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Essential Services Commission
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Dear Commissioners

Draft decision - Ensuring energy contracts are clear and fair – 10 December 2019

EnergyAustralia is one of Australia's largest energy companies with around 2.6 million electricity and gas accounts across eastern Australia. We also own, operate and contract an energy generation portfolio across Australia, including coal, gas, battery storage, demand response, wind and solar assets, with control of over 4,500MW of generation capacity.

We appreciate the opportunity to provide feedback on the Commission's draft decision regarding interventions arising out of the Thwaites Review[1], designed to provide more clarity and certainty for energy retail customers in Victoria.

EnergyAustralia has taken significant steps in recent years towards improving customer outcomes. Since 2015 we have moved over 200,000 of our customers off standing offers and onto market contracts, and have provided automatic discounts to concession customers that chose to remain on standing offers. A 15 per cent discount still applies to concession customers on our gas standing offers. Our practice is to not revert our customers onto standing offers. We offer fixed rate products, no longer offer conditional discounts and recently simplified the range of products on offer. At the same time, we have supported reforms to protect genuinely disengaged and disadvantaged customers from high-priced standing offers, as well as making market offers more comparable. We were also an active participant in developing the Energy Charter and now make periodic disclosures to an independent accountability panel.[2] These practices reflect our commitment to putting customers first and the specifics of our actions reflect efforts to deliver what customers value the most, as should occur in any competitive market.

Regulators and governments have an important role to play in ensuring markets deliver fair outcomes. However, if this is seen to be their responsibility, and retailers are portrayed as reactive and reluctant, this will perpetuate rather than reduce mistrust. It would undermine the genuine actions of retailers to improve their relationships with customers, their reputation and ultimately their brand and shareholder value.

Calls for strong government action in an environment of rising prices and debate over energy market transition are understandable. We consider some action is justified and indeed have moved ahead of many changes that are now and may soon be mandated. We also consider that some of the 29 recommendations of the Thwaites review, as well as further proposals from the Government, do not directly address market failure nor

[1] Thwaites, J. et al, *Independent review into the electricity & gas retail markets in Victoria*, August 2017.
[2] https://theenergycharterpanel.com.au/

would they prevent undesirable retailer behaviour. The Commission, in responding to calls to protect customers and under its Terms of Reference, should be careful of imposing unnecessary or broad conditions on the market, rather than targeted, first best solutions that will deliver better customer outcomes.

We appreciate the Commission has been tasked to give effect to the Thwaites Review recommendations and Government policy. As detailed in the attached submission, we still consider some interventions are unnecessary and have suggestions that should assist the Commission in making its final decision:

- Only allowing prices for all customers to change once a year, at the same time, seems likely to result in all customers paying extra for price certainty even though only a small subset of customers may want this. Our preferred option is to fix prices for 12 months from the date the customer signs up.

- Retailers should not be forced to continue providing contract benefits at as 1 July 2020 indefinitely, particularly given interactions with price change restrictions. It would not benefit disengaged customers given prices can still change. Engaged customers that are dissatisfied with any unexpected changes in benefits (or prices) will be prompted, and better able, to switch offers under best offer notifications, reference price comparisons and benefit/ price change notifications.

- We accept that reverting non-consenting gas customers to a retailer's 'best offer', rather than a standing offer, is likely to be preferable for the customer, but we consider it important to maintain the flexibility we currently have at the end of benefit periods. We also cannot meaningfully comment on this proposal in the absence of draft code and legislative amendments.

- We generally support adopting the current Default Market Offer (DMO) reference pricing arrangements, noting they were established via a rushed consultation process and need to be refined before being implemented in Victoria.

- We seek national alignment in regulating the size of conditional discounts, and support making pay-on-time discounts guaranteed for all hardship customers.

- Reducing back-billing to 4 months is a complex change and should be introduced after 1 July 2020 to allow proper consultation on code amendments and time for retailers to execute required changes. Any changes to regulations should ensure incentives are placed on the party best able to respond, thereby delivering a better customer outcome.

- Retailers should be given the flexibility to decide how and where on bills they notify customers about the Victorian Default Offer (VDO).

If you would like to discuss this submission, please contact me on [redacted] or [redacted]

Regards

Lawrence Irlam
Industry Regulation Lead

Giving customers certainty about price changes (Recommendation 4A)

As stated in our submission to the Commission's issues paper, we consider that customers seeking price certainty would be best served where their prices are fixed for at least 12 months from the date they sign up.

The main finding of the Thwaites Review leading to recommendation 4A was the ability of retailers to change prices without notice at any time during a contract, even if a customer has just signed up. Other concerns were the need for clear communication of the time periods for contract and benefit periods[3], which are addressed elsewhere.

Overall, our view is that there is limited evidence of baiting and switching practices that would justify intervention in pricing practices. The Commission now appears to be moving beyond this as a justification and pursuing what it regards as general customer preferences for price stability, which are best left for the market to deliver. Any regulation of price changes will restrict retailers' ability to offer innovative products, and the design of any associated exemptions framework for such products is critical.

We appreciate the Commission has been directed to best give effect to this recommendation. It now has before it a range of options and views on how to complete its task. In summary, our views on these options are:

- Allowing prices to change only at the date of each new VDO determination would deliver less certainty for customers and is based on unrealistic expectations of concerted, periodic customer engagement. This option also appears to contradict the Commission's terms of reference.

- Allowing prices to change during a time-limited window (e.g. for one month) after each VDO determination takes effect would significantly lower retailers' compliance burden relative to communicating price changes that take effect on the same day. However, it still would not address concerns about prices changing shortly after the customer signs up.

- Allowing retailers to change prices either on the customer's contract anniversary or on the VDO determination date would allow retailers more flexibility in managing costs or pricing strategies. We consider this option is superior to those canvassed in the Commission's draft decision and, if explored further, the Commission should also consider the date on which the customer's initial benefit period expires so as not to conflate benefit and contract periods. However, any situation where retailers can change prices on or around the VDO determination date still has associated shortcomings of not addressing potential baiting and switching practices.

What is the problem and the first best solution?

Our view is that a blanket intervention to reduce the frequency of, or align, price changes would not promote the long-term interests of consumers.

We consider a targeted intervention would be justified to address 'bait and switching' practices, whereby retailers mislead customers with aggressive acquisition offers, with

[3] Thwaites et al, p. 28.

an intention at the time of the offer to then materially increase prices shortly thereafter. Retailers would only be able to feasibly do this up to the point where the customer's expected bill increase was less than the costs of them switching to a better offer in the market. That is, a market failure may exist in the form of high transaction costs and poor or asymmetric information between customers and retailers to facilitate such switching. At the time of the Thwaites review, these transaction or information costs were likely to be higher, given the absence of:

- clear advice entitlements at the time of sign-up
- advance price change notifications
- best offer on bill notifications
- reference pricing under the VDO
- Victorian Energy Compare.

Where bait and switch tactics take the form of large discounts under benefit periods that expire (or plan benefits that allow for price changes to occur mid-benefit period), these should be similarly the subject of enhanced disclosures at the time the customer signs up (and are otherwise the subject of Thwaites recommendation 4D).

Stakeholders provided the Commission some evidence that baiting and switching practices are still prevalent in the market today.[4] This might suggest recent interventions to reduce transactions costs are taking time to have an effect or are not effective on their own. If the latter, baiting practices, where retailers are offering prices to consumers with the knowledge or intention that those prices will increase shortly thereafter, should be prohibited and penalised along with other classes of deceptive and misleading conduct.

It is not apparent to us, however, that the Commission is basing its decision on any evidence of baiting and switching practices. Our view is that the Commission is therefore moving beyond correcting for undesirable behaviour, and also beyond addressing any market failures in terms of informing customers and reducing transaction costs. Implementing this recommendation now appears to be catering for a general and apparent customer preference for price stability. This includes an expectation that customers on average are willing to pay a premium for such stability (discussed further below). The Commission's decision to cover all market contracts also presumes that periodic price changes are desired by customers who remain with the same retailer for several years,[5] whereas any intervention to address baiting and switching would only be applied to new offers in the market.

Several retailers now offer fixed price products in Victoria and all of EnergyAustralia's generally available plans are now fixed rate. Many retailers only change prices once a year in line with network tariff changes. The VDO also now exists as a "fair" price that changes only once a year, in line with the Commission's assessment of efficient costs. Where retailers do vary prices more frequently, this reflects their own pricing strategies

[4] Energy and Water Ombudsman (Victoria), *Submission to the Ensuring energy contracts are clear and fair – Issues Paper*, 1 July 2019, footnote 10.

[5] Essential Services Commission, *Ensuring energy contracts are clear and fair – Draft Decision*, 10 December 2019, p. 35.

relative to competitors, including their ability to deal with underlying cost changes. While the Commission has good intentions in seeking to protect customers from unwelcome price changes, forcing retailers to change prices in unison once a year will likely have negative unintended consequences on the market.

A pricing "focal point" for all customers is undesirable and highly unlikely

This appears to be a key justification for the Commission's preferred option to have all prices change once a year in line with the VDO, relative to allowing prices to change on the customer's contract anniversary.

We consider the effort required to make any pricing 'focal point' effective via direct communications to the customer is likely to be intrusive and expensive at worst, and at best ineffective. Expecting customers to re-engage with their retailer and the broader market less than 12 months of signing a contract, and at a specified time each year thereafter, demonstrates poor understanding of the customer experience.

The Commission should give further thought to the practical implications of Byrne and Leslie's "focal point", particularly as they identify the need to complement price adjustment events with public announcements and online campaigns[6]:

- At the time the customer receives a price change notification from their current retailer for the forthcoming 12 month period, other retailers' prices for the same period may not be readily available. This information would need to be directly obtained from each retailer for each of their products, assuming retailers are in a position to provide such information at that time.

- Further effort may be required to ensure each offer is recorded and expressed in a comparable manner where a retailer departs from benchmark usage under clause 64G. The need to direct customers to Victorian Energy Compare to obtain up-to-date information is identified by Byrne and Leslie.[7]

- Comparisons may be further complicated where retailers anchor prices or have benefits expressed relative to the VDO. That is, the customer will need to wait until retailers have reset prices after each VDO determination is published.

- Any lapse in time may dull the effectiveness of the initial 'trigger' in the customer's price change notification to search for better offers, placing further reliance on government or regulatory prompts.

- The academic report discusses related suggestions of rank ordering energy contracts, "VDO products" and a "VDO badge" in order to reduce search costs. The Commission has not mentioned such marketing activities and we presume they are beyond its scope as a regulator.

- While not criticising the Commission's efforts, observations from our own customer testing around the DMO and VDO suggest that efforts to promote customer awareness of market-wide price changes may simply be ineffective.

[6] Byrne, D. and Leslie G., *Market design considerations in implementing recommendation 4A from the Independent Review into the Electricity and Gas Retail Markets in Victoria*, 4 October 2019, p. 10.

[7] ibid.

Note the above shortcomings still hold in a situation where retailers have a 'window' within which to publish prices rather than a single day, and in some cases (e.g. waiting for enough retailers to publish offers) are made even worse.

Price certainty is not provided beyond the remainder of the 12-month period

Our primary issue with the Commission's preferred option is that it creates, rather than eliminates, an incentive for retailers to lure customers shortly ahead of increasing prices at the time of prescribed price reset dates.

The corrective measure identified by Byrne and Leslie is, in effect, to require retailers to disclose what the price change will be at the time of the next price reset, which would be up to 12 months in advance. The specific example they provide pegs future prices to the VDO by way of a discount, which apparently gives retailers certainty of cost recovery.[8] Such forward price disclosures are not explored by the Commission, including because it is contemplating making discounts evergreen (although this is not central to the academics' solution). This illustrates that recommendations 4A and 4B are substitutes, and that it was open to the Government to not implement all of the Thwaites' Review recommendations as a package.

The Commission states the following regarding the problem of baiting and switching, and future price disclosures:

> Our proposed approach would largely eliminate the use of bait and switch tactics, as retailers would have to honour the prices until the VDO price changes. The potential for a customer to experience a price rise soon after signing up to a new offer only exists if customers sign up to a new offer towards the end of the 12-month period. However, under the clear advice entitlement, a retailer would be required to make it clear to a customer in this situation when prices would be changing and by how much, so the customer could make an informed choice.[9]

These statements are confusing. They suggest that baiting and switching would only be a concern under the Commission's proposed approach where it occurs towards the end of a VDO determination period. We agree there would be a direct correlation between a customer's concern and how shortly after contract signing their prices were changed. However, the Commission suggests unwelcome price changes would be precluded by disclosures under clear advice entitlements. Such disclosures would only protect customers for a very short period i.e. a few weeks at most, noting that retailers would need to know the extent of their forthcoming price changes in order to disclose them.

In reality, any incentives to bait and switch customers by promoting favourable price terms may be counteracted by the stifling effects of the VDO (and DMO) advertising disclosures. Specifically, we expect the current trend of advertising on non-price terms to continue. The exclusion of one-off credits or rebates from price change restrictions may even encourage retailer behaviour that requires monitoring by the Commission.

[8] ibid., p. 12.
[9] Essential Services Commission, p. 35.

Restricting price changes over several years does not address baiting and switching concerns

As noted above, the Commission considers it beneficial to limit price changes to once a year for customers who remain with the same retailer on an enduring basis. This moves beyond the intent of the original Thwaites recommendation, which was rooted in a concern about prices changing without notice, including shortly after a customer signs up.

We question the suggestion that offering a 12 month fixed price contract could "effectively lead to a delayed bait and switch effect".[10] This same concern arises with any price change that is not notified to the customer in advance. The benefit of our preferred option is that customers would always have at least 12 months of price certainty, whereas the Commission's option only offers, realistically, between 1 to 11 months of certainty.

Prices may increase to cover retailer risk

The Commission, Byrne and Leslie note that retailers may increase prices to reflect the cost of bearing additional risk on behalf of customers. The Commission's data suggest that at 20% of the market, customers on fixed-price contracts are paying $22-100 more a year on average.[11]

We have in-principle concerns that the Commission is seeking to impose fixed price products on all customers and make them pay for this, irrespective of whether they see value in it.

Customer testing conducted on behalf of the Commission suggests that 76% of customers might prefer fixed price contracts.[12] The framing of this question i.e. "prices can change at any time" is likely to have invoked a negative response on the presumption that prices would increase. In any case we would expect a much weaker preference if customers were asked to pay a premium for such contracts.

Changing prices with the VDO reflects what some retailers currently do

While this is likely to be true for larger retailers, restricting pricing strategies may have a material financial impact on smaller retailers. They are less able to absorb short term fluctuations in costs, have smaller and less diverse customer bases, tend to have more innovative product ranges and are overall would be more sensitive to pricing and revenue restrictions.

Fixing prices from the date of contract signing provides better certainty

Customers seeking price certainty would be better served where their prices are fixed for 12 months from the date they sign up. This option is consistent with Recommendation 4A of the Thwaites Review.

This option is also aligned with the Government's terms of reference. We support the Commission maintaining flexibility in following its terms of reference, but note that is the

[10] Essential Services Commission, p. 35. Brotherhood St Laurence, *Submission regarding 'Ensuring energy contracts are clear and fair' issues paper*, 1 July 2019, p. 3.
[11] Essential Services Commission, p. 36.
[12] Behavioural Insights, *Testing the presentation of energy price information*, p. 33.

only recommendation where the Government has given an explicit direction to the Commission:

> The ESC is advised to interpret recommendation 4A, requiring retailers to fix prices for a minimum of 12 months, as applying from the date an individual customer enters into a new contract.[13]

Our experience is that many customers, irrespective of their contract terms, expect prices to be fixed for 12 months (or longer) from the date they sign up and do not welcome price changes before this time.

Byrne and Leslie do not indicate a preference for any of the pricing options they examine. We nevertheless consider they understate the benefits to consumers under our preferred option in terms of reducing search costs. They note that "the challenge of shopping for the best contract *across* retailers will likely be similar to the status quo."[14] The Commission's position is that the status quo is not acceptable, thus it is more relevant to compare expected net benefits between the fixed price scenarios.

Our preferred option allows customers to select the best offer available at any point in time that suits their circumstances and lock in those prices for 12 months. The Commission's preferred option sees that customer being encouraged back into the market at any time up to 12 months, at a time period that suits the market (currently around the December/ January holiday period). A customer comparing offers at any other time would face price uncertainty similar to the status quo, which is the key reason why the Commission should not adopt this option.

Imposing price restrictions will place heavy reliance on exemptions

The Commission has had some regard for the need to exempt certain product types where price flexibility is a key value driver for relevant customer segments. As with the DMO advertising requirements (discussed below), we expect price change exemption provisions will, at least initially, create a barrier to bringing innovative products to market. They are likely to require revision within a short time period as the Commission gains experience with different products proposed by retailers.

In developing its final code amendments and guidelines, the Commission should consider detailed procedural aspects including:

- criteria for granting exemptions
- publishing or communicating any exemptions, noting they will be initially commercially sensitive
- whether classes of products would be exempted
- steps and timeframes in the application process
- whether a shorter, streamlined process would apply for pricing trials as opposed to widely available products.

[13] Victorian Government, *Ensuring Contracts are Clear and Fair - Terms of Reference to the Essential Services Commission*, p. 1.
[14] Byrne and Leslie, p. 8.

Other issues arising from the Commission's draft decision

There is an inconsistency between the Commission's draft decision that retailers "can only change prices of existing market contracts when the VDO price changes"[15] and its draft code amendments under which a "retailer must not increase any of the tariffs payable…"[16]. The proposed code drafting around making benefits evergreen similarly restricts reductions to benefits rather than keeping these fixed for the life of the contract. The Commission should also clearly define "tariffs" which we presume to mean usage and supply charges.

The Commission should explain how it expects customers and retailers to be affected where VDO price determinations move to financial years from 1 July 2021. Specifically, whether it anticipates making a 6 or an 18 month VDO determination to align retail price regulation to the timing of the AER's Victorian network price determinations from 2021. While this is a once-off issue, we expect that a shorter or longer fixed price period will have a material market impact if the Commission continues with its preferred option.

Forcing all market contracts to reprice on the same date would involve considerable additional workload for retailers. This is particularly the case where the reprice trigger is the VDO, and retailer pricing strategies materially hinge on VDO values. If the Commission's final decision is to require all prices to change on the same date, retailers should be given the flexibility to notify customers progressively rather than the existing 5 business day requirement. This would enable retailers to accommodate all compliance-related price changes including those dependent on the release date of the Commission's VDO determination each year.

Disclosing the length of time for which offered prices do not change (Recommendation 4B)

This recommendation is redundant where any fixed price periods under recommendation 4A are implemented, in addition to clear advice entitlements.

As mentioned above, our view is that the Thwaites Review made a range of recommendations addressed at particular problems (in this case, baiting and switching), in expectation that the Government would select some recommendations and not give a blanket instruction to implement all of them. The Commission should therefore be mindful of not codifying changes where they overlap or are inconsistent.

[15] Essential Services Commission, p. 36.
[16] ibid., p. 71.

Moving customers onto the VDO and best offer at the end of contract and benefit periods (Recommendation 4C)

The Commission's stated intention in giving effect to this recommendation is to give customers confidence that, if they do not engage, they will not be on a significantly more expensive plan.[17]

We support but wish to confirm the Commission's approach for electricity

For electricity, if the Commission's proposal is effectively maintaining the status quo, whereby customers default onto the VDO when their contract ends, we consider this is acceptable. We would support this if it applies only in limited circumstances where the customer has not consented to continue purchasing electricity under a market retail contract at the end of their initial benefit period (whether or not that is with different plan benefits). This would allow us to continue our practice of retaining customers on market offers at the end of their initial benefit periods, which is more closely aligned to the original Thwaites recommendation 4C of moving customers onto the nearest matching generally available offer.

From our perspective, some uncertainty still arises because of the proposal to align benefit periods and contract periods (and effectively eliminate the former). That is, we would not support the Commission's approach where the outcome is to move customers onto the VDO at the end of their initial benefit period. We would appreciate the Commission clarifying this issue in its final decision.

The detriment of any electricity customer being moved onto standing offers now is less than prevailed at the time of the Thwaites Review given the introduction of the VDO. We recognise the Commission adopting a flexible approach under its Terms of Reference to accommodate interaction between the Thwaites' recommendations and changing market/ regulatory conditions.

The Commission's proposal on the treatment of gas customers is not clear

In principle we support protecting genuinely disengaged customers. As the Commission is aware, we attempted to move 'disengaged' customers off standing offers onto market offers in the past (including for electricity) however were unable to obtain a regulatory waiver for explicit informed consent requirements.

We accept that reverting to a retailer's 'best offer', where the customer has been notified of contract expiry and has not given informed consent to do otherwise, is likely to be a better outcome than reverting to a standing offer. It is not clear to us that there would be many customers in this situation who simply refuse to give consent. We already have high levels of engagement with customers that would be most exposed to paying higher standing offer rates i.e. vulnerable, hardship and concession customers.

It is also unclear what legislative amendments are required to give effect to the Commission's proposal. Our concern is that changes could override our current practice of allowing customers to remain on their current plan after its expiry, and be forced to change onto another plan which may not have terms or conditions that suit their

[17] ibid., p. 45.

circumstances. We encourage the Commission and the Victorian Government to circulate drafting for these changes immediately for stakeholder comment.

As this proposal appears to be an alternative to introducing a VDO for gas, it may create some complexities in the event the Victorian Government mandates a gas VDO or the Commission decides to introduce gas reference pricing at a later date.[18]

Making benefits evergreen (Recommendation 4D)

EnergyAustralia and other retailers already provide for evergreen contracts and benefit periods, as well as products with no benefits or discounts. These, along with fixed price products, are simple options that are available in the market now that cater for customer preferences. As in the case of fixed pricing, we consider that making all contract benefits evergreen is not directed at correcting any market failure. The Commission's draft decision would simply impose on the entire market what it considers to be of value for customers, with likely negative consequences.

We also note that the Commission appears to have incorrectly stated that there are no rules applying to end of benefit periods.[19]

The rationale for this change moves beyond correcting market failure

Thwaites recommendation 4D was to make conditional and online billing discounts "evergreen". While it is difficult to attribute specific recommendations to the review findings, this recommendation appears to address concerns that customers may not realise that benefit periods are time-limited, as well as shortcomings in how retailers communicate with and treat customers at the end of contract periods.[20] The recommendation's specific reference to conditional and online billing discounts appears to reflect concerns that these disadvantage low-income and vulnerable customers in spite of energy being an essential service.[21]

The Commission has expanded the scope of this recommendation to cover all discounts, rebates and credits. The justification for doing so appears to be that cessation of any benefit would be detrimental to customers as they are likely to end up paying more.[22] In effect, this change is intended to, and is justified on the basis of, keeping prices lower than they otherwise might have been.

We consider there is no justification for intervening in contract benefits to correct any market failure. For example, the new clear advice entitlement would address any contract information asymmetry by ensuring customers have clarity on benefit terms at the time they enter into contracts.

Regarding legacy contracts, the Commission notes there are a significant number of customers in Victoria currently on conditional discounts.[23] Many of these customers will still have benefit periods current as at 1 July 2020. The rationale for intervening in these

[18] ibid., p. 27.
[19] ibid., p. 40. For example, clause 48A(4) of the Energy Retail Code requires retailers to inform customers of their options and consequences of not entering into a customer retail contract.
[20] Thwaites et al, pp. 28-29.
[21] ibid, p. 32.
[22] Essential Services Commission, p. 42.
[23] ibid.

contracts appears to be that any withdrawal of or change to these benefits would not have been adequately communicated at the time the contract was agreed. The Commission has not presented any evidence to substantiate that this is the case. Concerns of this nature could be extended to any unanticipated increase in customer bills, not just the cessation of benefits. The issue here is therefore aligned to concerns around baiting and switching and the associated desirability of price stability. As discussed above in the context of recommendation 4A, a first best solution would be to minimise transaction costs and increase the threat of customer churn in response to adverse retailer pricing or benefit changes.

A countervailing view is these first best solutions (in the form of things like clear advice, best offer notifications and referring customers to Victorian Energy Compare) cater for 'engaged' customers, whereas moves to fix benefits forever, and price changes annually, protect 'disengaged' customers. The issue at the core of these considerations, and something we appreciate the Commission may have difficulty in resolving, is whether reforms designed to protect the small number of disengaged customers will be to the detriment of the majority of engaged customers, and if so, what the net impact would be.

Prescribing benefits, as well as prices, increases retailer risk and costs

As it applies retrospectively, this change may have a significant impact on retailer revenues and potentially pricing decisions. Any discounts expressed relative to the VDO will be more or less favourable to the particular retailer depending on how closely changes in the VDO reflect their costs. In the same way as restricting the frequency of price changes increases risk to retailers and may involve higher average prices, forcing benefits to continue indefinitely may place further upward pressure on prices.

The Commission should also confirm whether any fixed price features constitutes a "benefit", and whether these prices would be fixed for the affected customer for the life of their contract:

> We are decoupling the concepts of benefit periods and fixed-price periods. While it is not explicit, the definition of a benefit period could currently be read as including fixed-price tariffs. Given the interactions between recommendations 4A, 4C and 4D, this would cause unintended consequences if not changed…
>
> If fixed price periods were considered a type of benefit period after 1 July 2020, and retailers were required to align benefit and contract periods, then if a retailer wanted to offer an evergreen contract it would have to keep prices fixed at the same level for as long as a customer remained on that contract. Alternatively the retailer would have to only offer fixed-price, fixed-term contracts which would require customers to engage every 12 months, otherwise they would automatically roll onto another contract under recommendation 4C.[24]

The Commission appears to acknowledge that it would be undesirable for retailers to have to offer fixed prices forever, but the impact of this would be to prevent retailers from offering fixed prices as a benefit. This appears to be beyond the Commission's intention and not contemplated in the original Thwaites review recommendations, including the interactions between recommendations 4C and 4D.

[24] ibid., p. 43

A further complication arises where evergreen benefits prevent price decreases, even though retailer costs are expected to decline. Our preference would be to ensure any extension of contract benefits does not prevent such price decreases as it effectively forces uncompetitive price outcomes. The Commission may also wish to consider how this situation would be treated under the Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Act 2019.[25]

Retailers may choose to manage risks associated with pricing and benefit restrictions in designing new or more products with non-price benefits. This runs counter to the effectiveness of reference pricing and comparability in price terms, to the detriment of engaged customers.

Retailers may also wish to move customers off legacy contracts onto new ones that do not feature benefits. The withdrawal of offers in the market featuring discounts may reflect a loss of perceived benefit or choice for engaged customers. The Commission has already pre-empted retailers attempting to prematurely cease contracts without customer consent to circumvent benefit restrictions, however the incentive and freedom still exists for retailers to (annually) adjust prices to compensate. That is, this change would not actually prevent retailers from 'gouging' disengaged customers on legacy if they so wished.

This change also creates a perverse incentive for retailers to overemphasise the significance of being forced to extend benefits indefinitely. This may be a retention strategy and in worse cases, be used to distract customers from possible price increases.

It also gives rise to an inconsistency in any pay-on-time discounts that are in contracts signed before and after 1 July 2020. Customers on legacy contracts may be discouraged from churning in the face of a perceived loss of benefit, even though new market contracts may have lower prices and overall bills. This may be exacerbated if retailers oversell the value of offering benefits indefinitely.

Capping conditional discounts (Recommendation 4E)

We support the Commission's draft decision to regulate conditional discounts, noting that the justification for doing so appears to be less now than at the time of the Thwaites Review. We urge the Commission to adopt a nationally consistent approach in collaboration with the AEMC, with a preference for a regulator-determined maximum value. We also support measures to protect vulnerable customers who have trouble meeting pay-on-time discounts.

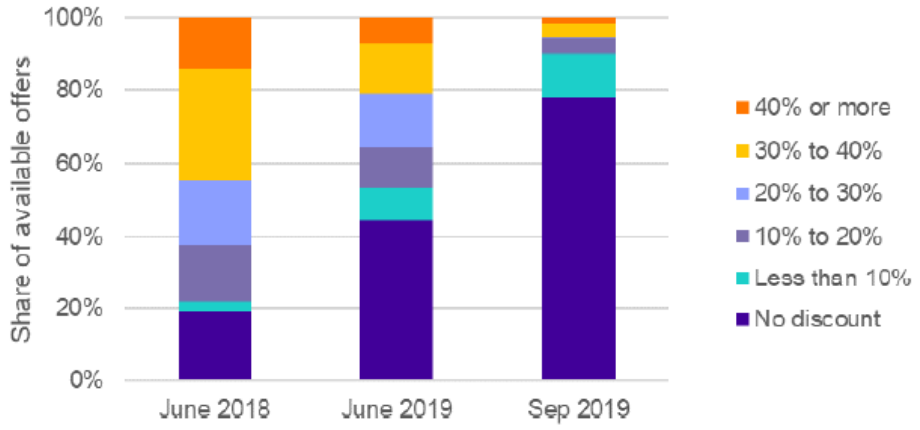
Problems associated with conditional discounts may have already been addressed

We consider that conditional discounts add confusion for customers and a large proportion of customers no longer value them. For these reasons we have ceased offering them in our product suite from 1 July 2019. This forms part of a broader market trend, with the ACCC's most recent electricity monitoring report suggesting that more

[25] See in particular s153E.

than 75% of flat rate residential offers in Victoria now have no conditional discounts.[26] The size of discount has also decreased substantially. These trends are consistent with the Commission's analysis.

Figure 3.18: Proportion and level of conditional discounts for residential flat rate market offers in Victoria



Source: ACCC, 2019.

Regarding existing market contracts, the Commission's data indicates that 83% of Victorian electricity customers were on offers with conditional discounts as at 30 June 2019.[27] This is a large number and contrasts to current market offers. However, the Commission has not presented information on the size of discounts (i.e. there is no breakdown of figure 4, reflecting existing customer contracts, into figures 5 and 6 which show breakdowns of discount values for current market offers). If these customers are not meeting their discount conditions and getting charged excessive rates, we should expect a much cheaper alternative offer to be identified in the customer's best offer bill notification given unconditional offers now make up more than three quarters of products in the market.

Reference pricing for all offers now prohibit "headline" conditional discounts, which should further assist any customers who feel their contract is unfavourable and in navigating information on published market offers. These developments in turn should put more pressure on retailers to retain their existing customers via competitive prices.

In this context, we support the Commission's draft decision to not cap the value of conditional discounts for existing market offers, aside from vulnerable customers as discussed below.

[26] ACCC, *Inquiry into the National Electricity Market - November 2019 Report*, 29 November 2019, p 109.
[27] Essential Services Commission, Figure 4, p. 21.

Other aspects of the Commission's approach

We note that the proportion of vulnerable customers not meeting pay-on-time conditions is excessive. We support the Commission's decision to make pay-on-time discounts unconditional for these customers. EnergyAustralia does not have hardship customers on pay-on-time discounts.

As the Commission is aware, the AEMC is concurrently considering the same concerns around conditional discounting and has proposed to institute a requirement that the size of discounts reflect "reasonable costs" to be enforced by the AER. We support national consistency and believe there are lower administration costs under the Commission's approach.

In terms of detailed feedback on the Commission's proposed methodology:

- a BBB+ credit rating is likely to significantly understate credit risk of energy retailers. The AER's benchmark was based on examining energy infrastructure businesses with significant tangible and long-lived assets, which may not be comparable to stand-alone energy retailers

- some useful public information is available for companies like Origin, AGL and Amaysim (which also has telecommunications services). Our cursory examination of annual reporting data suggests costs of debt in the order of 6 per cent per year.

- the AER's benchmark rating was determined in conjunction with a specific gearing assumption, which might warrant confirmation or further investigation, as well as the effect of different debt term assumptions.

Reference pricing requirements in line with the DMO (Recommendation 3A)

We note the Commission has based its reference pricing requirements on the corresponding regulations in the *Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019*. Our experience with reference pricing since 1 July 2019 is that some minor amendments to the DMO regulations would make advertising more workable and foster innovation, thereby improving customers' experiences. We commented on these issues in the Australian Government's recent consultation on the DMO Code and understand the Commission will have regard to its further amendment.

As the Commission would have observed, retailers typically no longer advertise prices because the reference price requirements are too onerous, meaning customers are now potentially less informed about available offers. Our experience is also that when customers engage with us (whether online or through a call centre), they do not understand how the reference price for the representative customer is relevant to them, generating confusion and dissatisfaction. Comparison to the reference price is suited only to offers with traditional pricing structures (that is, with a fixed and a variable component) so attempts by retailers to offer innovative pricing may be hampered by the reference price requirements.

In this context we recommend the Commission:

- allow more flexibility for displaying certain mandatory reference price content (distribution region, customer type and lowest possible price) in advertising formats such as radio, television, social media and other space or character-limited digital mediums

- allow the above mandatory reference price content to be included on a website linked to the communication when the communication is in media with certain content restrictions

- provide the ability to perform a comparison between the reference price and the unconditional price based on the customer's expected usage under the proposed clause 64G. As currently drafted, clause 64G only provides for the lowest possible price of an offer to be based on estimated consumption, creating an inconsistency in information provided under clause 64F(2)

- consider the alignment of exemptions under draft clause 52C and providing exemptions for products that are similarly incompatible with mandated reference price disclosures.

The Commission has not justified its proposal to duplicate obligations from the ACL around misleading or deceptive conduct and false or misleading representations (draft clauses 60D and 60E). Retailers are aware of these obligations and enforcing them is the role of the ACCC, not the Commission.

We have some concerns that policy-makers have set unrealistic expectations around the benefits that can be delivered from a reference price based on standard product and consumption profile. There also appears to be an expectation that more information disclosure around prices will result in customers becoming more engaged in the market. DMO reference pricing and disclosures are unlikely to achieve this objective.

Regulators and policymakers overstate the capacity and, more importantly, the willingness of customers to spend more effort in processing detailed information:

- best offer

- clear advice

- VDO and Vic energy compare on bills

- price change notification letters

- advertising disclosures.

Our experience is that customers generally have a poor knowledge of their own consumption rates, tariff types, distribution zone and other factors that underpin the effectiveness of reference pricing. Other changes in the market since 1 July have a bearing on the need for, and likely success of, reference price disclosures attached to the DMO price cap. Our observations are that:

- many retailers have reduced higher priced market offers to be in line with the DMO and VDO[28]

- as noted above, retailers generally appear to have withdrawn most forms of advertising that mention prices and discounts as reference price information is too cumbersome to disclose. The recent Behavioural Insights survey conducted for the Commission confirms that customers generally do not absorb this information, with 45% of respondents appearing to not read or understand reference pricing disclosures.[29]

- like us, many retailers have also withdrawn or removed conditional discounts from their products[30]

- there have been some reports of customer churn decreasing[31]

- some retailers have diversified their offers, with a rising prevalence of non-price benefits such as sign-up credits and packaging with other products, services and rewards programs

- our own research suggests that the introduction of reference pricing has not significantly improved customer awareness. This aligns with the Commission's surveys before and after 1 July regarding specific VDO reforms.[32]

Some of these developments suggest that retailers are moving away from unanchored discounting and marketing on price terms generally. This may allay customer concerns about incomparable or confusing offers although may also, perhaps counter-intuitively, invite further government and regulatory interventions to force retailers to disclose more (albeit standardised) pricing information to customers.

[28] ACCC, pp. 13-18.
[29] Behavioural Insights, p. 22. We believe the correct response rate is overstated as it is based on a three-answer multiple choice question.
[30] ACCC, pp. 106-109.
[31] See example investor presentations: https://www.originenergy.com.au/content/dam/origin/about/investors-media/documents/190822_fy19_investorpres_final.pdf - slide 28; https://www.agl.com.au/-/media/aglmedia/documents/about-agl/investors/webcasts-and-presentations/2019/2019investordaypresentation.pdf?la=en&hash=B9D0757D530146268A77117AD4459050 - slide 47.
[32] https://www.esc.vic.gov.au/media-centre/7-10-victorians-dont-know-their-energy-rights https://www.esc.vic.gov.au/sites/default/files/documents/victorian-energy-open-forum-presentation-energy-rights-campaign-20190827.pdf

Reducing back-billing to four months (Energy Fairness Plan)

We support the intent under the Government's Energy Fairness Plan to limit back-billing to 4 months. The current limit of 9 months corresponds to three billing cycles which is more than enough time to resolve most reasons for billing error, particularly in situations where meters are read remotely.

Our experience is that customers are particularly negative regarding any error that affects them. As the customer pays the retailer directly, they tend to view the retailer as responsible for coordinating the various parties involved in the supply of electricity, irrespective of which party is at fault.

Issues of identifying fault and liability are at the core of this change. The Commission's draft decision imposes a 4 month limit subject to contributing acts or omissions by the customer. The Commission must, however, consider the fault of other parties and the appropriate allocation of any financial shortfalls, in order to ensure each party is appropriately incentivised to act in the customer's interest. Where this is not done properly, it will result in additional costs being incurred by retailers (passed onto the customer) and a suboptimal customer experience.

If the Commission is minded to pursue code amendments for its final decision, we urge it to consider drafting provisions that avoid retailers incurring a shortfall in situations where they are not at fault, or otherwise where distributors are still able to back-bill beyond the 4 month limit.

The Commission should recommend a delay to the Government

We have concerns that this change is being introduced very late in the Commission's consultation process. On 20 December the Commission received the Victorian Government's terms of reference for implementing this element of its Energy Fairness Plan. This is around one year after it was issued Terms of Reference for 'Ensuring Contracts are Clear and Fair' and also after the Commission's draft decision.

The 1 July 2020 implementation date for this change was not anticipated. Implementation requires system and process changes, requiring training and updates to all existing Work Instructions and process documents. Completing this under such a compressed timeframe would add significant resource burden and compliance costs. We consider there is a material risk of not being able to properly execute changes in the time required.

There is also insufficient time to consult on this change for implementation by 1 July 2020. Stakeholders will have had around 5 weeks, over the Christmas holiday period, to consider detailed implementation issues. We appreciate the Commission's efforts in actively engaging with stakeholders on a bilateral basis and at its forum on 14 January. The Commission faces an extremely challenging timeframe in processing stakeholder views before making a final decision in late February/ early March. This introduces an avoidable risk of poorly designed reforms and suboptimal outcomes for consumers, including the passing through of unnecessary compliance costs in customer bills. In particular, the code amendment contained in the Commission's draft decision, i.e. a substitution of clause 30(2)(a), is insufficient for stakeholders to consider the breadth or impacts of required changes.

The Commission will need to be mindful of the range of situations that give rise to customer undercharging when drafting final code amendments. Some issues relate to distributor practices that will likely require changes beyond those in the draft decision and necessitate consultation with different stakeholders. Below we have endeavoured to provide information on a range of practicalities that should assist the Commission in its task.

It would be prudent to allow stakeholders to view required code amendments again before they are finalised to ensure they are complete and minimise unintended consequences. This process is unlikely to be feasibly implemented by 1 July 2020 and the Commission should request an extension of this timeframe from the Victorian Government. Such an extension may allow the Commission to jointly consult on retailer and distributor obligations as part of distribution code amendments.

Giving effect to this change requires clarity on the problem being addressed

The Government's terms of reference do not provide any guidance on how this change should be implemented. We consider guidance is required in terms of the fault of the various parties to billing transactions, particularly retailers and distributors.

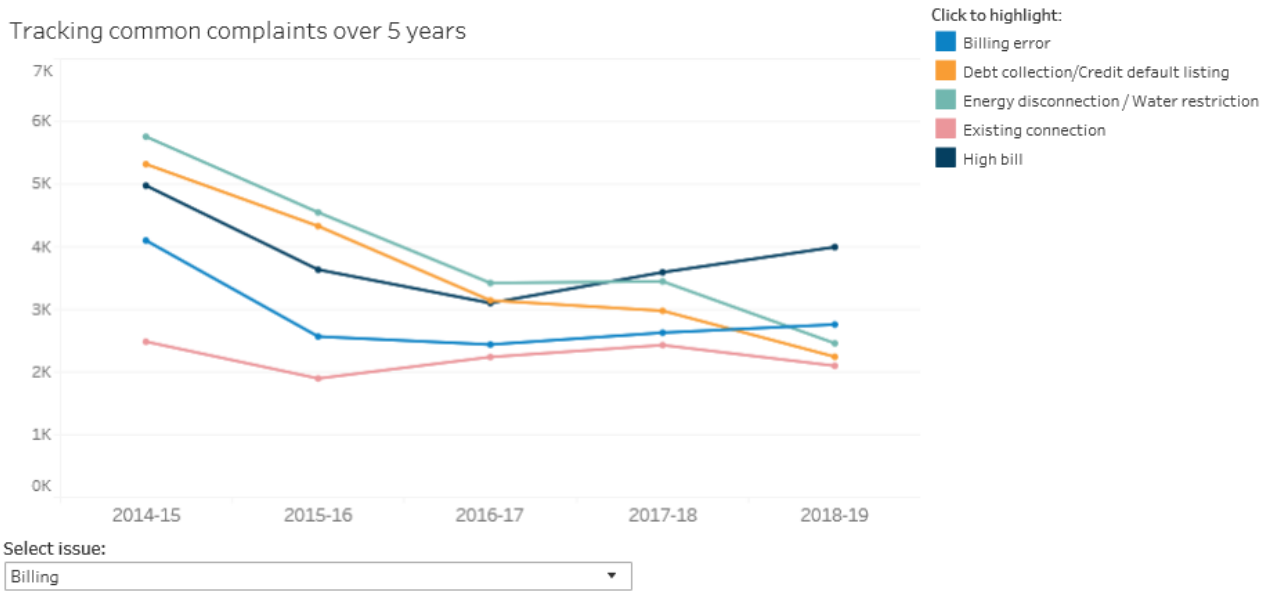
The Government's pre-election commitment for this particular intervention appears to be directed at correcting "dodgy" practices of energy retailers.[33] The Commission also referred to these materials which state that "it is unfair to have to pay a bill for nine months' worth of energy when you have been undercharged by the retailer and have done nothing wrong".[34]

The Commission supports the Government's decision to restrict back-billing as it would:

- promote trust and confidence in the market
- likely result in customers having a positive relationship with their energy retailer by avoiding significant bill shock when they are not the cause
- reduce customer bill shock due to the compressed billing recovery period
- deliver more accurate bills as energy companies are likely to be incentivised to develop and maintain compliant billing systems due to the reduced recovery period limit.[35]

The Commission's draft decision does not consider the roles of retailers and distributors, differences between gas and electricity, and the range of situations where fault, acts or omissions are difficult to determine. It is also not clear whether the Commission (or the Government) considers that retailers' billing practices are non-compliant. A fulsome examination of issues would be useful, including the causes of the steady (but relatively small) increases in billing error complaints registered with EWOV since 2015-16.

[33] https://www.danandrews.com.au/policies/time-is-up-for-energy-retailers-ripping-off-victorians
[34] https://www.danandrews.com.au/s/CRACKING-DOWN-ON-DODGY-ENERGY-RETAILERS-LABORS-ENERGY-FAIRNESS-PLAN-1.pdf
[35] Essential Services Commission, p. 53.



Source: https://www.ewov.com.au/reports/annual-report/201910, accessed 10 January 2019.

As the Commission may have found, in the absence of further direction on the nature of the problem being addressed it is difficult to recommend further amendments that would give effect to Government policy and also promote the long-term interests of customers. The Commission refers to "reviewing this provision as part of a broader 2020-21 regulatory reform program"[36] which may refer to regulation of DNSP practices, compliance and enforcement measures or a further opportunity to refine its proposed amendments given the limited time to consult now.

Some practical implications when regulating back-billing

The following situations and considerations may assist the Commission in further drafting code amendments, including the issue of fault and understanding the impact of change:

- **Differences between gas and electricity** — gas meters are manually read approximately once every 60 days. If a single reading is missed for any reason, this already approaches the proposed 4 month back-billing limit. Given reliance on manual reads, the incidence of billing error is also higher and we expect most gas customers would eventually be affected by this change.

- **Prevalence of manually read electricity meters** — most electricity meters are read remotely and we generally support the sentiment that back-billing for these customers should be less tolerated. A smaller number of Victorian customers may be relying on manually read meters for a range of reasons (e.g. concerns over health or in rural areas with no communications links). Because of the smaller number and dispersion of these meters, reading schedules may be more erratic or less resourced, and hence more affected by weather events such as the recent

[36] ibid., p. 54.

bushfires. These meters, as with gas, are also subject to issues associated with manual reads.

- **Replacement meter reads received from the market** — meter data providers or other industry participants can periodically cause a large amount of retrospective data to be sent to retailers, in some cases up to a year:
    - as part of the smart meter rollout
    - backdated tariff changes
    - solar metering backdated configurations
    - correction of a metering fault e.g. faulty wiring
    - errors within the distributor's IT systems.
- **Retrospective transfers** — market participants currently have 130 and 118 business day limits (for electricity and gas customers respectively[37]) on back-billing for data/ customer transfers. These situations are mostly where fault is difficult to determine or cannot be attributed, such as wrong NMI/MIRN information in MSATS and missed transfers. Transfers to correct for cross-metering issues (where correct meter data is attributed to the wrong customers) are generally the fault of the distributor.
- **Retrospective Standing Data corrections (e.g. change in Network Tariff)** — currently these corrections (e.g. market tariff change for electricity) can occur up to 140 days through a regular market process and more than 140 days through manual retailer system updates.
- **Site and meter access** — this is an issue particularly for manually read meters however access is sometimes required for interval meters e.g. for testing and fault investigation. We note that frequently the distributor cites "no access" as the reason for billing correction, while the customer advises they did provide access. Customers may not know the location of their meter in order to provide access. Meters in situations such as apartment buildings may be secured and only accessible by a building manager. Meter reading agencies may have different policies relating to site safety e.g. securing dogs. Retailers also have a role in facilitating communications between all affected parties and may be unintentionally excluded from communications.
- **"Unknown" consumers** — retailers encounter many issues in dealing with sites where customers have not, or refused to, set up an active electricity or gas account. Predominantly these relate to a retailer's capacity to contact a customer e.g. incorrect addresses or customers not reading correspondence, and site access when a retailer has no further recourse than to disconnect. It is difficult to determine who is at fault in these situations. The Commission may wish to consider whether a customer not contacting a retailer should be subject to the

[37] See clauses 3.7.1 and 1.1.1 (permitted retrospective period) of AEMO's MSATS procedures https://www.aemo.com.au/-/media/Files/Stakeholder_Consultation/Consultations/NEM-Consultations/2018/MSATS/MSATS-Procedures--CATS-v46-Final-Determination-Change-Marked.pdf

same back-billing provisions as if it was illegal consumption i.e. extended to 9 months or indefinitely. This would provide assurance to retailers that they would not be negatively impacted by action outside of their control.

- **Meter exchanges, meter fault notifications** — these arise in the above examples but are notable given they are subject to delays that are often outside the control of customers, retailers and distributors.

- **Reliance on estimated reads from distributors** — again this overlaps with prior cases but is worth mentioning that estimates are sometimes not forthcoming from the distributor, requiring retailers to spend effort in obtaining them, and once this is done estimates are sometimes clearly unrealistic or inaccurate. Estimated reads can be corrected over more than one billing cycle which would fall outside the proposed 4 month limit. Retailer practices here diverge in terms of billing on the basis of estimates, allowing customer own reads or delaying bills.

- **Defining customer fault, act or omission** — customer obligations should be clearly defined when their electricity and gas accounts are created. We would benefit from clear guidelines and definitions on what constitutes customer fault, as well as processes for resolving any disputes.

We would support limits being placed on distributors or more targeted recognition of retailer fault

Our primary concern in examining these above situations is that distributors would have the power to require bill payments from retailers, yet retailers would be prevented from recovering bill amounts from customers. These concerns may be allayed by ensuring that there are corresponding limits placed on distributors. For example, the National Electricity Rules (6B.A3.1(a)) and National Gas rules (508) prohibit distribution network service providers from charging retailers where retailers cannot recover costs from customers. Note that such a limit would still result in retailers foregoing revenues from customers in reflection of wholesale and other non-network costs.

Further re-drafting of amendments to subclause 30(2)(a) of the Energy Retail Code could specifically prevent back-billing beyond 4 months in situations where the retailer is at fault. However as outlined above, provisions dealing with concepts of fault for any party will be problematic. We understand the Australian Energy Council has proposed drafting to this end and we would welcome the opportunity to discuss this or other amendments with the Commission prior to making its final decision.

The Commission may also benefit from examining similar regulations in the United Kingdom which limit back-billing to 12 months.[38] Ofgem's consultation process is of note as:

- the changes were introduced following several years of monitoring back-billing practices

[38] See Ofgem's decisions and consultation materials here: https://www.ofgem.gov.uk/publications-and-updates/decision-modification-electricity-and-gas-supply-licences-introduce-rules-backbilling-improve-customer-outcomes

- an exclusion applies where retailers have not been able to recover charges for unpaid energy, despite sending repeated demands for payment in a manner compliant with licence obligations

- these regulations include transitional provisions that accommodated back-billing actions on foot at the time they took effect, as well as provisions relating to customer contracts.

Information on how to access the VDO on customer bills (VDO Order in Council)

As raised in consultation on the VDO Order in Council[39], we consider that requiring retailers to have information on bills regarding the VDO may be counter-productive.

We note the Commission is now compelled by the Order to develop code amendments to give effect to this obligation. In doing so, the Commission should allow retailers flexibility in how and where on the bill this information is provided.

The Commission's draft text suggests it considers the VDO may be a suitable or a preferred offer for some customers, which raises broader questions about the intent of VDO communications. The Commission should give further thought on why the VDO should be communicated to customers, which may better inform how this should be done by retailers, itself and the Government.

The benefits of this change are still yet to be articulated

The origins of this requirement are opaque, and the expected benefits to customers are difficult to determine. It does not appear to be within the Commission's remit to question the Government's direction under the Order. However, in making its final decision, the Commission should provide further reasoning on why this change is expected to be in the long-term interests of Victorian customers.

We have some concerns that the Commission's draft decision indicates it has not turned its mind to this recommendation in detail. It briefly states that VDO bill notifications will "help raise awareness among customers", including of the range of electricity plans available to them.[40] The VDO is the default for customers who effectively disengage with the market, and more attractive market offers will almost certainly be available. Mentioning it as a potentially suitable or accessible plan, on each bill, seems to be a wasteful exercise and would only result in customers being worse off than they would be on the retailer's best in market offer.

The Government's desire to provide customers bill notifications of the VDO follows one part of recommendation 3G of the Thwaites Review.[41] We believe this notification requirement was not central to the desire to ensure customers received "understandable and comparable information" to "promote engagement with the market and consumer

[39] EnergyAustralia's submission is available here: https://www.energy.vic.gov.au/about-energy/policy-and-strategy
[40] Essential Services Commission, p. 52.
[41] Recommendation 3G stated "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; 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."

empowerment."[42] In particular, the Review Panel did not analyse what benefits it would deliver for customers, including how it would operate alongside other recommendations. Indeed, we cannot find any mention of this VDO notification requirement outside of the statement of recommendations in the review's final report, or in the Government's response.[43]

In responding to more recent consultation on the draft Order, the Government heard suggestions from consumer representatives regarding "ongoing government and community information provision to promote the VDO, including a government VDO information sheet provided with energy bills" and "standardised terminology to describe the VDO".[44] There was clear resistance from retailers to VDO bill notifications. The Government received two submissions from customer representatives. One was a joint submission from five peak customer bodies, which read as follows:

> The Draft Order requires retailers to include information in energy bills about how customers can access the VDO. While we support this measure in general, it requires consultation to determine how it can work best for customers. Given people will receive 'best offer' notifications on bills from 1 July 2019, customers may be confused if even more information appears on their bill, and further trust may be lost if information about the VDO is not presented in a clear and reliable way. The Victorian Government should investigate including its own VDO information sheet with the bill, as a separate leaflet. It is important VDO information be in a 'government voice', authoritative and clearly distinguishable from retailer communications and branding, given low levels of trust in energy retailers. This will increase the VDO's credibility in the eyes of the community.[45]

As this has now been raised most recently in the Commission's draft decision, we would be interested to hear any customer support for ongoing notifications from retailers about the VDO on customer bills. We expect there is instead support, including from retailers, for government information and awareness campaigns around the VDO.

Customers are already being informed of the VDO

We recognise the importance of the VDO for customers and facilitated its implementation. Since 1 July 2019 EnergyAustralia has been sending all of its Victorian customers a two-page cover letter with bills. This explains the VDO in plain language alongside the bill changes arising from best offer notification requirements and GST inclusive pricing. Our view is that such a letter is an effective means to communicate changes to our customers. Further explanatory information about the VDO (and DMO) is also available on our website.

The Commission and the Government have also released materials, including advertising campaigns, regarding the VDO's introduction. For example, the Victorian Energy Compare website has a headline call-out box on the VDO which refers to a government landing page. We agree with the consumer joint submission quoted above that government and regulator information channels such as this are more likely to be

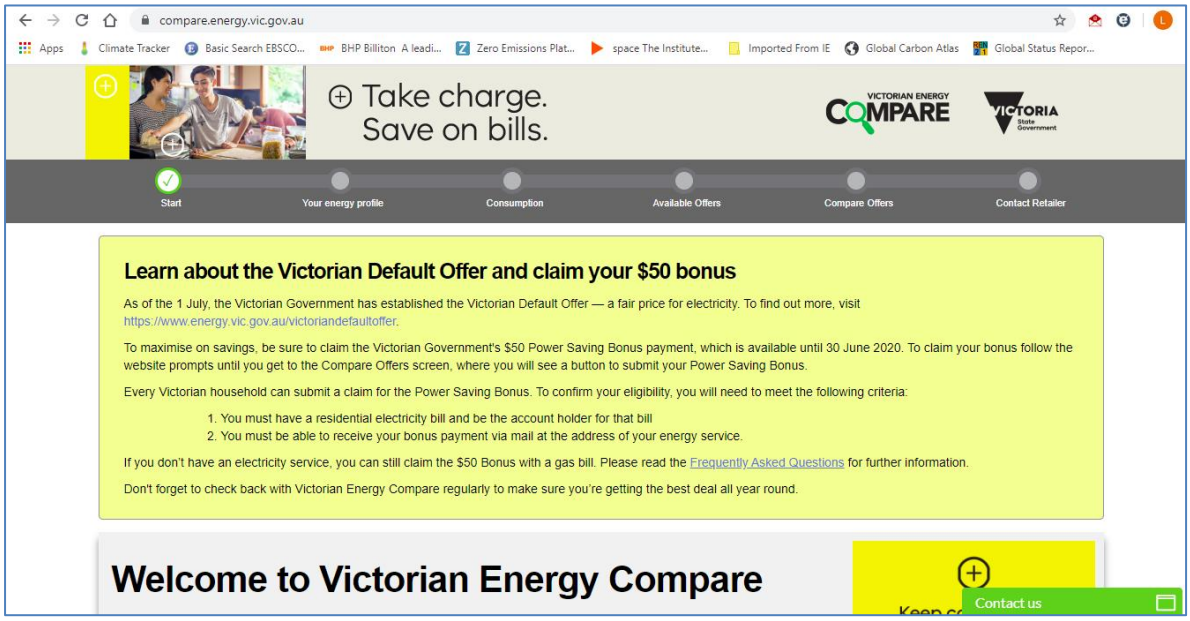
[42] Thwaites et al, p. 56.

[43] Victorian Department of Environment, Land, Water & Planning, *Final Response to the Independent Review of the Electricity & Gas Retail Markets in Victoria*, 2018, p. 6.

[44] Victorian Department of Environment, Land, Water & Planning, *Victorian Default Offer - Final Orders - Explanatory Statement*, 2019, p. 11.

[45] Joint submission by the Victorian Council of Social Service, Consumer Action Law Centre, Financial and Consumer Rights Council, Council on the Ageing Victoria, and the Victorian Public Tenants Association, *Response to draft Orders in Council on the Victorian Default Offer*, May 2019, p. 15.

trusted and hence more effective than retailer-initiated communications. Victorian Energy Compare is also a preferred channel as it demonstrates the VDO's function alongside the full range of retail market offers. That is, it informs customers of the VDO while demonstrating, from a credible source, that there are better offers in the market.



Source: https://compare.energy.vic.gov.au/ accessed 10 January 2019.

VDO notifications on bills may be confusing and counter-productive

As raised in our earlier submission to the Government, from 1 July 2019 customer bills already have best offer notifications as well as references to the Victorian Energy Compare website.

If a retailer's cheapest offer for that customer is the VDO, that will appear as the best offer on the customer's bill. If a retailer's cheapest offer is better than the VDO, there is no benefit to the customer of receiving information about the VDO on their bill.

Continually informing customers of the VDO on each bill may raise customer expectations that the VDO is somehow better for them than the 'best offer' already listed on the bill. In the current environment of distrust and confusion, there is a risk that customers may demand to be placed on the VDO, even though they would be worse off, and advised as much under the clear advice entitlement.

To avoid these shortcomings and still giving effect to Clause 16(2)(b) of the order, the Commission could make this obligation conditional. For example, unless the retailer has generally available offers that are better than the VDO, the bill needs to reference the VDO. While this would still repeat the best offer reference to the VDO, it would avoid potential confusion about what the best offer actually is.

The Commission should otherwise reconsider its proposed wording as it suggests the VDO may somehow be favourable i.e. "…to help you decide if this is a suitable plan for you…". This text should simply aim at providing further information on the VDO.

There are better ways to raise awareness of the VDO

We encourage the Commission and the Government to coordinate with retailers on VDO information campaigns and do not see why retailers should be forced in this regard. It is in retailers' interests to ensure customer communications around the VDO, including reference pricing, are effective. We are also keen to ensure that the Commission, Government and retailers share an objective in that any customer communications should encourage them to stay active in the market rather than revert to a default offer.

If bill notifications are to be prescribed, retailers should be given some flexibility in how they provide information about the VDO rather than "in a conspicuous manner on the front page of the bill". Our concern is that providing this information on the front of the bill, e.g. next to the best offer box, will add confusion for customers as noted above. The front pages of our bills are already crowded with prescribed information. Further changes will involve compliance costs that would be minimised if information can be presented in an alternative manner.

The prescribed text also has no context and presumes prior awareness of "The Victorian Default Offer" which is unlikely to be mentioned anywhere else on the bill. While we appreciate the Commission has sought to be brief, this text will be confusing. If this text and location on the bill are prescribed, retailers would need to provide more background information for such communications to be effective, similar to that in our bill cover letters from 1 July 2019. This further justifies allowing retailers flexibility in where and how information on the VDO is provided on or with bills.

Any prescribed text should be tested with customers to ensure it is understandable, including to customers where English is a second language.