

Retail Policy Working Group submission

Working Paper 1 –'National Framework for Distribution and Retail Regulation

Submission from Victorian consumer organisations

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This submission represents the views of the Consumer Utilities Advocacy Centre, Consumer Action Law Centre, Victorian Council of Social Service, St Vincent de Paul, Tenants Union of Victoria, Kildonan Child and Family Services and the National Seniors Association.

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1. Introduction

This submission represents the views of the Consumer Utilities Advocacy Centre, Consumer Action Law Centre, Victorian Council of Social Service, St Vincent de Paul, Tenants Union of Victoria, Kildonan Child and Family Services and the National Seniors Association.

Given the importance of the decisions to be made by the Retail Policy Working Group, we welcome the opportunity to comment on *Working Paper 1: A national framework for distribution and retail regulation* (the Paper), which outlines a potential approach to developing the fundamental consumer protections in energy market.

We would however stress that the consultation timelines for this process are extremely tight and, while we understand that there will be further opportunities to participate, there will be poorly-resourced consumer and community organisations unable to participate in this process at this stage. The Retail Policy Working Group should ensure that their views are considered fairly throughout the process.

Energy is an essential service, so the governance framework and institutional arrangements must reflect consumers' dependence on access to reliable and affordable energy.

The organisations supporting this submission have also endorsed the Charter of Principles for Energy Supply (Attachment B) developed by the National Consumers Roundtable, which points out that:

Electricity is an essential domestic service. Except in rare and exceptional circumstances, a regular connection to electricity supply is not discretionary or optional. In most instances there is no alternative to electricity. Electricity supports fundamental human needs including safe food (storage, preparation) and safe shelter (hygiene, lighting, temperature control). Electricity supports equipment that is critical to wellbeing and independence (health, communication). Beyond these fundamentals, electricity supports community engagement and family life (social interactions, employment, education).

A reliable, safe, affordable supply of electricity is now a matter of right rather than privilege and access must be guaranteed as far as reasonably possible.

The energy retail market is also immature, with characteristics that necessitate ongoing and robust protections for consumers. First of all, energy markets are dynamic – supply must meet demand immediately, and so there are opportunities created to exercise market power even though the market may be effectively competitive under other circumstances. Consumers' inability to respond in real time to wholesale price changes creates a disjunction between price and supply¹. Consumers have limited options to substitute for electricity, and there is significant cost attached to changing major appliances from one fuel source to another. Demand, particularly among small consumers, is largely inelastic. Small end-users do not and are unlikely to ever have equal bargaining power. And finally, information asymmetries continue to be a significant problem - most consumers view energy as a

¹ We do not envisage that the introduction of interval meters will necessarily have a marked impact on that disjunction – the complexities involved in providing information to customers in real time will continue to militate against the introduction of tariffs that really reflect wholesale price.

service, not a commodity, whose value is derived from the products whose use it enables. The level of real knowledge in the community about usage expressed by price/kilowatt hour or by consumption threshold remains very low, despite that all energy products are sold in those terms.

Not only does the energy market have peculiar characteristics that need to be incorporated into policy and regulatory development, it must also be remembered that the reality of the current National Energy Market (**NEM**) for retail and distribution is that it remains at a very early stage of development. In practical terms, the NEM is a series of state-based markets, with vastly differing levels of competition, and policy and regulatory structures that are only now being aligned. The creation of a single regulatory framework will not make one market, and policy-makers need to have realistic expectations about how well consumers will fare in the transition.

In developing a framework for a national regulatory regime that is in the interests of Victorian energy consumers, we see no evidence that would support the case for further deregulation in a national market, and note that neither the Paper nor the source materials cited by Allens Arthur Robinson (the NERA/Gilbert and Tobin or the Utility Regulators' Forum papers) produce any. d

Our response to this Paper has therefore been underpinned by the following principles:

- That the market is, at least in the short to medium term, characterised by significant market failures (outlined in section 1 of this submission) that require robust consumer protection to ensure Australians' access to safe and reliable and affordable energy continues;
- Energy is an essential service and disconnection should therefore be treated by government, regulators and industry alike as very much a last resort, and an inability to pay a bill should never be viewed as a reason to disconnect; and
- That reform now delivers an opportunity to implement a best practice regulatory framework that produces good outcomes for consumers and markets. There has now been significant work undertaken, among the member organisations of the National Consumers Roundtable, and research by Consumer Action Law Centre² that contributes to an understanding of what form of regulations produce the best outcomes for consumers.

In general, we support the approach taken in the Paper to identify the issues that need to be considered in relation to developing a national regulatory framework for obligation to supply, market contracts and marketing.

That said, there are specific issues that need to be further debated, to ensure that the interests of consumers are considered in this process, particularly those consumers who are less likely to benefit from competition. We comment on some of these issues below.

² Consumer Action Law Centre, Comparison Table of Retail Consumer Protections across NEM Jurisdictions, forthcoming.

2. Evaluation criteria

The Working Paper outlines a number of matters to be considered when evaluating options for the national framework for retail and distribution energy regulation. These include:

- consistency across jurisdictions;
- consistency between gas and electricity regimes;
- consistency with the national governance regime;
- transparency and simplicity of regulation, including the reduction of regulatory overlap with other energy and generic regimes;
- minimisation of burden and cost where practical, having regard to the benefits of regulation, in particular the need for appropriate consumer protection; and
- availability of effective enforcement regimes.

In our view, these evaluation criteria do not reflect the essential nature of the service and focus too heavily on the process, rather than the outcomes of regulation. The appropriate regulatory framework for energy retail and distribution must ensure that there is effective consumer protection not only because essential services require a robust minimum standard of delivery, but also because consumer protections assist consumers to participate in the market, so promoting effective competition (see further discussion below under “market contracts”).

While addressing the costs and benefits of regulatory options is integral to the development of an effective regulatory regime, we require a regime that ensures access to safe, reliable and affordable energy as a minimum. Indeed, in our view, a robust cost-benefit analysis that includes the benefits to society flowing from ensuring access to energy will demonstrate that a comprehensive level of regulatory intervention is essential.

For that reason, we believe that the evaluation criteria to be used in this process should include:

- ensuring access to a safe, reliable and affordable supply of energy for all consumers.

3. Who has the benefit of the obligations?

The Paper asks which consumers should benefit from the obligation to supply, the regulation of market contracts, and the regulation of marketing.

In our view, all consumers who consume less than 160MWh in electricity per annum, and less than 10,000 gigajoules in gas, should receive the benefit of each of the above obligations. We note that the Victorian Energy Retail Code (**VERC**) applies to customers consuming energy under these thresholds (small customer definition).³ These thresholds ensure that all residential and small business consumers are covered by the relevant obligations.

We strongly disagree with the suggestion that the benefit of the obligation should only apply to consumers fitting some descriptive criteria designed to capture the concept of vulnerability. The concept of vulnerability is very difficult to define.

³ These thresholds have been set by the Governor-in-Council under section 36 of the *Electricity Act 2000* (Vic) and section 43 of the *Gas Industry Act 2001* (Vic). We note that gas consumers who consume between 5,000 and 10,000 can contract out of various provisions of the VERC.

Vulnerability and hardship can also be temporary or transient, and it is unrealistic to expect that a checklist of characteristics can be developed that will accurately reflect the breadth of reasons for why consumers may be vulnerable. Indeed, in terms of the ability of market participants to exercise market power, we would argue that all residential consumers have limited market power and may experience vulnerability. On this basis, all residential consumers should have the benefit of the obligations. We agree that consumption levels contribute to consistency, certainty and transparency in retailer obligations.

The Paper also suggests that determination of who has the benefit of the obligations could remain with jurisdictions, applying common principles to be agreed by the MCE. While we are comfortable with this suggestion, we note that it may impinge upon the reform goal of harmonisation of the national framework. In our view, if the threshold level we are suggesting is adopted, then we see no reason why this cannot be applied nationally.

With respect to the regulation of market contracts, we note that the Paper suggests that this apply on the same basis as the small customer definition used for the obligation to supply, but using alternative criteria for specific requirements where that definition may be over inclusive. It is our view that all of the market contract protections should apply to small customers as defined above. We see no case for why some market contract protections should not apply or only apply to a class of consumers, where they may apply to the contractual provisions offered under the obligation to supply (the standing offer).

4. Retailer obligation to supply

In light of the essential nature of the service and the immaturity of the market, we strongly believe that a universal obligation to supply must be retained.

As the Paper acknowledges, “it is generally accepted that the essential nature of energy services, coupled with the current state of development of the competitive market, requires that certain customers have the benefit of an obligation to supply on regulated terms and conditions.”

The immaturity of the retail energy market is clearly demonstrated. The last comprehensive assessment of the Victorian marketplace found that competition at the household level remained largely ineffective.⁴ The Essential Service Commission’s (ESC) *Public Draft Report on the Effectiveness of Full Retail Competition* (2004) found that while competition was increasing, it was not benefiting around 60% of residential and small business customers. Within that group, customer classes perceived to have low consumption, poor credit or subject to off-peak tariffs were unlikely to be targeted by retailers. The ESC also found that another class of consumers having difficulty accessing any benefits from competition were tenants, and consumers within low income metropolitan areas and regional centres were also unlikely to be offered market contracts.⁵

Even if competition had improved for some of those classes of customers, research in Australia and overseas overwhelmingly concludes that small consumers all households and many small businesses will continue to experience difficulty and

⁴ ESC, *Draft Report on the effectiveness of Full Retail Competition* (2004).

⁵ ESC, *Public Draft Report on the Effectiveness of Full Retail Competition* (2004), pp 91-92.

require ongoing protection as profit margins on those customers are small and information asymmetries continue.⁶

As such, we strongly oppose any diminution of the existing universal obligation to supply. Access to an essential service must be assured, particularly for consumers who may be less attractive to retailers by virtue of their location, level of consumption or income.

The Paper summarises the issues that must be considered in developing and imposing an obligation to supply. We agree with the Paper's proposed approach that the obligation should be set out in the Law, and applied on a nationally consistent basis (p 18).

The Paper also correctly states that the preferred option – a continuation of the status quo, where jurisdictions decide the retailers and geographic areas on which the obligation is imposed, and the customers to whom it applies – may not be sustainable over time.

The Australian Energy Market Commission (**AEMC**) will next year begin to review the effectiveness of full retail competition in jurisdictions, to assess the ongoing case for retail price regulation. The criteria that the MCE has approved will not enable the AEMC to make an assessment of the ongoing need for a universal obligation to supply. Furthermore, there has been no discussion in Victoria – or indeed, any other jurisdiction – to assess the potential impact of the removal of the obligation to supply through removal of the standing offer contract. Other sectors, notably telecommunications and finance, have seen re-regulation by governments to ensure access.

The Paper does not address how a legislative obligation to supply sits with the commitment by jurisdictions to remove retail price regulation when competition is deemed effective. As such, we would recommend that the Retail Policy Working Group outline more clearly its assessment of the potential risks to consumers, particularly residential, low-income and disadvantaged consumers, of pursuing the option proposed in the Paper.

We would also welcome a more comprehensive examination of the legislative mechanism to deliver a universal obligation to supply in Queensland – there is value in the notion that it becomes an obligation that will eventually apply to all retailers, as it would seem to engender a more level playing field between retailers, while ensuring consumers are ensured access.

Move-in customers

We have some particular concerns about the Paper's proposed mechanism to deal with deemed arrangements for move-in customers, which is that the terms applicable to the immediately preceding supply relationship should continue, intended to cover second tier retailers or jurisdictions where an obligation to supply does not exist.

⁶ For more information see, for example, Centre for Privatisation and Public Accountability, Monash University, *Protecting Utility Consumers from Market Failure*, January 2004 and Waddams Price, C "Spoilt for Choice? The Costs and Benefits of Opening UK Residential Energy Markets", CSEM Working Paper 123, Center for the Study of Energy Markets, University of California Energy Institute, February 2004.

Quite apart from the questionable fairness in deeming that a consumer must be forced to unknowingly enter into a contract that could be significantly disadvantageous, such an arrangement would also serve to weaken the retailer's obligation to that consumer to ensure that the consumer is offered a product that is tailored to their needs, as well as to ensuring the previous consumer is not charged for energy they did not use.

The retailer should bear the primary responsibility for ensuring that a property is de-energised and a final read done of the meter when a contract is terminated. Neither the previous customer nor the new occupant of the property should be disadvantaged by retailer inaction.

5. Regulation vs social policy

We are also concerned at the Paper's discussion of the content of standing offer contracts and, particularly, the definition of social policy objectives and outcomes in relation to the terms and conditions that should accompany an obligation to supply, demonstrated in the statement that "there is certainly scope for debate about what terms and conditions are necessary or appropriate to adequately define the contractual relationship, on the one hand, and what represents a desire to implement broader social policy objectives on the other" (p 22), citing payment difficulties and bill smoothing as examples of social policy outcomes.

Such a statement ignores the fact that energy is an essential service that underpins the social and economic wellbeing of all Australians, and reflects a lack of understanding of the nature of hardship and its relation to the regulatory framework.

In Victoria, the regulatory protections supplied through the VERC were established with the intention of protecting all domestic consumers. The Victorian Government's recent Committee of Inquiry into the Financial Hardship of Energy Consumers acknowledged that regulatory instruments such as the VERC alone do not provide sufficient protection for Victorian energy consumers.

Regulatory instruments such as the VERC are not designed to and do not solely address the needs of customers in hardship. They ensure that the market develops in a way that produces good market outcomes. Indeed, the degree of competition in Victoria is due to protections such as the VERC, which have engendered confidence in consumers and so encouraged their participation in the market.

Similarly, the notion of community service obligations (**CSOs**) must be rigorously defined. CSOs are not arrangements such as instalment plans, which help retailers maintain their cash flows. Activities that are in the commercial interests of the retailer should not be deemed a CSO, and the Retail Policy Working Group needs to be careful in how it assigns that term within the terms and conditions of an energy contract.

Given there seems to be some confusion about the nature of hardship and its relationship to the regulatory framework, we believe that it is of value to outline in more detail the way in which regulatory protections interact with consumers experiencing financial hardship.

6. Energy hardship

There are three types of hardship experienced by energy consumers can be categorised into three main groups - temporary, chronic and energy inefficient households.⁷

Temporary financial hardship

It is impossible to develop a complete check-list of reasons for why consumers fall into temporary financial hardship. Research shows that certain characteristics have a more pronounced correlation to utility stress than others, but most importantly it has to be remembered that consumers can experience hardship for numerous but equally important reasons (interest rate rises that lead to higher mortgage repayments, loss of a job, family break-up, or a sudden unexpected bill for car repairs, to name but a few possible scenarios).

An issue for many customers in temporary financial hardship is that they can be “first timers” and therefore inexperienced in dealing with customer assistance schemes. These customers are very dependent upon the response they receive from energy retailers as their situation often means that they are not linked to the state concession system, Centrelink or other welfare/customer assistance schemes.

Payment plan arrangements are therefore crucial to assist consumers in temporary financial hardship, but it needs to be understood that that protection can be undermined if not properly designed.

The VERC was based on the assumption that the customer is fully informed of his/her rights and responsibilities and can therefore communicate and negotiate successfully with the retailer. Customers do not automatically know all their rights and it can therefore be difficult for those facing utility stress for the first time to negotiate a sustainable payment plan.

This is a very important aspect as a sustainable payment plan can assist a customer who is otherwise susceptible to debt spiralling activity. Delivered optimally, protections for payment plan arrangements provide a customer in temporary hardship with the arrangements necessary to avoid them accumulating further debt.

Research has demonstrated that retailers’ inflexibility when negotiating payment plans can be a cause of severe utility stress and imminent disconnection.⁸ For customers with temporary payment problems an affordable plan can be all that is needed to solve the problem. The VERC Clause 12.2 tries to address this issue by requiring retailers to “have in place fair and reasonable procedures to address payment difficulties a customer may face on the plan”.⁹ In the past when customers miss payments on their plans retailers often insist on the same amounts and simply threaten disconnection for non-payment.¹⁰

⁷ For a more detailed outline, refer to the CUAC submission to the Committee of Inquiry into the Hardship of Energy Consumers, available at

<http://www.cuac.org.au/docs/CUAC%20Submission%20to%20Hardship%20Inquiry.pdf>

⁸ N Rich and M Mauseth, *Access to Energy and Water in Victoria – A research report*, Consumer Law Centre Victoria and Consumer Utilities Advocacy Centre, 2004, p 64-65.

⁹ ESC, *Energy Retail Code*, August 2004, Clause 12.2 (c).

¹⁰ N Rich and M Mauseth, *Access to Energy and Water in Victoria – A research report*, Consumer Law Centre Victoria and Consumer Utilities Advocacy Centre, 2004, p 64.

Chronic hardship

This customer group includes customers with low income levels who experience a long term struggle to meet basic household expenses (housing, food, transport and utilities). These customers usually experience ongoing difficulty in paying their energy bills but it is not a given that they are always unable to pay for the service. Research has demonstrated that this group of customers often forgo other essential goods or services to pay for energy as well as under consuming as a way of making the service more affordable.

A key issue for this customer group is that only measures that address the affordability of energy are going to alleviate the problem. There are, however, many ways of addressing affordability, including reducing the cost of energy for this customer group, reducing consumption levels through improved energy efficiency and improving direct financial assistance or income levels.

The same issues in relation to payment plans as discussed above affect customers in chronic financial hardship. Unsustainable payment plans cause debt spiralling activities and for the 'chronic poor' this can result in actions such as declaring d bankruptcy.

There are limitations to what a regulatory code can offer customers in chronic financial hardship, but policy makers need to ensure that the costs of their energy use are not inappropriately pushed to the emergency relief sector to meet. St Vincent de Paul Society Victoria told the Victorian Committee of Inquiry into energy hardship that between 2001-02 and 2003-04 there was a 230% increase in utility assistance provided to consumers¹¹. Effective retailer hardship policies and programs do not shift their debt onto the community sector.

Energy inefficiency

As there is a strong relationship between energy efficiency and energy affordability we would argue that this is not so much a separate customer group as it is a way of addressing energy affordability and assisting customers in chronic financial hardship.

Energy efficiency measures can be divided into three broad types: advice/information, standards and retrofitting. Although all of the three types can be of valuable assistance to consumers we regard retrofitting schemes as imperative to assisting households in chronic financial hardship.

General advice or information about energy efficiency improvements can be valuable to all consumers and we welcome the Paper's proposed inclusion of such advice in the regulatory requirements. However, for many households advice does not address the root causes of their problems they may be informed but lack the capacity to make any improvements.

Tenants in the private property market are a class of consumers particularly vulnerable in this regard. They do not constitute a homogenous group. However it is well documented that there are more low income consumers in rental properties than

¹¹ Submission to Committee of Inquiry into Financial Hardship of Energy Consumers by St Vincent de Paul, June 2005 p 15, available at [http://www.doi.vic.gov.au/doi/doielect.nsf/2a6bd98dee287482ca256915001cff0c/3bf666a8e99340ecca257030001632f7/\\$FILE/St%20Vincent%20De%20Paul%20Society.pdf](http://www.doi.vic.gov.au/doi/doielect.nsf/2a6bd98dee287482ca256915001cff0c/3bf666a8e99340ecca257030001632f7/$FILE/St%20Vincent%20De%20Paul%20Society.pdf)

amongst home purchasers/owners and there is a positive relationship between tenants and utility stress.

The Retail Policy Working Group should not assume that the requirements pertaining to energy efficiency are targeted towards those in hardship. Firstly, it is naïve to believe that anyone having problems paying their energy bill will prioritise paying for an energy efficiency audit. Secondly, while the information provided by an audit can assist some customers in reducing their energy bills, many will need access to retrofitting schemes that can assist with capital outlays.

7. Market contracts

The Paper raises the issue of appropriate levels of regulation to apply to market contracts and marketing, in addition to general consumer protection legislation. The paper also states that

“much of the discussion about the issue (of the level of regulation of market contracts) is expressed in terms of the extent to which reliance should be placed on general consumer protection laws in protecting small customer interests, and the extent to which the competitive market will give such protections. Greater reliance on general consumer protection laws and the competitive market will result in a smaller list of market contract terms subject to regulation”.

In our view, the debate about general versus sector-specific regulation is largely misplaced, based on a misconception that regulation necessarily creates additional burdens on business rather than clarifying the operation of service provider’s responsibilities. Further, much sector-specific regulation applies where generalist legislation is not sufficient to deal with particular market failures relevant to particular industries.

Attached to this submission is a research paper authored by the Consumer Action Law Centre, which considers the need for energy-specific consumer protections in the national market (Attachment C).¹² This paper concludes that energy-specific consumer protections that currently operate in the Victorian regulatory framework complement generalist consumer protections under the TPA and FTA, and do not duplicate those protections. For example, generalist consumer protections do not provide regulation with respect to:

- standard contract terms and conditions, for example, in relation to billing and statements of account; payment collection; and dispute resolution;
- ensuring access to supply, protection against disconnection and retailer obligations in relation to dealing with utility debts and financial hardship;
- some matters relating to marketing, including information provision and appropriate contractual consent provisions.

In a market where consumers must be ensured access to a safe, reliable and affordable service, consumers must be protected from being disconnected on the basis of incapacity to pay. In addition, energy-specific consumer protections contribute to the efficient operation of a competitive energy market in the long term interests of consumers. This is because the protections enable consumers to participate in the market, activating competitive outcomes. Competitive outcomes

¹² Consumer Action Law Centre, *Consumer Protections in the National Energy Market – The Need for Comprehensive Energy-Specific Consumer Protections*, November 2006.

can only ensue where there is demand side and supply side participation. In recognition of this fact, consumer protections ensure that consumers are not disadvantaged by their lack of market power and can participate in the market.

The Consumer Action paper details specific areas of regulation, such as the levels of information required by consumers to exercise choice, to demonstrate that energy-specific regulation is required to enable consumers to participate in the market. The paper also discusses other sectors, such as telecommunications and financial services, which impose a range of robust industry-specific consumer protections from legislation, industry codes to position statements by industry ombudsman schemes. We strongly recommend this paper to the RPWG.

We note that the Paper suggests three alternative approaches to assessing whether particular areas should be included as minimum contract terms in market contracts. We support both Options 2 and 3 presented - we agree with the comments in the Paper that these options provide for regulatory consistency and the need for special purpose regulation to reflect the special characteristics of energy services and of consumer's relative lack of experience and information in contracting for energy services in a competitive market.

We also agree that Option 3 has additional benefits in encouraging compliance and consumer understanding. An approach which develops a comprehensive energy specific consumer protection regime will enable retailers and consumers to be clear about what specific requirements are and are not permissible. Much of the generalist consumer protection measures institutes principles of dealing (ie, not engaging in misleading or deceptive conduct) and does not clearly describe what actions are required by retailers. The certainty provided by prescription will benefit both consumers and retailers (by having clarification about their respective rights obligations).

Regulation of standing offer and market contract terms

We were concerned at some emerging trends in the AAR formulation, particularly that:

- Disconnection is not treated sufficiently seriously disconnection from energy, particularly electricity, offers significant detriment to consumers. Consumers, and their families as it must be remembered that consumers is a broader group than account-holders, are unable to cook, or to heat or light their homes. The Victorian Government has rightly included in legislation that disconnection should be viewed as a last resort.
 - We are also concerned that the 'rights' of industry, not outcomes for consumers are being given greater weight in the process;
- The Paper does not adequately reflect the importance of the regulatory framework in ameliorating hardship, and so it is impossible to support the requirements as they have been defined without concepts such as 'capacity to pay' being properly defined;
- In providing information to consumers, regulation needs to have a clear idea of the objectives of these requirements. We recommend the adoption of the following:
 - Product information disclosure promoting competition by making it easier for consumers to compare prices. We would note this

- regulatory innovation was bitterly resisted by retailers, but has proved to be a fillip to competition;
- Customer charters to provide a standing resource for consumers to inform them of their broader rights and responsibilities in relation to their energy contract in language that is easily understood. The requirement recognizes that a contract is not the best mechanism to deliver general information to a consumer; and
 - Greenhouse gas emissions reporting, acknowledging there is a broader societal benefit in communicating to customers a sense of the environmental cost of their energy use.
- Prepayment meters: we do not support the imposition of prepayment meters. The advantages of such meters, primarily through offering small and regular payments, are offered in other products in Victoria. Prepayment meters remove the need for regular communication between consumers and industry; and
 - The Paper's very brief treatment of some extremely important aspects of the d market, such as CSOs and performance monitoring and reporting, that deserve a discussion in their own right, given their importance. We believe regulations outlining retailer and regulatory obligations to both should be included in the Rules, but deserve more detailed attention than is given here.
 - We would appreciate notice if this is indeed the only mention such issues will be given, and will undertake to provide a more comprehensive response.

The following table therefore outlines in detail the regulations that the signatories to this submission strongly recommend are adopted nationally. They have been grouped in the same categories identified in the Paper's Attachment 1 Part A. Some d regulations/terms that were grouped in Part B have also been included in the Part A categories, as they share similar relationships between consumer protection, market failure and good market outcomes.

We recommend that the provisions contained below, which for the most part mirror the regulations of the VERC, are directly placed in the National Electricity Rules and National Gas Rules. There may be a need to further define some elements of those Rules (e.g. in the assessment of credit risk, or to outline the level and format of information to be provided to consumers).

Market and standing offer obligations

The Paper also sought feedback on the differences between market and standing offer obligations. As we have pointed out above, in the absence of any hard evidence demonstrating that existing market failures recognised and managed in current jurisdictional regulatory protections have altered, there is no reason to move away from current practice in Victoria, where the VERC flags a small number of terms and conditions that can be negotiated out of a contract with the consumer's d explicit informed consent.

These would include:

- Clause 3.2(a) and (b) billing cycles can be adjusted
- Clause 4.2(k) summary of payment methods and options
- Clause 4.4(a) graph showing consumption

- Clause 5.4(a) adjustments
- Clause 7.1(b) pay by date not less than 12 business days from date of dispatch
- Clause 7.2(a) retailer must accept payment in person at agencies, by mail or by direct debit
- Clause 7.3 payment in advance
- Clause 24.1(b) if customer not deemed and wants to terminate contract, customer must give 28 days notice.

We do not agree that all of the above should be incorporated into the national regime, and would certainly oppose any agreement to do so without more information on what other consumer protections will be in place, and the linkages between the two.

8. Small customer marketing

Content of marketing obligations

As with the content of market contracts, we support Option 3 presented in the Paper in relation to the content of the rules for marketing. That is, we believe the national framework should develop a comprehensive energy specific marketing regime that supplements general consumer protection laws. The current Code of Conduct for Marketing Retail Energy in Victoria was implemented in May 2002 with the introduction of full retail contestability into the Victorian electricity market. It was reviewed in 2004 and became the Code of conduct for Marketing Retail Energy (the **Marketing Code**) (covering both electricity and gas).

There has been some criticism that the Marketing Code duplicates consumer protection provisions in the *Fair Trading Act 1999 (Vic)* (**FTA**). However, rather than duplicating the FTA, it reinforces and extends provisions of generalist consumer protection legislation. The FTA has also been amended since the introduction of the Marketing Code, but other jurisdictions have not similarly done so. If it is comprehensive, the Marketing Code can operate as a simple, easy-to-access source of all regulatory obligations of marketers, reducing the burden on retailers to identify their obligations across regulatory instruments.

We have not analysed in detail at this stage Attachment 2 of the Working Paper which lists the possible regulation of marketing conduct. However, we broadly support the requirements detailed in the attachment and note that they largely reflect the Victorian Marketing Code. In addition, we believe that the Rules should include detailed requirements as to product and regulation knowledge of marketers.

Marketing complaints still remain significant in the complaints made to the Energy and Water Ombudsman Victoria (**EWOV**). EWOV reports 17% of its cases to be in relation to retail competition, which includes complaints about marketing conduct and errors in transferring. EWOV complaints statistics do not include complaints made to other regulators, such as Consumer Affairs Victoria and the ACCC. Given that marketing complaints are relatively high, even with marketing codes of conduct, continued regulatory oversight of marketing is clearly required.

The Marketing Code also helps articulate the application of some of the general protections to the energy sector. By doing so, the ESC is able to monitor the marketing of energy contracts and not leave that task to Consumer Affairs alone. The specialist knowledge of the regulator of the energy sector enables it to more

easily identify problematic conduct in the market, in collaboration with Consumer Affairs. Importantly, the Marketing Code also provides further protection over and above general protection in relation to the marketing of energy contracts. These further protections are listed at page 15 of the attached report by Consumer Action.

Who does the obligation apply to?

We agree with the Paper's recommendation that the obligation should apply to retailers and others engaged in marketing activity, but retailers should remain responsible for marketing activity carried out on their behalf. This will enable marketers who are not acting on behalf a retailer to be captured, but also for the ultimate party (ie, the retailer) to be responsible, in line with the objective of the regulation.

9. Implementation architecture

We are generally supportive of the implementation architecture outlined in the Paper. In particular, we agree that the Law should provide for the obligation to supply to small customers and that the Law should provide authority for the Rules to contain provisions which specify a range of details, including:

- Acceptable application procedures;
- Details of the standing offer contract;
- Terms and conditions which must or must not be included in market contracts; and
- Requirements with which the terms and conditions of market contracts must not be inconsistent

However, in our view, given the importance of continued access to essential services, all obligations relating to access should be placed in the Law. That is, in our view, all restrictions on disconnection should be placed in the Law. There are a number of restrictions on disconnections that are included in the lead legislation in Victoria, the *Electricity Industry Act 2000 (Vic) (EIA)* and the *Gas Industry Act 1999 (Vic) (GIA)*. For example, that legislation restricts disconnection where a small customer is participating in a retailer's approved hardship policy program.¹³ This restriction reflects the importance of maintaining access to services where the sole reason for non-payment is an incapacity to pay. In our view, all restrictions on disconnection (including those currently listed in clause 13.1 and 13.2 of the VERC) should be included in the Law.

10. Enforcement mechanisms

General enforcement and compliance

The Paper suggests that enforcement mechanisms currently available to the AER under the NEL (which the new NGL will replicate) appear adequate and appropriate for enforcement of the regulatory obligations in relation to the retailer obligation to supply small customers, retailer-small customer market contracts and retail-small customer marketing. The enforcement mechanisms discussed in the Paper all require the AER to apply to the Court, including for declarations, injunctions and imposing civil penalties. In our view, these mechanisms alone are not sufficiently responsive to allow the AER to effectively enforce compliance with retail and distribution businesses' regulatory obligations.

¹³ s 46A EIA and s 48K GIA.

We note that the mechanisms available to the AER are perhaps more appropriate than some mechanisms available to jurisdictional regulators, such as licence revocation. We agree that licence revocation (or even the threat thereof) is not an appropriate enforcement mechanism for many breaches of regulatory obligations. However, to deal with this, jurisdictional regulators have developed administrative enforcement measures that operate in conjunction with statutory powers. The Victorian Essential Services Commission undertakes a number of administrative enforcement actions, including communication and consultation, agreement, and further escalation.¹⁴ The Independent Pricing and Regulatory Tribunal (IPART) accepts enforceable undertakings as part of its administrative enforcement actions.¹⁵

Administrative actions, including enforceable undertakings, are an important tool for an effective regulator. Such actions enable regulators to be more responsive to inappropriate or unlawful market conduct. In our view, however, enforceable undertakings should not just have an administrative basis but a legislative one. Section 87B of the TPA or section 146 of the FTA provide examples of a legislative power given to regulators to accept court-enforced enforceable undertakings. In both cases, the regulator is required to keep a public register of enforceable undertakings. The public nature of the undertakings is important to promote compliance with regulatory obligations.

Under the NEL, the AER can also apply to a court for a declaration that a participant is in breach of the Rules, which can include an application for civil penalties. While we agree that this is a good enforcement measure, we are concerned that the requirement to apply to a court is not sufficiently responsive to deal with breaches of rules related to retailer and consumer protection regulation. We would appreciate further investigation on the ability of the AER to impose infringement notices (with associated fines) directly on retailers where they are in breach of their obligations.

Systemic issues

The Paper has not identified the obligation of the regulator to identify and address systemic issues. A systemic issue is an issue, a problem or a change in the policy or practice of a service provider which affects, or has the potential to affect, a number of customers. In our view, the energy regulator must work in tandem with energy ombudsman to identify and address systemic issues early, so that their impact on customers can be lessened. The regulator's obligation in relation to addressing systemic issues should be made clear in the Law and/or Rules, and should be developed in consultation with energy ombudsman.

Wrongful disconnection payment

The Wrongful Disconnection Payment (**WDP**) was legislated in Victoria in 2004. Section 40B of the EIA and section 48A of the GIA makes a payment obligatory if the retailer "wrongly" disconnects the supply of electricity or gas to the premises of a "relevant customer" after failing to comply with the terms and conditions of a customer's contract. The amount payable is currently \$250 for each whole day that supply is disconnected. This suggests that payments are intended not only to

¹⁴ ESC, *Compliance policy Statement for Victorian Energy Businesses*, November 2006.

¹⁵ See, for example, the enforceable undertaking entered into with JackGreen (International) Pty Ltd in June 2006: <http://www.ipart.nsw.gov.au/files/JACKGREEN%20-%20Licence%20Compliance%20document.website%20doc.PDF>.

compensate customers who have been wrongfully disconnected but to encourage retailer compliance with their obligations.

While the introduction of the WDP has been a challenge to the regulator, EWOV and market participants, it has achieved its goal of reducing the amount of disconnections that were occurring in the market. EWOV reports that it has seen a reduction of 72% in disconnection cases since the WDP was introduced. At the same time, there has not been a significant increase in customers' arrears. In this light, and given the fact that the ESCV makes the final decision as to when the WDP is payable, the WDP has operated as a significant compliance tool available to the regulator. In our view, this compliance tool should be available to the national regulator.

11. Objectives

The Paper raises the question whether the current national market objective in the NEL (and proposed objective of the NGL) is appropriate and adequate for the purpose of guiding the AEMC and the AER in carrying out their regulation functions for retail and distribution.

We believe that the NEL and NGL need to more clearly articulate objectives which will ensure effective and appropriate consumer protection and enable the appropriate balance between regulatory costs and benefits to be struck. We are concerned that the current objective, although referencing "the long term interests of consumers", can be defined too narrowly to focus on the economic efficiency goal.

In a recent research paper released by the Total Environment Centre, environmental and social objectives were developed to address the inadequacy of the current market objective.¹⁶ The paper argued that the long term interests of consumers can only be properly advanced if:

- A socially responsible approach is adopted which recognises that consumer protections are required reflecting the essential service characteristic of energy and the particular vulnerabilities of particular classes of consumers; and
- An ecological sustainable approach is adopted which recognises the environmental damage that the supply and use of energy can inflict.

We support this analysis and recommend this research paper to the Retail Policy Working Group.

In our view, the AEMC and the AER must be guided by the MCE to develop regulation that achieves the objectives of:

- effective consumer protection; and
- assured access to a safe, reliable and affordable supply of energy for all consumers.

The Paper states that the current objective focuses the AEMC and AER appropriately on the costs of regulation. While we agree that the AEMC and AER should consider the regulatory costs, we also believe they should consider the benefits of regulation. While often harder to assess, benefits include shorter term consumer welfare and distributional issues not kept in check by the vagaries of the market.

¹⁶ Total Environment Centre, *How Should Environmental and Social Policies be catered for as the regulatory framework for electricity becomes increasingly national?* (November 2006).

In our view, economic regulatory frameworks should acknowledge that the goals of efficiency and effective competition are not ends in themselves, but are a means to achieving beneficial outcomes for consumers.

In its regulatory role, the ESC must consider facilitating objectives. We note particularly the objective: “Ensuring that users and consumers (including low-income and vulnerable consumers) benefit from gains from competition and efficiency”.¹⁷ . The direction to pay particular notice to low-income and vulnerable consumers is an acknowledgement that these consumers may need additional assistance to retain access to essential services at an affordable price, and to reap gains from a competitive marketplace. The ESC has undertaken a series of actions focusing on the needs of low-income and vulnerable consumers, which have proven of great benefit for those consumers.

We would strongly recommend that the national regulatory agencies be given similar facilitating objectives to ensure that they are well-positioned to facilitate good market outcomes.

12. Additional issues

Empowering consumers in the marketplace

The Paper does not address an emerging issue in Victoria that consumers are not necessarily making choices that are in their best interests, and that there is a need for governments and regulators to tailor information to the needs of certain classes of consumers.

Consumers need information to confidently participate in a competitive market place and exercise choice. Some classes of consumers (e.g newly arrived migrants, or people with no internet access) have particular needs in terms of information levels and how information is communicated. Furthermore, transparency and consultation especially in regards to the regulated monopolies are key concepts to enhance consumer empowerment.

In Victoria, the following evidence has emerged over the past year:

- That nearly all consumers are ill-equipped to negotiate with energy businesses. Even among business consumers, many are on the wrong tariffs and are paying more than necessary. A study of manufacturing businesses in the Bendigo region found 23% of companies surveyed were on the wrong tariff, and more than 50% had incorrect contract demand figures.
- There are some classes of consumers that require targeted or additional information to enable them to make well-informed decisions that benefit them. This is especially an issue for consumers that sign on to market contracts offered by telemarketers or door to door salespeople without being able to adequately assess the offer. Examples we are aware of include consumers with culturally and linguistically diverse backgrounds, newly arrived migrants, and the elderly all require additional assistance, but the form of that assistance needs to be tailored to the needs of that group of consumers.

¹⁷ Section 8(2)(f) of the *Essential Services Commission Act 2001* (Vic).

- That it is important to explore in more detail the process of how customers change energy suppliers, to assess whether consumers made good decisions or not as well as to establish how many customers actively choose a new energy retailer. The current measuring of switching rates is unable to differentiate between customers switching by default (i.e. moving homes) and customers who actively go out and seek and compare energy offers. Such data is important to assess what type of information consumers need (including specific classes of consumers) to make good decisions, as well as to inform regulators and policy makers about the actual performance of the market and levels of retail competition.

The regulatory framework must recognise the need to empower consumers. The Victorian Government has made some recent significant improvements through its introduction of requirements that companies must produce information in a format that enables consumers to more easily participate in the market by facilitating price comparison. The ESC has developed information materials targeted directly toward low-income consumers, to help ensure they access benefits from competition.

The national regulatory agencies need to be able to institute similar programs to address market failure at an early stage.

13. Attachment A: V

Victorian Consumer Organisations' comments on ATTACHMENT 1: Regulation of standing offer V and market contract terms V

Subject	Requirement	Proposed formulation	Rationale
Calculation of charges and connection			
Tariffs and charges	<p>Changes are to be made on the basis of tariffs and contracts specified in the contract or published in accordance with prescribed publication requirements (such as in the Gazette and/or a general circulation newspaper and/or on the retailer's internet site).d</p> <p>Any variation to tariffs and charges must be notified to the customer in advance of the variation taking effect.</p> <p>Upon request, a retailer must provide a customer with reasonable information on network charges, retail charges and any other charges relating to the sale or supply of energy.</p>	<p>20. VARIATIONS REQUIRE CUSTOMER S AGREEMENT</p> <p>(a) The tariff and any terms and conditions of an energy contract between a customer and a retailer may only be varied by agreement in writing between the customer and the retailer.</p> <p>(b) For the avoidance of doubt, if the amount of the tariff changes in accordance with some term or condition of an energy contract previously agreed between the customer and the retailer, no further agreement is required.</p> <p>(c) Also for the avoidance of doubt, if the tariff and terms and conditions of a dual fuel contract vary on disconnection by a retailer of a domestic customer's gas in accordance with and as contemplated by a disconnection warning, no further agreement is required.</p> <p>21. GAZETTE BASED VARIATIONS</p> <p>21.1 Gazetted tariffs and gazetted terms and conditions</p> <p>(a) This clause 21.1 applies despite clause 20(a) in respect of any energy contract between a customer and a retailer which resulted from the acceptance by the customer of the retailer's relevant standing offer.</p> <p>(b) Any energy contract to which this clause 21.1 applies may provide for variation of a tariff applicable to the customer but not so that the tariff may at any time exceed the corresponding gazetted tariff at that time.</p> <p>(c) Any energy contract to which this clause 21.1 applies may provide that, if a gazetted term or condition is varied then, with effect from when that variation takes effect, the terms and conditions of the energy contract are varied as follows:</p> <ul style="list-style-type: none"> • if the variation effectively amends an existing gazetted term or condition, by amending in the same way the corresponding term or condition of the energy contract; or • if the variation effectively includes an additional gazetted term or condition, by including in the same way a corresponding term or condition in the energy contract. 	AAR formulation does not provide sufficiently rigorous requirements on retailers to provide information within a timely manner

		<p>VERC 26.4 ADVICE ON AVAILABLE TARIFFS</p> <p>(a) On request, a retailer must provide a customer with reasonable information on tariffs the retailer may offer to the customer. The information must be given to the customer within 10 business days of the customer's request and, if the customer requests it, in writing.</p> <p>(b) A retailer must give notice to a customer of any variation to the retailer's tariffs that affects the customer. The notice must be given as soon as practicable and in any event no later than the customer's next bill.</p>	
Use of meter data	Unless otherwise permitted, a retailer must base the calculation of charges for a small customer's bill on metering data d provided	<p>VERC 5.1 BILLS BASED ON METER READINGS</p> <p>A retailer must:</p> <p>(a) unless a customer gives explicit informed consent, base a customer's bill on a reading of the customer's meter; and</p>	The Victorian experience has proved that the concept of explicit informed consent within the VERC has been crucial, to ensure that retailers and consumers clearly understand their rights and obligations.
Meter reads	Retailer must use best endeavours to ensure that a meter reading takes place at least once in each [6/12] month period	<p>VERC 5.1.(B) BILLS BASED ON METER READINGS</p> <p>(b) in any event, use its best endeavours to ensure the customer's d meter is read at least once in any 6 months.</p> <p>A retailer does not breach clause 5.1(b) if the retailer is unable to read a meter in any relevant period as a result of the customer breaching clause 25 or some other event outside the retailer's d control.</p>	<p>Best practice regulation would be NSW, where the meter must be read every 6 months. It is not unreasonable for consumers to expect that their bills will be based on an accurate reading of their consumption. In Victoria, we have been concerned that the 12 month limit designed as a <u>minimum</u> benchmark for a read, is moving toward standard practice, particularly for consumers in rural communities.</p> <p>The introduction of interval meters means that this will not be an onerous obligation on the responsible party.</p>
Estimations	<p>Where estimations permitted, estimations may be based on:</p> <ul style="list-style-type: none"> ➢ Customers' reading of meterd ➢ Historical meter data ➢ Where no historical data, average usage of energy by a comparable customer over the corresponding period 	<p>VERC 5.2 ESTIMATIONS</p> <p>(a) Despite clause 5.1, if a retailer is not able to reasonably or reliably base a bill on a reading of the meter at a customer's supply d address, the retailer may provide the customer with an estimated bill that is either:</p> <ul style="list-style-type: none"> • based on the customer's reading of the meter, the customer's d historical billing data or, where the retailer does not have the customer's historical billing data, average consumption <i>at the relevant tariff calculated over the period covered by the estimated bill</i>; or 	VERC Clause 5.2.a should be adopted the AAR paper does not specify that the relevant tariff should be used, thereby leaving the consumer vulnerable to an estimation incorrectly based on other criteria (e.g. location, customer type)
Meter access	Customer must allow retailer or agent	VERC 25. ACCESS TO SUPPLY ADDRESS	AAR formulation does not address

	<p>access to the supply address for the purpose of reading the meter</p> <p>If failure to provide access results in charge being based on an estimation and the customer subsequently requests an actual read, the retail may charge the customer its reasonable costs of complying with the request</p>	<p>A customer must allow a retailer or the retailer's representative safe, convenient and unhindered access to the customer's supply d address and meter for the purpose of reading the customer's meter d and for connection, disconnection and reconnection. The retailer or the retailer's representative must carry or wear official identification and, on request, show that identification to the customer.</p> <p>VERC 5.5 UNSUCCESSFUL ATTEMPT TO READ</p> <p>Where an attempt to read the customer's meter is unsuccessful due to an act or omission on the part of the customer, and the customer subsequently requests a retailer to replace an estimated bill with a bill based on an actual reading of the customer's meter, the retailer must use its best endeavours to do so and may impose an additional retail charge on the customer in respect of costs incurred complying with the customer's request.</p> <p>VERC 5.4 ADJUSTMENTS</p> <p>(a) If a retailer has provided a customer with an estimated bill, and the retailer subsequently reads the customer's meter or otherwise d gets a reliable meter reading or, in the case of gas only, updated data from the distributor or from VENC Corp, the retailer must adjust the bill in accordance with the meter reading or the updated data and clause 6.</p>	<p>situation where retailer is not meter owner term "retailer's representative" d may be more accurate than "agent"– AAR formulation does not require retailer to use best endeavours to secure a meter read given access is sometimes not the responsibility of the account-holder (e.g. a tenant in a property where the landlord controls access to the meter, or living in an apartment building where body corporate controls access to meters).</p> <p>AAR formulation does not require identification to be carried given much of this work is subcontracted out by distribution businesses, those agents should be required to produce ID that clearly links them to the business.</p> <p>We also suggest that where a meter has been estimated, and a retailer subsequently becomes aware of correct data, that the bill should be adjusted.</p> <p>We note that Queensland's Electricity d Code now includes a requirement to ensure that the retailer or distributor take proper measures to endeavour to contact the customer at the relevant time in order to facilitate meter access. We suggest that the RPWG consider this requirement further.</p>
Assessing credit risk <i>(from Part B)</i>	In deciding whether a small customer has an unsatisfactory credit rating, a retailer may only have regard to any relevant utility related default by that small customer.	<p>AAR formulation supported, but supplemented by following:</p> <p>ADOPTION OF VICTORIAN ELECTRICITY GUIDELINE NO. 4 / GAS GUIDELINE NO. 1</p> <p>The Guidelines outline retailers' obligations, including: to only have d regard to relevant defaults, to be unable to refuse transfer for debts less than \$200, and that they must comply with Guidelines' d provisions in reporting debt to credit rating agencies. This includes limiting the reporting of defaults where a consumer has a genuine dispute about the outstanding amount or where they are applying for a utility relief grant.</p>	AAR formulation does not provide the detail that is required in relation to credit assessment and credit reporting. Without this protection, retailers may list defaults on credit reports inappropriately, for example where a consumer has a genuine grievance or is in the process of applying for a utility relief grant. Such defaults can have an unfair impact upon consumers by limiting their access to credit on fair and reasonable terms.
Cooling-off period	Retailer must ensure that each market contract entered into with a small end	VERC VRC 23.1 Customer s right to cancel an energy contract	We support the adoption of the provisions of the VERC as the regulation

<i>(from Part B)</i>	customer enables the customer to rescind the contract within 10 business days after the contract is entered into.	<p>(a) Beyond any right a customer may have to cancel an energy contract under the FT Act, the customer may cancel the energy contract if the energy contract is a market contract or arises from the acceptance of a standing offer.</p> <p>(b) Unless the customer has a longer cancellation period under the FT Act, to cancel an energy contract a customer must give a cancellation notice to the retailer within:</p> <ul style="list-style-type: none"> • if the energy contract is for electricity and it is an energisation contract or it is for gas and is in respect of a supply point which requires only unplugging or installation of a meter to allow the flow of gas, 5 business days from and including the relevant date; and • otherwise, 10 business days from and including the relevant date. 	<p>must deal appropriately with the following issues:</p> <ul style="list-style-type: none"> ➤ Consumers expect connection to a property to occur as soon as possible no-one expects to have to call a retailer 10 days ahead of the day they move into their property. In Victoria, the provisions ensure that consumers initiating contact for energisation do not wait unnecessarily for connection ; ➤ Customer transfers should not take place until after cooling-off period has concluded; and ➤ the interaction between this rule and generic regulation under the Fair Trading Act
Termination			
Retailer termination	<p>A retailer may terminate a small customer supply contract where</p> <ul style="list-style-type: none"> ➤ retailer has contractual right to disconnect, disconnection has occurred and there is no contractual right to reconnection ➤ small customer and retailer have entered into new customer contract ➤ small customer has transferred to another retailer 	<p>VERC 24.2 Termination for customer s breach</p> <p>A retailer may not terminate an energy contract with a customer for the customer's breach of their energy contract unless:</p> <p>(a) the breach is one conferring on the retailer a right to disconnect the customer under clause 13, the retailer has disconnected the customer at all relevant supply addresses and the customer no longer has a right under clause 15.1 to be reconnected; or</p> <p>(b) the customer and the retailer enter into a new energy contract, or the customer has transferred to another retailer, in respect of all relevant supply addresses, (whichever occurs first).</p> <p>VERC 24.3 Expiry of fixed term contract</p> <p>If the energy contract between a customer and a retailer is a fixed term contract:</p> <p>(a) prior to the expiry of the fixed term, the retailer must notify the customer of the following information:</p> <ul style="list-style-type: none"> • that the energy contract is due to expire; • when the expiry will occur;d • of the tariff and terms and conditions that will apply to the customer beyond the expiry of the fixed term if the customer does not exercise any other option (which the retailer may determine at 	<p>AAR formulation leaves open the possibility for consumers to be vulnerable to disconnection in the following situations:</p> <ul style="list-style-type: none"> ○ without warning at the expiry of their contract if no regulation specifies that they must be informed; and ○ If the consumer is unattractive to the retailer (e.g. by reason of their payment history, consumption level or location), there is no requirement that the retailer must inform the customer of impending expiry in a timely fashion, or their right to secure supply through a standing offer arrangement. <p>It is imperative that the regulatory framework be underpinned by an understanding that disconnection is a last resort and so protections around termination must therefore be robust, and adequately interlinked with rights and responsibilities pertaining to</p>

		<p>its discretion); and</p> <ul style="list-style-type: none"> • what the customer's other options are. These include: <ul style="list-style-type: none"> (A) the customer requesting that the customer's local retailer, which may be the retailer, make the customer a standing offer; and (B) the customer entering into a market contract with the retailer or any other retailer. <p>The information must be given no sooner than two months before, and no later than one month before, the expiration of the fixed term (unless the fixed term is less than one month in which case the information must be given to the customer at the commencement of the fixed term); and</p> <p>(b) on and from the expiry of the fixed term unless by then the customer has entered into another energy contract for the relevant supply address, the energy contract between the customer and the retailer continues at the tariff and on the terms and conditions the subject of the retailer's notice under clause 24.3(a). Despite clause 20(a), the agreement of the customer to any variation in the tariff, terms and conditions is not required.</p>	disconnection.
Customer termination	<p>A small customer may terminate a standing offer contract upon [3] business days notice to the retailer</p> <p>A small customer may terminate a market contract upon [28]days to the retailer</p>	<p>VERC 24.1 TERMINATION BY CUSTOMER</p> <p>(a) A customer may terminate an energy contract with a retailer.</p> <p>* (b) If a customer is not a deemed customer and wants to terminate an energy contract with a retailer under clause 24.1(a), the customer must give the retailer 28 days notice.</p> <p>(c) If a customer is a deemed customer and wants to terminate an energy contract with a retailer under clause 24.1(a), the deemed customer need not give any notice.</p>	
Early termination charges (from Part B)	<p>Retailer may only impose an early termination charge under a small end customer market contract if</p> <ul style="list-style-type: none"> ➤ Market contract includes details of the amount or manner of calculation of the early termination charges; and ➤ Imposition of the early termination charge is not prohibited under an applicable regulatory instrument, at law or in equity. 	<p>VERC 24.1.(d) TERMINATION BY CUSTOMER</p> <p>(d) If an energy contract is:</p> <ul style="list-style-type: none"> • a fixed term contract and it is terminated by the customer under clause 24.1(a); or • an evergreen contract and it is terminated by the customer under clause 24.1(a) before the maturity date, the retailer may impose an early termination fee on the customer if: • their energy contract includes details of the amount or manner of calculating the early termination fee; and • the imposition of an early termination fee in the circumstances is not prohibited by any relevant guideline. 	<p>ESC Victoria is now consulting with stakeholders to develop guidelines to outline the imposition of early termination charges to ensure that consumers are not penalised unfairly for deciding to terminate a contract. We supported the revised draft decision which placed a cap on the amount a retailer could charge for an early termination fee, recognising that in compliance with the TPA that such charges should accurately reflect the costs to the business of the termination. The cap clarifies what is a fair and</p>

		<p>VERC 32 AGREED DAMAGES TERMS</p> <p>(a) Any agreed damages term, whether providing for a late payment fee, an early termination fee or otherwise, must either include the amount that will be payable by the customer to the retailer for the customer's breach of their energy contract or include a simple basis for determining that amount.</p> <p>(b) The amount payable by a customer under an agreed damages term must be a fair and reasonable pre-estimate of the damage the retailer will incur if the customer breaches their energy contract, having regard to related costs likely to be incurred by the retailer.</p>	<p>reasonable fee.</p> <p>RPWG must also recognise the relationship between competition and early termination charge. Such a charge if pitched too high can prove a disincentive to competition by contributing to customer inertia at times when customer switching is required to dampen price volatility.</p>
Security			
Provision of security	<p>Retailer may require small customer to provide security deposit where:</p> <ul style="list-style-type: none"> ➤ Small customer still has outstanding debt with that retailer or another retailer ➤ Customer unlawfully used energy within past 2 years ➤ Customer has refused to provide acceptable ID ➤ Retailer reasonably considers that the customer does not have a satisfactory credit history and customer has refused an instalment plan offered by retailer 	<p>VERC 8.1 DOMESTIC CUSTOMERS</p> <p>(a) A retailer may only require a domestic customer to provide a refundable advance if:</p> <ul style="list-style-type: none"> • the customer has left a previous supply address or has transferred to the retailer and still owes the retailer or former retailer more than an amount the Commission nominates in any relevant guideline; • within the previous two years the customer has used energy otherwise than in accordance with applicable laws and codes; • the customer is a new customer and has refused to provide acceptable identification; or • the retailer decides the customer has an unsatisfactory credit rating, but only if the retailer has first offered the customer an instalment plan and the customer has not accepted the offer. 	<p>AAR formulation does not include the requirement that the outstanding debt should be a significant amount the ESC Victoria uses a threshold amount (developed with industry) below which a consumer cannot be prevented from moving to another retailer.</p>
Information about credit history	<p>If a retailer requires a security deposit on the basis that a small customer has an unsatisfactory credit history, retailer must inform the customer</p> <ul style="list-style-type: none"> ➤ That retailer has decided credit history is unsatisfactory ➤ Reasons for the decision ➤ Of customer's right to complain ➤ Of customer's right to obtain details d in relation to the information on which retailer's decision was based.d 	<p>AAR formulation supported, but supplemented by following</p> <p>VERC 8.3 CREDIT MANAGEMENT GUIDELINE</p> <p>In making decisions about a customer's credit rating and in dealing with credit management issues generally, a retailer must comply with any relevant guideline.</p>	<p>We support the inclusion of such regulation - credit management and how consumers credit is assessed by retailers is very important, given it can be a major factor in denying access to energy.</p> <p>However, given the need to tailor regulations with national complementary legislation and regulation pertaining to credit and privacy, we support the Victorian formulation in the VERC, which ensures that such issues are dealt with sufficiently through the ESC Guidelines Electricity No. 14 and Gas No. 1, that outline in detail the retailers' obligations d in relation to how they assess consumers' credit ratings, and so d</p>

			recommend that VERC Clause 8.3 be adopted.
Amount of security	Amount of security may not exceed [1.5] times average quarterly bill (for customers on quarterly billing cycle, or [2.5] times average monthly bill (for customers on monthly billing cycle)	<p>VERC 8.1 DOMESTIC CUSTOMERS</p> <p>(b) The amount of the refundable advance must not be:</p> <ul style="list-style-type: none"> • if the customer provides or the retailer otherwise has historical billing data for the customer's own consumption at the relevant supply address over the last four quarters ended before the refundable advance is required, more than: <ul style="list-style-type: none"> (A) for any energy contract other than a dual fuel contract, 37.5%; and (B) for a dual fuel contract where: <ul style="list-style-type: none"> (i) the retailer requires the refundable advance because the retailer has decided the customer has an unsatisfactory credit rating, 25%; and (ii) the retailer otherwise requires the refundable advance, 37.5%, of the amount billed to the customer for the supply and sale of energy to the supply address over those four quarters; or • otherwise, more than the corresponding percentage of the average amount the retailer billed domestic customers for the supply and sale of energy over those four quarters. 	<p>AAR formulation does not take into account the reality of dual fuel accounts, where such a security amount may be beyond the reach of low-income consumers who are of course the ones most likely to be forced to incur such a condition of supply. We therefore strongly recommend the VERC formulation that reduces a dual fuel security deposit to a manageable amount.</p> <p>We would also point out that the size of such deposits which will be in the realm of \$300-400 for an average low-income consumer (equivalent to a total fortnightly Centrelink payment) underline the need for retailers to be compelled to offer instalment plans to consumers in financial hardship.</p>
Interest	Retailer must pay interest on security deposit to customer in accordance with specified interest rate	<p>VERC 8.4 USE OF REFUNDABLE ADVANCES</p> <p>(a) A retailer must pay to a customer interest on the amount of a refundable advance at the bank bill rate. Interest is to accrue daily and is to be capitalised (if not paid) every 90 days.</p>	The VERC amount is fair and reasonable.
Application of security	<p>Retailer may only apply a security deposit to offset amounts owed to it under a standard form supply contract where the customer</p> <ul style="list-style-type: none"> ➤ Has failed to pay a bill which results in disconnection and there is no contractual right to reconnection ➤ Vacates the property ➤ Requests disconnection ➤ Transfers to another retailer 	<p>VERC 8.4 USE OF REFUNDABLE ADVANCES</p> <p>(c) A retailer may only use a customer's refundable advance and accrued interest to offset any amount owed by a customer to the retailer if the customer:</p> <ul style="list-style-type: none"> • fails to pay a bill and that results in disconnection of the customer and the customer no longer has a right to be reconnected under clause 15.1; or • vacates the supply address, requests disconnection or transfers to another retailer. 	AAR formulation applies to 'standard d form supply contract' without defining d what is meant. As we outlined above, the application of security deposits can play a major role in restricting access, and so we recommend instead that these rights as outlined in VERC be applied to all contracts.
Repayment of	Retailer must repay a security deposit to the customer after customer has	VERC 8.4 USE OF REFUNDABLE ADVANCES	AAR formulation does not give consumer any say in how the security deposit

security	completed 12 months of on-time payment of energy charges or where customer ceases to take supply at the relevant address	<p>(b) A retailer must repay to a customer and in accordance with the customer's reasonable instructions the amount of a refundable advance, together with accrued interest, within 10 business days of the customer:</p> <ul style="list-style-type: none"> • completing one year's payment (in the case of a domestic customer) or two years' payment (in the case of a business customer) by the pay by dates on the retailer's initial bills; or • ceasing to take supply at the relevant supply address. <p>If no reasonable instructions are given by the customer, a retailer must credit the amount of a refundable advance, together with accrued interest, on the customer's next bill.</p> <p>(d) If a retailer uses a refundable advance, the retailer must provide to a customer an account of its use. The retailer must pay any balance of the refundable advance to the customer within 10 business days.</p>	should be repaid to the customer, leaving the consumer, especially a low-income consumer, vulnerable to disadvantage through denying them the capacity to require that the money be repaid directly to them, rather than credited to their bill (perhaps even putting them in significant credit). We recommend that the VERC formulation be adopted instead.
Billing, apportionment of payment, disputes			
Frequency of bills	Bills must be issued at least every three months.	<p>Does not adequately reflect Victorian experience and systems. VERC 3.2 Billing cycles</p> <p>A retailer must issue a bill to a customer:</p> <p>(a) in the case of an electricity contract, at least every three months;</p> <p>(b) in the case of a gas contract, at least every two months;</p> <p>(c) in the case of a dual fuel contract, at least as often as the retailer and the customer have agreed. That agreement is not effective unless the customer gives explicit informed consent.</p>	<p>In Victoria, gas bills must be issued every two months, and frequency of single energy and dual fuel bills is negotiable (latter tied to explicit informed consent).</p> <p>The bi-monthly gas bills reflect seasonal variation, where usage and so a bill can be significantly higher in winter, and there is real advantage to consumers in ensuring that gas and electricity bills do not arrive at the same time.</p> <p>It is unclear how AAR formulation would sit with existing billing cycles and systems, or with seasonal requirements. We recommend that this be re-visited.</p>
Content of bills	<p>Bill should include</p> <ul style="list-style-type: none"> ➤ customer's name, account number and address ➤ NMI ➤ Bill period ➤ Relevant tariff ➤ Whether based on meter read or estimate ➤ Details of consumption or estimated consumption [including graph] 	<p>Agree with the content of the AAR list but also need to add the following:</p> <ul style="list-style-type: none"> ➤ Pay by date ➤ Amount of arrears/credit ➤ Details of Interpreter services ➤ EWOV details once every 12 months. <p>VERC 4.1 Form of bill</p> <p>A retailer must prepare a bill so that a customer can easily verify that the bill conforms to their energy contract.</p>	<p>AAR formulation should include the following:</p> <ul style="list-style-type: none"> ○ 'pay by date' is crucial, as it triggers a series of related protections relating to the time which consumers are given to meet the bill. ○ Arrears/credit are necessary for corrected estimations, products with bill smoothing, and for customers on instalment arrangements, to enable

	<ul style="list-style-type: none"> ➤ Pro rata billing information if applicable ➤ Any amount deducted, credited or received under a government rebate or concessions scheme or an instalment plan ➤ Amount of any security deposit ➤ Network charge and any other miscellaneous charges ➤ Details of available payment methods ➤ Telephone no. for account and fault enquiries ➤ Contact details for complaints <p>Amount billed for goods and services other than energy must be included in a separate bill or as a separate line item</p>	<p>VERC 4.3 Bundled charges</p> <p>On request, a retailer must provide a customer with reasonable information on network charges, retail charges and any other charges relating to the sale or supply of energy comprised in the amount payable under the customer's bill.</p>	<p>them to track their repayments;</p> <ul style="list-style-type: none"> ○ The value of interpreter services is self-evident ○ Annually, retailers should be required to include details of the Energy and Water Ombudsman Victoria, to ensure customers are aware of the service. <p>We strongly support the inclusion of a graph charting consumption be included on a consumers' bill. It is an easy way to d inform consumers of significant changes to their usage (e.g. if an appliance starts underperforming), and aligns with the longer-term policy objective of making consumers more aware of their consumption patterns.</p>
Apportionment	<p>If a bill includes amounts payable for other goods and services provided by the retailer (apart from the supply of energy), any payment made in relation to such a bill must be applied firstly to the payment of the energy charge, unless otherwise directed by the customer or agreed by the customer.</p> <p>In the case of dual fuel bills, payment is to be made as agreed with or directed by the customer. If there is no such agreement or direction, payment is to be applied in proportion to the relative value of electricity and gas charges.</p>	<p>VERC 4.5 PAYMENTS FOR ELECTRICITY AND GAS</p> <p>A retailer must apply a payment received from a customer to charges for the supply or sale of electricity and charges for the supply or sale of gas respectively as directed by the customer. If the customer gives no direction, the retailer must apply the payment in proportion to the relative value of those charges.</p> <p>VERC 4.6 PAYMENTS FOR OTHER GOODS OR SERVICES</p> <p>If beyond the supply or sale of energy, a retailer supplies other goods or services to a customer, the retailer may bill for those other goods or services separately. If the retailer chooses not to bill separately, the retailer must:</p> <p>(a) include the charge for the other goods or services as a separate item in its bill, together with a description of the other goods or services supplied; and</p> <p>(b) apply payments received from the customer as directed by the customer or, if the customer gives no direction, apply the payment to the charges for the supply or sale of energy before applying any part of it to the other goods or services.</p> <p>IN ADDITION, the following protections should be added</p> <ul style="list-style-type: none"> ○ For dual fuel accounts, the payment should go first to the electricity portion ○ Consumers cannot be disconnected from either fuel if they have made a payment or partial payment of the bill. 	<p>The regulatory framework should also recognise the different applications of electricity and gas and, where customers give no direction, know that consumers tend to place more weight on electricity (for which there is poorer substitution in relation to cooking/hot water) than gas.</p> <p>A consumer should not be disconnected from either fuel if they have made a payment on bundled account.</p>

Disputes	<p>Retailer must review a bill upon request of a small customer in accordance with the [retailer's standard complaints and dispute resolution procedures/retailers' billing d complaints procedure.</p> <p>Retailers may require customer to pay greater of</p> <ul style="list-style-type: none"> ➤ Portion of the bill under review which is not in dispute or ➤ Amount equal to average amount of customer's bills over previous year d (excluding disputed amount) <p>And any future bills that are properly due.</p> <p>Where, after reviewing bill, retailer is satisfied that the bill is</p> <ul style="list-style-type: none"> ➤ Correct: customer must pay outstanding amount ➤ Wrong: retailer must adjust bill and refund any fee paid in carrying out any metering test 	<p>Support AAR formulation, but need to include following formulation:</p> <p>VERC 6.1 REVIEW OF A BILL</p> <p>A retailer must review a customer's bill at the customer's request. During the review, the customer must pay that portion of the bill under review that the customer and the retailer agree is not in dispute or an amount equal to the average amount of the customer's bills in the previous 12 months (whichever is the lower).</p> <p>If the bill under review is:</p> <p>(a) correct, the customer must either pay the unpaid amount or request the retailer to arrange a meter test in accordance with applicable regulatory instruments. If the customer's meter is found to comply with applicable regulatory instruments, the customer must pay the cost of the test and pay the unpaid amount;</p>	<p>AAR formulation does not align with VERC, which ensures that a consumer has the right to request a test of the meter be undertaken.</p>
Undercharging and overcharging			
Undercharging	<p>Retailer may recover from a customer any amount undercharged during the previous 12 months. Interest is not payable on the amount undercharged and the customer must be given a corresponding period of time to pay any undercharged amount. Any amount undercharged must be listed and explained as a separate item on the customer's next bill or on a sep bill.d</p>	<p>VERC 6.2 UNDERCHARGING</p> <p>If a retailer has undercharged or not charged a customer, whether this becomes evident as a result of a review under clause 6.1 or otherwise, the retailer may recover the amount undercharged from the customer but, in doing so, the retailer must:</p> <p>(a) limit the amount to be recovered as follows:</p> <ul style="list-style-type: none"> • if the undercharging results from a failure of the retailer's billing systems, the retailer may recover no more than the amount undercharged in the 6 months prior to the date on which the retailer notifies the customer that undercharging has occurred. To avoid doubt, a retailer's billing system fails if the retailer does not receive relevant billing data from a distributor, no matter whether it is the retailer or the distributor at fault in respect of that failure; and • otherwise, the retailer may recover no more than the amount undercharged in the 12 months prior to that date. <p>To the extent necessary, the amount undercharged is to be calculated in proportion to relevant periods between dates on which the customer's meter has been read;</p> <p>(b) list the amount to be recovered as a separate item in a special</p>	<p>In the period following a period of restructuring in the industry, delays in providing bills to consumers were common, even when consumers contacted their retailer to obtain bills. The consequence was that consumers received very high bills, without being made aware of their right to request a longer repayment period. Many low-income consumers found that they were severely disadvantaged through no fault of their own. Given the level of restructuring now underway, particularly in Queensland, we believe the AAR formulation does not provide sufficient protection to protect consumers in the future. As such we strongly support the formulation put forward by the URF that proposed a repayment period of only 6 months if the retailer is at fault.</p>

		bill or in the customer's next bill together with an explanation of the amount; (c) not charge the customer interest on the amount undercharged; and (d) offer the customer time to pay the amount undercharged in a payment arrangement covering a period at least equal to the period over which the recoverable undercharging occurred.	
Overcharging	Retailer must pay any amount overcharged. If the amount overcharged is less than a threshold amount, retailer must credit to next bill. If amount overcharged exceeds relevant threshold, retailer must repay amount as directed by customer, or on next bill if there is no direction.	VERC 6.3 Overcharging Where a retailer has overcharged a customer, whether this becomes evident as a result of a review under clause 6.1 or otherwise, the retailer must inform the customer within 10 business days of the retailer becoming aware of the error and repay the amount in accordance with the customer's reasonable instructions or, if no reasonable instructions are given, by crediting the amount on the customer's next bill.	AAR formulation provides no direction that retailers must inform the consumer to arrange repayment of the amount as soon as possible 10 business days is a reasonable amount of time. We also do not support the imposition of a threshold for this amount customers should be given the opportunity to choose their preferred method of repayment.
Payment methods and difficulties			
Payment methods	Retailer must accept payment by a small customer by any of the following payment methods <ul style="list-style-type: none"> ➤ In person ➤ By mail or ➤ By direct debit [or credit card] arrangement. Where a direct debit is entered into, retailer and small customer must agree the amount, date and frequency of the direct debits and customer's cancellation options.	Need to add (to align with 7.2.b) as follows VERC 7.2 Payment methods * (a) A retailer must accept payment from a customer using any of the following payment methods: <ul style="list-style-type: none"> • in person at a network of agencies or payment outlets;d • by mail; and • by direct debit arrangement.d (b) Before a direct debit arrangement may be used, the customer and the retailer must agree in writing: <ul style="list-style-type: none"> • the amount, preferred date and frequency of the direct debits; • that the arrangement may be cancelled through the relevant d financial institution or the retailer, at the option of the customer; • that, if the customer cancels the arrangement through the financial institution, the customer must use best endeavours to notify the retailer as soon as practicable after the cancellation; • that, if the customer cancels the arrangement through the retailer, the retailer must use best endeavours to notify the financial institution as soon as practicable after the cancellation; • if their energy contract is a market contract, another payment method to apply if the customer cancels the direct debit arrangement; and • that, if a last resort event occurs in respect of the retailer, the retailer must immediately cancel the direct debit arrangement and 	There is significant research demonstrating that direct debit can seriously disadvantage consumers through the penalty arrangements when payments are missed. It therefore is not an arrangement that is recommended for consumers who are on a very tight budget, and so it is imperative that consumers only enter into such an arrangement with the consumer's explicit d informed consent, and with a good understanding of the possible penalties. The disadvantage that accrues to a customer should the arrangement fail, also places a greater obligation on retailers to ensure that they cancel the arrangement as soon as possible.

		<p>notify both the customer and the financial institution of the cancellation.</p> <p>IN ADDITION, retailers should be required to offer Centrepay.</p>	
Payment difficulties	<p>Retailer must offer small customer an instalment plan where the customer informs the retailer that it is experiencing payment difficulties or it becomes apparent to the retailer that the customer is experiencing payment difficulties. Where customers are experiencing payment difficulties, retailers must provide information to those customers in relation to available concessions or govt assistance, financial counselling services and their ability to have the bill redirected to a consenting third party.</p> <p>Retailer is not required to offer an instalment plan if the customer has had two instalment plans cancelled due to non-payment in previous 12 months.</p>	<p>VERC 11.1 CAPACITY TO PAY</p> <p>A customer must contact a retailer if the customer anticipates that payment of a bill by the pay by date may not be possible.</p> <p>VERC 11.2 ASSESSMENT AND ASSISTANCE TO DOMESTIC CUSTOMERS</p> <p>If:</p> <p>(a) a domestic customer so contacts a retailer and they do not agree on an alternative payment arrangement; or</p> <p>(b) the retailer otherwise believes the customer is experiencing repeated difficulties in paying the customer's bill or requires payment assistance, the retailer must:</p> <p>(1) assess in a timely way whatever information the customer provides or the retailer otherwise has concerning the customer's d capacity to pay, taking into account advice from an independent financial counsellor if the retailer is unable to adequately make that assessment;</p> <p>(2) on request, make available to the customer documentary evidence of the retailer's assessment;</p> <p>(3) unless the customer has in the previous 12 months failed to comply with two instalment plans and does not provide a reasonable assurance to the retailer that the customer is willing to meet payment obligations under a further instalment plan, offer the customer an instalment plan; and</p> <p>(4) provide the customer with details on concessions including the Utility Relief Grant Scheme, telephone information about energy efficiency and advice on the availability of an independent financial counsellor.</p> <p>VERC 11.3 ENERGY EFFICIENCY FIELD AUDITS</p> <p>A retailer must consider conducting an energy efficiency field audit to assist a domestic customer to address the difficulties the customer may have paying the retailer's bills. The retailer need only conduct such an audit if the retailer and the domestic customer reach an agreement to that effect. To avoid doubt, any charge the retailer imposes for conducting the audit is not an additional retail charge.</p> <p>VERC 11.4 DEBT COLLECTION</p>	<p>AAR formulation is much too weak in dealing with consumers in energy hardship.</p> <p>The concept of 'capacity to pay' is a d crucial one, ensuring that retailers will set instalment plans at levels which the consumer can <u>realistically</u> afford. The outline of the discussion on hardship in the main body of the submission hopefully makes that point adequately.</p> <p>RPWG also needs to be aware of the appropriate role of financial counsellors, or other equivalent community agency services. They should not be treated as a de facto credit management service in the regulations. Retailers and the Rules also need to reflect the high demand for those services waiting lists to see a financial counsellor can be 6-8 weeks.</p> <p>We also support the adoption of a requirement that consumers are also enabled to request an energy efficiency advice and audits (VERC Clause 11.3), although would point out that the practical implementation of that obligation is changing, as some retailers begin to offer a more comprehensive service to consumers in hardship. We recommend that the RPWG monitor the outcomes of the Victorian energy hardship polices review.</p> <p>In Victoria, under hardship policies of the first tier retailers, all companies are proposing free energy appliance services and energy efficiency audits.</p>

		<p>A retailer:</p> <p>(a) may not commence legal proceedings for recovery of a debt from a domestic customer unless and until the retailer has complied with all applicable requirements of clause 11.2;</p> <p>(b) may not commence legal proceedings for recovery of a debt while a customer continues to make payments according to an agreed payment arrangement; and</p> <p>(c) must comply with guidelines on debt collection issued by the Australian Competition and Consumer Commission concerning section 60 of the <i>Trade Practices Act 1974</i> (Cth).</p> <p>VERC 12.1 OPTIONS FOR DOMESTIC CUSTOMERS</p> <p>In offering an instalment plan to a domestic customer, a retailer must offer each of:</p> <p>(a) an instalment plan under which the customer may make payments in advance towards the next bill in the customer's billing cycle; and (b) an instalment plan under which the customer may pay any amount in arrears and continue consumption.</p> <p>VERC 12.2 REQUIREMENTS FOR AN INSTALMENT PLAN</p> <p>A retailer offering an instalment plan must:</p> <p>(a) specify the period of the plan and the amount of the instalments (which must reflect the customer's consumption needs and capacity to pay), the number of instalments and how the amount of them is calculated, the amount of the instalments which will pay the customer's arrears (if any) and estimated consumption during the period of the plan;</p> <p>(b) make provision for re-calculating the amount of the instalments where the difference between the customer's estimated consumption and actual consumption may result in the customer being significantly in credit or debit at the end of the period of the plan;</p> <p>(c) undertake to monitor the customer's consumption while on the plan and to have in place fair and reasonable procedures to address payment difficulties a customer may face while on the plan; and</p> <p>(d) provide the customer with energy efficiency advice and advice on the availability of an independent financial counsellor.</p>	
<p>Best practice hardship policies and programs (missing from AAR Paper)</p>		<p>Victorian <i>Electricity Industry Act</i> contains the following provisions:</p> <p>42. Objects</p> <p>The objects of this Division are—</p> <p>(a) to recognise that financial hardship may be suffered by domestic customers; and</p>	<p>As per the discussions in sections 6, 7 and 9 of our submission, we believe that similar provisions should be developed for inclusion in the National Electricity Law and National Gas Law.</p>

		<p>(b) to promote best practice in electricity service delivery to facilitate continuity of electricity supply to domestic customers experiencing financial hardship.</p> <p>43. Financial hardship policies</p> <p>(1) A licence to sell electricity is deemed to include a condition requiring the licensee to prepare a policy complying with this section to deal with domestic customers experiencing financial hardship and to submit it for approval to—</p> <p>(a) the Minister, if required to do so under section 46, within the period specified in the notice under that section; and</p> <p>(b) the Commission by 31 March 2007.</p> <p>(2) A financial hardship policy submitted under subsection (1) must include—</p> <p>(a) flexible payment options for payment of electricity bills; and</p> <p>(b) provision for the auditing of a domestic customer's electricity usage (whether wholly or partly at the expense of the licensee); and</p> <p>(c) flexible options for the purchase or supply of replacement electrical equipment designed for domestic use from the licensee or a third party nominated by the licensee; and</p> <p>(d) processes for the early response by both licensees and domestic customers to electricity bill payment difficulties.</p> <p>(3) A licence to sell electricity is deemed to include a condition requiring the licensee to implement an approved financial hardship policy by the date specified in the approved financial hardship policy.</p> <p>(4) A term or condition in a contract for the supply or sale of electricity by a licensee to a domestic customer is void to the extent that it is inconsistent with the approved financial hardship policy of the licensee.</p> <p>44. Commission may develop guidelines</p> <p>(1) The Commission may prepare and issue guidelines in relation to the development and implementation by licensees of financial hardship policies.</p> <p>(2) The Commission may amend any guidelines issued under this section.</p> <p>(3) The Commission must publish each guideline issued under this section and each amendment of a guideline.</p> <p>45. Commission may approve financial hardship policy</p> <p>(1) The Commission must consider a financial hardship policy submitted by a licensee in accordance with section 43 and may approve the policy if it considers it appropriate.</p> <p>(2) In deciding whether to approve a financial hardship policy the</p>	
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		<p>Commission must have regard to—</p> <p>(a) the essential nature of the electricity supply; and</p> <p>(b) community expectations that licensees will work with domestic customers to manage customers' present and future electricity usage and associated financial obligations;</p> <p>and</p> <p>(c) community expectations that the electricity supply will not be disconnected solely because of a customer's inability to pay for the electricity supply; and</p> <p>(d) the principle that the electricity supply to premises should only be disconnected as a last resort; and</p> <p>(e) the principle that there should be equitable access to financial hardship policies and that those policies should be transparent and applied consistently.</p> <p>(3) The Commission must not approve a financial hardship policy that does not include the provisions set out in section 43(2).</p> <p>(4) The Commission may, at the request of the licensee, approve a variation or replacement of an approved financial hardship policy.</p>	
Shortened billing cycles (from Part B)	Conditions under which a customer may be placed on a shortened billing cycle.	<p>10.1 Customer s right to negotiate a shorter billing cycle</p> <p>A retailer and a customer may agree a billing cycle with a regular recurrent period:</p> <p>(a) in the case of an electricity contract, of less than three months; and</p> <p>(b) in the case of a gas contract, of less than two months.</p> <p>That agreement is not effective unless the customer gives explicit informed consent.</p> <p>Under the agreement, the retailer may impose an additional retail charge on the customer for making the different billing cycle available.</p>	We recommend the adoption of the VERC formulation.
Bill smoothing	<p>Where retailer is entitled to use estimations as the basis for calculation, estimated bills may be provided under a smoothing arrangement if</p> <ul style="list-style-type: none"> ➤ Amount payable each month is initially the same ➤ Estimate based on customer's d historical billing data or, if no data, average consumption of a similar customer; ➤ Retailer re-estimates consumption after 6 months; and ➤ Difference between initial estimate and re-estimate is greater than 10%, 	<p>VERC 5.3 BILL SMOOTHING</p> <p>Despite clause 5.1, in respect of any 12 month period a retailer may provide a customer with estimated bills under a bill smoothing arrangement if and only if:</p> <p>(a) the following requirements are met:</p> <ul style="list-style-type: none"> • the amount payable under each bill is initially the same and is set d on the basis of the retailer's initial estimate of the amount of energy the customer will consume over the 12 month period; • that initial estimate is based on the customer's historical billing data or, where the retailer does not have that data, average consumption at the relevant tariff calculated over the 12 month period; • in the sixth month:d 	<p>Bill smoothing carries with it some potential problems for consumers it can be more difficult to monitor consumption, as significant change may not be reflected in the bill until a re-estimate has occurred. Such products are also often tied to direct debit arrangements, incurring the disadvantages outlined above. As such, the consumer should be made fully aware of the possible differences between a bill smoothing product and the more usual one.</p> <p>We also contest the assumption that bill smoothing is an arrangement for consumers in hardship while it is a</p>

	retailer resets the amount payable under each of the remaining bills to reflect the difference.	(A) the retailer re-estimates the amount of energy the customer will consume over the 12 month period, taking into account any meter readings and relevant seasonal factors; and (B) if there is a difference between the initial estimate and the re-estimate of greater than 10%, the amount payable under each of the remaining bills in the 12 month period is to be re-set to reflect that difference; and • at the end of the 12 month period, the meter is read and any undercharging or overcharging is adjusted for under clause 6.2 or 6.3; and b) the retailer has obtained the customer's explicit informed consent to the retailer billing on that basis.	product that is more attractive to people on tight budgets, bill smoothing is not, and should not be considered, a 'hardship measure. Instalment plans d as described above, and in the correct formulation are a much more effective tool for addressing hardship.
Fees for late payment (from Part B)	Not permitted	The Electricity Industry Act (sec40C) and the Gas Industry Act (sec48B) prohibits the imposition of late payment fees on consumers.	We do not support the imposition of late payment fees, which disproportionately affect low-income and vulnerable consumers.
Disconnection			
Rights GROUNDS to disconnect Notice	Retailer may disconnect or discontinue supply where ➤ Small customer has not paid a bill ➤ Access to a meter has been denied for 3 consecutive bills ➤ Customer refused to provide acceptable ID ➤ Customer used energy illegally; or ➤ Customer obstructed an authorised person in relation to acts to be done under the contract Disconnection may not be effected until the retailer has provided the customer with ➤ Reminder notice ➤ [2] disconnection notices And retailer must make reasonable attempt to contact customer by telephone.	13. GROUNDS FOR DISCONNECTION VERC 13.1 NON-PAYMENT OF A BILL A retailer may only disconnect the supply address of a customer, being a customer who fails to pay the retailer by the relevant pay by date an amount billed in respect of that supply address, if: (a) the failure does not relate to an instalment under the customer's d first instalment plan with the retailer; (b) the retailer has given the customer: • a reminder notice not less than 14 business days from the date of dispatch of the bill. The reminder notice must include a new pay by date which is not less than 20 business days from the date of dispatch of the bill. No reminder notice is required if the customer is on a shortened collection cycle under clause 9.1; and • a disconnection warning: (A) if the customer is on a shortened collection cycle under clause 9.1, not less than 16 business days from the date of dispatch of the bill. The disconnection warning must include a new pay by date which is not less than 20 business days from the date of dispatch of the bill; or (B) otherwise, not less than 22 business days from the date of dispatch of the bill. The disconnection warning must include a new	AAR formulation is much too weak, and does not reflect that disconnection should ➤ be treated very much as a last resort; and ➤ should not occur for an inability to pay. A diminution such as the AAR formulation would be a significant weakening for no evident reason of the protections currently afforded to Victorian consumers. We are also concerned at the terminology in this section of the AAR paper the consumer protection framework should be configured on the basis of consumer, <u>not</u> retailer, needs. We therefore strongly recommend that this section in future be called "Grounds d for Disconnection". d This section also includes Notice to consumers. The WDP Interim Operating Procedure clarifies what is meant by best

		<p>pay by date which is not less than 28 business days from the date of dispatch of the bill;</p> <p>(c) the retailer has included in the disconnection warning:</p> <ul style="list-style-type: none"> • if the customer is a domestic customer and has a dual fuel contract: <p>(A) a statement that the retailer may disconnect the customer's gas on a day no sooner than seven business days after the date of receipt of the disconnection warning and the customer's electricity on a day no sooner than 22 business days after the date of receipt of the disconnection warning; and</p> <p>(B) a statement that disconnection of the customer's gas may result in a variation of the tariffs and terms and conditions of the dual fuel contract as provided for in the dual fuel contract. If no variation is provided for in the dual fuel contract and neither does the dual fuel contract provide that there is to be no variation, the tariffs and terms and conditions of the dual fuel contract are to be varied such that on and from then:</p> <p>(i) the timeframe for disconnecting the customer's electricity is the timeframe stated in the disconnection warning;</p> <p>(ii) the supply and sale of electricity otherwise continues at the tariff, and on the terms and conditions, that would apply if the customer were party to a deemed contract under section 37 of the Electricity Act; and</p> <p>(iii) the supply and sale of gas otherwise continues at the tariff, and on the terms and conditions, that would apply if the customer were party to a deemed contract under section 44 of the Gas Act;</p> <ul style="list-style-type: none"> • in any other case, a statement that the retailer may disconnect the customer on a day no sooner than seven business days after the date of receipt of the disconnection warning; and • a telephone number for payment assistance enquiries; and <p>(d) the customer has called the telephone number referred to in paragraph (c) and the retailer has responded to the customer's enquiry and has provided advice on financial assistance;</p> <p>(e) the customer is a domestic customer and has a dual fuel contract with the retailer and the customer's electricity is to be disconnected, the retailer has given the customer a further disconnection warning no less than six business days before the electricity is disconnected; and</p> <p>(f) the customer is on a shortened collection cycle under clause 9.1 and the retailer has contacted the customer in person or by telephone to advise of the imminent disconnection, and, before disconnection, the customer:</p>	endeavours in clause 13.2.
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		<p>(1) does not provide a reasonable assurance to the retailer that the customer is willing to pay the retailer's bills; or</p> <p>(2) does so, but then:</p> <ul style="list-style-type: none"> • does not pay the retailer the amount payable by the pay by date on the relevant disconnection warning. This does not apply if the retailer and the customer have agreed to a new payment arrangement; • does not agree to a new payment arrangement within five business days after the date of receipt of the disconnection warning; or • does not make payments under such a new payment arrangement. <p>To avoid doubt, if the customer does not agree to such a new payment arrangement or does not so make payments under such a new payment arrangement, the retailer may disconnect the customer without again having to observe this clause 13.1.</p> <p>VERC 13.2 DOMESTIC CUSTOMERS WITHOUT SUFFICIENT INCOME</p> <p>Despite clause 13.1, a retailer must not disconnect a domestic customer if the failure to pay the retailer's bill occurs through lack of sufficient income of the customer until the retailer has also complied with clause 11.2, using its best endeavours to contact the customer in person or by telephone, and the customer has not accepted an instalment plan within five business days of the retailer's offer.</p> <p>VERC 13.3 DENYING ACCESS TO THE METER</p> <p>A retailer may disconnect a customer if, due to acts or omissions on the part of the customer, the customer's meter is not accessible for the purpose of a reading for three consecutive bills in the customer's billing cycle but only if:</p> <p>(a) the retailer or the relevant meter reader has:</p> <ul style="list-style-type: none"> • used its best endeavours, including by way of contacting the customer in person or by telephone, to give the customer an opportunity to offer reasonable access arrangements; • each time the customer's meter is not accessible, given or ensured the retailer's representative has given the customer a notice requesting access to the customer's meter; and • given the customer a disconnection warning including a statement that the retailer may disconnect the customer on a day no sooner than seven business days after the date of receipt of the notice; and <p>(b) due to acts or omissions on the part of the customer, the customer's meter continues not to be accessible.</p>	
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<p>Compensation for wrongful disconnection (from Part B)</p>	<p>Retailers must pay compensation to customers who are wrongfully disconnected.</p>	<p>Victorian <i>Electricity Industry Act</i> contains the following provisions:</p> <p>40B. Compensation for wrongful disconnection</p> <p>(1) Without limiting the generality of section 20(2) or (3) or section 21, the conditions to which a licence to sell electricity is subject include a condition requiring the licensee to make a payment of the prescribed amount to a relevant customer in accordance with this section if the licensee—</p> <p>(a) disconnects the supply of electricity to the premises of that customer; and</p> <p>(b) fails to comply with the terms and conditions of the contract specifying the circumstances in which the supply of electricity to those premises may be disconnected.</p> <p>(2) A payment under a condition under subsection (1) may be made directly to the customer or by way of rebate on the customer's electricity bill.</p> <p>(3) A payment under a condition under subsection (1) must be made as soon as practicable after the supply of electricity is reconnected to the premises of the relevant customer.</p>	<p>The imposition of this requirement has positively affected the level of disconnections in Victorian and we strongly support its adoption in the national regime.</p>
<p>Limitations on right to disconnect</p>	<p>Other limitations will apply to the right to discontinue in circumstances where a small customer has not paid a bill on</p>	<p>VERC 14. NO DISCONNECTION</p> <p>Despite clause 13, a retailer must not disconnect a customer:</p>	<p>AAR formulation does not outline in sufficient detail what are some of the most crucial protections in the</p>

<p>NO DISCONNECTION</p>	<p>account of having insufficient income. In these circumstances, the retailer is required to comply with its obligations in respect of customer payment difficulties (e.g. to offer instalment plans or special payment arrangements and to make referrals to counselling services etc) before proceeding to disconnect a customer. Retailers are not entitled to disconnect while an application for govt assistance or a payment plan is pending. In addition, premises registered as containing life support or other medical equipment may not be disconnected and retailers may only carry out disconnections before certain times of the day and on certain days.</p>	<p>(a) for non-payment of a bill:</p> <ul style="list-style-type: none"> • where the amount payable is less than any amount approved by the Commission for this purpose in a relevant guideline; • if the customer has made a complaint directly related to the non-payment of the bill, to the Energy and Water Ombudsman Victoria or another external dispute resolution body and the complaint remains unresolved; • if the customer has formally applied for a Utility Relief Grant and a decision on the application has not been made; or • if the only charge the customer has not paid is a charge not for the supply or sale of energy; <p>(b) if:</p> <ul style="list-style-type: none"> • for electricity, the customer's supply address is registered by the relevant distributor as a life support machine supply address; or • for gas, the customer's supply address is registered by the retailer or a distributor as a medical exemption supply address. A retailer must register a supply address as a medical exemption supply address if a customer requests registration and provides a current medical certificate certifying that a person residing at the supply address has a medical condition which requires continued supply of gas; or <p>(c) unless otherwise requested by the customer:</p> <ul style="list-style-type: none"> • after 2 pm (for a domestic customer) or 3 pm (for a business customer) on a weekday; or • on a Friday, on a weekend, on a public holiday or on the day before a public holiday. 	<p>framework, dictating when supply must not be discontinued. We recommend that the wording and content of the VERC be adopted.</p> <p>A "charge not for the supply or sale of energy" should not include ancillary charges (such as connection or reconnection fees, meter reading, and other fees and charges).</p>
<p>Notice</p>			<p>See "Grounds for Disconnection"–</p>
<p>Dual fuel contracts</p>	<p>If disconnection is permitted, retailer must ensure that a small customer on a dual fuel contract is initially disconnected from gas and that disconnection from electricity occurs within a certain period after the disconnection notice.</p>	<p>VERC Clause 13.1.(c) Disconnection warning must include</p> <p>(A) a statement that the retailer may disconnect the customer's gas on a day no sooner than seven business days after the date of receipt of the disconnection warning and the customer's electricity on a day no sooner than 22 business days after the date of receipt of the disconnection warning; and</p> <p>(B) a statement that disconnection of the customer's gas may result in a variation of the tariffs and terms and conditions of the dual fuel contract as provided for in the dual fuel contract. If no variation is provided for in the dual fuel contract and neither does the dual fuel contract provide that there is to be no variation, the tariffs and terms and conditions of the dual fuel contract are to be varied such that on and from then:</p> <p>(i) the timeframe for disconnecting the customer's electricity is the</p>	<p>We agree that a consumer on a dual fuel contract should be disconnected from gas before electricity, considering that electricity is a more essential service.</p>

		<p>timeframe stated in the disconnection warning;</p> <p>(ii) the supply and sale of electricity otherwise continues at the tariff, and on the terms and conditions, that would apply if the customer were party to a deemed contract under section 37 of the Electricity Act; and</p> <p>(iii) the supply and sale of gas otherwise continues at the tariff, and on the terms and conditions, that would apply if the customer were party to a deemed contract under section 44 of the Gas Act;</p>	
Rights of Reconnection	<p>Retailer must notify small customer of the arrangements which the customer will need to make in respect of any reconnection, including any costs payable by the customer. Any payment arrangements for reconnection must allow for fair and reasonable payments at fair and reasonable intervals.</p> <p>Retailer must reconnect premises if the breaches described above are remedied within 10 business days. Retailers must make appropriate arrangements with related DB to ensure reconnection occurs as soon as possible.</p>	<p>VERC 15. RECONNECTION</p> <p>15.1 Customer s right of reconnection</p> <p>If a retailer has disconnected a customer as a result of:</p> <p>(a) non-payment of a bill, and within 10 business days of disconnection either:</p> <ul style="list-style-type: none"> • the customer pays the bill or agrees to a payment arrangement; or • being eligible for a Utility Relief Grant, the customer applies for such a grant; <p>(b) the customer’s meter not being accessible, and within 10 business days of disconnection the customer provides access or makes available reasonable access arrangements;</p> <p>(c) the customer obtaining supply otherwise than in accordance with applicable laws and codes, and within 10 business days of disconnection that ceases and the customer pays for the supply so obtained or agrees to a payment arrangement; or</p> <p>(d) the customer refusing to provide acceptable identification or a refundable advance, and within 10 business days of disconnection the customer provides it, on request, but subject to other applicable laws and codes and the customer paying any reconnection charge, the retailer must reconnect the customer.</p> <p>15.2 Time for reconnection</p> <p>(a) If a customer makes a request for reconnection under clause 15.1:</p> <ul style="list-style-type: none"> • before 3 pm on a business day, the retailer must reconnect the customer on the day of the request; or • after 3 pm on a business day, the retailer must reconnect the customer on the next business day or, if the request also is made before 9 pm and the customer pays any applicable additional after hours reconnection charge, on the day requested by the customer. <p>A retailer and a customer may agree that later times are to apply to the retailer.</p> <p>(b) Despite clause 36.1, the obligation of a retailer to reconnect a</p>	<p>AAR formulation does not address instances where consumers should be able to reconnect if an application for assistance to government (in Victoria, a Utility Relief Grant) has been made.</p> <p>AAR formulation also does not require reconnection to be ‘as soon as possible’ d this is an essential service, and customers and their families should be able to access supply in a timely fashion.</p>

		customer under clause 15.2(a) is absolute. If reconnection does not occur by the relevant time, it is not sufficient to discharge the retailer's obligation that the retailer may have used best endeavours to procure the relevant distributor to reconnect the electrical system or natural gas installation at the customer's supply address to the distributor's distribution system.	
Liability and warranties	<p>Retailer must not include any term and condition in an energy contract that limits the liability of the retailer for breach of the contract or negligence by retailer provided that</p> <ul style="list-style-type: none"> ➢ Retailer's liability may be limited as provided per sec68A of Trade Practices Act or equivalent State/territory provisions ➢ No variation or exclusion of relevant legislative provisions which provide that the retailer is not liable for damages for failure to supply due to circumstances beyond its control (ie sec. 120 of NEL) <p>A retailer may not include in an energy contract with a small customer a term pursuant to which the customer indemnifies the retailer, so that the retailer may recover from the customer an amount greater than the retailer would otherwise have been able to recover at general law for breach of contract or negligence by the customer in respect of the contract.</p>	Support adoption of AAR formulation.	We encourage the rule to be formulated in a way that prevents retailers from including confusing exclusion clauses, which are common in consumer contracts (ie, "we are not liable for our actions or for breach of contract or negligence, except to the extent provided by law").
PART B			
DISPUTE RESOLUTION			
Dispute resolution and complaints	<p>Retailer must handle a complaint made by a small customer in accordance with the relevant Australian standard and the relevant jurisdictional dispute resolution process.</p> <p>When a customer contacts a retailer in relation to a complaint, the retailer must inform the customer that</p> <ul style="list-style-type: none"> ➢ Customer has right to raise the complaint to a higher level within the retailer's management structure; and 	<p>VERC 28. COMPLAINTS AND DISPUTE RESOLUTION</p> <p>28.1 Complaint handling</p> <p>A retailer must handle a complaint by a customer in accordance with the relevant Australian Standard on Complaints Handling or the 'Benchmark for Industry Based Customer Dispute Resolution Schemes' published by the Department of Industry, Tourism and Resources (Cth). The retailer must include information on its complaint handling processes in the retailer's charter.</p> <p>28.2 Advice on customer's rights</p> <p>When a retailer responds to a customer's complaint, the retailer</p>	<p>AAR formulation does not include a proviso that when a retailer responds to a consumer's complaint, any information must be given in writing.</p> <p>AAR Paper does not outline in sufficient detail the way in which consumers will be informed of their rights more generally. We recommend the adoption of the information requirements contained in the VERC (see below), but the RPWG should be aware that consumers' access d</p>

	<p>➤ If after raising the complaint to a higher level, the customer is still not satisfied with the retailer's response, the customer may refer the complaint to an external ombudsman</p>	<p>must inform the customer:</p> <p>(a) that the customer has a right to raise the complaint to a higher level within the retailer's management structure; and</p> <p>(b) if, after raising the complaint to a higher level the customer is still not satisfied with the retailer's response, the customer has a right to refer the complaint to the Energy and Water Ombudsman Victoria or other relevant external dispute resolution body. This information must be given in writing.</p> <p>28.3 Energy and Water Ombudsman Victoria</p> <p>A retailer must include the phone number of the Energy and Water Ombudsman Victoria on any disconnection warning.</p>	<p>to dispute resolution is limited by a lack of information about the service.</p>
INFORMING CONSUMERS OF THEIR RIGHTS AND RESPONSIBILITIES			
<p>Rights to information</p>	<p>An energy contract must set out for a small customer how the small customer can receive information on his or her rights, entitlements and obligations.</p>	<p>VERC 23.4 DOCUMENTING ENERGY CONTRACTS AND CUSTOMERS CANCELLATION RIGHTS</p> <p>(a) On or before the second business day after the relevant date in respect of their energy contract, a retailer must give a customer:</p> <ul style="list-style-type: none"> • a copy of the energy contract or other document evidencing the energy contract which sets out the tariff and all of the terms and conditions of the energy contract including: <ul style="list-style-type: none"> (A) the total consideration to be paid or provided by the customer under the energy contract or, if the total consideration is not ascertainable at the time the energy contract is entered into, the manner in which it is to be calculated; and (B) any additional retail charges or other charges or fees to be paid by the customer or which the customer may become liable to pay, including any payable on cancellation. <p>The retailer must comply with any relevant guideline in preparing this document; and</p> <ul style="list-style-type: none"> • if the customer has a right to cancel the energy contract, a notice advising the customer of the customer's right to cancel the energy contract, accompanied by a further form of notice which sets out the name and address of the retailer and the date and details of the energy contract which may be used by the customer to cancel the energy contract. <p>(b) A retailer will be taken to have given the document and notices required by clause 23.4(a) on the second business day after the relevant date if by then the retailer has posted the document and notices to the energy customer.</p> <p>VERC 26. PROVISION OF INFORMATION</p> <p>26.1 Contact details</p>	<p>Regulation concerning the provision of information to consumers must recognise that it is in this area that market failure is perhaps most evident. There are two key characteristics of consumer participation in the market consumers' lack of familiarity with the market and its terminology and the fact that most consumers deem it a 'low involvement activity', with too high transaction costs. Both encourage consumer inertia, which, in turn, constrains competition.</p> <p>AAR formulation appears to assume that the energy contract will be the sole source of information for the consumer. This fails to take into account these market failures, and we would strongly recommend that regulation is tailored to ensure that consumers receive the following types of information:</p> <ul style="list-style-type: none"> ➤ Copy of their contract, clearly outlining tariffs and terms and conditions ➤ General information on consumers' rights and responsibilities in Victoria this is supplied through a Customer Charter, which must be provided to all consumers and, as necessary, in the appropriate format (language or large-print);

		<p>A customer must inform a retailer as soon as possible of any relevant change to contact details.</p> <p>26.2 Retailer's charter</p> <p>(a) A retailer must give a copy of its charter to a customer:</p> <ul style="list-style-type: none"> • at or as soon as practicable after the time the customer is connected at a new supply address or transfers from another retailer to the retailer; • on request by the customer following which the copy is to be handed to the customer or posted to the customer's address within two business days of the request. • where the customer is a deemed customer, as soon as practicable after their energy contract begins. <p>(b) The charter must include details of the rights, entitlements and obligations of retailers and customers relating to the sale of energy and other aspects of their relationship under this Code and other applicable law and codes.</p> <p>(c) On request, a retailer must provide the charter to a customer in large print or, if the retailer has a significant number of customers from the same non-English speaking background as the customer, in the customer's non-English language.</p> <p>(d) A retailer must periodically include a statement on a customer's bills that, on request, the customer is entitled to a free copy of the retailer's charter.</p> <p>26.3 This Code</p> <p>On request, a retailer must give to a customer a copy of this Code (which, if so requested, must be a large print copy). The retailer may impose an additional retail charge on the customer for this. A retailer must also inform a customer of any amendment to this Code that materially affects the customer's rights, entitlements and obligations as soon as reasonably practicable after this Code is amended.</p> <p>26.4 Advice on available tariffs</p> <p>(a) On request, a retailer must provide a customer with reasonable information on tariffs the retailer may offer to the customer. The information must be given to the customer within 10 business days of the customer's request and, if the customer requests it, in writing.</p> <p>(b) A retailer must give notice to a customer of any variation to the retailer's tariffs that affects the customer. The notice must be given as soon as practicable and in any event no later than the customer's next bill.</p> <p>26.5 Concessions</p>	<p>➤ Advice on appropriate government assistance programs, dispute resolution schemes, and provision of services by the retailer (such as energy efficiency advice)</p> <p>The VERC covers most of these formats in clauses 26.1-26.6 and we would recommend that these be considered the minimum benchmark going forward.</p> <p>We assume that clause 26.7 will be included in the regulations pertaining to a distributor's obligation to supply, but I thought it of value to highlight regardless, given the importance of getting those provisions right.</p>
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		<p>On request, a retailer must provide to a domestic customer information on all concessions.</p> <p>26.7 Information from retailer to distributor</p> <p>As soon as practicable, a retailer must:</p> <p>(a) provide the relevant distributor with confirmation from a registered medical practitioner or a hospital that a person residing at a customer's supply address requires a life support machine or otherwise has a medical condition that requires continued supply, if the customer provides that confirmation to the retailer; or</p> <p>(b) inform the relevant distributor that the customer's supply address is affected by a fault, if the customer provides that information to the retailer.</p>	
Communications with customers	Retailer must provide access to multi-lingual services (for languages common to the relevant customer base) in order to meet the reasonable needs of its small customers.	<p>VERC Clause 4.2.(p) CONTENT OF BILL</p> <p>This clause requires that a domestic customer must be informed on their bill, in relevant languages, of details of interpreter services.</p>	It is unclear exactly what is meant by "communications with customers" other than multilingual services. We support the provision of such information.
Provision of energy efficiency advice	On request, a retailer must provide energy efficiency advice to a small customer	<p>VERC 26.6 Energy efficiency advice</p> <p>On request, a retailer must provide energy efficiency advice to a customer.</p>	We support inclusion of this requirement, an issue we would see as important given the likelihood of increased diversity in products and prices, and the vulnerability of large portions of the population to hardship.
Competitive pricing information	Retailers must publish information relating to the provision of pricing information to enable small customers to compare competing offers.	<p>We recommend the adoption in its entirety of VICTORIAN GUIDELINE NO. 19 –'Energy Product Disclosure –'electricity and gas</p> <p>Energy guideline no 19 requires retailers to publish price and key details of an energy product on their website, and to give customer copy in writing on request</p>	<p>This is a new regulatory requirement, aimed to promote competition. It was strongly supported by Victorian consumer organisations, as it not only significantly reduces transaction costs for consumers, but overall engenders greater consumer confidence in the marketplace.</p> <p>The publication of such information has been a very successful innovation by Victoria, and one we would not want to see lost in the transition to a national regulatory regime.</p>
Greenhouse gas emissions	Bills must include information concerning greenhouse gas emissions in accordance with guidelines.	We recommend the adoption in its entirety of Guideline No. 13 Greenhouse Gas Disclosure on Electricity Customers Bills	

<p>Historical billing information</p>	<p>Retailer must provide historical billing data for the previous [12] months without charge to a small customer. Any information provided prior to that period may be subject to a charge.</p>	<p>27. HISTORICAL BILLING INFORMATION</p> <p>27.1 Records</p> <p>A retailer must retain a customer's historical billing data for at least two years, even though in the meantime the customer's energy d contract with the retailer may have terminated.</p> <p>27.2 Historical billing data</p> <p>(a) On request, a customer's current retailer must provide to the customer any of the customer's historical billing data then retained by the retailer for any period nominated by the customer. The retailer may impose an additional retail charge on the customer but only if the request is not the first request made by the customer within the preceding year or the data requested relates to a period prior to the preceding two years.</p> <p>(b) If a customer has transferred to another retailer and requests from its previous retailer historical billing data relating to a period within two years prior to the date of the request then, even though the customer's energy contract with the previous retailer may otherwise have terminated, the previous retailer must provide the customer with any of the data then retained by the retailer and requested by the customer. The previous retailer may impose an additional retail charge on the customer for the provision of this information.</p> <p>(c) A retailer must use its best endeavours to provide historical billing data to a customer within 10 business days of the customer's d request or such other period they agree.</p> <p>(d) If historical billing data is required for the purposes of handling a genuine complaint made by a customer, in no circumstances may a retailer charge the customer for providing the data.</p>	<p>AAR formulation does not provide sufficient detail to ensure consumers' d rights to historical billing information are sufficiently protected. Such information is not only invaluable in the event of a dispute, but also to enable consumer to take advantage of innovative market products that may be more tailored to their consumption (as is expected through the introduction of interval meters), and also to facilitate consumers making the right choice in installing major systems (e.g. PV cells or other embedded generation).</p> <p>We also support the historical billing information to be available for the previous 2 years, which we believe is a reasonable time period.</p>
<p>OTHER ISSUES TO BE INCLUDED IN RULES</p>			
<p>Prepayment meters (PPM)</p>	<p>A customer cannot be required to use a prepayment meter.</p>	<p>We strongly oppose the introduction of prepayment meters. The Victorian Electricity Industry Act Section 40E provides the Government with the authority to prohibit or regulate prepayment meters.</p> <p>In light of community concerns about their use, the Victorian Government announced it will hold a review into prepayment meters before permitting their introduction. That review has not yet been held.</p>	<p>Victorian consumer and community groups remain deeply concerned about the potential introduction of prepayment meters, as they are completely unsuitable to address financial hardship:</p> <ul style="list-style-type: none"> ➤ PPMs reduce contact between retailers and customers, undermining attempts to assist customers with payment difficulties. ➤ PPMs do not make energy more affordable - experience shows that

			<p>PPM customers usually pay more for each unit of energy received than other customers.</p> <ul style="list-style-type: none"> ➤ PPMs have, by some proponents, been disguised as useful demand management tools (as it provides the customer with price signals through its more advanced metering technology). However, demand management is different to energy efficiency and we believe many low-income consumers have little ability to respond to price signals.
<p>Service standards Performance monitoring and reporting</p>	Retailer must comply with specified service standards.	Victorian requirements for compliance are located in licence obligation	<p>We assume that the AAR paper includes this obligation as it may not in the future be captured by licence obligations. However we believe that performance reporting and monitoring should be dealt with discretely in this process while there is an obligation to comply with regulatory requirements, the extent of such reporting, how public it is, and the powers given to the regulator to compel companies to produce data is a larger issue than should be dealt with here.</p>
<p>Customer consultative groups</p>	Retailer must establish a customer consultative group.	Supported.	<p>Engagement with consumers is a valuable tool for companies, including through the following:</p> <ul style="list-style-type: none"> ➤ It improves the quality of decision-making, by ensuring that companies are more aware of the impact of their decisions in the marketplace; ➤ Consumer input and guidance enables identification of market failures at an early stage; ➤ Well-informed consumer input assists in the identification of solutions to address market failures; <p>We would therefore support the inclusion of this obligation.</p>
<p>Discrimination</p>	Retailer must not refuse to supply or	Supported	<p>We support the inclusion of this</p>

	supply on inferior terms on the basis that the customer supplies or uses alternative forms or sources of energy or services that reduce the demand for energy.		obligation there has been extensive research demonstrating the issues for consumers who wish to install alternative energy sources in their homes or businesses.
CSOs	Retailers may be required to deliver government funded CSOs.	Victorian requirements for compliance are located in licence obligation	Similar to our comments above, we assume that the AAR paper includes this obligation as it may not in the future be captured by licence obligations. However we believe that the delivery of CSOs should also be dealt with discretely in this process given that they provide the ability for many low-income consumers to secure access to supply.