Retailers would also be required to display their best offer for customers on these bill change notices.

To accompany these new entitlements, we are also proposing a new transparency rule – a 'clear advice entitlement' – that will require retailers to be upfront with customers about any 'catches' within the contract that could lead to the customer paying more than they expect. This could include conditional discounts, or discounts that expire after a period of time. This will help manage the risk that customers may be tempted by large savings only to end up on plans that are not appropriate to their circumstances. The clear advice entitlement would also require retailers to tell customers about other deals that might suit them.

Finally, to promote transparency and ease of comparisons between offers, we are proposing that all tariffs, fees, prices and charges are to be expressed in GST inclusive terms only. This would apply to bills and related notices, in all marketing material and in any verbal exchange between retailers and customers or prospective customers.

Our draft decision is set out below.

## **Our draft decision**

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

Customers are entitled to be informed, via their bill, of the best offer available to them from their retailer. The best offer is to be determined and presented in accordance with the specifications set out in this draft decision.

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

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

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

The best offer is to be determined using the customer's previous 12 months metering data, or if that is not available, the retailer's best estimate of the customer's 12 months metering data.

When determining the best offer, the retailer is to apply all unconditional and conditional discounts to the estimates of the customer's current, and any alternative offers from the retailer.

When undertaking the best offer calculation, the retailer should not account for savings available on alternative offers if those savings require the customer to bundle their gas and electricity together, or bundle their energy service with another type of service, such as telecommunications services.

When determining the best offer, the retailer is to apply all concessions that currently apply to the customer's account to the estimates of the customer's current, and any alternative offers from the retailer.

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

Where the customer is not on the retailer's best offer, customer bills are to include a simple message, including a savings estimate, located immediately adjacent to the bill due amount using the words: 'We could offer you a cheaper plan. On our [plan name] you could save around \$[X] per year. Conditions may apply.' The message is also to include information on how to contact the retailer to switch.

Where the customer is already on an offer that is as cheap or cheaper than the retailer's best offer (within the meaning given to that term in the code), customer bills are to include a message confirming this for the customer and referencing the option to visit Victorian Energy Compare to compare offers from other retailers.

Figure ES 1 contains an example bill containing the best offer message.



### **Figure ES 1. Example bill mock up containing best offer message**



0002  
[NAME]  
1 SAMPLE ST VIC 3057

### Your electricity bill


4 Mar 18 – 5 June 18

<p><b>WE CAN OFFER YOU A CHEAPER PLAN</b></p> <p>On our Anytime Saver Plan you could <b>Save around \$485 per year*</b></p> <p>To switch plans, call 13 25 71, or go to <a href="http://www.boltenergy.com.au">www.boltenergy.com.au</a> <small>*Conditions may apply</small></p>	<p><b>DUE DATE</b></p> <p><b>5 Jul 18</b></p>	<p><b>YOUR ACCOUNT DETAILS</b></p> <p>Account number 300 000 000 000</p> <p>Tax invoice 100 000 000 400</p> <p>Issue date 6 Jun 18</p> <p>Total amount due See the Account Summary on pg. 2</p>
<p><b>YOUR ENERGY PLAN</b></p> <p>Easy Saver plan ending 24 Oct 18</p> <p>Your estimated bill over the next 12 months is \$1730.</p> <p>Benefits available on this energy plan</p> <p>Guaranteed usage discount (10%)</p>	<p><b>YOUR USAGE SUMMARY</b></p> <p>Average cost per day \$3.57</p> <p>Average daily usage 9.08 kWh</p> <p>Same time last year 9.01 kWh</p> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;">  0.07 kWh         </div> <div style="text-align: center;">  9.08 kWh         </div> </div>	

### Need to get in touch

Inquiries & moving address: 13 24 61  
7 am - 9 pm local time Mon - Fri  
9 am - 5 pm local time Sat

faults & emergencies: 13 12 80  
Call Melbourne Power 24 hrs

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|--|---|---|
| <p> <b>DIRECT DEBIT</b><br/>Register online at <a href="http://boltenergy.com.au/myaccount">boltenergy.com.au/myaccount</a> or call 13 24 61 to arrange automatic payment of future accounts*</p> | <p> <b>MAIL</b><br/>Send this slip with your cheque made payable to Bolt Energy Holdings Limited, Private Bag 14622 Melbourne Vic 3001</p> | <p> <b>TELEPHONE &amp; INTERNET BANKING - BPAY</b><br/>Contact your bank or financial institution to make this payment from your cheque, savings, debit, creditcard* or transaction account. More info: <a href="http://www.bpay.com.au">www.bpay.com.au</a></p> |
| <p> <b>VISA OR MASTERCARD*</b><br/>Call 1300 628 768 or visit <a href="http://boltenergy.com.au/paynow">boltenergy.com.au/paynow</a></p>  | <p> <b>EPOST</b><br/>Pay by cash, eftpos or card* at any Post Office</p>   |   |

\*Use or BPay Card payment requires processing fee of \$2.75 (incl GST) of the total payment amount. Fees do not show on our meter bill. Some examples and payment links may apply. Payment processing fee of \$2.50 (incl GST) may apply. Bolt Energy Ltd (BN 23 01 00 00)

## Draft decision 5: Clear advice entitlement

Customers are to receive a clear advice entitlement to ensure they are made aware of, at the point of entering a contract, the dollar cost implications of all terms and conditions that influence the costs they will face over the term of the contract, and of any other offers the retailer believes may be more suitable for the customer.

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

The best offer obligation applies to:

- bills supplied to small customers (domestic and small business)<sup>8</sup>
- electricity and gas bills
- bills in all formats, including paper and electronic
- communications that accompany a new bill and summarise its key content (bill summaries, in any form), including the amount owing and due date, and
- bills supplied by holders of a retail licence, but not to bills from holders of an exemption from a retail licence.

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

Best offer messages are to appear on bills at a minimum every six months. The message is to appear on the first bill to follow 1 January and 1 July each year, starting from 1 July 2019.

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

To be determined a 'best offer', an offer must result in an estimated saving of least \$22 (including GST) per year when compared to the customer's current offer.

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

The best offer must be available for the customer to accept for 13 business days from the issuing date of the bill on which that best offer appears.

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

All customer bills must also include information about how the customer can access the government comparator website, Victorian Energy Compare (VEC).

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

The existing requirement for retailers to issue benefit change notices is to be replaced by a new requirement to issue bill change notices that are triggered by any price or benefit change.

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<sup>8</sup> Clause 3 of the Energy Retail Code states 'small customer has the same meaning given to domestic or small business customer under section 3 of the Electricity Industry Act or section 3 of the Gas Industry Act.

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

Bill change notices are to include the following information:

- the small customer's metering identifier
- that the small customer may use the price comparator to compare offers that are generally available to classes of small customers in their area
- the name and web address of the price comparator
- that the customer can request historical billing data (and, if they are being sold electricity, energy consumption data) from the retailer that will assist the customer to use the price comparator to compare offers that are generally available to classes of small customers in their area
- any early termination charges payable under the market retail contract
- the retailer's best offer for that customer, defined, calculated and presented in the same manner as set out in draft decision 2 to 4, 8 and 9
- the retailer's estimate of the annual dollar impact of the benefit or price change (where the benefit is financial in nature)
- information specific to the customer to assist the customer to complete the fields necessary to compare offers on Victorian Energy Compare
- that a benefit change will occur and the benefit change date (benefit changes only)
- that the customer's tariffs and charges are being varied (price changes only)
- the date on which the variation will come into effect (price changes only)
- the customer's existing tariffs and charges (price changes only), and
- the customer's tariffs and charges as varied (price changes only).

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

Retailers should present bill change notices in a manner and form consistent with the objective of the notice.

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

Bill change notices are to be delivered by the customer's preferred form of communication where this has been communicated to the retailer, or otherwise by the same method as that used for delivery of the customer's bill.

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

Bill change notices are to apply to both standing offer and market offer contracts, gas and electricity contracts, and price increases and decreases. The notices are not to be applied to exempt sellers at this point in time.

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

Retailers must notify customers of a bill change a minimum of five business days before a benefit or price change takes effect.

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

Retailers are to be exempt from issuing a bill change notice under the following circumstances:

- where the customer has entered into a market retail contract with the retailer within 10 business days before the price change, and the retailer has already informed the customer of the change
- with respect to a tariff or charge that continually varies in relation to the prevailing spot price of energy
- where the variations to the tariffs and charges are a direct result of a change to, or withdrawal or expiry of, a government funded energy charge rebate, concession or relief scheme
- in relation to a benefit change relating to a benefit that is a one-off gift or sign-up credit provided to a customer as a result of entering the market retail contract
- in relation to a benefit change where a benefit change date occurs within 40 business days of the commencement of the market retail contract, or
- in relation to a benefit change where the benefit is rolled over on the same terms and conditions after the expiry of the existing benefit.

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

All tariffs, fees, prices and charges are to be expressed in GST inclusive terms only on bills and related notices, in all marketing material and in any verbal exchange between retailers and customers or prospective customers.

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

The Energy Retail Code amendments outlined in this draft decision are to commence on 1 July 2019.

## **Structure of this draft decision**

The draft decision is divided into the following chapters

- Chapter 1 describes the broader context leading to this draft decision, including an overview of the key themes that have emerged in recent reviews of the retail energy market
- Chapter 2 sets out what we have been asked to do in relation to the review recommendations
- Chapter 3 outlines the key decisions we have had to make in relation to the implementation of recommendation 3G of the review, including how we have considered the definition of ‘best offer’
- Chapter 4 outlines the key decisions we have had to make in relation to the implementation of recommendation 3F of the review, including the concept of bill change notices
- Chapter 5 contains our decision in relation to the implementation of recommendation 3H, which relates to GST inclusive pricing
- Chapter 6 explains how we propose to amend the Energy Retail Code to give effect to our draft decision
- Chapter 7 outlines next steps
- Appendix A contains the terms of reference under which our work is occurring
- Appendix B sets out the draft code amendments arising from our draft decision
- Appendix C summarises the results of consumer testing we did as part of our research into how new information should be presented on bills, and
- Appendix D explains the role of the commission.

## **Timeline for implementation**

The key dates relating to this draft decision, detailed in chapter 8, are as follows

- 7 September: Draft decision released
- September: Workshop on the draft decision (subject to stakeholder interest)
- 5 October: Submissions close
- October: Workshop on submissions (subject to stakeholder interest)
- October: Final decision released and code amended
- 1 July 2019: Proposed commencement date for code amendments



## How to make a submission

We are seeking feedback on our draft decision. Submissions in electronic format are preferred, and must be submitted to the commission by **5pm Friday 5 October 2018**.

Submissions marked 'Submissions to New Requirements for Energy Bills,' should be sent by

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

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

# 1. Background to this draft decision

Historically, the retail energy market has received less public attention than energy networks or the generation sector. This is despite being the part of the energy supply chain most directly experienced by consumers. In the past year, this has changed following a series of high profile reviews that have drawn attention to customers' negative experiences of this market and the surprisingly high costs associated with the retail component of customer bills.

A central theme of these reviews has been the loss of customer confidence and trust in the retail market. Such findings have spurred the reviewers to propose a suite of changes to make retailer conduct fairer and more transparent, and the customer experience clearer and easier. This background has shaped our approach to implementing the new entitlements outlined in this draft decision, which are intended to encourage and support a culture of shared responsibility within the retail sector.

## 1.1. An emerging consensus on the state of the retail energy market

Over the past year, a series of high profile reports have expressed concerns about the operation of Australia's competitive retail energy markets. These reports have been consistent in their findings about the state of the market and of consumers' experience.

The *Independent Review into the Electricity and Gas Retail Markets in Victoria*, released in August 2017, found that the benefits promised when competition was implemented have not been realised. The review identified the practices of the industry as a contributing factor, noting that retailers' approaches to marketing, pricing and contracting had left customers unwilling or unable to navigate the market.

The substantial number of different retail contracts confuses consumers. The market contains a complex array of prices, tariffs, discounts and contract terms. Most consumers have difficulty making an informed decision. They resort to simplistic evaluation tools such as the discount on offers. Consumers, especially those who are vulnerable and disadvantaged, tend to defer more difficult decisions entirely.<sup>9</sup>

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<sup>9</sup> John Thwaites, Patricia Faulkner and Terry Mulder, op cit, p 26.

Our Victorian Energy Market Report 2016-17, published in November 2017, also expressed concerns about the confusing state of the market and the adverse consequences this could have for customers.

[F]inding the right offer can be a daunting task. The complexity created by so many offers means customers may choose discounts they can't afford.<sup>10</sup>

The report highlighted how this could cause significant bill shock for customers which, when combined with rising prices, could see increasing numbers of customers struggling to pay for their energy.

In June 2018, the Australian Energy Market Commission's (AEMC) *2018 Retail Energy Competition Review* drew attention to the lack of consumer trust and confidence that increasingly characterises the market. The AEMC found that in the past year, consumer trust in the energy sector had dropped to 39 per cent, from an already low rate of 50 per cent in 2017.<sup>11</sup> This lack of trust correlated with increased confusion.

... in the past year consumers have become less confident that there is easily understood information about the electricity and gas markets available to them.... Further, there has been an increase in the average percentage of consumers that are not confident about their ability to easily understand information across the [National Energy Market].<sup>12</sup>

The AEMC said that that retailers' discounting practices, and the way energy offers are presented and marketed, were contributing to the decline in consumer trust and confidence. The AEMC drew attention to the difficulty customers face finding an attractive energy plan. 'Consumers tend to only get a better deal if they leave or threaten to leave a retailer.'<sup>13</sup>

In July 2018, the Australian Competition and Consumer Commission (ACCC) released the final report of its Retail Electricity Pricing Inquiry. In a detailed report spanning all elements of the electricity supply chain, the ACCC emphasised many of the same concerns articulated by the review and the AEMC.

Retail electricity services should be relatively simple for consumers to understand and engage with. However, the behaviour of retailers in marketing and advertising electricity

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<sup>10</sup> ESC, 'Victorian Energy market Report 2016-17', November 2017, p.5.

<sup>11</sup> AEMC, op cit, p vii.

<sup>12</sup> Ibid, p 89.

<sup>13</sup> Ibid, p i.

offers has resulted in the market becoming exceptionally complex and impenetrable for many consumers.<sup>14</sup>

The reports echo data from surveys conducted by Energy Consumers Australia (ECA) in December 2017 that indicated only one in five Victorians now believe the market is working in their long term interests.<sup>15</sup> Even fewer customers surveyed thought the market will deliver better value for money in the future.<sup>16</sup> Overwhelmingly, customers believe they receive better value for money from their bank than from their energy provider.<sup>17</sup>

The remainder of this chapter looks at how the various reviews have responded. It also explores how regulatory design must adapt to these circumstances.

## **1.2. Restoring trust through reciprocity**

The retail market review made a number of recommendations in August 2017 designed to support customers engaging with the retail energy market. Likewise, the ACCC's final report in July 2018 made recommendations seeking the same objective. The two sets of recommendations had the common goal of enabling consumers to participate confidently when engaging with the retail energy market.

To date, the most prominent recommendations made by the two reviews have related to the introduction of a regulated price. The Victorian retail market review recommended an obligation on all retailers to provide a Basic Service Offer that would be available as-of-right to all small customers, with the price to be regulated by the Essential Services Commission. The ACCC recommended the introduction of a regulated retail Default Offer that would serve as a price cap on all standing offers.

Notably, while both reports contemplate the reintroduction of a regulated price, neither suggests that the regulated price should be the cheapest offer in the market.

Retailers would be free to continue to offer additional offers at different prices, which may be lower than the 'no frills' option<sup>18</sup>

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<sup>14</sup> ACCC, op cit, p 234.

<sup>15</sup> ECA, 'Energy Consumer Sentiment Survey December 2017', 2018, p 18.

<sup>16</sup> Ibid, p 19.

<sup>17</sup> Ibid, p 42.

<sup>18</sup> John Thwaites, Patricia Faulkner and Terry Mulder, op cit, p x.

In other words, the retail market review and the ACCC upheld the underlying principle that has been in place since the introduction of full retail competition: that customers must play some role in promoting competitive outcomes by shopping around. This principle clearly informed many of the other recommendations made by these reviews, particularly as they related to the information retailers should be obliged to make available to customers on bills and through their marketing material.

Both reviews can be read as being motivated by the notion of reciprocity: if customers continue to be expected to shop around for their energy, then retailers should be obliged to act in ways that support the expectation being placed on customers.

*It is...of utmost importance that consumers receive information they can use from retailers and that this information enables them to make good decisions and engage in the market.<sup>19</sup>*

The confusion of offers, and the potential of that confusion to either disenfranchise customers or cause them to make poor choices, appears to have been deemed by both reviews as a sign that retailers and regulators were not upholding this principle of reciprocity. This failing was leading to a collapse in consumers' confidence that the market was serving their interests. And it is unlikely a market can operate efficiently if consumers do not trust the market to serve their interests.

No regulatory set of obligations can re-establish trust in their own right. Likewise, no market participant can just declare itself trustworthy and expect to be believed by its counterparties. So how might trust be restored?

### **1.3. Building trust by going beyond compliance**

The review and the ACCC both sought to compensate for the 'trust deficit' in the retail energy market by proposing new regulatory obligations for energy retailers. What is evident, furthermore, is that the retail market review was focussed not just on laying down new sets of obligations, but on delivering customer outcomes. This sentiment is captured by recommendation 9 of its report, subsequently supported by the Victorian Government, which is:

*Require the ESC to review its regulatory codes to ensure they focus on customer outcomes and can account for new business models of service provision.<sup>20</sup>*

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<sup>19</sup> ACCC op cit, p 269.

<sup>20</sup> John Thwaites, Patricia Faulkner and Terry Mulder, op cit, p 59.

This suggests that the review recognised that regulatory obligations that merely encouraged a compliance culture among retailers would not lead to the restoration of consumer confidence and trust. Requiring retailers to ensure they ticked each of these new boxes would not be sufficient to overcome the trust deficit and the inefficient market outcomes it causes.

The message from the review is that trust would only be restored if, in addition to meeting the basic compliance obligations, retailers adapted their conduct to meet the expectations of customers. This includes sharing a greater degree of responsibility for the outcomes experienced by those customers.

By implication, the regulatory framework must also adapt to these customer expectations – that is, it must do more than promote ‘tick box’ compliance. As a regulator we have been charged with finding ways to construct a regulatory framework that points retailers towards the types of conduct that will build the trust of customers.

## **1.4. Conclusion**

Since 2016, our regulatory reform efforts have sought to reorientate our frameworks in a manner consistent with the recommendations of the review. For example, our new payment difficulty framework is constructed precisely along these lines by creating new customer entitlements and supporting objectives, expressed in terms of customer outcomes.<sup>21</sup>

We have continued to apply this formula to developing our approach to Energy Retail Code amendments discussed in this draft decision, which continues the processes of reorienting the Victorian framework towards customers and customer outcomes, rather than retailers and regulatory compliance. It ensures that our work to implement recommendations 3F and 3G in this round of code amendments is consistent with recommendation 9 from the review.

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<sup>21</sup> The framework is established by a new Part 3 of the Energy Retail Code, which consists of cascading objectives which are expressed in terms of customer outcomes. These objectives frame the minimum standards with which retailers must comply, while leaving retailers scope to innovate and excel by exceeding these minima. The new payment difficulty framework comes into operation on 1 January 2019 and will be in version 12 of the Energy Retail Code.

<https://www.esc.vic.gov.au/electricity-and-gas/electricity-and-gas-codes-guidelines-policies-and-manuals/energy-retail-code/energy-retail-code-review-2016-customers-facing-payment-difficulties>

## 2. The commission's task

This draft decision forms part of the commission's wider work program following the *Independent Review into the Electricity and Gas Retail Markets in Victoria*.

We have been requested to give priority to implementing recommendation 3G of the retail market review, which is for retailers to put their best offer on customer bills. We are also taking this opportunity to progress recommendations in relation to price change notifications (recommendation 3F) and displaying prices in GST inclusive terms (recommendation 3H). This chapter also relates our current work program to the changes within the national framework.

### 2.1. Independent Review into the Electricity and Gas Retail Markets in Victoria

In November 2016, the Victorian Government appointed an independent panel to conduct a review of electricity and gas retail markets in Victoria. The government announced the review following a number of public reports suggesting Victorians were paying too much for energy.<sup>22</sup>

The review focused on operation of the retail energy market for residential and small business customers and considered:

- the characteristics of the electricity and gas retail markets, including consumer engagement, market structure, regulation and pricing – with a particular focus on retail costs and margins
- key drivers underlying electricity and gas retail pricing, with a focus on retail costs and margins
- whether the Victorian electricity and gas retail markets are operating in the interests of consumers
- whether the electricity and gas retail markets are competitive and whether there are potential constraints on competitiveness
- whether electricity retailers are taking advantage of the impending closure of Hazelwood Power Station in terms of their price offerings to consumers
- consumer awareness and understanding of the retail markets, including potential barriers for particular groups of customers to engage in the markets, and

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<sup>22</sup> Victorian Government, 'Terms of reference for Independent Review of the Electricity and Gas Retail Markets in Victoria', November 2016.

- a review of relevant policies and practices in other jurisdictions, nationally and internationally, to identify best practice in regulatory frameworks governing energy retail markets.

To support its analysis, the review drew upon specially commissioned reports from the CSIRO,<sup>23</sup> KPMG,<sup>24</sup> CME,<sup>25</sup> Jacobs,<sup>26</sup> and Newgate Research.<sup>27</sup>

In August 2017, the review released its final report and concluded the market was not working for consumers. In reaching its conclusion, the review found Victorians were paying ‘unusually high’ electricity prices compared to other jurisdictions. It also reported a 200 per cent increase in energy prices since 2000, with retail charges – the component of the bill that covers the retailer’s costs and profits – being a major contributor to the overall energy price. The review considered competition has added to retail costs without delivering the retail price reductions generally attributed to rivalrous behaviour in a competitive market.<sup>28</sup>

The review concluded there were three main reasons why the market was not working for Victorian consumers: the cost of competition, the structure of the market and the practices of the industry. Specifically, the review found that marketing practices by energy companies were not supporting customers to choose the best price. The review made 29 detailed recommendations, under eleven headings, aimed at improving energy market outcomes for consumers, including changing retailer marketing practices, improving market monitoring, establishing a regulated basic service offer and abolishing standing offer contracts.<sup>29</sup>

## 2.2. The Victorian Government response

### Interim government response

In March 2018, the government released its interim response, announcing support for the recommendations from the review, except for recommendation 1 (introducing a basic service offer

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<sup>23</sup> CSIRO, ‘Exploring the drivers and barriers of consumer engagement in the Victorian retail energy market’, April 2017.

<sup>24</sup> KPMG, ‘Energy retail markets: An international review’, April 2017.

<sup>25</sup> CME, ‘The retail electricity market for households and small businesses in Victoria: Analysis of offers and bills’, July 2017; CME, ‘Victorian retail gas market for residential and small business customers: Description and analysis of commonly available offers’, July 2017.

<sup>26</sup> Jacobs, ‘Retail price review’, August 2017.

<sup>27</sup> Newgate Research, ‘Consumer research for the Victorian government’s review of the state’s energy market’, May 2017.

<sup>28</sup> *ibid*, p.ix-xiii.

<sup>29</sup> *ibid*, p.ix-xiii.



(BSO)), and recommendation 2 (abolishing standing offer contracts), which it proposed to consider further.<sup>30</sup>

As part of its interim response, the government referred terms of reference to the Essential Services Commission under section 10(g) of the Essential Services Commission Act 2001. These terms of reference are:

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

The second terms of reference, relating to recommendation 8, is addressed via a separate work stream and is not discussed further in this paper.<sup>31</sup>

The first terms of reference request the commission consider reviewing its Energy Retail Code in order to give effect to recommendations 3A–H and 9 of the review.<sup>32</sup> Recommendation 3A–H propose changes to the information provided by energy companies to customers, including marketing material and information on bills. Recommendation 9 proposes the commission conduct a broader review of regulatory codes to ensure they focus on customer outcomes and account for new business models.

In considering these recommendations, the commission has been asked to have regard to its objectives under the Essential Services Commission Act 2001 (Vic), Electricity Industry Act 2000 (Vic) and Gas Industry Act 2001 (Vic), as well as:

- the findings from the review
- the approaches being used by other regulators such as the Australian Energy Regulator
- the information needs of Victoria’s rich and diverse community, including our culturally and linguistically diverse (CALD) and aged population, and
- other matters it deems relevant.

The terms of reference specify that the commission is not required to assess the merits of the review’s findings and recommendations. Our role is limited to identifying the most timely and cost-effective ways to implement the findings and recommendations through amendments to the Energy Retail Code. We have incorporated our assessment of timeliness and cost-effectiveness into our

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<sup>30</sup> Victorian Government, ‘Victorian Government Interim Response: Bipartisan Independent Review of the Electricity and Gas Retail Markets in Victoria’, March 2018, p.2.

<sup>31</sup> See our work to monitor and report on competitiveness and efficiency <https://www.esc.vic.gov.au/electricity-and-gas/electricity-and-gas-tariffs-benchmarks-inquiries-and-reviews/electricity-and-gas-retail-markets-review-implementation-2018/electricity-and-gas-retail-markets-review-implementation-2018-competitiveness#tabs-container1>

<sup>32</sup> Section 20(2) of the *Electricity Industry Act 2000* and section 28(2) of the *Gas Industry Act 2001* set out the licence conditions requiring energy retailers to comply with the Energy Retail Code.

exploration of the various options for implementing the review's recommendations discussed in chapters 3-5.

### **2.3. Our work program**

The terms of reference request the commission takes a staged approach to considering and implementing the recommendations. As stated, we are requested to give priority to recommendation 3G, which is for retailers to put their best offer on customer bills. We also considered that recommendation 3H – which proposes prices are quoted in GST inclusive terms only, could be implemented in this tranche of amendments because there is only one way to implement that recommendation.

To better balance the workload between the two rounds of code amendments, we also consider this draft decision provides an opportunity to commence consultation on recommendation 3F (requiring retailers to notify customers of the best offer in advance of any price or benefits change). We note that a notification requirement for benefits changes already exists in the Victorian framework, and that in preparing to implement recommendation 3G we have significantly developed our work on the concept of 'best offer'.

We also note that work is currently underway in the national framework to implement a price change notification, which provides a basis on which to consider any key issues and an opportunity to align the requirements, where possible. An early consultation such as we are proposing may also be beneficial to retailers by establishing clarity sooner about the required system changes to ensure compliance with the new requirements from 1 July 2019 (as required by government).

If stakeholders are supportive we may proceed to implement the associated code changes for all three recommendations together in October. Or, if material issues are raised that indicate more time is needed, we would implement the Energy Retail Code changes for recommendation 3F in the later round of amendments.

The resulting timelines for the work program are set out in table 2.1, while the full list of recommendations is set out in the box below.

**Table 2.1 Anticipated timelines for implementation of key recommendations**

Recommendation	Code changes	Commencement
Recommendation 3F–H	October 2018	July 2019
Recommendation 3A–E	February 2019	July 2019
Recommendation 9A	December 2019	To be determined

**Box 2.1 Recommendations 3A-H of the review**

**Recommendations 3A–H**

**3A:** Require retailers to market their offers in dollar terms, rather than as percentages or unanchored discounts.

**3B:** Where the retailer knows the actual usage profile for a specific customer, the marketing to that customer to be based on the estimated annual costs of the offer for that customer, and the \$ costs if conditions attached are not met.

**3C:** The ESC to develop a small number of typical customer usage profiles (3–4) for use in standardised marketing material (for 2,000 kWh, 4,000 kWh, 6,000 kWh per year).

**3D:** Marketing of prices to appear in a standardised format and display the actual annual cost for the 3–4 standardised customer usage profiles. Annual energy costs for the standardised customer usage profiles to be the comparison rates in marketing materials.

**3E:** The ESC to develop a standardised format for retailer information disclosure and marketing material.

**3F:** Require retailers to notify a customer of the best offer available by that retailer, and reference the Victorian Energy Compare website, in advance of any price or benefits change.

**3G:** Require retailers to include the following information on customer bills:

- How the customer can access the Victorian Energy Compare website
- How the customer can access the Basic Services Offer (see Recommendation 1)
- The retailer’s best offer for that customer based on their usage patterns
- The total annual bill for that customer based on the customer’s current offer and usage patterns.

**3H:** Require marketing material and bills to provide GST-inclusive pricing.

#### **Recommendation 9A**

**9A:** Require the ESC to review its regulatory codes to ensure they focus on customer outcomes and can account for new business models of service provision.

## **2.4. Relevant developments within the national framework**

The Victorian market sits within its own, state-based regulatory framework. However, other states operate within a 'national' framework that is administered by the Australian Energy Market Commission (AEMC) and regulated by the Australian Energy Regulator (AER). The AEMC is responsible for the National Energy Retail Rules (NERR), which it updates from time to time in response to rule change requests it receives from stakeholders and the public. Rule change requests can be submitted by anyone, but are routinely received from industry, community groups and governments.

Over the past 12 months, the AEMC has received a number of rule change requests from the Commonwealth Minister for Environment and Energy aimed at improving outcomes for customers in the retail energy market. We review each of these rule changes on a case by case basis and, where necessary, seek to mirror them in the Victorian framework. Some of these rule changes overlap with work we are undertaking in relation to the review. For the purposes of clarity, this section outlines the rule changes in this category and explains how we are responding to each of them, both in relation to our review work, and our wider regulatory reform work program.

As table 2.2 shows, a number of the AEMC rule changes have either already been mirrored in the Victorian framework or are being picked up via our work on the review recommendations. In the discussion below, we take this opportunity to very briefly set out the commission's intentions with regard to the estimated meter reads rule change request, which we anticipate will be the next focal point (after the price change notification rule change) to progress to a final determination.

**Table 2.2 Summary of AEMC rule changes initiated by the Commonwealth Government**

Rule change	Status with the AEMC	ESC action
<b>Notification of end of fixed benefit periods</b>	Completed: November 2017 Effective: February 2018	Implemented in Victoria, effective February 2018.
<b>Preventing discounts on inflated energy rates</b>	Completed: May 2018 Effective: July 2018	Will be considered during our work on marketing and discounting rules (recommendations 3A-E).
<b>Advance notice of price changes</b>	Initiated: April 2018 Draft determination: July 2018 Final determination: September 2018 Proposed implementation: February 2019	This draft decision proposes to largely mirror this rule change in the Victorian framework.
<b>Estimated meter reads</b>	Initiated: 17 May 2018 Draft determination: August 2018 Final determination: November 2018	If implemented consistent with the draft determination, we propose to mirror this rule in the Victorian framework, following a short consultation on the Energy Retail Code amendments. See discussion below.
<b>Metering installation timeframes</b>	Initiated: May 2018 Draft determination: September 2018 Final determination: December 2018	Of less relevance to Victoria due to the roll out of smart meters being complete.
<b>Long term standing offer notice</b>	Initiation pending Rule change request received 13 June 2018	To be considered once the rule change process is initiated.

### Estimated meter reads

The estimated meter reads rule changes aim to help protect customers from the negative impacts of bill estimates based on inaccurate estimated reads. The rule change in its current draft form would make a number of changes to the NERR to:

- require retailers to allow customers to submit meter self-reads where a meter read has been unable to do it
- require retailers to adjust bills based on customers' self-reads if they reasonably consider the reads to be appropriate and the reads are submitted before the due date of the bill

- require retailers to inform customers who have received bills based on estimated reads of their right to request an adjusted bill
- require customers to pay for the cost of meter check or test only if the meter or data is found to be faulty or incorrect.

The AEMC rule change also proposes that retailer non-compliance with the new requirements be subject to civil penalties.<sup>33</sup>

While the universal rollout of electricity smart meters means that the number of estimated reads in Victoria is reduced, it is nonetheless relevant to Victoria, most notably to gas customers:

[I]t is relevant to note that the Energy and Water Ombudsman Victoria (EWOV) has indicated that it continues to receive complaints about inaccurate estimated meter reads despite the completion of the smart meter rollout for electricity customers in Victoria in 2015.<sup>34</sup>

Under the Energy Retail Code as it currently stands, retailers are permitted—but not required—to base bill estimations on customer meter self-reads.<sup>35</sup> We have recently undertaken a pulse check audit of energy businesses to better understand billing practices in relation to estimated reads. The results of our audit will be presented in our September Victorian Energy Market Report update.

Thus the commission sees significant merit in the AEMC’s draft rule change. We will review the final form of rule change following the AEMC’s final determination, and subject to it still being appropriate to the Victorian context, will move quickly to replicate the change in Energy Retail Code following a focused consultation on the draft code amendments.

## 2.5. Information provision vs ‘nudging’ customers to engage

In considering the various ways the recommendations of the review might be implemented, we have been mindful of different ways of conceiving the role the new information may play. Input from stakeholders has been helpful in distinguishing between a conventional information provision approach and what can be labelled a ‘nudge based’ approach.<sup>36</sup>

Focusing on information provision has been the approach typically used by regulators, and by the energy industry. This approach seeks to drive engagement by customers by providing them with

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<sup>33</sup> AEMC, ‘Estimated meter reads’, draft rule determination, August 2018, pp i-iii.

<sup>34</sup> Ibid, p 20.

<sup>35</sup> Clause 21(2), *Energy Retail Code version 11b*.

<sup>36</sup> The use of the term ‘nudge’ in such contexts was originally popularised by a 2008 book, *Nudge: Improving Decisions about Health, Wealth, and Happiness*, by Richard H. Thaler and Cass R. Sunstein.

more information in order to overcome the information asymmetries between suppliers and customers. This approach assumes that customers have the time, knowledge and motivation to carefully consider and weigh information relating to their energy plan, and therefore, that more information is better. However, the information based approach has resulted in the overly detailed and complex fact sheets and energy bills that have now been criticised for being confusing and unhelpful.<sup>37</sup>

Evidence from disciplines such as psychology and behavioural economics has called into question the effectiveness of responding to information asymmetries in this manner. As the Consumer Protection Research Centre notes in a recent report

[E]vidence shows that simply providing consumers with more information – regardless of its quality, placement or relevance – can result in negative outcomes by overwhelming decision making, and giving rise to behavioural biases and the use of heuristics.<sup>38</sup>

Increasingly, regulators are turning to alternative approaches to encourage customer engagement, including those that draw more from behavioural disciplines. The intention of these newer approaches is to use insights about human behaviour to design more effective interventions, or ‘nudges’, that make it easier for customers to engage in the market.

A ‘nudge based’ approach attempts to ‘go with the grain’ of human behaviour.<sup>39</sup> It leads to concepts and designs that consciously respond to known behavioural tendencies. One such tendency is status quo bias, which manifests in the energy market as customers remaining on energy plans long after more suitable plans have become available. Another known bias is an aversion to choosing from a large number of complex options.

The review clearly developed their recommendations in acknowledgement of these issues. Recommendation 3G, for instance, seeks to counteract customers’ status quo bias by prompting them to consider the suitability of their energy plan at a critical juncture in their relationship with that plan (when they are paying for it). It also seeks to simplify and streamline the customer experience, by requiring the retailer to navigate some of the search process on the customer’s behalf.

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<sup>37</sup> The review notes this issue and responded to it with recommendation 3E, among others, which invites us to make these artefacts clearer.

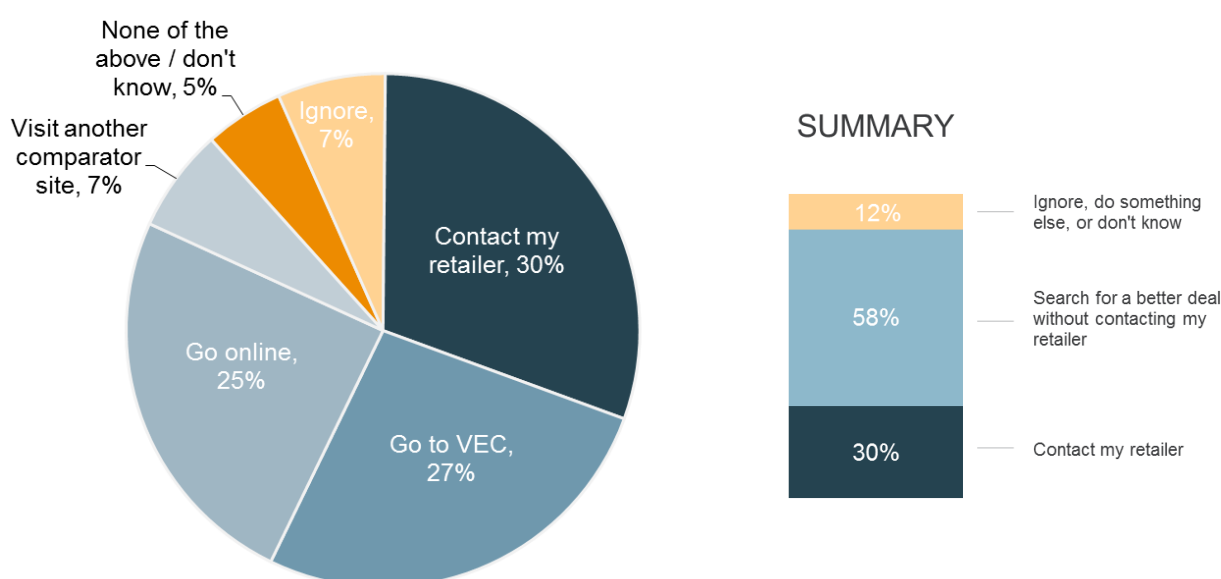
<sup>38</sup> Consumer Protection Research Centre, ‘Five preconditions of effective consumer engagement – a conceptual framework’, 2018, p 6.

<sup>39</sup> BETA 2018, *Saying more with less: Simplifying energy fact sheets*, March 2018, p 1.

In our proposed approach to implementing the recommendations, we have sought to align with the behaviourally informed, or ‘nudge based’, approach. In practice, this translates to minimising the amount of new information presented to customers and ensuring that information is presented in a way that is most likely to prompt their engagement. To test our preferred approach we conducted customer testing in order to better understand how well customers comprehend the new information we have added to bills, and what they might do in response.

As part of the testing, we presented a representative sample of Victorian customers with versions of a bill containing a retailer’s ‘best offer’, including the estimate of the annual savings available in the event the customer switched. We asked customers how they would likely respond. Around 30 per cent said they would contact their retailer in order to seek out the quoted offer. Around twice as many customers said that after receiving such a bill, they would engage with the broader energy market, either via a comparator website or their own research. The results are contained in figure 2.1.

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



Source: Behavioural Insights Team (BIT)

These results confirm the assumptions we have made in approaching this draft decision: that the new information on bills is valuable primarily as a prompt, or ‘nudge’, to customer engagement, and that the engagement may take a number of forms. A fuller discussion of the test results is



found in section 3.4, and our consultant report that has been released along with this draft decision.

The best offer requirements may also nudge energy retailers. We consider a retailer will not want to repeatedly advise its customers that they are not on the retailer's best offer. Doing so would signal to the customer that their retailer is not pursuing the customer's best interests and therefore may not be worthy of the customer's trust. We expect retailers will rise to this challenge in ways that rebuild and uphold customers' confidence and trust.

## 3. Putting the 'best offer' on bills

The retail market review found that many Victorian customers are paying more than is necessary for their energy, and that the complexity of the market makes customers disinclined to shop around, even when they could make significant savings.

We are proposing new customer entitlements to cut through this complexity and make it easier for customers to understand when a better deal is available from their retailer. Under our proposal, retailers will be required to regularly display their 'best offer' on customers' bills, along with advice on how to access it. Retailers will be required to personalise the information by using the customer's actual meter data to calculate the savings that may be available.

To accompany the new entitlements, we are also proposing a new transparency rule – a 'clear advice entitlement' – that will require retailers to be upfront with customers about any 'catches' within the contract that could lead to the customer paying more than they expect. This could include conditional discounts, or discounts that expire after a period of time. This will help manage the risk that customers would be tempted by large savings only to end up on plans that are not appropriate to their circumstances. The clear advice entitlement would also require retailers to tell customers about other deals that might suit them.

### 3.1. The objective of the retail market review's recommendation

The review found that many Victorian customers are paying more than is necessary for their energy. This is in part due to customers finding it difficult to identify the energy deal that is most appropriate to their circumstance. Contributing to this difficulty is the variety and complexity of the offers available in the market place. In response to this complexity, a large portion of the customer base simply does not engage with the market. A study conducted for the review by Newgate Research estimate that around half of Victorian energy customers had not switched their plan or provider in the previous three years.<sup>40</sup> Our own customer trial for this draft decision found similar results. More than 40 per cent of the customers in our sample reported not switching within the past four years.<sup>41</sup>

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<sup>40</sup> Newgate Research, op cit, p 21.

<sup>41</sup> The Behavioural Insights Team, 'Testing the impact of including the provider's best offer on energy bills – first trial report', 2018.

Recommendation 3G seeks to cut through the complexity of the market for customers by 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. As the review noted:

The retail energy market should deliver benefits to all consumers, not just to those who are capable, interested, and able to navigate its complexity.<sup>42</sup>

By putting the best offer on bills, we are seeking to provide a 'nudge' for customers to consider the suitability of their current energy plan. This is to be achieved by making it easier for customers to assess whether their retailer may have a better offer for them. The receipt of a bill is an ideal moment for this to occur because it represents a point at which customers are highly likely to consider their energy plan.

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

- Customers are entitled to be informed, via their bill, of the best offer available to them from their retailer.
- The best offer is to be determined and presented in accordance with the specifications set out in this draft decision.

### **3.2. Our approach**

Implementing this recommendation requires the commission to work through a range of practical questions, the most prominent of which are:

- How should we define 'best' when contemplating the definition of 'best offer'? and
- How should the new information be presented to customers?

This chapter outlines the options and considerations we took into account when developing a proposal for defining 'best offer', and how this is presented to customers. It also steps through a range of other matters related to the implementation of the changes.

### **3.3. Determining the best offer**

To identify the options for how the best offer could be defined, we worked with stakeholders and examined regulatory interventions in other jurisdictions. Through this process we identified five

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<sup>42</sup> John Thwaites, Patricia Faulkner and Terry Mulder, op cit, p 13.

distinct options for thinking about best offer. Before stepping through these options, however, we address three questions that apply regardless of which option is pursued:

- What energy consumption data should inform the best offer calculation?
- How are discounts managed when calculating the best offer?
- How are concessions managed when calculating the best offer?

### **Data used to determine the best offer**

Our proposed changes require retailers to decide, at various intervals, whether they have a better offer for each of their customers. To make this determination, retailers will need to compare the cost of the customer's current offer with the cost of the other offers the retailer has available. To be meaningful, this comparison will necessarily rely on the customer's energy metering data. It is therefore necessary to clarify how the retailer should use the customer's energy metering data when making this comparison.

The recommendation in the review provides guidance on how this question should be approached. The recommendation points towards annual comparisons, as opposed to comparisons on the basis of, for example, an individual billing period. Consequently, we have proposed a simple approach – the data used to inform the best offer calculation should be the customer's most recent 12 months metering data. Where 12 months metering data is not available, we propose that retailers make their best estimate of the customer's 12 months metering data.

For the avoidance of doubt, this means that the data used to determine the best offer would include both consumption and export data. (Customers with solar panels may generate excess electricity, which is then exported back into the grid.) In this way, the best offer determination accounts for both the cost to the customer of the energy consumed, and any revenue received from the feed-in tariffs associated with the offers being compared.<sup>43</sup>

### **How discounts are managed when calculating best offer**

Another key question relates to how discounts are managed when calculating the best offer. In the current market, many energy plans come with conditional discounts, which are often sizable, whereas other offers have unconditional discounts. The question then arises: when retailers make

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<sup>43</sup> A feed-in tariff is the rate payable for electricity exported to the grid from eligible generation sources, such as solar panels.

the comparison between the customer's current plan and an alternative, should it assume the discounts are applied?<sup>44</sup>

We consider it a straightforward decision that unconditional discounts should be applied during the comparison. This discount will be applied to the customer's bill regardless of what actions the customer takes. The more difficult question is in relation to conditional discounts, which may or may not be applied in actuality, depending on actions taken by the customer.

Our analysis of offers in the market indicates that if conditional discounts are not applied when determining the best offer, then customers may not be presented with a 'best offer' as commonly as they would if discounts were applied. This is because a number of retailers use discounts as the means of differentiating their offers from one another. When discounts are not applied, the costs of these plans are similar if not identical.

To demonstrate this, figure 3.1 sets out the estimated annual cost for an average customer for offers from a selection of eight retailers, among them retailers who currently use discounting in this manner. The offers were drawn from Victorian Energy Compare on 17 July 2018, and apply in the Jemena distribution zone.<sup>45</sup> The charts show that the costs of these retailers' current offers are very similar if discounts are not applied.<sup>46</sup> In fact, for four retailers – Alinta Energy, Click Energy, Dodo, and Powerdirect – if discounts are not applied then their best current market offer is no better than the retailer's standing offer.<sup>47</sup>

Current discounting practices mean that if conditional discounts were not applied in the determination of best offer, many customers would not be advised that potential savings were available. In some instances, customers on high priced market offers could be told that their best offer is a standing offer. For this reason, our draft decision is that unconditional and conditional discounts must be applied to the customer's current and any alternative offers from the retailer.

In terms of the offers shown in Figure 3.1, this formulation means the retailers' best offers are represented by the blue bars on the left of each of the diagrams.

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<sup>44</sup> In working through this question, we operate on the assumption that whatever approach is applied to a customer's current plan should be applied to the alternatives, and vice versa, to ensure a like for like comparison.

<sup>45</sup> Victorian Energy Compare (<https://compare.energy.vic.gov.au/>) is the government energy price comparator website.

<sup>46</sup> The charts indicate that in relation to two retailers – Dodo and CovaU – the annual bill for a typical 4000kWh customer in this distribution zone would be higher on their market offer than their standing offer. The commission is currently considering this matter further.

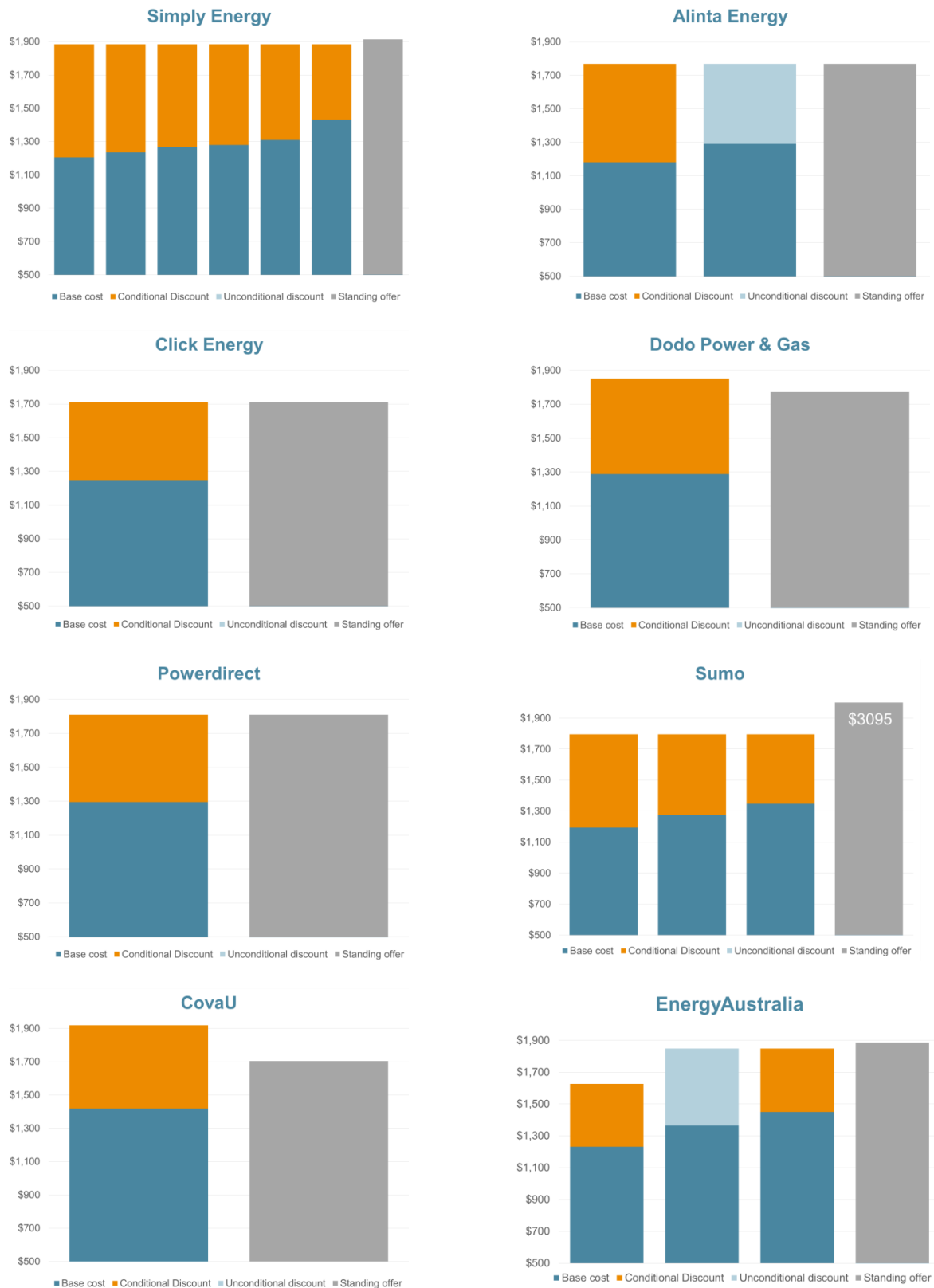
<sup>47</sup> In drawing attention to this, we also note that a number of retailers have moved in another direction and have developed low cost, 'no discount' plans to which this description does not apply. These retailers include AGL, Origin, Lumo, Powershop and Globird. Furthermore, there are now two retailers – Momentum and Tango – whose offers in Victorian Energy Compare are all 'no discount' plans.

We note that VEC and commercial comparator websites typically allow customers to choose to display offers with conditional discounts applied. This means that there is broad consistency between our approach and the way offers are presented elsewhere in the market.

The exception to this position is the case of 'bundled' offers. Some retailers offer deals whereby a customer can save money off either their gas and/or electricity rates by 'bundling' both services together with the same retailer. Energy services may also be bundled with other products, such as telecommunication services.

Our view is that, unlike other discounts, the best offer calculation should not account for bundled deals when considering the alternative offers. That is, the calculations should not assume that any discounts associated within bundling are applied to those offers. The calculation should be made independently for each fuel type. If the best offer calculation allowed for discounts associated with bundled offers, the true nature of the savings will be opaque because they may be offset by higher costs associated with the other, bundled service. For instance, a retailer may offer a very low electricity price only if it is bundled with a high priced gas offer.

**Figure 3.1. Comparison of offers from selected retailer as at 17 July 2018**  
 Estimated annual cost for a 4000kWh/annum customer, Jemena distribution zone



## How concessions are managed when calculating best offer

Customers holding concession cards may be eligible for concessions (state funded deductions) on their energy bill as part of schemes administered by the Department of Health and Human Services (DHHS).<sup>48</sup> These concessions can reduce the cost of their energy bills.

Our view is that when the best offer calculation is undertaken, that the retailer should apply any concessions that are currently applied to the customer's account when calculating their current annual cost and the annual cost of any alternative offers. This will ensure the comparison is like-for-like.

The following sections set out the five potential approaches we have identified for defining 'best offer'.

### Option 1: Cheapest possible offer

This option entails defining 'best offer' as the lowest cost offer the retailer can make to the customer, including from among the retailer's non-public offers. This would include the retailer's win-back and retention offers, as well as any offers the retailer reserve for customers on their hardship policy.

The offer presented on the customer's bill under this version would be the genuinely lowest cost offer available from their retailer. It is also a simple concept that is easy to understand.

However, where the offer presented on the bill is not among the retailer's publicly available offers, customers would not be able to corroborate the offer with publicly available information, such as Victorian Energy Compare. This may run counter to the objective of improving transparency and trust in the market. It is also unclear how compliance with this option would be enforced because the commission does not have visibility of retailers' unpublished offers.

There is also a risk the offer will not be suitable or appropriate for the customer – see discussion under option 2 below.

### Option 2: Cheapest generally available offer

This option is to define best offer as the retailer's cheapest generally available offer. The term 'generally available' is drawn from the national framework and means 'all plans that are available to any customers in the appropriate distribution zone with the appropriate metering configuration are

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<sup>48</sup> For further information, see <https://services.dhhs.vic.gov.au/energy>.



generally available unless they are a restricted plan.<sup>49</sup> Under the AER's definition, restricted plans are those that are specifically targeted at an individual or exclusive group, such as concession card holders or hardship customers.<sup>50</sup>

Using this approach, the offer presented to the customer would be among the cheapest the retailer has. It would also be available to the majority of customers. It also has the additional advantage of being a simple, easy to understand concept.

However, under both this approach (and option 1), even if an offer is available to a customer, it may not be well suited to the customer. That is, in order to obtain the low price, the customer may be required to meet conditions or fulfil contract terms that they are technically capable of fulfilling, but which they are not well placed to meet. The most prominent example of such a condition in the current market is pay-on-time discounts. For customers with a history of not paying by the due date, or who are facing payment difficulties, the potential savings promised by the 'best offer' presented on the bill may not materialise if they depend upon meeting this condition. In such situations, the customer may gain no advantage, or even be disadvantaged, by switching to the 'best offer' presented on their bill. They may be better off staying on their current offer, or moving to another offer altogether.

This issue would be particularly pronounced for customers with more limited capacity to interrogate the terms of their contracts, such as those in vulnerable cohorts or potentially those from culturally and linguistically diverse (CALD) backgrounds with limited English language abilities. Depending on how retailers construct contract terms in the future, this issue may also take other forms beyond that created by the conditional discounts we currently observe in the market.

### **Option 3: Cheapest equivalent offer**

This option responds to the risks associated with the previous options by introducing the concept of 'equivalent offer'. By equivalent offer, we mean one that is similar in character to the offer the customer is currently on. Under this option, the best offer displayed on the bill would be the cheapest offer that has the same characteristics as the customer's current offer. For instance, if the customer is currently on a plan that had e-billing and pay-on-time discount, then the best offer presented on their bill would be the cheapest plan the retailer offers that also comes with e-billing and pay-on-time discounts.

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<sup>49</sup> AER, 'AER Retail Pricing Information Guidelines – Version 5.0', April 2018, p 15.

<sup>50</sup> Other examples include plans restricted to customers in a pilot program, 'save' or 'retention' plans, which are offered by retailers in response to a customer signalling they intend to switch to another retailer, 'win-back' plans, which are offered by retailers after the customer has switched to a new retailer to persuade the customer to return.

The advantage of this approach is that, unlike option 1 or option 2, it tailors the best offer in line with the customer's current offer.

However, the offer presented may not be the cheapest offer the customer would accept. In other words, it presumes the customer's preferences are static. It also presumes the customer would not be willing to trade in characteristics of their current plan for a lower price offer.

This option would also require a definition of 'equivalence'. This would involve stepping through the various attributes of energy plans and selecting those that should be included in a concept of equivalence, and those that should be excluded. For instance, tariff structure might be considered one of these attributes, meaning a plan with a flat tariff could only be compared with offers containing a flat tariff. By contrast, the inclusion of movie tickets in a plan might be excluded, meaning that a customer on a plan that came with movie tickets could be presented with an offer for which movie tickets were not part of the package.

If the definition of equivalence was prescribed in regulation, this would invite considerable complexity into our decision making process, given the many potential plan attributes that would need to be considered. It would also require the commission to decide on behalf of consumers what attributes were more integral than others. If the definition was left open, customers may experience inconsistent outcomes as different retailers would be likely to define equivalence differently. Retailers may also define equivalence in such narrow terms that customers are rarely shown a better offer than their current plan.

#### **Option 4: Two 'best offers': cheapest generally available and cheapest equivalent**

This option involves the retailer being required to display two 'best offers' spanning both the cheapest generally available and cheapest equivalent options. This was the broad approach adopted by Ofgem in the United Kingdom for the purposes of their Cheapest Tariff Message mechanism.<sup>51</sup> The Ofgem mechanism requires energy retailers to communicate to customers about their cheapest tariff at various junctures, including on customer bills.

This option avoids the need for the commission or a retailer to select a single 'best offer' definition. It could also provide, subject to how the information is presented, the customer with a richer set of information to aid their deliberations about what type of energy plan is suitable for them. The ability for a retailer to display a 'bargain basement' plan against a plan with more 'premium' attributes would allow the customer to make an assessment about the value of those additional premium attributes.

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<sup>51</sup> Also known as the "could you pay less?" label.

However, the issues of defining equivalence that apply to option 3 also apply to this option. To the extent that this makes the third option unattractive, it also counts against this fourth option.

A further issue is that this option involves a step change in the level of complexity associated with the new requirement. It may be harder for customers to understand. And the complexity would also manifest when contemplating how the best offer is displayed on the bill. It is therefore likely to involve a more complex, and therefore most costly, IT system build for retailers.

As we outline in the following section, we have sought to ensure any additional information added to the bill is as simple as possible while still preserving the intended benefits of the review's recommendation. It is here that our adoption of a behaviourally informed approach becomes particularly relevant. Our assumption is that a key benefit of putting the best offer on bills is to 'nudge' customers to engage with their retailer or the market more generally. This is as opposed to assuming, as we might when working within the 'information provision' paradigm, customers will be making a decision, then and there, about whether to switch onto the offer displayed on the bill. This latter assumption errs towards providing more complex information to support the customer's decision as fully as possible. The former assumption errs towards ensuring the message is a clear, simple and relevant as possible.

Working on the basis of the former assumption, we have focused on distilling the new information to a short, focused message with a savings estimate. To include two best offers would require that information to be expanded to include two plan names and two dollar estimates, or a range. This additional detail can be expected to erode the effectiveness of the 'nudge' by making the message to the customer more complex. For that reason, this option is difficult to reconcile with our approach to implementing the review's best offer recommendation.

### **Option 5: Allow retailers discretion to define 'best offer'**

The final option we considered is not to define 'best offer' at all, and instead leave this question to the discretion of retailers. Under this option, retailers would independently determine what the best offer for any customer might be, taking into account matters they deem relevant.

This approach avoids the need to enshrine a single definition of 'best offer' in the regulatory framework, thus sidestepping many of the disadvantages of the previously discussed options. It could also allow retailers to flexibly apply the definition of 'best offer' in a manner that reflects customer preferences, to the extent these are known by the retailer. Operating in this manner, the retailer could present 'cheapest' offers to customers it believes would value cost over other attributes, such as green power. Conversely, it could offer 'cheapest equivalent' plans to customers who it considers would place more weight on non-price elements.

While such an approach may have some merits, it brings a significantly elevated risk of inconsistent outcomes for customers. ‘Best offer’ would presumably be interpreted differently between retailers. By definition, it could be interpreted by a single retailer in different ways, depending on the customer who was receiving the bill. The way retailers interpret the definition may also vary over time, meaning that a single customer may be supplied with a ‘best offer’ that is identified using different criteria from one bill to the next.

Apart from producing inconsistent outcomes for customer, this lack of clarity may also pose problems for compliance and enforcement, and complicate any dispute resolution process for the Energy and Water Ombudsman Victoria (EWOV).

Consequently, if it were progressed, this option would need to be accompanied by additional mechanisms to manage these risks. This might include guiding principles enshrined in the Energy Retail Code or, more likely, a requirement for retailers to transparently explain how they approach the definitional question – through a ‘best offer’ policy, for instance – according to guidance published by the commission.

Although such a mechanism may help to mitigate the risks associated with this option, arguably it does so only through the addition of more complexity in the regulatory arrangements. It is unlikely this additional complexity could be justified by the benefits of the commission not establishing a regulatory definition of ‘best offer’. In reality, avoiding the difficulty of enshrining a definition in the framework simply means the difficulty re-emerges elsewhere in the regulatory arrangements.

### **Our draft decision on the definition of best offer**

We have carefully considered these options, noting that none are free of potential drawbacks. Ultimately, the commission faces a choice about how to balance benefits and risks, and the extent to which the risks can be managed. A summary of each option and the key advantages and disadvantages is presented in table 3.1. Taking into account all the matters discussed above, we consider option 2 strikes the best balance between benefits and drawbacks, and is most consistent with finding a cost effective, timely approach to implementing the recommendation. However, we consider this could be set as a minimum standard, which would allow retailers to present lower cost, non-generally available offers if they choose to do so.

It has become clear that there is no regulatory definition of ‘best offer’ which will produce the best plan for all customers in all circumstances. Customer circumstances are too diverse, and the range of offers in the market is too complex. Any regulatory definition of ‘best offer’ will suit some customers, but could produce neutral or even negative outcomes for others. In other words, in trying to cut through the complexity of the market by putting the best offer on customer’s bills, we find ourselves entangled in its complexity of offers.

**Table 3.1. Summary of options for defining best offer and associated opportunities and challenges**

Option	Description	Opportunities/benefits	Challenges/risks
<b>1. Cheapest possible offer</b>	Includes all possible offers, including non-public 'bottom draw' offers	<ul style="list-style-type: none"> <li>• Conceptual simplicity</li> <li>• Customers see absolute cheapest offers available from their retailer</li> </ul>	<ul style="list-style-type: none"> <li>• The offer may not be available to the customer</li> <li>• No ability for customers to verify the offer using publicly available info</li> </ul>
<b>2. Cheapest generally available</b>	Only includes offers that are generally available	<ul style="list-style-type: none"> <li>• Conceptual simplicity</li> <li>• Low risk of offer being unavailable to the customer</li> <li>• Customer sees one of the cheapest possible offers from their retailer</li> </ul>	<ul style="list-style-type: none"> <li>• The offer may not be suitable for the customer due to its terms and conditions, particularly vulnerable or disadvantaged customers</li> <li>• Excludes the absolute cheapest offers</li> </ul>
<b>3. Cheapest equivalent offer</b>	Offers that are 'equivalent' to the customer's current offer	<ul style="list-style-type: none"> <li>• Low risk of offer being unavailable to the customer</li> <li>• Low risk of offer being unsuitable for the customer</li> </ul>	<ul style="list-style-type: none"> <li>• Elevated conceptual complexity</li> <li>• Higher risk the offer presented is not the cheapest the customer would accept</li> <li>• Need to define 'equivalence', requiring either the commission or retailers to make judgements about how customers weight the value and importance of different plan attributes</li> </ul>
<b>4. Two best offers</b>	For example, cheapest generally available + cheapest equivalent	<ul style="list-style-type: none"> <li>• Avoids the need to establish a single definition</li> <li>• Could provide customers with richer information to aid decision making</li> </ul>	<ul style="list-style-type: none"> <li>• Additional elevated conceptual complexity</li> <li>• May still require definition of 'equivalence'</li> <li>• Adds complexity to the presentation of material on the bill, which may erode the efficacy of the 'nudge' to engage</li> </ul>
<b>5. At retailer's discretion</b>	Let the retailer decide how to define 'best offer'	<ul style="list-style-type: none"> <li>• Avoids the need to establish a single definition</li> <li>• Allows the retailer to flexibly apply the definition, potentially accounting for customers preferences</li> </ul>	<ul style="list-style-type: none"> <li>• Elevated risk of inconsistent customer outcomes, within retailers, between retailers and across time</li> <li>• Management of elevated risks require additional mechanism (eg a retailer policy), adding regulatory complexity, potentially simply shifting around definitional issues</li> </ul>

In particular, in making this draft decision we are mindful that it creates a material risk that customers may be alerted to a 'best offer' on the basis of savings that, due to their individual circumstances, they may not be well placed to realise. For example, a best offer with savings primarily driven by pay-on-time discounts may not be 'best' for a customer who regularly misses their bill payment due date, even if only by one or two days. In other words, by taking the cheapest generally available offer approach, we are potentially increasing the risk that customers will shift onto plans that they find, in the long run, are not in their interests because of complexity associated with the terms of the contract.

We think this risk can be partially mitigated by requiring the information to be presented in such a way that indicates 'conditions may apply'.<sup>52</sup> However, given the recognised complexity of energy offers and the way this complexity is contributing to the trust deficit in the market, such a measure is likely to be insufficient on its own, meaning there is residual risk to manage. We discuss our proposed means of responding to this residual risk in section 4.5.

Section 6.4 explains how we have translated our definition of 'best offer' into code amendments, including a discussion of the terminology we have adopted to avoid misunderstandings about the meaning of 'best'.

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

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

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

- The best offer is to be determined using the customer's previous 12 months metering data, or if that is not available, the retailer's best estimate of the customer's 12 months metering data.
- When determining the best offer, the retailer is to apply all unconditional and conditional discounts to the estimates of the customer's current, and any alternative offers from the retailer.
- When undertaking the best offer calculation, the retailer should not account for savings available on alternative offers if those savings require the customer to bundle their gas and

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<sup>52</sup> For instance, using the well-recognised mechanism of "\*\* conditions apply". We develop this concept further in the discussion on presentation in the following section.

electricity together, or bundle their energy service with another type of service, such as telecommunications services.

- When determining the best offer, the retailer is to apply all concessions that currently apply to the customer's account to the estimates of the customer's current, and any alternative offers from the retailer.

### 3.4. Design and presentation of the new information

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

- Where the customer is not on the retailer's best offer, customer bills are to include a simple message, including a savings estimate, located immediately adjacent to the bill due amount using the words: 'We could offer you a cheaper plan. On our [plan name] you could save around \$[X] per year. Conditions may apply.' The message is also to include information on how to contact the retailer to switch.
- Where the customer is already on an offer that is as cheap or cheaper than the retailer's best offer (within the meaning given to that term in the code), customer bills are to include a message confirming this for the customer and referencing the option to visit Victorian Energy Compare to compare offers from other retailers.

Recommendation 3G requires new information to be included with bills, which in turn requires the commission to make decisions about how this new information should be presented. Our approach to this task was to work with stakeholders and behavioural specialists<sup>53</sup> to map out and then narrow down design options.

During the design phase, we worked closely with stakeholders – through workshops, regular reference group meetings and one-on-one meetings – to understand the key issues and potential options for resolving them. This process allowed us to screen out options that appeared unlikely to deliver the anticipated benefits, or which could produce adverse consequences for customers or retailers, or which would be potentially costly.

At the conclusion of this phase, our basic proposal comprised:

- a simple, best offer message (with savings estimate) on the bill, and
- an accompanying 'bill insert' to present the best offer message in more detail.

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<sup>53</sup> The Behavioural Insights Team (BIT)



We determined the best offer message should be located immediately adjacent to the bill due amount to ensure it was readily visible to customers and that the message should include the following words: We could offer you a cheaper plan. On our [plan name] you could save up to \$X per year. Contact us to switch.<sup>54</sup>

We initially considered that adding a bill insert, which reiterated and expanded on this message, might drive higher levels of customer comprehension and efficacy by drawing more attention to the best offer and ensuring it was easily comparable to the customer's existing offer.

We developed three versions of the bill insert, allowing us to compare the effectiveness of two versions using a traditional letter format and an alternative format that more resembled marketing material. We also experimented with different ways of presenting the dollar amounts on the insert. One version displayed the annual estimated costs for each plan, whereas another displayed the estimated annual savings available if the customer switched from their current offer to the retailer's best offer. The experiment also contained a control, which consisted of the best offer message on the bill, but no bill insert.<sup>55</sup> Examples of the bill with the best offer message and the three letter options that were presented to customers are included in Appendix C.

We then subjected our options to customer testing in a randomised control trial. The trial was run by our consultants, the Behavioural Insights Team (BIT), with input from the Department of Premier and Cabinet's Behavioural Insights Unit. The trial involved a representative sample of around 2,400 Victorian customers.

The objective of the trial was to test the relative efficacy of the different options we had developed by testing for comprehension, intention and the potential for confusion. This design is informed by best practice standards outlined by the Consumer Policy Research Centre.<sup>56</sup> Specifically, we tested:

- whether customers could identify whether they were on the best offer or not (comprehension)
- whether customers could identify what steps they needed to take in order to get the best offer (comprehension)

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<sup>54</sup> See appendix C for details.

<sup>55</sup> The control version also had a table on the final page of the bill which contained plan information displayed in such a way to enable comparison between the offers. In the other arms of the trial, this table appeared on the back page of the bill insert.

<sup>56</sup> See recommendation 7 of the CPRC 2018 report *Five preconditions of effective consumer engagement – a conceptual framework*, 2018, p 53. 'Policymakers and regulators making reforms to product information disclosure requirements would benefit from placing greater focus on consumer comprehension testing in order to identify the most effective ways to present information. Comprehension testing will more effectively identify whether changes to disclosed information result in increased consumer understanding of the product information in question. Consumer research and testing during this phase will greatly assist the development of these disclosure requirements.'



- customers' stated intentions upon reviewing the material (intention), and
- whether the new best offer information on the front of the bill was confusing to customers, in the context of the other dollar amounts that appear on the bill (confusion).

In summary, the testing indicated that the efficacy of all options was likely to be reasonably effective. For each option, a majority of customers could correctly identify whether they were already on their retailer's best offer (between 60 and 70 per cent), and could also identify how to access that offer (between 65 and 75 per cent). These results are set out in figure 3.2 below. The testing also indicated very low levels of confusion in response to the new information – 95 per cent of customers tested were able to accurately identify which dollar amount on the bill was the amount they were required to pay their retailer (see figure C.3 in appendix C).<sup>57</sup>

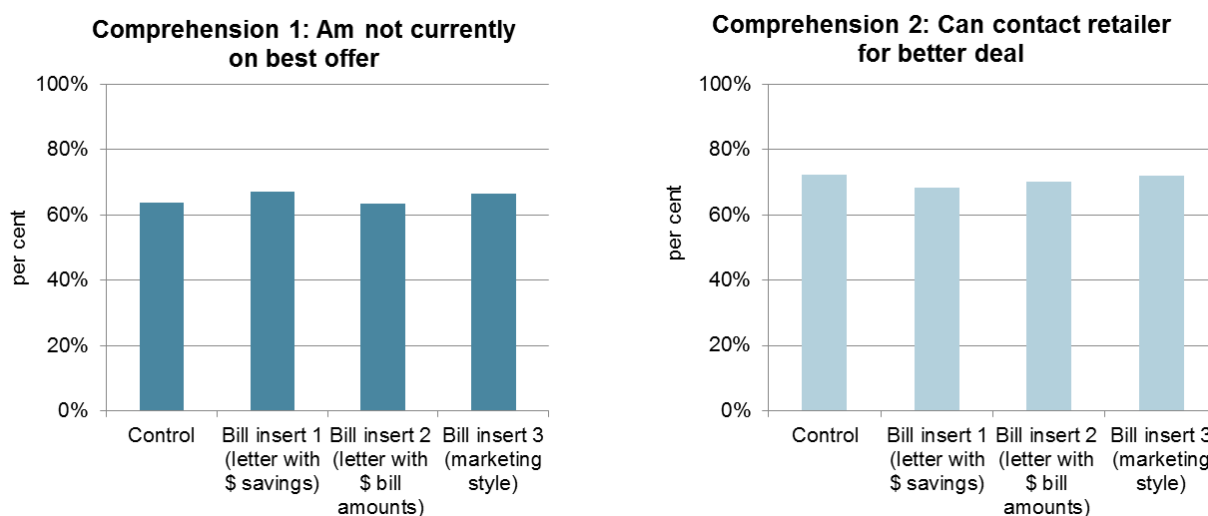
The testing also indicated that customers were likely to have a diversity of responses when seeing the best offer on their bill, from contacting their retailer through to shopping around. Overall, roughly 90 per cent of customers said they would take some action to search out a better deal in response to seeing the best offer on their bill. BIT advised that these results broadly held for CALD and aged customers, as well as customers in rural and metro areas.

The testing did not indicate that one option was markedly more effective than any other. Additionally, the testing indicated that the addition of the bill insert provided only a modest improvement in efficacy, relative to the control option. That is, the best message on the bill was enough on its own to prompt consumers to understand that they were not on the best offer and they could contact their retailer for a better offer. The additional information presented in the letter did not significantly improve customers' comprehension of the best offer message included on the bill (figure 3.2).

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<sup>57</sup> Also see The Behavioural Insights Team, op cit, 2018.

Figure 3.2 Comprehension results, all trial arms



Source: Behavioural Insights Team (BIT)

Given the results indicated that no option was overwhelmingly more effective than another, we focused on the relative cost of each option when deciding which one should guide the presentation of new information.

The inclusion of a bill insert would introduce additional costs to retailers, which could be expected to ultimately be borne by consumers. This would include design costs, as well as the postage and administrative costs associated with including the bill insert in mail outs. Similarly, there would be costs associated with IT system design to include the bill insert with electronic bills. Given the limited additional efficacy the bill insert is likely to deliver, we do not consider there is a strong case for the inclusion of the bill insert. Rather, the results of the trial indicate that a simple message on the bill, construed in broadly the terms set out in the control arm of the trial, appears sufficient to produce the intended results.

Our draft decision is therefore not to include the bill insert and instead proceed on the basis of a simple message on the bill only, with the form and content of that message broadly consistent with that used for control arm of our customer trial. Prior to our final decision, we will conduct another randomised control trial to test different versions of the message on the bill to inform its final wording.

### 3.6. Clear advice entitlement

#### Draft decision 5: Clear advice entitlement

Customers are to receive a clear advice entitlement to ensure they are made aware of, at the point of entering a contract, the dollar cost implications of all terms and conditions that influence the costs they will face over the term of the contract, and of any other offers the retailer believes may be more suitable for the customer.

As outlined in the analysis above, the main risk associated with presenting the ‘best offer’ on the bill is that it may not be suitable for the customer, particularly vulnerable customers, because of complexities associated with the contract terms and conditions. Some customers may even be disadvantaged by a ‘best offer’. This risk is more pronounced for vulnerable customer cohorts, such as those from CALD backgrounds, who may be less well placed to interrogate and comprehend the ‘fine print’ of the contract. We consider it incumbent upon the commission, as the regulator responsible for promoting protections for customers in Victoria, to respond adequately to this risk.<sup>58</sup>

We note that in order to switch in response to receiving a best offer message, the customer must contact the retailer (even if this contact is made online) to provide explicit informed consent.<sup>59</sup> This interaction between the customer and the retailer therefore provides an opportunity to manage the risk we have identified. We consider the risk is amenable to being managed using an outcomes-based mechanism or obligation that requires retailers to assist customers during this interaction to avoid inadvertently switching to a plan that is not appropriate to their circumstances.

We see such a mechanism as originating from a principle of shared responsibility for the effectiveness of the retail energy market. In this context, the notion of shared responsibility implies a reciprocal obligation on retailers to assist customers to navigate the complexity of the retailer’s offers, with a particular view to avoiding conditions or contract terms that may not be in that customer’s interests. It also responds directly to the issues of declining consumer trust and confidence in the market.

The remainder of this section outlines our proposed construction of the clear advice mechanism and its scope.

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<sup>58</sup> The relevant Industry Acts enshrine an objective for the commission to promote protections for consumers. See section 10(c) *Electricity Industry Act 2000* (Vic) and section 18(c) *Gas Industry Act 2001* (Vic).

<sup>59</sup> As required by clause 3C of the Energy Retail Code.

## Outline of the new obligation

We propose that a new ‘clear advice entitlement’ is established to apply to interactions between retailers and customers ahead of the commencement of new energy contracts. The intended outcome is to make customers more aware of the way the contract terms will affect their bills. In practical terms, the obligation would be on retailers to communicate with the customer in clear and easily understood terms:

- the estimated dollar cost implications of terms and conditions that influence the costs they will face over the term of the contract, and
- any of that retailer’s alternative offers that, on the basis of their interaction with the customer, might be better suited to the customer.

## Scope of the clear advice entitlement

We define the scope of the obligation in terms of:

- the information the retailer must communicate to the customer
- when and how the retailer must communicate the information, and
- what the retailer should take into account when communicating that information.

Under our proposal, the scope of what the retailer should communicate to the customer would be defined by the contract itself. Specifically, the retailer would be required to advise the customer about any terms, conditions or attributes of the contract (including fees and charges) that could influence the costs faced by the customer over the term of the contract. If the proposed contract contained three terms or conditions that could influence the bill faced by the customer, the retailer must communicate those three items to the customer. If the contract contained no terms or conditions that influence the cost faced by the customer – that is, if the tariffs and charges established at the start of the contract were constant and unalterable for the length of the contract – then the retailer would have nothing to advise the customer apart from the fact that all tariffs and charges were fixed for the duration of the contract.

Examples of contract attributes that would need to be highlighted in complying with the clear advice entitlement are conditional discounts, such as pay-on-time discounts, or additional fees and charges for switching to paper billing. If the contract entitled the retailer to change prices during the term of the contract, then this would need to be disclosed as well. Relevant contract attributes would also include the nature of the tariff structure – for instance, if a customer was contemplating an offer that included more complex tariff structures, such as flexible pricing or a demand charge, then the potential impact of these structures should be explained to the customer.

Our proposal is that, unless it is not feasible to do so, the retailer must communicate the potential impact of these terms and conditions in dollar terms, even if it is only possible to provide broad

estimates. For example, if a contract included a condition whereby an initial 20 per cent discount expired after one year, the retailer would be obliged to communicate, the estimated dollar impact of the discount expiring (as opposed to simply noting the expiration date). Similarly, for pay-on-time discounts, the retailer would be obliged to communicate the estimated dollar impact for that customer of not paying on time.

By contrast, a case in which it may not be reasonably possible to communicate the dollar impact is if the contract conditions allowed for a price rise during the contract term. This is because retailers would not reasonably be expected to estimate the price changes that may occur many months in advance. However, the converse would be true if the retailer was aware of a scheduled price change during the contract period, such as one that was occurring within a few weeks of signing up a customer. In this instance, the retailer would be able to advise the customer that a price change was scheduled, what the price change will be, and the likely dollar impact of the price change. Other examples of the information retailer should provide include (subject to the contract terms) the dollar cost of switching to paper billing or simply the retailer's entitlement to change prices during the course of the contract.

We propose that the retailer be required to communicate the information prior to obtaining explicit informed consent from the customer.<sup>60</sup> We propose that the information be communicated in clear, plain language and given due prominence in the exchange between the retailer and the customer. Giving 'due prominence' means drawing attention to the relevant terms and conditions, as opposed to including them within a recital of the full terms and conditions of the contract.

When fulfilling the obligation, we propose the retailer should take into account any information it already possesses in relation to the customer that relates to the relevant terms and conditions. For a contract condition that establishes a pay-on-time discount, this information could include a payment history in which the customer has missed bill due dates. For the avoidance of doubt, we do not propose the retailer be obliged to seek new information from the customer in order to discharge the obligation. Though best practice would suggest the retailer should use its judgement in assessing the need to gather relevant information from the customer.

The net outcome of combining the best offer message and the clear advice mechanism should be the desired behaviour change by customers (they confidently shop around) and retailers (reciprocate to support customers' confidence and trust). We anticipate it will enhance trust and transparency by making the retailer share responsibility for identifying whether an offer is suitable for a customer's circumstance.

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<sup>60</sup> Explicit informed consent from a customer is required before the formation of a contract for the supply energy. See clause 3C and clause 3E of the Energy Retail Code.

## Effect of the clear advice entitlement on retailers

It is expected the clear advice entitlement will encourage high quality customer service from customers. We expect that many retailers are already engaged in providing this sort of service in the normal course of their interactions with customers. For those retailers, the clear advice entitlement would have no additional effect on their business.

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

In this context, we note that a number of retailers have already begun reorienting their offers towards simplicity. Both Momentum Energy and Tango Energy are notable for having done away with discounting entirely. We also note that AGL, Origin, Lumo, Powershop and Globird now have low cost, 'no discount' offers in the market. For these retailers, fulfilling the clear advice entitlement will be relatively straightforward compared to retailers that retain complex and confusing offers that require elaborate explanation. Figure 3.3 shows offers from these retailers drawn from Victorian Energy Compare on 17 July 2018 (Jemena distribution zone).<sup>61</sup>

With the exception of Lumo, the best offers for the retailers shown in Figure 3.3 are those on the left of each diagram. All these offers include simple plans with no discounts. Lumo's best offer would have been its second offer from the left which includes a conditional discount.

Separately, there is the question of how the obligation would be discharged for digital sales – that is, ones that are transacted entirely through a digital platform such as a website. Our view is that the obligation we have developed should apply regardless of which platform the transaction takes place through. As such, we have aimed to design the obligation to be 'platform agnostic'. This is to allow retailers scope to innovate in how they meet the obligation across the various digital mediums they may use to transact sales, while complying with the relevant objectives and purposes described in Part 2A.

Further details about how we propose to construct the clear advice entitlement in the Energy Retail Code is found in section 6.5.

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<sup>61</sup> Victorian Energy Compare is the government energy price comparator website.

**Figure 3.3. Comparison of no discount offers from selected retailers as at 17 July 2018**  
 Estimated annual cost for a 4000kWh/annum customer, Jemena distribution zone



## Interaction with third parties

One potential development within retail energy markets in Australia is the emergence of third party switching or brokerage services. This model has been pioneered by companies such as Flipper in the United Kingdom<sup>62</sup> and more recently the Transformer service released by Choice in Australia.<sup>63</sup> These services operate as agents of their customers, switching the customer between energy deals as better offers become available in the market. Another form of third party arrangement takes place when retailers engage sales agents, or ‘channels’, who promote energy plans on their behalf.

In developing our proposal for a clear advice entitlement, we have turned our mind to how such an obligation would interact with these third party arrangements. To the extent third party switching services have established a legally sound capacity to act as the customer’s agent (including providing explicit informed consent on behalf of their customer) then it is reasonable to expect they can represent the customer while the retailer discharges its clear advice entitlement. This includes reflecting the customer’s preferences in respect of terms and conditions of the contract that may affect the customer’s bill.

With regard to third party sales agents, we consider it reasonable that any firm representing a retailer to customers should be able to meet the customer protection obligations of the retailer. Assuming the third party agent was responsible for securing the customer’s explicit informed consent, it is therefore expected that third party sales agents should be able to also meet the new clear advice obligations on the retailer’s behalf.

## Interaction with existing provisions

The Energy Retail Code currently contains existing information disclosure requirements for retail energy offers.<sup>64</sup> These provisions require retailers to make information disclosure documents (i.e. Price and Product Information Statements, PPIS, and offer summaries) available to customers.

These rules set out certain format and content requirements of the documents and how they must be made available to customers. PPIS documents must be clearly accessible through the retailer’s own website, while offer summaries must be provided to customers upon request and:

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<sup>62</sup> See <https://flipper.community/>.

<sup>63</sup> See <https://transformer.choice.com.au/>.

<sup>64</sup> For example, Part 2 of the Energy Retail Code sets out the minimum terms and conditions of customer retail contracts, while Division 2A of the Code sets out the rules for energy price and product disclosure.



*When providing the customer the terms or information about the terms of any new retail contract, including when engaging in any marketing activity.<sup>65</sup>*

Under these existing rules, retailers are able to take a relatively passive role in information disclosure (i.e simply providing written documents with terms and conditions), while the onus is on customers to seek out the relevant features of the plan and understand their impacts. The clear advice entitlement requires retailers to go further than these current requirements, and to take a more proactive role in clearly outlining the relevant specific features of the energy offer and their bill impact for the customer in dollar terms wherever possible.

### **3.7. Other matters relating to best offer**

This section outlines a range of operational matters about how the new requirement might function in practical terms.

#### **Scope of the new requirements**

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

The best offer obligation applies to:

- bills supplied to small customers (domestic and small business)<sup>66</sup>
- electricity and gas bills
- bills in all formats, including paper and electronic
- communications that accompany a new bill and summarise its key content (bill summaries, in any form), including the amount owing and due date, and
- bills supplied by holders of a retail licence, but not to bills from holders of an exemption from a retail license.

In the context of ‘best offer’, the question of scope concerns:

- customer type
- whether the new requirement applies to bills that are provided in non-traditional formats
- whether the requirement applies to all fuel types, and
- whether the requirement applies only to retailers or also to holders of an exemption from a retail licence.

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<sup>65</sup> Energy Retail Code, clause 15C(1)(b)

<sup>66</sup> Clause 3 of the Energy Retail Code states ‘small customer has the same meaning given to domestic or small business customer under section 3 of the Electricity Industry Act or section 3 of the Gas Industry Act.

We consider the new best offer obligation and associated clear advice entitlement should apply to domestic and small business customers. That is, customers defined as ‘small customers’ in the Energy Retail Code.<sup>67</sup>

We consider the new requirement should apply to bills in whatever format they are provided to the customer, whether paper or electronic.

We also note that when issuing bills electronically, retailers commonly present a bill summary in the accompanying email or SMS that can include click-through-to-pay options. In these instances, customers may have no need to open the attached bill and would therefore miss the best offer message unless that message was also included in the bill summary.

Consequently, we consider that the new best offer message requirement should apply equally to bill summaries – that is, associated material that sets out the key elements of the bill such as the due date and amount owing – that accompany a new bill. The reference to ‘new’ bill is to clarify that this requirement does not extend to other communications that might contain due dates and amount owing such as reminder notices and disconnection warning notices.

For the avoidance of doubt, the new requirement applies to both gas and electricity.

Persons who sell energy in Victoria are required to hold a licence, or alternatively, an exemption from holding a licence. Exempt suppliers can include operators of caravan parks, retirement homes, or embedded networks (such as those that exist in some shopping centres and apartment blocks).

One of the key issues for customers who are supplied by exemption holders is the limited options they have for participating in the retail energy market. Typically, these customers do not have a choice of plan from their provider (and don’t have a choice of provider unless they are willing to fund their own connection to the distribution system). As a result, we do not consider it appropriate to apply this new requirement to exemption holders because it is not clear these customers will have sufficient alternatives for a best offer message to be meaningful.<sup>68</sup>

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<sup>67</sup> Clause 3 of the Energy Retail Code states ‘small customer has the same meaning given to domestic or small business customer under section 3 of the Electricity Industry Act or section 3 of the Gas Industry Act.

<sup>68</sup> We recently conducted a review of the Energy Retail Code to specify which clauses apply to different categories of exemption holder to ensure that their customers receive adequate protections in the absence of easily participating in the retail market. As part of the review, which concludes in September 2018, we will make amendments to the Code to clarify the obligations of exemption holders.

## How frequently the best offer message should appear on bills

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

- Best offer messages are to appear on bills at a minimum every six months.
- The message is to appear on the first bill to follow 1 January and 1 July each year, starting from 1 July 2019.

The new requirement could be designed to apply to every bill, or it could be designed to apply at intervals, such as every six or 12 months.

In our consultation to date, some consumer advocates and retailers have noted that the effectiveness of the intervention may become muted if customers become overly accustomed to, and therefore desensitised to, the best offer message. The counter argument, put by other stakeholders, is that more frequent messaging will reinforce the customer's comprehension of the intervention, and actually increase its effectiveness.

We consider this argument to be finely balanced, and can see merit on both sides. On balance we have developed a proposal for the purpose of this draft decision based on a minimum interval of six months, but we invite stakeholder views on this question.

We opted for a six month interval because, relative to one or three months, there is a greater likelihood the difference between a customer's current offer and the best offer will have materially changed over this period. As more time passes, there is a greater likelihood the retailer will have increased the customer's tariff, and/or put a lower price offer into the market.

We propose this 6 monthly frequency should be set as a minimum period, meaning retailers would be free to present the information more frequently. This may help minimise costs in the event that a retailer finds it less costly from an IT systems perspective to include the new information with each bill (as opposed to at intervals).

We propose the best offer message appears on the first bill issued after 1 January and 1 July each year, to capture the outcomes of any price changes that usually occur on these dates. The requirement would apply from the first bills issued after 1 July 2019.

## Minimum dollar threshold for the new requirement

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

To be determined a 'best offer', an offer must result in an estimated saving of least \$22 (including GST) per year when compared to the customer's current offer.

During our consultation to date, stakeholders have invited us to consider whether there should be a minimum dollar threshold after which the new requirement is activated. That is, should customers be told there is a better offer from their retailer if there is only a small saving available?

Research shows that for many customers relatively significant savings are required to prompt them to switch. Our testing for this project indicates that 90 per cent of customers would require a saving of \$50 or more to consider switching.<sup>69</sup> On this basis, we see merit in a minimum dollar threshold for best offer messages when only trivial savings are available.

We propose that this threshold be set at \$22 (including GST) per year on the basis that this is the maximum exit fee retailers may charge, and that most customers will therefore need to save at least this amount to make switching worthwhile.

### How long should a 'best offer' be valid for after it is presented on bill?

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

The best offer must be available for the customer to accept for 13 business days from the issuing date of the bill on which that best offer appears.

Over time, retailers revise their offers. It is therefore relevant to consider how long a best offer should be available after it has been listed on a customer's bill. This is in anticipation of a scenario whereby a customer contacts their retailer in the days after receiving their bill but is advised the offer is no longer available. Such an outcome would not be consistent with the objective of building customer trust and confidence in the market. Conversely, if retailers are required to maintain the offer for an excessive period of time, this may unreasonably impact their pricing strategy, including potentially preventing them from offering lower prices sooner.

One option we considered was to avoid specifying a defined day count and instead specify that the offer had to be valid for 'a reasonable period'. However, while this approach appears attractive for its apparent flexibility, our concern is that it would prove problematic for enforcement and dispute resolution purposes. It is likely we would eventually be required to effectively define 'reasonable period' over time as cases came to our attention.

Consequently, we have sought to identify an appropriate day count by drawing upon existing standards in the energy retail code. We propose the best offer presented on the bill be valid for 13 business days after the bill issue date. This period aligns with the minimum period for a bill due date specified in the code.

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<sup>69</sup> The Behavioural Insights Team, op cit, 2018.

### 3.8. Other information to appear on bills

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

All customer bills must also include information about how the customer can access the government comparator website, Victorian Energy Compare (VEC).

Recommendation 3G from the review also proposed the following information to be added to the bill, in addition to the retailer's best offer for that customer:

- how the retailer can access the Basic Services Offer (BSO)
- how the customer can access VEC, the government comparator website, and
- the total annual bill for that customer based on their current offer and usage patterns.

At the time of making this draft decision, the Government's policy position on the BSO was not settled, so we have not required any information relating to a BSO to be included on the bill.

We are also mindful of the quantity of information that currently appears on the bill. We propose not to include the total annual bill for the customer on the bill at this time. We will consider the best approach for introducing this information in the context of our work to implement the remaining recommendations of the retail market review that have been referred to us.

However, we propose that information about how the customer can access VEC should appear on all bills, regardless of whether the customer is on the best offer or not. We also note that the requirement to place the customer's average daily usage in kilowatt hours and megajoules on the bill will also remain unchanged, as this information is important when customers are comparing offers on VEC. These requirements would apply to all bills, not just every 6 months.

## 4. Price and benefit change notices

The retail market review highlighted that the existing regulatory framework allows retailers to change a customer's energy prices without prior notice.

We have proposed a new 'bill change notice' that retailers must send to customers ahead of price changes, as well as changes to benefits (such as discounts) associated with their contracts. This chapter outlines our proposals for the information the notices should contain, how they should be presented, and a range of practical and operational matters related to the new notices.

### 4.1. Purpose of the retail market review's recommendation

The review raised concerns with the current regulatory framework that allows retailers to change a customer's energy prices without prior notice.<sup>70</sup> The review observed that this discretion was inconsistent with community expectations and should be rectified.

*The current ability of retailer to change energy prices without notice at any time during a contract must be addressed for fairness and to increase consumer confidence.<sup>71</sup>*

The review also considered the issues around 'benefit periods'. Benefit periods are used by retailers to place an expiration date on benefits associated with the contract – that is, an expiration date that occurs prior to the end of the contract itself. In this context, benefits can include movie tickets or magazine subscriptions, but more commonly they are discounts that apply to the customer's bill. This means that a customer may sign up to a new two year energy plan on the basis of, for example, a 20 per cent discount, but that discount may expire after the first year, making the plan significantly more expensive. The review proposed that retailers be required to give prior notice of benefit changes, just as they proposed should apply to price changes.<sup>72</sup>

When prices change and/or benefit periods end without prior notice, customers may find themselves on a pricing schedule that no longer resembles the one when they signed up. This risk

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<sup>70</sup> Section 46 of the Energy Retail Code stipulates retailers must advise customers as soon as practicable and otherwise no later than their next bill of any price changes. Retailers have full discretion on the form and content of these notices.

<sup>71</sup> John Thwaites, Patricia Faulkner and Terry Mulder, op cit,p56.

<sup>72</sup> At the time the review's report was finalised, retailers were not obliged to provide notice to customers ahead of the expiration of a benefit period. However, the commission has since amended the Energy Retail Code, requiring retailers to provide prior notice of changes to benefits. The new requirements are set out in section 47A of the Energy Retail Code and explained in detail below.

is particularly pronounced for customers who, by choice or circumstances, do not regularly engage with the market. As previously noted, the review was focused on ensuring the market worked for these customers, not just those who are highly engaged.

This sentiment is echoed in a recent green paper on the future of consumer markets, including utility markets, from the UK's Department of Business, Energy and Industrial Strategy:

[We] ... want people to feel confident that they are not being exploited for their loyalty to what they may think of as a trustworthy supplier. Competition should drive the best deals, but no one should be exploited if they lack the time or capacity to engage and the vulnerable should be protected.<sup>73</sup>

The purpose of the proposed changes to ensure that customers' trust in their supplier is reciprocated by the retailer keeping the customer informed, in a clear and timely manner, about changes to their energy plan. It will also assist the customer navigate the complexity of the market by providing a low effort means of identifying whether they could access a better offer from their retailer.

## 4.2. Our approach

Implementing recommendation 3F requires us to step through the following questions:

- what information should appear on the benefit and price change notices?
- in what manner and form should the notices be presented?
- how should the new requirement manage practical and operational matters, including the amount of notice retailers must give customers of the price changes, and the interaction between the different notices?

In working through these questions, we have had regard to the existing provisions relating to benefit change notifications within the Victorian framework, as well as work undertaken by the Australian Energy Market Commission (AEMC) and the Australian Energy Regulatory (AER) within the national framework.

## 4.3. Current requirements

Retailers are currently required to provide customers with advance notice of the end of benefit periods. However, they are not required to notify customers of price changes until their next bill.

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<sup>73</sup> UK Department of Business, Energy and Industrial Strategy, 'Modernising consumer markets: Consumer Green Paper', April 2018, p 7.

## Price change notification requirements

Section 46 of the Energy Retail Code requires energy retailers to give notice to the customer of any variation to the tariffs and charges that affect the customer. The notice must be given as soon as practicable and otherwise no later than the customer's next bill. The requirements in their current form do not require prior notification to customers of price changes. This means customers can experience bill shock as a result of unanticipated higher prices.

## Benefit change notification requirements

Section 47A of the Energy Retail Code requires retailers to notify small customers of any benefit changes to their market retail contract. This notice must be made in writing and provided to the customers between 20 and 40 business days before the benefit change date. The Energy Retail Code specifies the minimum information that must appear on the notice.<sup>74</sup>

### 4.4. Relevant developments within the national framework

The national framework, established through the National Energy Retail Rules (NERR), does not apply in Victoria.<sup>75</sup> However two recent pieces of work within the national framework address price and benefit changes and are therefore relevant to our work.

#### AEMC price change notifications rule change

The AEMC is currently considering a rule change request to amend the NERR to require energy retailers to notify their small customers in advance of any price changes. Its work on the proposed rule change to date, as well as stakeholder submissions to the associated consultation paper, has informed our proposed design of the new requirement in Victoria.

In its draft decision, the AEMC anticipates price change notices will produce significant benefits to consumers, outweighing the costs associated with the change.

Significant benefits are expected from the rule in the short and long term, both direct to the customer and more indirectly via the impact on the efficient operation of the market. Consumers are more likely to avoid bill shock, they have more time to switch earlier to a retail plan or new retailer that better serves their needs and they have more timely information to implement other actions that may help them to save money in the short and

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<sup>74</sup> See section 5.5.1 below for more information.

<sup>75</sup> The National Energy Customer Framework, which comprises the National Energy Retail Law and the NERR applies in Queensland, New South Wales, the Australian Capital Territory, Tasmania and South Australia. In Victoria, energy retailers are required to comply with the Energy Retail Code as a condition of their energy licence.



long term. In the process, consumers should gain greater confidence in the market and retailers should be incentivised to develop products and tariff structures that better meet consumer needs.

The costs of the draft rule are likely to be minimised by the simple and concise prescription of the draft rule and the limited amount of information required in notices. Costs are also expected to be better managed under the more flexible notice period required in the draft rule.<sup>76</sup>

### **Benefit change notice guidelines**

Both the Victorian Code and the NERR require retailers to give customers prior notice of changes to the benefits they receive as part of their energy contract. The NERR also provide for the AER to issue a guideline outlining the required form and content of the notices.<sup>77</sup>

The AER recently issued the guideline that applies to benefit change notices in the national framework, which will apply from 1 October 2018.<sup>78</sup> In developing our thinking on price change notices, we have drawn upon the AER's work in developing their guideline.

## **4.5. New notice requirements for Victoria**

Our proposal is to streamline the notice requirements for Victoria and establish a single 'bill change notice' that can be triggered by either benefit or price changes. The content of the bill change notice would vary depending on which type of change triggered the notice.

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<sup>76</sup> AEMC, 'National energy retail amendment (advance notice of price changes) rule', July 2018, p 27.

<sup>77</sup> AER, 'AER Benefit Change Notice Guidelines – version 1', June 2018, pp 2-4.

<sup>78</sup> *Ibid*, p 5.

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

The existing requirement for retailers to issue benefit change notices is to be replaced by a new requirement to issue bill change notices that are triggered by any price or benefit change.

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

Bill change notices are to include the following information:

- the small customer's metering identifier
- that the small customer may use the price comparator to compare offers that are generally available to classes of small customers in their area
- the name and web address of the price comparator
- that the customer can request historical billing data (and, if they are being sold electricity, energy consumption data) from the retailer that will assist the customer to use the price comparator to compare offers that are generally available to classes of small customers in their area
- any early termination charges payable under the market retail contract
- the retailer's best offer for that customer, defined, calculated and presented in the same manner as set out in draft decision 2 to 4, 8 and 9
- the retailer's estimate of the annual dollar impact of the benefit or price change (where the benefit is financial in nature)
- information specific to the customer to assist the customer to complete the fields necessary to compare offers on Victorian Energy Compare
- that a benefit change will occur and the benefit change date (benefit changes only)
- that the customer's tariffs and charges are being varied (price changes only)
- the date on which the variation will come into effect (price changes only)
- the customer's existing tariffs and charges, (price changes only), and
- the customer's tariffs and charges as varied (price changes only).

### **Minimum information to be included**

The minimum information to be included on the bill falls into three categories: information that appears regardless of the trigger (common information), information applicable only to benefit changes (benefit change information) and information applicable only to price changes (price change information).

We propose the common information be based on the existing information requirements for benefit notices as per section 47A of the code, with the addition of the retailer's best offer. Drawing on the

AER's benefit change notice guideline, we also propose the notice includes information about the estimated dollar impact of the change, as well as information to help the customer use Victorian Energy Compare. The *common information* we propose is therefore:

- the small customer's metering identifier
- that the small customer may use the price comparator to compare offers that are generally available to classes of small customers in their area
- the name and web address of the price comparator
- that the customer can request historical billing data (and, if they are being sold electricity, energy consumption data) from the retailer that will assist the customer to use the price comparator to compare offers that are generally available to classes of small customers in their area,
- any early termination charges payable under the market retail contract
- the retailer's best offer for that customer, defined, calculated and presented in the same manner as set out under recommendation 3G.
- the retailer's estimate of the annual dollar impact of the benefit or price change (where the benefit is financial in nature),<sup>79</sup> and
- information to assist the customer complete the fields necessary to use Victorian Energy Compare.

We propose the *benefit change information* also be drawn from the existing code, with the addition of the information required by the AER's benefit change notice guideline, namely:

- that a benefit change will occur and the benefit change date.

For the *price change information* we have drawn upon the AEMC's work on price change notifications and propose the following information be included:

- that the customer's tariffs and charges are being varied
- the date on which the variation will come into effect
- the customer's existing tariffs and charges, and
- the customer's tariffs and charges as varied.

Table 4.1 summarises the proposed information requirements, and their source of the requirement.

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<sup>79</sup> Consistent with our draft decision on recommendation 3G, the annual dollar impact should be calculated on the basis of the customer's most recent 12 months of metering data. If the retailer does not have the most recent 12 months metering data for a customer, we propose that the retailer use its best estimate to determine the dollar impact.

**Table 4.1. Minimum information to appear on bill change notifications**

Type of information	Item of information	Source
Common information	The small customer's metering identifier	The existing benefit change notification requirement
	That the small customer may use the price comparator to compare offers that are generally available to classes of small customers in their area	
	The name and web address of the price comparator	
	That the customer can request historical billing data (and, if they are being sold electricity, energy consumption data) from the retailer that will assist the customer to use the price comparator to compare offers that are generally available to classes of small customers in their area,	Recommendation 3F of the retail market review
	Any early termination charges payable under the market retail contract	
	The retailer's best offer for that customer, defined, calculated and presented in the same manner as set out under recommendation 3G.	
The retailer's estimate of the annual dollar impact of the benefit or price change (where the benefit is financial in nature)	The review's emphasis on communicating to the customer in dollar terms, and the AER's benefit change notification guideline <sup>80</sup>	
Information to assist the customer complete the fields necessary to use Victorian Energy Compare.	the AER's benefit change notification guideline	
Where a benefit is changing	That a benefit change will occur and the benefit change date.	The existing benefit change notification requirement
Where a price is changing	That the customer's tariffs and charges are being varied	AEMC draft rule change
	The date on which the variation will come into effect	
	The customer's existing tariffs and charges	
	The customer's tariffs and charges as varied	

<sup>80</sup> The AER's Benefit Change Notice Guidelines requires retailers to include the dollar impact of doing nothing in response to a benefit change.

## Manner and form of the notices

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

Retailers should present bill change notices in a manner and form consistent with the objective of the notice.

The Energy Retail Code does not specify the manner and form of the benefit change notification. Within the national framework, the NERR defers consideration of manner and form, among other practical considerations, to a guideline produced by the AER. The AER's *Benefit Change Notice Guideline – Version 1* was released on 1 July 2018 and takes effect from 1 October 2018. The AEMC's draft rule on price change notifications does not prescribe the manner and form of those notices.

In considering the manner and form in which the bill change notices should be presented, one approach we considered was to adopt the relevant sections of the AER's guideline via the Energy Retail Code, either by replicating the requirements in the code itself or by referring in the code to specific parts of the AER guideline. However, this approach introduces some complexity due to the need to specify which elements of the AER guideline would be relevant to Victoria and which would not apply. We would also need to adapt the requirements to apply to price changes.

We have instead opted for a simpler, outcomes based approach. Our draft decision is to require retailers to prepare and present the notices in a manner and form that is consistent with the objective of the notice. To support this, we have clarified this objective in the Energy Retail Code. The objective we plan to adopt is:

To assist customers to evaluate the ongoing suitability of their energy contract by giving them an entitlement to be informed in a clear, timely manner regarding:

- any changes that will affect their bill, before those changes occur
- the likely bill implications of the changes, and
- the steps customers can take to seek out alternative offers in the market.

We will monitor retailers' bill change notices and consider adding more prescription in future if it appears necessary.

## Method of delivery

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

Bill change notices are to be delivered by the customer's preferred form of communication where this has been communicated to the retailer, or otherwise by the same method as that used for delivery of the customer's bill.

The AEMC's draft determination is that the price change notice be delivered by the customer's preferred form of communication where this has been communicated to the retailer, or otherwise by the same method as that used for delivery of the customer's bill.

We propose the same requirement apply in Victoria for bill change notices.

## Scope

### **Draft decision 15: Scope**

Bill change notices are to apply to both standing offer and market offer contracts, gas and electricity contracts, and price increases and decreases. The notices are not to be applied to exempt sellers at this point in time.

In keeping with the AEMC's decisions regarding price change notices, we propose the bill change notice apply to both standing offer and market offer contracts, and also to both gas and electricity.

The AEMC also propose the price change notice be applied to both price increases and decreases. In taking this position on including price decreases, the AEMC notes

Consistent treatment of price increases and decreases has benefits in terms of the ease of implementing the rule due to the difficulty of affirming whether a price decrease is in fact a decrease. A customer may see fixed rate charges fall, but variable charges increase. Whether their overall bill will increase, in unit volume terms, as a result of these changes may vary depending on the consumer's existing and future consumption pattern. Making the rule consistent for price increases and decreases removes this complication and requires the retailer to issue advance notice in the event of a price change, regardless of whether it results in an increase or decrease in the customer's bill.

This requirement removes the difficulty of forecasting the likely impact on the consumer. It removes the complication for the retailer of assessing whether there has only been a change in one component and whether the change in that single component is likely to increase the customer's bill. Similarly, where consumer tariffs differ for usage at different times of the day,

it removes the need for the retailer to assess whether this results in an increase or decrease in the customer's bill.<sup>81</sup>

We accept the arguments set out by the AEMC and propose adopting identical coverage in Victoria. That is, the price change trigger for the bill change notice would include price decreases.

Additionally, we have considered whether the requirement should apply to holders of a licence exemption to sell energy. Our view is that this requirement should not yet be applied to exempt sellers as it is not yet clear how material the problem is in this segment of the community. We will reconsider this view in due course based on our assessment of the experience of customers supplied by exempt sellers.

## Notice period

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

Retailers must notify customers of a bill change a minimum of five business days before a benefit or price change takes effect.

Currently, the notice period for benefit change notices is between 40 and 20 business days. The AEMC's draft determination on price change notices is that retailers should notify customers a minimum of five business days before a price change takes effect. This relatively short notice period is largely due to constraints around the timing of the release of network costs, which may occur quite soon prior to a retailer price change, and administrative issues with coordinating a mass mail out to customers.

In the interests of operational simplicity and national consistency, we propose aligning the notice period with the AEMC's notice period for price changes. Consistent with the AEMC draft decision, we therefore propose the notice period in Victoria should be five business days. In other words, this involved bringing the current notice period for benefit change notifications in line with the AEMC's proposed notice period for price change notifications.

In making this draft decision, we note that advice provided to us by the Department of Premier and Cabinet's (DPC) Behavioural Insights Unit (BI Unit) is that timeliness is a key principle of effective behavioural approaches. According to behavioural research, a prompt to take action is most likely to be effective if it is provided as close as practical to the time the consumer is required to make and act on a decision. For example, a recent OECD report based on the telecommunications market suggests that information be provided just in time, such that it is available in the context of

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<sup>81</sup> AEMC, 'National energy retail amendment (advance notice of price changes) rule', July 2018, p 20. '

the critical decision point.<sup>82</sup> Consequently, we consider the shortening of the notice period associated with the current benefit notice requirement may increase its effectiveness as a prompt for customers to engage with the market.

## Exemptions

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

Retailers are to be exempt from issuing a bill change notice under the following circumstances:

- where the customer has entered into a market retail contract with the retailer within 10 business days before the price change, and the retailer has already informed the customer of the change
- with respect to a tariff or charge that continually varies in relation to the prevailing spot price of energy
- where the variations to the tariffs and charges are a direct result of a change to, or withdrawal or expiry of, a government funded energy charge rebate, concession or relief scheme
- in relation to a benefit change relating to a benefit that is a one-off gift or sign-up credit provided to a customer as a result of entering the market retail contract
- in relation to a benefit change where a benefit change date occurs within 40 business days of the commencement of the market retail contract, or
- in relation to a benefit change where the benefit is rolled over on the same terms and conditions after the expiry of the existing benefit.

The AEMC has identified a number of circumstances in which a retailer would be exempt from providing customers a price change notice:

1. where the customer has entered into a market retail contract with the retailer within 10 business days before the price change, and the retailer has already informed the customer of the change
2. where the variations to the tariffs and charges are a direct result of a benefit change and the retailer has provided the customer with a benefit change notice
3. with respect to a tariff or charge that continually varies in relation to the prevailing spot price of energy, and
4. where the variations to the tariffs and charges are a direct result of a change to, or withdrawal or expiry of, a government funded energy charge rebate, concession or relief scheme.

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<sup>82</sup> OECD, *Protecting Consumers through Behavioural Insights: Regulating the Communications Market in Colombia*, 2016, OECD Publishing, Paris.



We consider these exemptions reasonable and propose to adopt the same in Victoria for bill change notices, with the exception of the second exemption criteria which would not apply because the bill change notice combines benefit changes notices and price change notices.

Separately, the AER has identified a number of contract attributes that should not be considered 'benefits' for the purposes of retailers' obligation to send benefit change notices.<sup>83</sup> Those include where:

1. a benefit change relating to a benefit is a one-off gift or sign-up credit provide to a customer as a result of entering the market retail contract
2. a benefit change with a benefit change date within 40 days of the commencement of the market retail contract<sup>84</sup>
3. a benefit change where the benefit is rolled over on the same terms and conditions after the expiry of the existing benefit.

Similarly, we agree that these items should not be considered benefits for the purpose of triggering the obligation to send a bill change notice and propose adopting these exemptions in the Victorian framework.

### Commencement date

The AEMC proposes the new price change notice requirement commence on 1 February 2019.

In Victoria, our proposed streamlined bill change notice will include the retailer's best offer for that customer, which goes beyond that required by either notice within the national framework.

Determining the best offer will involve IT system changes for retailers, meaning it is reasonable that more time is provided for the commencement of the equivalent requirement in Victoria. We propose the new bill change notice requirement commences on 1 July 2019, which is consistent with expectations of the Victorian Government for the commencement of code amendments associated with recommendation 3F. The existing benefit change requirements under section 47A would remain in force until 1 July 2019.

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<sup>83</sup> See the list of excluded changes on page 8 of the AER's Benefit Change Notification Guideline.

<sup>84</sup> Based on our analysis of the AER's Notice of Final Instrument, we interpret this to mean 40 business days.

## 5. GST inclusive pricing

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

All tariffs, fees, prices and charges are to be expressed in GST inclusive terms only on bills and related notices, in all marketing material and in any verbal exchange between retailers and customers or prospective customers.

### **5.1. Recommendation 3H**

Recommendation 3H requires retailers to make pricing on bills and marketing material GST inclusive. The review noted that energy bills still list GST-exclusive charges and add GST to the total bill.<sup>85</sup> This recommendation will make it simpler for customers to understand energy price information by ensuring that GST is presented and communicated consistently, bringing energy bills and marketing material into line with GST price disclosure in the rest of the economy.

The benefit of this recommendation is threefold:

- making it simpler for customers by reducing the calculations required to understand GST exclusive prices and also reducing the number of prices presented in their bill, information disclosure documents or in marketing material (including verbal transactions with customers)
- making it easier to compare prices and understand total costs or charges on a bill and other documents that outline prices in information disclosure or marketing material
- stop practices where some retailers quote or present GST exclusive tariffs to customers, which can make retail products seem more attractive and may lead customers to making incorrect conclusions about the retailer's prices

Although the effect of this amendment is to prohibit GST exclusive pricing, retailers will still be able to itemise GST as a component of the total price on bills. This recommendation does not change the requirement for tax invoices to specify enough information to be able to clearly determine the GST amount payable.

We have included the Energy Retail Code amendment for recommendation 3H in the first tranche of code amendments, which will take effect from 1 July 2019 because there is only one way to interpret this recommendation.

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<sup>85</sup> John Thwaites, Patricia Faulkner and Terry Mulder, op cit, p 56.

Chapter 6 describes our proposed amendments to the Energy Retail Code to give effect to this proposal.

## 6. Amending the Energy Retail Code

To translate our proposal into the Energy Retail Code, we have proposed a series of code amendments. The amendments centre on a new Part 2A of the code, which is focused on assisting customers to engage with the energy retail market. In developing the amendments, we have applied a similar formula as in the amendments we made to give effect to our payment difficult framework: a combination of objectives, customer entitlements and minimum standards, along with provisions that clarify how we will interpret the new clauses. The code amendments are listed in full in appendix B.

### 6.1. Summary of amendments

To give effect to the proposal contained in this draft decision, we propose making following a number of changes to the Energy Retail Code. (In Victoria, energy retailers are required to comply with the code as a condition of their energy licence.<sup>86</sup>) In summary, the changes we have proposed are to:

- streamline the notice requirements to create a single ‘bill change notice’ requirement that can be triggered by either a benefit or price change
- introduce the concept of ‘best offer’ and clarified the circumstances in which it must appear on the customer bills and the bill change notices
- introduce an outcomes based transparency obligation – the ‘clear advice entitlement’
- group the above amendments into a new part (Part 2A)
- make a series of consequential technical amendments associated with streamlining the customer notices, and
- made changes to clarify that all prices must be GST inclusive.

The amendments to the code are made under section 25 of the Electricity Industry Act 2000 and section 31 of the Gas Industry Act 2001.

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<sup>86</sup> Section 20(2) of the *Electricity Industry Act 2000* and section 28(2) of the *Gas Industry Act 2001* set out the licence conditions requiring energy retailers to comply with the Energy Retail Code.

## 6.2. Our approach

### Approach

To make the substantive changes to the code, we have applied a formula developed through our work on the new payment difficulty framework.<sup>87</sup> This approach is intended to establish a cascading set of objectives, entitlements and minimum standards. The formula encompasses:

- a new Part with its own purpose (new Part 2A)
- interpretative provisions – to clarify the approach the commission will take to interpreting the new provision
- objectives – to clarify the objective of the new provision, with reference to the customers' entitlement to a specific outcome, and
- minimum standards – to clarify the minimum detailed requirements that retailers must adhere to in order to give effect to the entitlements.

We have modelled the interpretative provision on the equivalent provision within the new Part 3 of the Energy Retail Code, developed for the purposes of the new payment difficulty framework which commences on 1 January 2019. The interpretive provision sets out the matters the commission will consider when interpreting the clause for the purposes of determining compliance, which includes guidance the commission may issue under its compliance and enforcement policy.<sup>88</sup>

### New part 2A

We have placed the main code changes together in a new part of the code (Part 2A), to reflect their common objective of promoting market integrity by assisting customers to engage with the market.

We have defined the purpose of the new Part 2A as being to establish that small customers have an entitlement to measures that assist them to engage confidently with the energy market (70C). As we continue to implement recommendations associated with the review we expect to continue expanding Part 2A to include other customer outcomes focused provisions. We expect it will be possible to scale back or remove requirements in the current code as they are superseded by new provisions within Part 2A. In this way, Part 2A begins the work called for by recommendation 9 of

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<sup>87</sup> See <https://www.esc.vic.gov.au/electricity-and-gas/electricity-and-gas-codes-guidelines-policies-and-manuals/energy-retail-code/energy-retail-code-review-2016-customers-facing-payment-difficulties>

<sup>88</sup> In our Energy Compliance and Enforcement Policy, we state we will consider publishing guidance notes where we consider there is a need to provide further details of the standards we expect. Essential Services Commission 2016, *Energy Compliance and Enforcement Policy*, July, p. 4.

the retail market review, which is to review our regulatory codes to ensure they focus on customer outcomes.

### **6.3. Bill change notices**

To give effect to the new bill change notice requirement, we propose a new clause that largely combines elements of the existing benefit change notification requirement and the AEMC draft determination on price change notices. We have also developed an objective for the notice, that retailers must consider when meeting (or exceeding) the minimum requirements, including when designing and presenting the notices.

We have also amended the pre-existing price and benefit change notice requirements to clarify that they no longer apply to retailers (they may continue to apply to exempt sellers, subject to our final decision on the review of the requirements for these entities).

The proposed amendments are:

- A new Division 3 in new Part 2A to establish a customer entitlement to be given prior notice of changes to price or benefits that will impact a customer's bill, and to require retailers to at that time advise the customer of their best offer.
- Consequential technical amendments to Division 7 of Part 2, including to clauses 46 and 47A, to clarify that the pre-existing benefit and price change notification requirements may only apply to exempt sellers, as per the commission's draft decision on requirements for these entities.<sup>89</sup>

It is worth noting that the consequential technical amendments to Division 7 of Part 2 are lengthy but are in fact minor in terms of their impact (see the final section of appendix B). The previous title of the relevant division of the code indicated the division only applied to market contracts. Because under our proposal the division would contain provisions that now apply only to exempt sellers, this title needed to be changed to reflect the wider application of the division. Consequently, it was necessary to then clarify the application of each clause to specify whether each one applied to market contracts, standard contracts, or exempt person arrangements. This requires additional 'application' clauses to be added throughout the division. The end result is approximately five pages of amendments, the consequence of which is to simply to clarify that parts of clause 46 and clause 47A of Division 7 no longer apply to retailers.

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<sup>89</sup> We are basing the amendments on our draft decision on the obligations of exempt persons. The final decision in that process is anticipated for release in September 2018. Our final decision for this process will rely upon the code as amended at the time of making the decision.

## 6.4. Best offer on bills

To enact the obligation for retailers to place the best offer on bills, we propose a new Division 4 within new Part 2A. The proposed amendments set the objective of the division as being to provide small customers an entitlement to prominently displayed, helpful information that enables them to easily identify whether they are on their retailer's 'best offer', understand how to access their retailer's best offer, and understand how to access offers from other retailers via the Victorian Government energy price comparison website (see cl 70M).

The objective should ensure retailers complying with their obligations under this clause do so in a way that is conducive to the intent of the new requirement. This includes using their discretion around the design and presentation of the best offer on the bills in such a way that is consistent with the objective.

It is an inevitable outcome of using a superlative adjective such as 'best' in this context that the offer that appears on bills will in some instances not be 'best', in the everyday meaning of that word. As such, we have deliberately avoided creating an obligation for retailers to use the term 'best offer' in their communication with the customer (and in the code we have used the term 'deemed best offer' to clarify we are not using the term in the sense of its ordinary meaning)The term only appears in the code, where its meaning is defined for the specific purpose of giving effect to the new entitlement. Beyond potentially leading to misunderstandings, requiring a retailer to advise their customer, for example, that they are 'on the best offer' may, in some circumstances, raise questions of misleading and deceptive conduct under consumer protection legislation.

Consequently, where a customer is already on a retailer's 'best offer' (within the meaning defined in the code), we have provided retailers with discretion about how they communicate this message to customers. Our proposal is that in these circumstances, the retailer would just be required to communicate the meaning we have assigned the term 'best offer' via the code (see cl 70P(5)). This might be achieved, for instance, by advising the customer 'you are on our lowest cost generally available offer'. This approach allows the retailer the latitude required to meet their obligations under consumer protection legislation.

The proposed amendments also set out the minimum standards associated with:

- how the retailer must determine the best offer
- how frequently the retailer must put the best offer on bills
- the content of the best offer message, and some basic rules around how it is presented on the bill, and
- a requirement for retailers to maintain records to demonstrate compliance.

## Other information to be added to bills

As outlined in chapter 3, we are proposing to add one new piece of information to bills beyond the best offer message, namely: how the customer can access the government comparator website, Victorian Energy Compare (VEC).

We propose this change is enacted by adding an extra item to those listed in existing clause 25, which outlines the content that must be included on bills.

## 6.5. Clear advice entitlement

### New division: Supporting customer choices

We have proposed establishing the clear advice entitlement in the new Part 2A. The objective of the division is to give small customers an entitlement to clear, timely and reliable information to assist them to assess the suitability of, and select, customer retail contracts (see cl 70F). The division also outlines minimum standards that require retailers to provide the following information to customers, in a readily understandable form, prior to obtaining explicit informed consent to enter a contract:

- any contractual term or condition that may influence the total monetary value of the customer's bill issued by during the term of the contract (see cl 70G(1)(a)), and
- any of the retailer's other energy offers that the retailer believes would be suitable to the customer (see cl 70G(1)(b)).

The minimum standards also clarify that the retailer must:

- communicate the information with reference to the retailer's estimate of the total monetary value of a bill for the customer - in other words, in reference to the dollar impact on the bill of the contract terms – unless it is unreasonable to do so (see cl 70G(2)(b)), and
- emphasise any information the retailer believes may be of particular relevance to that customer (see cl 70G(2)(c)).

Finally, the minimum standards specify that when fulfilling these requirements, the retailer should take into account all information it has knowledge of regarding the customer (including, any information regarding the customer's pattern of energy consumption and pattern of bill payment) (see cl 70G(2)(a)).

As with the new best offer on bills requirements outlined above, the proposed amendments for the clear advice entitlement include a requirement for retailers to maintain records to demonstrate compliance (see cl 70H).



We are also proposing that the clear advice entitlement be linked to the existing explicit informed consent requirements. That is, we are proposing to prescribe the clear advice entitlement for the purposes of clause 3C(1)(d) of the code, the effect of which is that a failure to comply with the new entitlement would constitute a failure to properly obtain explicit informed consent.

## **6.6. GST inclusive pricing amendments**

As outlined in chapter 6, we propose to amend the Energy Retail Code to ensure that all prices displayed by retailers must be GST inclusive by default. This would involve:

- amending the existing references to GST to clarify that prices (including amount payable, tariffs, fees, charges or other costs) should be displayed in GST inclusive format (including references contained in schedule 1 of the code)
- introducing a new requirement to clarify that the communication of prices should be displayed as GST inclusive by default, regardless of the context in which they are being displayed (that is, to include marketing, information disclosure and bills) (new 3G).

## **6.7. Enforcement of the new provisions**

We propose to monitor retailers' compliance with the new requirements, including through our audit program. Compliance with the best offer obligation will be readily assessable by reviewing customer bills, while compliance with the clear advice entitlement will be assessable by reviewing call recordings and assessing the conduct against the new requirements, among other means. Where we identify potential non-compliance, we will promote compliance or consider taking enforcement action in line with our compliance and enforcement policy. Should it become necessary, we may recommend the Victorian Government make regulations to attach penalty notices to the new requirements.

## 7. Next steps

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

The Energy Retail Code amendments outlined in this draft decision are to commence on 1 July 2019.

#### 7.1. How to make a submission

We will continue to consult with interested stakeholders and invite you to contribute your views by making a submission in response to this draft decision in writing by **5pm Friday 5 October 2018**.

Submissions marked 'Submissions to New Requirements for Energy Bills,' should be sent by

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

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

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

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

Our approach to consultation is set out in our updated Charter of Consultation and Regulatory Practice.<sup>90</sup>

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<sup>90</sup> ESC, 'Stakeholder engagement framework – Charter of Consultation and Regulatory Practice', June 2018.

## 7.2. Indicative timelines

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

Target date	Activity
7 September 2018	Draft decision released
September 2018	Workshop on the draft decision (subject to stakeholder interest)
5 October 2018	Submissions close
October 2018	Workshop on submissions (subject to stakeholder interest)
October 2018	Final decision released and code amended
1 July 2019	Amendments to come into effect

## 7.3. Final decision

Once we have received and considered the submissions, we intend to make a final decision in October 2018.

## 7.4. Commencement of new requirements

The terms of reference propose that the new rules implementing recommendation 3F, 3G and 3H of the review are to take effect from 1 July 2019.

## 7.5. Review of new requirements

We propose to monitor the new requirements and review their effectiveness after they have been active for a suitable period. In due course, our monitoring will likely include making changes to our Compliance and Performance Reporting Guideline (CPRG) under which we collect the data we use to inform our Victorian Energy Market Report (VEMR), in order to track how the new requirements operate in the field. Our monitoring and review process may include looking at how many customers receive different forms of best offer messages on their bills and bill change notices, and how these rates change over time. We may also look at how effectively the best offer message prompts comprehension and behaviour change, with a view to revising the level of prescription around how these messages are presented, if necessary.

# Appendix A: Terms of reference

## Attachment 1

### Customer outcomes in the energy market

#### Terms of Reference to the Essential Services Commission

The Essential Services Commission is requested to conduct a review under section 10(g) of the *Essential Services Commission Act 2001* on the appropriate amendments to the Energy Retail Code to efficiently give effect to recommendations 3A to 3H and 9A of the Independent Review of the Electricity and Gas Retail Markets in Victoria (the independent review), released on 13 August 2017.

#### Background

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

In February 2018, the Government provided its support to the recommendations from the independent review, except for two recommendations - introducing a Basic Service Offer (BSO) and abolishing standing offer contracts (recommendations 1A and 2A). The Government will undertake further analysis on the application and scope of the BSO and abolishing standing offers and their effect on Victoria's energy sector. The Government will consult further with stakeholders regarding the design of a BSO and any alternatives to the BSO.

#### Request

The Government is now requesting the Essential Services Commission to give effect to recommendations 3A to 3H and 9A.

Recommendations 3A to 3H propose changes to the information provided by energy companies to customers, including marketing material and information



on bills. To give effect to these changes, the Commission is required to review the Energy Retail Code (the Code).

Recommendation 9A requires the Commission to review its regulatory codes to ensure a focus on customer outcomes and to account for new business models of service provision.

The Code is issued under Part 2 of the *Essential Services Commission Act 2001*. All licensed energy retailers must comply with the Energy Retail Code in accordance with their retail licences.

The review is to be conducted in two phases. While undertaking its review, the ESC may consider early adoption of any measures, including those introduced in other Australian jurisdictions, that it considers necessary in the context of its statutory objectives.

#### *First phase*

In conducting its review of the Code for the purposes of giving effect to recommendations 3A to 3H, the Commission is required to have regard to its objectives under the *Essential Services Commission Act 2001*, *Electricity Industry Act 2000*, *Gas Industry Act 2001* and the following:

- findings from the independent review;
- approaches being used by other regulators, such as the Australian Energy Regulator;
- information needs for Victoria's rich and diverse community, including our culturally and linguistically diverse and aged population; and
- other matters it deems relevant.

For the avoidance of doubt, the Commission is not required to assess the merits of the independent review's findings and recommendations. Its role is limited to identifying the most timely and cost-effective opportunities for implementing these findings and recommendations through amendments to the Energy Retail Code.

The Commission is required to complete and publish its review that gives effect to recommendation 3G, specifically relevant Code changes relating to

information published on customer bills, by 1 October 2018. These changes are to take effect from 1 July 2019.

The Commission is required to complete and publish its review that gives effect to recommendations 3A to 3F and 3H, including relevant Code changes, by 30 January 2019. Unless otherwise determined by Government, changes made by the Commission to the Code relating to marketing information (recommendations 3A-3F and 3H) will take effect no later than 1 July 2019 so that the marketing of energy retail offers in a standardised format (including incorporation of annual energy costs for standardised customer usage profiles) can commence from that date.

### *Second phase*

The Commission is required to review its codes and guidelines, for the purposes of establishing an energy market code (recommendation 9A). In developing the energy market code, the Commission should have regard to developing a principles-based, consumer-focused framework that can account for new business models of service provision.

The Commission should also have regard to its objectives under the *Essential Services Commission Act 2001*, *Electricity Industry Act 2000* and *Gas Industry Act 2001*.

The Commission is required to complete this stage of the review, including relevant Code changes, by 31 December 2019.

### *Consultation*

In undertaking this review, the Commission is required to consult widely, including with consumers, consumer advocacy groups, energy businesses, relevant experts, government departments and other regulators.

### *Reporting*

Throughout the review, the Commission will advise the Minister for Finance and Minister for Energy, Environment and Climate Change regarding its progress and its final approach.

# Appendix B: Draft code amendments

## New part 2A – clear advice entitlement, bill change notice, best offer on bills

### AMENDMENTS TO THE ENERGY RETAIL CODE: MARKET INTEGRITY

[Insert Date]

#### Amendments made by the Essential Services Commission on [insert date]

#### 1 Nature and commencement of this instrument

- (1) This instrument amends the *Energy Retail Code*.
- (2) This instrument comes into operation on [insert date].

#### 2 Table of amendments

- (1) Insert the following definitions in clause 3, after *AMI retail tariff*:

***annual total cost of current plan*** means the minimum possible amount payable by a *customer* under the *customer's* current *customer retail contract* calculated on the basis of the *customer's* annual usage history and the tariff, charges and discount rates current at the *bill issue date* (or the date that a *price change* or *benefit change* becomes effective, or the date immediately prior to this effective date, if applicable), with all discounts applied including any discount the *customer* receives because the *customer* buys another good or service, and including any amounts deducted, credited, or received by the *retailer* under a government funded *energy* charge rebate, concession or relief scheme;

***annual total cost of deemed best offer*** means the minimum possible amount payable by the *small customer* under the *deemed best offer* calculated on the basis of the *small customer's* annual usage history and the tariff, charges and discount rates of the *deemed best offer* current at the *bill issue date* (or the date that a *price change* or *benefit change* becomes effective, if applicable), with all discounts applied (except any discount which applies to a *customer retail contract* because the *customer* buys another good or service) and including any amounts deducted, credited, or received by the *retailer* under a government funded *energy* charge rebate, concession or relief scheme;

**annual usage history** means the consumption or export of electricity or gas by a *customer* at the *customer's* current premises over the 12 month period preceding the *bill issue date* (or the date of the *bill change alert*, if applicable), based on *meter* readings. Where the *retailer* does not have 12 months of *meter* readings for the *customer* at the *customer's* current premises, the *retailer* must estimate the *customer's* consumption and export of electricity or gas during a 12 month period having regard to any relevant information that is available to the *retailer* (and must have regard to any *meter* readings obtained during the 12 month period preceding the *bill issue date* (or the date of the *bill change alert*, if applicable));

- (2) Insert the following definitions in clause 3 after *associate*:

**benefit change** means a change to, or the expiry of, a benefit (such as a price discount) provided to a *customer* for a minimum period or a fixed benefit period under a *customer retail contract* during the term of that contract (whether or not as a result of a variation of the contract) or under an *exempt person arrangement*;

**bill change alert** means a notice given under clause 70L;

**bill summary** means a communication from the *retailer* to the *customer* intended to alert the *customer* that the *retailer* has issued a new bill;

- (3) Insert the following definitions in clause 3 after *de-energisation or disconnection*:

**deemed best offer** means the *customer retail contract* that the *retailer* offers which:

- (a) is the lowest cost *customer retail contract* available to the *customer*, with regard to the *customer's* *annual usage history*; and
- (b) is generally available to any *customer*; or
- (c) if not generally available, has a lower cost than the lowest cost generally available *customer retail contract* (but the *retailer* is under no obligation to consider a *customer retail contract* that is not generally available, for the purposes of determining the *deemed best offer*).

If the *customer* is party to a *customer retail contract* which provides a discount because the *customer* buys another good or service, the *deemed best offer* must be determined without any such discount;



**deemed best offer check** means a comparison between the *customer's annual total cost of current plan* and *annual total cost of deemed best offer*, as set out in clause 70P;

**deemed best offer check result** means the amount determined in accordance with the formula set out in clause 70P;

**deemed best offer message** means either a *positive deemed best offer message* or a *negative deemed best offer message*;

- (4) Insert the following definition in clause 3 after *move-in customer*:

**negative deemed best offer message** means a message which conforms with the form and content requirements set out in clause 70R(4);

- (5) Insert the following definition in clause 3 after *payment plan*:

**positive deemed best offer message** means a message which conforms with the form and content requirements set out in clause 70R(3); and

- (6) Insert the following definitions in clause 3 after *Price and Product Information Statement*:

**price change** means a change to any of the tariffs or charges payable by a *small customer* under a *customer retail contract*;

**price comparator** means a facility available on a website to assist a *small customer* to compare:

- (a) the tariffs available to a *customer* under a *standing offer*; and
- (b) the tariffs that are generally available to classes of *small customers* under *market retail contracts*,

in accordance with guidelines issued by the *Commission* under section 36A(2) of the *Electricity Industry Act* or section 43A(2) of the *Gas Industry Act*;

- (7) Insert the following definition after *relevant authority*:

**relevant bill** means each of the first bill issued by a *retailer* to a *small customer* after 1 January each year and the first bill issued by a *retailer* to a *small customer* after 1 July each year;

- (8) In subclause 25(1)(y)(iv), delete "." and insert ";".

(9) Insert the following new subclauses after subclause 25(1)(y):

(z) clear and simple information about the *price comparator* and how to access it, including a hyperlink on electronic bills.

(10) In subclause 25(5) delete "(q) and (w)" and replace with "(q),(w) and (z)".

(11) Replace the table after subclause 25(5) with the following:

Subclause application	Exemption Category											
	VD1	VD2	VD3	VD4	VD5	VD6	VD7	VR1	VR2	VR3	VR4	VR5
1(d)-(h), (n), (t), (u)	√	√	√				√	√	√	√	√	
1(k), (l), (m), (o), (v), (w), (z)												
1(a)-(c), (i), (j), (m), (x), (y)	√	√					√	√	√	√	√	
1(nn)			√				√		√	√	√	
1(p)		√										
1(q)	√	√					√	√				
1(s)	√	√							√	√	√	
2	√	√					√	√	√	√	√	

(12) Insert the following new Part 2A, after Part 2:

## **Part 2A Market Integrity**

### **Division 1 Operation of this Part**

#### **70C Purpose**

The purpose of this Part is to establish that *small customers* have an entitlement to measures that assist them to engage confidently with the *energy* market.

#### **70D Application of this Part**

This Part applies to *customers* who are *small customers*, unless specified otherwise.

## **70E Interpretation of this Part**

The approach that the *Commission* will take to the interpretation of this Part is as follows:

- (1) clear words will be given their natural and ordinary meaning; and
- (2) where this Part appears to be capable of having more than one meaning, the *Commission* will have regard to the following, in the following order, in seeking to discover the intended meaning of the Part:
  - (a) first, the objective of the relevant Division(s);
  - (b) secondly, the purpose of this Part;
  - (c) thirdly, any guidelines published by the *Commission* under section 13 of the *Essential Service Commission Act 2001* (Vic);
  - (d) fourthly, any relevant guidance notes published by the *Commission* under its Energy Compliance and Enforcement Policy; and
  - (e) fifthly, any written information issued by the *Commission* regarding a *small customer's* entitlement to supporting measures under this Part.

## **Division 2 Supporting customer choices**

### **70F Requirement**

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

### **70G Objective**

The objective of this Division is to give *small customers* an entitlement to clear, timely and reliable information to assist the *small customer* to assess the suitability of, and select, a *customer retail contract*.

### **70H Minimum standards – clear advice**

- (1) Prior to obtaining a *small customer's explicit informed consent* to enter a *customer retail contract*, a *retailer* must communicate to the *small customer* in a readily understandable manner information about:
  - (a) any contractual term or condition that may influence the total monetary value of a bill issued by the *retailer* to the *customer* during the term of the *customer retail contract* (including the structure of any tariff or a *price change*, where the *price change* is to come into effect after the *small customer* enters into the *customer retail contract*); and

- (b) the *retailer's* other *energy* offers that the *retailer* reasonably believes would be suitable for the *customer*.
- (2) In fulfilling subclause (1), the *retailer* must:
  - (a) consider all information it has knowledge of regarding the *customer* (including, without limitation, any information regarding the *customer's* pattern of *energy* consumption and pattern of bill payment) and use this information to inform the *retailer's* decision on what to communicate to the *customer* under subclause (1);
  - (b) communicate the information with reference to the *retailer's* estimate of the total monetary value of a bill for the *customer* under the *customer retail contract*, unless it is unreasonable to do so; and
  - (c) emphasise any information the *retailer* reasonably believes may be of particular relevance to that *customer*.
- (3) Without limiting subclauses (1) or (2), the *retailer* should provide the *customer* with any other information it reasonably considers relevant to the *customer's* decision to enter into a *customer retail contract* and that is consistent with the objective of this Division.
- (4) **Explicit informed consent prescribed requirement**

The obligations of the *retailer* under this clause 70H are prescribed requirements for the purposes of clause 3C(1)(d).
- (5) **Application of this clause to standard retail contracts**

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

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

## **70I Compliance**

A *retailer* must maintain records that are sufficient to evidence its compliance with this Division.

## **Division 3 - Change notification**

### **70J Requirement**

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

### **70K Objective**

The objective of this Division is to give *small customers* an entitlement to clear, timely, easily understood information to allow them to evaluate the ongoing suitability of their *customer retail contract*, before any changes that will affect their bill occur, and the steps the *small customer* can take to find an alternative *customer retail contract*.

### **70L Minimum standards - Notice of price or benefit change to be given**

- (1) If a *benefit change* or a *price change* is to occur to a *customer retail contract*, the *retailer* must provide each *small customer* who is party to that *customer retail contract* with a *bill change alert* in accordance with this Division 3.
- (2) The *bill change alert* must be given to the *small customer*:
  - (a) in writing;
  - (b) using the *customer's* preferred method of communication (if nominated, for example by post or by email to a specified address);
  - (c) in a manner and form (including the required elements set out in this clause 70L) which promotes the objective of this Division; and
  - (d) at least 5 *business days* before the *benefit change* or *price change* occurs.
- (3) The *bill change alert* must state:
  - (a) the *customer's* metering identifier;
  - (b) the *customer* may use a *price comparator* to compare offers that are generally available to classes of *small customers* in their geographical area;
  - (c) the name and web address of the *price comparator* referred to in subclause (b) above;
  - (d) the *customer* may request historical billing data from the *retailer* that will assist the *customer* to compare offers that are generally available to similar classes of *small customers* in their geographical area;
  - (e) the *price change* or *benefit change* will occur and the date on which the *price change* or *benefit change* will occur;

- (f) any early termination charges payable under the *customer retail contract*;
  - (g) the *retailer's* estimate of the annual dollar impact of the *price change* or *benefit change* to the *customer*, determined by the *retailer* calculating the difference in dollars between the *customer's annual total cost of current plan* calculated from the effective date of the *price change* or *benefit change* and the *customer's annual total cost of current plan* calculated immediately prior to the effective date of the *price change* or *benefit change*;
  - (h) any information the *retailer* has that will assist the *customer* to use the *price comparator* except *metering data* (the *retailer* is obligated to know what data is required by a *customer* to use the *price comparator*); and
  - (i) a *deemed best offer message*, determined in accordance with, and which complies with, subclause (4) below.
- (4) For the purposes of subclause (3):
- (a) the *retailer* must determine the *deemed best offer* for the *customer* as at the effective date of the *price change* or *benefit change*;
  - (b) using this *deemed best offer*, the *retailer* must perform the *deemed best offer check* for the *customer* (where, for the purposes of performing the *deemed best offer check*, a reference to *bill issue date* is to be read as a reference to the effective date of the *price change* or *benefit change*);
  - (c) if the *deemed best offer check result* is negative, the *retailer* must include a *negative best offer message* on the *customer's bill change alert*;
  - (d) if the *deemed best offer check* is positive, the *retailer* must include a *positive best offer message* on the *customer's bill change alert*;
  - (e) a *deemed best offer message* must:
    - (i) be on the front page of the *bill change alert*;
    - (ii) be displayed prominently in a clear and legible typeset;
    - (iii) be contained in a border; and
    - (iv) comply with any direction from the *Commission*;
  - (f) a *deemed best offer message* is not required to use the words "best offer", but must be written in a way which clearly and simply conveys the meaning of *deemed best offer*, having regard to the objective of this Division; and
  - (g) if a *retailer* provides a *negative best offer message* to a *customer*, the *retailer* must give the *customer* at least 13 *business days* from the date

the *negative best offer message* was provided to accept the *deemed best offer* referred to in the *negative best offer message*.

- (5) Where a *retailer* provides a *small customer* with a *bill change alert* in relation to a *price change*, in addition to the requirements of subclause (3) above the *bill change alert* must state:
- (a) the *customer's* existing tariffs and charges; and
  - (b) the *customer's* tariffs and charges as varied by the *price change*.
- (6) A *retailer* is not required to comply with this clause in respect of a *benefit change*:
- (a) relating to a benefit that is a one-off gift or sign-up credit provided to a *customer* as a result of entering the *customer retail contract*;
  - (b) that occurs within 40 *business days* of the commencement of the *customer retail contract*; or
  - (c) where the benefit is rolled over on the same terms and conditions after the expiry of the existing benefit.
- (7) A *retailer* is not required to comply with this clause in respect of a *price change* where:
- (a) a *small customer* enters a *customer retail contract* less than 10 *business days* prior to a *price change* coming into effect, and the *retailer* notified the *small customer* of the *price change* prior to *small customer* entering the *customer retail contract*;
  - (b) the *price change* is a result of a tariff or charge that continually varies in relation to the prevailing spot price of *energy*. For the avoidance of doubt, this exemption does not apply with respect to *price changes* to any remaining tariffs and charges that form part of the same *customer retail contract* and which do not vary in relation to the spot price of *energy*; or
  - (c) where the *price change* is a direct result of a change or withdrawal or expiry of a government funded energy charge rebate, concession or relief scheme.
- (8) **Application of this clause to standard retail contracts**
- This clause applies in relation to *standard retail contracts*.
- (9) **Application of this clause to market retail contracts**
- This clause applies in relation to *market retail contracts*.

## 70M Compliance

A *retailer* must maintain records that are sufficient to evidence its compliance with this Division.

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

## 70N Requirement

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

## 70O Objective

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*;
- (2) understand how to access their *retailer's deemed best offer*, if they are not already on the *retailer's deemed best offer*; and
- (3) understand how to access offers from other *retailers* via the *price comparator*.

## 70P Deemed best offer check

- (1) A *retailer* must carry out the *deemed best offer check* by calculating the *deemed best offer check result* in accordance with the following formula:

$$\text{deemed best offer check result} = A - B$$

Where:

A = *annual total cost of current plan*

B = *annual total cost of deemed best offer*

- (2) If the *deemed best offer check result* is less than or equal to \$22, the *deemed best offer check result* is positive.
- (3) If the *deemed best offer check result* is greater than \$22, the *deemed best offer check result* is negative.

## 70Q Retailers to give customers deemed best offer message

- (1) A *retailer* must provide a *deemed best offer message* to a *small customer* at least two times a year, on each *relevant bill*.
- (2) Before issuing a *relevant bill* to a *small customer*, a *retailer* must:



- (a) determine the *deemed best offer* for the *customer* as at the *bill issue date*; and
  - (b) using this *deemed best offer*, perform the *deemed best offer check* for the *customer*.
- (3) If the *deemed best offer check result* is negative, the retailer must include:
- (a) a *negative deemed best offer message* on the *small customer's relevant bill*; and
  - (b) a *negative deemed best offer message* on any *bill summary* of the *relevant bill* that it sends to the *small customer*.
- (4) If the *deemed best offer check result* is positive, the retailer must include:
- (a) a *positive deemed best offer message* on the *small customer's relevant bill*; and
  - (b) a *positive deemed best offer message* on any *bill summary* of the *relevant bill* it sends to the *small customer*.
- (5) A retailer may include a *deemed best offer message* on any bill in addition to a *relevant bill*. If the retailer does include a *deemed best offer message* on a bill that is not a *relevant bill*, it must comply with this clause 70Q as though a reference to a *relevant bill* is a reference to any bill.
- (6) **Application of this clause to standard retail contracts**
- This clause applies in relation to *standard retail contracts*.
- (7) **Application of this clause to market retail contracts**
- This clause applies in relation to *market retail contracts*.

## **70R Form and content requirements of deemed best offer message**

- (1) The requirements in this clause 70R apply to any bill or *bill summary* that contains a *deemed best offer message*.
- (2) A *deemed best offer message* must:
  - (a) if included on a bill, be on the front page of the bill;
  - (b) be displayed prominently in a clear and legible typeset;
  - (c) be contained in a border;
  - (d) be located adjacent to and no less prominently than the amount due; and
  - (e) comply with any direction from the *Commission*.

- (3) A *retailer* has discretion over what to include in a *positive deemed best offer message*, provided that the *retailer*:
- (a) has regard to the objective of this Division;
  - (b) ensures that it is clear to the *small customer* that they are on the *retailer's deemed best offer*; and
  - (c) includes the name and web address of the *price comparator*.
- (4) A *negative deemed best offer message* must:
- (a) be displayed in the same typeset, including size of the typeset, as a *positive deemed best offer message*;
  - (b) contain a title using the exact words “we can offer you a cheaper plan”. To avoid doubt, a *retailer* must use these exact words and not words in or to a like effect;
  - (c) contain the exact words “on our” followed by the name of the plan, followed by the exact words “you could save around”, followed by the dollar amount of the *deemed best offer check result*, followed by the exact words “per year”. To avoid doubt, a *retailer* must use these exact words and not words in or to a like effect;
  - (d) where the *deemed best offer* contains conditions which mean the *customer* may not realise the dollar amount of the *deemed best offer check result* if they do not satisfy the conditions, even if their usage remains the same as their *annual usage history*, the text in subclause (c) above must include a footnote within the border surrounding the *deemed best offer message* which contains the exact words “Conditions may apply” To avoid doubt, a *retailer* must use these exact words and not words in or to a like effect; and
  - (e) contain clear and simple instructions on how to switch to the *deemed best offer*, having regard to the objective of this Division.
- (5) A *deemed best offer message* is not required to use the words “best offer”, but must be written in a way which clearly and simply conveys the meaning of *deemed best offer*, having regard to the objective of this Division.

## **70S Time to accept deemed best offer**

If a *retailer* provides a *negative best offer message* to a *small customer*, the *retailer* must give the *small customer* at least 13 *business days* from the date the *negative best offer message* was provided to accept the *deemed best offer* referred to in the *negative best offer message*.

## **70T Compliance**

*A retailer* must maintain records that are sufficient to evidence its compliance with this Division.

## **GST inclusive pricing**

### **AMENDMENTS TO THE ENERGY RETAIL CODE: AMOUNTS TO BE INCLUSIVE OF GST**

**[Insert Date]**

**Amendments made by the Essential Services Commission on [insert date]**

#### **1 Nature and commencement of this instrument**

- (1) This instrument amends the *Energy Retail Code*.
- (2) This instrument comes into operation on **[insert date]**.

#### **3 Table of amendments**

- (1) Insert the following definition in clause 3 after *General Exemption Order*:

*GST* has the meaning given in the *GST Act*;

*GST Act* means the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

- (2) Insert the following new clause 3G after clause 3F:

##### **3G GST inclusive pricing**

- (1) Except where expressly provided to the contrary in this Code, where a *retailer* in a communication (whether oral or written and including, without limitation, a bill, *bill summary*, *bill change alert*, offer, advertisement, notice or information statement) to a *customer* specifies an amount:
  - (a) payable for a taxable supply or taxable importation within the meaning given by the *GST Act*; or
  - (b) which has been derived from an amount described in paragraph (a) above (for example, the *annual total cost of current plan* or the dollar impact of a *price change* or *benefit change*),

that amount must be stated inclusive of *GST*.

- (2) Any communication described in subclause (1) must not state an amount described in subclause (1) exclusive of *GST* except:
  - (a) where required to comply with *GST Act*; or

(b) where expressly permitted in this Code.

(3) Subclause (2) does not limit the *retailer's* obligations under subclause (1); if the retailer is required to state an amount as exclusive of *GST*, it must also state that amount inclusive of *GST*.

(3) Replace clause 15B(7)(c) with the following:

all monetary amounts must be shown on a GST-inclusive basis;

(4) Replace clause 15C(4) with the following:

All monetary amounts presented on the *offer summary* must be shown on a GST-inclusive basis.

(5) Replace clause 8.6 in Schedule 1 with the following:

**GST**

Amounts specified in the standing offer prices from time to time and other amounts payable under this contract are inclusive of GST.

(6) In Schedule 4, in each table, delete each column with the header "Ex GST".

(7) In Schedule 5 replace the Electricity section with the following:

<b>Electricity Tariffs</b>	<b>Including GST</b>
<b>As set out in Schedule A</b>	XX.xxx
<b>Supply Charge (\$/Day) (or how billed and calculated)</b>	XX.xxx

(8) In Schedule 5 replace the Gas section with the following:

<b>Gas Tariffs</b>	<b>Including GST</b>
<b>As set out in Schedule A</b>	XX.xxx
<b>Supply Charge (\$/Day) (or how billed and calculated)</b>	XX.xxx

## Consequential technical amendments

### AMENDMENTS TO THE ENERGY RETAIL CODE: CONSEQUENTIAL AMENDMENTS

[Insert Date]

Amendments made by the Essential Services Commission on [insert date]

#### 1 Nature and commencement of this instrument

- (1) This instrument amends the *Energy Retail Code*.
- (2) This instrument comes into operation on [insert date].

#### 2 Table of amendments

- (1) Rename Division 7 of Part 2 "Particular requirements for contracts and exempt person arrangements"
- (2) In clause 45A, delete the definition of *benefit change*, *benefit change date*, *benefit change notice*, *price comparator* and *relevant benefit period*.
- (3) Replace clause 46 with the following:

##### 46 Tariffs and charges

- (1) This clause sets out some minimum requirements that are to apply in relation to the terms and conditions of *market retail contracts* and *exempt person arrangement*.
- (2) A *retailer* must set out in a *market retail contract* or an *exempt person arrangement* with a *small customer* all tariffs and charges payable by the *customer*.
- (3) The *retailer* must give notice to the *customer* of any variation to the tariffs and charges that affects the *customer*.
- (4) The notice must be given as soon as practicable, and otherwise no later than the *customer's* next bill.
- (5) The *retailer* must set out in the *market retail contract* the obligations with regard to notice that the *retailer* must comply with where the tariffs and charges are to be varied.
- (6) Any variation of the terms and conditions of a *market retail contract* must not be inconsistent with the requirements of this Code in relation to the variation of *market retail contracts*.
- (7) **Application of this clause to standard retail contracts**

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

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

This clause, except subclauses (3) and (4), applies in relation to *market retail contracts*.

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

Subclauses (1), (2), (3) and (4) of this clause applies to *exempt persons* in the following *categories*:

VD1, VD2, VD7, VR1, VR2, VR3 and VR4.

(4) In clause 46A after subclause (4) insert the following

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

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

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

This clause applies in relation to *market retail contracts*

(5) In clause 47 delete subclause (8) and after subclause (7) insert the following

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

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

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

This clause applies in relation to *market retail contracts*

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

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

VD1, VD2, VD7, VR1, VR2, VR3 and VR4.

(6) Replace clause 47A with the following:

**47A Notice of benefit change (EPA)**

(1) If an *exempt person arrangement* provides for a benefit change, the *retailer* must, in accordance with this clause, notify the *small customer* of each benefit change.

(2) The notice of *benefit change* must be given:

(a) in writing; and

- (b) no earlier than 40 *business days* and no later than 20 *business days* before the date the *benefit change* takes effect.
- (3) The notice of the *benefit change* must state:
  - (a) the *small customer's metering* identifier; and
  - (b) that a *benefit change* will occur and the date *benefit change* will take effect; and
- (4) **Application of this clause to standard retail contracts**

This clause does not apply in relation to *standard retail contracts*.
- (5) **Application of this clause to market retail contracts**

This clause does not apply in relation to *market retail contracts*
- (6) **Application of this clause to exempt persons**

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

VD1, VD2, VR1, VR2, VR3 and VR4.
- (7) In clause 48 delete subclause (7) and after subclause (6) insert the following
  - (7) **Application of this clause to standard retail contracts**

This clause does not apply in relation to *standard retail contracts*.
  - (8) **Application of this clause to market retail contracts**

This clause applies in relation to *market retail contracts*
  - (9) **Application of this clause to exempt persons**

Subclauses (1), (2), (3), (4) and (5), (except for (4)(b)) of this clause apply to *exempt persons* in the following *categories*:

VD1, VD2, VD7, VR1, VR2, VR3 and VR4.
- (8) In clause 49 delete subclause (6) and after subclause (5) insert the following
  - (6) **Application of this clause to standard retail contracts**

This clause does not apply in relation to *standard retail contracts*.
  - (7) **Application of this clause to market retail contracts**



This clause applies in relation to *market retail contracts*

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

Subclauses (1), (2), (3) and (5) of this clause apply to *exempt persons* in the following *categories*:

VD1, VD2, VD7, VR1, VR2, VR3 and VR4.

(9) In clause 49A after subclause (7) insert the following

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

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

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

This clause applies in relation to *market retail contracts*

(10) In clause 50 after subclause (1) insert the following

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

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

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

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

(11) In Clause 51 delete subclause (2) and after subclause (1) insert the following

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

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

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

This clause applies in relation to *market retail contracts*

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

This clause applies to exempt persons in the following categories:

VD1, VD2, VD3, VD7, VR1, VR2, VR3 and VR4.

(12) In Clause 52 delete subclause (2) and after subclause (1) insert the following

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

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

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

This clause applies in relation to *market retail contracts*

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

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

VD1, VD2, VD3, VD7, VR1, VR2, VR3 and VR4.

## Appendix C: Summary of consumer testing

This appendix contains a summary of the key findings of our consumer testing. The testing was conducted on our behalf by the Behavioural Insights Team (BIT). A full report from BIT has been released along with this draft decision.

### Approach

We ran a framed field experiment involving a representative sample of around 2,400 Victorian consumers, using a randomised control trial method. We tested three versions of a new bill plus a bill insert, which we compared with a control for which there was no bill insert. This corresponds to the four arms of the trial, which were:


- Arm 1: Control – a new box on the front page of the bill alerting the customer to the fact their retail could have a better offer for them, a dollar estimate of the annual savings, and information about what steps to take to access the offer. The last page of the bill also included more detailed plan information about the alternative offer.
- Arm 2: Bill insert (marketing style) – a bill insert containing information about two alternative, cheaper offers, designed to be eye catching and non-traditional.
- Arm 3: Bill insert (letter style – bill amount) – a bill insert containing broadly the same information, but presented in a letter format and with the alternative total bill amounts (as opposed to the alternatives being expressed as savings). The back page of the bill insert included more detailed plan information about the alternative offer. The front page of the underlying bill is the same design as in the control arm.
- Arm 4: Bill insert (letter style – savings amount) – Identical to arm 3 but the dollar amounts were expressed as savings rather than total bill amounts.

The front page seen by consumers for each of the arms is contained in figure C.1.

The testing provided insight into the potential efficacy of the options by focusing on four main things:

- the customer's comprehension of whether or not they are on the best deal (comprehension)
- the customer's comprehension of the steps required to access the alternative offer (comprehension)
- the customer's stated intentions upon receiving the information (intention), and
- the potential that the consumer would find the new information confusing (confusion).

Figure C.1. Front page seen by trial participants, all four arms



0042  
[NAME]  
1 SAMPLE ST VIC 3057

**Your electricity bill** 4 Mar 18 – 5 June 18

**WE COULD PUT YOU ON A CHEAPER PLAN**

On our Anytime Saver Plan you could save:

**\$485 each year**

To switch plans, call 13 25 71, or go to [www.boltenergy.com.au](http://www.boltenergy.com.au)

**DUE DATE**  
**5 Jul 18**

**AMOUNT DUE**  
**\$320.01** if paid by 5 Jul 18  
Or  
**\$365.01** if paid after the due date

**YOUR ACCOUNT DETAILS**

Account number  
300 033 393 200

Tax invoice  
180 000 596 420

Issue date  
6 Jun 18

Total amount due  
See the Account Summary on pg. 2

**YOUR ENERGY PLAN**

Easy Saver plan ending 24 Oct 18

Your estimated bill over the next 12 months is \$1,730.

Benefits available on this energy plan

Guaranteed usage discount (10%)

**YOUR USAGE SUMMARY**

Average cost per day \$3.57

Average daily usage 9.06 kWh

Same time last year 9.01 kWh

\$3.57

COST PER DAY

9.06 kWh

DAILY USAGE

**Need to get in touch**

Enquiries & moving address: 13 24 61  
7 am - 9 pm local time Mon - Fri  
9 am - 5 pm local time Sat

Faults & emergencies: 13 12 80  
Call Melbourne Power 24 hrs

**DIRECT DEBIT**  
Register online at [boltenergy.com.au/myaccount](http://boltenergy.com.au/myaccount) or call 13 24 61 to arrange automatic payment of future accounts\*


**MAIL**  
Send this slip with your cheque made payable to: Bolt Energy Holdings Limited, Private Bag 14623 Melbourne Vic 8001

**TELEPHONE & INTERNET BANKING - BPAY**  
Contact your bank or financial institution to make this payment from your cheque, savings, debit, credit card\* or transaction account. More info: [www.bpay.com.au](http://www.bpay.com.au)

**VISA OR MASTERCARD\***  
Call 1300 658 783 or visit [boltenergy.com.au/paynow](http://boltenergy.com.au/paynow)

**IN PERSON**  
Pay by cash, eftpos or card\* at any Post Office

\* Visa or MasterCard payments may incur a processing fee of 0.37% (incl GST) of the total payment amount. This will be shown on your next bill. Some exemptions and payment limits may apply. \*Payment processing fee of \$2.00 (incl GST) may apply. Bolt Energy Ltd ABN 20 071 352 357



0042  
[NAME]  
1 SAMPLE ST VIC 3057

**[NAME], we could put you on a cheaper plan.**

We now regularly check if we can offer you a cheaper plan based on your energy usage.\* New rules in Victoria require us to do this. Here are two cheaper plans for you.

The **yearly cost** of your current plan is

**\$1,730**

Or \$1,557 with discounts

The potential **yearly saving** on a plan with similar features is

**\$406**


Or \$300 with discounts


The potential **yearly saving** on our cheapest plan is


**\$485**

Or \$312 with discounts


It's easy to switch to a cheaper plan. Simply:

  
[Email switch@boltenergy.com.au](mailto:Email switch@boltenergy.com.au)

  
 Call 13 24 61

  
[Visit www.boltenergy.com.au](http://Visit www.boltenergy.com.au)

\* Based on your usage patterns over the last 12 months



0042  
[NAME]  
1 SAMPLE ST VIC 3057

**[NAME], we could put you on a cheaper plan**

Dear [NAME],

We now regularly check if we can offer you a cheaper plan based on your energy usage.\* New rules in Victoria require us to do this. Here are two cheaper plans for you.


	Your current plan "Easy Saver Plan"	Our cheapest similar plan "Flexi Saver Plan"	Our cheapest plan "Anytime Saver Plan"
Yearly bill without discounts*	\$1,730	\$1,324	\$1,245
Yearly bill with discounts*	\$1,557	\$1,257	\$1,245

It's easy to switch to a cheaper plan. Simply:


- ✓ call 13 25 71 or email [switch@boltenergy.com.au](mailto:switch@boltenergy.com.au)
- ✓ or visit [www.boltenergy.com.au](http://www.boltenergy.com.au)

Your account number is 300 033 393 200. You can find details about the plans on the back of this letter, or on our website.

John Smith  
Bolt Energy CEO



\* Based on your usage patterns over the last 12 months



0042  
[NAME]  
1 SAMPLE ST VIC 3057

**[NAME], we could put you on a cheaper plan**

Dear [NAME],

We now regularly check if we can offer you a cheaper plan based on your energy usage.\* New rules in Victoria require us to do this. Here are two cheaper plans for you.

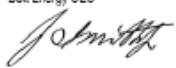
	Your current plan "Easy Saver Plan"	Our cheapest similar plan "Flexi Saver Plan"	Our cheapest plan "Anytime Saver Plan"
Without discounts	You <b>pay</b> \$1,730 per year	You could <b>save</b> \$406 per year	You could <b>save</b> \$485 per year
With discounts	You <b>pay</b> \$1,557 per year	You could <b>save</b> \$300 per year	You could <b>save</b> \$312 per year

It's easy to switch to a cheaper plan. Simply:

- ✓ call 13 25 71 or email [switch@boltenergy.com.au](mailto:switch@boltenergy.com.au)
- ✓ or visit [www.boltenergy.com.au](http://www.boltenergy.com.au)

Your account number is 300 033 393 200. You can find details about the plans on the back of this letter, or on our website.

John Smith  
Bolt Energy CEO



\* Based on your usage patterns over the last 12 months

## Results

### Comprehension measure 1 – identifying I am not on the best offer

This question was designed to test respondents' comprehension of a key message that the best offer message was conveying—that the customer was not on their retailer's best offer. The question that respondents were asked was as follows:

*Based on this bill, I am on the best plan for energy for me with this provider;*

- Yes
- No
- I don't know

Figure C.2 below shows the proportion of those in each of the four trial arms who were able to correctly “no” to the question. The results indicate that arm 4 (Bill insert, letter style – savings amount) was marginally more effective at driving comprehension, but that all three other arms, including the control, performed similarly.

### Comprehension measure 2 – identifying how to access the alternative offer

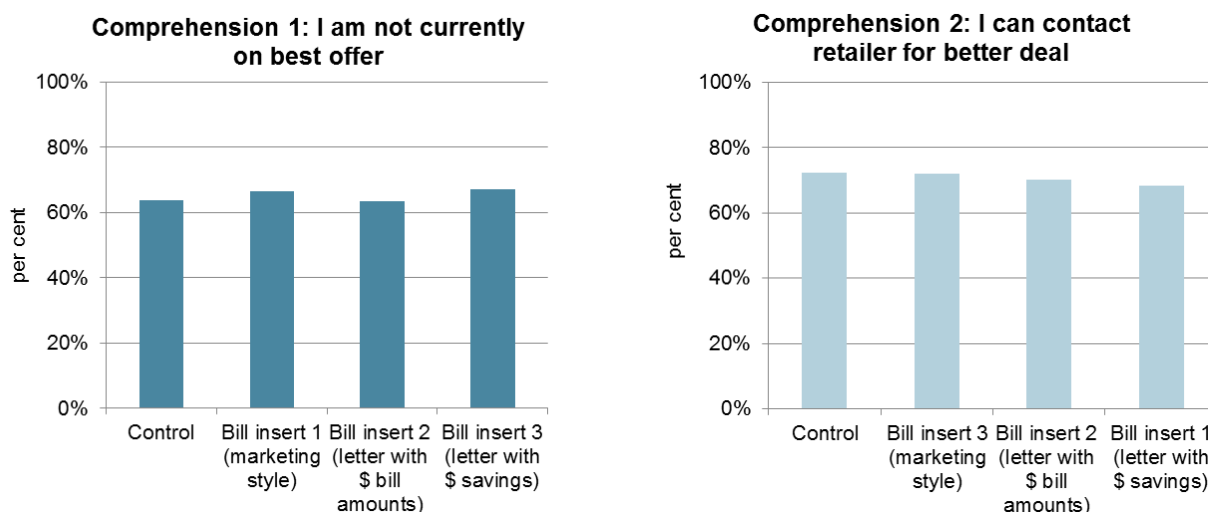
This question focused on the customer's comprehension of what they needed to do next in order to access the offer presented on their bill. The question that respondents were asked was as follows:

*The access the best for me with my provider:*

- I don't need to do anything; I'm already on the cheapest plan
- I can call my provider or visit their website
- I have to go to the Victorian Energy Compare website
- I don't need to do anything; I will get put on the best deal automatically
- Something else
- I don't know

Figure C.2 also shows the proportion who correctly answered 'I can call my provider or visit their website'. The results indicate that the control was the more effective than any of the other arms at driving this measure of comprehension.

**Figure C.2. Results of comprehension measures 1 and 2, all trial arms**



Source: Behavioural Insights Team (BIT)

## Intention

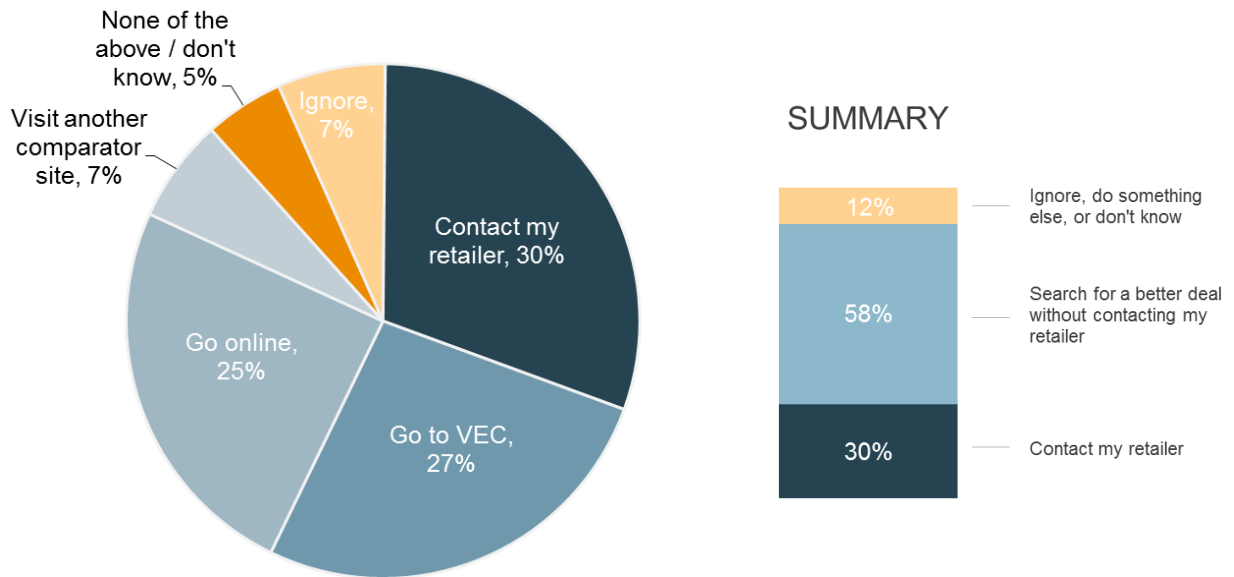
This question sought to gauge what, if anything, the best offer message on the bill would prompt customers to do upon receiving it. It is important to note that this question can only reveal intentions, which are only indicative of likely real world outcomes. The question that respondents were asked was as follows:

*On receiving a bill like this, what do you think your response would be?*

- *I would pay it and do nothing else/I have a direct debit set up for it to get paid, so would do nothing else*
- *I would visit the Victorian Energy Compare website to try and find a better deal*
- *I would visit a comparison website (but not the Victorian Energy Compare website) to try and find a better deal*
- *I would call my energy provider or go on their website to get a better deal that's mentioned*
- *I would go online and do some research to try and find a better deal*
- *Don't know/none of the above*

Figure C.3 below shows the percentage breakdowns of stated intentions across all four trial arms.

### C.3 Stated intentions upon receiving a bill containing the retailers best offer



Source: Behavioural Insights Team (BIT)

### Confusion

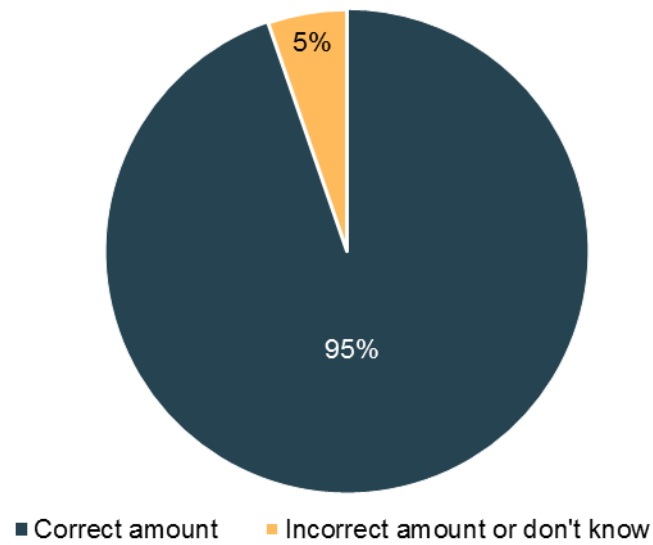
This question was seeking to determine whether the addition of the dollar amount in the best offer message confused respondents as to which amount on the bill they were supposed to pay to meet the conditions of the pay-on-time discount. The question that respondents were asked was as follows:

*Please take a look at the image of the bill above, and select the amount you would need to pay by 5 July if you want to get a pay on time discount.*

- \$365.01
- \$320.01 (correct answer)
- \$485.00
- Some other amount
- Don't know.

Figure C.4 below shows the percentage breakdown of those who were able to identify the correct amount versus those who could not.

### C.3 Stated intentions upon receiving a bill containing the retailers best offer



Source: Behavioural Insights Team (BIT)



## Appendix D: Role of the commission

### Role of the Essential Services Commission

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

The *Essential Services Commission Act 2001 (Vic)* (ESC Act) sets out the commission's overarching objective to promote the long-term interests of Victorian consumers.<sup>91</sup> The commission is also guided by objectives under the *Electricity Industry Act 2000 (Vic)* and *Gas Industry Act 2001 (Vic)* to promote the protections for customers, including in relation to customers who are facing payment difficulty.<sup>92</sup>

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

The principle instrument used to set out retailers' obligations is the Energy Retail Code. After being established in 2002,<sup>93</sup> the commission released the first version of the Code, of which version 11b is in force today.

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<sup>91</sup> Section 8 *Essential Services Commission Act 2001 (Vic)*.

<sup>92</sup> Section 10(c) *Electricity Industry Act 2000 (Vic)* and section 18(c) *Gas Industry Act 2001 (Vic)*.

<sup>93</sup> The commission replaced the Office of the Regulator-General (ORG), which was established to oversee regulation of electricity and gas industries during the privatisation of the industry and accompanying establishment of markets in generation, distribution and retail segments of the industry. The legislative objective for the ORG in relation to consumers was expressed as: "to ensure that users and consumers benefit from competition and efficiency" (*Office of the Regulator-General Act 1994 (Vic)*, s7(1)(e)).